



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

**CIVIL CASE 11 OF 2007**

JAMES MWANGI GACHERU.....PLAINTIFF

VERSUS

HEWAN INVESTMENTS LIMITED.....1<sup>ST</sup> DEFENDANT

THE CHIEF LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT

**JUDGMENT**

**A. PLAINTIFF'S CLAIM: DEPRIVATION OF LANDED PROPERTY THROUGH FRAUDULENT TRANSFERS AND REGISTRATIONS**

The plaintiff moved the Court by plaint dated 25<sup>th</sup> January, 2007 and filed on 26<sup>th</sup> January, 2007.

The plaintiff states in the pleadings that he was at all material times, and to-date, the duly registered and lawful owner and proprietor of all that parcel of land registered under the Registered Land Act (Cap. 300, Laws of Kenya) as Land Reference No. Galu/Kinondo/679 situate in Kwale District, Coast Province.

The plaintiff pleads that in **December, 1993** he charged the suit property to Barclays Bank of Kenya, as collateral for a loan of Kshs. 6,500,000/= which was to be advanced as agreed. The original title to the suit property was left in the custody of the said bank, as part of the charge agreement.

The plaintiff states that in 2006 he conducted a Land Registry search on the suit property; and he was surprised to find documents purporting to show that in **July, 2006** the said bank exercised, in relation to the suit property, a statutory power of sale under s. 77 of the Registered Land Act, and sold that property to 1<sup>st</sup> defendant; and the Land Register indicated that the said bank had sold the suit property by private treaty for the sum of Kshs. 3,000,000/= and subsequently transferred this property, on **28<sup>th</sup> July, 2006** to 1<sup>st</sup> defendant.

It is pleaded that 1<sup>st</sup> defendant after purporting thus to acquire the suit property, proceeded to consolidate it with another property, L.R. No. Galu/Kinondo/685, and thereafter consolidated the two in a new title, namely, L.R. No. Galu/Kinondo/1640. Such transfer and creation of a consolidated title, the plaintiff pleaded, were endorsed and registered by 2<sup>nd</sup> defendant. When the plaintiff wrote to the said bank questioning the transactions with his property, the bank wrote back denying having sanctioned, known of, or participated in any such transaction; and the bank stated that it was still in possession of the original title documents for the suit property. The bank denied the authenticity of all documents relating to the said transaction that bore its letter-head and stamps; and the bank had its position on the matter formalized in

affidavit evidence.

The plaintiff pleads that 1st defendant, acting with other persons unknown to him or to the bank, “engaged in and participated in.....a fraudulent transaction intended to deprive the plaintiff of the suit property”.

The alleged particulars of fraud are: forging documents of title for a property the authentic documents of which were in the custody of Barclays Bank; purporting to engage in a sale transaction with the said bank, and with the aid of unknown persons who were forging the signatures of bank officials and lawyers; collaborating with unauthorized persons in purporting to discharge land title, without the consent of the chargee, or with forged documents of consent; purporting to register a transfer of titles, and to effect a consolidation of titles, using fake documents; purchasing property by private treaty when the law provides exclusively for sale by public auction.

The plaintiff pleaded that the purported sale of his property was “illegal, null and void”; that the suit property has never been discharged, with regard to the charge registered in favour of the bank, and that no attempt to exercise the power of sale has been made by the bank; that the plaintiff has suffered and continues to suffer loss, having lost his property.

The plaintiff particularizes as his loss and damage, the following: denial of entry and use of the suit property; denial of the freedom to plan and develop the suit property as he pleases; denial of *mesne profits* accruing from the suit property.

The plaintiff seeks a declaration that the purported sale and transfer of the suit property by the chargee on 28<sup>th</sup> July, 2006 is null and void; and that equally null and void is the subsequent consolidation by 1<sup>st</sup> defendant of L.R. No. Galu/Kinondo/679 with L.R. No. Galu/Kinondo/685 to form the new title L.R. No. Galu/Kinondo/1640; and that no less null and void is the registration of the said transactions on 17<sup>th</sup> August, 2006.

The plaintiff asks to be declared to be still the *bona fide* owner and proprietor of L.R. No. Galu/kinondo/679. He seeks an order that 2<sup>nd</sup> defendant do rectify the Land Register by cancellation of and/or amendment to the registrations and/or entries against the suit property that come after the plaintiff’s registration and charge to Barclays Bank of Kenya.

