



REPUBLIC OF KENYA



**KENYA LAW**  
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**High Preference Properties Ltd & another v Muturi (Environment & Land  
Case 20 of 2015) [2022] KEELC 2781 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2781 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 20 OF 2015**

**EK WABWOTO, J**

**JUNE 30, 2022**

**BETWEEN**

**HIGH PREFERENCE PROPERTIES LTD ..... 1<sup>ST</sup> PLAINTIFF**

**FLEXITANK SYSTEMS KENYA LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**STEPHEN MAINA MUTURI ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. The Plaintiffs have filed this suit vide an amended plaint dated 7<sup>th</sup> May 2021 and in respect of which they seek for the following orders: -
  - a) A mandatory injunction directing the Defendant to move out of the suit property, that is the two ground floor shops specified in the Lease Agreement dated 5<sup>th</sup> November, 2009 located on a building known as Mepalux Plaza erected on the property known as Land Reference Number 209/1820 in the City of Nairobi in the County of Nairobi, and allow the Plaintiffs to continue with their business as before in the suit property;
  - b) An order of permanent injunction restraining the Defendant whether by himself, his agents, servants and/or employees from terminating the Plaintiffs' Lease Agreements, evicting the Plaintiffs from the suit property and/or interfering with their quiet and peaceful enjoyment of the suit property, that is the two ground floor shops specified in the Lease Agreement dated 5<sup>th</sup> November, 2009 located on a building known as Mepalux Plaza erected on the property known as Land Reference Number 209/1820 in the city of Nairobi in the County of Nairobi;
  - c) Compensation for loss of profit of Kshs 100,000/- per month from 25<sup>th</sup> September, 2015 till the date of judgment;



- d) General damages for loss of business;
  - e) Interest on (c), (d) and (f) above at Court's rate till payment in full;
  - f) Costs of this suit; and
  - g) Any other or further relief that this Honourable Court may deem just and fit to grant.
2. The Defendant filed a statement of Defence and Counter Claim dated 31<sup>st</sup> March 2015. Through the counterclaim, he sought the following reliefs against the Plaintiffs
- a) An order of eviction of the Plaintiffs, their servants, agents, sub-tenants and all persons claiming under them from the ground floor of all that property known as L.R. No 209/1820 commonly referred to as Mepalux Plaza.
  - b) The Officer Commanding Kamukunji Police Division be ordered to assist the Defendant to effect order (a) above by providing security to the Defendant or his agents.
  - c) Pending the hearing and determination of this suit an order be issued directing the Defendant to deposit the sum of Kshs 600,000/- or such higher sum as mesne profits being rent collected by the Defendants from exhibition stalls traders on the suit property from 1<sup>st</sup> February 2015 to the Defendant or in an account in the name of the Defendant's advocates as stake holders.
  - d) An order of mesne profits being equivalent to the rental market rate of the suit premises or the rent collected by the Defendants from the exhibiter stall traders whichever is higher from 1<sup>st</sup> February 2015 till delivery up of possession of the suit premises to the Defendant.
  - e) Interest on (d) above at court rates.
  - f) Costs of the suit.

#### **Plaintiffs case\_**

- 3. The Plaintiffs case is contained in the amended plaint dated 7<sup>th</sup> May 2021, the witness statement dated 13<sup>th</sup> January 2022, letter dated 20<sup>th</sup> March 2022, Supplementary list and bundle of documents dated 29<sup>th</sup> September 2021, oral evidence tendered in court on 21<sup>st</sup> March 2022 and the written submissions filed through the firm of Njiru Boniface & Company Advocates.
- 4. It is the Plaintiffs case that they were tenants of the Defendant in the Defendant's premises on L.R. No 209/1820 wherein is erected a storey building known as Mepalux Plaza(hereafter referred to as the suit premises) by virtue of 2 lease agreements dated 5<sup>th</sup> November 2009, that were executed between the Plaintiffs and Defendant's late father Gerald Muturi Maina. The terms of the lease agreements were 5 years and 3 months and the two agreements are similar for all intents and purposes.
- 5. The Plaintiffs contends that they had been in occupation of the suit premises as tenants of APA Insurance Company Ltd for the period immediately preceding the 5<sup>th</sup> November 2009 and later on as tenants of one Gerald Muturi Maina (Deceased), the Defendant's father, with whom they executed the lease agreements dated 5<sup>th</sup> November 2009 and Gerald Muturi Maina died before the expiry of the term of the lease.
- 6. The Plaintiff further contends that at the time of the execution of the leases with APA Insurance Company Ltd and subsequent Lease Agreement dated 5<sup>th</sup> November 2009, the suit premises had been converted by the Plaintiffs and their predecessor into ready-made exhibition shops which were ideal



for exhibition and sale of wares by informal traders. The said exhibitionists were not the Plaintiff's sub-tenants and do not fit the legal description of sub-tenants.

