



Kango Enterprises Limited & another v Unsworth (Sued as the administrator the Estate of John Fraser Unsworth) & 7 others (Suing as the administrator ad litem of the Estate of the Late Morris Ngole Machache) (Environment and Land Case Civil Suit 41 of 2012 & E11 of 2020 (Consolidated)) [2022] KEELC 3959 (KLR) (5 August 2022) (Judgment)

Neutral citation: [2022] KEELC 3959 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE CIVIL SUIT
41 OF 2012 & E11 OF 2020 (CONSOLIDATED)**

MAO ODENY, J

AUGUST 5, 2022

BETWEEN

KANGO ENTERPRISES LIMITED PETITIONER

AND

GAIL UNSWORTH (SUED AS THE ADMINISTRATOR THE ESTATE OF JOHN FRASER UNSWORTH) 1ST DEFENDANT

FREDRICK KAZUNGU 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

THE COMMISSIONER OF LANDS 4TH DEFENDANT

THE CHIEF LAND REGISTRAR 5TH DEFENDANT

GRACE MGHOI MUSHIMBA 6TH DEFENDANT

SUING AS THE ADMINISTRATOR AD LITEM OF THE ESTATE OF THE LATE MORRIS NGOLE MACHACHE

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE CIVIL SUIT E11 OF 2020

BETWEEN

GRACE MGHOI MUSHIMBA PLAINTIFF

SUING AS THE DMINISTRATOR AD LITEM OF THE ESTATE OF THE LATE MORRIS NGOLE MACHACHE



AND

THE HON ATTORNEY GENERAL 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT
LAND REGISTRAR, KILIFI COUNTY 3RD DEFENDANT

JUDGMENT

1. By an Amended Plaint dated October 22, 2018 Kango Enterprises Limited (hereinafter referred to as (“the 1st Plaintiff”)) sued the Defendants jointly and severally seeking the following reliefs: -
 - a. A declaration that the Plaintiff is the lawful proprietor of all that parcel of land known as Chembe/kibabamshe/327 and is entitled to legal and actual possession thereof.
 - b. A declaration that the processing and issuance by the Commissioner of Lands and the Registrar of Titles of the title deed in the 1st Defendant’s possession in respect of property known as Chembe/kibabamshe/327 was fraudulent and/or erroneous and thus unlawful and a nullity.
 - c. An order directing the Commissioner of Lands and the Register of Titles to rectify the register.
 - d. An order directing the 1st Defendant to vacate the suit property and give vacant possession to the Plaintiff.
 - e. A permanent injunction restraining the 1st Defendant by themselves their agents, servants or otherwise howsoever from trespassing, encroaching, alienating, transferring, selling, leasing, and charging or in any other way dealing with all that parcel of land known as Chembe/kibabamshe /327.
 - f. Costs of this suit together with interest thereon at Court rates.
 - g. Such further relief or remedy as this Honourable Court may deem just and expedient.
2. Further by an Amended Plaint dated the March 3, 2022, Grace Mgoi Mushimba (suing in her capacity as Administrator *ad litem* of the estate of the late Morris Ngole Machache (hereinafter referred to as “the deceased”)) sued the Defendants jointly and severally seeking the following orders: -
 - a. A declaration that the estate of the deceased was on the January 12, 1984 registered as the lawful proprietor of all that property known as Title Number Chembe/Kibabamshe/327.
 - b. A declaration that the purported cancellation of the deceased’s title to the suit property and the registration of the Government of Kenya on the December 22, 1986 as the owner thereof and the subsequent registration of Roving Investment (A) Limited on the February 18, 1999 by the Land Registrar, Kilifi District Land Registry was null and void *ab initio* and ineffectual to confer any right, interest or title upon the 4th Defendant in the first instance thereby rendering the subsequent transfers to the 5th Defendant herein, Kango Enterprises Limited on the February 18, 1999 and the late John Fraser Unsworth on the October 19, 2007 null and void *ab initio*.
 - c. An order directing the 3rd Defendant to rectify the land register by cancellation of the entries made in favour of the Government of Kenya on the December 22, 1986, Kango Enterprises



Limited on the May 6, 1999 and John Fraser Unsworth on the October 19, 2007 so as to restore the suit property to the deceased as the registered proprietor.

- d. An order directing the 3rd Defendant to restore the Green Card relating to the estate of the deceased's proprietorship of the suit property.
 - e. An order of permanent injunction to restrain the Defendants by themselves, their servants, their agents, assigns or whosoever authorized on their behalf from entering, or remaining upon, alienating, encumbering, charging, interfering, transferring and/or in any other way howsoever dealing with all that property known as Title Number Chembe/Kibabamshe/327.
 - f. An order compelling the Defendants jointly and severally to compensate and pay the Plaintiff the unencumbered open market value of the suit property.
 - g. Interest on (f) at the rate of 16% from the date of judgment until payment in full.
 - h. General damages against the Defendants jointly and severally. for wrongful deprivation of property together with interest at Court rates.
 - i. Exemplary damages against the Defendants jointly and severally.
 - j. Aggravated damages against the Defendants jointly and severally.
 - k. Interest on (h), (i), and (j) at the rate of 12% from the date of judgment until payment in full.
 - l. Costs of this suit on full indemnity basis together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
 - m. Any such other or further relief as this Honourable Court may deem appropriate.
3. Pursuant to an order of this court issued on February 17, 2022, the two files, ELC No 41 of 2012 and ELC No E11 of 2020 were consolidated with ELC No 41 of 2012 being the lead file.

