



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 112 OF 2008

ALICE WAMBUI NJOROGE.....PLAINTIFF

VERUS

JACKSON KAMAU NDEGWA.....DEFENDANT

JUDGMENT

1. Background and Pleadings

The plaintiff instituted this case against the defendant vide a plaint dated 29th February 2009 and Amended on the 21st October 2009.

Material facts giving rise to the suit are that the plaintiff and the defendant executed a sale agreement on the 18th December 2007. The defendant agreed to sell and the plaintiff agreed to purchase the defendants land parcel known as **Nakuru/Municipality Block 12/224** being a subdivision of **Nakuru Municipality Block 12/170**, the property of the defendant.

2. The plaintiff paid a sum of Kshs.300,000/= to the defendant as a deposit to facilitate payment of outgoings towards land rent, rates and any other so as to obtain the requisite clearance certificates. The Purchase price was agreed at Kshs.1.6 Million. The plaintiff obtained from the defendant a duly executed transfer of the suit land, copy of Value Added Tax(VAT), Personal Identification Number(PIN) certificate and a passport photograph of the defendant in readiness to register the transfer.

3. The defendant however failed to complete the conveyance leading to the filing of the suit by an amended plaint dated 21st October 2009 and filed on the 22nd October 2009, seeking the following reliefs:

(i) That a permanent injunction do issue forthwith restraining the Defendants either by himself, his servants or agents from interfering with the plaintiff's occupation, use and quiet enjoyment of all the parcel of land known as Nakuru Municipality Block 12/224.

(ii) A declaratory order that the plaintiff having performed all the fundamental terms of a contract for sale between herself and the Defendant is lawfully entitled to own and hold the title for the suit property absolutely.

(iii) Damages for breach of contract

(iv) An order that the defendant do compensate the plaintiff for all the costs and expenses incurred in the conveyance to obtain documents while otherwise the defendant was obliged to

provide being the inter alia: a rates clearance certificate, a Land rent clearance certificate and the Commissioner of Lands consent to transfer.

(v) An order that the defendant do compensate the plaintiff for expenses incurred by the plaintiff in pursuit of this matter being inter alia flight to and from Canada, hotel boarding and lodging expenses taxi and other public transport costs and legal fees.

(vi) Costs of the suit.

4. The defendant by his **defence and counter-claim** dated the 29th October 2009 and filed on the 6th November 2009 denied the plaintiff's claim, and referring to the sale agreement stated that there existed a clause that if the sale is frustrated by one reason or another, the defendant would return the purchase price to the plaintiff with interest at 2% above Central Bank's rates then, and further informed the plaintiff of difficulties in completing and thus withdrew from the sale.

5. He therefore stated that the plaintiff is entitled to refund of the money she paid to the defendant and not to an order of specific performance. It was a further defence that the defendant never permitted the plaintiff to take possession of the suit land and that if transfer was in favour of the plaintiff, it was so done through fraud thus his claim in the counter-claim for an order of cancellation of the title of the suit land and reinstatement of the defendant as the proprietor.

6. In reply to defence and counter-claim dated 10th November 2009 and filed on the 11th November 2009, the plaintiff sought dismissal of the counter-claim.

7. Upon application, the defendant obtained an order on the 19th October 2009 (D.K. Maraga, J as he then was) restraining the plaintiff from selling or charging the suit land pending the hearing and determination of the suit. This order is in force to date.

8. The suit by its nature, as can be seen from the pleadings is a dispute on land ownership, title, occupation and use of land. It is therefore a Land Dispute. The suit was filed before the established of the **Environment and Land Court pursuant to Article 162(2) (b) of the Kenya Constitution 2010, and the Environment and Land Court, vide the Environment and Land Act, No.19 of 2011.** Mandate and jurisdiction under **Section 13** thereof to hear disputes relating to use, occupation and title to land. This suit was thus filed and partly heard by the High Court before the establishment of the said court.

The plaintiff's evidence was taken before the Hon. W. Ouko J (as he then was) and R.P.W. Wendo J, who was transferred from this station before the defence case was heard.

9. Faced with numerous part heard land cases pending in the High Court, at the promulgation of the New Constitution, the Honourable the Chief Justice by **Gazette Notice No. 5178 dated the 25th July 2014**, issued practice directions on proceedings in the Environment and Land Courts Direction No. 4 stated:

“All part-heard cases relating to the environment and the use and occupation of and title to land pending before the High Court shall continue to be heard and determined by the same court.”

