



**Sheikh v Board of Governors.Sangalo Institute of Science & Technology & another (Environment and Land Appeal 16 of 2021) [2022] KEELC 14491 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 14491 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND APPEAL 16 OF 2021  
EC CHERONO, J  
OCTOBER 31, 2022**

**BETWEEN**

**AMIN ALI SHEIKH ..... APPELLANT**

**AND**

**BOARD OF GOVERNORS.SANGALO INSTITUTE OF SCIENCE &  
TECHNOLOGY ..... 1<sup>ST</sup> RESPONDENT**

**ETHICS & ANTI CORRUPTION COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

*(An appeal from the Judgment of Hon. S.O Magute, Principal Magistrate in Bungoma  
Chief Magistrates' court CMELC Case NO. 31 of 2019 Delivered on 02/09/2021)*

**JUDGMENT**

**Introduction**

1. Amin Ali Sheikh, the appellant herein was the plaintiff in the case before the Magistrate Court being CMELC Case No 31 of 2019. By a plaint dated April 4, 2019, the plaintiff/appellant had sought orders for *inter-alia* a declaration that he was the *bona fide* proprietor of land parcel No Bungoma Township/570. The plaintiff also sought for a permanent injunction order restraining the defendants/respondents whether by themselves, agents, servants or otherwise from entering, remaining or otherwise trespassing on the suit land parcel No Bungoma/township/570.
2. The defendant/respondent filed defence and counter-claim on May 17, 2019. While denying the plaintiff's/appellant's suit, the defendant/respondent counter-claimed against the plaintiff/appellant for a declaration that the transfer of land parcel No Bungoma/township/570 and registration of the same in the name of the plaintiff was irregular, unlawful and fraudulent. In addition, the defendant/respondent sought an order for cancellation of registration of the plaintiff/appellant from the register of the suit land parcel No Bungoma/township/570 and be reverted back in the name of the defendant/respondent



3. By a notice of motion application dated July 11, 2019, Ethics and Anti-Corruption Commission sought to be joined as an interested party. That application was subsequently allowed by consent on September 4, 2019.
4. The suit was heard between September 30, 2020 and August 4, 2021. The plaintiff testified alone and closed his case. The 2<sup>nd</sup> defendant on her part called three (3) witnesses while the interested party called one witness.
5. Upon considering the evidence and the applicable law, the trial magistrate rendered himself on September 2, 2021 by dismissing the plaintiff's/appellant's suit and allowing the defendant's/respondent's counter-claim. The plaintiff/appellant was dissatisfied with the verdict of the trial court and preferred the present appeal citing the following grounds of appeal;
  1. The learned trial magistrate erred in law and fact by finding that the appellant failed to prove his case on a balance of probability despite overwhelming evidence to the contrary.
  2. The learned trial magistrate erred in law and in fact in holding that the appellant entered into agreement form purchase of plot No 570 Municipality and not Bungoma Township/570
    - 2(a) The learned trial magistrate erred in law and in fact by disregarding substantive justice in favour of over technicalities
  3. The learned trial magistrate erred in law and in fact in holding that George Monari lawfully sold the suit land to the Respondent without considering whether the power of attorney used could be used to transfer interest in land, an issue in dispute.
  4. The learned trial magistrate erred in law and in fact in faulting the appellant for not calling Nadeem Mohammed to testify when it is on record that Nadeem Mohammed was dead.
  5. The learned trial magistrate erred in law and in fact in failing to appreciate the import of 2<sup>nd</sup> respondent's exhibit 20 and appellant's exhibit 11 in holding that the appellant's exhibit 4 is not applicable in the suit.
  6. The learned trial magistrate erred in law and in fact in failing to appreciate and take into consideration the evidence adduced by the appellant thereby making a wrong decision in dismissing the appellant's suit.
  7. The learned trial magistrate erred in law and in fact in failing to keep in mind the importance and purpose of parties' pleadings resulting to an erroneous judgment.
  8. The learned trial magistrate erred in law and in fact in finding that the respondent's counter-claim was proved to the required standard.
    - 8 (1) The learned trial magistrate erred in law and in fact by disregarding the legal principle binding parties to their pleadings and that evidence led which does not support the pleadings must be disregarded in giving weight to evidence not supported by pleadings
  9. The trial magistrate erred in law and in fact in failing to consider appellant's submissions.
  10. The learned trial magistrate erred in law and in fact in failing to hold that the 1<sup>st</sup> respondent had not proven particulars of fraud enumerated in its counter-claim to the required standards.
  11. The learned trial magistrate erred in law and in fact in failing to keep in mind the importance and purpose of impartiality in the administration of justice when analysing evidence presented before him



