



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 8 OF 2014 (OS)**

**IN THE MATTER OF:     **MATRIMONIAL PROPERTY ACT NO. 49 OF 2013****

**AND**

**IN THE MATTER OF:     **ENFORCEMENT OF RIGHTS TO MATRIMONIAL  
HOME AND MATRIMONIAL PROPERTY****

**R B ..... PLAINTIFF/ APPLICANT**

**VERSUS**

**H B ..... 1<sup>ST</sup> DEFENDANT/ RESPONDENT**

**A B ..... 2<sup>ND</sup> DEFENDANT/ RESPONDENT**

**RULING**

**INTRODUCTION**

1. This is a ruling on an application dated 8<sup>th</sup> September 2014 filed simultaneously with the Originating Summons herein, seeking two principal orders for –

- a. *An order of injunction restraining the defendants by themselves, their servants, employees, agents, assigns or otherwise howsoever from dealing in, entering, occupying, remaining upon, removing household goods and personal effects of the plaintiff and the plaintiff's children therefrom, evicting or in any way interfering with or undermining the plaintiff's rights and interests in all that property known as House No. 1 situate on Mombasa [Particulars Withheld], Nkomani Road, Mombasa pending hearing and determination of the suit.*
- b. *In the event the defendants evict the plaintiff pending hearing and determination hereof, the Honorable Court be pleased to order the Defendants to deliver to the plaintiff vacant possession of all that property known as House No. 1 situate on Mombasa [Particulars Withheld], Nkomani Road, Mombasa.*

2. This is clearly an interlocutory application pending the hearing and determination of the Originating Summons dated the 8<sup>th</sup> September 2014, by which the plaintiff seeks the determination of the following questions:

1. *Whether all that property known as HOUSE NO. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, hereinafter called “the subject property” was the matrimonial home of S P B (Deceased) and R B for purposes of the Act;*
2. *Whether all that property known as HOUSE NO. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, MOMBASA, household goods and effects therein are matrimonial property for purposes of the Act;*
3. *Whether the Plaintiff can be lawfully evicted from HOUSE NO. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, MOMBASA by the defendants as they have purported to do absent court order or decree.*

3. Contending that the above questions are to be answered in her favour. the plaintiff prays for specific Orders that –

- a. *A DECLARATION that all that property known as HOUSE NO. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, MOMBASA is the matrimonial home of R B AND S P B (Deceased) within the meaning of the Matrimonial Property Act, 2013.*
- b. *A DECLARATION that HOUSE NO. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, MOMBASA, household goods and effects therein are the matrimonial property of R B and S P B (Deceased) within the meaning of the Matrimonial Property Act, 2013.*
- c. *A DECLARATION that the threatened eviction or eviction of R B by the defendants from HOUSE NO. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, MOMBASA is unlawful, null and void.*
- d. *An Order of injunction restraining the defendants by themselves, their servants, employees, agents, assigns or otherwise howsoever from removing household goods and effect of the plaintiff and the plaintiff’s children from, evicting or in any way interfering with or undermining quiet and peaceful enjoyment by the plaintiff of all that property known as HOUSE NO. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, MOMBASA.*

4. The application is expressed to be based upon grounds set out on the Chamber Summons dated 8<sup>th</sup> September 2014 as follows:

1. *The Plaintiff is the wife of S P B (Deceased).*
2. *Following their marriage, the plaintiff lived with her family in their family home on all that property known as HOUSE No. 1 situate on MOMBASA [Particulars Withheld], NKOMANI ROAD, MOMBASA, hereinafter called “the subject property” where the plaintiff’s husband S P B (Deceased) lived alone before marriage.*
3. *The subject property is a matrimonial home and a matrimonial property of the Plaintiff and her late husband under the Matrimonial Property Act, 2013.*
4. *The marriage of the Plaintiff to S P B (Deceased) is blessed with two children: T S B, born on 21<sup>st</sup> May 2010 and A S B, born on 18<sup>th</sup> April 2012.*
5. *The plaintiff’s husband died on 11<sup>th</sup> July 2014 following a widely reported shooting incident in Changamwe, Mombasa, while driving to his office along Lumumba Road from Moi International Airport, Mombasa.*
6. *Following the death of the Plaintiff’s husband, the 1<sup>st</sup> Defendant has demanded that the Plaintiff vacates her family home herein stating that he wants to live therein with his wife and biological mother, the 2<sup>nd</sup> Defendant. The demands have been followed by threats all of which have been reported to the Police.*
7. *The 2<sup>nd</sup> defendant who was the first wife of the plaintiff’s late husband had long separated from him and was living in a separate residence provided to her by S P B (Deceased) following protracted court actions.*
8. *The defendants have locked the plaintiff family home herein and have purported to deny the plaintiff and her young school going children access to clothing, education materials, all their belongings, household goods and personal effects all of which are in the home, contrary to law...”*

