



**Mugumoini Farmers Co. Ltd v Inshwil Builders Engineering Ltd;  
Ruitha & another (Interested Parties) (Environment & Land Case  
67 of 2018) [2022] KEELC 12752 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12752 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE 67 OF 2018  
LN GACHERU, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**MUGUMOINI FARMERS CO. LTD ..... PLAINTIFF**

**AND**

**INSHWIL BUILDERS ENGINEERING LTD ..... DEFENDANT**

**AND**

**EPHRAIM WAI THAKA RUTHA ..... INTERESTED PARTY**

**CHARLES WANG'ONDU SAMSON ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiff filed this suit against the Defendant by a Plaint dated 16<sup>th</sup> August 2018, wherein it sought for Judgment against the Defendant for
  1. Injunctive orders do issue prohibiting transfer, sale, sub-division, charge interference with and or intermeddling in or sale of or in any dealings in all that piece and or parcel of land known as Kakuzi/ Kirimiri Block 7/37 and its sub-divisions: Kakuzi/ Kirimiri Block 7/ 249 (sub-divided to Kakuzi/ Kirimiri Block 7/381, Kakuzi/ Kirimiri Block 7/382, Kakuzi/ Kirimiri Block 7/383), Kakuzi/ Kirimiri Block 7/250, Kakuzi/ Kirimiri Block 7/445 or any other sub-division thereof by the Defendant by themselves and or their agents, successors, assigns, representatives and employees.
  2. The title to Kakuzi/ Kirimiri Block 7/37 and its sub-divisions Kakuzi/ Kirimiri Block 7/ 249 (sub-divided To Kakuzi/ Kirimiri Block 7/381, Kakuzi/ Kirimiri Block 7/382, Kakuzi/ Kirimiri Block 7/383), Kakuzi/ Kirimiri Block 7/250, Kakuzi/ Kirimiri Block 7/445 or any other sub-divisions thereof be revoked and the suit property reverts to the Plaintiff unconditionally



3. The Court do direct the Registrar of titles, Thika Land Registry to cancel all titles emanating from transfer of Kakuzi/kirimiri Block 7/37 to the Defendants and all its sub-division and to further rectify the register, amalgamate the properties and re-issue a new title in favour of the Plaintiff.
4. Costs of this suit plus interest thereon at Court rates.
2. It is the Plaintiff's case that it was the registered proprietors of a land parcel known as Kakuzi/ Kirimiri/ Block 7/37, measuring 229 Acres. It contends that sometime in 2016, it came to the knowledge of its Directors that the said land had been unprocedurally transferred to the Defendant on February 12, 2010, through a Sale Agreement entered into on July 11, 2003. That the purported sale was entered into by persons who were not signatories and thus lacked the capacity to do so. It avers on the illegality of the sale of the said parcel of land and maintains that there was a fraudulent transaction which ought to be sanctioned by this Court.
3. In response to the suit, the Defendant filed its Statement of Defence dated January 16, 2020. It denies the contents of the Plaint and avers that the Plaintiff's right over the suit property were distinguished by the Sale Agreement entered into on the July 11, 2003, as well as the Orders of Court of December 12, 2009, issued in Nairobi HCC No 3086 of 1994, now Thika ELC No 245 of 2017. It is the Defendant's averments that the Plaint is bad in law for want of particulars of fraud. Further it adds that the Plaintiff never disclosed the existence of other suits and thus is guilty of material non-disclosure.
4. The matter was set down for hearing after protracted applications.
5. PW1 Simon Kamere, testified that he is an advocate of the High Court of Kenya and is familiar with the facts founding the suit. He confirmed having sworn an Affidavit dated 22<sup>nd</sup> November 2017, and produced the same as Exhibit 1. It was his testimony that his Law Firm had previously filed a suit being HCC No 3086 of 1994, on behalf Emac Enterprises against the Plaintiff herein where the Plaintiff herein owed his client Kshs. 3,060,522/=. That the matter was heard and a Decree was issued on the May 24, 1995, which he produced as exhibit 2. That in realization of the Decree, the suit property was attached and subsequently sold through a public auction. He gave a detailed chronology of events and produced documents showing how the Defendant expressed interest to purchase the suit property.
6. It was his testimony that he never admitted to selling land to the Defendant, unless it followed the due process of public auction. He told this Court that he never agreed to sell the demised property to the Defendant, but sometime in July 2003, he received a sale agreement between the Plaintiff and the Defendant herein.
7. He also testified on the breach of sale over the suit property, that occurred between the parties herein that led to rescission of the contract. He further told this Court that there was an attempt by the Purchaser's advocate, Kanyi Ndurumo, to have a gentleman agreement on lifting of the Prohibition Order, that had been registered against the suit property. That thereafter he received a letter addressed to Kakuzi Land Control Board, by the purchaser's advocate indicating that the parties to this suit had successfully entered into a sale agreement for a consideration of Kshs. 5,000,000/=. He informed the Court that at the time of the alleged sale, parties had rescinded the contract and the Prohibitory Order was in situ. He added that he later established that the Prohibitory Order had been lifted by an Order of Court, without their knowledge, and on the date the matter was in Court, only counsel for the Defendant and the Interested Parties herein were in Court.
8. On cross-examination by Mr Ndurumo for the Defendant, he confirmed that his client sold the land, but he never received any monies as its counsel. He also confirmed that the Defendant was not a party to the lifting of the prohibitory orders and maintained the lifting of the order was done through deceit.



