



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Suit 587 of 2011

JACKSON NGECHU KIMOTHO.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED.....1ST DEFENDANT

KENYA REVENUE AUTHORITY.....2ND DEFENDANT

RULING

By a Motion on Notice dated 10th September 2012 expressed to be brought under Order 1 Rule 10(2), Order 15 rule 1(a), (b), (c) & (d) of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Section 96(8) of the Income Tax Act and all enabling provisions of the law the 1st Defendant/Applicant seeks the following orders:

- 1. That the Plaintiff's suit as against the 1st defendant be struck out.**
- 2. That the 1st Defendant be awarded costs of this application and of defending the suit to be borne by the Plaintiff/Respondent.**

The application is based on the following grounds:

- (i) The 1st Defendant was an agent of the 2nd Defendant and was mandated by law to pay the sum demanded by the 2nd Defendant from the plaintiff.**
- (ii) That the plaintiff's suit against the 1st Defendant is scandalous, frivolous and vexatious.**
- (iii) That the continued subsistence of the suit against the 1st Defendant herein amounts to an abuse of court process.**
- (iv) That it is in the interest of justice that the suit be struck out.**

The application is supported by an affidavit sworn by **Joyce Munene**, the 1st Defendant's Legal Affairs Manager on 10th September 2012. According to the deponent, the 1st defendant is a limited liability company incorporated under Cap 486 and established as a bank pursuant to the provisions of the Banking Act Cap 488 Laws of Kenya. The plaintiff's cause of action against the 1st defendant is in respect of breach of confidence and unlawful retention of a sum of Kshs 800,000.00. By a notice issued under Section 56(1) of the Income Tax Act on 18th November, 2008 the 2nd Defendant sought information

regarding among others, the plaintiff. On 21st May 2009 it is deposed that the 1st Defendant was lawfully appointed an agent of the 2nd Defendant, pursuant to section 96(7) of the Income Tax Act, in respect of the tax due to the 2nd Defendant from the Plaintiff. By a letter dated 10th June 2009, the 2nd Defendant informed the 1st Defendant that it had reached an agreement with the plaintiff in respect of the tax due, being Kshs. 800,000.00 and directed the 1st Defendant to deduct the said amount from the Plaintiff's account No. 0120100276178 and issue a cheque in favour of the Commissioner of Domestic Taxes. Pursuant to the said directive and the aforementioned agency notice the 1st defendant deducted the said sum of Kshs 800,000.00 and forwarded a banker's cheque to the 2nd Defendant. According to the deponent the 1st defendant's action was lawful under the circumstances, because the 1st Defendant was legally obliged to provide the information sought by the 2nd Defendant under section 56(1) of the Income Tax and once the agency notice was issued by the 2nd Defendant, the 1st Defendant had an obligation to comply or otherwise face penal consequences. By virtue of section 96(8) of the same Act the 1st Defendant is indemnified against all civil proceedings from any claim arising out of an agency notice issued under section 96(6) of the Income Tax Act and as such the plaintiff's suit against the 1st Defendant is scandalous, frivolous, vexatious and should be dismissed.

The application was opposed by way of a replying affidavit sworn by **Jackson Ngechu Kimotho**, the plaintiff herein on 24th September 2012. According to him the notice dated 18th November 2008 sought information of people unknown to him and hence the 1st defendant's conclusion that the same requested information relating to the plaintiff was erroneously arrived at. Further had the 1st Defendant provided response to the said letter it would clearly show the identity of the persons named therein. While admitting that the Defendant was lawfully appointed it is contended that the 1st Defendant failed to inform the plaintiff of the transactions requested vide the letter dated 21st May 2009 but chose to act with speed without the plaintiff's knowledge and information. It is further contended that the 1st defendant relied on a letter that does not show or provide an agreement reached between the 2nd defendant and the plaintiff. In the deponent's view, the 1st Defendant acted casually to a very sensitive matter by authorising the drawing of the Banker's Cheque when the plaintiff did not authorise anybody to act on his behalf in drawing the Banker's Cheque. It is therefore contended that the 1st Defendant breached the duty of confidentiality that it owes the plaintiff and closed the account without informing him contrary to well settled principles of good practice. According to him the agency notice dated 21st May 2009 was not meant for him since he has honoured his duty by paying taxes and the 2nd defendant has never demanded any taxes due from him hence it beats logic and common sense to demand such arrears from a company that had operated for a few months. In his view the conduct of the 1st defendant amounted to his being condemned unheard and if the 1st Defendant is struck out it will prejudice his case hence it is in the interest of justice that the application be dismissed.