It is upon the above Practice Directions and the authority donated to me as a High court Judge that I took over the hearing of the defence case and determination of the suit.

10. The defence case was heard before me on 24th April 2016. The defendant was unrepresented and acting in person having filed a Notice to act in person.

11. **The Plaintiff's case**

PW1 was Alice Wambui Njoroge the plaintiff. She resides at Canada where she works. Her evidence was that vide an agreement dated 18th December 2007 between herself and the defendant she paid Kshs.300,000/= as a down payment for the purchase of the suit land whose purchase price was agreed at Kshs.1,600,000/=. That the said sum of Kshs.300,000/= was to facilitate the defendant to pay rates, land rent and other charges. She testified that the defendant failed to pay the outgoings and failed to respond to demand letters leading to filing of this suit. It was her testimony that the defendant had given her all documents to enable her through the Advocates to transfer the property to herself after the subdivision and therefore she paid the charges, obtained the necessary clearances and consents, and proceeded to register the suit land in her favour.

She further told the court that she deposited the balance of the purchase price into court for the defendant's collection, a sum of Kshs.575,000/=.

She thus urged the court to declare that the property belongs to her.

The plaintiff produced the sale agreement – PExt 1 – in support of her case.

12. Upon cross examination, the plaintiff stated that out of the balance of the purchase price of Kshs.1,300,000/=: she paid land rent, rates and clearances and the balance of Kshs.575,000/= was deposited in court. That at time of the agreement, the suit land being a subdivision was not in existence as it was awaiting subdivision by the defendant which was done. She stated that she travels from Canada to come for the hearing of the case and that having been given all the suit property papers, it was in order that she transferred it in her favour.

13. **PW2, Eunice Wambui Babu** a Land Registrar confirmed having witnessed the agreement between the parties (PExt 7) and played no other role as parties were represented by their respective advocates.

PW3 was Murungi Dishon Mwiti an advocate then practicing in the firm of Murungi Mwiti & Associates, Advocates, and acting for the Defendant in the conveyance.

He too confirmed having witnessed the signing of the agreement and exchange of documents by the parties. He testified that at his office, the defendant gave him an un-dated transfer of lease to **Nakuru Block 12/170**, copy of Identity card, Pin Certificate and passport photographs of the defendant in exchange for Kshs.300,000/= pursuant to **Clause 2(a)** in the agreement of sale, which money was to be used by the vendor to settle land rents and rates.

It was his testimony that completion period of 90 days was not complied with by the defendant and no payment of the balance of purchase price was paid, but by an order of the court, the balance was deposited in court.

14. **PW4 is also an Advocate of the High Court, Catherine Gathoni.**

She was the advocate in the firm of Gatheru & Gathemia & Company Advocates who were acting for the plaintiff in the conveyance. She confirmed having prepared the agreement for sale that was witnessed at Lands Office and that she gave an undertaking for the payment of the balance of the purchase price on behalf of the plaintiff. It was her further confirmation that the Deputy Registrar of the court was authorised by the court upon application to surrender the suit land documents and sign the transfer documents to enable transfer in the plaintiff's favour and upon the transfer being registered, she communicated to the defendant. She testified that no fraud whatsoever was committed in the transfer of the suit property to the plaintiff.

15. It was her further evidence that upon informing the defendant by letter that the plaintiff intended to complete, she paid Kshs.217,350/= being outstanding rates and Kshs.56,000/= land rates and clearance certificate for Kshs.7,500/= pursuant to a Court order issued by the Hon. J. Maraga (as he then was), and the balance certified as Kshs.575,000/= deposited in court. The plaintiff therefore sought a declaration that the suit property is her property, among other reliefs.

16. Defendant's Case

The Defendant Jackson Kamau Ndegwa testified as DWI.

He produced a list of his documents and his statement recorded on the 22nd April 2016, which he asked the court to adopt as his evidence.

He confirmed having executed the sale agreement in respect of the sale of suit land to the plaintiff at an agreed price of Kshs.1.6 Million and having received Kshs.300,000/= as down payment. He confirmed having not paid the rates and land rent for the property as stated in the Sale Agreement.

