



**Mwaine v M’Ithili & another (Environment & Land Case 99 of 2003)
[2022] KEELC 13571 (KLR) (19 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 99 OF 2003
CK YANO, J
OCTOBER 19, 2022**

BETWEEN

NG’OLUA MWAINA PLAINTIFF

AND

ALEXANDER KAMATHI M’ITHILI 1ST DEFENDANT

BETHA GACHERI 2ND DEFENDANT

JUDGMENT

1. In this case, I am required to write a judgment based on evidence that was partly taken by other judges who were previously seized of the matter before they were transferred. JA Makau J took the evidence of PW 1 and PW 2, while L Mbugua J also took the evidence of PW 1 and the 2nd defendant who were recalled. Pursuant to the provisions of order 18 rule 8(1) of the *Civil Procedure Rules*, I proceeded with the matter and took the evidence of the 1st defendant and concluded the matter. Order 18 rule 8 (1) of the *Civil Procedure Rules* provides as follows-;

“where a judge is prevented by death, transfer, or other cause from concluding the trial of a suit or the hearing of any application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken down by him or under his direction under the said rules, and may proceed with the suit or application from the state at which his predecessor left it”

The Pleadings

2. The plaintiff commenced this suit by way of a plaint dated August 5, 2003 which was amended on October 3, 2018 seeking for orders that-;
 - a. A declaration that the plaintiff is the sole proprietor of LR No Kangeta/kangeta/3919 measuring 0.12 acres or hereabout (sic) inclusive of all developments thereon, the land



adjudication officer Meru North land adjudication do cause land parcel No 3919 Kangeta to be transferred to the plaintiff herein and the defendant do sign all the requisite documents, instruments to cause the said transfer and in default this Honourable court do authorize the executive officer to sign the same.

- aa) An order that the defendant do vacate the plaintiff's land parcel No Kangeta/kangeta/3919 and in default they get forcefully evicted with the assistance of the officer commanding Police station (OCS) Kangeta Police station.
 - b. Costs of this suit.
 - c. Interest at court rates.
3. The 1st defendant filed his defence on August 27, 2004 by way of admission. The 1st defendant in admitting the plaintiff's claim averred that he has been ready and willing to transfer the suit land to the plaintiff and had gone severally to the Land Adjudication Office Kangeta and that it is his wife, now the 2nd defendant, who complicated the issue by unreasonably lodging objections, including filing Maua SPMCC No 121 of 2021 which the 1st defendant stated was dismissed on July 24, 2003.
 4. On her part, the 2nd defendant filed a defence and counter-claim dated April 2, 2007 and which was amended on February 26, 2019 wherein the 2nd defendant prays for the dismissal of the plaintiff's suit with costs, and judgment to be entered against the plaintiff and the 1st defendant for a declaration that the sale of LR NO Kangeta/Kangeta/3919 was fraudulent, illegal, null and void as well as costs and interest.

The Plaintiff's Case

5. The plaintiff's case is that on January 22, 2003, the plaintiff and the 1st defendant willfully entered into a sale of land agreement over the suit property together with the developments erected thereon. That the agreed consideration was Kshs 800,000/= out of which the plaintiff had already paid the sum of Kshs 600,000/= to the 1st defendant.
6. The plaintiff averred that clause 3 of the said agreement provided that the plaintiff was to occupy the said plot in the month of February, 2003. That the 2nd defendant who is the 1st defendant's wife, and who was not a party to the said agreement registered a caution on the said plot making the transfer of the same impossible. The plaintiff averred that the 1st defendant is the sole registered proprietor of the suit plot, and that the plaintiff has consent from the Land Adjudication Office Meru North District. That the 2nd defendant filed Maua SPMCC No 121 of 2003 restraining the 1st defendant from selling the said land to the plaintiff, but the said suit was struck out with costs on July 24, 2003.
7. The plaintiff testified as PW 1 and reiterated the averments in the amended plaint. He stated that the 1st and 2nd defendants sold him the suit plot in the year 2003 and they entered into a written sale agreement dated January 22, 2003. That he was purchasing plot 3919 in Kangeta Land Adjudication Section at a purchase price of Kshs 800,000/= out of which he paid Kshs 600,000/= on January 22, 2003 and later paid the balance. The plaintiff produced the sale agreement as exhibit P1 and the acknowledgement as exhibit P 2.
8. The plaintiff stated that prior to the year 2003, he had known the 1st defendant as the owner of the suit land. He produced a letter dated September 26, 2004 for the Land Adjudication and Settlement Office, Maua which made reference to Plot 3919 Kangeta as exhibit P3.
9. The plaintiff testified that he paid the sum of Kshs 600,000/= to the 1st defendant, but the 1st defendant did not effect the transfer but wrote a note in the presence of the 2nd defendant and the plaintiff