12. The learned trial magistrate erred in law and in fact in arriving at a judgment that was against the weight of the evidence on record
  13. The learned trial magistrate erred in law and in fact in awarding the 1<sup>st</sup> respondent costs of the suit and counter-claim given that the said respondent had not proved its case to the required standards.
6. It is now settled that the sole responsibility of a first appellate court is to re-evaluate, re analyse and reconsider the extract of the record and come up with its own conclusion as held in the case of *Selle v Associated Motor Boat Company*, (1968) EA 123 at page 126 where it was held;
- “---this court must consider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen or heard the witnesses and should make due allowance in that respect---”
7. From the extract of the proceedings, the appellant who was the plaintiff in the former suit testified on September 30, 2020 by adopting his witness statement dated April 4, 2019. In his testimony, the plaintiff stated that he was the registered proprietor of land parcel No Bungoma/township/570 having bought the same from one Nadeem Mohamed on April 18, 2017. He further stated that in the month of January 2019, the defendant/respondent fenced off the suit property and erected a sign board claiming ownership of the property. He was referred a list of documents dated April 14, 2019, a second list of documents dated May 20, 2019 and a third list of documents dated January 23, 2020 containing 10 items in total which he produced as p-exhibits 1 2, 3, 4, 5, 6, 7, 8, 8, &10 respectively.
  8. On cross-examination, the plaintiff told the trial court that he did not conduct a search before he bought the suit property from Nadeem Mohamed. The plaintiff further admitted that the sale agreement dated April 18, 2017 and produced as p-exhibit No 3 does not show where the land he had purchased was situated or to be found. The plaintiff also stated that the purchase price for the suit property was Kshs 10,000,000/=. He said that at the time of executing the sale agreement, he had paid the seller Kshs 3,000,000/ by cash and the balance of Kshs 7000000/= was to be paid within six months from the date of the agreement. He said that he paid the balance through cheque and cash between the date of the agreement and 2018. He said that the seller transferred the suit land to him before he signed or entered into the sale agreement. He referred to the certificate of lease dated April 26, 2017 which confirms the position. He said that Nadeem did not tell him that the land had been sold earlier.
  9. The plaintiff further said that before he bought the suit property, he learnt that the same belonged to Sang’alo Institute of technology. He said that he called the principal of Sang’alo Institute of Science & Technology, one Chrisantus Wanyonyi and notified him that Nadeem was selling the land for the institute and he replied that he was not in the office and that he was going to check the following day. He asked Nadeem to sort out the issue with the principal. The plaintiff also stated that he was a board member of the Institute between 2013 and 2016. He also admitted in cross-examination that he used to be a signatory of some of the accounts of the institute. He further admitted that he was a member of the committee of the Town Campus between 2014 and 2015. While he was a member of the committee of the Town Campus between 2014 and 2015, they agreed to develop the suit property
  10. The defendant on the other hand called 3 witnesses. PW1 was Chrisantus Wanyonyi who adopted his witness statement dated August 26, 2019. He stated that he was the former principal and secretary to the Board of Sang’alo Institute of Science & technology between the year 2012 and September, 2018. He recalled that in the year 2012, the Institute purchased a town plot known as Bungoma/ municipality/570 and was issued with a certificate of Title.