17. It was his testimony that by a letter dated 21st January 2008, he informed the plaintiff that he was unable to complete the sale as he was unable to pay the outstanding rates and land rent and intended to recall the documents after which he would refund the Kshs.300,000/=.

By that letter, it was his evidence that he had rescinded the sale agreement. He testified that the land was to be sub-divided first before transfer of the relevant portion to the plaintiff but also that he had given to the advocates all the subdivision documents to process the subdivision. He was later served with the documents in this case. It was his testimony that most of the plaintiff's documents were forgeries and the court was used to effect the fraudulent transfer, and urged the court to order re transfer of the suit title to him. He did not produce any evidence of the forged documents, nor any evidence that the transfer document was executed through misrepresentation. On why he repudiated the sale, he stated that he could not pay the rates as they were too high and beyond his expectations.

He therefore prayed that the plaintiff's case be dismissed and his counter-claim be allowed.

18. Upon conclusion of the defence case, parties opted and agreed to file written submissions. The plaintiff's submissions are dated 25th May 2016 while the defendant's submissions dated 26th September 2016 were filed on the same day. On the 27th September 2016 when parties were scheduled to highlight their respective submissions, the defendant as well as the plaintiff's advocate urged the court to prepare judgment upon the evidence and submissions as filed as they did not wish to highlight the same.

19. **Issues for determination**

Arising from the evidence and pleadings as stated, the following issues arise for determination.

- 1. *Whether the defendant breached the terms of the sale agreement dated the 18th December 2007.***
- 2. *Whether the sale agreement was validly rescinded by the defendant in terms of the sale agreement.***
- 3. *Whether the plaintiff was procedurally, lawfully and validly registered as the proprietor of the suit property.***
- 4. *Whether the plaintiff is entitled to the reliefs stated in the Amended plaint.***
- 5. *Whether the Defendants is entitled to the reliefs stated in the counter claim***
- 6. *Costs.***

20. I have perused the sale agreement dated the 18th December 2007. Both parties admit having executed it voluntarily and crafted the terms thereof. The court can only interfere with such agreement only when there are vitiating factors in the transaction such as fraud, illegality or misrepresentation, and if the terms thereof are oppressive by virtue of being forced on either party. This is not the case in the suit.

In **Kenya Commercial Bank -vs- Harunai HCCC No.468 of 1999. J. Waki** (as he then was) rendered that in commercial dealings there is freedom of contract which should be respected. This was the case in the present case. No evidence was led by any party that there was coercion or force upon any of the parties. They contracted freely and executed the agreement voluntarily. As such the terms of the agreement must bind each party. The business of the court is to enforce terms of the contract, and not to rewrite it. See **Kisimani Holdings Ltd & Another -vs- Fidelity Bank Ltd (2013) e KLR** and **Misc. Application No. 898 of 2010(Milimani) Osteria Ice Cream Ltd -vs- Junction Ltd (2011) e KLR**.

21. Coming to the sale agreement(PExt 1) special conditions **Clause 1**, the vendor was to obtain all the necessary clearance certificates and consents to facilitate completion of the conveyance.

Clause 2(a) states that Kshs.300,000/= was to be paid by the purchaser to the vendor upon execution of the **agreement on strict understanding that the amount shall be utilised by the Vendor to clear all outstanding municipal council rates, land rent and incidental subdivision and related expenses to enable the Commissioner of Lands to process and release Titles No. Nakuru 12/224.** (emphasis mine).

Clause 2(b) was to the effect that a further Kshs.700,000/= was to be paid to the vendor upon handing over to the purchaser, all completion documents including an undated instrument of transfer in favour of the purchaser as well as colour passport photograph, pin certificates, and consent to transfer.

Clause 6(1) stipulated that **interest on No. 2 shall be 2% above Central Bank of Kenya prevailing rates**, if there was default in completion of the transaction within the 90 days as stipulated. Time was of essence in the performance of the terms of the agreement.

Upon the backdrop of the above clear provisions of the agreement, did the parties adhere to the provisions?

