



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
ELC CIVIL SUIT NO. 369 OF 2013

BARCLAYS BANK OF KENYA LTD..... PETITIONER

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

JUDITH MUOK ATIENO.....INTERESTED PARTY

JUDGMENT

This matter was commenced by way of plaint dated 4th October 2012 by **Judith Muok Atieno** as the plaintiff and Barclays Bank of Kenya Limited as the Defendant. Simultaneously with the plaint the plaintiff filed a Notice of Motion application seeking an injunction restraining the Defendant from realizing its security over title number **Kajiado/Olchoro- Onyore/5682** inter alia on the ground that the property constituted matrimonial property and that the plaintiff had not executed the charge and neither had she granted consent to the charge being taken as registered under the law. The court on 5th October 2012 granted an ex parte interim order of injunction for 14 days pending the hearing of the plaintiff's application inter partes.

Upon being served with the pleadings and the Notice of Motion the Defendant's response was to file the petition dated 3rd December 2012 now the subject of this judgment.

The petition is brought under Articles 2 (4), 20, 21, 22, 23, 40, 159 and 165 (3) of the constitution. Barclays Bank of Kenya Limited, a Commercial Bank operating in Kenya is the Petitioner.

The Honourable Attorney General as the principal Legal Adviser to the Government of Kenya is the Respondent, **Judith Muok Atieno**, the plaintiff in the suit wherein the petition has been filed is the interested party.

Orders that:-

1. A declaration do issue that in so far as section 78 of the Land Act can apply Section 79(30) of the Land Act retrospectively it is unconstitutional.
2. A declaration do issue that in so far as section 78 of the land Act can apply to any other provisions of Part VIII of the Land Act or any other part of that Act to affect the rights of a charge or Mortgage which had accrued before the Act came into force it is unconstitutional.

3. A declaration that in so far as no forms have been prescribed under the Land Act Section 56(2) of the Land:- Registration Act and sections 90(1) and 96(2) of the Land of Act infringe on the petitioner's right to property.
4. The Honourable court do issue such orders and give such directions as it may deem fit to meet the ends of justice.
5. The costs of the petition be awarded to the petition.

In support of the petition the petitioner filed an affidavit sworn by one **Castro Kipkemboi Mutai**, a Recoveries Officer in the Credit Operations Department of the petitioner. The interested party, **Judith Muok Atieno**, filed a reply to the petition and a replying affidavit on 8th May 2013. The Attorney General who is named as the Respondent did not enter any appearance and/or file any response to the petition. The court on 15th May 2013 directed that the petition be canvassed by way of written submissions. The petitioner filed their submissions on 17th March 2014 while the interested party filed her submissions on 17th April 2014.

The Petitioner's Case

The petitioner states that by an instrument of charge dated 13th February 2001 and a further charge dated 23rd June 2003 copies whereof are exhibited and marked "KM1" the Petitioner advanced Moneys to **Amos Oketch ("the borrower")** who is the spouse of the interested party, on the security of property **Kajiado/Olchoro- Onyore/5682**. The charges were registered against the suit property under the repealed Registered Land Act, Cap 300 Laws of Kenya and consequently the petitioner acquired a proprietary interest over the suit property.

The Petitioner avers that the Borrower has not repaid the monies advanced to him and that the petitioner initiated the process of realizing the security following default in repayment but following negotiations with the Borrower an amicable repayment arrangement was agreed upon resulting in the suspension of sale of the security through public auction. The borrower however failed to honour the repayment arrangement and the Borrower's spouse to forestall the realization of the security through public auction has brought these court proceedings which have resulted in the petitioner being stopped from enforcing its rights under the securities it holds.

The Petitioner states that in the proceedings brought by the Borrower's spouse, the interested party herein, she avers that:-

- i. The suit property is the matrimonial home belonging to her and the Borrower and as such she has a legal right to make a claim in respect of the same,
- ii. That she never consented to the taking and/or creation of the securities over the suit property.
- iii. That section 79(3) of the Land Act 2012 requires that any securities taken over matrimonial property be subject to consent of the spouse of a Borrower and in absence of such consent the security is invalid.
- iv. That the provisions of the Land Act 2012 have retrospective application such that the securities created over the matrimonial property without the consent of the interested party are null and void and are incapable of being enforced.

