M'Ikiara v Muriuki (Environment and Land Appeal 23 of 2020)
[2022] KEELC 13836 (KLR) (26 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13836 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL 23 OF 2020

CK NZILI, J

OCTOBER 26, 2022

BETWEEN

LATIF M'IKIARA ..... APPELLANT

AND

ERASTUS GATOBU MURIUKI ..... RESPONDENT

(Being an appeal from the Judgment/Decree and Orders of Hon. S. Abuya SPM delivered on 28.8.2019 in Meru CM ELC No. 11/2018)

JUDGMENT

1. This appeal relates to the judgment by trial court is which the respondent had sued the appellant for breach of a sale agreement, for failing to subdivide and transfer 0.05 ha portion of LR No Ntima/ Ntakira/2194.

2. The trial court entered judgment in favour of the respondent on general damages for breach of contract for Kshs 3.4 million plus costs and interests.

3. The appellant complains that the trial court; entered judgment on a case which was not proved on a balance of probability; it failed to consider his evidence; failed to establish that the suit had not been properly filed for lack of payment of court fees; gave a sum of Kshs 3.4 million which was neither pleaded nor proved and lastly, gave a judgment against law and the evidence tendered.

4. This being a first appeal this court is mandated to re-evaluate, rehearse and re-assess the lower court record, come up with its own independent findings as to facts and law while considering that the trial court had the benefit of seeing and hearing the witness first hand. See *Abok James Odera t/a A.J Odera & Associates v Kenya Posts & Telecommunications Corporation* (HCCC No 51808 of 1990).

5. At the lower court, the respondent through a plaint dated April 27, 2017 pleaded that he entered into a sale agreement dated November 10, 2009 to purchase 0.05 ha which was to be excised from

the appellant's LR No Ntima/Ntakira/2194 for Kshs 1.7 million which he paid fully and took vacant possession.

6. However, he averred that the appellant failed to honour the terms and conditions to subdivide and transfer the portion on time or at all. The respondent averred he established that the property was encumbered on account of a loan with a financial body which facts had not been disclosed to him.

7. The respondent pleaded fraud against the appellant for selling an encumbered property, taking a loan using the property as security which he had already sold and failing to remove the encumbrances so as to facilitate the subdivision and the subsequent transfer.

8. The respondent sought for specific performance or in the alternative a refund of the consideration plus damages for breach of contract and fraud. The plaint was accompanied by witnesses statements, lists of documents dated April 27, 2017 and July 2, 2018, case summary and list of issues dated September 2, 2017.

9. The appellant by a defence dated November 20, 2017 admitted the land transaction but denied the payment of Kshs 1.7 million as alleged or at all or giving the respondent vacant and exclusive possession or promising to subdivide and transfer the portion to him.

10. Further the appellant denied the alleged fraud since the respondent knew of the existence of the charge hence the payment of the loan to the loan account.

11. The appellant insisted that it was the respondent who was unable to fulfil part of the sale agreement hence had come to court with unclean hands.

12. The defence was supported by issues for determination dated March 8, 2019, witness statements and a list of exhibits dated April 9, 2019.

13. The respondent adopted his witness statement dated April 27, 2017 as his evidence in chief and produced the documents in the list dated July 2, 2018, produced a sale agreement dated January 10, 2010 as Pexh (1) an addendum dated April 1, 2016 as Pehx (2), a demand notice dated September 22, 2016 as P exh (3), an official search as Pexh (4) and the payment in slips into the appellant's bank with effect from December 21, 2010, May 19, 2012 as Pexh 6-10 respectively.

14. The respondent said he had cleared the entire Kshs 1.7 million as agreed as shown by the payment in slips and receipts, took vacant possession in December 2012 up to October 2017, where he was leasing the wooden timber structures generating Kshs 13,300/= per month for five years. He denied that there was a condition precedent that he clears the entire loan.

15. The appellant adopted his witness statements dated and filed on April 9, 2019 saying that they visited the bank and established the statutory loan was Kshs 1.5 million. That thereafter he offered to sell the land and entered into a sale agreement with the respondent. He admitted that he was paid Kshs 200,000/= and the respondent was to clear the loan but was unable to do so after paying Kshs 300,000/= hence the bank loan shot up to Kshs 4.6 million. He said he ended up paying the loan of Kshs 6 million after which the two agreed for a refund which the appellant paid Kshs 912,000/= through the respondent's wife. He admitted he owed the respondent Kshs 788,800/=.