22. There is no dispute that the purchaser paid the vendor the sum of Kshs.300,000/= which he acknowledged. It is also not in dispute that the defendant as vendor failed to pay the municipal rates and land rent, which he admitted in his evidence in Chief and by a letter to the purchaser dated the 21st January 2008. I have looked at the letter. The defendant was categorical that:

“I am not able to continue with this sale because the Municipal Council of Nakuru Rates are Erroneous and very high---”

By the same letter the defendant requested for **return** of the documents so that **he can** release Kshs.300,000/= **back to** the purchaser:

“---to avoid interest accrual as specified in the agreement,”

He did not pay the rates and land rent, but in terms of **Clause 29(b)** of the special conditions, had handed over the undated but signed transfer instrument and all other completion documents to the purchaser.

23. The sale agreement as drawn does not have a clear default Clause save for **Clause 6(1)** – that interest shall be 2% above CBK rates. In my understanding of the terms of the sale agreement, I construe that clause to mean that if the parties defaulted in terms of payment of the purchase price or if the sale was rescinded, a 2% interest would be charged on the amounts either paid or the refund. However, the CBK bank rates then were not stated. None of parties submitted on this item.

24. I have considered whether or not the letter of rescission of the agreement for sale by the defendant was served upon the plaintiff. The Defendant's said letter is dated 21st January 2008. It is addressed to the plaintiff's address as appears in the Agreement for sale, and copied to Wambui Babu, Advocate and Lands Officer who witnessed the sale agreement on behalf of both the vendor and the purchaser at lands offices Ardhi House, Nairobi.

The plaintiff submits that if such notice was indeed sent out and received by the plaintiff's advocates he would not have sent another letter dated 17th January 2008 seeking compliance and completion of the transaction. Indeed, this is so because the defendant's letter dated 21st January 2008 was not addressed to Gatheru Gathemia & Co. Advocates for the plaintiff yet the defendant knew that the plaintiff – (herself) was not resident in Kenya. No evidence of receipt of the said letter was produced.

25. It is also not clear why the defendant, while represented by S. Murigi & Co Advocates by passed his advocates and addressed letters directly to the plaintiff instead of through her Advocates. Citing the Case **Karanja Mbugua & Another -vs- Marybin Holdings Ltd (2014) e KLR**, the plaintiff – submitted that the Sale Agreement did not contain a condition entitling the vendor to rescind the agreement on the happening of certain events. In such a scenario. It is submitted, the vendor could only rescind if the purchaser's conduct is such as to amount to a repudiation of the contract, and the parties can be restored to their former positions.

26. It is also evident that had the rescission notice been received by the plaintiff or her advocates, their letter dated 25th January 2008, requesting for provision of land rent clearance certificate would not have been written, nor a demand for completion sent out to the defendant.

I therefore come to the conclusion that the Defendant's letter of termination of the sale agreement dated 21st January 2008 was not served upon or received by the plaintiff or her advocates.

In those circumstances the defendant does not have a defence to the obvious breach of the terms of the agreement. The defence raised is that the Municipal Council rates were too high. If that were so, the defendant would perhaps have requested for more advances from the plaintiff to enable him pay if he indeed was keen on complying with the terms of the agreement. Had he done so and the request rejected, then, the result would be different.

27. In **Mwirigi Miriti -vs- Thananga Tea Growers Ltd and Another (2014) e KLR** the matter of frustration was discussed. It was held that frustration of a contract should not be due to the act or election of the party seeking to rely on, but due to some outside event or extraneous change of situation. The event too must be without any blame or fault on the party seeking to rely on it.

In the case **David Contractors Ltd -vs- Farehlium U.D.C. (1956) A.C. 696, Lord Radcliffe at Page 726** held:

“---frustration occurs whenever the law recognises that without the default of either party a constructional obligation has become inadequate of being performed because the circumstances in which the performance is called for would render it a thing radically different from that which was undertaken by contract.”

I come to the finding that the alleged frustration due to high rates as alleged by the defendant is not innocent nor without fault of the defendant. I have explained the basis of my findings above.

28. The Defendant at all material times while entering into the agreement for sale knew or ought to have known, and would have found out earlier, the land rent and rates then payable. It is on record that the plaintiff paid a sum of about Kshs.297,000/= towards rates and land rent, a sum within the Kshs.300,000/= advanced to the defendant for that very purpose. That in itself negates the defendant's claim on frustration, and indeed shows that he knew the amount payable hence the Kshs.300,000/= deposit.

To that extent, the defendant has no defence to the breach of the terms of the sale agreement.