The plaintiff seeks an injunction prohibiting 2nd defendant from dealing with, alienating, or in any other manner whatsoever, disposing of the suit property.

The plaintiff prays for a permanent injunction restraining 1st defendant or its agents and/or servants and/or assigns from interfering with the plaintiff’s quiet possession, occupation and enjoyment of the suit property.

The plaintiff seeks general damages, costs of the suit, and any other relief such as the Court may deem fit.

**B. DEFENDANT’S CASE: WE DEALT WITH ONE CLAIMING TO BE BANK’S AGENT; LANDS REGISTRY ACCEPTED DOCUMENTS; SUE**

**ONLY THE BANK**

The 1<sup>st</sup> defendant in its statement of defence, pleaded that it had been approached by “a person who claimed to be an agent of the Bank and engaged in conveyancing the subject-matter of this suit and paid the consideration required and that all the documents were presented to the Lands Office of the said agent and were accepted as genuine and the transaction was completed”. This defendant pleaded that, on the basis of s.77 of the Registered Land Act, the plaintiff’s remedy lies only against the Bank. The 1<sup>st</sup> defendant pleads that the consolidation of title for the suit property, with that for a different property, “was legally done and all the correct procedures followed”. This defendant states that it is a stranger to the averments of fraud and “denies them *in toto* putting the plaintiff to strict proof thereof”: the defendant states that it “acted on documents presented to the Lands Registry by the Bank’s agents and it had no way of knowing if the said documents were forgeries; if anything the documents were accepted at the Lands Registry as authentic and lawful”.

The 1st defendant pleads that “this Court has no jurisdiction to hear and determine this suit, and the same should therefore be dismissed with costs”.

### **C. CHARGE AND CHARGOR KNEW NOT OF THE DISCHARGE, TRANSFER, AMALGAMATION, REGISTRATION: PLAINTIFF’S EVIDENCE**

**Salim Said Soban** (PW1), an official of Barclays Bank of Kenya, and being responsible for making of business loans on security such as landed property, gave evidence on **30<sup>th</sup> April, 2008**. This witness said that the suit property, L.R. No. Kwale/Galu/Kinondo/679 was charged to the Bank on **9<sup>th</sup> September, 1993** and the title was in the name of the plaintiff herein; the agreed loan amount was Kshs. 6,000,000/= but it was not given out to the plaintiff. All the same, the plaintiff had given to the Bank the original title, on **9<sup>th</sup> December, 1993** and this was still being held by the Bank. PW1 produced the said land title in Court, and said: “The Bank has not sold the property”. It is confirmed in the Court record: “The property has never been sold.”

The witness, on cross-examination by learned counsel **Mr. Mkan**, thus stated:

*“I have worked with the Bank for seven years. The title is charged to Barclays Bank as a collateral for Kshs. 6 million. I do not know why the [chargor] was not paid. We have no records showing that the money was not released.”*

The plaintiff (PW2) testified that the suit property belonged to him; he had bought it in **June 1993**, from one **Chiman Gidoomal**. PW2 said that after he purchased the suit land, he charged it to Barclays Bank on **9<sup>th</sup> December, 1993**; he executed a charge document, and he was to be loaned Kshs. 6,000,000/=. Why didn’t he take the loan money? In PW2’s words: “...I changed my mind and did not proceed to draw the loan. I did not want to proceed with the construction at the time. I surrendered the original title to the Bank.”

PW2 gave evidence on the registration status of the suit land:

*“At the moment, the property is not registered in my name. I made a search at the Lands Office in 2006. I found that it was purported that the Bank sold the land as a chargee.”*

It was PW2’s evidence that on **8<sup>th</sup> March, 2006** he had written to the Bank asking for a discharge to be prepared, and his document of title handed over to him; and on **16<sup>th</sup> October, 2006** he again wrote to the Bank inquiring about the apparent sale of his land. The Bank responded on **22<sup>nd</sup> November, 2006** denying ever selling the said land. The Bank had already written to the Commissioner of Lands on **20<sup>th</sup> September, 2006** as follows:

*“The Bank is made to understand by Mr. Gacheru that the above property was amalgamated with another property and sold to a third party, without the Bank’s consent.*

*“We would like to inform you that the said property is charged to the Bank and held as*

***security. The Bank therefore does not understand [how] the property would have been amalgamated and sold off without its consent”.***

The Chief Land Registrar responded on **13<sup>th</sup> November, 2006** stating that the suit land had been amalgamated with L. R. No. Kwale/Galu Kinondo/685 to give rise to L.R. No. Kwale/Galu Kinondo/1640.