1st Plaintiff's Case

4. PW1 Josiah Mugendi Njagi an officer at the Business Registration Services Formerly Companies Registry adopted his witness statement and stated that the directorship and shareholding of the Plaintiff Company had not changed since May 19, 1988 when the company was registered. PW1 also produced Pex 1 to 5 which are letters on the Company details of Kango Enterprises Ltd registered on May 19, 1988 showing that the Directors of the Company are Ida Betty Odinga and Raila Amollo Odinga with 100 shares each, letter showing that there were no changes of shareholding since incorporation, a copy of original incorporation, Articles of Association and Memorandum in respect of the company, CR 12 and official search.
5. PW1 further stated that the name Fredrick Kazungu did not at any point feature in the company registration documents exhibited and that there has never been a dispute in respect of Kango Enterprises Ltd directorship. He also stated that Kango Enterprises Ltd is deemed as verified in E-citizen portal which means that the company is fully updated.
6. On cross examination, PW1 confirmed that the company is verified as per the CR 12 and the same can be obtained by logging into the E-Citizen portal.

PW2 John Andiwo Mwai, the Plaintiff Company Group General Manager adopted his statement and produced the bundle of documents in respect of the suit land. He gave the history of the suit land and how it was acquired, the criminal case and the conviction of the 3 accused persons who fraudulently transferred the suit property to the 1st Defendant by forging the directorship of the company.



7. On cross examination by Ms Mwanyika, counsel for the 1st Defendant, PW2 stated that they were approached by Hon Kazungu about the suit property and that the suit land was fraudulently transferred to the 1st Defendant who has a title deed. He stated that there are developments on the suit land but he was not aware of the person responsible for the developments on the suit property.

On further cross-examination by Mr Mkala, counsel for the 3rd, 4th and 5th Defendants, PW2 stated that the suit property was initially sold to the Plaintiff Company by Fredrick Kazungu through Roving Investment Limited, a company that belongs to the said Kazungu.

8. On cross-examination by Mr Binyenya for the 6th Defendant, PW2 stated that Roving Investments Ltd confirmed that they received Kshs 1Million from Kango Enterprises Ltd who were issued with LCB consent together with a transfer and title deed to the suit land on May 6, 1999 which date is similar to the one in the Green Card.

PW2 also confirmed that there was a Criminal Case No 161 of 2009 where the 1st Defendant was the Complainant and the court ordered that the purchase price paid by the 1st Defendant be refunded to him. PW2 also stated that the 2nd Defendant admitted the fraud charges in the criminal case and was convicted accordingly.

Defendants' Case

9. DW1 Grace Mghoi Mushimba, equally adopted her statement dated March 30, 2022 as her evidence in chief, and produced her list of documents dated March 3, 2022.

On cross examination by Ms Mwanyika, she stated that her late husband was issued with a title to the suit property in January 1984 and that title was never cancelled. DW1 further stated that when they wanted to develop the suit property, they found out that the 2nd Defendant, (now deceased), had sold the same to the 1st Defendant who had developed it.

10. On cross – examination by Mr Mkala who showed her documents filed, DW1 confirmed that her husband's title was cancelled but she was not aware of the cancellation as she was never informed of the cancellation of all titles relating to Chembe/Kibabamshe scheme.

DW1 also stated that her late husband was convicted in a criminal case in respect of the suit land and paid a fine of Kshs 400,000/- of which he appealed but is not aware of the outcome of the appeal.

11. DW2 Gail Unsworth adopted her statement and list of documents as her evidence in chief.

On cross examination by Mr Mkala, she stated that she bought the suit land from Kango Enterprises Ltd and that it was her late husband who handled the transaction and further that she never filed a search of the Directors of Kango Enterprises Ltd.

On further cross examination by Mr Binyenya, DW2 stated that they dealt with a Mr Devani and Oduor and not Hon Raila Odinga and that they never paid any money to Hon Raila Odinga. DW2 was shown the proceedings of the Criminal Revision No 42 of 2009 where the court ordered that John Fraser Unsworth DW2's husband be refunded the money that he had paid for the purchase price which she stated that the same was never refunded. DW2 also confirmed that she never appealed the decision for the refund.

12. DW2 further stated that she participated in a Succession Cause No 16 of 2017 where the grant in respect of the suit property was revoked by the court and the suit property was removed from the estate of John Fraser Unsworth. DW2 also stated that she is not aware that her case, Civil Case No 119 of 2013 was dismissed for want of prosecution.



On cross examination by Mr Makwaya, DW2 stated that that the purchase price paid was Kshs 13, 440,000/- but did not have a receipt and proof of payment as they were handed over to the DCI. She also stated that the transfer was signed by 2 directors namely Fredrick Kazungu and Davis Oduor and the title deed for Kango Enterprises Ltd was dated May 6, 1999 while the one in ELC E11 was dated September 8, 1999 which are different.

13. DW3 Stella Kinyua, the Kilifi Land Registrar adopted her statement dated April 20, 2022 and produced a list of documents. She testified that according to the land records, the suit property had 2 Green Cards whereby the 1st Green Card was opened on May 30, 1978 upon adjudication and a land certificate was issued to Morris Ngole Machache on January 12, 1984.

It was DW3's evidence that in 1986, the Commissioner for Lands cancelled the records of the suit land and the registered owner Morris Ngole surrendered the original title. A new Green Card edition 2 was subsequently opened on December 22, 1986 and the suit property allocated by the Settlement Fund Trustee to Roving Investment Africa Limited on February 18, 1999 and a title deed issued.

14. DW3 stated that the suit property was then transferred to Kango Enterprises Ltd on May 6, 1999 and eventually to Fraser Unsworth on October 19, 2007. Thereafter various restrictions were filed against the suit property.

DW3 also testified that DCI requested for original documents in respect of the suit land for investigations which were later returned *vide* a letter dated July 23, 2014 indicating that the 3 accused persons were convicted and that the 3rd accused was Morris Ngole Machache who was originally allocated the suit land. That prior to this case Morris Ngole had not filed any case claiming ownership of the suit land

On cross examination by Mr Binyenya, DW3 told the court that the settlement schemes Kilifi/Jimba and Chembe/Kibabamshe were cancelled via the Gazette Notice 2505 dated May 30, 1986 which to her was sufficient notice to the affected residents. She explained that there was no specific notice that cancelled a specific title.