7. The Plaintiffs adds that when APA Insurance Company Ltd and Gerald Muturi Maina (Deceased) were the Landlords, the issue of sub-tenancy did not arise and there was no objection whatsoever by the said landlords, who are the Defendant's predecessor in title, concerning the nature and style of the Plaintiff's occupation or business of exhibiting wares within the suit premises and the Plaintiffs enjoyed a sound and cordial relationship with the Defendant's predecessors in title.
8. The Plaintiffs further added that upon the sale of the suit property by APA Insurance Company Ltd and acquisition of the same by Gerald Muturi Maina (deceased), the Plaintiffs were invited to enter into fresh negotiations for a new lease with the deceased. After negotiations, the Plaintiffs and the deceased came up with the terms that were to govern their landlord-tenant relationship with the nature of the Plaintiffs' business of exhibitions being put into consideration. This culminated into the 2 lease agreements that were executed between the Plaintiffs and the said Gerald Muturi Maina (Deceased) on 5<sup>th</sup> November 2009.
9. The Plaintiffs further contends that the lease agreements contained a term on renewal of the lease under clause 7 which states as follows; -

“That at the expiration of the lease herein, the tenant shall have an option to review the lease and the rent reserved herein shall be reviewed or increased by such amount which shall not be below the prevailing market rates and/or by not less than the rent contained herein whoever is the higher provided that the tenant expresses its intention to review the lease three (3) months preceding the termination period”

10. It was also averred by the Plaintiffs that the lease agreements were set to expire on 31<sup>st</sup> January 2015 and unfortunately Gerald Muturi Maina died before that date and the Defendant declined to review the leases and vide a letter dated 19<sup>th</sup> August 2014, he cited the Plaintiffs' breach of clause 3 (n) of the lease agreements as the reason for refusal to renew the leases a decision which was protested by the Plaintiffs.
11. It was also the Plaintiffs' case that the actions of the Defendant in not reviewing the said lease prompted them to file the current suit, which suit was also instituted together with an application seeking for orders of temporary injunction restraining the Defendant from terminating their respective lease agreements or evicting them from the suit property pending the hearing and determination of the suit. The application was heard and dismissed vide a ruling delivered on 13<sup>th</sup> March 2015 prompting the Plaintiffs to appeal against the said ruling to the Court of Appeal.
12. According to the Plaintiffs, the Court of Appeal, made a finding that: -

“the presence of the words, “to be agreed by the parties” was not fatal to the existence of an enforceable contract if it is otherwise clear that there was a contractual intention by the parties to be bound by the clause”

The Court of Appeal made a further finding that the enforcement of the option to review was still subject to there being no subsisting breach of any of the terms of the lease.

13. The Plaintiffs also contended that the Court of Appeal dismissed their application for stay on the sole reason that the Defendant would appear to have had reason to decline to renew the lease.
14. In their case, the Plaintiffs maintained the position that the Court of Appeal findings were made at an Interlocutory stage and without a hearing on merit and hence this court still had an obligation to



interpret the terms of the lease agreements accordingly and apply the law fairly as between the parties herein.

