



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL CASE NO. 178 OF 2012

REBECCA PETER FRANCESKIDES.....PLAINTIFF

VERSUS

LUCAS OLOO OPONDO & OTHERS.....1ST DEFENDANT

JOSEPH MUISYO practicing as MUISYO &

CO. ADVOCATES (DECEASED).....2ND DEFENDANT

JOHN KHAMINWA & ALBERT KHAMINWA

ADVOCATES practicing as KHAMINWA & KHAMINWA

ADVOCATES.....3RD DEFENDANT

MORRIS MATANDA.....4TH DEFENDANT

STANDARD CHARTERED BANK LIMITED.....5TH DEFENDANT

JUDGEMENT

1. At the time of the institution of this suit, the Plaintiff, Rebecca Peter Franceskides, had sued the 1st Defendant, Lucas Oloo Opondo, the 2nd Defendant, Joseph Muisyo practicing as Muisyo & Co. Advocates, the 3rd Defendant, John M. Khaminwa & Albert Khaminwa advocates practicing as Khaminwa & Khaminwa advocates, the 4th Defendant, Morris Matanda and the 5th Defendant, Standard chartered Bank Limited. On 4th November, 2016 it was communicated to the court that the 2nd defendant had passed away. The claim against the 2nd Defendant was therefore marked as abated.

2. The Plaintiff's claim against the defendants is as stated in the plaint as amended on 15th June, 2015. Her averment is that sometime in august, 2011 she expressed interest to the 1st Defendant in acquiring a parcel of land around Malindi suitable for purposes of establishing and running a lodge and tour operations. The 1st Defendant advised her that as a foreigner she could not acquire land in her own name in Kenya and neither could she do so through a limited liability company unless she had a local partner who would own at least 50% of the shares in the land. Acting on the said advice, the Plaintiff agreed to acquire land jointly with the 1st Defendant on the understanding that the property will be transferred to her when she acquires Kenyan citizenship and in the alternative she would be paid back the money invested on the land should the 1st Defendant accept to register a limited liability company with the Plaintiff for the tour business.

3. It is the Plaintiff's averment that sometime in November, 2011, the 1st Defendant informed her that he had identified a suitable parcel of land on sale being L.R. No. Gede/Mida Majaoni/21 at a good bargain price of 100,000 euros. According to the Plaintiff, on 3rd November, 2011 the 1st Defendant informed her that the plans of acquiring the land were at an advanced stage and that he had identified a good lawyer being the 2nd Defendant herein to prepare the sale agreement between them and the vendor. The Plaintiff and the 1st Defendant proceeded to the 2nd Defendant where the Plaintiff executed an agreement for the purchase of land for the sum of 100,000 euros to be paid in two instalments of 10,000 euros being 10% of the sale price at the execution of the agreement and the balance of 90,000 euros to be paid on or before 31st January, 2012. The Plaintiff avers that she paid a deposit of 10,000 euros and a further sum of Kshs. 20,000 being legal fees for the preparation of the sale agreement but she was not given a copy of the agreement and did not subsequently obtain a copy.

4. It is the Plaintiff's averment that sometimes in December, 2011 while she was in Belgium the 1st Defendant informed her that he had already obtained the consent of the Land Control Board and that in his application for the consent he had stated the purchase price at Kshs. 4,500,000 instead of 100,000 euros and that therefore a fresh agreement needed to be signed showing the purchase price of Kshs. 4,500,000.

5. The Plaintiff stated that when she arrived from Belgium on 14th January, 2012, she gave the 1st Defendant the sum of 90,000 euros being the balance of the purchase price and accompanied the 1st Defendant to the 2nd Defendant's office where she executed another sale agreement for the sum of Kshs. 4,500,000 this time in the presence of the vendor.

6. The Plaintiff's averment is that on 14th January, 2012, the 1st Defendant informed her that though he had paid the vendor the sum of 100,000 euros, the vendor was refusing to execute the transfer and wanted further payment of 30,000 euros as a result of the fall in the exchange rate to the Kenyan shilling. It is the Plaintiff's case that she refused to pay the additional 30,000 euros and asked the 1st Defendant to show her the November, 2011 agreement. As the agreement had a purchase price of 100,000 euros, the Plaintiff informed the 1st Defendant that they should file a suit against the vendor for breach of contract. The 1st Defendant informed her that as a foreigner she could not win any suit in Kenya and asked her to allow him to negotiate with the vendor to reduce his demand. A few days later, the 1st Defendant informed her that the vendor would accept 10,000 euros instead of 30,000 euros. Having expended huge sums in the transaction, she reluctantly gave 10,000 euros to the 1st Defendant to pay the vendor so that the land could be transferred to her.

7. According to the Plaintiff, sometimes in November, 2012 she discovered that the purchase price of the land was Kshs. 4,500,000 and not 110,000 euros and that the 1st and 2nd defendants had designed the fraud to enable the 1st Defendant raise funds for his own project, a building he has since constructed at Malindi on Plot No. 10719/421.

8. It is the Plaintiff's claim that the 1st Defendant as her partner and the 2nd Defendant in his capacity as an advocate for both the Plaintiff and the vendor had breached their duty of care towards her. The particulars of breach of duty as disclosed in paragraph 20A of the amended plaint are:

“a. The 2nd Defendant breached the duty of care by allowing her to execute the sale agreement of 100,000 Euros when he knew or ought to have known that the purchase price was Kshs. 4,500,000;

b. The 2nd Defendant maliciously and illegally conspired with the 1st Defendant to inflate the purchase price with over Kshs. 5,500,000 by drawing two sale agreements in November, 2011: one for 100,000.00 euros signed by the Plaintiff and one for Kshs.4,500,000 signed by the Vendor;

c. The 1st and 2nd Defendants fraudulently and unlawfully misrepresented to the Plaintiff the reason for signing the new agreement in January, 2012 was for the purpose of getting the Land Control Board consent when they knew that the purchase price was Kshs. 4,500,000 and not the sum of 100,000 Euros paid.

d. The 2nd Defendant omitted to specify the price paid for the land on the 14.1.2012 Acknowledgment so as to keep the Plaintiff and the Vendor in the dark that the Vendor was paid Kshs. 4,500,000 but the Plaintiff had paid 100,000.00 Euros; and

e. the 1st and 2nd defendants generally failed to give proper and honest advice on the transaction to defraud the Plaintiff.”