15. On further cross examination by Mr Makwaya, DW3 told the Court that the 1st Defendant relied on a title deed dated September 8, 1999 to enter into a sale agreement, which title was cancelled. She was shown Entry No 5 of August 8, 1999 on the said title and confirmed the entry was not on the Green Card. She explained that the entries on the title should always tally with that on the Green Card.

On re-examination by Mr Mkala, DW3 stated that Mr Kazungu Diwani was not registered as a proprietor of the suit land therefore he could not surrender the original title and that the Office of the Land Registrar was not a party to Criminal Case No 169 of 2009.

1st Plaintiff's Submissions

16. Counsel gave a brief background to the plaintiff's case and submitted that the ownership of the suit property by the Plaintiff from Roving Investment (A) Limited is not in dispute and has not been challenged by any party.

Mr Wakwaya submitted that the question before the Honourable Court is whether the 1st Defendant obtained good title and whether the title is protected by law of which counsel stated that the 1st Defendant did not obtain good title as the title it purportedly obtained cannot be protected in law as the 1st Defendant was not a *bonafide* purchaser of the suit property for value without knowledge of the fraud perpetrated against the Plaintiff.



17. Counsel submitted that the applicable law is the Registered Land Act (RLA) (repealed) and that the 1st Defendant did not obtain a good title to the suit land hence he is not a bona fide purchaser for value without notice and cited the case of Shimoni Resort v Registrar of Titles & 5 others [2016] eKLR Mr Wakwaya also relied on Black's Law Dictionary, 8th Edition and in Katende v Haridar & Company Ltd [2008] 2 EA 173, for the definition of *bona fide* purchaser and submitted that the 1st Defendant does not fit the description of a bona fide purchaser as he failed to conduct due diligence both on the directorship of the Plaintiff Company and on the persons purporting to sell the suit property as directors of the Plaintiff Company. Counsel submitted that PW2 a witness from the Registrar of Companies testified that no search request was ever received from the 1st Defendant or his advocates and that there was no evidence to show that the 1st Defendant ever visited the offices of the Plaintiff Company to ascertain ownership of the Company.
18. Counsel cited the cases of Joseph Kipkoech Chemor v Kimaiyo Chemor & another [2019] eKLR, Esther Ndengi & Another v Gatei Mbugua (2020) eKLR where the Court of Appeal applied Section 106(1) of the Land Registration Act No 3 of 2012 since RLA had been repealed.
19. Mr Wakwaya relied on Section 26 of the Land Registration Act which provides that: -

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

 - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
20. According to counsel, no title passed to the 1st Defendant by virtue of the fraudulent transfer and relied on the cases of Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] eKLR; Ruben & another v Great Fingall Consolidated [1906] AC 439 and stated that the 1st Defendant should have done due diligence by examining the company's records, and the 1st Defendant cannot be availed of this defence.
21. Counsel further submitted that the title relied on by the 1st Defendant was said to have been re-issued on September 8, 1999 yet the records show that the Plaintiff's title was issued on May 6, 1999. Counsel argued that there was no evidence that the title had been re-issued on September 8, 1999 and submitted that Section 35 of the RLA and Section 33 Land Registration Act makes provision for re-issuance of title when lost or destroyed. That the 1st Defendant ought to have exercised further due diligence in determining the authentication of the alleged re-issuance on 8th September 1999.

Section 35 of the RLA (repealed) provided as follows: -

1. If a title deed or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new title deed or certificate, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous title deed or certificate.
2. The Registrar may require a statutory declaration that the certificate has been lost or destroyed.



3. The Registrar, if satisfied with the evidence as to the destruction or loss of the certificate, and after the publication of such notice as he may think fit, may issue a new certificate.
 4. When a lost certificate is found, it shall be delivered to the Registrar for cancellation.
22. Section 33 of the LRA makes similar provision and adds the following: -
- If the Registrar is satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a replacement certificate of title or certificate of lease upon the expiry of sixty days from the date of publication in the Gazette or circulation of such newspapers; whichever is first.
23. Mr Wakwaya further relied on the cases of Mark Lecchini v Attorney General & another [2021] eKLR; Samuel Kamere v Lands Registrar Kajiado [2015] eKLR; Esther Ndegi Njiru & another v Leonard Gatei [2014] eKLR; and the Arthi Highway Developers case (supra) and argued that the 1st Defendant had a duty to conduct due diligence, obligation which he neglected and as such he cannot be said to be a bonafide purchaser.
 24. It was counsel's further submission that the alleged transfer to the 1st Defendant was not properly executed for lack of the Plaintiff's Company seal as required under Section 109 (2) (b) (1) of the RLA hence the transfer should be declared void
 25. Counsel cited the cases of Stanley Olonana Ntutu & 12 others v District Land Registrar, Narok & 3 others [2013] eKLR; Kingdom Kenya Limited v District Land Registrar, Narok & 15 others [2018] eKLR; and Westminster City Council v Croyalgrange Limited [1986] 2 ALL ER 353 and submitted that the 1st Defendant could not be said to be a bona fide purchaser for failure to prove that he paid consideration to the Plaintiff Company.
 26. On the issue raised by the 1st Defendant that this suit is res judicata, counsel submitted that the present suit was not res judicata High Court Civil No 54 of 2009 OS for reasons that the dispute herein is on ownership of the suit property while that in the former suit was on removal of a restriction, and that the question of ownership has never been determined and urged the court to grant the orders as prayed in the plaint.