PW2 testified that the said amalgamation of his land with another property had been done without his consent: and the amalgamated land was transferred to 1<sup>st</sup> defendant herein, PW2’s title being cancelled on **17<sup>th</sup> August, 2006** and the new title L.R. No. Kwale/Galu Kinondo/1640 being created.

It was PW2’s evidence that the Bank’s charge on the suit land was still in force, since it was effected on **9<sup>th</sup> December, 1993**; yet the Lands Office record shows a discharge of charge to have been entered on **28<sup>th</sup> July, 2006**.

On cross-examination, PW2 said he did not know those who had purported to transfer his land to somebody else; and he said:

“The Lands office would be in a position to know which is a fake [title] and [which is] an original title”. The plaintiff said he had sued the Chief Lands Registrar [2<sup>nd</sup> defendant], who had not filed any defence.

#### **D. RELUCTANT DEFENCE, MILESTONES OF FRAUD: THE PLAINTIFF’S CASE**

Learned counsel **Mr. Nyachoti**, for the plaintiff, restated the assertions in the pleadings, urging that the plaintiff is the duly registered, lawful owner and proprietor of the suit land: and that both defendants had engaged in illegal transactions purporting to divest the plaintiff of his land, using existing legal forms as a mask. Counsel urged that 1<sup>st</sup> defendant had illegally consolidated the suit property with an adjacent plot, L.R. No. Kwale/Galu Kinondo/685 and acquired a new title over the two properties, the plaintiff’s title, in the process, being cancelled; and the wrongful consolidation of the two plots and issuance of a common title in the name of 1<sup>st</sup> defendant, had been executed by 2<sup>nd</sup> defendant herein who when sued, only filed a Memorandum of Appearance but then elected not to participate in any other manner in the proceedings before the Court.

Counsel urged that the chargee had not exercised the power of sale over the suit property, and that this was clear from the evidence; the chargee, moreover, still held the original documents of title for the suit property – and that such documents as were used in the purported transfer, could only be fake, and arising from a scheme of fraud involving the hands of the two defendants herein.

Counsel submitted, on the basis of the evidence of PW1 and PW2 and of the several documents produced as exhibits, that: the Bank did not at any time instruct anybody to sell the suit property, in exercise of its statutory power of sale, or in any other manner whatsoever; the Bank did not release the original title deed for use in a sale transaction for the suit property; the Bank did not participate in the transactions entailing the suit land, which have occasioned this case; the evidence, oral and documentary, emanating from the plaintiff stands uncontroverted; the defendants have no answer to the plaintiff’s claim.

Counsel urged that there were situations in this case only knowable to the defendants; and therefore, by the law of evidence, it was incumbent upon the defendants to bring relevant proof before the Court; and these include:

- (i) the particulars of the alleged sale of the suit property by private treaty, involving the Bank and 1<sup>st</sup> defendant;*
- (ii) the particulars of the officials of the Bank whom the defendants (and particularly 1<sup>st</sup> defendant) dealt with during the property transactions;*
- (iii) the particulars of the lawyers who appeared for parties, during the said transactions;*
- (iv) the specific mode in which the alleged sum of Kshs. 3,000,000/= paid under the private treaty, was paid to the Bank as*

*consideration.*

In all the circumstances, learned counsel urged that there was but one “logical and irresistible conclusion”:

“that the discharge of charge and transfer of the suit property and the subsequent amalgamation of the same with the adjacent property known as Kwale/Galu Kinondo/685 to acquire Kwale/Galu Kinondo/1640 was done fraudulently, illegally and without the knowledge and/or consent of the plaintiff as well as the Bank.”