Additionally the interested party has contended that the petitioner cannot exercise its power of sale under the securities as there has been no compliance with section 56(2) of the Land Registration Act, sections 90(1) and 96 (2) of the Land Act respecting the issuance of notices.

The Petitioner contends the effect of section 78 of the Land Act as read together with section 79(3) is to render its securities invalid yet the securities were created long before the Land Act came into force and to that extent the petitioner avers that the two provisions taken together are in conflict with Article 40 of the Constitution which protects rights to property. The petitioner therefore urges the court in terms of Article 2(4) of the Constitution to find the said provisions of the Land Act to be unconstitutional as they infringe on the fundamental rights of the petitioner to property.

Interested Party's case.

The interested party in her response to the petition states that she filed the instant suit in Machakos High Court before the same was transferred to this court. The interested party avers the Constitution affords all persons equal protection and states that her fundamental rights equally deserve protection by the constitution. The interested party contends by virtue of being the wife (spouse) of the '**Borrower**' she has a recognized legal interest in the suit property and that her property rights deserve protection under article 40 of the Constitution. The interested party finds no fault with sections 78 and 79 of the Land Act 2012 and lauds the Land Act 2012 and the Land Registration Act as the codification of Article 68(iii) of the Constitution which mandated parliament to enact legislation to” **regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and upon termination of marriage**”

The interested party in the premises avers that the petition is an assault on the supremacy of the constitution and points to Article 2(3) of the Constitution which provides:-

“The validity or legality of this constitution is not subject to challenge by or before any court or other state organ”.

And states that allowing the petition would be to breach and violate her rights which the constitution protects and thus seeks the dismissal of the petition with costs.

The parties filed written submissions to ventilate their respective positions. The petitioner filed its submissions dated 7th March 2014 on 17th March 2014 while the interested party's submissions dated 15th April 2014 were filed on 17th April 2014. The Attorney General did not file any submissions.

The Petitioner's submissions

The petitioner submits that the charges forming the security created over Land **Title Kajiado/Olchoro-Onyore/5682** registered in the name of **Amos Opundo Akech (Borrower)** who is the husband of the interested party were created well before the Land Act 2012 became law. The initial charge having been taken on 13th February 2001 and the further charge on 23rd June 2003. The Petitioner in their submission take issue with the application of section 78 of the Land Act in so far as it purports to apply all provisions relating to Legal charges contained in Part VII of the Act to all charges including those charges which were created before the Act came into force.

Part VII of the Land Act 2012 deals with General Provisions on charges and section 78 of the Act falling under this part provides as follows:

78.(1) This part applies to all charges on land including any charge made before the coming into effect of this Act and in effect at that time, any other charges of land which are specifically referred to in any section in this part.

(2) Reference in this part to “the charged land” shall be taken to mean and include a charged land, a charged lease and sublease and a second or subsequent charge.

The petitioner submits the effect of section 78 of the Land Act is virtually to apply part VII of the Act to all legal charges existing at the time the Act took effect which would include even those charges which were created before the Act took effect. The petitioner argues that the effect of implementing section 78 of the Act would be to render charges taken over matrimonial property without the consent of a spouse (which was not a prerequisite before the coming into force of the Act) invalid and therefore unenforceable. The petitioner submits the net effect of the application of this provision retrospectively would be to violate the interest and rights of the petitioner to enforce its security to realize the money advanced to the Borrower under the charges. The petitioner contends its right to realize its security had crystallized before the Land Act came into force and it would be a violation of its fundamental rights to have its property rights protected as provided under article 40 of the constitution.

The petitioner referred the court to the case of **Fina Bank Limited –vs. Dinesh Kumar Zaverchand Jetha HCCC NO. 643 of 2005** where Havelock, J (as in then was) vide a ruling delivered on 8th March 2013 held that the law applicable for charges drawn prior to the new land laws was the law as per the repealed land laws by virtue of the transition provisions of section 162 of the Land Act and section 107 of the Land Registration Act of 2012. However Havelock, J in the case of Patrick **Waweru Mwangi & Another –vs- Housing Finance Company of (k) Ltd (2013) eKLR** delivered on 3rd October 2013 followed the holding by Mabeya, J in the case of **Jimmy Wafula Simiyu –vs- Fidelity Commercial Bank Ltd (2013) eKLR** where the learned Judge held that the Land Act, 2012 section 78 brings the charges created before the enactment of the Land Act under the operation of the Act.