transferring the land to the plaintiff. He produced the note said to have been thumbprinted by all the parties herein as exhibit P4.

10. 1 stated that he was shown the plot by the 1st defendant, and the same was developed with 11 rooms. He further stated that the defendants were residing at Makutano (Meru) but they had one room at plot 3919 in which they had their properties while the other rooms were occupied by tenants. PW 1 stated that he collected rent up to July 2003 when the 2nd defendant in the company of her two sons and brother came and started screaming saying that the plaintiff had deprived them of their plot. PW 1 stated that he was assaulted but was saved by prison wardens and that he had never returned to the plot since July 2003.
11. 1 averred that he had sued the 1st defendant for breach of contract and that when the 1st defendant was served with summons to enter appearance, he filed a defence admitting the claim. That thereafter, the court issued an order for transfer of the plot into the plaintiff's name and a transfer was effected on January 6, 2004.
12. The plaintiff also produced a letter dated January 6, 2004 from the District Land Adjudication Officer as exhibit P5. He stated that the 2nd defendant refused to deliver vacant possession and continues to collect rent. PW 1 further stated that the 2nd defendant lives on the suit plot no 3919. He stated that when he purchased the plot, the 2nd defendant was not living on the said plot, but only moved there in July 2003.
13. PW 1 testified that when he purchased the plot, the 2nd defendant was aware and did not object to the sale. The plaintiff prayed for the defendants to be evicted from the suit plot and deliver vacant possession to him.
14. PW 1 was cross examined by Mr. Mwanzia, learned counsel for the 1st defendant and Mr. C.Kariuki learned counsel for the 2nd defendant and re-examined by Mr. Mwirigi learned counsel for the plaintiff. He stated that he purchased the suit plot from the 1st defendant with the consent of the 2nd defendant. That the 2nd defendant signed the letter authorizing transfer being exhibit P4, and that he had no problem with the 1st defendant.
15. PW 1 stated that he knew the defendants when he was in the army before he retired in 2004, and that the 1st defendant approached him and told him that he wanted to sell a plot. He stated that exhibit P1 is dated January 23, 2003 but should be January 22, 2003. He stated that the agreement was made in the absence of the 2nd defendant who was not a witness, and the sum of Kshs 600,000/= was made in the absence of the 2nd defendant. He stated that he paid Kshs 50,000 at the end of March and Kshs 50,000/= at the end of September. That he used to take money to the advocate.
16. PW 1 admitted that exhibit P2 is contrary to the agreement of payment but stated that the 1st defendant acknowledged receipt of Kshs 200,000/=. That the 2nd defendant gave consent to transfer as per exhibit P4 which he said was written by the 1st defendant.
17. PW 1 stated that before he came to court, he did not know that the 2nd defendant was objecting to the sale. That he came to know of the Maua case after he had purchased the land. He stated that exhibit P4 has no date and that he was not aware that the 2nd defendant was forced to sign exhibit P4. He stated that before he filed this suit, the 1st defendant had refused to effect transfer, and could not include the 2nd defendant as she was not registered (as owner). That when they made a consent, they did not involve the 2nd defendant and that he used the consent of the court to remove the caution.