15. It was also the Plaintiffs case that immediately the Court of Appeal delivered its ruling the Defendant took possession of the suit premises as a result of which the Plaintiffs lost their business.
16. During the hearing, Lawrence Murethi Mbambu testified as PW1. He stated that he sought for grant of prayers set out in the amended plaint and he also adopted the Plaintiffs witness statement and bundle of documents that were on record.
17. In cross-examination by Counsel for the Defendant, he stated that the Plaintiffs had properly exercised their option to review the leases. He also conceded that clause 3 (n) of the lease agreements was a bar to any further subletting of the premises and that the terms of the lease, were negotiated to cater for the new landlords and tenants since there were already existing stalls and shops.
18. In further cross-examination by the Defendant's Counsel, he stated that the leases were carefully drafted and hence the use of "no further" and "other third parties". He further stated that the lease agreement does not use the words "exhibitions" and that according to him the interpretation of a shop is a place where goods were sold for commercial use and that there was no subletting.
19. In re-examination, he stated that clause 3 (n) of the Lease agreements, was negotiated with the landlord and it was agreed that the business was to remain the way it is and that there was no complaint by the defendant on any breach during the tenancy and the issues only arose when the Plaintiff had exercised their option to review the lease.

### **The Defendant's Case**

20. The case of the Defendant is contained in his statement of defence and counterclaim dated 31<sup>st</sup> March 2015 and the written submissions dated 16<sup>th</sup> May 2022 through the firm of Harit Sheth Advocates.
21. In summary, their case is that the Plaintiffs are not entitled to the prayers sought in their plaint for the reasons that the leases dated 5<sup>th</sup> November 2009 expired by effluxion of time on 31<sup>st</sup> January 2015.
22. The Defendant's also contended that the Plaintiffs were in breach of the lease agreements and they equally filed a counterclaim seeking various orders as particularized at paragraph 2 of this judgment.
23. During the hearing of the suit, the Defendant never called any witness to testify on their behalf and they closed their case opting to file written submissions.

### **Plaintiffs submissions**

24. The Plaintiffs filed written submissions dated 19<sup>th</sup> May 2022, through the firm of Njiru Boniface & Company Advocates. Counsel for the Plaintiffs identified the following as the key issues falling for determination; -
  - i. Whether the Plaintiffs were in breach of the terms of the lease agreements dated 5<sup>th</sup> November 2009.
  - ii. If the response to (i) above is in the negative, whether the Plaintiffs lawfully exercised the right to renew the leases dated 5<sup>th</sup> November 2009.
  - iii. What is the effect of the Defendant's failure to call any witness and/or adduce any evidence during the hearing of the suit.



- iv. Whether the Plaintiffs are entitled to the reliefs sought in their amended plaint dated 7<sup>th</sup> May 2021.
25. On whether there was breach, Counsel submitted that clause 3(n) on the phrase “not to transfer sublet or part any further” with possession of any part of the premises without the prior written consent of the landlord, meant the following; -
  - a) That the spaces that had been designated and developed by the Plaintiffs or their predecessors and occupied as exhibition spaces prior to 5<sup>th</sup> November 2009 to remain as such and that the Plaintiffs were not permitted by the agreements to increase the said spaces without first obtaining the landlord’s written consent.
  - b) That the current landlord did not have any right to raise any objections concerning the spaces that the Plaintiffs had converted into or were occupied as exhibition spaces prior to 5<sup>th</sup> November 2009.
  - c) That, in other words, the status quo obtaining as of 5<sup>th</sup> November 2009 in respect to possession were to continue during the period of tenancy and its renewal.
26. The Counsel argued that, “clause 3(o): Not to permit any part of the premises to be used by other third parties without the prior written consent of the landlord” in their own understanding, places a restriction on the Plaintiffs with respect to parting with possession of their respective shops to additional third parties but reserved the Plaintiffs right to retain into the demised premises any third parties who were in occupation as at 5<sup>th</sup> November 2009.
27. Counsel also submitted at length that exhibition of wares within the suit premises did not amount to sub-tenancy in law and the said exhibitionists were not the Plaintiffs sub tenants.
28. Counsel also added that clause 3 (p) of the lease agreement provided the “use” of the demised premises as limited to a “shop”. According to the Plaintiffs, the exhibition shops that the Plaintiffs had set up on the demised premises fits the definition of a shop.
29. On clause 7 of the Lease Agreements which provided for the option of renewal, Counsel submitted that the Plaintiffs exercised their right to renewal of the lease 3 months to the expiration date and once the same had been done, the respective leases crystalized the only outstanding issue would be review of rent. Surprisingly to the Plaintiffs, the Defendant through a letter dated 19<sup>th</sup> August 2014, terminated the lease agreements for the reason that the Plaintiffs had been in breach of clause 3 (n).
30. On the defendants failure to call any witness and or adduce evidence during hearing, Counsel referred to the case of *Gateway Insurance Co. Ltd –vs- Jamial Suleiman & Another* (2018) eKLR and *Mary Njeri Murigi –vs- Peter Macharia & Another* (2016) eKLR and submitted that the Plaintiffs evidence adduced in support of their case stands unchallenged and uncontroverted and that the Defendants statement of defence and counterclaim that is on record together with the Affidavit sworn by Dishon Wanjohi Ndonga are mere statements of facts with no evidential value.
31. On whether the Plaintiffs are entitled to the prayers sought, Counsel submitted that the court should find that the Plaintiffs had proved their case to the required standards and as such they were entitled to the prayers sought.
32. On the prayer for mandatory injunction, Counsel submitted that it was in the interest of justice that the same be granted so that the Plaintiffs be reinstated back to the suit premises to continue running their business while paying rent as and when it falls due.