Honourable Justice Havelock in the case of **Patrick Waweru Mwangi & Another –vs- Housing Finance Co. Ltd (supra)** in considering the applicability of the Land Act to charges executed and registered before the coming into force of the Act stated:-

“9. That being said, the question is whether the provisions of the Land Act and Land Registration Act are therefore applicable in the instant suit, given that the charge instruments before the said Acts were enacted. The savings and transitional provisions with respect to rights, actions dispositions etc are provided under section 107(1) & (2) of the Land Registration Act and sections 106 (1) &(2) of the Land Act”. Both regimes of the law provide that “Unless the contrary is specifically provided in this Act”, any rights, interest, obligations acquired, accrued, or established before the commencement of the Act shall continue to be governed by the law applicable. This is the saving transitionally clause for the transition into the new laws with the repeal of all previous land laws including the Registered Land Act Cap 300. The “Contrary provision” aspect that the Land Act provides for is the issue of the matrimonial home. Having established indeed the suit premises is matrimonial property, the other issue is to establish what the remedies available to both the chargee and charger under the Act and whether the same is applicable in the instant is application”.

On the applicability of the new land laws the learned Judge cited with approval the holding of **Mabeya, J** in the case of **Jimmy Wafula Simiyu –vs- Fidelity Commercial Bank Ltd (supra)** where the Judge stated thus:-

“A careful reading of this section will show that there is the use of the words “ Unless the contrary is specifically provided in this Act” section 78 of the Land Act, 2012 which the plaintiff relies on is in my view, express and specific that part VII of the Act on “General provisions on charges” applied to all charges on land including any charge made before the coming into effect of that made before the coming into effect of that Act. That part VII generally deals with the creation, transfer, contents of charges and the remedies thereon part VII extends from section 78 to 106 of the Act. In my view therefore notwithstanding the provisions of section 162 (1) of the Act, the provisions of section 78 of the Act being express and specific as to application of part VII of the Act, that part applies to the charges made before 2nd May, 2012 when the Land Act 2012 came into effect. In this regard, I hold the view that prima facie, the provisions of the Land Act, 2012 is applicable in this case as regards part VII thereof”.

Hon Justice Havelock despite holding that section 78 rendered charges created before the coming into force of the Land Act, 2012 subject to the provisions of the Act nonetheless held that the conduct of a spouse who makes the application for relief under the provisions of the Act should be taken into account in deciding whether or not to grant the relief sought. The granting of the relief is not automatic and the attendant circumstances in every case are a relevant factor to be considered in determining whether or not to grant an order or any relief against the operation of a chargees remedy of enforcement of the security. A spouse cannot having been aware of the existence of the charge and having for instance participated in its servicing simply turn around and become obstructionist by resorting to the provisions of the Act to curtail a chargees’s legitimate exercise of its powers under the charge.

The petitioner referred the court to the case of **Overseas Private Investment Corporation & 2 others –**

vs- AG (2013) eKLR where Hon. **Justice Majaja** was invited to find section 78(1) of the Land Act unconstitutional and null and void in so far as it applies to charges made before the coming into effect of the Land Act on 2nd May 2012 for being in contravention of articles 40(1) and (2) of the Constitution. **Hon Justice Majaja** in the case held that the legislature may in its wisdom and with clear intention legislate a law that in its operation is intended to have retrospective application. The Judge observed that.

“ the duty of courts is to give effect to the will of Parliament so that if the legislation provided for retrospective operation, courts will not impugn it solely on the basis that the same appears unfair or depicts a “lack of wisdom or applies retrospectively”.

The judge further stated that section 78(1) of the Land Act cannot be construed in abstract and that the same should be looked at within the context of the entire part VII of the Act.