18. When re-examined by Mr Mwirigi, PW 1 stated that he knew that the 2nd defendant sued them at Maua law court after he had paid the purchase price. That he was not informed of any caution by the 2nd defendant, and did not receive any letter of objection. The plaintiff was recalled on 19/3/2019 and he produced a copy of title deed for LR Kangeta/Kangeta/3919 which title he had gotten by then. The same was produced as P exhibit 7.
19. PW 2 is Patrick Masila Munyao, the District Land Adjudication and Settlement Officer Igembe South and North Districts. He testified that land parcel No 3919 Kangeta Land Adjudication Section falls within his jurisdiction. He averred that he knew the parties in this matter from the court summons served upon him. He testified that he did not have the Land Adjudication record in respect of Kangeta Adjudication Section because adjudication had been completed and records forwarded to Nairobi. He stated that he was not aware whether consent to institute proceedings in respect of this suit was issued adding that from the records the matter started in 2003 and that he reported to the office in 2011. That he was not aware which documents he was required to give. He was shown a consent dated April 30, 2004, signed by one SM Masika who was then District Land Adjudication Officer, Igembe, by then called Meru North, in respect of parcel No 3919. He stated that Mr Masika was the officer to confirm that the same emanated from their office.

The 2nd Defendant's Case

20. The 2nd defendant Betha Gaceri testified that the 1st defendant was her husband with whom they got married in 1985 at Methodist Church. She produced the documents in her list of documents filed on December 27, 2017 as exhibit 1 – 14 respectively, and relied on her statement filed on November 15, 2011 as her evidence.
21. Her evidence was that the 1st defendant sold their land secretly and without her consent. She testified that though she had put a caution, she stated that she was forced by the plaintiff and the 1st defendant to sign the consent resulting in a fight. That she filed a case in Maua Law Court.
22. The 2nd defendant testified that they went to the lands office where she declined to remove the caution upon explaining that she had 9 children who had nowhere to stay, the 1st defendant having sold other parcels of land.
23. The 2nd defendant stated that she was not a witness to the sale agreement and was not even aware that the land had been sold. That she sought legal advice from FIDA and she was referred to Charles Kariuki Advocates, but the 1st defendant colluded and compromised the case and proceed to have the 2nd defendant arrested and placed in police custody. She stated that she had sued the 1st defendant and the plaintiff in Maua SPMCC 121 of 2003, but the case was dismissed since there was no consent from the Adjudication Officer to institute the case. She stated that she also got an advocate at Kitua cha Sheria and eventually applied to be joined in this case to protect the suit land which she referred to as family land and which was their matrimonial home which they built in 1990. That she was still staying on the suit property together with her children. She stated that she did not know where her husband (the 1st defendant) stays since they do not communicate. The 2nd defendant prayed for the land to be returned to the family and for judgment in terms of the counter claim.
24. The 2nd defendant was cross – examined by Mr Mutegei, learned counsel for the plaintiff. She stated that she thumb printed exhibit P7 (which is together with a P3 form) because she was forced to do so. That she went to the CID who told her to report to the lands office and when she went she was told that since she had placed a caution, they will be called to agree. She maintained that she had no other land to stay on. That she learnt in court that the plaintiff had a title deed.



25. The 2nd defendant was also cross-examined by Mr Thangicia, learned counsel for the plaintiff and re-examined by M/S Gikundi advocate for the 2nd defendant. She stated that they got married with the 1st defendant in 1985 and stayed at her father's land before they bought their own land and built their home at Kangeta. That they stayed at Meru for one year only from February, 2002 and had a hotel at Makutano. That she went to operate the hotel at Makutano while her husband operated one at Gakoromone while their children were attending school at Meru Primary and at Makuu. She denied having a children's case at the children's office.
26. The 2nd defendant stated that her husband's place is called Nginyang'a where he had another wife and children. That she was never taken to Nginyang'a, though dowry was paid by the 1st defendant's parents. She stated that she knew her husband had land at Nginyang'a, but he never built for her a house there. That they bought a house in town, though she did not have the documents for sale or records for the hotel business.
27. The 2nd defendant stated that her husband got diabetic in the year 2000, but did not know that he sold the suit land because of his sickness and school fees for the children. She maintained that she was forced to thumbprint on the documents and added that she reported to the police, and also filed a case in Maua which was later dismissed. She denied that her husband used to buy and sell land.