5. The application is supported by the supporting affidavit and further affidavit of the plaintiff respectively sworn on 8<sup>th</sup> September 2014 and 15<sup>th</sup> September 2014 and of counsel Mr. Miyare sworn on 8<sup>th</sup> January 2015. In reply, the defendants each filed a replying affidavit respectively on 11<sup>th</sup> September 2014 and 15<sup>th</sup> September 2014 and a supplementary Affidavit by the 2<sup>nd</sup> defendant filed on 23<sup>rd</sup> April 2015.

### **SUBMISSIONS**

6. Counsel for the parties – Mr. Miyare for the Plaintiff and Mr. Agwara for the Defendants made oral submissions on the 23<sup>rd</sup> April 2015 and ruling was reserved for the 4<sup>th</sup> June 2015.

### **The Plaintiff's Case**

7. For the Plaintiff it was contended that the issue of the matrimonial property as between the deceased and the 2<sup>nd</sup> Defendant was resolved by a consent order filed in HC Civil Suit No. 93 of 2006 (OS) in which the 2<sup>nd</sup> Defendant to be provided with a separate accommodation and the deceased allowed to stay in the matrimonial home on the suit property and on which he subsequently established a matrimonial home with the Plaintiff upon their marriage on 13<sup>th</sup> June 2009 at the suit property. Until his death, the deceased and the Plaintiff lived as husband and wife on the suit property together with their two children. During this time, the 1<sup>st</sup> defendant, who was at school in a university abroad lived, with the Plaintiff and the Deceased in the matrimonial property during the school holidays. Just before he died, it was averred by the plaintiff, the deceased had made plans for his son, the 1<sup>st</sup> defendant herein, and his wife to relocate to Nairobi.

8. The Plaintiff also claimed to have made substantial modifications and improvements on the matrimonial property. It was contended that the 2<sup>nd</sup> Defendant only returned to the suit premises after the death of the deceased and with the collusion of her son the 1<sup>st</sup> defendant locked the Plaintiff out of her matrimonial home and instructed the guards not to open the gate for the Plaintiff. Subsequently, they respondent took the Plaintiff's belonging's and dumped them at the Plaintiff Mother's house.

9. It was contended that the eviction of the Plaintiff was illegal because it was done without a court order as required by law under section 12 of the Matrimonial Property Act 2013, and the Court should not entertain an illegality of a forcible eviction.

### **The Respondents' case**

10. For the Defendants, it was submitted, principally, that the defendants were shareholders of the limited liability company Blue Bell Limited which owned the suit property; that the Consent order in OS 93 of 2006 did not determine the rights of the parties to the suit property; and that as the first wife during the time of acquisition of the suit property, she had a 50:50 ownership share with the Deceased S in accordance with section 8 of the Matrimonial Property Act. They denied that the Plaintiff was ever threatened or evicted for the suit property and pointed out that the plaintiff had mounted similar proceedings in the Children Court. Counsel for the Defendants urged that the plaintiff and the two defendants could not stay together and urged the court to dismiss the application for injunction to restore the plaintiff on to the suit property.

### **ISSUE FOR DETERMINATION**

11. The issue for determination is whether the court will grant the order of interlocutory injunction sought, which is clearly a mandatory injunction, at this interlocutory stage of the proceedings.