9. It is further the Plaintiff's averment that in July, 2012, and before discovering the fraud relating to the purchase price of the land, she gave the 1st Defendant 25,000 euros to purchase motor vehicle KBS 372P Toyota Hiace Super GL van for the purpose of setting up the tour business and 16,000 euros to purchase motor vehicle KBR 458J Pajero for her own use. The Plaintiff avers that without her knowledge or consent, the 1st Defendant purchased the said vehicles in his own name and arranged for their insurance using her funds. Further, that the 1st Defendant had denied her usage of the motor vehicles and as a result she had suffered loss of business and profit from the cars at the rate of Kshs. 5,000 per day.

10. At paragraph 21B of the amended plaint the Plaintiff makes other claims against the 1st Defendant as follows:

“a. A sum of 6,480 Euros being loans advanced to the 1st Defendant with a promise to pay but he failed to make any payments.

b. A sum of 250 Euros paid to the 1st Defendant allegedly being excess payable to AMACO Insurance Company for repairs of motor vehicle KBR 458J which had an accident while being driven by the 1st Defendant without her consent.

c. A sum of Kshs. 145,000 being cost of repairs of motor vehicle registration number KBR 458J paid by the Plaintiff but reimbursed to the 1st defendant by AMACO as he had fraudulently named himself as the beneficiary of the policy.

d. A sum of 2000 Euros being amount paid by the Plaintiff as insurance premiums for motor vehicles registration numbers KBS 372P and KBR 458J on the belief that the motor vehicles were registered in her name.

e. A sum of 1400 being money given to the 1st Defendant to purchase a motorcycle for purposes of visiting the land.

- f. A sum of 640 Euros being the value of the Plaintiff's iPhone which the Plaintiff smashed.**
- g. A sum of 150 Euros being the value of the Plaintiff's Samsung phone which the Plaintiff smashed.**
- h. A sum of 1000 Euros for excess paid for water and electricity connection and usage at her White Sails Apartment.**
- i. A sum of 4,500 Euros for a diamond eternity ring kept by the 1st Defendant without the consent of the Plaintiff."**

11. At paragraph 33A of the amended plaint the Plaintiff frames her claim against the 3rd and 4th defendants as follows:

"a. On 8th November, 2012 the Plaintiff visited the 3rd Defendant's offices at Malindi to seek their assistance and legal services to recover the motor vehicles she had purchased through the 1st Defendant, the Title Deed for the land and the monies advanced and obtained by the 1st Defendant from the Plaintiff fraudulently.

b. The Plaintiff at the 3rd Defendant met the 4th Defendant who introduced himself as an advocate.

c. The Plaintiff gave instructions to the 4th Defendant who assured her that she had an excellent case with overwhelming chances of success. The 4th Defendant asked for a deposit of 300 Euros which the Plaintiff paid.

d. On 14th November, 2012, the Plaintiff went to the 4th Defendant's office with the 1st Defendant's in an attempt to reach an amicable settlement of the matter with a reasonable expectation that she would get justice.

e. In the meeting, the 4th Defendant colluded with the 1st Defendant and demanded the Plaintiff to pay the 1st Defendant a sum of 30,000 Euros and a further sum of Kshs. 185,000 as legal fees, which the Plaintiff paid under duress to get at least her Pajero car and logbook, transfer form for the land and the photographs for purposes of the transfer and other matters.

f. In collusion with the 1st Defendant, at the same meeting, the 4th Defendant fraudulently divested the Plaintiff of vehicle KBS 372P despite knowing the Plaintiff provided the funds for the purchase and failed to ensure the return of the diamond ring, the transfer of the insurance policies, an authorization for the garage repairs and excess to be reimburse to her, the reimbursement of sundry monies loaned to the 1st Defendant and other matters.

g. The 1st, 3rd and 4th Defendants withheld the logbook for the Pajero and caused the Plaintiff to make a false report to the police and sign a false affidavit that the logbook was lost in an attempt to extort more money from the Plaintiff or steal the Pajero.

h. The Plaintiff avers that as the 3rd Defendant allowed the 4th Defendant to pass himself off as an advocate facilitated the fraud against the Plaintiff and therefore is vicariously liable for the actions of the 4th Defendant.

i. The 1st, 3rd and 4th Defendants are jointly and severally liable to pay for the sum of 30,000 Euros paid to the 1st Defendant and the alleged legal fees of 300 Euros and Kshs. 185,000 paid to the 4th Defendant."

12. As for her claim against the 5th Defendant, the Plaintiff states that she holds a Euro account and a Kenya shillings account with the 5th Defendant. On 12th December, 2012 she wished to transfer 3,000 Euros from her Euro account to her Kenya shillings account but the 3,000 euros was by mistake credited to the 1st Defendant's account number 0100320292700 maintained at the Defendant's branch at Malindi. Her request to the 5th Defendant to reverse the transaction was not successful and she therefore prays for a reversal order directed at the 5th Defendant.

13. In conclusion the Plaintiff prays for orders as follows:

"a. A declaration that the Plaintiff did not execute any agreements on 11.11.2011.

b. A declaration that the agreement the Plaintiff executed on 3.11.2011 in the presence of the 2nd Defendant was procured by the 1st and 2nd Defendants by fraud and is null and void.

c. A declaration that the sum of €3,000.00 was transferred by the Plaintiff into the 1st Defendant's account with the 5th Defendant by mistake and that the 1st Defendant is not entitled to keep the said sum.

d. An order compelling the 5th Defendant, Standard Chartered Bank Malindi Branch, to reverse the transfer of €3,000.00 or its equivalent in Kenya shillings from the Plaintiff's euro account to the 1st Defendant's Kenya shillings account

e. Judgement against the 1st and 2nd defendants jointly and severally in the sum of €68,753.10 being the amount paid by the Plaintiff for the purchase of property comprised in Title number Gede/Mida Majaoni/XXI in excess of Kshs. 4,500,000.00 at the exchange rate of Kshs. 130.00 to the Euro in November, 2011 and Kshs. 102.41 in January, 2012.

f. Judgement against the 1st Defendant for a sum of €41,169.99 made up as follows: -

ii. €25,000.00 paid by the Plaintiff to the 1st Defendant for purchase of motor vehicle registration number KBS 372P.

iii. €6,480.00 for monies advanced to him which has not been paid.

iv. Return of the diamond ring or in the alternative €4,500.00 for full diamond eternity ring.