1st Defendant's Case

28. The 1st defendant testified that he used to be a businessman operating hotel business and buying and selling land. He confirmed that the 2nd defendant was his wife. He denied forcing the 2nd defendant to sign the sale agreement.
29. He stated that he was living with the 2nd defendant in Meru town in a house that he had rented, and that he was carrying out hotel business in various places such as Kangeta, Kiengu, Maua and Meru towns. The 1st defendant adopted his witness statement filed on April 25, 2012 as his evidence in chief. He also produced the documents filed on April 25, 2012 as exhibit 1 – 5, and the documents in the further list of documents filed on May 20, 2019 as exhibit 6 – 11.
30. The 1st defendant testified that he agreed with the 2nd defendant to sell the suit land because he was unwell and they had children in school. He stated that there was also another land which he had found and wanted to buy. That he differed with his wife because the 2nd defendant wanted to use the proceeds from the sale to open a shop business. He stated that they were paid the purchase price when they were staying in Meru Town. That the 2nd defendant went and blocked the house/plot after they had received the purchase price.
31. The 1st defendant was cross-examined by Mr Kiruai advocate for the plaintiff, and Ms Gikundi advocate for the 2nd defendant. He maintained that he did not force the 2nd defendant to sign the sale agreement and that the plaintiff has no outstanding balance with them and was given the plot upon payment of the full purchase price. It was the evidence of the 1st defendant that the suit plot belongs to the plaintiff.
32. The 1st defendant confirmed that the 2nd defendant is still on the suit plot, adding that initially, she was not staying thereon. That it was business premises. He denied that the 2nd defendant bought the plot, and also denied forcefully evicting her from the plot after it was sold. He stated that they had agreed with the 2nd defendant to sign the sale agreement marked exhibit 4. The 1st defendant stated that they had agreed to sell the plot, and that he used to sell other plots. He stated that it was not necessary for



him to seek permission from the 2nd defendant. That he had developed the plot, but found that the income therefrom was not sufficient for his treatment and the school fees for their children.

33. The parties were granted time to file written submissions and only the defendants complied. The plaintiff did not file any submissions.

The 1st Defendant's Submissions

34. In his submissions dated September 26, 2022, the 1st defendant gave a summary of the case which involves the sale agreement dated January 22, 2003 in respect of the suit land. The 1st defendant submitted that the suit property is not family property and referred the court to the letter dated February 20, 2008 in the 2nd defendant's list of documents filed in court on December 27, 2017 and the photographs therein. The 1st defendant accused the 2nd defendant of knowingly misrepresenting facts to the court in order to obtain unfair orders.
35. The 1st defendant argued that the 2nd defendant was aware of the sale agreement and cited the production of another sale agreement of different properties produced by the 2nd defendant to support his argument.
36. The 1st defendant submitted that the 2nd defendant has not adduced any evidence before court showing that she ever contributed to the purchase of the properties, including the suit land that she did not adduce any evidence to demonstrate that the suit land was purchased in the subsistence of their marriage. It is the 1st defendant's submissions that the 2nd defendant's claim for half share of the suit land is unfounded. That the 2nd defendant was fully aware of the sale, consented to the same and signed transfer in favour of the plaintiff, adding that the problem arose when the 2nd defendant wanted to eat more than enough, yet the proceeds from the sale was meant for the 1st defendant's medical expenses and school fees and to boost their hotel business.
37. The 1st defendant submitted the suit against him is misconceived and ought to be dismissed with costs since he has not breached the agreement. That it is the 2nd defendant who ought to have been sued for trespass and not the 1st defendant. The 1st defendant urged the court to declare that the sale was legitimate and dismiss the claim by the 2nd defendant.

The 2nd Defendant's Submissions.

38. In her submissions dated September 7, 2022, the 2nd defendant reiterated this matter arises from a consolidation of two files which combine a matrimonial cause between the 1st defendant and 2nd defendant and a land matter involving a breach of contract with the plaintiff. The 2nd defendant also gave a brief history of the dispute and pointed out that initially, the plaintiff had sued the 1st defendant when the 2nd defendant cautioned the suit property after she became aware that their matrimonial home was sold, without her knowledge and consent. That the matter was settled by consent as there was collusion between the plaintiff and the 1st defendant in order to defeat the rights of the 2nd defendant. That the judgment was thereafter set aside by order of court after the 2nd defendant filed an application dated March 31, 2004.
39. The 2nd defendant submitted that she was married to the 1st defendant under Kimeru customary Law and later solemnized the marriage under Christian marriage in 1985 and have 9 children. That during the tenure of their marriage, they acquired several properties being Kangeta Adjudication section Nos 3919 (the suit property). 4324, 2798, 3579, 3903 and 2341, all of which she stated were sold without her consent and in secrecy. The 2nd defendant submitted inter alia, that she resided in the suit



plot together with the 1st defendant and their children, and that prior to its sale, the plot was their matrimonial home.