The application was prosecuted by way of written submissions. According to the 1st defendant, the 1st defendant was appointed by the 2nd agent under section 96(2) of the Income Tax Act Cap 470 and was required to pay Kshs 6,381,935.00 within seven days which sum was after negotiations revised to Kshs 800,000.00. It is further submitted that pursuant to section 96(7) of the Act, the 1st defendant had no option but to comply at the risk of facing punitive consequences. It is therefore submitted that there was no breach of the customer/bank confidentiality when the actions of the Applicant were actually sanctioned by law. Citing **Intercom Services Limited & 4 Others vs. Standard Chartered Bank NBI HCCC No. 761 of 1988** and **Tournier vs. National Provincial and Union Bank of England [1923] All ER 550** it is submitted:

“.....On the other hand, it seems to me clear that there must be important limitations upon the obligation of the bank not to divulge such information as I have mentioned. It is plain that there is no privilege from disclosure enforced in the course of legal proceedings. But the bank is entitled to secure itself in respect of liabilities it incurs to the customer, or the customer to it, and in respect of liabilities to third parties in respect of transactions it conducts for or with the customer. It is difficult to hit upon formula which will define the maximum of that obligation which must not

necessarily be implied. But I think it safe that the obligation not to disclose information such as I have mentioned is subject to the qualification that the bank has the right to disclose such information, when and to what extent to which it is reasonably necessary for the protection of the bank's interests.....”

It is therefore submitted based on section 56(1) that the applicant was within the permitted exceptions and further to protect itself from the liabilities that may have arisen from the failure to comply with the 2nd defendant's notice hence the suit against the applicant is without basis, vexatious, scandalous and only meant to embarrass the Applicant. It is further submitted that there is no allegation in the plaint that the applicant exceeded his authority under the Income Tax Act. Citing **John Wachira Wangombe vs. Bhupinder Sound & Others NBI HCCC No. 206 of 2005**, it is submitted that a duty can only arise by violation owed to the plaintiff by operation of law, certainly not duty which is a subject of the plaintiff's imagination. In the present case, it is submitted that the Plaintiff is alleging breach of duty of care in respect of an action taken by the Applicant, in its performance of a statutorily imposed obligation hence the Applicant cannot be said to have owed the plaintiff a duty of care which did not exist. On the allegation that the plaintiff was not consulted, it is submitted that the applicant was an agent of the 2nd defendant and took the action pursuant to the directions of the 2nd defendant. Whereas the applicant annexed the tax returns for the years 2008 and 2009, the information sought was for the years 2002 and 2008 which the applicant has not annexed. Since the 1st defendant was lawfully appointed under section 96(8) of the said Act, all the actions the applicant took are therefore indemnified and hence the suit against the applicant is baseless and the application ought to be allowed.

According to the 2nd defendant on the other hand, it has no objection to the grant of the orders sought. According to the 2nd defendant the 1st defendant was appointed as an agent for the plaintiff for the purposes of collecting taxes that were owed by the plaintiff under section 96 a of the Income Tax Act since section 96(1) defines “**Agent**” and also defines “**Principal**” of the agent as “the person in respect of whom an agent is appointed”. The plaintiff, it is submitted, is therefore the principal under section 96(1) as the plaintiff is the one whose tax debt is sought to be recovered through the appointed agent hence the 2nd defendant duly appointed the 1st Defendant as the agent of the plaintiff as provided under section 96(2) of the Income Tax Act. According to the 2nd defendant under section 96(8) the 1st defendant was at all material times, while acting under section 96(3) of the Act, indemnified from any legal proceedings against it.