2nd Plaintiff 6th Defendant's Submissions

27. Counsel gave a brief background to the case and listed the following issues for determination: -
 - a. Who issues title documents and was the deceased's title document issued by the Government of Kenya?
 - b. Whether or not the Government recalled, and/revoked the deceased's title document or instituted proceedings to have the same cancelled?
 - c. What reliefs if at all are available to the 2nd Plaintiff?
 - d. What reliefs if at all are available to the Plaintiff?
 - e. Who should bear the cost of this suit?
28. It was counsel's submission that the RLA which is the applicable law in this case had procedural and substantive law on cancellation of titles and that the 5th Defendant, the Commissioner for Lands, did not have the authority to revoke or cancel titles.



Mr Binyenya submitted that Section 143 (1) of the RLA granted such powers to the Court as was held in the case of Republic v Kisumu District Lands Officer and another [2010] eKLR; and to a Registrar as defined under Section 3 of the RLA, as it was held in the case of Livingstone Kunini Ntutu v Minister of Lands & 4 others [2014] eKLR.

Counsel argued that where the government issues a title and revokes the same without following due process, the affected party will be entitled to get their land back or be compensated in monetary form. Counsel therefore urged the court to order compensation of Kshs 150,000,000 being the current market value of the suit property and relied on the case of Rose Kavita Mwivithi & 2 others v Commissioner of Lands & 5 others [2015] eKLR.

29. Mr Binyenya submitted that the then Commissioner of Lands Circular Letter Number 113936/55 of 1986 and Gazette Notice No 2505 of 1986 was declared unconstitutional, illegal, null and void *ab initio* by the Hon. Lady Justice K. Rawal (as she then was) in her judgment of the March 14, 2002 in Helena Kithinji vs the Attorney General [2002] eKLR.

Counsel further submitted that Section 13 A of the Government Proceedings Act, Cap 50 of the Laws of Kenya was declared unconstitutional by the Hon Mr Justice DS Majanja in his judgment of the September 21, 2012 in Kenya Bus Service Ltd & another v Minister for Transport & 2 others [2012] eKLR.

30. Further that by a Summons dated the November 9, 2020 and filed at the High Court in Malindi High Court Succession Cause No 16 of 2017 in the matter of the estate of the late John Fraser Ainsworth, the 2nd Plaintiff sought for the revocation of the grant that was issued to the 1st Defendant by the Hon Mr Justice W Korir on the 3rd day of May 2018 and by a ruling of the March 24, 2020 in Malindi High Court Succession Cause No 16 of 2017 in the matter of the estate of the late John Fraser Unsworth, Hon Mr Justice R Nyakundi held as hereunder: -

- a. That the grant in respect of Land Portion No Chembe/Kibabamshe/327 is set aside pending the hearing and determination of Malindi Civil Case No E11/2020.
- b. To enforce distribution of the above referenced asset as part of the estate of the deceased is likely to prejudice the applicant who on *prima facie* evidence demonstrated existence of a dispute on the sanctity of title held in the name of the deceased.
- c. It is after such confirmation by a Court of Law can the property revert to the estate of the deceased to be administered by the administrator in adherence to the Law of Succession Act.
- d. The Respondent shall continue to administer the remaining assets, in exclusion of the above captioned property until further orders from a competent Court. In light of the above objection lodged on the defect of inclusion of the itemized LR Chembe/kibabamshe/327 has been found to be meritorious to that extent move the Court to sever it as free property of the deceased estate.
- e. Each party to bear their own costs.

31. Counsel therefore submitted that no appeal or review was or has been preferred by the 1st Defendant against the ruling of the Hon Mr Justice R Nyakundi delivered on the March 24, 2020 in Malindi High Court Succession Cause No 16 of 2017.

Counsel also referred to the Gazette Notice No 2505 of 1986 which read as follows: -



Notice To Landowners In Kilifi District

A letter has been sent to the landowners within Chembe/Kibabamshe, Kilifi/Jimba, Kilifi/Madeteni, Kakuyuni/Madunguni and Kilifi/Matsangoni, all in Kilifi District, requesting them to respond to the said letter before 31st July 1986 and also requesting them to report to the District Lands Officer, Kilifi District before July 31, 1986.

Those who might not have received the said letter are requested to contact the Commissioner of Lands, PO Box 30089, Nairobi (Telephone No 721780, Nairobi), as soon as possible.

32. Mr Binyenya submitted that the reading of the Gazette Notice does not indicate which title the Commissioner of Lands cancelled, if at all and further that the Land Registrar Ms Stella Kinyua Gatwiri conceded during cross examination that the Gazette Notice No 2505 of 1986 merely gave the Government's intention to cancel titles within the Chembe/Kibabamshe, Kilifi/Jimba, Kilifi/Madeteni, Kakuyuni/Madunguni and Kilifi/Matsangoni but did not in itself amount to any cancellation.

Counsel urged the Court to allow the Plaintiff's claim over the suit property by virtue of being a bona fide purchaser for value and without notice of fraud as the Plaintiff had no duty to enquire how the previous owner acquired the suit property. Counsel relied on the cases of *David Peterson Kiengo & 2 others v Kariuki Thuo* [2012] eKLR; and *Charles Karathe Kiarie & 2 others v Administrators of the Estate of John Wallace Matahre {deceased} & 5 others* [2013] eKLR.