v. €2,000 the amount paid by the Plaintiff as insurance premiums for motor vehicles registration numbers KBS 372P and KBR 458J.

vi. €1,400.00 for the motorbike.

vii. €1,000.00 for excess paid for water and electricity connection.

viii. €639.99 for the Plaintiff's iPhone he smashed

ix. €150.00 for the Plaintiff's Samsung that he smashed.”

g. Judgement against the 1st, 3rd and 4th Defendants jointly and severally in the sums of €30,000 paid on 14.11.2012 to the 1st Defendant's office on coercion by the 1st and 4th Defendants.

h. Judgement against the 1st Defendant in the sum of Kshs. 955,00.00 being the sum of Kshs. 620,000.00 on account of loss of user of motor vehicle registration number KBS 372P as at 14.11.2012 and Kshs. 335,000.00 in relation to motor vehicle registration number KBR 457J for a total of 67 days at Kshs. 5,000.00.

h.1. Judgement be entered against the 1st Defendant for the sum of Kshs. 145,000.00 paid by the Plaintiff for the repair of the Pajero and Kshs. 25,000.00 being the excess paid to the insurer with funds provided by the Plaintiff.

i. Judgement against the 3rd and 4th Defendants jointly and severally in the sum of Kshs. 185,000.00 paid to the 4th Defendant as legal fees.

k. A declaration that it was illegal and unlawful for the 4th defendant to pass himself off as an advocate and to discharge the functions of an advocate and that it was unlawful for the 3rd Defendant to allow the 4th Defendant to pass himself off to clients as an advocate.

l. A declaration that the 1st Defendant build himself a complex on Plot 10719/421 Malindi with funds stolen by means of fraud from the Plaintiff.

m. An order reprimanding the 2nd, 3rd and 4th defendants.

n. General, punitive and aggravated damages against the Defendants jointly and severally.

o. An injunction restraining the 1st Defendant entering into any further leases on and from charging, selling, sub-dividing or disposing of any interests on Plot Nos. 10719/421 and 4797 Malindi or any of his assets of whatever description wheresoever situated in Kenya until this suit is heard and determined and until all monies due from him to the Plaintiff are paid in full.

p.

q. Interest on all sums payable to the Plaintiff from the Defendants calculated on monthly rests (sic) from the dates the various sums were paid at 12% per annum until all payment in full.

r. Costs of and incidental to this suit.”

14. A perusal of the court file does not disclose any reply filed by any of the defendants in response to the amended plaint. It is thus presumed that they rely on the defences filed in response to the Plaintiff's original plaint.

15. In his statement of defence dated 19th February, 2013 and filed in court on the same date, the 1st Defendant avers about a love affair

between him and the Plaintiff. He denies receiving any money from the Plaintiff for purchase of land. He denies each and every allegation made against him by the Plaintiff.

16. On the claim that he had informed the Plaintiff that L.R. No. Gede/Mida Majaoni/21 was selling for 100,000 euros, the 1st Defendant avers that the same is not true and that the Plaintiff and the vendor one Khamis Makanga knew all along that the land was being sold for Kshs. 4,500,000. Further, that throughout the negotiations, the vendor was also with his adult daughter who understands English. His case is that the process of the purchase of the land commenced on 3rd November, 2011 but nothing could be done as the Plaintiff did not have the deposit and neither did the vendor have the original title deed. The terms of the agreement were agreed upon and the Plaintiff who was leaving the country signed her part of the agreement and mandated him as a co-purchaser to follow up on the issue. On 11th November, 2011 he paid the deposit of Kshs. 1,000,000 and signed the agreement. He also paid the 2nd Defendant's fees of Kshs. 20,000. His averment is that he later gave the Plaintiff a copy of the agreement.

17. According to the 1st Defendant, the balance of Kshs. 3,500,000, made up of Kshs. 2,860,000 he withdrew from his account and money availed by the Plaintiff, was paid to the vendor on 14th January, 2012. He further avers that on that day an agreement was drawn by the 2nd Defendant to confirm that the full purchase price had been paid and that the original title deed, certificate of search and the Land Control Board consent had been released to him and the Plaintiff as purchasers. He therefore denies any collusion or fraud between him and the 2nd Defendant.

18. The 1st Defendant denies the claim that he had defrauded the Plaintiff so as to construct a building stating that the said building was constructed between 2006 and 2008 and tenants had been living in that building from 2008 to date.

19. He denies the Plaintiff's allegations with regard to motor vehicles registration numbers KBR 458J and KBS 372P and alleged motorbike and put her to strict proof of the same.

20. As for the transfer of 3,000 euros by the Plaintiff to him on 12th December, 2012 the 1st Defendant claims that the same was meant to patch up their broken love relationship and the money was meant to assist his **"family in line with similar past money transfers between the Plaintiff and the 1st Defendant."**

21. It is the 1st Defendant's case that he had been living with the Plaintiff at White Sail in Malindi in a house bought by the Plaintiff over ten years ago and having acquired real property in Kenya she cannot feign ignorance and naivety as alleged in her plaint.

22. As already stated, the claim against the 2nd Defendant who is now deceased abated. For record purposes, he filed a statement of defence dated 25th February, 2013.

23. The 3rd and 4th defendant filed a joint statement of defence dated 10th January, 2013. They deny the allegations of fraud made against them by the Plaintiff and aver that on 14th November, 2012 the Plaintiff freely and unequivocally entered into an agreement with the 1st Defendant in which the 1st Defendant agreed to transfer motor vehicle registration number KBR 458J to the Plaintiff and also hand over the logbook together with a duly signed transfer form to her. They also agreed that the Plaintiff would have nothing to do with motor vehicle registration number KBS 372P. According to the 3rd and 4th defendants, they managed the Plaintiff's affairs professionally in accordance with Section 34(1)(f)(11) of the Advocates Act, Cap. 16.

24. The 3rd and 4th defendants aver that the Plaintiff and the 1st Defendant negotiated the terms of their agreement with the 1st Defendant demanding the sum of 75,000 euros to forfeit his half share in Gede/Mida Majaoni/21 but they negotiated until they settle on 30,000 euros. According to the 3rd and 4th defendants, an advocate by the name Mr. Mwadilo acted mutually for both the Plaintiff and 1st Defendant.

25. It is the 3rd and 4th defendants' case that the intentions of the Plaintiff and the 1st Defendant are found in the instrument they executed and the Plaintiff is estopped from retracting and/or reneging on the same as there existed a *consensus ad idem*.