On the part of the plaintiff, it is submitted that the 1st defendant is a necessary party as it initiated a process that was ordinarily meant for another person hence striking it out will be highly prejudicial to the entire case. According to him, the plaintiff was wrongly attached and his privacy was invaded and he lost his property without due process and this will unravel at the hearing. Since there is a contract between the plaintiff and the 1st defendant rather than with the 2nd defendant, it is in the interest of justice that this is sustained. It is trite law, according to the plaintiff that money paid by mistake of fact is repayable by the recipient. In the plaintiff's view, the 1st defendant was in breach of its contractual obligations as it interfered with the plaintiff's savings without notice and breached the principle of client confidentiality. According to the plaintiff under Order 1 rule 9 no suit shall be defeated for misjoinder or non-joinder of a party. Reiterating the contents of the replying affidavit, it is submitted that the application is frivolous, vexatious and ought not to be granted.

As already indicated the present application is principally brought under the provisions of Order 1 Rule 10(2) and Order 15 rule 1(a), (b), (c) and (d) of the Civil Procedure Rules. Order 1 Rule 10(2) aforesaid provides:

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate

upon and settle all questions involved in the suit, be added.

Order 15 on the other hand deals with “Issues” and has no relevance to the orders sought herein.

The provision which expressly provides for striking out pleadings is Order 2 rule 15 of the Civil Procedure Rules. However as the application in substance seeks that the 1st defendant be removed from this suit, the provisions of Order 1 rule 10(2) are still relevant. In the premises no issue turns upon the failure to cite the correct provision of the law.

The law relating to the exercise of judicial discretion to strike out a pleading or a suit for that matter are trite. That is a jurisdiction that must be exercised sparingly and in clear and obvious cases and unless the matter is plain and obvious, a party to civil litigation is not to be deprived of his right to have his suit tried by a proper trial. The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. Therefore if a pleading raises a triable issue even if at the end of the day it may not succeed the suit ought to go to trial since in civil litigation as opposed to criminal trials there is no provision for holding mini-trials or a trial within a trial. However where the suit is without substance or groundless or fanciful and or is brought or is instituted with some ulterior motive or for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process, the court will not allow its process to be as a forum for such ventures since to do this would amount to

opening a front for parties to ventilate vexatious litigation which lack bona fides with the sole intention of causing the opposite party unnecessary anxiety, trouble and expense at the expense of deserving cases contrary to the spirit of the overriding objective which requires the court to allot appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.

A pleading is scandalous if it states (i) matters which are indecent; or (ii) matters that are offensive; or (iii) matters made for the mere purpose of abusing or prejudicing the opposite party; or (iv) matters that are immaterial or unnecessary which contain imputation on the opposite party; or (v) matters that charge the opposite party with bad faith or misconduct against him or anyone else; or (vi) matters that contain degrading charges; or (vii) matters that are necessary but otherwise accompanied by unnecessary details. See **Blake vs. Albion Life Ass. Society (1876) LJQB 663; Marham vs. Werner, Beit & Company (1902) 18 TLR 763; Christie vs. Christie (1973) LR 8 Ch 499.**

Under Order 2 rule 15 aforesaid the Court may strike out a pleading where it is satisfied that the same is frivolous, vexatious, scandalous or does not disclose a reasonable cause of action or defence or is otherwise an abuse of the process of the court. However, the word “scandalous” for the purposes of striking out a pleading under Order 2 rule 15 of the Civil Procedure Rules is not limited to the indecent, the offensive and the improper and that denial of a well-known fact can also be rightly described as scandalous. See **J P Machira vs. Wangechi Mwangi vs. Nation Newspapers Civil Appeal No. 179 of 1997.**

But they may not be scandalous if the matter however scandalising is relevant and admissible in evidence in proof of the truth of the allegation in the plaint or defence so that when considering whether the matter is scandalous regard must be had to the nature of the action.