33. On the prayer for permanent injunction, Counsel maintained that the Plaintiffs stand to suffer irreparable harm if the same was not granted.
34. On compensation for loss of profit and general damages for loss of business, Counsel argued that prior to the unlawful termination of the lease, the Plaintiffs were making a profit of more than Kshs 100,000/- per month which was lost after they were unlawfully evicted from the suit premises. It was also argued that the Plaintiffs were entitled to compensation for the costs of refurbishing and renovating the suit premises.
35. Counsel also submitted that they were entitled to costs of the suit and reference was made to the case of *Cecilia Karuru Ngayu-Vs- Barclays Bank of Kenya & Another* (2016) eKLR, since it was the Defendant's breach that led to the filing of the suit.

### **The Defendant's submissions.**

36. The Defendant's filed written submissions dated 16<sup>th</sup> May 2022 through the firm of Harit Sheth Advocates. Counsel submitted that pursuant to the Court of Appeal ruling in Civil Appeal No NAI 91 of 2015, the court of Appeal held that the Defendant had the right to decline to renew the lease as the Plaintiffs were in breach of clause 3(n) 3(o) and 3 (p) of the lease agreements and that the said premises have already been let to third parties by the Defendant.
37. Counsel also added that the ruling by Lady Justice Gitumbi on 13<sup>th</sup> March 2015, the court had equally dismissed their application for injunction and found that the Plaintiffs did not have a prima facie case on the right to renew the lease.
38. Relying on the case of *Sands –vs- Mutual Benefits Limited* (1971) E.A. 156, Counsel submitted that there was no effective agreement between the parties for failure to agree on new terms. The right of renewal was not absolute.
39. According to the Defendant's Counsel, if both parties were unanimous on sub-letting the premises to third party exhibitionists, then the same would have been expressly stated in the lease agreements.
40. On the Defendant's claim of mesne profits, Counsel submitted that the mesne profits are payable from 31<sup>st</sup> January 2015 to December 2015 when the Defendant got possession as was stated in the case of *Starman East Africa Limited –Vs- Hassan Guyo Wakalo* (2014) eKLR.
41. Counsel concluded his submissions by maintaining that the Defendant was well within his right in not renewing the lease agreements and a tenant cannot impose or force himself on a landlord as was stated in the case of *Kasturi Limited-Vs-Nyeri Wholesalers Limited* (2014) eKLR.
42. Counsel urged the court to dismiss the Plaintiffs case and allow the counterclaim.

### **Analysis and Determination**

43. I have considered the parties pleadings, evidence and submissions. I have also considered the relevant legal framework and jurisprudence. Taking into account the parties pleadings, evidence, and submissions, in my view, the following are the key issues for determination in the suit:-
  - i. Whether there was any breach of the lease agreements and in particular clauses 3(n), 3(o), 3(p) and 7.
  - ii. Whether the Plaintiffs are entitled to the prayers sought.
  - iii. Whether the Defendant is entitled to the orders sought in the counter claim.



- iv. Who should bear the costs of the suit and counter claim.

### Issue No 1

Whether there was any breach of the lease agreements and in particular clauses 3(n), 3(o), 3(p) and 7.