9. On re-examination, he told this Court that the contract was rescinded because the agreement was not stamped.
10. PW2 Grace Wangui Kinyanjui, testified that she is the wife of Julius Mbugua, who was the Director of the Plaintiff herein up and until 17<sup>th</sup> May 2003. It was her testimony that her husband was later arrested and charged on the premise of a complaint filed by one Francis Ngone, who was also the Plaintiff's Chairman. When questioned on a Supporting Affidavit dated 10<sup>th</sup> August 2004, "MF114" she told this Court that at the time of swearing the said Affidavit, her husband was hospitalized and could not be in a position to sign.
11. On cross-exam, she testified that she neither had any letters of administration over the estate of her husband nor was she a member of Mugumoini Farmers Cooperative Ltd. She added that she had no document to support her claim that her husband was critically ill.
12. PW3 Francis Nganga Wanyoike, adopted his witness statement dated March 9, 2019, as evidence and told this Court that he is the Secretary of the Board of Mugumoini Farmers Co. Ltd. It was his testimony that he was present during the meeting of April 18, 2003, which minutes were signed by the Julius Mbugua Gatuha, Chairman and Benjamin Kamande Gathuka, the Secretary. He further testified that the resolutions dated May 5, 2003, were signed by the Directors, but added that the signatures differed.
13. It was his further testimony on cross-examination that he is not a handwriting expert, but could tell the signatures contained in the minutes and the resolutions were not the same.
14. PW4 Thomas Waithaka Kinaga, adopted his witness statement dated October 11, 2019, as evidence in chief. It was his testimony that he was elected as a Director of the Plaintiff on May 17, 2003, while Francis Gathiga was voted the Chairman and James Njau, the Secretary. He also testified that at the time the parties entered into the alleged sale agreement, the sellers were no longer the Directors of the Plaintiff herein. He further testified that the process of sale was flawed and maintained that at the time of the agreement, the Directors who allegedly signed the agreement were not in office.
15. On cross-examination, he testified that he had nothing to show that he was a Director of the Plaintiff and added that there was no dispute between the Directors of the Plaintiff.
16. On re-exam he told this Court that Francis Ngone Gathiga, was the person behind the selling of the suit land.
17. PW5 Joseph Kamande Ngone, testified that he is the current Chairman of the Plaintiff having been made one in April, 2016. He produced a list of documents and adopted his witness Statement as his evidence. He also testified that they did a search, over the suit property in 2016, and discovered that the land had already changed hands. He further informed this Court that after the search they unearthed: an application for consent, application for transfer, consideration for the sale Kshs. 5,000,000/= and that the signatories for the sale were Francis Ngone Gathiga, and a party not known to them. He produced a copy of a CR12 dated June 22, 2005, which showed that the Directors of the Plaintiff at the time of the sale agreement. It was his testimony that the sale agreement was invalid since the Directors were not involved.
18. On cross-examination, he testified that he became a shareholder through the shareholding of his father Ngone Mube, but did not produce any evidence to support his claim. He confirmed that the Company owed money to Emac Enterprises Limited, and they had the intentions to sale the land so as to clear the loan. He added that their then advocate on record was Chacha Mwita Advocate, was not aware of



- the Court Order setting aside the Prohibitory Order and confirmed further that they never made an application to set aside the said orders. He testified that fraud took place at the Land's Registry.
19. On re-exam, he testified that before he became a Director, there was an AGM and added that he took ownership of his father's shares and had his name replaced as ordered by the Registrar of Companies.
  20. DW1 Patrick Gukura Muraya testified that he is a Co-Director with Susan Wamucie Gukura in the Defendant's Company. He relied on his witness statement of December 9, 2021, as evidence. He produced documentations showing that he is a Director. He also testified on how he bought the suit property. He told this Court that on July 11, 2003, he entered into a sale agreement with the Plaintiff for the purchase of the suit property and added that he was aware at that time that the land had been attached to recover a debt.
  21. It was his further testimony that he paid the consideration to Erastus Nduhiu, the Creditor and that at the time of the sale agreement, parties were represented by their counsels. He confirmed that he paid the entire consideration of Kshs. 5,000,000/= as per the acknowledgement. He also testified that the prohibitory order was lifted by consent of the Plaintiff and the Defendant herein. He informed this Court that the transfer documents were drawn by one Chacha Mwita Advocate, who was the counsel for Mugumoini. Further that they bought the land, sub-divided it and sold to other parties, but the process was never objected to. He further told this Court that the sale agreement was validly entered into and the transfer dully executed.
  22. It was his further testimony that Francis Ngone Gathiga was the Director of the Plaintiff, and added the said Francis Ngone Gathiga had signed a Verifying Affidavit on behalf of the Plaintiff herein in HCC No 117 of 2005. He led the Court through the number of cases that had been filed by the Plaintiff over the suit property. When asked about these cases on cross-examination, he testified on the status of the cases and stated that he never testified in any of them. He also told this Court that Julius Gatuha was a Director as at March 3, 2003, and did not know if he ceased being a Director or not.
  23. He also testified that the sale agreement was executed by Julius Gatuha and Benjamin Kinanga and which agreement was dully registered. On the sale agreement, he testified that he was not aware that the contract had been rescinded and that he paid the cash way before the contract was rescinded. He admitted that the acknowledgment was in respect of receipt for monies for 229 and 200 acres. He was put to task on the form and content of the transfer forms and he told this Court that the documents neither indicated the names of the Directors, their PIN numbers, the date of signing nor when the Directors appeared. In the end, he told this Court that the title deed was issued based on an incomplete document.
  24. On cross-exam, he told the Court that the sale agreement was unregistered, but maintained that he did not engage in any fraudulent transaction. On the Directorship of the Company, he testified that he did not know the wrangles in the Company.
  25. On re-exam, he testified that the transfer document was prepared by Chacha Mwita Advocate, who was counsel for Mugumoini and not his Company. Additionally, he told this Court that he completed payment in 2004, when the contract had not been rescinded. He also testified on a complaint by Mugumoini and told the Court that he was not prosecuted by Police. The Defendant closed their case.
  26. On June 29, 2022, the Interested Parties were directed to file and serve their Affidavit of Claim. In compliance with the aforementioned directions the 3<sup>rd</sup> – 4<sup>th</sup> Interested Parties swore a joint Affidavit sworn by Anthony Mumenya Watare, on the July 8, 2022. It is their disposition that they were introduced to the Defendant by agents and when they entered into negotiations, the land had been sub-divided. They deponed that they examined the relevant documents before entering into their