A matter is frivolous if (i) it has no substance; or (ii) it is fanciful; or (iii) where a party is trifling with the Court; or (iv) *when to put up a defence would be wasting Court’s time*; or (v) when it is not capable of reasoned argument. See **Dawkins vs. Prince Edward of Save Weimber (1976) 1 QBD 499; Chaffers vs. GoldsMid (1894) 1 QBD 186.**

Again a pleading or an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks *bona fides* and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble and expense. See **Bullen&Leake and Jacobs Precedents of Pleading (12thEdn.) at 145.**

A matter is said to be vexatious when (i) it has no foundation; or (ii) it has no chance of succeeding; or (iii) the defence (pleading) is brought merely for purposes of annoyance; or (iv) it is brought so that the

party's pleading should have some fanciful advantage; or (v). where it can really lead to no possible good. See **Willis Vs. Earl Beauchamp (1886) 11 PD 59.**

Pleading tend to prejudice, embarrass or delay fair trial when (i) *it is evasive*; or (ii) *obscuring or concealing the real question in issue between the parties in the case*. It is embarrassing if (i) It is ambiguous and unintelligible; or (ii) it raises immaterial matter thereby enlarging issues, creating more trouble, delay and expense; or (iii) it is a pleading the party is not entitled to make use of; or (iv) where the defendant does not say how much of the claim he admits and how much he denies. See **Strokes Vs. Grant (1878) AC 345; Hardbord vs. Monk (1876) 1 Ex. D. 367; Preston vs. Lamont (1876).**

A pleading which tends to embarrass or delay fair trial is described as a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve expenses, trouble and delay and that which contains unnecessary or irrelevant allegations which will prejudice the fair trial of the action and lastly a pleading which is abuse of the process of the court really means in brief a pleading which is a misuse of the Court machinery or process. See **Trust Bank Limited vs. Hemanshu Siryakat Amin & Company Limited & Another Nairobi HCCC No. 984 of 1999.**

A pleading is an abuse of the process where it is frivolous or vexatious or both.

Where the pleading as it stands is not really and seriously embarrassing it is wiser to leave it un-amended or to apply for further particulars. See **Kemsley vs. Foot (1952) AC 325.**

However, in **The Co-Operative Merchant Bank Ltd. vs. George Fredrick Wekesa Civil Appeal No. 54 of 1999** the Court of Appeal stated as follows:

“The power of the Court to strike out a pleading under Order 6 rule 13(1)(b)(c) and (d) is discretionary and an appellate Court will not interfere with the exercise of the power unless it is clear that there was either an error on principle or that the trial Judge was plainly wrong...Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant's defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent's action or which is otherwise an abuse of the process of the court. The defence raises a fundamental issue, namely, whether there was any misrepresentation as alleged by the respondent, a question which, cannot possibly be answered at the stage of an application for striking out; nor will it be competent for the court of appeal to try to answer it as its jurisdiction only extends to identifying whether, if any, there are issues which are fit to go for trial. The court has no doubt whatsoever, that the above is a fundamental triable issue...A Court may only strike out pleadings where they disclose no semblance of a cause of action or defence and are incurable by amendment. The appellant's defence cannot be said to fall into that category and had the trial Judge considered fully all the matters alluded to, he would not have come to the same conclusion as he did”.