44. As earlier stated, the Plaintiffs claim against the Defendant is based on lease agreements dated 5<sup>th</sup> November 2009.
45. In their pleadings and testimony adduced by PW1, it was stated that they were tenants of the Defendant in the Defendant's premises on L.R. No 209/1820 wherein is erected a storey building known as Mepalux Plaza (hereafter referred to as the suit premises) by virtue of 2 lease agreements dated 5<sup>th</sup> November 2009, that were executed between the Plaintiffs and Defendant's late father Gerald Muturi Maina. The terms of the lease agreements was 5 years and 3 months and the two agreements are similar for all intents and purposes.
46. In cross-examination, PW1 stated that the Plaintiffs had properly exercised their option to review the leases. He further stated that clause 3 (n) of the lease agreements was a bar to any further sublet, and that the terms of the lease, were negotiated to cater for the new landlords and tenants since there were already existing stalls and shops.
47. In their written submissions, Counsel for the Plaintiff submitted that there was no breach of the lease agreements while the Defendant on the other hand maintained that there was indeed a breach of the said lease agreements.
48. For purposes of clarity, I hereby wish to reproduce the said clauses which are at the center of the dispute herein.

Clause 3(n);

“Not to transfer sublet or part any further with the possession of any part of the premises without the prior written consent of the Landlord and (if the same is required) of any charge having a security over land and the building first had obtained and it is expressly agreed and declared that upon any breach by the Tenant of this covenant the Landlord may re-enter upon the premises without notice and thereupon the term shall determine absolutely. If the landlord give consent the instrument of transfer or sub-letting shall be registered within two months of the date of the consent with the Landlord's Advocates and registration fee shall be paid to such Advocates by the Tenant for the service rendered in connection with any transfer or subletting pursuant to the provisions of this sub-clause. Any agreement of subletting shall contain an unqualified covenant by the sub-lessee in the same terms as this sub clause. For the purpose of this sub-clause if the tenant is a private limited liability company or unlimited company the transfer of the beneficial interest is more than fifty per centum of its issued share capital shall be deemed to be a transfer and shall require the consent of the Landlord and (If the case so requires) also of any such charge accordingly”

Clause 3(o):-

“Not to permit any part of the premises to be used by other third parties without the prior written consent of the landlord”



Clause 3(p)

“To use the premises solely for the purposes of a shop and for no other purposes without prior written consent of the landlord”

Clause 7:-

“That at the expiration of the lease herein the tenant shall have an option to renew the lease and the rent reserved herein shall be reviewed or increased by such amount which shall not be below the prevailing market rates and/or by not less than the rent contained herein whichever is the higher provided that the tenant expresses its intention to review the lease three (3) months preceding the termination period”

49. It is trite law that in deciding dispute regarding contracts, it is the duty of the court to give effect to the intention of the parties that is discernible from the documents and conduct of the parties. However complicated or vague an agreement may be, the court’s duty is to give effect to it. In the case of *Smith-v- Cook* (1891) AC 297 at 303 the court held:-

“The duty of the court is to give the natural meaning to the language of the deed cites it involves some manifest absurdity or would be inconsistent with some other provision of the deed and would therefore be contrary to the intention of the parties as appearing upon the face of the deed”

50. This is a position that was held by the court of Appeal in *National Bank of Kenya Ltd -vs- Pipe Plastic SamKolit (K) Ltd & Another* (2001) eKLR, where the court stated that: -

“A court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved”

51. In the instant case, having scrutinized the said agreement, it is evident that clause 3 (n) and clause 3 (o) had express provisions barring any transfer sublet or part any further with possession or permit any part of the premises to be used by other third parties without the prior written consent of the landlord.

52. It is therefore evident that from the said lease agreements, the common intention of the parties herein was that while the suit premises were let to the Plaintiffs, should there be any need to sublet, transfer, part any further, or part any use by other third parties then the written consent of the landlord ought to be obtained.

53. In the instant case, the Plaintiffs argued that at the time of execution of the lease agreement between the Plaintiffs and the deceased Gerald Muturi Maina, there were already exhibition shops which had already been converted by the Plaintiffs and their predecessors. Close to the expiry of the lease, the Defendant declined to renew for the reasons that there was breach when the Plaintiffs had sublet the suit premises without any written consent from the Landlord.

54. In the letter dated 19<sup>th</sup> August 2014, the Defendants through his Advocates, Harit Sheth Advocates maintained that there was breach of the lease agreements and hence the defendant was not going to renew the leases for a further term.