### **DETERMINATION**

### **Prima Facie Case and Balance of Convenience Tests for Interlocutory Injunctions**

12. As I observed in Mombasa HCCC No. 36 of 2011, **Grace Samba & 27 Ors. v. Christine Nyamalwa** -

“[W]hether to grant interlocutory injunction sought by the Plaintiffs depends on well known principles. Firstly, I have considered that the principles for the grant of interlocutory injunctions, whether under the **Giella v. Casman Brown**, supra, cited by the Plaintiffs’ counsel or under the **American Cyanamid Co. v. Ethicon Ltd**, (1975) 1 ALL ER, 504; (1975) AC 396 HL), the question of damages as an adequate remedy for the injury is central to the consideration whether to grant interlocutory injunctions. As held in **Giella** injunctions will not normally be granted if the injury is remediable by an award of damages. Secondly, the applicant must demonstrate at least an arguable case in accordance with the **American Cyanamid** formulation and a **prima facie** case under the **Giella** test. I have in the past expressed preference for the arguable case standard of **American Cyanamid** on the reasoning, as held by Platt, JA in the twin decisions of **Banana Hill Investment Ltd. v. Pan African Bank Ltd & 2 Others** (1987) KLR 351 and **Mbuthia v. Jimba Credit Corporation Ltd** (1988) KLR 1, that it is not the function of the court at the interlocutory stage to attempt finalized determination of disputed matters of fact and law. Thirdly, under both formulations, the inquiry as to the balance of convenience falls for consideration subject to an arguable case under the **American Cyanamid** test, and where the Court doubts whether there is a **prima facie** case under the **Giella** test.

**Prima facie case or arguable case**

13. In resolution of matrimonial dispute between the 2<sup>nd</sup> defendant and the deceased S B, the parties settled the various suits between them by a consent order in Court of Appeal Civil Application No. 285 of 2006 on 26<sup>th</sup> July 2007 as follows:

**“BY CONSENT OF THE PARTIES HEREIN:-**

(a) All the matrimonial disputes between Mrs. A S B and S P B and the cases arising therefrom being MSA CIVIL SUIT NO.93 OF 2006 (OS): MSA A S B VS S P B & R E; CHIEF KADHI'S COURT CASE NO. 63 OF 2005: A S B VS S P B & R E; REP VS SHEIKH M KASSIM, THE CHIEF KADHI EX P S P B & R E, A S B (INTERESTED PARTY); MSA MISC. APPLICATION NO. 284 OF 2005: A S B VS S P B & R E; WINDING UP CAUSE NO. 2 OF 2006: IN THE MATTER OF BLUEBELL PROPERTIES LIMITED be and are hereby withdrawn.

(b) MR. S P B shall adequately maintain MRS. A S B and in so doing shall provide her with the following

- a. Housing
- b. Medication
- c. Clothing
- d. Food and/or subsistence
- e. Car

(c) All the cases listed hereinabove to be mentioned before the High Court of Kenya at Mombasa within 30 days for further specific orders.

(d) Each party to bear his/her/ its own costs

Dated at Mombasa this 26<sup>th</sup> day of July 2007”

14. Section 12 of the Matrimonial Property Act No. 49 of 2013 is in the following terms:

*“12. (1) An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated in any form, whether by way of sale, gift, lease, mortgage or otherwise.*

*(2) A spouse in a monogamous marriage, or in the case of a polygamous marriage, the man and any of the man's wives, have an interest in matrimonial property capable of protection by caveat, caution / or otherwise under any law for the time being in force relating to the registration of title to land or of deeds.*

*(3) A spouse shall not, **during the subsistence of the marriage**, be evicted from the matrimonial home **by or at the instance of the other spouse except by order of a court.***

*(4) Subject to subsection (3), **a spouse shall not be evicted from the matrimonial home by any person except —***

***(a) on the sale of any estate or interest in the matrimonial home in execution of a decree;***

***(b) by a trustee in bankruptcy; or***

***(c) by a mortgagee or chargee in exercise of a power of sale or other remedy given under any law.***

*(5) The matrimonial home shall not be mortgaged or leased without the written and informed consent of both spouses.”*

15. Section 2 of the Act defines matrimonial home as follows:

*“**“matrimonial home” means any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.**”*

16. The question of ownership of the suit property will finally be determined upon trial in the judgment of Court. Despite any interest the 2<sup>nd</sup> defendant may claim as a co-owner of property by virtue of shareholding in the company Blue Bell Ltd which is the registered proprietor of the suit property, or by virtue of section 8 of the Matrimonial Property Act, the I consider that the plaintiff has a strong prima facie case in the provisions of section 12 (4) of the Matrimonial Property Act No. 49 of 2013, which provides that **“Subject to subsection (3), a spouse shall not be evicted from the matrimonial home by any person.”** This injunction against eviction appears to bind all persons including former or other spouses of one of the spouses, as in this case.