16. The appellant produced Dexh 1 a bundle of receipts showing that he was the one who cleared the loan. DW 1 admitted he had accounts with Consolidated Bank, NIC Bank and ABC Bank. The appellant stated, that the Kshs 196,000 deposited to those accounts by the respondent was for some other business they were doing with him. He denied that the agreement had said he pays the loan.

17. The appellant denied that he handed over any vacant possession or that tenants were making payment as alleged given the respondent failed to pay the money as agreed, making him repay the loan and eventually refund him Kshs 912,000.

18. It was the appellant's submission that the deposit slip or receipts to the bank did not bear the name of the respondent as the depositor; that he totally failed to pay the Kshs 1.7 million hence was the one who breached the sale agreement and should have been the one liable to pay damages.

19. As regards the claims, the appellant submitted that the suit was not properly filed for non-payment of court fees.

20. Further the respondent submitted that parties are bound by their pleadings and that the respondent did not plead and pray for Kshs 3.4 million.

21. On the other hand, the respondent submitted that the claim was founded on a sale agreement done before Ms Leonard K. Ondari and Co Advocates, which was duly signed and attested.

22. Similarly, the respondent submitted that he complied with his obligations by paying the consideration to the appellant directly and to his bank accounts or his appointed nominees as per his exhibits before court.

23. The respondent also submitted that the trial court was right since the sale agreement was cancelled but the appellant had not pleaded or alleged any breach of contract by the respondent hence the trial court relied on the facts and evidence to reach a fair decision.

24. Regarding court fees, the respondent stated he paid the full court filing fees of Kshs 70,275/= on April 27, 2017 and that the court was right in granting general damages for breach of contract in line with the default clause in the sale agreement.

25. The respondent further submitted that the trial court ought to have awarded the Kshs 3.4 million over and above the Kshs 1.7 million paid as deposit

26. Having gone through the lower court record, the grounds of appeal and the written submissions, the issues for determination are: -

    i. If there was breach of the sale agreement and by which party.

    ii. What were the consequences of the breach of the sale agreement.

    iii. If the respondent had proved his claim against the appellant

    iv. If the appellant had pleaded and proved breach on the part of the respondent and the payment of a refund of Kshs 912,000/=.

    v. If the appeal has merits.

    vi. If the respondent is entitled to the refund without a cross-appeal.

27. It is trite law that where parties voluntarily enter into a contract they are bound by the terms stipulated therein and that a court of law has no mandate to rewrite a contract for parties who in law are bound by such a contract unless on account of coercion, fraud or undue influence which must be pleaded and proved. See *LN Gitonga Mwaniki & another v Anastacia Waithira Kibiru* (2013) eKLR, *Action Homes Ltd & another v David Nathan Chelogoi & 2 others* (2015) eKLR.

28. Further contracting parties are at liberty to make time to be of essence in a contract voluntarily entered as between them and where this is not provided, the contract may be altered subsequently to make time

to be of essence. Similarly, where a party has been subjected to an unreasonable delay he has liberty to give notice to the defaulting party making time to be of essence through the doctrine of repudiation. See *David Muturi Mwangi v Kiiru* (1987) eKLR.

29. Both parties herein admit that the cornerstone of their case is the sale agreement and the addendum thereto dated January 10, 2009 and December 14, 2010 respectively.

30. The salient features are the subject matter as 1/8 acre of LR Ntima/Ntakira 2194 and the consideration being Kshs 1.7 million. The terms of payment were set out as Kshs 20,000/= at the signing of the agreement, Kshs 500,000/= on or before November 19, 2009; Kshs 350,000/= by December 31, 2011, and Kshs 350,000 by December 31, 2011.

31. The property was being sold free of any encumbrances and without any claim thereof; vacant possession was to be handed over on or before December 2012; the property was being sold inclusive of the twelve houses; the transfer and subdivision fees were to be catered for by the purchaser and seller respectively and the deadline for the transfer was to be done on or before December 2012.

32. In default of the terms and conditions of the agreement, the offending party was to pay Kshs 3.4 million notwithstanding any law of equity for the time being in force.