“28. The question is whether in the circumstances of the petitioners, such an application of the law contravenes their fundamental rights and freedoms. Section 78(1) of the Act which has been impugned is part of Part VII of the Act titled, “General provisions on charges”. The part relating to charges contains 28 sections dealing with a range of issues governing, among others, the formation of the charges, the rights and obligations of the parties, the rights of third parties and the remedies of the chargor and chargee.

29. section 78(1) is the introductory section in part VII and whether and to what extent it applies to the matters in part VII must be tested as against each and every section. As demonstrated by the petitioner, some of the sections of part VII when considered against section 78(1) may be considered retrospective and indeed amount to interfering negatively with accrued rights Section 78(1) cannot be read in isolation as doing so would be inconsistent with the legislative intention to enact what is in effect retroactive legislation. As the authorities I have cited demonstrate, the legislature is entitled to enact statutes with retrospective effect the question is whether the court should intervene in this particular instance”.

The petitioner further referred the court to the decision/ruling of this court in the case of **ENW –VS- PWM & 3 others (2013) eKLR** where the court when generally considering the application of the Land Registration Act, 2012 observed as follows:-

“As regards the operation of section 93(2) and (3) of the Land Registration Act 2012 I would only observe that the subject Act came into operation in 2012 and it was not intended that it would have retrospective application. The transaction between the 1st and 2nd Defendant was executed in 2005 when there was no requirement for spousal consent to be obtained before a spouse could deal with any asset registered in the sole name. In the premises the 1st Defendant could properly deal and transact with the third parties in regard to the suit property without necessarily consulting with and/or obtaining the consent of the spouse as he was the sole registered owner of the suit property.

In the said suit while still considering the application of the Land Registration Act, 2012 in as far as matrimonial property is concerned I observed as follows:-

“AS a further observation I would like to state that where a property while would otherwise be considered as matrimonial property is tendered as security for a bank loan as in the instant matter such property becomes a commercial commodity available in the market and liable to be sold by the chargee under the chargees statutory power of sale and the exercise of such power of sale cannot be defeated by a claim that such property constitutes matrimonial property. That indeed should be viewed as what informed the requirement in the new Land Registration Act of 2012 requiring spouses to give their consent to the charging of matrimonial properties so that none of the spouses may be heard to say they were not aware or were not consulted when the charge was taken. Charges taken before the enactment of the Land Registration Act 2012 cannot be invalidated on the basis that spousal

consent had not been obtained. It was not a requirement prior to the enactment of the new Land Registration Act and therefore the plaintiff in the present case cannot take refuge under the new Land Act”.

The petitioner argues that as the chargee its rights had accrued and crystallized under the charge and it would be a violation of its fundamental rights to property if its rights were to be taken away on the ground that the Respondent had not consented to the charge when there was no such requirement at the time the charge was taken. The petitioner thus contends to the extent the application of section 78(1) of the Land Act 2012 would apply to invalidate its security it is unconstitutional and it should be so declared.

Interested Party's Submissions

The interested party filed her submissions dated 15th April 2014 on 17th April 2014. The gist of the interested party's submissions is that while sections 78 and 79 of the Land Act have retrospective application in regard to charges and mortgages created before the coming into force of the Act, they do not invalidate those instruments but rather require that the enforcement of remedies available to the chargees must conform to the provisions of the Land Act and the Land Registration Act. The interested party further submits that as the spouse she has an overriding interest over the suit property under section 28 of the Land Registration Act that need not be noted in the land register. In particular the interested party submits that the provisions of section 56(2) of the Land Registration Act and section 90(1) of the Land Act relating to service of notice are applicable to both charges created before or after the Acts became operational.

The interested party places reliance on the cases of **Jimmy Wafula Simiyu –vs- Fidelity Commercial Bank (2013) eKLR** and **Overseas Private Investment Corporation & 2 others –vs- Attorney General (2013) eKLR** which were equally cited by the petitioner to support her submission that section 78 (1) of the Land Act, 2012 renders charges created before the coming into force of the Act subject to the provisions of the Act.

Analysis and determinations

The issue for determination by the court is whether section 78(1) has a retrospective application to charges created before the coming into force of the Land Act and if so whether section 79(3), 90(1), and 96(2) of the Act equally apply retrospectively.

