



**Odunga (Suing as the administratrix of the Estate of Joshua Otieno alias Josiah Odunga Omondi) v Barasa & 9 others (Environment and Land Appeal E001 of 2021) [2022] KEELC 3801 (KLR) (29 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3801 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND APPEAL E001 OF 2021**

**AA OMOLLO, J  
JUNE 29, 2022**

**BETWEEN**

**PENINA ODUNGA ..... PROPOSED APPELLANT  
SUING AS THE ADMINISTRATRIX OF THE ESTATE OF JOSHUA OTIENO  
ALIAS JOSIAH ODUNGA OMONDI**

**AND**

**ZAKAYO OUMA BARASA ..... 1<sup>ST</sup> RESPONDENT  
JOHN OMURUTU BARASA ..... 2<sup>ND</sup> RESPONDENT  
WILLIAM OPERA WASWA ..... 3<sup>RD</sup> RESPONDENT  
JACOB OUMA BARASA ..... 4<sup>TH</sup> RESPONDENT  
DANIEL ODHIAMBO WASWA ..... 5<sup>TH</sup> RESPONDENT  
STEPHEN WAFULA WASWA ..... 6<sup>TH</sup> RESPONDENT  
NIMROD KARAKACHA ..... 7<sup>TH</sup> RESPONDENT  
CHARLES OPERA WASWA ..... 8<sup>TH</sup> RESPONDENT  
CHIEF LAND REGISTRAR ..... 9<sup>TH</sup> RESPONDENT  
WASWA OBERA ..... 10<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This appeal arises from the judgment made in Busia CMC ELC No 01 of 2021 of Senior Resident Magistrate's Court by Hon PY Kulecho SRM delivered on February 8, 2021 in this suit. The appellant



who was the Plaintiff in the Lower Court raised the following grounds in their Memorandum of Appeal dated February 9, 2021;

- i) The learned trial magistrate erred in law and fact by holding that the Appellant was not entitled to ownership of the 6.0 acres' portion of Land Reference Number Bukhayo/Malanga/541 (the suit property) as there was no executed agreement of sale of the suit property in the year 1977 as required by Section 3 of the Law of Contract Act considering that;
    - a) Section 3(3) of the Law of Contract Act was not in force in the year 1977 when the agreement for sale of the suit property was entered into.
    - b) No evidence was led by the 3<sup>rd</sup> to 8<sup>th</sup> and 10<sup>th</sup> Respondents to suggest that the same was not entered into.
  - ii) The learned trial magistrate erred in law and fact in not considering the implications of the consent entered into between the Appellant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who are the sons of the deceased vendor who was the absolute registered owner of the suit property and which consent confirmed the existence of a valid interest of the Appellant in the suit property.
  - iii) The learned trial magistrate erred in law and fact in holding that the 3<sup>rd</sup> to 8<sup>th</sup> and 10<sup>th</sup> Respondents were not accorded an opportunity to cross examine the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on their admissions and the contents of their consent with the Appellant dated January 25, 2021 considering that;
    - a) The consent was adopted as an order of the court in the presence of all the parties and with the consent of all the other Respondents except the 9<sup>th</sup> Respondent who did not participate in the proceedings.
    - b) The counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sought to call them on the stand to testify and be cross-examined but this was objected to by the counsel for the 3<sup>rd</sup> to 8<sup>th</sup> and 10<sup>th</sup> Respondents.
  - iv) The learned trial magistrate abrogated her mandate in not appreciating the nature and importance of the evidence that was tendered by the Appellant considering that the Appellant had on the court's own request on the January 6, 2021, during the hearing of the application provided clearer copies of her exhibits on the weight of which the trial magistrate granted interim orders.
  - v) The trial magistrate erred in fact and law in concluding that the Appellant had no valid interest in the suit property when the 3<sup>rd</sup> to 8<sup>th</sup> and 10<sup>th</sup> Respondents had both in pleadings and during hearing admitted the Appellant had valid interest on 2 acres of the suit property which her deceased husband acquired through purchase.
  - vi) The learned trial magistrate erred in law and fact in setting aside a consent order between the Appellant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on the court's own motion while alleging collusion without any proof or evidence to demonstrate the same and without considering that the consent was adopted as an order of the court without the objection of the other Respondents.
2. The Appellant prayed that the appeal be allowed and the judgment and order of the Senior Resident Magistrate in Busia Chief Magistrate's Court Environment and Land Case No E01 OF 2021 be set aside and substituted with an order allowing the reliefs in the Plaint dated January 4, 2021. She also prayed for the costs of this appeal and in the Senior Resident Magistrate in Busia Chief Magistrate's Court Environment and Land Case No E01 of 2021 be allowed to the Appellant.