26. The 5th Defendant's defence dated 25th January, 2013 was filed in court on the same day. The 5th Defendant denies that the sum of 3,000 euros was transferred from the account of the Plaintiff to that of the 1st Defendant as a result of a mistake on its part. According to the 5th Defendant, it owes a fiduciary duty to both the 1st Defendant and the Plaintiff and it could not reverse the transfer of funds without authorization from the 1st Defendant or without an order of the court.

27. The Plaintiff made replies to the statements of defence filed by the defendants.

28. Although the parties filed lengthy pleadings in this matter, the core issue for the determination of this court is whether the defendants jointly or severally fraudulently received any funds from the Plaintiff.

29. The Plaintiff testified on 29th November, 2016 before my brother Said Chitembwe, J and indicated that she was adopting her statement dated 27th December, 2012 and the documents attached thereto as her evidence. She also summarized her evidence as per her pleadings.

30. Cross-examined by Mr. Muranje for the 1st, 3rd and 4th defendants, the Plaintiff stated that the 1st Defendant was a boyfriend and the decision to purchase land was made about one month after the commencement of their affair. She stated that she transferred a large portion of the money from Europe and the purpose of the money was indicated as family support. It was her evidence that she had stated in her SMS correspondence with the 1st Defendant that he is the one who had told her to indicate that the money she was sending to him was for family

support.

31. As for the 30,000 euros paid to the 1st Defendant in accordance with the agreement drafted on 14th December, 2012, the Plaintiff stated that she paid the same under duress. She insisted that she was claiming that money from the 1st and 3rd defendants. She admitted that she had paid the 3rd Defendant 300 euros for her case and a receipt for the payment was issued to her. She testified that she was attended by a clerk who was not an advocate.

32. She stated that she signed three agreement for the purchase of the parcel of land.

33. Cross-examined by counsel for the 5th Defendant, the Plaintiff conceded that she was the one who conducted the transaction that moved 3,000 euros to the 1st Defendant's account.

34. Re-examined by her counsel, the Plaintiff stated that she paid 30,000 euros to the 1st Defendant so as to secure her documents which included a title deed, a logbook, transfer forms, insurance cover, diamond ring and other documents. She also wanted him to change the water and electricity bills to her name. Her evidence was that the 1st Defendant had locked her up in the house for three days before she went to sign the agreement. She further stated that she was in the office of the 3rd Defendant the whole day.

35. As for the land transaction, she stated that she signed two agreements. One was for 100,000 euros and another was for Kshs. 4,500,000 which the 1st Defendant told her was to tally with the Land Control Board declaration.

36. The 1st Defendant testified as DW1 and adopted his statement of defence filed on 19th February, 2013, his affidavit filed on 20th February, 2013 and his further affidavit filed on 23rd April, 2013.

37. The 1st Defendant testified that he met the Plaintiff in 2011 and they started an affair. On 3rd November, 2011 they gave instructions to the 2nd Defendant to prepare a sale agreement between him and the Plaintiff as purchasers and one Hamisi Noor as the seller. The agreement was not concluded on that day as the seller did not have all the necessary documents. On 11th November, 2011 they went back to the office of the 2nd Defendant where they signed the agreement after he paid Kshs. 1,000,000 being part payment of the purchase price of Kshs. 4,500,000. He stated that the Plaintiff was present when he made the payment. His evidence was that the balance of Kshs. 3,500,000 was paid on 14th January, 2012 with Kshs. 2,860,000 coming from his pocket and Kshs. 640,000 being paid by the Plaintiff. He stated that he withdrew the money from his account whereas the Plaintiff paid in cash.

38. It was the 1st Defendant's testimony that there was only one agreement and the Plaintiff had not produced any other agreement showing that the purchase price was not Kshs. 4,500,000.

39. The 1st Defendant testified that whatever money he received from the Plaintiff was for family support or family gift as indicated in the money transfer documents. He stressed that he never received any money from the Plaintiff for purchase of land.

40. The 1st Defendant testified that the money transfer documents produced as exhibits by the Plaintiff had the information in the section which states the purpose of the transaction erased. He stated that the Plaintiff had attached the same documents to her affidavit filed on 18th March, 2013 and the purpose of the transactions is indicated in those documents as either **"family support"** or **"family gift."**

41. The 1st Defendant referred to an agreement entered between her and the Plaintiff before Patrick Shujaa advocate in which they agreed that in case of any break-up they would share their property equally. The only property they had is the land in question.

42. Turning to the Plaintiff's claim for two vehicles, the 1st Defendant stated that none of the vehicles belonged to the Plaintiff. He stated that both vehicles were registered in his names.

43. As for the 3,000 euros transferred to his account by the Plaintiff, the 1st Defendant stated that at that time, he had disagreed with the Plaintiff and she was trying to induce him so that they could resume their love affair.

44. Cross-examined by counsel for the Plaintiff, the 1st Defendant stated that they started the purchase of the land on 3rd November, 2011. On that day they did not pay anything and neither did they sign any document. His testimony was that although his love affair with the Plaintiff started in late 2011, they had been friends for eight to nine years prior to that.

45. It was the evidence of the 1st Defendant that the deposit of Kshs. 1,000,000 was from an account he holds with the 5th Defendant but he had no document to show where that money had come from. He stated that he is a businessman. He stated that although the Plaintiff did not send him any money for the purchase of the land he put her name in the sale agreement for the land as they had agreed to do everything together. According to him this was in accordance with their agreement of 10th July, 2012. He nevertheless admitted that they signed the land sale agreement prior to signing their agreement of 10th July, 2012. He stated that the Plaintiff was simply his lover and they did not have a legal marriage. He stated that on 3rd November, 2011 the Plaintiff was present but she was not present on 11th November, 2011 as she was in Europe. He denied entering into an agreement for Kshs. 10,000,000 on 3rd November, 2011. He stated that although the Plaintiff was not present on 11th November, 2011 she had left instructions with the advocate. Shown the agreement, he stated that the Plaintiff is said to have signed it on 11th November, 2011. He changed his evidence and stated that the agreement was prepared on 3rd November, 2011 and signed by the Plaintiff before she left for Europe.

46. The 1st Defendant stated that the Plaintiff was present on 14th January, 2012 and signed the sale agreement. He stated that there are two sale agreements.