From my reading of section 78(1) of the Land Act 2012 there is no doubt that the intention of the legislature was to bring the charges that were created before the Act came into force under the provisions of the Act. Following the repeal of the various Acts relating to land namely, the Indian Transfer of property Act 1882, The Government Lands Act (Cap 280). The registration of Titles Act, (Cap 281), The land Titles Act, (Chapter 282), and the Registered Land Act (Cap 300) vide section 109 of the Land Registration Act, 2012 it was to be expected that provisions were to be made to regulate any instruments of charges or mortgages that were made under the repealed Acts. The prior charges and Mortgages and any accrued rights, liabilities and/or remedies were saved under the transitional provisions under sections 106 and 107 of the Land Registration Act. The provisions of section 106 of the Act are infact reproduced in part under section 162 of the Land Act 2012. Section 106 of the Land Registration Act provides:-

106.(1) on the effective date, the repealed Acts shall cease to apply to a parcel of land to which this Act applies.

(2) Nothing in this Act shall affect the rights, liabilities and remedies of the parties under any mortgage, charge, memorandum of equitable mortgage, memorandum of charge by deposit of title or lease that, immediately before the registration under this Act of the land affected, was registered under any of the repealed Acts.

(3) For the avoidance of any doubt:-

(a) any rights, liabilities and remedies shall be exercisable and enforceable in accordance with the law that was applicable to the parcel immediately before the registration of the land under this Act,

Section 107(1) of the Act provides

Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

The Land Act 2012 part VII- from sections 78 to 106 provides for General provisions on charges and these are the provisions section 78(1) applies to all charges on land including those which were made before the coming into force of the Act. One of the contentious provisions is section 79(3) which provides thus:-

79.(3) A charge of a matrimonial home, shall be valid only if any document or form used in applying for such a charge or used to grant the charge, is executed by the chargor and any spouse of the chargor living in that matrimonial home, or there is evidence from the document that it has been assented to by all such persons.

The General provisions relating to charges under part VII of the Land Act have to be applied having regard to the savings and transitional provisions contained under section 162 of the same Act.

Section 162(1) provides:-

162.(1) Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the contrary is specifically provided in this Act or the circumstances are such that the contrary must be presumed, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) -----

(4) -----

(5) -----

Considering the above provisions of both the Land Registration Act 2012 and the Land Act 2012 I am left in no doubt that it was the intention of parliament to have a break with the old order of the land laws regime whereby all the previous laws dealing with land were collated and consolidated under one Act which is the Land Act 2012 while the Land Registration Act 2012 was to deal exclusively with the registration of land and issue of titles. The Land Act 2012 was to provide for the applicable land law in regard to all interests in land and it is in this context that Part VII of the Act is to be viewed in so far as it sought to make provision for the applicable law in as far as charges are concerned. Thus section 78(1) is in this respect to be seen as a deliberate provision on the part of parliament to provide for both prior charges created before the Act came into force and charges created after the commencement of the Act. The fact that in both the Land Registration Act 2012 and the Land Act 2012 there is the savings and transitional provisions makes it evident that the intention was to have the Acts have retrospective application in the sense that actions undertaken under the previous Act were saved and transitioned to be governed under the new Acts.

My view is that by reason of section 162(1) of the Land Act, where any right or interest had accrued to the chargee before the commencement of the Act, the provisions under part VII of Act cannot be applied to take that right or interest away. Hence where a chargee's right to exercise its power of sale had arisen and there was compliance with the previous law applicable prior to the coming into force of the Land Act, it is that law which would be applicable and not the provisions of the Land Act.

I note that **Hon. Justice Mabeya** in the case of **Jimmy Wafula Simiyu –vs- Fidelity Commercial Bank Ltd (2013) eKLR** and **Hon. Justice Havelock** in the case of **Patrick Waweru Mwangi & Another –vs- Housing Finance Co. (k) Ltd (2013) eKLR** interpreted the use of the words **“Unless the contrary is specifically provided for in this Act”** in section 162(1) of the Land Act to mean that Part VII of the Act had indeed specifically applied the provisions of Part VII which include the requirement of spousal consent to any charge over matrimonial property as required under section 90(3) of the Land Act, 2012 and the various consequential notices and/or actions required to be done by the chargee before enforcing its rights conferred under the charge. With tremendous respect to my brother Judges my view is that indeed section 162(1) of the Land Act does exclude the application of Part VII of the Act in respect of those prior charges where rights had accrued and were exercisable before the commencement of the Land Act.