In **Yaya Towers Limited vs. Trade Bank Limited (In Liquidation) Civil Appeal No. 35 of 2000** the same court expressed itself thus:

“A plaintiff is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved... If the defendant assumes the heavy burden of demonstrating the claim is bound to fail, he will not be allowed to conduct a mini trial upon affidavits... It is not the length of arguments in the case but the inherent difficulty of the issues, which they have to address that, is

decisive... The issue has nothing to do with the complexity or difficulty of the case or that it requires a minute or protracted examination of the documents and facts of the case but whether the action is one which cannot succeed or is in some ways an abuse of the process of the Court or is unarguable...Where the plaintiff brings an action where the cause of action is based on a request made by the defendant he must allege and prove inter alia, both the act done and the request made for doing such an act. In the absence of any request shown to have been made by the defendant in the particulars delivered of such allegation, it would not be possible for the plaintiff to prove any request made by the defendant and without this the essential ingredient of the cause of action cannot be proved and the plaintiff is bound to fail...No suit should be summarily dismissed unless it appears so hopeless that it is plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment”.

Those then are, in my view, the principles that should guide the Court in determining an application under Order 2 rule 15 of the Civil Procedure Rules.

In this case the main ground for seeking to strike out the suit against the 1st defendant is that the 1st defendant was legally appointed as an urgent of the 2nd defendant and was therefore carrying out a statutory obligation placed upon it hence it ought not to be sued. The plaintiff’s case, however, is that the remission of the sum of Kshs 800,000.00 by the 1st defendant to the 2nd defendant was done without his consent and/or knowledge and was in breach of contract and confidentiality between the plaintiff and the 1st defendant and was done in breach of the rules of natural justice.

It is not in doubt that the 1st defendant held monies to the credit of the plaintiff and it is also clear from a reading of section 96(3) of the Income Tax Act that the 1st defendant was under a statutory obligation to pay the sum demanded by the 2nd defendant at the risk of being penalised section 96(7) of the same Act. In other words, the 1st defendant may not have had any alternative but to remit the said sum to the 2nd defendant. However, under section 96(8), if it turns out that the demand made by the 2nd defendant was not legally justified and the 1st defendant is found liable to the account holder, the 2nd defendant would be under a statutory obligation to indemnify the 1st defendant in respect of that payment against all proceedings, civil or criminal, and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

What then does the term “indemnity” “mean? In Yafesi Walusimbi vs. Attorney General of Uganda [1959] EA 223 it was held citing Birmingham and District Land Co. vs. L and Nw Rly Co. [1887] 34 Ch D 261:

“A right to indemnity as such is given by the original bargain between the parties. The right to damages is given in consequence of the breach of the original contract between the parties. There is a large class of cases, chiefly arising under the law of principal and agent, where one man employs another to do a thing which the employer apparently has a legal right to direct to be done. The law implies from the request an undertaking on the part of the principal to indemnify the agent if he acts upon the request. It is true that this is not confined only to case of principal and agent, there are other cases which it is not necessary to examine, but they all proceed upon the notion of a request which one makes under circumstances from which the law implies that both parties understand that the person who acts upon the request is to be indemnified if he does so. The word “indemnity” means to express a direct right either at law or in equity to indemnity as such and this right has to be contrasted, and not for a moment to be confounded with the right to damages which arises either from a breach of contract or from tort.”

In George O Obondo vs. Matiko Agoy Akedi Kisumu HCCC No. 306 of 1995 the Court held that the action between a defendant and a third party being one based on contribution and indemnity the cause of action accrues when the Judgement is given against the defendant or when he pays the amount admitted in discharge of his liability but the claim must be lodged within two years of that date. From these two authorities two issues arise, Firstly, a right to indemnity is given by the original bargain between the

parties and for it to accrue the agent must be found to have been liable to the party with whom it entered into the contract. In other words, the principal only becomes liable to indemnify the agent where the agent is liable to its customer.

In this instant case the issue of liability as between the plaintiff and the 1st defendant is yet to be determined. It is in fact the subject of this case. It is therefore clear that the liability of the 2nd defendant to the plaintiff cannot be said to be so remote to the 1st defendant's participation in these proceedings so as to render the presence of the 1st defendant unnecessary. Under the provisions of Order 1 rule 10(2) aforesaid the Court is empowered to remove the 2nd defendant from these proceedings if it finds that it was improperly joined and its presence in these proceedings is unnecessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit.