11. He stated that before the plot was purchased, the Board discussed the issue in several Board of Governors meetings where two plots were identified. They then carried out due diligence to establish the actual position of the two parcels. He said that the suit property parcel No Bungoma Municipality/570 was one of the plots the institute identified and an official search was conducted to establish the actual ownership of the plot.
12. The witness further stated that the institute subsequently engaged the firm of Bulimo & Co & Advocates to act for them. The Institute also engaged the services of Chrisca Real Estates to establish the true value of the property before buying it and a valuation report was prepared. They later established that the suit property was registered in the name of one Nadeem Mohammed whom they were advised had been deported to Canada but had donated a power of Attorney to one George Monari to act on his behalf. He said that the Chairman at that time doubted the alleged power of Attorney and George Monari was invited to one of the Board meetings after which the legal adviser to the Institute advised them that the power of attorney was genuine and that George Monari was able to transact on behalf of Nadeem Mohammed. He said that a sale agreement was then prepared and signed by George Monari as the seller on one part and the institute represented by him and Murambi Njibwakale (as representatives of the institution) of the other part on November 22, 2012. A sum of three million was paid to George Monari as initial purchase price leaving a balance of Kenya shillings 1.4 million.
13. The witness said that the Institute defaulted in paying the balance of the purchase price and were served with a written demand letter by the vendor's lawyer M/S Areba and Company Advocates. The Institute subsequently paid the balance of the purchase price as well as the stamp duty fees through the firm of Bulimo & Company Advocates after which they were issued with the title deed. He stated that the plaintiff in the former suit and also the appellant in this appeal Dr. Amin Ali Sheik was appointed to the Board of Governors on December 21, 2012 and on January 28, 2013, the said Dr Amin Ali Sheik and 3 other members were elected as signatories to the institute's bank accounts.
14. The witness further said that Dr Amin Ali Sheik was appointed as a member to the Town Campus sub-committee together with Engineer Benard Masake and were part of the team making plans and deliberations on the development of the suit land.
15. He said that after the institute acquired the title to the suit land, they became eager to develop the same and went ahead and got construction plans done and even sought the approval from the concerned authorities. To have the plans approved, they needed to confirm ownership of the plot and that was when the town campus coordinator asked for the title and it was discovered to be missing. Since he was in Nairobi at the time, the Deputy Principal made a report to the police about the lost title. On June 17, 2015, the Deputy Principal also made a report to the Ministry of lands for the replacement of the lost title. He stated that by the time he left the Institute in 2018, the lost title had not been replaced.
16. The second defence witness was Roselyne Muleshe who adopted in evidence her witness statement dated January 6, 2020. The witness stated that she was the current Principal of Sang'alo Institute of Science and Technology having taken over from Mr Chrisantus Wanyonyi upon retirement on September 9, 2018. She stated that during the handing over, She was informed about the parcel of land the Institute had acquired in Bungoma town and was handed the file containing all documents and correspondences. She was further informed that the title deed in respect of the property had gone missing and that a report had been made at the Bungoma Police Station and that the matter was under investigations. She said that during one of the board meeting sometime in 2018, She was advised to fence of the suit land and put up a disclaimer to warn members of the public from any encroachment on the institute's property. In early 2019, She enforced the directive by erecting a disclaimer warning members of the public that the said land was a property of the Institute



17. The third defence witness was Allan Mbaabu, the land Registrar, Bungoma. He testified that on April 26, 2017, the title deed for Sang'alo Institute was cancelled through a letter by the DCIO Bungoma South dated April 24, 2017 and thereafter the land was registered in the name of Amin Sheik on April 26, 2017. The witness stated that the land Registrar has no powers to cancel a title deed and that a title deed can only be cancelled through a court order. He produced copies of both the green and white card as D-exhibit No 13 & 14 respectively.
18. Ethics & Anti-Corruption Commission who was later joined as an interested party called one witness namely, Jackson Gitonga. The said witness referred to his two witness statements dated October 29, 2019 and September 14, 2020 respectively which he adopted in his evidence. He is the investigating officer in respect of a report made by the 1<sup>st</sup> defendant in respect of the suit property. He said that he had not concluded his investigations but after the conclusion of his investigations, he would be recommending charges against the plaintiff/appellant and the land registrar for land fraud charges.
19. Having carefully gone through the extract of the court record and the impugned judgment by the learned trial magistrate, I now consider the 13 grounds of this appeal as hereunder;

**1.The learned trial Magistrate erred in law and fact by finding that the appellant failed to prove his case on a balance of probability despite overwhelming evidence to the contrary.**