1st Defendant's Submissions

33. Counsel Mr Mwamuye gave a brief background to the 1st Defendant's case and stated that the 1st Defendant is the wife of the late John Fraser Unsworth and the administrator of his Estate who was the legally registered owner of all the property known as Chemba/kibabamshe/327 at the time of his demise. That on or about the year 2007, the late John Fraser Unsworth purchased the Suit Property Chemba/kibabamshe/327 *vide* an Agreement dated July 26, 2007 with Kango Enterprises Limited for a consideration of Kenya Shillings Thirteen Million Four Hundred and Forty Thousand (KES 13,440,000/=).
34. As a result of the findings of the National Land Commission Task Force, which were that the Mambo Kai Ancestral Family were the legal owners of the Suit Property Chemba/kibabamshe/327. The Advocate of the late John Fraser Unsworth at the time advised him to purchase the Suit Property from the Mwambo Kai Ancestral Family despite the fact that he had already signed an Agreement with Kango Enterprises Limited and transferred the full purchase price to them.
35. Counsel submitted that the late John Fraser Unsworth was declared as the registered and bona fide owner of the Suit Property Chemba/kibabamshe/327 in Malindi Civil Appeal No 332 of 2012 John Fraser Unsworth vs Kango Enterprises and 2 Others where a challenge had been made against the Judgment and Decree of the High Court of Kenya in Malindi Civil Case No 54 of 2009 (OS) and that the 1st Defendant and her deceased husband have since occupied and developed the property since the year 2007.

Mr Mwamuye listed the following issues for determination: -

- a. Whether the 1st Defendant is a bona fide purchaser for value without notice?
- b. Is the Plaintiff entitled to the prayers sought in its Complaint in ELC No 41 of 2012?



- c. Is the 6th Defendant entitled to the prayers sought in its Complaint in ELC No 41 of 2012 and its Defence in ELC No E11 of 2020?
- d. What is the just and fair outcome of this Matter?
36. Counsel submitted that the 1st Defendant satisfied the scope of due diligence expected prior to purchasing the suit property, and that he had no notice of fraud at that given time. That he paid the expected consideration and a transfer was duly effected in his favour, thereby making him a bona fide purchaser for value and that the fraudulent acts of other parties should not be visited upon him.
- Counsel relied on the cases of *Eunice Grace Njambi Kamall & another v The Hon. Attorney General & 5 others*; *Lawrence P Muriuki v Attorney General & 4 others* [2013] eKLR; *Elizabeth Wambui Gitthinji & 29 others v Kenya Roads Authority & 4 others* [2019] eKLR.
37. Counsel submitted that the 1st Defendant's title could not be impugned under Section 26 of the *Land Registration Act* and that any attempt to do so would be in contravention of Article 259 (1) of the *Constitution* of Kenya. Counsel relied on the case of *Samwel D Omwenga Angwenyi v National Land Commission & 2 others* [2019] eKLR to buttress this point.
- It was counsel's submission that in the event that this Honourable Court allows the Plaintiff's prayers, the Plaintiff should compensate the 1st Defendant's development works conducted on the suit property since 2007 at market value of Kshs 150 Million as per the valuation report plus costs of this Suit.

3rd, 4th & 5th Defendants' Submissions

38. Mr Mkala, State Counsel, associated himself with the submissions by counsel for the 1st Plaintiff in ELC No 41 of 2021 and submitted that the 6th Defendant's claim was time barred under Section 7 and 9 of the *Limitation of Actions Act*.
- It was Counsel's submission that time started running in 1986 when the cause of action accrued when the 2nd Plaintiff's husband's title was cancelled, and again on October 19, 2007 when the last changes on the record were done.
39. Mr Mkala submitted that the records were cancelled by the Commissioner of Lands in 1986 along with all records in Chembe/Kibabamshe and Kilifi/Jimba registration sections for irregularities in allocation. That the second edition Green Card was opened on December 22, 1986. Roving Investment (A) Limited was issued with a title deed on February 18, 1999 after procuring a discharge from Settlement Fund Trustee. The property was thereafter transferred to Kango Enterprises Limited on May 6, 1999 and a Title Deed on even date.
- Mr Mkala listed the following issues for determination: -
- a. Whether the Plaintiff's case is time barred;
 - b. Whether the Plaintiff is entitled to the prayers sought; and
 - c. Who pays the costs?
40. Counsel relied on the cases of *IGA v Makerere University* [1972] EA 65 and *Edward Moonge Lengusuranga v James Lanaiyara & another* [2019] eKLR and submitted that the 6th Defendant's claim for compensation could only survive on the claim for ownership and the fact that the Plaintiff's title had already been extinguished as per Section 17 of the *Limitation of Actions Act*, her claim for compensation could not stand.



Counsel added that the valuation report relied upon by the 6th Defendant in her claim for compensation was not authenticated, tested or produced by the maker as is required. It was his argument that production of a document alone does not make it evidence as it was held in the case of *South Nyanza Sugar Co Limited v Mary A Mwita & Another* [2018] eKLR.