3. The hearing of the appeal was dispensed with by way of written submissions. The Appellant filed her submissions on September 28, 2021 and submitted that the amendments of subsection (3) vide the Statute Law (Miscellaneous Amendments) (No 2) Act, 1990, No 21 of 1990 clearly stipulates at subsection (7) that the provisions of the Repealed subsection 3 shall not interfere with any agreement or contract made or entered into before the commencement of that subsection and therefore, the trial court erred in law using the wrong provision in dismissing the Appellant claims since the transaction took place in the 1977 long before the subsection (3) came into force. She submitted that she has been in peaceful and uninterrupted occupation of the suit property since the year 1977 and during the trial she also tendered evidence showing that the vendor applied for Land Control board's consent to subdivide and transfer 6.0 acres portion of the suit property to her deceased husband as a bona fide purchaser. She further submitted that a consent judgment or order has a contractual effect and can only be set aside on the grounds that would justify the setting aside of a contract, or if certain conditions remain to be fulfilled, which are not carried out. The trial court in setting aside the consent order in its own motion raised the issue of intermeddling between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents whereas it is clear that the two had carried out succession proceedings on behalf of their deceased father. She relied on the following authorities; *Samson Munikah T/a Munikah & Company Advocates V Wedube Estates Limited (2007) eKLR*.
4. The 9<sup>th</sup> Respondent filed his submissions on September 23, 2021 and submitted that the appellant's suit was based on contract and she was therefore under duty to prove existence of the key elements of a contract and she neither had any agreement nor did she present any evidence, implied or express to support her claim of an existence of a valid agreement to entitle her claim of 6 acres of land. They submitted that the defendants evidence was consistent and admitted that the appellant's deceased husband had only bought 2 acres on which the appellant resides.
5. The 3<sup>rd</sup> to 8<sup>th</sup> defendants filed their submissions on November 19, 2021 and submitted that the confirmation of grant in respect of the estate of Samson Barasa Opera Alias Barasa Opera and in particular LR Bukhayo/malanga/541 has not been done and yet the appellant is seeking that the court declares that the appellant is entitled to ownership and occupation of the 6 acres portion of LR Bukhayo/malanga/541 and that the respondents have no legal rights or recognizable interest that the administrator of the estate to transfer the 6 acres of LR 541 to the appellant. It is their submissions that this is a plea to distribute the estate of the deceased in a cause other than a succession cause and in the manner not provided for under the *Law of Succession Act*. They submitted that the issue of actual acreage of LR 541 which the appellant is occupying and using can only be resolved in Busia CMC ELC NO 05 of 2021 commenced by way of originating summons and they urged the court to leave the issue of how much of LR 541 the appellant is entitled to, to either the succession court or the pending suits where the claim is based on adverse possession. They further submitted that the appellant is not without remedy as there are probate and administration causes where her claim can be channelled as a liability to the estate of Samson Barasa Obera and there is the originating summons cause where she is seeking similar orders on the basis of adverse possession.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their submissions on February 2, 2022 and submitted that it is their evidence and knowledge that the Appellant's family have been living and staying peacefully as their neighbours and enjoyed cordial relationship with their family on the suit property since 1977 thus acknowledging her family's interest on the suit property. They also knew for a fact that their late father sold a portion of land measuring 6 acres to the appellant's late husband. It was their submission that they initiated succession proceedings through Succession Cause 652 of 2018 which is still pending as the 10<sup>th</sup> Respondent has raised an objection thereto. Therefore, the court on its own motion intermeddles between them as it is evident that they have carried out succession proceedings and also