40. The 2nd defendant denied giving spousal consent for the sale and disowned the documents indicating that she thumb-printed, arguing that she could not have done so and at the same time place a caution on the land. She maintained that the suit property was their matrimonial home.
41. It is the 2nd defendant's submission that the plaintiff is not a bona fide purchaser for value without notice since the plaintiff in his evidence admitted that he knew the family of the defendants. The 2nd defendant maintained that she was not present when the sale agreement was being executed and when the purchase price was being paid.
42. The 2nd defendant submitted that since the suit concerned an interest in land situate in an adjudication section, the suit could not have been instituted without the Consent of the Adjudication Officer since the Adjudication Register had not been finalized at the time.
43. In support of the 2nd defendant's submissions, counsel for the 2nd defendant cited the provisions of article 45(3) of the *Constitution*, sections 2, 6(1), 7, 12 and 14 of the *Matrimonial Property Act* No 49 of 2013 and section 93 of the *Land Registration Act* relied on the case of *NWM V KNM* [2014] eKLR, *PNN V ZWN* [2017] eKLR, *PWK V JKG* [2015] eKLR, *Lawrence Mukiri vs Attorney General and 4 others* [2013] eKLR and urged the court to deliver judgment in favour of the 2nd defendant.

Analysis and Determination

44. This court has carefully considered the pleadings, the evidence and the submissions filed by the parties to buttress their assertions. I have also taken into account the law and legal authorities proffered by the parties. The court identifies the following issues for determination-;
 - i. Whether lack of consent of the adjudication officer rendered the suit and the entire proceedings a nullity; and if not,
 - ii. Whether the plaintiff is entitled to the reliefs sought in the amended plaint
 - iii. Whether the 2nd defendant is entitled to the reliefs sought in the counter-claim.
45. The 2nd defendant has raised the issue of the validity of the suit herein, and submitted that the suit as filed could not have been instituted without the consent of the adjudication officer since the adjudication register had not been finalized at the time the suit was filed while the suit land concerned an interest in land situate in an adjudication section. In this respect, I will first consider the issue of consent since it goes to the jurisdiction of this court as a preliminary issue, since my finding in this respect will determine whether I can proceed to address the other issues raised in the suit.
46. Section 30 of the *Land Adjudication Act* provides as follows as regards institution of suits over land that is the subject of an adjudication process-;
 - “ 30(1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29 (3) of this Act.
 - (2) Where any proceedings were begun before the publication of the notice under Section 5 of this Act, they shall be discontinued, unless the adjudication officer having regard to the stage which the proceedings have reached, otherwise directs.



- (3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty eight days after the refusal, appeal in writing to the minister whose decision shall be final.
- (4) The foregoing provisions of this section do not prevent a final order or decision of a court made or given in proceedings concerning land in an adjudication section being enforced or executed, if at the time this act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired.
- (5) A certificate signed by an adjudication officer certifying land to be, or to have become on a particular date, land within an adjudication section shall be conclusive evidence that the land is such land.
- (6) Every certificate purporting to be signed by an adjudication officer shall be presumed to be so signed unless the contrary is shown”.

47. In the case of *Bhaijee & another* (Civil Appeal 139 of 2019 (2022) KECA 119 (KLR)) the court of appeal held that a civil suit concerning an interest in land in an Adjudication Section which is instituted without the consent of a Land Adjudication Officer renders it a nullity. The court of appeal stated-;

“The section therefore requires consent to be given before institution of civil proceedings concerning an interest in land in an Adjudication Section. The said consent is a condition precedent to a valid suit concerning disputes of land in an adjudication section and specifically requires the suits to be discontinued if started without consent. The section therefore clearly affects the power and jurisdiction of courts to hear and determine such disputes. The rationale for the said provisions is that there is an elaborate process that is laid down by the *Land Adjudication Act*, on how to determine which persons are, and the extent to which, they are entitled to interests in the land under adjudication, and it is therefore necessary that it is first employed before resort is made to the courts, and also shielded from unnecessary and unjustified abuses...”