**Mr. Nyachoti** submitted that the plaintiff has established his case to the required standard. Of the standard of proof required in a claim of fraud, counsel relied on past judicial decisions - **Mutsonga v. Nyati** (2008) 1KLR (G&F), 1048; **Ratilal Gordhanbhai Patel v. Lalji Makanji** [1957]E.A. 314; **Caroline Njeri v. Manohar Singh Sagoo & 3 others** [2007] e KLR. In the **Ratilal Gordhanbhai Patel** case the Court of Appeal held (at p. 317):

*“Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.*

And in **Mutsonga v. Nyati** the High Court (**Kneller, J.**) held (*op. cit.*, p. 1049):

*“Allegations of fraud must be strictly proved and although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, a high degree of probability is required, which is something more than a mere balance of probabilities, and it is a question for the trial judge to answer [emphases supplied].”*

#### **E. DOCUMENTS WERE REGULAR, NO PROOF OTHERWISE: 1<sup>ST</sup> DEFENDANT’S CASE**

Learned counsel, **Mr. Mkan** submitted, in relation to the claim, that “currently the plot that is in existence is plot No. L.R. Galu/Kinondo/1640 which is one major plot that forms the amalgamation of two minor plots being Plot No. Galu/Kinondo/685 and Galu/Kinondo/679;” and “1<sup>st</sup> defendant is the lawful owner of Plot No. Galu/Kinondo/685 and Galu/Kinondo/679;” and “1<sup>st</sup> defendant is the lawful owner of Plot No. Galu/Kinondo/685 which is not in dispute and the plaintiff claims Plot No. Galu/Kinondo/679 which was amalgamated with Plot No. Galu/Kinondo/675 to form a major plot known as Galu/Kinondo/1640.”

Counsel submitted that neither of the plaintiff’s witnesses “touched on any issue of fraud on the part of 1st defendant”; and that this is the reason the defendant called no witnesses, and elected to rely purely on counsel’s submissions. Indeed, 1st defendant had at first called one witness who was about to embark upon testifying; what happened then is described by counsel: “during the defence hearing 1st defendant called one witness who was stood down in the course of [the] hearing, and thereafter the defendant chose to close his case and [to rely] entirely on his written submissions”.

Counsel urged that no evidence had been called in this case “that implicates 1st defendant in any wrong-doing....” Counsel submitted:

*“All documents produced only [confirm] that the transfer of L.R. No. Galu/Kinondo/679 to 1<sup>st</sup> defendant was done legally and without any mistake and/or fraud on the part of 1<sup>st</sup> defendant and due process as required in law was followed, and that the subsequent consolidation of plots No. Galu/Kinondo/679 and Galu/Kinondo/685 to form Plot No. Galu/Kinondo/1640 was .....done legally.....”*

Counsel urged that no particulars of fraud, or any knowledge of fraudulent acts on the part of 1st defendant, were adduced by the plaintiff.

How did 1st defendant come to be the registered owner of L.R. No. Galu/Kinondo/679? Counsel stated that a discharge of charge had been placed before the Kwale District Land Registry. By whom? Counsel’s answer to this question is indirect:

*“.....PW1 did not deny or adduce any evidence to deny or refute the fact that the author of the said discharge of charge was .....an employee of the Bank, nor did the plaintiff [make] any effort to call the author to deny and/or give evidence before this*

*Honourable Court on the circumstances that led to the preparation of the said document”.*

Counsel went on to urge that: a discharge of charge had been duly placed before the Registrar; “a valid document of transfer of the said land was presented before the Registrar, duly executed by the required parties to effect such transfer”; “the original title deed for plot No. L.R. Galu/Kinondo/679 was presented and was accepted as the original title deed and surrendered to the Registrar”; “a new title deed was issued [for] Plot No. Galu/Kinondo/679.”

Counsel contended that it was the obligation of the plaintiff to call a witness from the Kwale Lands Office to refute the conclusions as to the legality of the transactions which he (counsel) makes. In counsel’s words:

*“It was therefore crucial for the plaintiff to call [witnesses] from the Lands Office, Kwale to present, compare and ....give facts regarding the document that the plaintiff has produced in evidence as the genuine title deed. In the absence of such evidence...., it is so evident that [the document which he has produced], which he claims to be genuine, is not the original title deed.....”*

Counsel cited s. 143 of the Registered Land Act (Cap. 300, Laws of Kenya) as protecting 1st defendant, as “a purchaser for valuable consideration”.