20. I have looked at the impugned judgment of the trial magistrate and the reasons for the decision. in the said judgment, the trial magistrate framed two issues. The first issue seeks to answer the question whether the plaintiff had proved his case on the required threshold which she answered in the negative. I agree with her finding that the plaintiff did not prove his on the required standard. First, the sale agreement dated April 18, 2017 does not describe the subject property of the agreement. Looking at the certificate of lease issued to the plaintiff, it shows that the same was given on April 26, 2017. A simple arithmetic indicates that the sale agreement was entered long after the certificate of lease had been issued. That points to one irresistible conclusion that the certificate of lease was issued without a valid contract.
21. Section 3 (3) of the [Law of Contract Act](#) cap 22 laws of Kenya provides as follows;
 

“No suit shall be brought upon a contract for the disposition of an interest in land unless;

  - i. Is in writing
  - ii. Is signed by all the parties thereto; and

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

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the [Auctioneers Act](#), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”
22. Flowing from the foregoing, it is clear that the certificate of lease issued to the plaintiff on April 26, 2017 is null and void and of no legal consequence, having been issued irregularly, illegally and unprocedurally. It is also a statutory requirement that stamp duty must be paid for all land transactions unless exempted by the law. The plaintiff did not produce any payment receipt or exemption thereof. There is also no evidence that consideration as a condition for a legal and valid contract was paid to the seller. The plaintiff also admitted that he did not conduct a search to establish the actual registered



proprietor of the suit property before he purchased. If the plaintiff did due diligence, he could have found out that Sang'alo Institute of Science & Technology, the 1<sup>st</sup> respondent herein and not Mohamed Nadeem was the registered proprietor of the property at the time of the purported sale.

23. It is also instructive to note that the land registrar purported to cancel the defendant's title (entry No 8) on April 26, 2017 through a letter by the DCIO dated April 24, 2017 on allegations of fraud without authority or powers. It therefore follows that the purported cancellation and subsequent registration and issuance of a certificate of lease in favour of the plaintiff is fraudulent, illegal, irregular, unlawful, null and void.
24. From my re-evaluation of the extract of the record on the first ground, I find that the trial magistrate was right in his evaluation and analysis that the plaintiff had not proved his claim on the required standard.

**2. The learned trial Magistrate erred in law and in fact in holding that the appellant entered into agreement form purchase of plot NO. 570 Municipality and not Bungoma Township/570**

25. The sale agreement produced by the plaintiff in evidence dated April 18, 2017 describes the subject matter of the sale transaction as plot No 570 Municipality. However, the agreement does not indicate the measurements and/acreage of the interest in the land being sold. The lease agreement also produced by the plaintiff issued on April 26, 2017 relates to land parcel No Bungoma/township measuring approximately 0.0563 Ha. The two documents in my view do not refer to one and the same property. The trial magistrate properly directed her mind in holding that the appellant entered into a sale transaction for the purchase of plot No 570 Municipality and not No Bungoma/township/570.

**2(a) The learned trial magistrate erred in law and in fact by disregarding substantive justice in favour of over technicalities.**

26. Article 159(2) (d) provides that judicial authority vests in and shall be exercised by the courts and tribunals and to be guided by principles which include administering justice without undue regard to procedural technicalities. The description of the interest which was the subject of the sale agreement dated April 18, 2017 is not the same with the property described in the certificate of lease issued to the plaintiff/appellant on April 26, 2017. The difference in the two properties is not a technicality contemplated under article 159 (2) (b) of the Constitution of Kenya, 2010. It is a matter that goes into the substance of the suit.

**3. The learned trial magistrate erred in law and in fact in holding that George Monari lawfully sold suit land to the respondent without considering whether power of Attorney used could be used to transfer interest in land, an issue in dispute.**

27. From the extract of the record, Sang'alo Institute of Science and Technology was registered as proprietor of the suit land parcel No Bungoma/township/570 on November 28, 2013 and on the same date, she was issued with a title deed. By the stroke of a pen, the Land Registrar Bungoma through a letter issued by the DCIO Bungoma South cancelled the 1<sup>st</sup> defendant's title on allegations of fraud. I have already re-considered the issue by finding that the purported cancellation was unlawful, illegal, unprocedural, null and void. It was the duty of any court or tribunal including the trial magistrate to restore the 1<sup>st</sup> defendant's title deed. The issue whether the sale of the suit property to the 1<sup>st</sup> defendant on the basis of the power of attorney by George Monari was lawful was not an issue for determination before the trial court. The plaintiff had not challenged the title issued to the 1<sup>st</sup> defendant. The trial magistrate had no basis to make a determination on an issue that did not arise from the pleadings.