#### **Damages as remedy**

17. It is clear that the loss of a home is not a matter for compensation by damages and as observed by Platt JA in ***Mbuthia v. Jimba Credit Finance Corporation & Anor.*** (1988) KLR 1 it is usual to grant injunctions in land cases.

#### **Balance of convenience**

18. As held in ***Mbuthia v. Jimba Credit Finance Corporation***, supra, the Court in deciding interlocutory applications does not finally decide disputed facts upon affidavits. It rather weighs the respective merits of the parties' cases and leave the final determination of the matter to the full trial. In this matter, the balance of convenience lies with the plaintiff who was removed from her matrimonial home where she lived with her husband and two children since her marriage in 2009. It is not disputed that the 1<sup>st</sup>

defendant and his wife lived in the house before the death of his father S B. The plaintiff only asserted that the 1<sup>st</sup> defendant was on the verge of moving out upon his marriage and the father having acquired for him a house at Nairobi. It is, however, disputed whether the 2<sup>nd</sup> defendant lived in the house before the Deceased's death. While she claimed to have reconciled and started living with the Deceased shortly before his death, the plaintiff maintained that the 2<sup>nd</sup> defendant only came in during the mourning period after the death of their deceased husband and thereafter refused to leave. The balance of convenience is, firstly, in maintaining the situation as it was during the life of the deceased as accepted by the parties – that is to say with the plaintiff her children and the 1<sup>st</sup> defendant with his wife living on the home. Secondly, with regard to evicting the 2<sup>nd</sup> defendant whom the plaintiff contends only came in after the death of S and refused to leave, it being not clear at this stage as to when she came onto the property and her property rights therein not being finally determined, the balance of convenience also lies in maintaining her on the home, living in the portion of the house occupied by her son the 1<sup>st</sup> defendant, unless that is not possible in which case the Estate must provide accommodation for the 2<sup>nd</sup> defendant in the same fashion as set out in the Consent Order between the late S and the 2<sup>nd</sup> defendant. -

### **MANDATORY INJUNCTION**

19. In Prayer (b) of the Chamber Summons, the applicant seeks to be restored to possession of the suit property if evicted, as she was, before the hearing and determination of the interlocutory application. As observed in ***Halsbury's Laws of England*** 4<sup>th</sup> Ed. 1979 at paragraphs 946 p. 533 there should no difference in the amount of caution to be exercised by the court in the grant of mandatory as opposed to prohibitory or restrictive injunctions:

*“946. Power to grant mandatory Injunctions. It has been said that the power of granting mandatory injunctions must be exercised with the greatest possible care, but every injunction, whether restrictive or mandatory, ought to be granted with care and caution, and no more care or caution is required in the case of mandatory injunction than a restrictive injunction. The court has no more hesitation in granting a mandatory injunction in a proper case than any other injunction, and has frequently granted one in order, for instance, to remove obstructions to light. The court may grant a mandatory injunction upon trial of the action, or in certain circumstances upon an interlocutory injunction.”*

### **Interlocutory Mandatory Injunction**

20. The Plaintiff's application herein seeks mandatory orders for the reinstatement into the suit premises, having been evicted by the Defendants. ***Halsbury's Laws of England, ibid.***, at paragraph 948 p. 534 gives the circumstances where mandatory injunctions on interlocutory applications may be made as follows:

*“A mandatory Injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is simple and summary which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on the receipt of notice that an injunction is about to be applied for, the defendant hurries the work in respect of which the complaint is made so that when he receives notice of an interim order it is completed, a mandatory injunction will be granted on an application.”*