It would be totally unrealistic to hold that charges created before the commencement of the Land Act should have been endorsed with spousal consent when there was no such requirement immediately prior to the commencement of the Land Act and the Land Registration Act. To interpret the use of the words **“Unless the contrary is specifically provided in this Act”** to mean that part VII of the Land Act is applied wholesale to all charges including those created before the coming into force of the Land Act without exception would be to invalidate the charges created prior to the enactment of the Land Act where no spousal consent was required before taking a charge over matrimonial property. That would violate the rights of chargees who had acquired rights and interests in the charged properties. I do not think that would have been the intention of the legislature and in my view the legislature acknowledged this undesired effect and to mitigate the effect did come up with the savings and transitional provisions with respect to accrued rights and actions under section 162 of the Land Act which in my opinion allows rights that had accrued under the prior charges to be governed by the applicable law in force immediately prior to the commencement of the Land Act.

I am in agreement with the observations of Hon. Justice Majaja in the case of **Overseas Private Investment Corporation & 2 others –vs- Attorney General (2013) eKLR** on the rationale of the transitional provisions where he stated:-

“32. These transitional provisions I have cited are intended to mitigate the full rigour of the retrospective effect of the provisions of Part VII. Section 162 of the Act permits the application of the repealed law to specific instruments made or any rights or interests accrued prior to the Act coming into force. Specifically section 162 (2) of the Act permits transactions commenced prior to the Act to continue in accordance with the repealed law”.

Having regard to the provisions of section 78(1) read together with section 162(1) of the Land Act, my view is that where a right had accrued and a charge had become enforceable through realisation pursuant to the chargee's power of sale a spouse who was not a party to such charge does not by reason of Part VII of the Act acquire any additional rights that he/she did not possess under the operative law under which the charge was governed prior to the coming into force of the Land Act. Such a spouse cannot challenge the prior charge on the basis that his/her consent was not given to the creation of the charge. If the appropriate notices had been given under the repealed laws the chargee, in my view, would not be obliged to serve fresh notices under the provisions of part VII of the Land Act. However where default had not occurred and the right to realise the security had not arisen, the chargee would be obliged to give the appropriate notices in compliance with the provisions of part VII of the Land Act 2012 and comply with the other requirements thereof to be able to realise the security. Thus before realising the security a chargee would need to verify whether the property is matrimonial property or not and, if it is, to effect service of the notices in accordance with Part VII of the Act also on the spouse.

Conclusions

Turning to the prayers sought in the petition by the petitioner it is my decision that no fundamental rights of the petitioner have been infringed and I decline to grant the declarations sought under prayers 1 and 2 of the petition. I hold that section 78(1) applies Part VII of the Land Act 2012 retrospectively subject to section 162 of the Land Act which I hold exempts prior charges where rights had accrued before the coming into force of the Land Act from the provisions of Part VII of the Land Act. I further hold that section 79(3) of the Land Act cannot apply to prior charges taken prior to the coming into force of the Land Act 2012 and a chargee of a matrimonial property under a prior charge will be taken to have accrued a right over the charged property without the requirement of spousal consent and would in terms of section 162 of the Land Act 2012 be entitled to have the benefit of the rights and interest conferred by the prior charge notwithstanding the absence/lack of spousal consent as envisaged under section 79(3) of the Land Act 2012.

In the premises and for the above reasons I decline to grant the declarations sought in the petition. In the result the petition is ordered dismissed but considering the issues that were submitted for determination were no doubt of public interest I direct that each party shall bear their own costs of the petition.

Orders accordingly.

Judgment dated signed and delivered at Nairobi this **24th** day of **March**, 2015.

J. M. MUTUNGI

JUDGE

In the Presence of:

..... For the Plaintiffs

..... For the Defendants