48. I have carefully perused the pleadings herein, and in particular the original plaint. The plaintiff filed suit on August 5, 2003 praying for judgment against the defendant for a declaration that the plaintiff is the sole proprietor of plot No 3919 Kangeta Land Adjudication Section measuring 0.12 acres or thereabout inclusive of the developments thereon, that the land Adjudication Officer Meru North Land Adjudication do cause land parcel No. 3919 Kangeta to be transferred to the plaintiff herein and the defendant do sign all the requisite documents, instruments to cause the said transfer and in default the court to authorize the Executive Officer to sign the same.

49. I have perused the letters dated September 26, 1994 and January 6, 2004 which were produced by the plaintiff as exhibits P3 and P5 respectively. The first letter was written by Mr Stephen O Ongoro, the Divisional Land Adjudication Officer, Igembe Central and North Divisions. It stated *inter alia* that land parcel Number 3919 of 0.12 acres registered in Kangeta Adjudication Section belongs to Mr Alexander Kamathi M’Thiri and that the adjudication section was under AR objections and when the pending objections are completed, the register shall be forwarded to the Director of Land Adjudication for finality and issuance of title deeds. The second letter dated January 6, 2004 was by Mr SM Masia, the District Land Adjudication and Settlement Officer, Meru North District and stated that the said



parcel of land situated within Kangeta Adjudication section is demarcated and recorded in the name of Ng'olua Mwaine, the plaintiff herein. None of the letters gave consent for institution of a suit.

50. It is therefore not disputed that as at August 5, 2003, the suit land was situated in a Land Adjudication Section. Moreover the letters produced by the plaintiff as exhibit P3 and P5 were not the requisite consent nor did the letters say whether or not the Adjudication Register had been finalized in all respects under section 29 (3) of the Land Adjudication Act. Unless an Adjudication Register has been finalized, a suit concerning an interest in land situated in an adjudication section under section 30 (1) of the Land Adjudication Act cannot be instituted without the written consent of the adjudication officer.
51. In the case of Bhaijee (supra), the court of appeal went on and stated:
- “Section 30 of the Land Adjudication Act requires an adjudication officer appointed under section 4 of the Land Adjudication Act to give consent to institute civil proceedings...”
52. Therefore, quite apart from the fact that the contents of the letters dated September 25, 1994 and January 6, 2004 clearly confirming that the suit parcel of land No 3919 Kangeta Adjudication Section was in an adjudication section, they cannot be construed to be the consent envisaged under section 30 of the Land Adjudication Act.
53. As already stated the suit by the plaintiff herein was instituted by a plaint dated August 5, 2003, and filed on the same date. Therefore at the time of inception of the suit no consent had been granted by an adjudication officer as no such consent has been produced before this court. The lack of consent renders the suit and the entire proceedings hereunder a nullity. This was the holding of the court of appeal in the case of Bhaijee (supra) in which the court also referred to the case of McFoy vs United Africa Co Ltd (1961) 3 ALLER 1169, in which Lord Denning held as follows:-
- “If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceedings which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse”
54. Therefore, without the said consent, it is my view that this court is not clothed with jurisdiction to continue entertaining this suit as filed by the plaintiff, including pleadings filed subsequently as the same is null and void ab initio. I do not think the current status of the suit property will cure the suit which was null and void from inception and therefore a nullity.
55. It is therefore my view that my holding hereinabove on the issue of the jurisdiction of this court is sufficient to dispose of this suit, and the counter claim founded on it, and in any event, I am precluded by my findings from going into the merits of the parties' respective cases, having found that the court has no jurisdiction, and the proceedings before this court are a nullity.
56. Accordingly, the suit and counter claim are struck out. Each party to bear their own costs.
57. It is so ordered.

DATED SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF OCTOBER, 2022.

IN THE PRESENCE OF:

C.A Mwenda



M/S Gikunda for 2nd defendant

Kiruai for plaintiff

Thangicia for 1st defendant

C.K YANO

ELC JUDGE