- respective sale agreements where they paid the entire purchase price. They deponed that they were subsequently issued with their respective titles and they took immediate occupation and possession where they have been occupying the suit land without any dispute. Their prayer is that this Court protects their proprietary rights, since they were innocent purchasers for value without notice, and for the sole reason that they were not aware of any proceedings over the suit property
27. Parties filed and exchanged their rival written submissions as directed by this Court. The Plaintiff filed its submissions dated June 6, 2022, and raised three issues for consideration by this Court.
  28. The first issue is whether the Defendant acquired the suit property through fraudulent means. The Plaintiff adopted the Black's Law Dictionary meaning of fraud and submitted that the evidence adduced by its witnesses' point to the existence of fraud in the execution of the sale agreement. It enumerated eleven grounds which it submits point to fraud. Additionally, it submits that PW1 being counsel for Emac Enterprises, the Plaintiff was not aware of the removal of Prohibitory Orders and claims the consent recorded for the removal of the orders was fraudulent. It also submits that the Supporting Affidavit sworn in support of the application for removal of Prohibitory Order was signed by Benjamin Githuka, who was not a Director at the material time. It relied on the case of Don Woods Company Ltd vs Chemusian Company Ltd{2004} eKLR, where the Court opined that an authorized officer ought to swear an Affidavit on behalf of a Corporation. On fraud, it submits that the fact that the transfer document was defective espouses existence of fraud.
  29. On whether the Plaintiff proved its case on the balance of probabilities, the Plaintiff submitted that the Defendant's title can be challenged by dint of the provisions of Section 26 of the Land Registrar Act, which acknowledges challenging of title where there is fraud. Moreover, it submits that it discharged its burden as required by Sections 107-112 of the Evidence Act, and added that the standard of proof in fraud is high.
  30. Reliance was placed on the case of Fatuma Ali Omar & Another vs Omar Ali Omar & 2 Others{2015}, where the trial Court established the test for a balance of probability. It maintains that it discharged its burden while the Defendant only gave contradictory evidence and enumerates the circumstances which DW1 tendered contradictory evidence.
  31. It was the Plaintiff's further submissions that Defendant has not satisfied the principles of bona fide purchaser, as was adopted in the Ugandan Case of Katende vs Haridar & Company Limited {2008}. In the end, the Plaintiff submitted that it has proved its case on the required standard and is entitled to the reliefs sought.
  32. The Defendant filed its written submissions dated July 12, 2022, and raised five issues to be determined by this Court.
  33. The first issue raised by the Defendant was whether the suit is statutory barred. It submitted thus that the suit being based on recovery of land over a contract entered into in 2003, and filed in 2018, it was in breach of the provisions of Section 7 of the Limitations of Actions Act. Additionally, it submitted that this suit being one based on contract, it ought to have been brought within six years of the contract which was executed on July 13, 2003.
  34. The Defendant raised an issue of res judicata and submitted that the Plaintiff's suit is res judicata to Thika ELC No 245 of 2017,
  35. Nairobi ELC No 1643 of 2007, Nairobi HCC No1159 of 2005 and Muranga CMCC No 68 of 2018. It maintained that the issues raised in the present suit have been canvassed in the above mentioned cases. It relied on a litany of cases to demonstrate that the instant suit is res judicata and an impediment to the provisions of Section 7 of the Civil Procedure Act and the principle of finality of litigation.



36. Further it is the Defendants submissions that the Plaintiff's suit is bad for failure to disclose previous suits as evident in paragraph 20 of its Plaint and paragraph 3 of the Verifying Affidavit. It is the Defendant's further submissions that the Plaintiff being desirous of an equitable order, are equity bound to disclose the existence of the previous suits.
37. It is the Defendant's submissions that the Plaintiff has not established a case of fraud against it. In elaborating that it acquired the property without fraud, the Defendant enumerated facts of circumstances on how they acquired ownership of the suit property. It submitted that as per the CR12 form produced by the Plaintiff, the Directors who signed the Sale agreement were Directors at the time of the agreement.
38. On resolution, the Defendant submitted that the meeting of April 18, 2003, as produced by the Plaintiff shows the Shareholders resolution to sale the land. It also submitted that if any, the issue of resolution was an internal affair of the Plaintiff.
39. In submitting that fraud ought to have been pleaded, particularized and proved, the Defendant relied on the cases of *Demutilla Nanyama Rurumu vs Salim Mohamed Salim* and *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another*, where the Court found in the former that the burden of leading evidence rests on the one who alleges and in the later holds that fraud must be distinctively pleaded and distinctively proved.
40. The Defendant also submitted that it has sold the suit property to third parties for a valuable consideration. It maintains that it sub-divided the suit land into 84 portions, before the suit was filed. Finally, it submitted that the Plaintiff has not made out a case for fraud and therefore urged this Court to dismiss the suit with cost to the Defendant.
41. Before delving into the merits of this suit, it is important to point out that this Court in its ruling of September 23, 2019, in paragraphs 8-13 analysed the various suits that parties have highlighted. It will thus be guided by the said analysis in determining the issues raised herein.
42. It is also relevant to point out at this stage that the suit property was prior to sub-division referenced to as Kakuzi/kirimiri/ Block-7/37. The Plaintiff was first registered as the proprietor of the suit property and issued with a title deed on June 9, 1989. Subsequently, the Defendant became the registered proprietor on the premise of purchaser interest and was issued with a title deed on February 12, 2010. The Defendant then caused the foregoing land to be sub-divided and sold the subdivisions to the Interested Parties herein.
43. Having analysed the pleadings and the annexures thereto, the testimonies and the documents produced at the hearing hereof, the rival written submissions by parties together with the list of authorities provided the issues for determination by this Court are
  - i. Whether the suit is statutory barred
  - ii. Whether the suit is res judicata
  - iii. Whether the suit is bad in law for non –disclosure of other suits
  - iv. Whether the Sale Agreement entered into on the July 13, 2003 was valid
  - v. Whether there was fraud in the execution of the said agreement
  - vi. Whether the prayers sought by the Plaintiff are merited
  - i. Whether the suit is statutory barred.