Analysis And Determination

41. On March 21, 2022, a consent between the Plaintiff in ELC No 41 of 2012 and the Plaintiff in ELC No E11 of 2020 was filed in Court which consent was in the following terms: -
1. That the Plaintiff in ELC No E11 of 2020 and who is the 7th Defendant in ELC No 41 of 2012, Grace Mgoi Mushimba (suing in her capacity as Administrator ad litem of the estate of the late Morris Ngole Machache), has no claim against Kango Enterprises Limited who is the Plaintiff in ELC No 41 of 2012 and the 5th Defendant in ELC No E11 of 2020.
 2. That the Plaintiff in ELC No E11 of 2020 and who is the 7th Defendant in ELC No 41 of 2012, Grace Mgoi Mushimba (suing in her capacity as Administrator ad litem of the estate of the late Morris Ngole Machache) withdraws all claims against Kango Enterprises Limited who is the Plaintiff in ELC No 41 of 2012 and the 5th Defendant in ELC No E11 of 2020 and elects to pursue compensation on full indemnity basis against the Honourable Attorney General, the Chief Land Registrar and the Chief Land Registration Officer, Kilifi.
 3. That the Plaintiff in ELC No E11 of 2020 and who is the 7th Defendant in ELC No 41 of 2012, Grace Mgoi Mushimba (suing in her capacity as Administrator ad litem of the estate of the late Morris Ngole Machache), recognizes Kango Enterprises Limited who is the Plaintiff in ELC No 41 of 2012 and the 5th Defendant in ELC No E11 of 2020, as an innocent and *bona fide* purchaser for value without notice of any irregularity or illegality and has good title to the property known as Title Number Chembe/Kibabamshe/327.
 4. That Kango Enterprises Limited who is the Plaintiff in ELC No 41 of 2012 and the 5th Defendant in ELC No E11 of 2020, withdraws the claim against Grace Mgoi Mushimba (suing in her capacity as Administrator ad litem of the estate of the late Morris Ngole Machache), the Plaintiff in ELC No E11 of 2020 and the 7th Defendant in ELC No 41 of 2012.
 5. The claim by the Plaintiff in ELC No E11 of 2020 and who is the 7th Defendant in ELC No 41 of 2012, Grace Mgoi Mushimba (suing in her capacity as Administrator ad litem of the estate of the late Morris Ngole Machache), lies against the Honourable Attorney General, the Chief Land Registrar and the Chief Land Registration Officer, Kilifi in terms of compensation.
 6. That each party is to bear their own costs of their respective suits as against each other.
42. The above consent was adopted as an order of the court on March 24, 2022 in the presence of Hon Otiende Amollo, SC and Mr Wakwaya for the Plaintiff in ELC No 41 of 2012; Mr Binyenya for Grace Mgoi Mushimba, the Plaintiff in ELC No E11 of 2020 and the 7th Defendant in ELC No 41 of 2012 (hereinafter referred to as the 2nd Plaintiff); Ms. Mwanjika holding brief for Mr Bahati Mwamuye for the 1st Defendant in ELC No 41 of 2012 (hereinafter referred to as the 1st Defendant); and Mr Mkala for the 3rd, 4th, and 5th Defendants in ELC No 41 of 2012 and the Defendants in ELC No E11 of 2020 (hereinafter referred to as “the Defendants”).
43. The adoption of the consent was to the effect that Grace Mgoi Mushimba recognizes Kango Enterprises Limited who is the Plaintiff in ELC No 41 of 2012 and the 5th Defendant in ELC No E11



of 2020, as an innocent and *bona fide* purchaser for value without notice of any irregularity or illegality and has good title to the property known as Title Number Chembe/Kibabamshe/327.

Grace Mgoi Mushimba also acknowledged that she has no claim against Kango Enterprises Limited who is the Plaintiff in ELC No 41 of 2012 and the 5th Defendant in ELC No E11 of 2020 and that she elected to pursue compensation on full indemnity basis against the Honourable Attorney General, the Chief Land Registrar and the Chief Land Registration Officer, Kilifi.

44. It should be noted pursuant to the consent the Plaintiff in ELC 41 of 2012 and Plaintiff in ELC E11 of 2020 resolved their issues and withdrew their claim against each other. The only claim by Kango Enterprises Ltd in ELC No 41 of 2012 is against the 1st Defendant, the Attorney General, Chief Land Registrar and the Commissioner of Lands. The Plaintiff's in ELC No E11 of 2020 is for compensation against the Attorney General, The Chief Land Registrar and the Commissioner of Lands.

The issues for determination are therefore:

- a. Whether the 2nd Plaintiff's suit is time barred
 - b. Whether the 1st Defendant is a bona fide purchaser
 - c. Who is the rightful owner of the suit land?
 - d. Whether the 2nd Plaintiff is entitled to compensation
45. Mr Mkala Counsel for the 3rd 4th and 5th Defendants raised an issue that the 2nd Plaintiff's /6th Defendant suit is time barred as the cause of action accrued in 1986. It was the 2nd Plaintiff's evidence that neither her nor her deceased husband were informed of the decision of cancellation, therefore entitled to compensation.
46. The 2nd Plaintiff's/6th Defendant title was first in registration but was cancelled by the Commissioner of Lands in 1986 and thereafter a new title was issued to Roving Investments Limited in February 1999. The same was then transferred to Kango Enterprises and eventually to John Unsworth in October 2007. Ordinarily, this would be when time started to run as far as limitation is concerned (See section 13 of the Limitation of Actions Act). However, seeing that the 6th Defendant's claim is based on illegality on the part of the 3rd-5th Defendants, it is pertinent to consider when they became aware of such illegality.

Section 7 of the [Limitation of Actions Act](#) provides as follows: -

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

47. The 2nd Plaintiff/6th Defendant told this court that her late husband was aware of the cancellation of title but she did not know what action he took upon such knowledge. According to her she was not aware that there was any cancellation of title in the first place.

It is important to note that the 2nd Plaintiff's/ 6th Defendant husband was charged and convicted in a Criminal Case No 161 of 2009 instituted on February 2009 whereby the proceedings before that court, states that the facts were inter alia that on September 8, 1999, the 2nd Defendant herein alongside the 6th Defendant's husband and others forged a title deed to the suit property. In light of these facts, would it be reasonable to believe that the 6th Defendant or her late husband were aware of the alleged illegality or cancellation, at least as early as 1999?



48. The 2nd Plaintiff was also sued in ELC No 41 of 2012 but did not file a counterclaim only to file a suit in 2020 seeking for compensation.

In the case of *Mtana Lewa v Kabindi Ngala Mwangandi* [2015] eKLR the court held as follows: -

Limitation of time for land claims as with claims of any other nature exist for three main reasons which are:

- i. A plaintiff with a good cause of action ought to pursue it with reasonable diligence (equity does not aid the indolent);
- ii. A defendant might have lost evidence over time to disprove a stale claim; and
- iii. Long dormant claims have more cruelty than justice in them (Halsbury's Laws of England, 4th Edition.)“

49. In this particular case, I find that it has many issues involving fraudulent dealings which are on record in the proceedings in the criminal cases mentioned involving several parties including the 2nd Plaintiff/6th Defendant's husband, investigation of the title by DCI and several cases in court on the legality of the processes of acquisition of the suit land.