33. In the addendum dated December 14, 2010, the purchaser was to pay Kshs 330,000/= to the seller's account number NIC Bank C/A 31300011502. The seller was to clear all the encumbrances upon the land within 6 months from January 1, 2011 and was to hand over vacant possession with effect from January 1, 2011 where after the purchaser was entitled to collect monthly rent from the premises.

34. Prior to the addendum it appears the respondent issued a notice dated October 19, 2010 indicating that there had been a fundamental breach to the sale agreement for the undisclosed encumbrance, which he termed as fraudulent. The respondent stated in the said letter that he had paid Kshs 1.3 million ahead of the completion date and expressed his willingness to clear the balance immediately on transfer.

35. Following the demand letter, it appears the appellant was given an additional time of six months with effect from January 1, 2011 to clear the encumbrances so as to pave way for the transfer. The other terms and conditions of the sale agreement dated November 10, 2009 remained unchanged.

36. After the variation of the sale agreement, the next letter is the one dated September 22, 2016 produced as Pexh (4) in which the respondent complained that the appellant had breached the terms to subdivide and transfer the suit land despite the clearance of the total consideration. He therefore sought for Kshs 3.4 million as damages and a refund with interest.

37. The respondent produced an official search dated October 5, 2016 as Pexh (5) showing the two key encumbrances to the title deed entered on August 20, 2010 and a charge in favour of Consolidated Bank of Kenya Ltd entered on August 14, 2007.

38. It is trite law that parole evidence may not be used to replace or supplement a written contract.

39. From the sale agreement herein, it is quite evident that the appellant had failed to disclose the existence of the encumbrances by November 10, 2009 which he knew but withheld from the respondent. The respondent was to honour his obligations only to realize that there was an impediment.

40. That notwithstanding, it is apparent parties sought to enlarge the completion date by six months, the appellant agreed to clear the encumbrance by July 2011 and transfer the land. At the same time, it is apparent the appellant agreed to hand over vacant possession with effect from January 1, 2011 and the respondent to start collecting rental income while awaiting completion date.

41. Additionally, it is also clear that before the sale agreement, parties herein visited the appellant's bank and established the outstanding loan as Kshs 1.5 million. This could only have been the reason why the appellant was paid Kshs 200,000/= and the balance agreed to be payable to his account at the bank presumably to help clear the loan with the bank.

42. Therefore, it cannot be true for the respondent to say he did not know there was a loan with the bank. Again, it is clear from the sale agreement that what the parties were referring to as the encumbrances was the outstanding loan which the respondent had agreed to settle as per the timeline's parties set in the sale agreement.

43. Having the key features of the sale agreement in mind, the respondent in his plaint pleaded at paragraph 8 that he applied and obtained an official search to the title and discovered that the appellant had defrauded him by selling to him property already encumbered and which he knew he could not convey; taking a loan from a bank using the property as security which he had already sold and for failing to remove the encumbrances to facilitate the subdivision and transfer. He therefore sought for the refund and damages for the breach of contract.

44. In his evidence, the respondent produced payment records namely Pexh's 6-20 indicating that as at May 2020, he had already paid Kshs 1,960,000/= to the appellant's directly and or through the nominee banks. Between July 2011, the respondent had paid Kshs 330,000/= which was indicated in the clause to the addendum.

45. In defence, the appellant denied that Kshs 1,700,000 had been paid or that he had handed over vacant possession or promised to transfer the plot to the respondent. On the contrary the appellant denied the alleged fraud and stated that the respondent knew the land was charged and was the one to pay the money into the loan account. He insisted it was the respondent who failed to fulfil his part of the sale agreement.

46. In his testimony before court, the appellant after visiting the bank with the respondent and upon establishing the loan balance he entered into the sale agreement, was paid Kshs 200,000/= and that they agreed the loan be paid with the remaining the balance. He testified that unfortunately, the respondent only paid Kshs 300,000/= for which the bank interest shot up to Kshs 4.6 million, eventually he ended up paying Kshs 6 million, refunded the respondent Kshs 912,000/= and remained with his balance of Kshs 788,800/=.

47. He denied the money paid by the respondent was the one in the sale agreement but instead said it was on account of other business they were doing together.