44. The Defendant averred in its Defence that the suit herein is statutory barred. The Plaintiff did not submit on this issue. The Defendant submitted that the suit is barred for want of compliance with Sections 7 & 4(1) (a) of the *Limitations of Actions Act*.
45. On the strength of Section 7, the Defendant submitted that the expunged sale agreement was entered into on the July 13, 2003, in the presence of counsel for the purchaser, vendor and interested party. It submits that the suit was filed in 2018, beyond the time stipulated by law.
46. Additionally, and on provisions of Section 4 (1) (a) of the *Limitations of Actions Act*, the Defendant submitted that the cause of action being an issue based on contract ought to have been brought within six years. To determine whether this suit is statutory barred, it is important to look at the said provisions.
47. Section 7 of the *Limitation of Actions Act* provides:
48. 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.
49. Section 4 (1) (a) provides:
- (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—
- (a) Actions founded on contract;
50. A suit must be filed within the required time frame as provided for under the *Limitation of Actions Act*. Whether this suit is Statutory barred for want of compliance with either of the foregoing will require this Court to determine cause of action in the instant suit. Undoubtedly the suit emanates from the controversial sale agreement entered into on July 13, 2003. However, while the suit is for discovery of land, the same is based on of fraud as averred in paragraph 5 of the Plaint. The Plaintiff alleges that the sale agreement entered into on the July 13, 2003, was executed fraudulently.
51. Section 26 of the *Limitation of Actions Act* makes provision on the time within when to bring an action for fraud. It provides:
52. 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,
53. 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.
54. The above provisions was observed by the Court in the case of *Kenya Ports Authority v Timberland (K) Limited* [2017] eKLR, where it was held:
55. That provision expressly states that a prescribed period of limitation for a cause of action does not begin to run where the right of action is concealed by the fraud of the Defendant or his agent until the Plaintiff has discovered the fraud.



56. It is the Plaintiff's averments in paragraph 4 of the Plaintiff that "on or about December, 2016, it came to the knowledge of the new Directors of the Plaintiff elected in April, 2016, that the said land had without knowledge and or consent...."
57. PW1 gave testimony on the circumstances that gave rise to the controversial sale agreement, but added that the contract was rescinded as stated in the letter dated January 22, 2004 "Pexh7". He testified that despite the gentleman agreement letter forwarded to him on behalf of his client, "Pexh8 a & b" the sale agreement remained rescinded. He told this Court he became aware that Prohibitory Orders had been lifted in 2017.
58. PW5 testified that he is the current Chairman of the Plaintiff and only became aware of the transfer in 2016, after a search was carried out and showed that the land had been transferred to the Defendant. He testified that as of 2010, the land was still registered in the name of the Plaintiff. He produced a copy of a search certificate marked "Pexh 20".
59. A perusal of the Certificate shows that a search was done in January 26, 2010, and confirms the land was still registered in the Plaintiff's name. As per the minutes of July 4, 2014, the Chairman informed the meeting that DW1, had not obtained any title since the land was still subject to Court proceedings. There is no evidence showing that indeed the Plaintiff was aware of fraud prior to 2016.
60. To this end, this Court finds and holds that that this suit being based on fraud and then Sections 7 and 4 (1) (b) of the Limitation of Actions Act cannot apply and is therefore the suit is not statutory barred.

**ii. Whether the suit is res judicata and whether the suit is bad in law for non –disclosure of other suits**

61. The issues of res judicata and material non-disclosure were raised by the Defendant in its Notice of Preliminary Objection dated September 13, 2018. It objected to the suit on the basis that the issues raised in the present suit had been canvassed and determined in other suits and also that the Plaintiff was in breach of the provisions of Order 4 Rule (1) (f) of the Civil Procedure Rules.
62. This Court in its ruling of September 23, 2019, determined the Preliminary Objection, and dismissed it for lack of merit. The Court found in paragraph 15 that the current suit is not *res judicata*.
63. In finding so, the Court analysed the various suits cited by the Defendant and observed in paragraph 14 of its ruling that "The issues raised in this suit are based on fraud and illegalities in respect to the transfer of the suit land to the Defendant. The issues were not raised in HCC No 3086 of 1994. It follows that the principles of res judicata have not been ousted." The issue of res judicata was thus determined by this Court conclusively.
64. On material non-disclosure, the issue was equally determined by this Court in the above ruling. The Court found that the fact that the Plaintiff did not plead to the previous suits did not go to the substance of the suit. In an attempt to revive the Preliminary Objection, the Defendant filed for review orders vide a Notice of Motion dated January 16, 2020. The same was however dismissed.
65. The foregoing has been determined by this Court and the Defendant cannot now be heard to raise the same issues on Defence. There is no Appeal that was preferred by the Defendant and inviting this Court to pronounce itself on these issues once again is an abuse of the process of this Court that cannot be entertained. As rightly stated by the Supreme Court in the case of Mawathe Julius Musili v Irshadali Sumra & others, Petition No 16 of 2018, when determining whether an issue raised therein was res judicata

(94) The application was heard, and a Ruling delivered on 8 November 2017: the trial Court holding that the petition was not incurably defective for non-joinder of the Returning



Officer. No appeal was lodged against this decision; and the issue, therefore, was definitively settled by judicial decision.

(95) It is therefore unwarranted for the appellant to maintain that the issue of joinder of the Returning Officer was not *res judicata*. Both superior Courts having found that no appeal was made on this issue of joinder, the matter has to rest.”

66. Guided by the above provisions, this Court finds and holds that it pronounced itself conclusively and distinctively over these issues.

### **iii. Whether the Sale Agreement entered into on the July 13, 2003 was valid.**

67. At the centre of this suit is a controversial agreement dated July 13, 2003, which was entered into between the Plaintiff as the Vendor, the Defendant as the Purchaser and Erastus G Nduhiu for EMAC Enterprises as the Interested Party.