the court did not provide any evidence to show that they have intermeddled with the deceased property in any manner.

7. Since this is the first appellate court, it has a duty to analyse the evidence adduced before the trial court afresh keeping in mind it did not have the privilege of seeing and hearing the witnesses first hand.
8. The duty of the court in a first appeal such as this one was stated in *Selle & Another -Vs- Associated Motor Boat Co Ltd & others (1968) EA 123* in the following terms:

' I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (Abdul Hammed Saif -Vs- Ali Mohamed Sholan (1955), 22 EACA 270).'

9. A brief background of the appeal is that the Appellant herein was the plaintiff in the subordinate court and she had brought a suit against the Respondents in her capacity as the administrator of the estate of her deceased husband Joshua Othieno alias Josiah Odunga Omondi. She stated that her husband, on or about March 1977, purchased 6 acres of LR Bukhayo/malanga/541 which measures 18 acres from the late Samson Barasa Obera alias Baraza Opera who was the absolute proprietor. She prayed for a permanent injunction against the Respondents, a declaration that she is entitled to ownership and occupation of the 6 acres of the suit property and an order that the administrator of the estate of the vendor does transfer the 6 acres of the suit land to the estate of her deceased husband. The Respondents filed their defence and stated that Bukhayo/malanga/541 is a family land which was registered in that name of Barasa Opera to hold on his own behalf and his two brothers and that the Appellant was only occupying a portion that measures 2 acres only.
10. During the hearing, both witnesses adopted their witness statements. Before the close of hearing, the Appellant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents entered into a consent dated January 25, 2021 which was adopted as an order of court on January 27, 2021. The trial court rendered its judgment on February 8, 2021 in which the Appellant was faulted for not producing a sale agreement as required under Section 3(3) of the Law of Contract CAP 23 Las of Kenya. The trial court found that the Appellant failed to demonstrate that she had acquired an interest on the suit land and she was therefore not entitled to the orders she sought. On the consent order, the trial court found that there were peculiar circumstances in the suit to warrant the court's intervention to set aside the consent order to safeguard the deceased's estate. Further, the trial court found that the effect of the consent order on record is to give the two defendants authority to intermeddle with the deceased's property and the two having been sued in their individual capacities could not purport to deal with the deceased's property as their own.
11. Having looked at the Memorandum and Record of Appeal, the rival submissions by the parties and authorities cited, I opine that the following issues arise for determination of this appeal;
  - i) Which was the applicable law when the alleged sale agreement was entered into?
  - ii) Whether the court can on its own motion set aside a consent judgment;