S. 143 of the Registered Land Act thus provides:

*“(1) Subject to subsection (2), the Court may order rectification of Registrar by directing that any registration shall be cancelled or amended, where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.*

*(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and who acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default”.*

Counsel submitted that no evidence had been adduced that 1<sup>st</sup> defendant was involved in, or had knowledge of omission, fraud or mistake in the property transactions. In aid of this argument, counsel cited case law: *Chauhan v. Omagwa* [1985] 656; *Koinange & 13 others v. Koinange* [1986]KLR 23.

## **F. PARTICIPATING IN AND BENEFITING FROM THE IRREGULAR TRANSACTIONS EVIDENCED FRAUD: PLAINTIFF’S REJOINDER**

**Mr. Nyachoti** in a rejoinder, submitted that all the evidence showed that the suit land, L.R. No. Kwale/Galu Kinondo/679, “has never been offered and/or issued for sale by Barclays Bank of Kenya, in exercise of its statutory powers of sale or otherwise”; and since the Bank, through PW1, denied such a claim, “the burden of proof automatically shifted from the plaintiff to 1<sup>st</sup> defendant who was then required to adduce evidence”.

Since 1st defendant chose not to give evidence, counsel submitted, “more than enough evidence was adduced to demonstrate that the suit property was irregularly, illegally and/or fraudulently discharged and subsequently transferred to 1st defendant”.

Counsel urged that it had emerged from the plaintiff’s evidence that “the discharge, transfer and consolidation of the suit property was done with the full participation, knowledge, consent and/or benefit of 1st defendant”; and so it could not be contended that there was no evidence to implicate 1st defendant in wrong-doing, in the entire transaction.

Learned counsel urged that the provisions of the Registered Land invoked by 1<sup>st</sup> defendant (ss. 28, 39, 243) cannot come in aid of its case, because –

*(i) there is ample evidence on record that 1<sup>st</sup> defendant obtained the title deed for the suit property irregularly, illegally and/or*

*fraudulently;*

*(ii) there is no evidence that 1<sup>st</sup> defendant obtained title to the suit property for any consideration at all; no evidence of the private treaty was produced; no evidence of any payments was produced.*

## G. OVERALL ASSESSMENT, AND DETERMINATION OF THE QUESTION

The plaintiff had negotiated a charger-chargee arrangement with Barclays Bank of Kenya, with which he deposited his title document for the suit land, L.R. No. Kwale/Galu Kinondo/679. Witnesses gave evidence that the said title document was locked up in the vault of the Bank, and it remained there up to and including the time of hearing this case. A witness from the Bank gave evidence that the question of exercising by public auction the statutory power of sale did not arise, as the intended loan-money had not yet been advanced to the chargor; the truthfulness of this evidence was shown by the fact that the witness from the Bank, indeed, produced the said original title documents in Court.

But it turned out that, barely a year earlier, there had been a purported sale transaction involving L.R. No. Kwale/Galu Kinondo/679 under which the Bank is claimed to have sold the suit land by private treaty to 1<sup>st</sup> defendant; 1<sup>st</sup> defendant had placed title documents before the Kwale District Land Registry; that Land Registry is said to have registered a discharge of charge, then registered a transfer of the suit land to 1<sup>st</sup> defendant, then expunged title to the suit land and consolidated it into a new title incorporating a neighbouring plot, namely L.R. No. Kwale/Galu Kinondo/685, the new title now in the name of 1<sup>st</sup> defendant, being L.R. No. Kwale/Galu Kinondo/1640.