68. Section 3 of the *Contract Act* makes provisions on what constitutes a valid Contract. It provides that:

(3) (3) No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) The contract upon which the suit is founded—

(i) Is in writing;

(ii) Is signed by all the parties thereto; and

(b) The signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

69. For Company’s contracts Section 35 of the *Companies Act* which is a replica of Section 34 of the repealed *Companies Act* Cap, 486, requires that

(1) A contract may be made—

(a) By a company, in writing; or

(b) On behalf of a company, by a person acting under its authority, express or implied.

(2) Any formalities required by law for a contract made by a natural person also apply, unless a contrary intention appears, to a contract made by or on behalf of a company

70. A cursory look at the Sale Agreement produced as evidence before this Court shows that the Sale Agreement was in compliance with the provisions of Section 3(3) of the *Law of Contract Act*. As to whether the same was valid or not, it will be determined by this Court.

71. It is trite law that the elements of a valid contract constitute offer, acceptance and consideration. The foregoing were also enlisted in *Charles Mwirigi Miriti -vs- Thananga Tea Growers Sacco Ltd & Another* [2014] eKLR, as quoted by the Court of Appeal in *NIC Bank Limited v Victor Ochieng Oloo* [2018] eKLR.

72. Morawetz Victor in “The Elements of Contract” in American Bar Association Journal 11 No 2 (1925:87-90 defines an offer as “a proposal of a definite agreement embracing, expressly or by implication, a declaration of willingness of the party making the proposal and an invitation to the other party or parties to enter into an agreement.

73. PW1 testified that the suit property subject to the Sale Agreement was to be sold through a Public Auction, in realization of the Decree of the Court in Nairobi HCC No 3086 of 1994. As per “Pexh5C”,



the suit land was indeed subject to an auction. PW1 however told this Court that the auction was held on May 31, 2002 but there was no purchase.

74. It was his testimony that thereafter the Defendant and his client, Emac Enterprises came to his office where the Defendant expressed interest to purchase the suit property. Even though DW1, did not expressly state how he came to know about the suit property, he testified that he knew the property was attached in realization of a Decree. For an offer to be valid, there is a legal requirement that a party who receives an offer must accept and which acceptance will result into an agreement by parties.
75. According to the Sale Agreement, in clause c, there is an implication that the Plaintiff herein had the intentions of disposing off the land. Further the Defendant herein accepted to buy the suit land on the terms and conditions set out in the agreement. The consideration of the sale agreement was Kshs. 5,000,000/= and which mode of payment was expressly stated in therein. Clause 4.1 of the sale agreement indicates that a sum of Kshs. 2,170,000/= had already been paid to the Interested Party. In clause 4.IV, this Court appreciates that parties therein agreed that the purchaser would pay Kshs. 2,670,000/= to the Interested Party, within seven days of issue of the raising order in accordance with clause 3(ii) & (iii) of the Agreement. There are two acknowledgements showing that the remainder sum was paid up. Whether the sum was paid up or not will be determined later in the judgment herein.
76. The Court in the case of Nelson Kivuvani...v...Yuda Komora & Another, Nairobi HCCC No956 of 1991, opined that an agreement for sale of land
77. The agreement for sale of land which contains the names of the parties, the number of the property, the purchase price and the conditions attached thereto, the obligations, express or implied, of each of the parties and signed and witnessed by two witnesses who signed against their names amount to a valid contract”.
78. The Court is satisfied that the sale agreement contained the foregoing save that counsel witnessed the contract.
79. To this end, this Court finds and holds that the Sale Agreement contains the elements of a valid contract.

#### **iv. Whether there was fraud in the execution of the said agreement**

80. The Plaintiff contends that the Agreement was drawn fraudulently for the reasons inter alia that there existed a prohibitory order, there were no resolutions to sell the land, the executors of the agreement were not the Directors and sale agreement was not stamped among others.
81. On the other hand, the Defendant submitted that it entered into a valid agreement devoid of fraud and maintained that the Plaintiff had not established fraud on its end.
82. Allegations of fraud are grave as held by the Court of Appeal in Mombasa Civ Appeal No 312 of 2012;- *Emfil Limited v Registrar of Titles Mombasa & 2 others* [2014] eKLR, that;
83. Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities”.
84. Fraud is defined under the *Black’s Law Dictionary* 10<sup>th</sup> Edition as “A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment”.
85. Under the *Limitation of Actions Act*, Fraud is defined as “includes conduct which, having regard to some special relationship between the parties concerned, is an unconscionable thing for the one to do towards the other”



86. It is imperative to note that while the Plaintiff pleaded Fraud, it failed to put forward the particulars of fraud. Order 2 Rule 4 of the [Civil Procedure Rules](#) requires that:

4. (1) A party shall in any pleading subsequent to a plaint plead specifically any matter, for example performance, release, payment, fraud, inevitable accident, act of God, any relevant Statute of limitation or any fact showing illegality—

- (a) Which he alleges makes any claim or Defence of the opposite party not maintainable;
- (b) Which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) Which raises issues of fact not arising out of the preceding pleading.

87. The burden of leading evidence as to the existence of fraud lies on the Plaintiff, as the party that alleged the existence of fraud. To determine whether there was fraud or not, this Court will seek to answer the following

- a. Whether the agreement dated July 13, 2003, was signed by the officials of the Plaintiff on behalf of the vendor
- b. Whether there was a resolution to sell the suit land
- c. Whether it was mandatory to obtain the consent of the shareholders
- d. Whether the transfer document was legally executed
- e. Whether the prohibitory orders were lifted through deceit

**a. Whether the agreement dated July 13, 2003 was signed by the Directors of the Plaintiff on behalf of the vendor.**

88. As per the sale agreement, the Vendor was the Plaintiff herein and the agreement was signed on its behalf by the Director and Secretary under the seal of the Company. Under the [Companies Act 2015](#), Section 34, provides that the actions of a Director done in good faith will always bind the Company. Further the Act provides:

- (2) For purposes of subsection (1)—
  - (a) A person deals with a company if the person is a party to a transaction or other act to which the company is a party; and
  - (b) a person dealing with a company—
    - (i) Is not bound to enquire as to any limitation on the powers of the Directors to bind the company or to authorize others to do so;
    - (ii) Is presumed to have acted in good faith unless the contrary is proved; and
    - (iii) Is not to be regarded as having acted in bad faith only because the person knew that a particular act is beyond the powers of the Directors under [the constitution](#) of the company.