47. The 1st Defendant further testified that he was a tour operator. Also that he received money from the Plaintiff between November, 2011 and January, 2011. He stated that he received 100,000 euros which is equivalent to Kshs. 10,000,000 but quickly stated that he did not receive any money from the Plaintiff.

48. On further cross-examination the 1st Defendant admitted receiving 4,500 euros and 4,000 euros on 2nd November, 2011, 20,500 euros on 27th December, 2011 and 12,000 euros on 3rd January, 2012. He stated that the money was for family support. He stated that on 27th November, 2011 he had sent a message to the Plaintiff telling her to indicate that the money she was sending him was for family support so that the government would not raise queries. However, he immediately stated that the message was not his. He stated that he had no document showing how he utilized the money received from the Plaintiff. He stated that he paid Kshs. 3,860,000 for the land and the money came from his business.

49. The 1st Defendant stated that the Plaintiff could also send him 300 euros or 500 euros through Western Union. He admitted that the Plaintiff had deposited 3,000 euros but he had been blocked from dealing with the money. Further, that orders had been issued barring him from selling motor vehicle registration number KBS 372P or his house.

50. The 1st Defendant admitted that on 14th November, 2012 the Plaintiff paid him 30,000 euros before Mwadilo advocate. He stated that the money was for settlement of their affairs. Further, that he left her the parcel of land bought from Mzee Noor. He also gave her the Pajero motor vehicle. He did this because the Plaintiff was his lover and they had agreed to split the property equally. He stated that the agreement in which she received 30,000 euros from the Plaintiff was prepared and signed in the office of the 3rd Defendant. He said he knew the 4th Defendant as an employee of the 3rd Defendant and the 4th Defendant never presented himself to the Plaintiff as an advocate. His evidence was that they were served by an advocate called Mwadilo.

51. Finally the 1st Defendant denied knowing a lady by the name Karen Tina Brody and stated that he could not remember being charged in a criminal case for defrauding such a person.

52. Re-examined, the 1st Defendant stated that the agreement dated 10th July, 2012 had been prepared and signed before an advocate called Patrick Shujaa and the **“agreement was that we would divide her investments equally.”**

53. On the agreement dated 14th November, 2012, he stated that the same involved payment of 30,000 euros to him. The agreement was signed before Mwadilo advocate and the name of the 4th Defendant appears as that of a witness. He stated that the 30,000 euros was for settlement of their affairs.

54. As for the land sale agreement he stated that the Plaintiff and the vendor signed the same on 3rd November, 2011 before retracting and stating that the vendor signed the agreement on 11th November, 2011. He explained that the vendor could not sign the agreement on 3rd November, 2011 because he had not received any money.

55. The 1st Defendant stated that it was the Plaintiff who took him to the offices of the 3rd Defendant.

56. Further, that the injunction issued against him on 31st December, 2012 was issued *ex parte* and the same had not been extended and neither has the application been heard *inter- partes*.

57. The 4th Defendant testified as DW2 and denied presenting himself to the Plaintiff as an advocate. He stated that he works as a manager as well as a cashier with the 3rd Defendant. He stated that when the Plaintiff first went to their office she indicated that she wanted to see an advocate. She later saw Mwadilo advocate. He was present when Mwadilo recorded her statement. Her issue was that she had a problem in respect of a Pajero motor vehicle with her boyfriend called Lucas Opondo, the 1st Defendant. She was charged Kshs. 30,000 but she said she could pay in euros and she paid 300 euros and a receipt was issued to her. She took his mobile phone number on that day.

58. One or two days thereafter the Plaintiff texted him and told him she was coming to the office with the 1st Defendant but that he should not tell the 1st Defendant that she had been to their office. When they arrived he led them to the conference room and they were shortly joined by advocate Mwadilo. He stated that the Plaintiff and the 1st Defendant exchanged bad words and the 1st Defendant conspiratorily told him in Kiswahili that the Plaintiff's eyes were red and she had taken something. According to the 4th Defendant, it was then that the Plaintiff hit the roof claiming they were talking about her. There was shouting as Mr. Mwadilo told them to calm down as they could not attend to them in that state. The purpose of the meeting was to discuss the motor vehicle which the Plaintiff claimed belonged to her. Eventually the parties agreed that the 1st Defendant would be paid 30,000 euros so that he could resign from the company that held the property situated in Gedi. On that day Kshs. 185,000 was paid for the 3rd Respondent's services.

59. Cross-examined, the 4th Defendant stated that the Plaintiff wanted the motor vehicle recovered from the 1st Defendant and the issue of the parcel of land came up later. He stated that the 1st Defendant lied if he said he (4th Defendant) was the one who had prepared the agreement. He stated that Kshs. 185,000 was paid as Mr. Mwadilo had already drafted pleadings with a view to filing a case in court seeking to repossess the motor vehicle from the 1st Defendant. He stated that the 1st defendant had stated that the Plaintiff's eyes were red as she had used a substance. His understanding was that the Plaintiff might have been drunk. He stated that the house of the Plaintiff was searched in his presence. Mr. Mwadilo and a clerk from the office were also present. He identified the search certificate and stated that the word **“counsel”** which appeared beside his name was not there at the time he signed the certificate.

60. The vendor of the land in question Noor Hamisi Makanga testified as DW3 and his daughter Hadija Noor testified as DW4. In summary their evidence is that DW3 entered into a sale agreement with the Plaintiff and the 1st Defendant in which the Plaintiff and the 1st Defendant were to purchase their parcel of land for Kshs. 4,500,000. DW4 was present during the entire transaction.

61. DW3's evidence was that in the presence of DW4 he had met the Plaintiff and the 1st Defendant who viewed the parcel of land and agreed to purchase it. On 11th November, 2011 he went with his daughter (DW4) to the office of the 2nd Defendant where they signed a sale agreement with the 1st Defendant who paid him Kshs. 1,000,000. At that time the Plaintiff was absent. He stated that they went to the office of the 2nd Defendant for the first time on that day. He stated that he received the balance of the purchase price on 14th January, 2012. His testimony was that the Plaintiff had signed the agreement on 3rd November, 2011 and gone home.

62. In answer to questions put to him during cross-examination by counsel for the Plaintiff, DW3 stated that on 16th March, 2013 he went before advocate Michira who told him to sign an affidavit that had already been prepared at Mombasa. The advocate also told him that the affidavit would not be brought to court. He did not know the contents of the affidavit and neither did DW4 understand the contents of the affidavit. He stated that in the affidavit he swore on 25th March, 2013, which he had asked this court to adopt as his evidence, he had denied the contents of the affidavit he swore on 16th March, 2013.