While 1<sup>st</sup> defendant contends that he had presented all valid documents before the Kwale District Land Registry and that it (1<sup>st</sup> defendant) is lawfully the proprietor, in respect of the consolidated parcel of land, the plaintiff contends that 1<sup>st</sup> defendant has used fraud to get registered as the owner of the suit land. The 1<sup>st</sup> defendant's position is that all the land documents it used were valid – though no evidence was given on how 1<sup>st</sup> defendant came by those documents. The 1<sup>st</sup> defendant would not name the person or persons allegedly at the Bank, who gave the property documents and who facilitated the registration in the name of 1<sup>st</sup> defendant. These are matters of *evidence*, but 1<sup>st</sup> defendant elected not to give any evidence; and 2<sup>nd</sup> defendant who purported to consummate 1<sup>st</sup> defendant's land transactions, by giving colour of legality through registration, not only did not come to give evidence, but did not even file a defence. There is no account, therefore, to authenticate the actions of 2<sup>nd</sup> defendant. Such is the position, too, regarding 1<sup>st</sup> defendant who, clearly, was the beneficiary of the land transactions, but chose to give no evidence.

The 1<sup>st</sup> defendant's position is pure legalistic argument, completely uninformed by explanatory evidence: and this position is that property documents *reached the hands of the Lands Registry officials*; these officials *recorded* a discharge of charge; they recorded a *transfer*; they *registered* 1<sup>st</sup> defendant as new owner; they registered a *consolidation of two parcels of land* (including the suit land); these documents and the acts upon them, bear a neutral and valid face, it is for the plaintiff to prove by evidence what was wrong with them.

The plaintiff takes the position that the defendants were involved in an irregular and fraudulent act, designed to deprive him of his land, and this Court agrees. What is the evidence that Barclays Bank

sold the suit land? The only evidence available shows that there was **no such sale**. Other evidence shows that there would be no reason for Barclays Bank to sell the suit property. It is claimed that Barclays Bank sold the suit property by private treaty: but there is no evidence of such private treaty. And counsel has submitted that had Barclays Bank had to sell any property the subject of a charge, then only a public auction (as opposed to private treaty) would be used. This Court knows, from the evidence, where the valid original title for the suit land has been – in the vaults of the Bank; but the Court does not know where the purported original titles submitted at the Kwale District Lands Registry came from: these must be the fake titles; and so they are the foundation of a fraud. Sitting at the very core of the fraudulent exercise is **1<sup>st</sup> defendant** herein. It is contrary to public policy that a fraudster should seek to benefit from the protections of the Registered Land Act, and I hold that the invocation of ss. 28, 39 and 243 of that Act by 1<sup>st</sup> defendant was all in vain.

This suit succeeds, and I hold both 1st and 2nd defendants liable to the plaintiff. I will make declarations and specific orders as follows:

- (1) It is hereby declared that the purported sale and transfer of the suit property by the chargee on 28<sup>th</sup> July, 2006 is null and void.*
- (2) It is hereby declared that the purported consolidation by 1<sup>st</sup> defendant of L.R. No. Kwale/Galu Kinondo/679 with L.R. No. Kwale/Galu Kinondo/685 to form the new title, L.R. No. Kwale/Galu Kinondo/1640 is null and void.*
- (3) It is hereby declared that the registration of the transactions referred to in (1) and (2) above, on 17<sup>th</sup> August, 2006 is null and void.*
- (4) It is hereby declared that the plaintiff is the bona fide owner and proprietor of L.R. No. Kwale/Galu Kinondo/679.*
- (5) The Lands Registrar (2<sup>nd</sup> defendant) shall rectify the Register to reflect the position declared in No. (4) hereinabove.*
- (6) An order of injunction is hereby made, subject to Order No. (5) hereinabove, prohibiting 2<sup>nd</sup> defendant from dealing with, alienating, or in any other manner whatsoever, disposing of the suit property.*
- (7) A permanent injunction is hereby issued, restraining 1<sup>st</sup> defendant or its agents and/or servants and/or assigns from interfering with the plaintiff's quiet possession, occupation and enjoyment of the suit property.*
- (8) The defendants jointly and severally, shall pay general damages in the sum of Kenya shillings One Hundred Thousand (Kshs. 100,000/=) to the plaintiff herein.*
- (9) The defendants jointly and severally shall pay the plaintiff's costs which shall bear interest at Court rate as from the date of filing suit, until payment in full.*

**DATED and DELIVERED at MOMBASA this 14<sup>th</sup> day of May, 2010.**

**J. B. OJWANG**

**JUDGE**

Coram: **Ojwang, J.**

Court Clerk: **Ibrahim**

For the Plaintiff: **Mr. Nyachoti**

For 1<sup>st</sup> Defendant: **Mr. Mkan**