89. Under the Repealed [Companies Act](#), Cap 486 Laws of Kenya Section 38 donated power to the Company's Director, Secretary or such person appointed to sign or authenticate documents.



90. The Plaintiff contends that the purported Director and Secretary, Julius Gathuha and Benjamin Kinanga respectively were not the officials of the Company as at the time of the agreement.
91. This Court has perused a number of conflicting documents. PW2 testified that she is the wife of Julius Gatuha and told this Court that the said Julius ceased being a Director of the Company on May 17, 2003, and there is no way he could have signed the sale agreement because he was critically ill at that time.
92. There was no evidence to the testimony of the PW2, save for a Death Certificate which confirms that the Julius Gatuha died on August 13, 2004. This Court has perused a copy of a Supporting Affidavit that was sworn by Julius Mbugua Gatuha on August 10, 2004, and filed on the even date. In paragraph (a) of the Affidavit, the deponent swore that he was a Director and Chairman of the Plaintiff herein. PW2 testified on the Affidavit and told this Court that it was impossible for her husband to sign the Affidavit as he was sick at that time. This Court takes cue of the fact that the Affidavit was sworn three days before the death of Julius Mbugua Gatuha. There is no cogent evidence that shows that the said Julius Mbugua Gatuha was unwell and could not sign any document.
93. According to an extract of the meeting held on May 17, 2003, produced as “Pexh25” the contents therein shows that there were seven Directors of the Company, who were asked to step out as the office bearers were elected. PW 3 was elected the Chairman. What comes out of the meeting is that there were leadership wrangles in the Company. Interestingly, the Registrar of Companies vide a letter dated June 22, 2005, produced as “Pexh27”, addressed to the Plaintiff shows that as per the last annual returns of 2003, the Directors of the Company included PW3 and six others.
94. As if to complicate the matter, there is a Supporting Affidavit filed in Court on November 5, 2004, sworn by Benjamin Kamande Kinanga, claiming to be the Director and Secretary of the Plaintiff herein. PW4 testified that he was a Director from May 17, 2003, but produced no evidence to buttress this.
95. DW1 testified that the sale agreement was signed by Julius Gatuha and Benjamin Kinanga. As per the Letter dated April 7, 2003, addressed to Mugumoini Farmers by the Assistant Registrar of Companies, produced as “Dexh15”, the same indicates that the Directors of the Company included Julius Mbugua Gatuha, Benjamin Kamande Kinanga, among others. This letter corroborates the Defendant’s testimony that he entered into an agreement with Julius Mbugua Gatuha and Benjamin Kamande Kinanga. While this letter conflicts of the Plaintiff’s letter of 2005, produced as “Pexh27” the later does not however indicate which month the returns were made. (when are the annual returns of a company done).
96. There is no evidence tendered before this Court when the annual returns were made to ascertain when the Directors’ indicated in the letter of 2005 “Pexh27” came into office. There are two CR 12 Forms and both have been produced into this Court.
97. Even though the Company Registrar was not called to shade light, this Court notes that the two letters were issued on different dates, while “Pexh27” was issued in 2005 “Dexh15” was issued in 2003. This Court has no reason to doubt the Defendant’s testimony that it entered into the sale agreement with the Julius Mbugua Gatuha and Benjamin Kamande Kinanga.
98. To this end, this Court finds and holds that the sale agreement dated July 13, 2003, was signed by the officials of the Plaintiff on behalf of the vendor.



#### v. Whether there was a resolution to sell the suit land

99. The Plaintiff submitted that there were no resolutions by the shareholders to sale the property, yet the same was sold by private treaty. PW4 testified that it was the procedure of the Company that they ought to have called the members of the company before any sell could happen. This Court perused no memorandum and/or articles of association of the Plaintiff to determine the procedure of disposing Company asset.
100. However, this Court has perused an extract of minutes from the Plaintiff's Company held on the April 18, 2003. The agenda of the meeting was for sale of the suit property. As per minute 4, the Board authorized the sale of the suit property and thereafter signed a resolution to sale the land to the Defendant herein. If at all the Directors exceeded their powers, the Plaintiff through its members or other officials had the right to move a competent Court to challenge the actions of the Directors.
101. The Plaintiff cannot now be heard to claim there was no resolution prior to the sale, when they have not demonstrated what the Articles and/ Memorandum required of the officials before disposing off property. Thus the Court associates itself with the pronouncement of the Court of Appeal in *Samuel Mureithi Murioki & Another ... Vs... Kamabuba Limited* [2018] eKLR, where it held:
102. We agree with the respondent's submission that whether a company has or has not complied with its internal procedures as to execution of contracts is an internal management issue and cannot afford a defence to a third party dealing with the company. This is an old principle first propounded in the case of *Royal British Bank v. Turquand* 1856 A 11 E.R. 886 and now commonly known as the rule of Turquand's case. In the case of *Ashok Morjaria v Kenya Batteries* [1981] Ltd. & 2 others, [2002] eKLR, the principle was reiterated thus:
103. The Court proceeded further to hold
104. So where, as here, a Director of a company executes a loan agreement on behalf of the company and stamps it with a company stamp, as the second Defendant did, the company cannot wriggle away from its obligations to pay by contending that the borrowing was not authorized, or one Director's signature was not enough or the company seal was not affixed to the agreement if what he did was within his ostensible authority as Director of the company as in deed it was."
105. Thus this Court finds and holds that there were resolutions by the Company authorizing the sale of the suit property. In finding so, this Court also finds that there was no cogent evidence placed before it to show that the sale required a special resolution by members. While the size of the land lends credence to the idea that special resolution may be needed, this Court appreciates that Directors too have power to transact on behalf of the Company. This Court cannot operate on assumption, but on evidence and which evidence presently can be through production of Articles of Association or Memorandum of Articles.