55. The Plaintiffs denied the contents of the said letter and responded vide their letter dated 7<sup>th</sup> November 2014 stating as follows:

“Our clients do not agree with your clients allegations that they are in breach of clause 3(n) of the said lease agreement”

56. I have taken the time to keenly peruse the said agreements and examine the facts as was presented herein. While I note that the Plaintiffs have maintained that the exhibitions were all already in existence at the execution of the lease agreements dated 5<sup>th</sup> November 2019, and that the previous landlord Gerald Muturi Maina had never raised any complaint to the same and further that the existence of the said exhibitionists did not amount to subletting the premises, It is evident that they were still third parties upon which the Defendant denied ever giving any consent written or otherwise to the Plaintiffs. To this end, I agree with the submissions made by the Defendant’s Counsel that should the parties have wished to have the exhibitionists continue then nothing stopped them from expressly amending the agreement to include the said position and or expressly stating the same in their lease agreements. It is therefore the finding of this court that in view of lack of clear provision which specifically stated that the exhibitionists will continue to remain in the premises and further in view of the denial of the provisions of any consent by the defendant permitting them to be in the suit premises, the Plaintiffs were in breach of the lease agreements.

57. On the clause 7 on renewal of the lease, the Plaintiffs submitted that they had a right to seek for renewal of the leases while the Defendant submitted that that the same was not automatic.

58. In view of the foregoing, while it is the position that the Plaintiffs had a right to exercise the option to renew the lease agreement, the same was not automatic since it had to be accepted by the Defendant. I am therefore in agreement with the Defendant that a tenant cannot impose or force himself on a landlord. On this position, I am further guided by the decision held in *Kasturi Limited –Vs- Nyeri Wholesalers Limited* (2014) eKLR and *Brand City Limited –Vs- United Housing Estate Limited* (2016) eKLR .

### **Issue No 2**

Whether the Plaintiffs are entitled to the prayers sought.

59. Having found that the Plaintiffs were in breach of the lease agreement and that the Defendant acted lawfully in declining to review the said lease agreements, I find that the Plaintiffs have not proved their case to the required standard and as such are not entitled to the prayers sought in their amended plaint dated 7<sup>th</sup> May 2021.

### **Issue No 3**

Whether the Defendant is entitled to the orders sought in the counter claim.

60. In the counterclaim, The Defendant had sought for several orders. However, during the hearing of the case, the Defendant never led any evidence nor called any witness to support his case. Therefore, the Defendant defence remains mere allegations. See the case of *Billsah Matiangi –vs- Kisii Bottlers Limited & Another* (2021) eKLR, where the court held that: -

“Where a Plaintiff gives evidence in support of her case, but the Defendant fails to call any witness in support of its allegations, then the Plaintiff’s evidence is uncontroverted and the statement of defence remains mere allegations. In *Janet Kaphiphe Ouma & Another Vs. Marie Stopes International (Kenya)* Kisumu HCCC no. 68 of 2007 Ali-Aroni, J. citing the



decision in *Edward Muriga through Stanley Muriga Vs Nathaniel D. Schulter*, Civil Appeal No. 23 of 1997 held that:

“in this matter, apart from filing its statement of defence the Defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1<sup>st</sup> Plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...sections 107 and 108 of the *Evidence act* are clear that he who asserts or pleads must support the same by way of evidence.”

61. In view of the foregoing, it is the finding of this court that the Defendant’s counterclaim has not been proved to the required standard. There being no evidence in support of the counter claim, the prayers sought cannot be granted. The same is equally for dismissal.

#### **Issue No 4**

Who should bear the costs of the suit and counter claim?

62. Although costs of an action or proceedings are at the discretion of the Court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap. 21). In the circumstances and considering that the Plaintiffs’ claim has been dismissed and the Defendant equally having not been successful in his counterclaim, I direct that each party bears own costs of these proceedings.

#### **Final Orders**

63. In conclusion, I hereby make the following final orders: -
- a. The Plaintiffs suit is dismissed with no orders as to costs.
  - b. The prayers in the counter claim are declined with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2022.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Ms. Ndinda holding brief for Mr. Njiru for the Plaintiffs.

Mr. Koech holding for Defendant.

Court Assistant-Caroline Nafuna.

**E. K. WABWOTO**

**JUDGE**