48. The appellant produced Dexh 1, as bank slips showing that he was actually the one who repaid the bank loan.

49. Looking at Dexh 1 the total sum is Kshs 115,980 or thereabout spreading between 2012 – October 2017.

50. In the addendum, the appellant acknowledged that the respondent was up to date in his payments in line with the original sale agreement. There was no clause in the sale agreement for the respondent to pay the interest or for that matter, to pay to the appellant's account anything beyond Kshs 1.5 million.

51. Again, the appellant did not raise the issue of the non-payment of the instalments as per the sale agreement on their due dates at the time the addendum was prepared and signed.

52. Further, the appellant agreed to hand over vacant possession on January 1, 2011 as he worked towards clearing the outstanding encumbrances by July 2011 so as to transfer the land. Therefore, the appellant

could not possibly plead non-fulfillment of some terms and conditions by the respondent after July 2011, when it is quite evident from D exhibit 1 that the appellant was still struggling to clear the loan balance as late as 2017, which was during the pendency of this suit.

53. Incidentally, as at the time the appellant filed his defence he did not specify what terms and conditions the respondent had allegedly breached.

54. Even after the appellant was issued with a notice of breach dated September 22, 2016, which was close to five years after the expiry of six months in the addendum, the appellant never sought from the respondent for a further extension of time and or gave any reasons why he had not transferred the land or was unable to do so as to escape the default clause and its consequences. Again, the appellant did not show any willingness to still honour and or complete the transaction despite the inordinate delay and or the breach.

55. The appellant never pleaded the alleged refund of Kshs 912,000/= and details thereof, as to when, where and how he made the refund. The documents the appellant has included in the record of appeal at pages 22 – 50 were not among the list of documents filed on April 9, 2019 and produced as exhibits during the hearing by the appellant as per the Dexh memorandum.

56. They are therefore being sneaked in irregularly and without leave of the court for adduction of additional evidence under the order 42 of the *Civil Procedure Rules*. The same is rejected as of no probative value and does not form part of the record of this court.

57. More importantly, the appellant never amended his defense to be in tandem with the witness statement and documents filed on April 9, 2019 so as to seek for a set off, if at all he had already agreed to repay the purchase price and had started doing so as a way of mitigating his loss or liability to the respondent.

58. Parties also complied with order 11 of the *Civil Procedure Rules* and filed different sets of issues for the court's determination.

59. Going by the two lists of issues dated September 2, 2017 and March 8, 2019 respectively, items 1-4 related to the sale agreement, its terms and conditions and the handing over of vacant possession. They were similar. The parties raised the issue of breach, fraud, evidence of payment of consideration, refund and payment of the deposit. The appellant never raised the issues having already refunded Kshs 912,000/= to the respondent directly or through his wife and the outstanding balance of Kshs 788,800/=.

60. Therefore, it cannot be true that the trial court erred when it determined and made a finding on the issue of the breach of the sale agreement, yet looking at the pleadings, the two sets of issues for determination and the evidence the issue occupied the central role.

61. The appellant had at paragraph 3 of the defence admitted entering into the sale agreement for Kshs 1.7 million but denied receiving the money except Kshs 200,000/=

62. In his witness statement, the appellant admitted that he gave out his bank accounts for the sums to be channeled through them by the respondent as part of the consideration in the sale agreement. The respondent produced the payments slips as Pexh's 6-20.

63. Therefore, it cannot be true for the appellant to turn around and deny that the said monies were not paid for and on his behalf, to his own accounts and turn around to assert that the dispositor(s) was not the respondent herein.

64. Again, if the appellant denied that such payments we ever occurred to the extent that the loan balance shot up and frustrated the sale agreement, the easiest thing for the appellant would have been to bring

before court the loan statements and demonstrate the failures by the respondent to pay the instalments in the sale agreement on their due dates.

65. He who asserts must prove as per sections 107 – 111 of the *Evidence Act*. It was the appellant who pleaded that the respondent, had failed to fulfil the terms of the sale agreement. He should therefore have supported those assertions with tangible evidence.

66. Looking at the copy of records produced by the respondent it was also quite evident that other than the encumbrance of the charge by the bank, there was a prohibition order issued by the court on account of a court decree in 2007.