#### vi. Whether the transfer document was legally executed

106. The Plaintiff submitted that the transfer form was defective in form and substance. It submitted that the form did not have the details of the transferor to wit ID, PIN and name. This was confirmed by DW1 during cross-examination. He told this Court however that the transfer was signed by the Chairman and Secretary Francis Ngone and Peter Ngone.
107. Section 44(5) of the *Land Registration Act* provides:
- (5) The transferee shall in addition to executing the instrument, attach the following—



- (a) A copy of an identity card or passport; and
- (b) A copy of a Personal Identification Number certificate;
- (c) Passport size photographs;
- (d) Where applicable, a marriage certificate; or
- (e) Such other identification documents as the Cabinet Secretary may prescribe.

108. This Court has perused the copy of transfer form produced by the Plaintiff as “Pexh23” and Defendant as “Dexh12”. The said exhibits shows the same was registered on February 12, 2010. It is glaring that some details were not indicated on the form including PIN Certificates and Identification Numbers of the parties.
109. However, this Court notes that the document was dully witnessed by Enoch Chacha Mwita Advocates and Tom M. Getange Advocates, who were not called before this Court to testify. Further there are photographs annexed to the form and this Court believes that these are persons that can be identified.
110. The Defendant testified that he is known to the Directors of the Plaintiff and also told this Court that the transfer was signed by the Chairman and Secretary Francis Ngone and Peter Ngone. According to the Order of Court of August 1, 2005, produced as “Pexh26” the foregoing were officials of the Plaintiff. The Plaintiff did not dispute that the persons whose photographs are attached to the transfer documents were not the aforementioned officials.
111. Additionally, a reading of Section 44(5) of the *Land Registration Act*, requires that these documents be attached. As to whether the documents need to be replicated on the transfer form while filling is not clear
112. While the Plaintiff asserted that the Defendant did not pay the requisite Stamp Duty, on the face of the Transfer Documents, this Court notes a Stamp indicating stamp duty was collected. This Court cannot infer fraud on the mere fact that the purchase price was not properly indicated. Therefore, the Court finds that the failure to input the ID and PIN Certificate details on the transfer form does not make the transfer form invalid and of no legal value. This Court would have held otherwise had it been established that the documents contemplated in Section 44(5) of the *Land Registration Act*, above were not attached.
113. Furthermore, this Court takes note that the transfer form produced by the Plaintiff is a Certified copy issued by the District Land Registrar, Thika. It was been settled by Court as to the authenticity of documents contained in the Land Register in Civil Appeal No 156 of 123 *Elizabeth Wambui Gitbinji & 29 others VS Kenya Urban Roads Authority & 4 others* [2019] eKLR the Court held:

...that the land register must mirror all currently active registerable interests that affect a particular parcel of land; that the Government, as the keeper of the master record of all land in Kenya and their owners, guarantees indefeasibility of all rights and interests shown in the land register against the entire world; and that in case of loss arising from an error in registration, the Government guarantees the person affected of compensation”

114. Having been so guided, this Court finds and holds that the transfer document was legally executed.

**(d) Whether the prohibitory orders were lifted through deceit.**

115. PW1 testified that EMAC Enterprise, his client had placed a Prohibitory Order, over the suit property. As per the Green Card produced as “Pexh24”, the Order was registered as entry 4, pursuant to the



proceedings in Nairobi HCC No 3086 of 1994, for a claim of Kshs. 4,457,015.80. All the parties agree to the fact that there was a prohibitory order.

116. As a condition for payment of the monies to the Interested Party, in the Sale Agreement, the Interested Party was to cause removal of the Prohibitory Order. PW1 testified that there was no way the prohibition order could have been removed without his knowledge, yet he was counsel on record for the Interested Party in the suit.
117. This Court has had the benefit of perusing the Court Order of December 17, 2009, that lifted the Prohibitory Order. The Defendant was not party to the said suit and the consent was entered into between the Plaintiff herein and Emac Enterprise. The Order was in consideration of the application dated August 9, 2004, by the Plaintiff herein wherein it indicated their intention of selling the land to the Defendant herein to settle a debt.
118. There is no evidence that the said order was challenged through an Appeal, set aside or reviewed. As it is, the said Order is valid and this Court cannot sit on the Order to establish whether it was obtained by deceit. The Plaintiff had the option of moving the said Court for review. This Court finds no basis for holding that the said Orders were lifted deceitfully.
119. PW1 testified that the Sale Agreement had been rescinded and there was no way the agreement could be executed. It appears the agreement was rescinded for non-payment of monies as per the Sale Agreement. The effect of rescission was discussed by the Court in *Mwangi v Kiiru* [1987] eKLR, where the Court took into consideration Chitty on Contracts, 25th Edition, volume one, under the heading Discharge by Breach states: Paragraph 1591 on page 876
120. One party to a contract may, by reason of the other's breach be entitled to treat himself as discharged from liability further to perform his own unperformed obligations under the contract..... The rule is usually stated as follows: Any breach of contract gives rise to a cause of action; not every breach gives a discharge from liability. Thus the question ....is whether a party who admittedly has a claim for damages is relieved from further performance by the other party's breach. Secondly although sometimes the innocent party is referred to as "rescinding" the contract and the contract as being "terminated" by the breach, it is clear that the contract is not rescinded ab initio. The innocent party or in some cases both parties are excused from further performance of their primary obligations under the contract; but there is then substituted for the primary obligations of the party in default a secondary obligation to pay monetary compensation for his non-performance."
121. The Interested Party and the purchaser entered into an agreement which no law prohibits them from doing so. As it was then, the contract became operational and parties executed it through making payments as agreed. There are acknowledgement notes produced before this Court showing monies were paid as per the Sale Agreement. The monies were paid on account of the debt owed by the Plaintiff herein to Emac Enterprise. There is no complaint on the part of Emac Enterprise, that its monies remain unpaid. As a matter of record, the Plaintiff owed money to the said Emac Enterprise and they have opted not to produce evidence as to whether the debt was settled or not. This Court finds a probability that the Defendant herein duly settled the Plaintiff's debt emanating from Nairobi HCC No 3086 of 1994.