- iii) Whether the appeal is merited;
12. The Appellant pleaded at paragraph 5 of the amended plaint that her deceased husband Josiah Odunga Omondi in 1977 purchased a portion measuring 6.0 acres from the suit title. The Appellant produced the following documents in support of her claim;
- i. Application for consent of Land Control Board marked - Pex 11 & Pex 12.
  - ii. Letter of consent marked – Pex 13.
13. The Respondents contested the Appellant’s claim pleading that Bukhayo/Malanga/541 was family owned by three brothers namely Baraza Opera, Waswa Obara and John Amukacha Maringo. The Respondents claim they are entitled to the land as beneficiaries of the three brothers. From the evidence adduced on behalf of the defendants, there is an admission that the Appellant is entitled to a portion of the suit land measuring 2 acres only.
14. The learned trial magistrate after analysis of the evidence presented held inter alia that;
- 1) The Appellant’s claim was unsubstantiated because she did not produce a sale agreement and that it offended the provisions of section 3 (3) of the Law of Contract act Cap 23.
    - (i) Having failed to demonstrate how she acquired an interest in the land she was not entitled to the orders she sought.
    - (ii) The consent entered into between the Appellant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was contrary to the provision of section 45(1) of the Law of Succession Act Cap 160 and the court proceeded to set aside the said consent.
15. The Appellant has submitted that in the year 1968 the Law of Contract Act was amended and Section 3 provided as follows;
- (3) No suit shall be brought upon a contract for the disposition of interest in land unless the agreement upon which the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it.  
Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intended purchaser or lessee who has performed or is willing to perform his part of a contract-
    - i. Has in part performance of the contract taken possession of the property or any part thereof; or
    - ii. Being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.
16. It is the Appellant’s submission that the above quoted section which was in force when her deceased husband entered into a sale agreement with the late Barasa Opera in 1977 and therefore there was no need for an executed sale agreement as embodied in Section 3(3) of the Law of Contract Act which came to effect in 1990. The Attorney General for 9<sup>th</sup> Respondent submitted that the Appellant’s suit was based on contract and she was under duty to prove the existence of the key elements of a contract. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that they knew for a fact that their late father sold a portion of land measuring 6.0 acres to the appellant’s late husband. The 3<sup>rd</sup> to 8<sup>th</sup> Respondents have conceded that Section 3(3) of the Law of Contract Act was not applicable but on the whole and on the basis of the weight of the evidence placed before the trial court, the decision cannot be faulted.



17. I have looked at the law which was applicable at the time the Appellant's late husband entered into a sale agreement with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' father. Section 3(3) of the [Law of Contract Act](#) was amended in 1968, then later in 1990 and 2003. The trial court relied on the amendment which first came to effect in 1990 which required all land sale agreements to be in writing. However, the law applicable at the time the parties entered into the land sale agreement is the 1968 amendment which though required the parties to have the agreement reduced in to writing, did not bar the parties from bringing a suit as long as a party had in part performance of the contract taken possession of the property or already been in possession and has done some other act in furtherance of the contract.
18. The Respondents admitted that the Appellant and her late husband had been in possession of the suit property which evidence proved fulfilment of part performance of the contract. I am guided by the decision in [Peter Mbiru Michuki V Samuel Mugo Michuki \(2014\) eKLR](#), where the Court of Appeal held as follows;

' We find that notwithstanding the fact that the sale agreement made by the parties in 1964 was not in writing, the plaintiff/respondent had to satisfy the trial court that he either, took possession of the suit property in part performance of the said oral contract, or that being already in possession of the suit property, he continued in possession in part performance of the oral contract. Having re-evaluated the evidence we concur with the finding of the learned judge that the plaintiff/respondent proved that he had actual and or constructive possession of the suit property since 1964 and the possession was open, uninterrupted and continuous till the filing of the Originating Summons by the Plaintiff in 1991. It is our view that Section 3 (7) of the [Law of Contract Act](#) makes exception to oral contracts for sale of land coupled with part performance. We find that Section 3 (3) of the [Law of Contract Act](#) came into effect in 2003 and does not apply to oral contracts for sale of land concluded before Section 3 (3) of the Act came into force. The proviso to Section 3 (3) of the [Law of Contract Act](#) applies in this case and we hold that the sale agreement between the appellant and the plaintiff did not violate or offend the provisions of the [Law of Contract Act](#).'

In view of the above, I find that the subordinate court misdirected herself in holding that the Appellant had not acquired an interest in the suit property for non-compliance with the provisions of section 3(3) of Cap 23.