Different aspects of the suit land have been litigated in criminal courts, Succession court, review in appeal and currently this case to establish ownership of the suit land and compensation. Further the Plaintiff's action is for a relief from the consequences of a mistake which could not have been discovered with reasonable diligence. I therefore find that it is not time barred.

Section 26 (a) and (c) of the *Limitation of Actions Act* provides: -

(26) Where, in the case of an action for which a period of limitation is prescribed, either:

- a. the action is based upon the fraud of the Defendant or his agent, or of any person through whom he claims or his agent; or
- b. the right of action is concealed by the fraud of any such person as aforesaid; or
- c. the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:”

50. On the issue whether the 2nd Plaintiff is entitled to compensation for the cancellation of the title to the suit land, the constitutionality or otherwise of the cancellation of title documents by the Commissioner of Lands vide the circular letter No113936/55 of 1986 and Gazette Notice No 2505 of May 30, 1986 in relation to properties falling under the Chembe/Kibabamshe scheme has been the subject of numerous disputes filed in this court.

Indeed, Courts have stated in numerous other cases that the cancellation by the Commissioner of Lands of the title deeds falling within the 10-mile coastal strip in 1986 was unconstitutional, null and void. It is on this basis that the 6th Defendant lays her claim.

In the case of *Helena Kithinji V Attorney General*[2002] eKLR, Rawal J, (as she then was) held as follows:

In all respect the actions of the Commissioner of Lands of cancelling the titles of the applicant without hearing the applicant is illegal, invalid and unconstitutional and has to be set aside....i also declare that she has been deprived of the proprietorship of the land



registered in her name in pursuance of the circular which is unconstitutional and in flagrant violation of the rules of natural justice. I therefore decree that she is still the registered owner of titles No Kilifi/Madeteni/410 and Kilifi Madeteni 414.”

51. Further in the case of Nairobi HCCC No 3106 of 1997, Regina Ngaku & Others Vs Commissioner of Lands & 4 Others it was held as follows:

The Commissioner of Lands cancelled titles within Kilifi/Chembe/Kibabamshe despite parties having held title for the same area.”

52. This cancellation of title by the Commissioner of Lands in 1986 has already been determined by Rawal J and the position therefore lies that the cancellation was null and void.”

This case referred to Helena Kithinji case (supra) where Rawal J had declared the cancellation vide the gazette notice unconstitutional. The issue is that the Plaintiff’s husband willingly surrendered the original title but was later involved in fraudulent activities in respect of the suit land which led to him being charged and convicted and paid a fine of Kshs 400, 000/ This does not mean that the cancellation was legal. The Plaintiff is still entitled to compensation for the void acts of the Commissioner of Lands who acted ultra vires.

53. On the second issue as to whether the 1st Defendant is a *bona fide* purchaser for value hence he is entitled to compensation of the developments done on the suit land. It should be noted that counsel for the 1st Defendant submitted that should the court be inclined to find that the Plaintiff is the legal owner of the suit land then the court should order compensation or the developments of the suit land using the valuation filed by the 2nd Plaintiff which gave the market value of Kshs 150 Million.

The court in the case of *Lawrence Mukiri v Attorney General & 4 Others* (supra) defined what a bona fide purchaser for value is as: -

... a *bona fide* purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a certificate of Title.
- b. He purchased the Property in good faith;
- c. He had no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.

54. A *bona fide* purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner. ”

From the evidence on record the 1st Defendant’s stated that when he was purchasing the suit land and after he had paid a consideration of Kshs 13,440,000/- to the 2nd Defendant, he was informed that the suit property belonged to a different party-the Mwambo Kai Family whereby he further paid the said family a further Kshs 14,000,000/-.

55. This shows that the 1st Defendant had knowledge of the fraud as early as at the time of purchase but chose to ignore the same and or attempted to rectify his position without conducting further due



diligence. If he had indeed conducted a proper search of the suit property, what was the need for making payment twice?

The 1st Defendant admitted that the purchase price was paid to Kazungu and Oduor who were purportedly directors of Kango Enterprises Ltd and that they neither paid the money to the real directors who are Ida Betty Odinga and Hon, Raila Odinga. The 1st Defendant also admitted that they never applied and obtained an official search of the Companies registry to find out the real directors of the company as per the CR12.

56. The 1st Defendant was also a complainant in a criminal case where the court ordered that he be refunded the purchase price that was fraudulently obtained from him in respect of the suit land. The result of the criminal fraud case bolsters the Plaintiff's case herein as the purported director and 2nd Defendant herein, confessed to the fraud involving the forgery of the title and documents which the 1st Defendant relied on in purchasing the suit property.

It therefore follows that the 1st Defendant does not fall within the ambit or definition of bona fide purchaser for value without notice. Luckily the court had already ordered a refund of his money and therefore his relief stops at the doorstep of the fraudulent vendors who sold to him land that they did not have a good title to pass.

57. On the issue as to whether the 2nd Plaintiff Grace Mgoi Mushimba is entitled to compensation by the 3rd, 4th and 5th Defendants.

On the issue on who is the legal owner of the suit land, the consent entered into by the 1st Plaintiff and the 6th Defendant acknowledges that Kango Enterprises Ltd is a bona fide purchaser of the suit land for value and is the rightful owner of the suit land. The transaction followed due process where a consent from the Land Control Board was sought and obtained procedurally and transfer done legally. There was evidence that the title issued to the Plaintiff on May 6, 1999 tallied with the Green Card as opposed to the title issued to the 1st Defendant dated September 8, 1999 which had no entry in the Green Card. It is trite that the entries in the Green Card must tally with the title. If a title is lost, then an application must be made for replacement and procedures have to be followed and entries indicated in the Green Card. If such entry is not noted, then there is either a forgery or an anomaly.