#### **vi. Whether the prayers sought by the Plaintiff are merited**

122. As found hereinabove, the onus of leading evidence as to the existence of fraud rested with the Plaintiff. This Court agrees with the submissions by the Plaintiff on the standard of proof in cases of fraud. This standard was well elaborated in the case of *Fatuma Ali Omar & Another vs Omar Ali Omar & 2 Other*, supra as submitted by the Plaintiff. Even though it is its submission that this burden shifted to



the Defendant, this Court finds that the Plaintiff's did not at any point shift the evidential burden to the Defendant and even if it did, the Defendant discharged its burden to the required standard.

123. The Supreme Court had the following to state on shifting of evidentiary burden in Presidential Election Petition No 1 of 2017 between *Raila Amolo Odinga & Another v IEBC & 2 Others* (2017) eKLR

(132) Though the legal and evidential burden of establishing the facts and contentions which will support a party's case is static and "remains constant through a trial with the Plaintiff, however, "depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced.

124. It would be prudent to conclude that the Plaintiff did not discharge their evidentiary burden of proof to the standard required. The Plaintiff invited this Court to treat the Defendant's evidence as contradictory evidence.

125. The Defendant has an indefeasible title within the provisions of Section 26 of the *Land Registration Act* and such a title is protected. The case of *Alice Chemutai Too – Vs – Nickson Kipkurui Korir & 2 Others* [2015] eKLR well elaborated when the protection may be taken away. The Court held that

126. 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 Makeri 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."

127. In *Charles Karatbe Kiarie & 2 others v Administrators of the Estate of John Wallace Mathare (Deceased) & 5 others* [2013] Eklr, the Court held:

We have taken this long route in order to explain that it has always been the law under the Registration of Titles Act and based on the Torrens system, that the title of a bona fide purchaser for value and without notice of fraud could not be impeached. This is what the judges in the Uganda case of *Lwanga V. Registrar of Titles, Misc. Cause No 7A of 1977 (1980) HCB 24*, called the paradox of registered conveyancing – that the registration obtained by fraud was void and yet capable of becoming a good root of title to a bona fide purchaser for value. Because of the seriousness of allegation of fraud, a criminal act, the



burden of proof is on the party who alleges it and the standard of proof is more than a mere balance of probabilities. Fraud, for that reason, is treated as matter of evidence”.

128. Based on the evidence analysed above and on the case laws cited, this Court finds that the Plaintiff failed to discharge their burden of proof on the required standard of balance of probability. Thus this Court holds that no case for fraud was made out against the Defendant.
129. Further, it is evident that the Defendant herein after purchase of the suit property, subdivided the said parcel of land into several portions and sold them to other third parties. The Plaintiff did not dispute that allegations or controvert the same. These third Parties are allegedly in possession of their respective parcels of land. The said third Parties, who have proprietary interest on the said property as purchasers were not made parties to the suit or served with the proceedings. It would be contrary to the rule of natural justice to issue or grant Orders that would affect their proprietary interests without being granted an opportunity to be heard. The Defendant produced said sale agreements, as D. exhibits. Failure to join the said purchasers as Parties in this suit also make it difficult for this court to grant an Order of cancellation of the titles herein without granting the said parties an opportunity to appear in Court. See the case of *Pashito Holdings Limited & Another vs Paul Ndungu & 2 Others*[1197]eKLR where the Court of Appeal stated that:
130. The rule of “audi alteram partem”, which literally means hear the other side, is a rule of natural justice. According to Jowitts Dictionary of English Law (2nd Edition)

“It is an indispensable requirement of justice that the party who had to decide shall hear both sides, giving each an opportunity of hearing what is urged against him”.
131. This Court takes observance of the number of suits filed by the Plaintiff in an attempt to retain ownership of the suit property. On the accessory, it notes the glaring squabbles that existed within the Plaintiff and appreciates that such could negate the filing of suits. But what is constant is the fact that the Plaintiff owed Emac Enterprise Limited, monies which was paid by the Defendant herein for and on behalf of the Plaintiff. There is no reason that the Defendant could be paying money to Emac Enterprise Limited, that has been presented to this Court. To this end, this Court finds and holds that Plaintiff is not entitled to the prayers sought and shall thus proceed to dismiss the Plaintiff’s suit.

#### **vi. Who should pay Costs**

132. Section 27 of the *Civil Procedure Act* requires that costs to follow event, but the Court have the discretion to rule otherwise. The Court in Machakos ELC Petition No 6 of 2013: *Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others* [2013] eKLR quoted the case of *Levben Products vs Alexander Films (SA) (PTY)Ltd* 1957 (4) SA 225 (SR) at 227 and held:

“It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (FrippvsGibbon & Co., 1913 AD D 354). But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”
133. This Court notes the circumstances that led to the findings of this Court and shall exercise its discretion and directs that each party should bear its own costs.



134. Having now carefully considered the available evidence, the Court finds and holds that the Plaintiff has failed to prove its case against the Defendant herein on the required standard of balance of probabilities. For the above reasons, the Plaintiff's Suit as stated in the Plaint dated August 16, 2018, is dismissed entirely with an Order that each party herein should bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2022.**

**L. GACHERU**

**JUDGE**

Delivered online in the presence of:

Joel Njonjo - Court Assistant

Mrs Beaco for the Plaintiff

Mr. Ndurumo for the Defendant

Mr. Munene holding brief for Mr. Mbugua for the 1<sup>st</sup> & 2<sup>nd</sup> Interested Party

Mr. Wanjohi for 3<sup>rd</sup> – 6<sup>th</sup> Interested Parties.

L. GACHERU

JUDGE

29/9/2022