In this case, if the Court were to find that the action of the 2nd defendant in demanding that the 1st defendant should remit the sum of Kshs 800,000.00 from the plaintiff's account was unjustified as the plaintiff claims, the Court would then if properly called to do so as required under the procedure stipulated under Order 1 rule 24 of the Civil Procedure Rules proceed to determine whether the 2nd defendant is liable to indemnify the 1st defendant as required under section 96(8) of the Income Tax Act. Under section 1A(2) of the Civil Procedure Act the Court is under a statutory duty to seek to give effect to the overriding objective specified in subsection (1) in the exercise of its powers under this Act or the interpretation of any of its provisions. The said objective has as one of its purposes the expeditious resolution of disputes under the Act and under section 1B thereof the court aims at the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties. In my view, in order for the Court to achieve the said aims the Court ought to dispose of as many issues in a suit as possible and this may require consolidation of causes. Where therefore there is a possibility that an issue may arise for determination between the parties to the suit such as in this case where an issue of indemnity may arise between the 1st and 2nd defendant, it is prudent to leave the proceedings intact rather than risk the possibility of the Court having to determine that issue in separate proceedings. That would be contrary to the requirement that the court allots appropriate share of its resources while allotting resources to other cases.

The 1st defendant's position seems to be that it has a defence in law for its action and hence ought not to be sued. In Marwaha vs. Pandit Dwarka Nath Nairobi HCCC No. 599 of 1952 [1952] 25 LRK 45 the Court expressed itself as follows:

“This application under Order 1, rule 10(2) to strike out the second defendant is misconceived as the ground on which he seeks to be struck out amounts in substance to a defence on a point of law, namely his non-liability upon actions in tort at the time when the cause of action arose. That being so, the proper course would have been to file a defence and to plead this point in it, under Order 6, rule 27...The point was premature because upon the plaint alone it was not unequivocally clear that he is being sued in tort at all. Paragraph 9 of the plaint might seem to imply this, but it is at least consistent with an allegation of some statutory liability for non-feasance so far as the second defendant is concerned. If the nature of the liability is not made clear in the plaint, as indeed it is not, then the proper remedy would seem to be an application for particulars, or alternatively a denial of tortious liability in a statement of defence which, if not countered in a statement in reply by an assertion that the liability being imputed was not tortious but statutory, would establish on the pleadings that the liability being imputed was in tort, whereupon an application to determine the legal point as to liability before trial could be made under Order 6 rule 27”.

If eventually it turns out that the applicants were not properly joined in this suit, they would be entitled to costs. It has been said that seldom, if ever, do you come across an instance where a party has made a mistake in his pleadings which has put the other side to such disadvantage or that it cannot be cured by the application of that healing medicine. See Waljee's (Uganda) Ltd vs. Ramji Punjabhai Bugerere Tea Estates Ltd [1971] EA 188.

In deciding whether or not to exercise its discretion under the said overriding objective the Court ought to keep in mind the twin principles of proportionality and the equality of arms. In other words as was stated by **Ojwang, AJ** (as he then was) in **Suleiman vs. Amboseli Resort Limited [2004] 2 KLR 589** it is the business of the court, so far as possible, to secure that any transitional motions before the Court do not render nugatory the ultimate end of justice.

In the result I am not convinced that the ultimate ends of justice dictate that the 1st defendant be removed from these proceedings at this stage.

Consequently, the Notice of Motion dated 10th September 2012 fails and is dismissed with costs to the plaintiff.

Dated at Nairobi this 6th day of February 2013
G V ODUNGA
JUDGE

Delivered in the presence of:

Non attendance for the Plaintiff

Mr. for Ngunjiri for the 1st Defendant

for Lavuna for the 2nd Defendant