67. The appellant did not tender any evidence if he ever disclosed to the respondent or discharged that obligation and sought for the lifting of the prohibition order by July 2011 so as to comply with the requirements of both the sale agreement and the addendum.

68. In absence of that evidence, it is my considered view that the appellant was the one who breached both the sale agreement and the addendum. The respondent was right to give a notice of breach in line with the *Land Act* 2012 and after whose no-compliance, he was entitled to move to court for redress.

69. Sections 40 & 42 of the *Land Act* provides the redress for breach of a contract for sale of land to both the vendor and the purchaser and grants the court powers to issue reliefs on such terms as it may consider appropriate including reliefs for breach of any term or condition of the contract that is not capable of being remedied.

70. Under sub-rule (4) thereof, an application under this section shall not be in itself to be taken as an addendum by the purchaser that there has been breach by him or that a notice has been duly and properly served or the time for remedying a breach or for paying an amount by way of compensation has expired. Under sub-section (5), any express or implied term in the contract or other instrument to which this section applies that conflicts with or purports to set aside or negation this section shall be inoperative.

71. The appellant has complained that the respondent did not plead and prove the damages for breach of Kshs 3.4 million nor had he paid court fees for such a claim and therefore the trial court erred in law and in fact in granting such a prayer.

72. The court has gone through the record of the lower court and established that the respondent made a prayer for specific performance or in the alternative a finding that the appellant defrauded him and a judgment for Kshs 1.7 million plus damages for fraud and breach of contract. The said prayer attracted a filing fee of Kshs 70,275/=. The same was assessed and paid for *vide* receipt No 8140791 on April 27, 2017.

73. At paragraph 9 of the plaint, the respondent pleaded his claim was for specific performance or in the alternative a refund of the consideration plus damages for breach of contract and for fraud.

74. The respondent's pleading was eventually supported by evidence of payment of Kshs 1,960,000/= by way of bank slips and acknowledgement thereof by the appellant in the addendum and the witness statement.

75. Given this facts and evidence, the court finds no merits in grounds 3 & 4 of the memorandum of appeal.

76. As to whether the default clause in the sale agreement was binding on the parties and therefore enforceable, the duty of the court in construing a contract is to ascertain its meaning or the common intention of the parties thereto in an objective manner and based on how a reasonable man in the position of the parties would have understood the word to mean, since it is trite law parties to a contract

are bound by the terms and conditions therein as held in *Sun Sand Dunes Ltd v Raiya Construction Ltd* (2018) eKLR.

77. In this matter, the respondent pleaded fraud. However, there was no evidence tendered to sustain the claim of fraud to the required standard as held in *Arithi Highway Developers Ltd v West End Butchery Ltd & 6 others* (2015) eKLR.

78. None of the parties pleaded and proved fraud, coercion or illegality of the contract. The court has already found the appellant had disclosed his property was subject to a loan with a bank. Parties even went to ascertain the balance. The respondent was supplied with the bank balance and the accounts he was to channel the Kshs 1.5 million so as to offset the loan.

79. Therefore, the allegations that the respondent was duped and or offered land in which a loan was taken after cannot be true. The claim based on fraud lacks merits to the extent of the land being under security of a loan. The respondent had also a duty to undertake due diligence prior to entering into the sale agreement by applying and obtaining the search to establish if the title deed was free of any liabilities.

80. In *National Bank of Kenya v Pipeplastic Samkoit (K) Ltd & another* (2001) eKLR, the court held parties are bound by the terms of their contract unless there was coercion, fraud or undue influence.

81. While aware of the liability of the loan, the respondent entered into an addendum to the sale agreement with the appellant. Therefore, he cannot turn around and plead fraud, undue influence or lack of a consent. The respondent willingly agreed to enlarge time for compliance. Similarly, the appellant agreed to getting more time to remove the encumbrance so as to transfer the suit land.

82. Again, parties knew the extent of the default clause which they incorporated through the addendum for the second time.

83. The literal interpretation of the addendum and the default clause is clear that parties intended to impose a penalty for anyone of them breaching the sale agreement by either delaying performance or outrightly rescinding the sale agreement.

84. Parties herein had for the second time left no doubt that any foreseeable contingencies would attract a penalty in order to safeguard each other of any unintended consequences. See *Savings and Loan (K) Ltd v May Fair Holdings Ltd* (2012) eKLR.