19. On whether a court can set aside a consent judgment on its own motion, the Appellant has submitted that the consent order adopted on the January 27, 2021 is binding on all parties and is not varied or set aside since the 3<sup>rd</sup> to 8<sup>th</sup> and 10<sup>th</sup> Respondents as well as the trial court did not provide any material to demonstrate that it was obtained by fraud, collusion or an agreement that is contrary to the public policy. The 3<sup>rd</sup> to 8<sup>th</sup> Respondents have submitted that to the extent that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had not been sued as the administrators of the estate of Samson Obera, they did not have legal capacity to bind the estate and that the subordinate court was right in setting aside the offending consent. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the advocates for the 3<sup>rd</sup> to 8<sup>th</sup> and 10<sup>th</sup> Respondents chose not to cross examine them and therefore the subordinate court erred in law and fact by finding that they were not accorded an opportunity to cross examine the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
20. The Court of Appeal in [Hirani V Kassam \[1952\] 19 EACA 131](#) held as follows;

' It is now well settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court in JM Mwakio



v Kenya Commercial Bank Limited Civ Apps 28 of 1982 and 69 of 1983. In Purcell v FC Trigell Ltd [1970] 3 All ER 671, Winn LJ said at 676:-

Which said, 'It seems to me that, if a consent order is to be set aside, it can only be set aside on grounds which would justify the setting aside of a contract entered into with the knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.'

21. The impugned consent order which was adopted by the court on January 27, 2021 stated as follows;
  1. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein admit the Plaintiff to the effect that the Plaintiff deceased husband Joshua Othieno alias Josiah Odunga Omondi duly purchased the 6.0 acres portion of the property known as Bukhayo/Malanga/541 from their late father Samson Barasa Ober alias Baraza Opera and have been occupying the same since the year 1977 and they have no interest or claim whatsoever against the same.
  2. That the estate of Joshua Othieno alias Josiah Odunga Omondi is entitled to quiet possession, occupation and ownership of the 6 acres portion of the property known as Bukhayo/Malanga/541 which they have occupied since the year 1977.
  3. That as beneficiaries and joint administrators of the estate of Samson Barasa Ober alias Baraza Opera, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall facilitate the transfer and registration of the 6 acres portion of the property known as Bukhayo/Malanga/541 to the estate of Joshua Othieno alias Josiah Odunga Omondi.
  4. The suit as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein be marked as settled with no orders as to costs.
22. Indeed the pleadings show that the 1<sup>st</sup> – 9<sup>th</sup> Defendants were sued in their individual capacities save for the 10<sup>th</sup> defendant who is described as the administrator of the estate of Barasa Opera. As defendants, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are permitted in law to either deny the claim brought against them or admit the claim. In the instant case, they admitted the plaintiff's claim by executing the impugned consent. The consent did not state that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were signing it as administrators to bind the estate of Samson Barasa Opera - deceased. In any case at paragraph 3 of the impugned order, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents said that as administrators, they were willing to facilitate the transfer. According to Black's Law dictionary, to facilitate is 'to make the occurrence of something easier or to render less difficult' which does not mean the same thing as bind. It was therefore a misapprehension of the law for the learned magistrate to state their actions amounted to inter-meddling with the deceased estate. Secondly, their execution of the consent did not take away the rights of the 3<sup>rd</sup> – 10<sup>th</sup> Respondents in defending the claim.
23. Further, it was a misdirection on the part of the trial magistrate to find that because the Appellant stated the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were her witnesses; and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents changing advocates as actions of collusion on the part of the parties to the consent. How she arrived at the decision that this defeated the co-defendants case was misplaced as these Respondents still had room to defend and indeed defended the suit. The obligation on the Appellant to prove her claim, against the 3<sup>rd</sup> – 10<sup>th</sup> Respondents was also not discharged by the filing of the consent.
24. The last part is whether or not the Appellant demonstrated she had a stake in the suit property Bukhayo/Malanga/541. The Appellant in her evidence stated that she entered the land in 1977 and started tilling it before moving in to stay there from 1986 (page 116 of the record). To demonstrate that



she was using and in occupation of 6 acres, she produced a copy of an application for Land Control Board consent dated March 21, 1977 (pages 33 and 34) which document was referenced as 551 and signed by Barasa Opera and Joshua Otieno. At paragraph 3 of the application, it is recorded thus;

' I wish to subdivide my plot of 18.0acre into two portions of 12.0acres and 6.0acres and thereafter transfer the later portion to the above purchaser'.