**4. The learned trial Magistrate erred in law and in fact in faulting the appellant for not calling Nadeem Mohammed to testify when it is on record that Nadeem Mohammed was dead.**

28. Section 107 of the *Evidence Act* cap 80 laws of Kenya provides as follows;

“ 107(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

29. The plaintiff/appellant in the former suit had sought for an order of a declaration that he was the *bona fide* proprietor of land parcel No Bungoma/township/570. The 1<sup>st</sup> defendant filed a statement of defence and counter-claim to the plaintiff's claim. Both the plaintiff and the produced documents of title as prove of ownership. Where a title is under challenge, it is not enough for the owner to dangle the very same title under attack as prove of ownership. It behoves him to establish the root of such title. That becomes even more compelling especially where there is double allocation over the same parcel of land. The trial magistrate was proper in her finding that the plaintiff had fallen short of the standard of prove required. No proof was produced before the trial magistrate showing that Mohammed Nadeem had passed on. Even assuming that the said Mohammed Nadeem had passed on, his personal representatives would have been called as a witness. On this ground, I find the trial magistrate did not err.

**5. The learned trial magistrate erred in law and in fact in failing to appreciate the import of 2<sup>nd</sup> respondent's exhibit 20 and appellant's exhibit 11 in holding that appellant's exhibit 4 is not applicable in the suit.**

30. The land registrar, Bungoma cancelled the 1<sup>st</sup> defendant's title deed pursuant to a letter issued by the DCIO, Bungoma South dated April 24, 2017. The plaintiff produced exhibits in support of his claim. P-Exhibit No 11 was a letter of undertaking by one George Monari Maiso dated April 28, 2017. By a letter dated April 20, 2017, the County Government of Bungoma stated that the consent to sell the suit land had been granted. In her analysis, the trial magistrate held that the said letter did not apply. At page 47 of the impugned judgment, the learned magistrate observed as follows;

“---I have already held that George Moreri had lawfully sold the land parcel No Bungoma/ municipality/570 to the defendant in the year 2013, Mohamed Nadeem having given George Moreri the power of attorney it implies that he is the one who had sold the suit property to the defendant. He had no capacity again to run around and purport to sell the same parcel of land to another buyer (plaintiff herein) the letter dated April 20, 2017 from the County Government of Bungoma stating that the consent to sell the suit land had been granted will not apply herein---”

31. I find that the trial magistrate properly evaluated and analysed the evidence and the applicable law in holding that the letter by the county government of Bungoma dated April 20, 2017 was of no evidentiary value to the plaintiff since the same land they were purporting to have given consent was not available at the time as the same had been transferred and duly registered in the name of Sang'alo Institute of Science and Technology, the 1<sup>st</sup> defendant herein.

**Ground 6, 9 & 12**

6. The learned trial magistrate erred in law and in fact in failing to appreciate and take into consideration the evidence adduced by the appellant thereby making a wrong decision in dismissing the appellant's suit.



9. The learned trial magistrate erred in law and in fact in failing to consider appellant's submissions
12. The learned trial magistrate erred in law and in fact in arriving at a judgment that was against the weight of the evidence on record

The trial magistrate framed two issues for determination in her judgment. The first issue was whether the plaintiff/appellant had proved his case on a balance of probability. From extract of the court record, it is apparent that the testimony of the parties and the witnesses as well as the exhibits were considered by the trial magistrate in the impugned judgment. This ground therefore fails.

#### **Ground 7 & 8(1)**

7. The learned trial magistrate erred in law and in fact in failing to keep in mind the importance and purpose of parties' pleadings resulting to an erroneous judgment.

8.

- (1) The learned trial magistrate erred in law and in fact by disregarding the legal principal binding parties to their pleadings and that evidence led which does not support the pleadings must be disregarded in giving weight to evidence not supported by pleadings.