85. In my view therefore, there was no ambiguity in the default clause and hence its words should be taken as the intention of the parties in the event of default.

86. The parties agreed on another six months for completion of the sale agreement. It is the appellant who defaulted and despite a notice of 30 days to make good the agreement, he failed to do so hence leaving the respondent with no option but to seek for damages in line with the default clause.

87. Even though the respondent had handed over vacant possession on January 1, 2011 and the respondent started earning rental income, which he testified went on for five years, the delay of over five years without clearing the encumbrances to subdivide and transfer the land was unreasonably long.

88. To my mind, the sale agreement stood terminated after or upon the expiry of 6 months. The respondent continued being in occupation of the land while hoping and believing that the appellant would eventually transfer the land to him.

89. The respondent gave a repudiation notice dated September 22, 2016 after having established from the official search that the suit property was still encumbered making it impossible for the appellant to honour the sale agreement.

90. Given the fact that the appellant could not guarantee his capacity and willingness to still honour his obligations by clearance of the encumbrances, it was therefore lawful for the trial court to grant the primary prayer in the plaint based on the evidence tendered which had not been challenged by the appellant. See *Sisto Wambugu Kamau Njuguna* (1983) eKLR.

91. As regards the alternative prayer, courts have in several cases enforced the penalty clause. In *Andrew Kiprop Ronoh v Vitalis Sunguti Ligare & another* (2018) eKLR, the court confirmed that it was in order to invoke a penalty clause in the sale agreement for reasons that specific performance could not be granted in absence of a consent of the land control board.

92. On the issue of damages the Court of Appeal in *Millicent Perpetua Otieno v Louis Onyango Otieno* (2013) eKLR citing with approval *Halsbury's Laws of England* Vol 12 4th Edition where it was stated that if it is the vendor who wrongly refuses to complete, the measure of damage is, the loss incurred by the purchaser as the natural and direct result of the repudiation of the contract by the vendor which includes the return of any deposit paid with interest together with expenses incurred *inter alia* investigating the title and other expenses within the contemplation of the parties.

93. As a general rule, general damages are not recoverable in cases of an alleged breach of a contract as held by the Court of Appeal in Kenya *Tourist Development Corporation v Sundowner Lodge Ltd* (2018) eKLR.

94. The reasons for this were explained in *Consolata Anyango Ouma v South Nyanza Sugar Co Ltd* (2015) eKLR, that such damages are not at large but are in the nature of special damages and must be pleaded and proved. They must also be quantified as held in *Kinakie Cooperative Society v Green Hotel* (1988) KLR 242.

95. In this matter parties willingly consented to the liquidated damages to be paid in the event of a default.

96. In *Silas Mutuma Kabwima v Joseph Ntongai M'Ithungai* (2022) eKLR, the court cited with approval Mwangi v Kiiru (1987) eKLR that the consequences of the breach result to a secondary obligation to pay damages and capital. In *Capital Fish Kenya Ltd v KPLC* (2016) eKLR, the court said that there are exceptions and the general rule on payment of damages particularly where the respondent was oppressive, outrageous, insolent or highhanded.

97. In this matter, the delay was for five years. The consequences of non-performance were agreed at twice the purchase price. There is an admission that as at the initial completion date, the respondent had paid Kshs 1,960,000/= to the appellant, which was Kshs 260,000/= over and above the agreed sum of Kshs 1.7 million. This was admitted in the addendum.

98. The respondent has urged the court to find the sum reasonable and proceed to award the refund of Kshs 1.7 million over and above the default sum.

99. In my considered view, the respondent pleaded and proved the agreed liquidated sum of twice the purchase price which the court finds reasonable in the circumstances of this case given the inordinate delay in performing the contract, failing to obtain the subdivision, transfer forms and consent on time or at all. See *Willy Kimutai Kitilit v Michael Kibet* (2018) eKLR.

100. This could only be termed as liquidated damages and not general damages flowing directly from the loss suffered by the respondent. Unfortunately, the respondent never filed a cross appeal. The court would have awarded such a sum had there being a cross appeal.

101. In the circumstances I find the appeal lacking merits. The same is dismissed with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 26TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Anampiu for appellant

Gikunda Anampiu for respondent

HON. C.K. NZILI

ELC JUDGE