29. The defendant's further submissions are that the transfer of the suit property in the plaintiff's name was through deceit, fraud and misrepresentation by the plaintiff. He did not attempt to call evidence to prove any of the allegations.

In his defence and counterclaim, the defendant states that even if he defaulted in providing the necessary documents and/or compliance with the terms of the sale agreement, the remedy was only refund of the sums advanced to him with a 2% interest, and not an order of specific performance. As at the date of filing of the suit, specific performance had already been achieved as the plaintiff had already been registered as proprietor of the suit property. That defence therefore had been overtaken by events. Further, the defendant failed to state any particulars of the alleged fraud, deceit or misrepresentation. In his evidence, the defendant did not give any evidence on the alleged fraud, deceit, misrepresentation on the part of the plaintiff or any other party. He did not produce any evidence that he was forced or coerced into giving the completion documents to the plaintiffs advocates, or to doing any act.

30. It is true that the purchaser had not paid the full purchase price to the defendant by the time the transfer in her favour was effected. It is trite that in conveyancing the purchasers advocates ordinarily give their professional undertaking to pay the balance of the purchase price once completion is achieved. The plaintiff's advocates had given that professional undertaking and were holding the balance pending completion which the court ordered deposited in court. This was done.

31. The transfer of the suit property to the plaintiff's name was effected on the 8th July 2008 as evidenced by a certificate of lease issued in her favour by order of the court issued on the 29th July 2008 (D.K.Maraga, as he then was). That registration vested to the plaintiff a legal interest that is indefeasible except where fraud, misrepresentation or illegality are proved. **Section 25 of Land Registration Act, 2012, and Section 26(1) of the 2012 Land Act** gives a registered proprietor an indefeasible and absolute ownership of land, and such title can only be subject to challenge on grounds of fraud and misrepresentation or if such registration was acquired illegally unprocedurally or through a corrupt scheme.

32. In **HCCC Case No. 131 of 2015 Anita Chalagaat O'donoran & 2 Others -vs- Fredrick Kwame Krumah & 2 Others (2015) e KLR and Kaplan Shashikant Jai & Another -vs- EcoBank Kenya Limited & Another where J. Gikonyo with regard to Section 99 of Land Act, 2012**, stated as follows:

“The law as it stands is that only fraud, misrepresentation or other dishonest conduct on the part of the chargee of which the purchaser had actual or constructive knowledge will impeach a sale to a purchaser for value of a charged property---.”

33. Having found no corrupt dealings by the plaintiff or even a corrupt scheme leading to the transfer of the title to the plaintiff's favour, coupled with decisions cited above and others, then it is evident that the defendant can not be availed the orders he seeks in his counter-claim. For an order of cancellation of Title to issue the court must be satisfied that the applicant has demonstrated clearly that the registration was fraudulent. In **Esther Ndegi Njiru & Another -vs- Leonard Gatei (20140 e KLR** faced with similar circumstances as in the present case, the court in interpreting the provisions of **Section 26(1) (a) and (b) of the Land Registration Act 2012** rendered that a title shall not be absolute and indefeasible, as a title found to have been acquired unlawfully will not be protected under the above provisions. Further **Article 40(6) of the Constitution** removes protection of a title to property found to have been unlawfully acquired.

It is important that when one intends to impeach title on the basis of having been procured by fraud or misrepresentation, to prove that the title holder was party to the fraud, through corrupt scheme.

34. **Munyao J. in Elijah Makeri Nyangwara -vs- Stephen Mugai Njuguna & Another Eldoret ELC Case Case No. 609B of 2012** rendered that:

“The purpose of Section 26(1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”

I have cited enough authorities in support of the plaintiffs submissions that the defendant is not entitled to the prayers in the counterclaim and in support of the plaintiff's claims for a declaration of ownership of

the use of the property.

It is evident that the defendant was never ready and willing to perform his obligations under the agreement of sale but nevertheless the plaintiff proceeded to perfect the terms of the sale agreement and obtained registration in her favour, with courts intervention.

35. I have not found any act by the plaintiff that may vitiate the title in her favour. By the counterclaim, the defendant sought to defeat the plaintiff's title, but he failed to lead any evidence that, on a balance of probability, may have persuaded the court to come to findings that the plaintiff's title was irregularly, fraudulently or illegally obtained. See **Arthi Highway Developers Ltd -vs- West End Butchery Ltd (2015) e KLR.**

The counter-claim must therefore fail.