63. DW3 told the court that the Plaintiff signed the agreement on 3rd November, 2011. He stated that the Plaintiff never mentioned to him that she had bought his land for Kshs. 10,000,000. DW3 denied swearing an affidavit on 7th December, 2012. He stated that he could not tell whether the Plaintiff had given Kshs. 10,000,000 for his parcel of land as all that he knew is had received Kshs. 4,500,000 for his parcel of land. DW3 stated that he was paid the balance of Kshs. 3,500,000 in cash in the 2nd Defendant's office and stated that an averment in paragraph 13 of the replying affidavit sworn by Joel Muisyo that he was paid in the bank and not in the advocate's office was not truthful. Upon payment he asked the 1st Defendant to escort him to First Community Bank where he deposited the money.

64. Re-examined, DW3 denied signing an affidavit on 18th March, 2013 in Mr. Michira's office averring that he had been summoned to the chief's office at Ganda on that day. He stated that the Plaintiff signed the agreement on 3rd November, 2011 but the agreement was dated 11th November, 2011 when he was paid the deposit.

65. DW4's evidence was to the effect that she had seen the affidavit sworn by DW3 on 25th March, 2013 and she confirmed the contents of the affidavit. The witness talked of two agreements. One was dated 11th November, 2011 and on that day the deposit of Kshs. 4,500,000 was made. The second agreement was for 14th January, 2012 when the balance of Kshs. 3,500,000 was paid.

66. During cross-examination, DW4 stated that she was with her father (DW3) at every step of the process. She was interpreting to him in Kiswahili what was being said in English. The witness stated that they first met at Lenas Joint where they reached an agreement on the price. The second time they met was 11th November, 2011 at the 2nd Defendant's office when the agreement was signed. The witness talked of the signing of another agreement on 14th January, 2012 but denied seeing the acknowledgement slip dated 14th January, 2012 when the same was shown to her. She denied knowledge of an affidavit allegedly sworn on 18th March, 2013 by her father. She denied knowledge of any meeting held between herself, her father, the Plaintiff and the 1st Defendant on 19th March, 2013. She admitted that at paragraph 8 of her affidavit she had averred that she met the Plaintiff on 16th March, 2013 who showed her some documents and asked her to verify if the signature belonged to her father or if the same was forged. She did not read the document because the Plaintiff was in a hurry. She asked the Plaintiff if the documents would affect her father and she was told there would be no harm. She denied receiving any threats from the 1st Defendant.

67. The story, which I believe to be correct, that can be pieced together from the deluge of pleadings, evidence and documents filed in this case is that the Plaintiff and the 1st Defendant started having an affair in 2011. In the course of that affair, the Plaintiff started confiding in the 1st Defendant. She told him of her intention to purchase land and set up business in the tourism sector on that land.

68. In late 2011, the 1st Defendant disclosed to the Plaintiff that he had identified an ideal parcel of land. Upon inspecting the parcel of land the Plaintiff was satisfied and commenced negotiations with the vendor, DW3 Noor Hamisi Makanga with a view of purchasing the parcel of land.

69. It is the Plaintiff's case, and I have no reason to doubt her, that since she did not understand Kiswahili, negotiations were conducted through the 1st Defendant. Her evidence was confirmed by DW3 who stated that he only understood Kiswahili and used his daughter, DW4 Hadija Noor, as his interpreter.

70. According to the Plaintiff, the agreed purchase price for the land was 100,000 euros. The 1st Defendant, DW3 and DW4 all insist that the agreed purchase price was Kshs. 4,500,000. Who is telling the truth?

71. The Plaintiff told the court that on 3rd November, 2011 she signed a land sale agreement in the office the 2nd Defendant. The agreement was for the purchase of DW3's land parcel number Gede/Mida Majaoni/21 for 100,000 euros. She was however not given a copy of the said agreement but she saw it and the 1st Defendant later waved it at her after their relationship had deteriorated.

72. In support of her claim that there was indeed an agreement dated 3rd November, 2011, the Plaintiff pointed to the fact that there was a forgery of her signature had been forged to show that she had signed the sale agreement on 11th November, 2011 yet on that day she was out of Kenya. She supported this with her passport.

73. The Plaintiff also pointed to the fact that in the agreement dated 14th January, 2012 it was indicated that she was purchasing the land for Kshs. 4,500,000. She wonders why the agreement talked of a purchase price of Kshs. 4,500,000 yet the 1st Defendant had paid to the vendor, on her behalf Kshs. 1,000,000 on 11th November, 2011. It was her evidence that this new agreement was prepared in order to dupe her that it was only being prepared for the Land Control Board. Her evidence was that the 1st Defendant had called her in December, 2011 and told her that he had obtained a consent from the Land Control Board in which he had indicated a purchase price of Kshs. 4,500,000 and it was therefore necessary to do another agreement reflecting the new price.

74. The Plaintiff's testimony was that she paid the 100,000 euros as follows:

- a) 4,500 euros on 2.11.2011 by bank transfer;
- b) 4,000 euros on 2.11.2011 by bank transfer;
- c) 1,500 euros on 2.11.2011 by cash;
- d) 20,500 euros on 27.12.2011 by bank transfer;
- e) 12,000 euros on 3.1.2012 by bank transfer;
- f) 18,500 euros on 14.1.2012 by cash; and
- g) 39,000 euros (Kshs. 3,994,000) on 14.1.2012 by cash.

75. She produced a money transfer slip for 4,500 euros on 2nd November, 2011 from herself to the 1st Defendant. On the same date she also transferred 4,000 euros to the 1st Defendant. On 27th December, 2011 she transferred to the 1st Defendant 20,500 euros. Again this is backed by a money transfer slip. On 3rd January, 2012 she transferred 12,000 euros to the 1st Defendant. All the money transfers were supported by documents. A total of 42,000 was transferred to the 1st Defendant around the period that the land transaction was taking place. The purpose of the money was indicated as either family support or family gift.

76. The 1st Defendant's case is that the monies were sent to him by the Plaintiff for the tender loving care he gave her. That is unbelievable. The Plaintiff produced messages exchanged between her and the 1st Defendant on 27th November, 2011. The messages explain where the purpose of the money being transferred is indicated as family support or family gift.