25. The application for consent was granted by the Land Control Board meeting held on April 26, 1977 as evidenced in the letter of consent at page 35 of the record dated April 26, 1977 issued to Barasa Opera and Joshua Othieno. Besides these documents, the 4<sup>th</sup> Respondent Jacob Ouma Waswa in his evidence as DW1 stated that Barasa Opera told him before his demise in 1999 that he had sold only 2 acres to the Appellant's husband. He added that there existed a land dispute between Samson Barasa Opera and the Appellant which caused the 2<sup>nd</sup> Respondent and him (DW1) to stop the Appellant from planting sugarcane on the suit land. That prior to the dispute the Appellant occupied six (6) acres.

26. The 4<sup>th</sup> Respondent in re-examination stated that the land feud started in the year 1999. The 4<sup>th</sup> Respondent's evidence corroborated the plaintiff's claim in so far as date of entry onto the land. He only disputes that the Appellant is entitled to six (6) acres of the land. According to him (and on behalf of his co-Respondents numbers 3-8 &10), the Appellant was only entitled to 2 acres. But the witness admitted that prior to 1999, the Appellant was using six acres to plant sugarcane.

27. Thus there was ample evidence on record that proved the Appellant had been on a portion of the suit land whether that portion was 2 or 6 acres. That occupation was running from 1977 to date. The Appellant pleaded at paragraph 15 thus;

' The plaintiff is entitled to exclusive occupation and possession of the suit property as against the defendants having lawfully purchased it and subsequently occupied the land for decades'.

28. The pleading for occupation for decades was again supported by the Appellant's evidence at paragraph 8, 9, 11, 17 and 25 of her written statement dated January 4, 2021 found at pages 15-19 of the record of appeal. For instance paragraph 17 stated thus;

' I verily believe that having acquired the suit property lawfully and having occupied the same for decades thereof, we are vested with absolute ownership and rights and privileges attached to the suit property including peaceful and quiet occupation to the exclusion of defendants who have unlawfully and without any justification or right threatened us with violent and unlawful eviction from the property'.

29. It is my considered opinion that the Appellant clearly demonstrated that she acquired an interest in the suit land first under contract which on expiry of six years the rights became available under operations of the Law by virtue of adverse possession. The occupation was open, peaceful and now without the consent of the registered owner whether from 1984 when the six years from 1977 lapsed or from 1999 when the 4<sup>th</sup> Respondent alleged a dispute arose between the registered owner and the Appellant whichever of the two dates, as at the time this suit was filed in the year 2021, 12 year period had lapsed.

30. The learned trial magistrate thus erred in her finding that the Appellant had failed to prove that she had acquired an interest in the suit property and therefore failed to prove her case. From my analysis of the evidence given herein I am satisfied that the Appellant's Case was merited. Consequently, the decision dismissing her suit is faulted and instead the dismissal is hereby set aside. Accordingly I make an order allowing her appeal and enter judgement in her favour as follows;



i. The judgement and order of dismissal made by the Senior Resident Magistrate in Busia CMCC ELC Case No E01 of 2021 is hereby set aside and substituted with an order allowing the reliefs in the plaint dated January 4, 2021.

ii. The cost of this Appeal and in the case in the court below CMCC case No E01 of 2021 is hereby awarded to the Appellant.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 29<sup>TH</sup> DAY OF JUNE 2022.**

**A. OMOLLO**

**JUDGE**