Had this court found that the title to the plaintiff had been fraudulently or through a corrupt scheme registered in the plaintiff's name, I would have had no difficulty in ordering cancellation and restoration of the defendant's name as the rightful proprietor. That having been said, I find that the plaintiff is entitled, and she has proved, to the required standards, that she is entitled to absolute ownership of the suit property.

36. The plaintiff sought damages for breach of contract. Other than stating the claim in her plaint she did not adduce any evidence in support. She stated that she lives in Canada and had to travel to Kenya three times in pursuit of this case. It was her duty to prosecute her case and therefore any associated costs towards that goal ought to be taxed as costs by the taxing officer. I shall therefore not award any damages stated as expenses in air tickets from Canada, hotel accommodation and taxi expenses. In any event, those are special damages which were neither pleaded nor proved.

See **Equity Bank Ltd -vs- Genrald Wang'ombe Thuri(2015) e KLR.**

37. The plaintiff further seeks compensation for expenses she incurred in obtaining the documents that otherwise were to be provided by the defendant. These are Rates clearance certificates and consents to transfer. I have considered that the plaintiff paid a sum of Kshs.300,000/= as down payment to the defendant. There was a balance of Kshs.1,300,000/= to be paid upon completion.

The plaintiff made further payments as follows:

(a) Land Rents	-	Kshs. 65,944
(b) Municipal Rates	-	Kshs.196,100
(c) Consent to transfer	-	<u>Kshs. 3,250</u>
Total	-	<u>Kshs.265,294/=</u>

38. I have noted that Rates paid for Kshs.29,350/= were for the year 2009, after the transfer was completed. That amount is not for the relevant period. I therefore find that the plaintiff spend Kshs.265,294/= for obtaining the completion documents. Added to the deposit in court the plaintiff paid in total Kshs.565,294/=.

That leaves the balance from the total purchase price of Kshs.1,600,000/= of Kshs.1,034,706/= out of which Kshs.575,000/= is deposited in court. For the defendant's collection. That leaves a sum of Kshs.459,706/= payable to the defendant. This sum ought to be paid to the defendant forthwith as the plaintiff cannot benefit twice by registration of the land in her favour and keeping the balance of the purchase price. It would amount to an unjust enrichment.

39. In regard to the claim for damages for breach of contract, the general rule is that any party in breach

of the agreement for sale shall pay the innocent party the purchase price being the damages for breach of contract. The plaintiff, notwithstanding default by the defendant proceeded and obtained registration of the suit property in her favour soon thereafter. The plaintiff did not adduce evidence to prove what she suffered by the defendants default.

40. I have stated above that the plaintiff obtained what she intended to and her expectations arising from the sale agreement. That being the case, the plaintiff is not entitled to any damages under the sale agreement.

For the above reasons, the court finds and concludes that the plaintiff has proved her case against the defendant. On the other hand, it is the courts finding that the defendant failed to prove his counter-claim against the plaintiff. The counterclaim is therefore dismissed with costs.

41. Consequently, I enter judgment for the plaintiff against the defendant as follows:

(a) That the plaintiff is declared the lawful owner and holder of the suit property title Known as Nakuru Municipality Block 12/224 absolutely.

(b) That the plaintiff is directed to pay to the defendant the balance of the purchase price being Kshs.1,034,706/= including the sum of Kshs.575,000/= deposited in court.

(c) That the sum of Kshs.575,000/= deposited in court, being part of the purchase price shall be released forthwith to the defendant.

(d) Thus, the total sum of Kshs.1,034,706/= (inclusive of the court deposit) is to be paid to the defendant to bring him to the same position he would have been had he performed his obligations under the sale agreement dated the 18th December 2007.

(e) Interest on (d) above shall be at court rates effective 30 days from the date of this judgment.

(f) The Defendants counter-claim is dismissed with costs.

42. Circumstance of this suit, and pursuant to **Section 27(1) of the Civil Procedure Act Chapter 21 Laws of Kenya** dictate that each party bears its own costs of the suit.

Dated, Signed and Delivered this 27th Day of July 2017.

J. N. MULWA

JUDGE