21. In addition, I reiterate what I observed with respect to availability of interlocutory mandatory injunction and the effect of forcible entry into property in Mombasa HCCC No. 586 of 2011 ***African Safari Club Limited versus Miriam Muthoni Mahihu & 5 Ors.***:

*“I have considered the principles of the grant of an interlocutory mandatory injunction as set out in ***Shepherd Homes Ltd v. Sandham (1970) 3 ALL ER 402, Locabail****

***International Finance Ltd v. Agro Export & Others (1986) 1 ALL ER 901; and Muchuha v. Ripples Ltd (1990-94) EA 388 among others, being that mandatory injunctions at the interlocutory stage will only be granted in special circumstances and clear cases such as where the Defendant has attempted to steal a march on the Plaintiff. See also Gusii Mwalimu Investments Co. Ltd & Others v. Mwalimu Hotel Kisii Ltd Court of Appeal Civil Appeal No. 160 of 1995, [1995-1998] 2 EA 100.***

*As I have ruled above, the dispossession of the Plaintiff by the Defendant without a lawful court order in circumstances which may amount to the offence of forcible entry under section 90 of the Penal Code presents special circumstances in this case. Whether the Plaintiff was in possession as an owner of the suit property, as it contends, or as a lessee as contended by the Defendants, the Plaintiff/Applicant was entitled to occupy the suit premises until dispossessed through a valid and lawful order of court in that regard. That the Defendants used self-help, with the assistance of the police, offends the basic principles of the Rule of Law.*

### **Best Interests of the Children**

22. The Court is under a duty to consider the effect of its decision on the minor children in accordance with article 53 (2) of the Constitution and section 4 of the Children Act 2001. Article 53(2) is in compelling terms as follows:

*“53 (2) A child’s best interests are of paramount importance in **every matter concerning the child.**”*

23. I consider that this dispute which relates to the plaintiff’s claim to stay at her matrimonial home with the deceased concern the children of the plaintiff’s marriage to the deceased within the meaning of the Article 53 (2) of the Constitution. I further consider that the best interests of the two children of the deceased with the plaintiff require that their interest in a suitable stable home environment as they had been used to during the life of their deceased father be restored pending determination of any proprietary disputes between the plaintiff and the defendants. Having to lodge with their maternal grandmother upon eviction by the defendants cannot be in their best interest, which the Court is enjoined to give paramount treatment. The proceedings before the Children Court are no doubt for the enforcement of the rights of the children in the circumstances of this case and if similar orders be sought in the proceedings, appropriate orders for stay in accordance with the rules of court may be made but the plaintiff is at liberty to seek orders for the maintenance of the children from that specialised court.

### **CONCLUSION**

24. In determining this application, the Court has considered the following matters of law and fact as establishing special circumstances for the grant of the interlocutory mandatory injunction sought by the plaintiff:

- 1. There is prima facie evidence that by a consent order of the parties made on 2009 in HCCC No. 93 of 2006 (OS) between the 2<sup>nd</sup> defendant and the late S B the suit property was reserved for the use of the latter and the 2<sup>nd</sup> defendant provided for accommodation.*
- 2. The Deceased S B subsequently in 2009 married the Plaintiff and the two established their matrimonial home with the Plaintiff on the suit property where they lived with their two minor children until his death in 2014.*
- 3. The best interest of the children of the marriage between the plaintiff and the deceased S B is for the preservation of their right to occupy the matrimonial home which they have known as home and lived on since they were born, pending the determination of the proprietary dispute between the Plaintiff and the 2<sup>nd</sup> Defendant.*
- 4. The plaintiff as a spouse of the deceased S B has a prima facie right to occupy the matrimonial home that the two established on the suit property and to protection of that right in accordance with section 12 (4) of the Matrimonial Property Act.*