Pleadings can be defined as written presentation by a litigant in a lawsuit setting out a brief statement of facts upon which he claims legal relief or challenges the claim of his opponent. A pleading includes claims and counterclaims but not the evidence by which the litigant intends to prove his case. The trial magistrate in the former suit framed issues based on the party's pleadings which She properly analysed and evaluated in the judgment. These two grounds also fail

#### **Ground 8 & 10**

8. The learned trial magistrate erred in law and in fact in finding that the respondent's counterclaim was proved to the required standard.
10. The learned trial magistrate erred in law and in fact in failing to hold that the 1<sup>st</sup> respondent had not proven particulars of fraud enumerated in its counterclaim to the required standard.

The second issue framed by the trial magistrate for determination was whether the defendant had proved its counterclaim. In answering that question, the learned trial magistrate at page 49 of her judgment stated as follows;

“The defendant tendered sufficient evidence to show that it purchased the suit land upon paying the full consideration of Kshs 4.4 million. After the land sale transaction was concluded the defendant was registered as the proprietor of land parcel No Bungoma/ municipality/570. The Title issued to the defendant was illegally cancelled by the land registrar on April 26, 2017---”

From the excerpt of the impugned judgment, it clearly shows that the trial magistrate evaluated the evidence adduced by both the plaintiff/appellant and the defendant/respondent and gave reasons for decision in her judgment.

11. The learned trial magistrate erred in law and in fact in failing to keep in mind the importance and purpose of impartiality in the administration of justice when analysing evidence presented before him.



32. Section 50 (1) of the Constitution of Kenya 2010 provides for the right of everyone to have any dispute that can be resolved by the application of law in a fair and public hearing before a court or if appropriate, another independent and impartial tribunal.
33. Impartiality is one of the Bangalore principles defining a judicial officer's role in the administration of justice. The reason for this is that in a constitutional order grounded on the rule of law, it is imperative that judicial officers make decisions in accordance with the facts by the parties and their witnesses as well as the applicable law and not personal bias or conflict of interests. It is not enough that judicial officers conduct court proceedings and hearing in an impartial manner but the public must perceive them to be so. It is instructive that from the extract of the court record, the appellant did not raise any complaint towards the conduct of the trial magistrate at any time before or during the trial. It is also instructive to note that there is nothing on record showing that the appellant at any time applied to the trial magistrate to recuse himself from the case on account of bias. My view is that if the appellant perceived that the trial magistrate was not impartial toward him in the course of the trial, he should have applied for him to recuse himself and if it is declined, then prefer an appeal. Having not raised a complaint of bias or likelihood of bias at any stage before or during or even after the trial, I find this ground without basis and the same equally falls by the wayside.
34. The learned trial magistrate erred in law and in fact in awarding the 1<sup>st</sup> respondent costs of the suit and counter-claim given that the said respondent had not proved its case to the requisite standards.

Section 27(1) of the Civil Procedure Act provides as follows;

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any written law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

35. Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”
36. It is trite law that ordinarily, costs in a case are awarded to the successful party unless good reasons are given by the trial court/judge. Costs is a discretionary power which must be exercised judicially. In the case of *Janmohammed & Sons v Twentsche overseas Trading Co Ltd* 1967] EA 287, it was held that a successful party should normally be awarded costs of the suit and that he should not be deprived of costs except for good cause. The appellant has not given any good reason why the respondent, as the successful party in the trial court should have been deprived of costs of the suit. This ground of the appeal also fails.
37. The upshot of my re-analysis, re-evaluation and re-consideration of the extract of the record is that the trial magistrate properly considered the factual evidence and the relevant law in arriving at her decision. I find no reason to disturb her judgment. This appeal therefore lacks merit and the same is hereby dismissed with costs to the respondents. Orders accordingly.

**READ, DELIVERED AND SIGNED IN THE OPEN COURT THIS 31ST OCTOBER, 2022**

**HON. E.C CHERONO**

**ELC JUDGE**

**In the presence of;**



1. Mr. Maloba for appellant
2. M/S Ayunga for 2nd Respondent and H/B for M/S Were for 1st Respondent
- 3. Joy C/A**