77. On the said date at 17.24 hours the 1st Defendant wrote to the Plaintiff as follows:

“When you sent da money I hope u put family gift support, don't want gorvent bank to start questinn ma account pls.”

The Plaintiff responded thus:

“Don't worry. I wrote family support. But they r going to think im supporting a whole village!!”.

78. The said communication quashes the 1st Defendant's claim that the money was sent to him as a gift. It also gives support to the Plaintiff's claim that the money the 1st Defendant withdrew on 14th January, 2012 was her money. The 1st Defendant's claim that he contributed to the purchase of the land by paying Kshs. 2,860,000 is therefore without basis.

79. The 1st Defendant's fervent denial that the Plaintiff never gave him money on 14th January, 2012 is therefore upset by the production of documentary evidence showing that the Plaintiff transferred a total of 32,500 euros to the 1st Defendant's account on 27th December, 2012.

That the Plaintiff transferred substantial money to the 1st Defendant is supported by the 5th Defendant's list of documents dated 25th February, 2013 and filed in court on 25th April, 2013. Annexed to that list is a money transfer slip confirming that on 17th November, 2011 the Plaintiff transferred 1,200 euros to the 1st Defendant. A transfer of 4,250 Euros was made on 28th November, 2011 and another transfer of 300 euros was made on 29th November, 2011.

80. The 1st Defendant's attempt to demonstrate that he had money in his Kenyan currency account with the 5th Defendant leaves several unanswered questions. He produced, as an annexure to his replying affidavit sworn on 19th February, 2013 in response to the Plaintiff's notice of motion dated 27th December, 2012 pages 1 and 3 of the statement of his account. Page 1 shows that on 4th November, 2011 he received a family gift of Kshs. 555,102.65 from the Plaintiff. The credit balance carried forward on that day was Kshs. 764,792.65. There is no statement on the transactions that took place from 5th November, 2011 to 11th November, 2011. Page 3 of the copy of the statement availed shows that the balance brought forward on 12th January, 2012 was Kshs. 2,903,740.55. The 1st Defendant concealed information from the court concerning the transactions that took place between 5th November, 2011 and 11th January 2012.

81. Whatever the case, the Plaintiff's evidence that the 1st Defendant misled her into believing that she was purchasing the land in question for 100,000 euros received credence from the evidence of DW3 and DW4. There is an affidavit on record sworn by DW3 on 18th March,

2013, though later repudiated, in which he averred that his signature on page 2 of the agreement he signed on 11th November, 2011 had been forged. DW4 admitted that the Plaintiff reached out to her and asked her whether the signature on the document was that of her father. DW4 stated that she was worried if the issue would be harmful to her father.

82. There is therefore sufficient evidence that the agreement signed by the Plaintiff on 3rd November, 2011 was manipulated and the purchase price changed from 100,000 euros to Kshs. 4,500,000. I also believe the Plaintiff when she states that she did give the balance of the purchase price of 90,000 euros in cash or through bank transfers to the 1st Defendant. She was not present when the 1st Defendant escorted DW3 to the bank to pay the money. She did not therefore witness the actual amount of money given to DW3 by the 1st Defendant.

83. The other question is the validity of the agreements dated 14th November, 2012. The Plaintiff's evidence was that she had approached the 3rd Defendant for legal assistance as she wanted to get back her Pajero from the 1st Defendant. The Plaintiff stated that she signed the agreements under duress so that she could get back her Pajero and land. She detailed in her statement of evidence how the 4th Defendant presented himself to her as an advocate in the 3rd Defendant law firm. Her evidence finds support in the evidence of the 1st Defendant who stated that the 4th Defendant is the one who drafted the agreements. The Plaintiff is also supported by the search certificate prepared by the Kenya Police on 16th November, 2011 in which the word counsel appears alongside the name of Maurice who is the 4th Defendant.

84. The Plaintiff testified that she signed the agreement under duress as the 4th Defendant told her to accede to the terms set by the 1st Defendant otherwise the 1st Defendant would finish her. The 4th Defendant would also follow her out of the office whenever she stepped out to smoke so that she could not go away. She testified that she was in the offices of the 3rd Defendant the whole day and she was crying most of the time. The Plaintiff further stated that she found the agreements already prepared meaning that the 1st Defendant had met the 4th Defendant prior to their going to the offices of the 3rd Defendant. The statement by 4th Defendant that the 1st Defendant could easily run the Plaintiff out of town was confirmed when police officers from the Anti-Narcotics Unit, Malindi descended upon the house of the Plaintiff two days later in search of narcotic drugs. No drugs were recovered. The 1st Defendant had, according to the evidence of the 4th Defendant, stated that the Plaintiff's eyes were red as she had taken some substance.

85. The evidence on the circumstances surrounding the signing of the agreements on 14th November, 2012 supports the Plaintiff's claim that she signed the agreements under duress. That is sufficient to rescind the agreements.

86. There is another reason why the agreements signed on 14th November, 2011 could not form any valid contracts. In the agreement for the surrender of motor vehicle Registration Number KBR 458J a profound statement is found therein. It states:

“WHEREAS the 1st and 2nd Part have been friends AND WHEREAS the 1ST Part had been given money to purchase for the 2nd Part a motor vehicle registration number KBR 458J Pajero IO Black in colour.”

87. According to the agreement, the 1st Part is the 1st Defendant and the 2nd Part is the Plaintiff. It is clear that the Plaintiff had given money to the 1st Defendant to purchase the said vehicle. Through the agreement the Plaintiff also surrenders motor vehicle registration number KBS 372P to the 1st Defendant. The unchallenged evidence is that the Plaintiff had provided money for the purchase of this vehicle too. There was therefore no basis for making the agreement as no consideration was offered by the 1st Defendant.

88. A valid contract is based on offer, acceptance, consideration, intention to create a legal relation, certainty and capacity. In the case at hand there was no consideration provided by the 1st Defendant in order for him to take away the Plaintiff's second car registration number KBS 372P. For motor vehicle registration number KBR 458J, the purported surrender of the same was based on sinking sand. The motor vehicle was registered in the name of Jafrica Motors Kenya Limited and the transfer of ownership of motor vehicle form given to the Plaintiff could not assist her as it was purporting to transfer to her the vehicle from the 1st Defendant, who was not a registered owner. This is another reason why there was no valid contract created on the material day.