5. *It is not plausible as contended by the defendants that the plaintiff who seeks a declaration that the suit property is her matrimonial property with the deceased S B could willingly have left the matrimonial property and asked the defendants to drop off her personal property at her mother's home. A person cannot be taken to have acted contrary to her interest and on a balance of probabilities, I find that the Defendants evicted the plaintiff from the suit property.*
6. *In the circumstances of the disputed ownership of the suit property, it is clear that as in the authorities on interlocutory mandatory injunction the defendants sought to steal a march on the plaintiff by keeping her out of the suit property.*
0. I have considered the objection by the counsel for the defendants that in view of the allegations of threats to the plaintiff it is not possible for the parties to live together in one home. I, however, did not find sufficient evidence that the two sides cannot live together in the same home. The 1<sup>st</sup> defendant has denied that he has threatened any harm to the plaintiff and there is no reason why they cannot live together as law abiding citizens, pending the final hearing and determination of the suit.
0. I consider that the situation on the ground on the suit property must be restored to the status quo obtaining before the forcible eviction of the plaintiff and her children. The plaintiff and her two children must be restored to the portion of the property that they occupied before they were evicted by the Defendants.
0. However, I do not consider that the second limb of the plaintiff's prayers that the Defendants do give vacant possession should be granted at this interlocutory stage. While the court determines that the plaintiff's right to occupy the suit property as a matrimonial home is protected and enforceable under section 12 (4) of the Matrimonial Property Act, I am not able to determine at this interlocutory stage that the 2<sup>nd</sup> Defendant has no right to the suit property to warrant an order for vacant possession of the suit property at this interlocutory stage.
0. Should the court upon full hearing determine that the suit property was the property of the deceased S B and the 2<sup>nd</sup> Defendant then the plaintiff will by order of the court required to vacate the suit premises consistently with the exception under section 12 (3) which allows eviction by order of the court, to which subsection (4) is subject. At the same time the Court may determine any question of beneficial interest that may arise under section 9 of the Matrimonial Property Act, which provides that –

*“9. Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.”*

25. For now, the court is enjoined by the Constitution to give paramount importance to the best interest of the two minor children of the plaintiff and the deceased S B in securing for the children the home that they have known as their home having lived there with their parents, the said deceased S B and the Plaintiff, and by Statute to protect, in accordance with the Matrimonial Property Act, the plaintiff from being evicted from the matrimonial home - within the meaning of section 2 of the Act - that they established with said deceased Shahid Bhutt upon marriage.

### **ORDERS**

26. Accordingly, for the reasons set out above, the Plaintiff's Notice of Motion is granted upon terms as follows:

- a. ***An order of mandatory injunction to restore the Plaintiff to the matrimonial home on the suit property which she occupied with the deceased S B before his death in 2014 and***
- b. ***An order of prohibitory injunction restraining the defendants by themselves, their servants, employees, agents, assigns or otherwise howsoever from in any way interfering with or undermining the plaintiff's possession and occupation of the matrimonial home on all that property known as House No. 1 situate on Mombasa [Particulars Withheld], Mkomani Road, Mombasa pending hearing and determination of the suit.***
- c. ***For avoidance of doubt, this court does not authorize the eviction of the 2<sup>nd</sup> defendant from the***

*suit property and she may continue to stay with the 1<sup>st</sup> Defendant at the portion of the house previously occupied by him during the life of his deceased father, S B. In the alternative, the Estate will in accordance with the Consent Order of 27<sup>th</sup> November 2009 in HCCC NO. 93 of 2006 aforesaid pay for accommodation and maintenance of the 2<sup>nd</sup> defendant as provided therein*

d. *Liberty to apply.*

27. In accordance with the duty of parties and counsel pursuant to the overriding objective principle under section 1A (3) of the Civil Procedure Act to assist the court in compliance with court orders, I direct that counsel for the parties and the parties do within seven (7) days hereof to arrange for the smooth restoration of the Plaintiff and her children to the matrimonial home on the suit property and for the retention of the defendants of the portion of the suit property that the 1<sup>st</sup> defendant lived on prior to the death of the Deceased S B.

28. Costs in the cause.

**DATED      SIGNED      AND      DELIVERED      THIS      15<sup>TH</sup>      DAY      OF      JUNE  
2015.**

**EDWARD M. MURIITHI**

**JUDGE**

In the presence of: -

Mr. Miyare with Mr. Kaluma for the Plaintiff

Mr. Agwara for the Defendants

Mr. Kaunda Court Assistant.