PW1 an officer from the Business Registration Services stated that there has never been any director or shareholding changes to Kango Enterprises Ltd since its incorporation and anyone who purported to be directors were imposters who were later charged with forgery and convicted of the offence.

Section 26 of the *Land Registration Act*, 2012 is clear and it provides as follows: -

1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
58. The Section gives the court power to impeach titles that have been acquired fraudulently or unprocedurally. The 1st Defendant's title was acquired fraudulently as has been found in the criminal



proceedings and further removed from the assets of the estate of the 1st Defendant's husband through revocation of the grant that included the suit property as one of the assets of the deceased.

In the case of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR the Court held that: -

It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation. However, where a person intends to indict a title on the ground that the title has been acquired illegally, unprocedurally, or through a corrupt scheme, my view has been, and still remains, that it is not necessary for one to demonstrate that the title holder is guilty of any immoral conduct on his part. I had occasion to interpret the above provisions in the case of *Elijah Makeji Nyangwara vs Stephen Mungai Njuguna & Another*, Eldoret ELC Case No 609 B of 2012 where I stated as follows: - "...it needs to be appreciated that for Section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent titleholder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally, or through a corrupt scheme. The titleholder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions. "I stand by the above words and I am unable to put it better than I did in the said dictum."

59. Further that when the issue of ownership is disputed and there are two titles to the suit land, the root of the title must be established, a party who claims to be the owner must prove that the title that he or she holds is the genuine one.

In the case of *Hubert L. Martin & 2 Others V Margaret J Kamar & 5 Others* [2016] eKLR, the Court held that; -

'A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.'

60. The evidence before the court shows that the Plaintiff, Kango Enterprises Ltd is the rightful owner of the suit land. There were investigations carried out in respect of the suit land and there was conviction of the perpetrators of the fraud. The suit property was transferred from Roving Investments Limited to Kango Enterprises Ltd which was confirmed by DW3, the Land Registrar's evidence Section 80 of



the [Land Registration Act](#), 2012 provides for rectification of the register in regard to a registered title if fraud is proved. That section provides as follows: -

80 (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land lease or charge for valuable consideration, unless the 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 any act, neglect or default.

61. In the case of *Mary Ruguru Njoroge Vs John Samuel Gathuma Mbugu* [2014] eKLR the court held that:

The court too has powers to order the rectification of the title or register in appropriate circumstances. The court will under Section 80(1) of the [Land Registration Act](#) order the cancellation or amendment of an entry or any registration when it is satisfied that the registration was obtained made or omitted by fraud or mistake. Registration under the said Section, in my view, refer to and includes a title or entry in the register or on the title itself. It is however upto the party seeking rectification to prove to the court's satisfaction that there has been fraud or a mistake in the registration. In my view, the mistake referred to under section 80(1) includes both a slip like a typographical error and a substantive mistake like the registration of a wrong or erroneous name. In equity, the court also has powers to rectify in suitable circumstances any written instrument to conform with the agreement between the parties, where the instrument, by mistake, does not express the agreement and the mistake justifies the intervention of the court."

62. In the circumstances, I find that the Plaintiff Kango Enterprises Ltd has proved its case against the Defendants on a balance of probabilities and therefore allowed as prayed in the following terms: -

- a. A declaration is hereby issued that the Plaintiff is the lawful proprietor of all that parcel of land known as Chembe/kibabamshe/327 and is entitled to legal and actual possession thereof.
- b. A declaration is hereby issued that the processing and issuance by the Commissioner of Lands and the Registrar of Titles of the title deed in the 1st Defendant's possession in respect of property known as Chembe/kibabamshe/327 was fraudulent and/or erroneous and thus unlawful and a nullity.
- c. An order is hereby issued directing the Register of Titles to rectify the register.
- d. The 1st Defendant to give vacant possession within the next 45 days to the Plaintiff failure to which eviction order to issue.
- e. A permanent injunction is hereby issued restraining the 1st Defendant by themselves their agents, servants or otherwise howsoever from trespassing, encroaching, alienating, transferring, selling, leasing, and charging or in any other way dealing with all that parcel of land known as Chembe/kibabamshe /327.
- f. Costs of this suit together with interest thereon at Court rates to be paid by the Defendants.



63. On ELC Case NO E 11 of 2020, the 2nd Plaintiff having proved that she is entitled to compensation in respect to the suit land and having filed a valuation report for the current market value of Kshs 100Million, I find and hold that the Plaintiff is also entitled to exemplary damages of Kshs5 Million being the 5% of the total sum of the quantified damages (Kshs100,000,000) The Plaintiff is also entitled to costs of the suit against the 3rd 4th and 5th Defendants .

64. In the case of Rose Kavita Mwivithi & 2 others v Commissioner of Lands & 5 others [2015] eKLR the court while face with a similar case awarded the Plaintiff Kshs 178,500,000 being the market value of the parcels of land and exemplary damages of Kshs 8,925,000, being 5% of Kshs 178,500,000/- plus costs of the suit.

The final orders are as follows in respect of the 2nd Plaintiff's case against the 3rd 4th and 5th Defendants who are the AG, Commissioner of Lands and Chief Land Registrar.

- a. The Defendants, or their successors in office, to pay to the Plaintiff compensation in respect of parcels of land number Chembe Kibabamshe/327 Kshs 100,000,000 being the market value of the suit land.
- b. The Defendants, or their successors in office, to pay to the Plaintiff exemplary damages of Kshs 5,000,000, being 5% of Kshs 100,000,000/-.
- c. The Defendants, or their successors in office, to pay to the Plaintiffs costs of the suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 5TH DAY OF AUGUST, 2022.

M.A. ODENY

JUDGE

NB: In view of the Public Order No 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