89. I have already demonstrated that although the parcel of land was to be registered in the name of Ojuro Company Limited in which both the Plaintiff and the 1st Defendant were shareholders, the truth of the matter is that the money for the purchase of the parcel of land came from the Plaintiff. The 1st Defendant was therefore not entitled to any money from the Plaintiff before surrendering the documents for the land to her.

90. The only conclusion is that the 30,000 euros given to the 1st Defendant on 14th November, 2012 was an outright theft. The Plaintiff is entitled to get this money back from the 1st Defendant.

91. The Plaintiff's claim for money given to the 1st Defendant to connect water and electricity to her White Sails Apartment did not come out clearly. She did not demonstrate that the 1st Defendant did not use the money for what it was meant. This claim fails.

92. The claim for the money she gave to the 1st Defendant for payment of insurance premiums for the motor vehicles cannot succeed. The Plaintiff did not say that the motor vehicles were not insured.

93. The Plaintiff claimed Kshs. 145,000 being the money she used to repair one of the motor vehicles when it was involved in an accident while under the control and possession of the 1st Defendant. The evidence is that this money was paid out by the insurer to the 1st Defendant. The Plaintiff is therefore entitled to a refund of the money. She is however not entitled to the Ksh. 25,000 paid as excess to the insurer. This is money the insurer required before the claim could be settled. It did not benefit the 1st Defendant in any way.

94. The Plaintiff claimed 1,400 euros sent to the 1st Defendant for purchase of a motorbike. Attached to the supplementary statement filed in court on 28th May, 2013 are several messages. At page 39 there is a message dated 26th November, 2011 and it goes thus:

“Have sent 4250. End of my money so spend wisely. The breakdown is as follows. 2300 for land, 312 for big water tank, 200 for fixing fans and adding 2 in the bedrooms, and yes 1400 for ur or should I say our motorbike and finally 138 for emergencies and bills. Remember lots of ginger tea with honey. And our adventure continuous..... take care on the road. Need u babe.”

95. The message confirms that the 1st Defendant was given money to purchase a motorbike. He never gave the motorbike to the Plaintiff. The Plaintiff is entitled to a refund of 1,400 euros from the 1st Defendant.

96. The Plaintiff prays for the return of a diamond eternity ring worth 4,500 euros from the 1st Defendant. She told the court that was one of the items she had given the 1st Defendant. The Plaintiff's claim succeeds and the 1st Defendant shall return the diamond eternity ring given to him by the Plaintiff or pay her 4,500 euros.

97. There is indeed evidence conveyed through the Plaintiff's supplementary statement filed on 28th May, 2013 showing that on 12th October, 2011 the 1st Defendant asked the Plaintiff to advance him 300 euros which he would pay back together with 1200 euros already loaned to him. This is the only amount proved in the Plaintiff's claim for 6,480 euros as monies advanced to the 1st Defendant. She is therefore awarded 1500 euros on this head.

98. The Plaintiff's evidence that the 1st Defendant in a fit of anger and in order to destroy evidence smashed her iPhone and her Samsung mobile phones valued at 639.99 euros and 150 euros respectively was not challenged. The Plaintiff's claim for the damaged mobile phones succeeds.

99. The claim for loss of user of the motor vehicles being a claim for special damages was not proved by way of evidence. Her claim for Kshs. 955,000 for loss of usage of the two motor vehicles fail.

100. The Plaintiff's claim that the money the 1st Defendant obtained from her was used to construct on his plot in Malindi was not backed by any evidence.

101. Much as the Plaintiff tried to establish professional negligence on the part of the 3rd Defendant and the firm's employee being the 4th Defendant, I am not satisfied that she proved her case against the 3rd and 4th defendants to the required standards. Her claim for a refund of 300 euros and Kshs. 185,000 which was paid to the 3rd Defendant therefore fails.

102. The Plaintiff did not adduce any iota of evidence to show that the 5th Defendant made any mistake or was negligent when it acted on her instructions and transferred 3,000 euros from her euro account to the 1st Defendant's euro account. Her claim against the 5th Defendant therefore fails.

103. The 1st Defendant claimed that the 3,000 euros transferred to his account on 12th December, 2012 was meant to reignite the affair that had existed between him and the Plaintiff. Now that the Plaintiff has seen the light and there being no evidence that she owes the 1st Defendant anything, the Plaintiff's prayer to have the transfer reversed succeeds.

104. In summary, the Plaintiff's claim against the 2nd Defendant abated as the 2nd Defendant is now deceased. Her claim against the 3rd, 4th and 5th defendants were not proved and they fail. Her case against the 3rd, 4th and 5th defendants is therefore dismissed.

105. As for her case against the 1st Defendant, the same largely succeeds and judgement is entered in her favour and against the 1st Defendant as follows:

- a) 55,000 euros or Kshs. 5,632,550 being the equivalent at an exchange rate of Kshs. 102.41 in January 2012 being the amount the 1st Defendant fraudulently obtained from Plaintiff when she was purchasing L.R. No. Gede/Mida Majaoni/21;
- b) Motor vehicle KBS 372P or payment of 25,000 euros being the money given to the 1st Defendant by the Plaintiff for its purchase;
- c) A motorbike or payment of 1,400 euros being the money given to the 1st Defendant by Plaintiff for purchase of the motorbike;
- d) 30,000 euros being the money given to the 1st Defendant by the Plaintiff on the strength of the invalidated agreements entered on 14th November, 2012;
- e) Return of diamond eternity ring or payment of 4,500 euros being the value of the ring;
- f) Kshs. 145,000 being payment for repairs on motor vehicle registration number KBR 458J;
- g) 639.99 euros for the damaged iPhone mobile phone;

h) 150 euros for the damaged Samsung mobile phone;

i) An order directed at the 5th Defendant to transfer to the Plaintiff 3,000 euros from the 1st Defendant account No. 0100320292700;

j) Interest on the judgement amount at court rates from the date of the delivery of this judgement till payment in full; and

k) Costs of the suit.

106. Although the 3rd, 4th and 5th defendants have not been found liable for the Plaintiff's claim, it is clear that they were necessary parties. They could not have incurred the costs in this matter had the 1st Defendant not defrauded the Plaintiff. For that reason, the 1st Defendant shall meet the costs incurred by the 3rd, 4th and 5th defendants in this litigation.

Dated, signed and delivered at Malindi this 19th day of December, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT