



**Nderitu & another v Themis Investment Limited (Environment and Land Case Civil Suit 124 of 2007) [2022] KEELC 15143 (KLR) (22 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15143 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 124 OF 2007**

**JA MOGENI, J**

**NOVEMBER 22, 2022**

**BETWEEN**

**JAMES K. NDERITU ..... 1<sup>ST</sup> PLAINTIFF**

**MARGARET W. NDERITU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**THEMIS INVESTMENT LIMITED ..... DEFENDANT**

**JUDGMENT**

1. This suit was instituted by way of a plaint filed on 06/02/2007 which was amended on 08/03/2007 against the defendant where the following orders have been sought:
  - a. A declaration that the plaintiffs are the rightful allottees and owners of LR No 209/12155 situate along Jogoo Road, Makadara area and that the purported distress levied by the Defendant against the Plaintiffs on the Property LR No 209/12155 is wrongful, illegal, irregular, null and void and of no effect in Law and the same is hereby nullified.
  - b. A declaration that the Title held by the Defendant on the Suit Property LR No 209/12155 was irregularly and illegally obtained and is hereby declared null and void and consequently nullified
  - c. Damages for wrongful and illegal Distress plus interest thereon at Court rates.
  - d. Permanent Injunction restraining the Defendants by himself, his Company agents, servants or employees from in any way interfering with he Plaintiffs business and peaceful occupation of LR No 209/12155
  - e. Cost of this suit together with interest and such further reliefs as the Court deems just and expedient.



2. The suit is opposed. The Defendant filed an amended defence and counterclaim dated 10/05/2007. The Defendant herein counterclaims from the Plaintiff as follows: -
  - a. An Order for the joint survey of LR No 209/12154 and LR 209/12155 and the re-establishment of the beacons thereof.
  - b. An Order for the eviction forthwith of the plaintiffs from any encroachment on LR209/12154
  - c. A declaration that the plaintiff is a trespasser on LR 209/12154 and LR No 209/12155 and that the purported allotment of LR 209/12155 to the plaintiffs by the City Council of Nairobi or its predecessor the Nairobi City Commission is unlawful, illegal and a nullity ab initio.
  - d. An Order for the eviction forthwith of the plaintiffs from LR 209/12155
  - e. Any order of permanent injunction barring the plaintiff by themselves their agents or anyone claiming under them, from in any way trespassing, encroaching or otherwise interfering with the Defendant's quiet enjoyment of LR 209/12154 and LR 209/12155
  - f. Delivery of Vacant possession of the suit land to the 1<sup>st</sup> Defendant.
  - g. General damages for trespass.
  - h. Mesne profits
  - i. Costs of the counterclaim.
  - j. Any other relief that this Honorable Court deems just.
1. Upon pleadings thereby being closed, the suit proceeded by viva voce evidence. The Plaintiff called one witness and the Defendant called one witness too. Both parties testified on 24/05/2022.

### **Plaintiff's Case**

3. It was the plaintiffs' case that they are the lawful allottees and owners of LR No 209/12155 situated along Jogoo Road in Makadara area within the City of Nairobi from the Nairobi City Council. They paid the annual rents from 1992 to 2006 and have been issued with a beacon certificate and they are awaiting issuance of the lease from the City Council and eventual issuance of Certificate of Lease upon registration of lease.
4. That the plaintiffs received letters from the defendant who alleged that the plaintiffs were trespassers on the suit property and the they had instructed Auctioneers to levy distress for an outstanding amount of Kshs 240,000 for a period that was not disclosed to the plaintiffs
5. The plaintiffs allege that they defendant were strangers to them. Further, upon investigating they discovered that the defendant is a limited liability company and that the parcel where it is alleged that there was trespass and building materials was parcel number LR No 209/12659 and not the suit property herein.

### **Evidence by the Plaintiff**

6. PW1- James Kanyita Nderitu the plaintiff testified that he was the first plaintiff in the suit and that the 2<sup>nd</sup> plaintiff was his wife. He adopted his witness statement dated 29/05/2015 as his evidence in chief. He also asked that the court adopts his exhibits numbered as PW1- Exh 1-8. It was the Plaintiff's testimony that the suit property was duly registered in the joint names of the plaintiffs vide IR No



- 62833/1 on 25/07/1995 he moved into the suit property before 1992 and that he is still in possession of the suit property. That they as owners of the suit property have never been tenants of the defendant.
7. That prior to 1992 he had been given a temporary occupier and subsequently the City Council asked him to apply for a deed plan and then he was granted the title in 2007. Further that he got the allotment for the title on 25/07/1994. It was his testimony he has had peaceful possession of the suit property until 26/01/2007 when he was served with an auctioneer's court order to levy distress on the suit property from one Richard Njoba on behalf of the defendant company of Kshs 240,000.
  8. Further that they noticed that the defendant stated in its pleadings that the land rates which are to be paid yearly was only paid by the defendants in January 2007 and backdated to the year 1994 through a cheque dated 31/01/2007 of the value of Kshs 290,700.
  9. It was his testimony that he conducts business on the suit property of collection of materials for sale to industries in Nairobi and Nakuru. He stated that he had fenced the suit property but he came to court because he was told that a Mr Joba was claiming the suit property. He reported the matter to the police station on Jogoo road and he took the title deed to them. Mr Joba on the other hand took a copy of the title deed of the same property. It was the plaintiff's testimony that there are two parcels of land LR 209/12154 and LR 209/12155 and that the later is the one he owns.
  10. The plaintiff testified that the defendant took to the police copies of the two titles and claimed to own both. The plaintiff stated that he only owned LR 209/12154. It was the plaintiff's testimony that he obtained the beacon certificates from Nairobi City Council dated 15/09/2006. He stated that the certificates show that the two properties are distinct. It was his testimony that he had no claim on LR No 209/12155 and that he fenced in both parcels of land only to wade off would be intruders.
  11. In cross-examination by Mr Ng'arua, Counsel for the plaintiff stated before 2007 he had never interacted with Mr Joba and that he did not know the defendant. He said that he knows Themis Investment. It was his testimony that there were no meetings with or by the provincial administration. He stated that he bought the suit property in 1991 or 1992 early and then he applied for title which he got in 2007. It was his testimony that he had attached a newspaper article with a caption at page 11 of his bundle for an article in the Daily Newspaper dated 7/08/2007 speaking to his ownership of the suit property. He stated that he filed the instant suit on 6/02/2007 and by this time he already had his title.
  12. He stated that he moved onto the parcel of land around early 1991 or 1992 thereabout. That he erected structures on the parcel after Mr Joba claimed his parcel of land and he went to the police.
  13. During re-examination by Mr. Kopere, the plaintiff – PW1 testified that he awaited the title since he had an allotment letter for Jogoo Road Central District for LR 209/Oblique 12155. The letter for allotment is dated 14/03/1992 and based on the said letter beaconing was done and the title was issued. He further reemphasized that he has never had any interactions with Mr. Joba and that he sued the company Themis Investment.
  14. He stated that he came to know about Themis from a letter they wrote to Virmir Auctioneers which he attached at page 14 of his bundle where they were asking for Kshs 240,000 but he had never dealt with them prior to this letter being written to them. He testified that Jogoo Police station was 50 meters from the suit property and that neither Mr Joba nor the company Themis Investment ever went to the police to report any trespass or interference in the suit property.
  15. It was his testimony that they followed all procedures required in allotment of land and produced, 1. The title IR No 62833/1 and registered in the plaintiffs' names and issued on 25/07/1994, 2. The allotment letter by Nairobi City Council dated 14/03/1992, 3. Deed plan No 184909 and dated 30/06/1994 and finally 4. Payment Receipt from 1993-2010 (Ground Rent).



16. He urged the court to dismiss the counter-claim and allow him to get back to his property.

### **Defendants 'Case**

17. The Defendant filed an amended defence and counterclaim dated 10/05/2007. The Defendant denies each and every allegation as set out in the Plaint. On the contrary, he avers as follows;
- a. That the purported allotment of LR 209/12155 to the City Council is illegal and unlawful and tainted by fraud and that the City Council of Nairobi holds no lawful title to the property. That the Council has acknowledged this position by levying and receiving land rates from the defendant
  - b. That the purported allotment has been illegally issued and has long lapsed and confers no title to the plaintiff. Further the allotment purports to be for a term of the residue of the City Council/Commission's term of 99 years less (the last three days) while in actual fact no such term existed.
  - c. That the alleged approval was issued without the approval of the Minister for Local Government as required by Section 144 (6) of the Local Government Act Cap 265 of the Laws of Kenya (now repealed)
  - d. The purported allottees who are the plaintiffs only purported to pay the stand premium and ground rent and obtain beacon certificate after the Defendant's initial demand and more than fourteen years after the purported dated allotment.
18. The defendant further avers that it is the rightful owner of the suit property and the beacon certificate and the expected lease from the City Council are untenable and unmaintainable. That the plaintiffs were summoned several times to the chief and they never showed up even after the defendant issuing them with demand letters concerning the trespass which has made the defendant engage a surveyor to re-establish the beacons and extent to trespass.
19. The defendant denies that the plaintiff is entitled to any damages under the Distress Act (Cap 296) and he also denies allegations of impropriety. He avers that he paid land rates on 31/01/2007 amounting to Kshs 290,700 and he has been issue with a rates clearance certificate. He denies that the City Council and the Chief Land Registrar of Titles have verified his titles are genuine and legal as alleged by plaintiff.
20. It is his case that the plaintiff's land being a grant from the President through the Land Commissioner does not require an allotment letter, beacon certificate, lease and certificate of lease from the City Council of Nairobi.
21. He states that the suit property has been vacant for the last fifteen years with a heap of rubbish on it and only in the last two years the plaintiff has encroached.
22. That the 1<sup>st</sup> plaintiff had no authority from the 2<sup>nd</sup> plaintiff and so the defendant will seek to have her name struck out of the suit. That the defendant discovered the encroachment and the fencing off on or about August 2006.
23. The Defendant contends that he only became aware who the trespasser was when this suit was filed and he also filed a counter-claim. He prays that the plaintiff suit be dismissed with costs to the defendant and judgment be entered for the defendant on the counter-claim.



## Counterclaim

24. The counter claims seek an order of joint survey of the suit property including LR 209/12154 and re-establishment of the beacons, an order of eviction to the plaintiffs, a declaration that the plaintiff is a trespasser and that the allotment was illegal and a nullity from the very onset of the process. He also seeks an order of permanent injunction against the plaintiffs and their agents.
25. The defendant prays for judgement be entered against the Plaintiffs as provided in the Counterclaim.

## Evidence by the Defendant

26. DW1 – Richard Gethecha Njoba adopted his witness statement dated 15/05/2012. He also produced and relied on his list and bundle of documents dated 27/01/2010 and a supplementary list of documents dated 30/09/2021 and their witness statement dated 30/09/2021 which he produced and was marked them as DW1-Exhibit 1-11.
27. He averred that that the plaintiff had deposited a heap of rubbish on the suit property and the youth were hired from time to time to sort and cart it away. That prior to filing of this suit he interacted with the wife of the plaintiff and they were called to meetings by the chief which the plaintiff never attended.
28. During cross examination by Mr Kopere, the defendant testified that the defendant company bought the suit property from its owners. The defendant stated he did not include the information about purchasing the suit property from the owners, in his written statement, the defence nor in the counterclaim filed between 2007 and 2010. Further that there is no statement that he purchased the property in question or the adjacent one but he stated that he obtained titles in 1994.
29. It was his testimony that in his supplementary statement he stated that he purchased the two parcels in May 1994 from Mr Cheruiyot and Mr Otieno at Kshs 800,000 each. It was his testimony that he had a sale agreement but he did not have it in court. He testified that after the purchase, he never did anything on the suit property until 2006 or 2007 thereabout.
30. Further that in 2007 he made out a payment cheque worth Kshs 297,000 to the City Council for LR 209/12154 and a cheque worth Kshs 290,700 on the same day for parcel number LR 209/12155. He also stated that he did not have any statement to show that the payments went through. The suit was filed in February 2007. The defendant stated that there was no record of the payments, that his advocates did not submit the evidence.
31. It was his testimony that in 2006, there was a bunch of materials heaped up and they found materials disposed on the suit property and the youth would be called in to deal with sorting out the materials. The defendant testified among the documents he produced was a letter written to Mr Nderitu about encroachment at page 23 and the letter at page 29 which identified many people who had encroached and that when he failed to identify Mr Nderitu he went to the District Officer who issued summons but Mr Nderitu never turned up. He testified that he did not have copies of the letter before the court.
32. He testified that he never gave instructions for levy of distress as stated by the plaintiff but that they contracted someone to evict. He however could not recall the institution that they had contracted. He testified that it was not the auctioneer.
33. He testified that he had not done any development on the suit property since they court stopped the defendant but that on LR 209/12154 the defendant has tried to establish the beacons. He stated that he was aware the court gave an injunction on LR 209/12155. It was his testimony that for one to get a deed plan one needs to get a survey report with beacons. Further he stated that he got the title but



he was now sending a surveyor to resurvey the land. It was his testimony that the court order was not issued against LR No 209/12154 and that he had title for both LR 209/12155 and LR 209/12154 but he did not have a beacon certificate.

34. In re-examination, it was his testimony that he could not produce original titles since he had an overdraft with Charter House Bank and so the original titles were in the bank. He stated that he was not aware that LR 209/12154 was not encumbered.
35. The defendant then closed its case.

### **Plaintiff's Reply to the Defendant's Defence and Defence to Counterclaim**

36. The Plaintiff denies each and every allegation contained in the Defendant's Defence and counter-claim dated 17/04/2007 and reiterates the averments contained in his amended plaint dated 8/03/2007.
37. In further response to the averments of the defence and counterclaim, the Plaintiff verily avers as follows: -
  - a. That in response to paragraph 4, it is the defendant who fraudulently obtained its Title as the plaintiff avers in the plaint at Paragraph 7 E.
  - b. That the defendant failed to produce the demand letters he refers to in his defence and neither did he produce the summons from the Chief and the District Officer.
  - c. Further he avers that the defendant never set out evidence on how he acquired the suit property in 1994.
38. The plaintiff avers that the defence and counter-claim is inept, misconceived, and frivolous.
39. The Plaintiff reiterates the averments contained in the Amended Plaint dated 8/03/2007 and prays that the reliefs sought therein be granted.

### **Written submissions**

40. The Plaintiff and the Defendant filed submissions that I have considered both. The Plaintiffs' submissions are dated 06/06/2022 and Defendant's submissions are dated 29/06/2022.

### **Analysis and Determination**

41. I have considered the parties' respective pleadings, the evidence tendered by both the plaintiff and the Defendant and the respective submissions by counsels. I have also considered the joint list of 16 issues that was identified by both parties as the issues the court needs to determine. The court has at the same time considered the relevant legal framework and jurisprudence as argued by the parties and the jurisprudence in the area of ownership of land.
42. In my view, the following are the key issues for determination in this suit;
  1. Who between the plaintiffs and the defendant is the bona fide owner of LR 209/12155;
  2. Whether the plaintiffs is entitled to the reliefs sought in the plaint.
  3. Who should bear the costs of this suit?



### **Who between the plaintiffs and the defendant is the bona fide owner of LR 209/12155**

43. It is trite law that the registration of a person and Certificate of title held by such a person as a proprietor of a property is conclusive proof that such person is the owner of the property.
44. On one hand, evidence tabled by the plaintiffs through supporting documents, was that they have been lawful allottees and owners of LR 209/12155 and following the allotment they duly paid the requisite stand premium and all annual rents from 1992 upto 2006 and were issued with beacon certificate and are only awaiting the processing and issuance of the Lease from the City Council of Nairobi. Evidence adduced before the court show that the City Council allotted the said Suit Property to the plaintiffs vide a letter dated 14/03/1992 and after complying with all the processes the suit property was registered in the joint names of the plaintiffs as IR No 62833/1 on 25/07/1994 .
45. The plaintiffs produced before the court the title IR No 62833/1 registered in the names of the plaintiffs and issued on 25/07/1994, the allotment letter by Nairobi City Council dated 14/03/1992, a deed plan No 184909 and dated 30/06/94 and payment receipt for the ground rent from 1993 – 2010.
46. The Plaintiffs stated that the defendant Richard Njoba and the defendant company are total strangers to them. Their claim of ownership of the suit property cannot be authenticated because the suit property is duly registered in the plaintiffs’ names. Further that whereas the defendant has a title, he was not able to show the processes followed to enable him or the company to have acquired the said title.
47. The defendant on the other hand claims to have purchased the suit property from the original allottee Mr Cheruiyot and Mr Otieno. At the same time, he has also attached the grant IR No 62833 which show that the defendant company was allotted the said suit property on 1/02/1994 and a deed plan No 184909 dated 30/06/1994.
48. The orders sought by the Plaintiffs assertion that they are the rightful owners of the Suit Property are premised being the allottees and fulfilment of the conditions of the allocation by Nairobi City Council now Nairobi City County.
49. It is trite law that whoever asserts the existence of a legal right or liability is encumbered with the burden of proving the existence of that right or liability asserted. Section 107 of the *Evidence Act* (Cap 80 Laws of Kenya) succinctly states:
- “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.”
50. And Section 108 of *Evidence Act* (Cap 80 Laws of Kenya) further states thus:
- “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
51. The plaintiffs’ asserted ownership of the Suit Property is founded upon an allotment letter issued to them. The defendant has attacked the letter of allotment held by the Plaintiffs on the grounds that while the same was issued in 1992, the defendant bought the parcel of land from the original allottees Mr. Cheruiyot and Mr Otieno in May 1994. Once the defendant attacked the allotment letter, the question of the process of acquisition of the allotment letter came into play. The question of acquisition behoves the court to trace the legal prescriptions for the issuance of an allotment letter and to adjudge the plaintiffs’ acquisition from the light of the law.



52. Again Section 109 of Act refers to the burden of proof of a particular fact. It states that:
- “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
53. In the instant case, the burden of proof lay on the Plaintiffs. They claimed to be the rightful owner of the Plot No L.R No 209/12155 for grant number IR 62833 issued from 1/02/1994. They testified that they were allotted and they produced a copy of the allotment letter dated 14/03/1992, a beacon certificate signed by Land Surveyor and Chief Land Surveyor on 15/09/2006. There was a Deed Plan Number 184909 attached. A keen perusal of the document showed that indeed the suit land herein was one of the plots on the deed plan.
54. The plaintiffs have also attached ground rent receipts of the years 2004, 2005 and 2006, it is not clear why the ground rent receipts for the previous years were not attached and produced in court. The plaintiffs also attached a copy of the Daily Nation Newspaper cutting calling on property owners to collect their land papers from the City Council to enable their owners acquire title deeds from the Commissioner of Lands dated 07/08/2007. The cutting does not mention the plaintiffs in any way and one is left wondering why the newspaper cutting was added to the documents.
55. I however note that the plaintiffs did not produce in court the acceptance letter nor the payment voucher which was attached to the allotment letter to show that they paid the requisite money required and directed by the letter of offer. The allotment letter read in part....
- “...If acceptance and payment is not received within 30 days from the date hereof the offer herein contained will be considered to have lapsed without further reference to yourself.”
56. In the case of *Rukaya Ali Mohamed v David Gikonyo Nambachia & another* Kisumu HCCA.9/2004 Warsame Judge held that:
- “Once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest”.
57. Whereas I note there was no evidence presented to attest to the fact that the letter of allotment to the plaintiffs was cancelled. It is also not lost to me that the plaintiffs did not lead nor present any evidence to show that they accepted the offer made within the stated 30 days in the letter of offer. Failure to show when the offer was accepted means the allotment lapsed automatically as per the condition thereon.
58. The lapse rendered the land unavailable to the allottee and left it available for allocation to another person if it was to be allotted, and if was not, it reverted back to the government. The instant facts are equated and similar to those on *Dickinson v Dodds* *Dickinson v Dodds* (1876) 2 Ch D 463 where communication of an offer was said to be complete once communicated in any manner howsoever.
59. My reading of the allotment letter about the offer in the purported allotment letter point to the fact that once the allotment letter making an offer was issued to an allottee, acceptance had to be made within a period of thirty (30) days from the date of issue and that failure to which, the allotment would lapse automatically. That acceptance is by way of fulfilling all the conditions of the allotment. I have perused the documents presented by the plaintiff and I have not seen clear evidence that there was



payment as the plaintiffs were directed in the offer letter in compliance with the conditions on the letter of allotment.

60. I note that the ground rate payments were made more than ten years after the offer letter this is in 2004, 2005 and 2006 way after the offer letter was written on 14/03/1992. That being so, the offer had already lapsed. There was nothing to be accepted hence anything that was done after the expiry of the period, absent of an extension, was neither here nor there. The case of *Dickinson v Dodds* *Dickinson v Dodds* (1876) 2 Ch D 463 gives a clear explanation that once an offer ceases, there is nothing to accept. The case is clear that even when the notification is by a third party that the offer has been withdrawn, that suffices as though the notice was given by the offeror. In the instant case, the condition was express about when the offer could be subsisting. The Offeree needed to do more to revive the offer than to make a payment in purport of acceptance of the non-existent offer. To cement that action as binding on the part of the government which had given the offer that lapsed would amount to forcing a contract or offer into existence.
61. The plaintiffs did not also produce any search to show that they are the registered allottees or owners of the suit property and neither did they invite a representative from the Nairobi City Council as it then was nor Nairobi City County as it is today to shade light on who is the allottee or registered owner. The Chief Land Registrar would have been also an important expert witness to shade light on the person who is registered on the Certificate of Lease.
62. From the foregoing I find that the plaintiffs have not proved their case on a balance of probability.
63. On the other hand, the defendant apart from alleging purchase from the original allottees, or that he has hired a surveyor a Mr Baniel Njiru Gikombo to reestablish the beacons of their two properties and that he has charged the suit property with Charter Bank, he has not attached nor led any evidence in court on these crucial issues. No sale agreement is attached, no report from the surveyor was produced nor a copy of the charge to the suit property.
64. On the other hand, it is the defendant's case in the counter-claim that he bought the suit property from the original allottees, one Mr Cheruiyot and one Mr Otieno. It is not clear why the sellers only had one name each. The defendant did not enjoin these original allottees to the suit nor call them as witnesses. There is sale agreement nor original letter of allotment from the two persons who he alleges to have bought the land from. There is no attachment of receipts nor bank deposits produced as testament to the purchase.
65. The Court of Appeal in the case of *Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwua & 4 others* [1997] eKLR held as follows:

“It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.”
66. Further in the case of *Philma Farm Produce & Supplies & 4 others v Attorney General & 6 others* [2012] eKLR Majanja J expressed the issue as follows:

“These letters do not confer a proprietary right but only a right to receive property or to be allocated on complying with the terms and conditions stated therein. The right to be allocated the property is a contractual right and must be determined in accordance with the ordinary rules of contract. It is in this respect that the petitioner's claim must fail.



There were no allocation letters issued to the company and therefore any payment by the company was purely gratuitous. It could not create a legal obligation on the part of the Commissioner of Lands to process titles in the petitioners' favour in accordance with the offer nor confer a proprietary interest in the suit properties."

67. As earlier stated, the defendant did not aid this Court by availing evidence of on acquisition of the suit property. The claim of purchase from the original allottees did not benefit from presentation of any evidence to prove this fact. No sale agreement was presented making it difficult for the court to find that the claim of ownership is deserved.
68. Just like the plaintiff the defendant did enjoin not nor call the Nairobi City Council as it then was nor Nairobi City County as it is now, nor the Chief Land Registrar to shade light on why there are two persons claiming the same parcel of land which is the suit property each armed with a grant.
69. Given the foregoing I also find that the defendant's claim in the counter-claim fails and I find no basis to declare the defendant as the owner of the suit property.

#### **Who should bear the Costs of the Suit?**

70. It is trite that costs usually follow the events. Section 27 of the *Civil Procedure Act* gives the Court discretion to grants costs. As the successful party is always entitled to costs except in exceptional circumstances, no exceptional circumstance exists in this suit, and thus the Court finds that the plaintiffs' case is not merited and neither is the defendant's case merited. The court will therefore direct that each party bears its own cost

#### **Disposal Orders**

71. Taking into account the findings of the court on the key issues that fell for determination in this suit; and further taking into account the reliefs sought in the primary suit and in the counter-claim, I make the following disposal orders:
  - a. The plaintiffs' case is not merited and is therefore dismissed
  - b. The defendant's counter-claim is dismissed for lack of merit
  - c. Parties shall bear their respective costs of the primary suit and the counter-claim herein.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2022.**

.....

**MOGENI J**

**JUDGE**

Judgement read in virtual court in the presence of:

Mr Ntogati holding brief for Mr Ng'arua for the Defendant

Ms.Ligala holding brief for Mr Kopere for Plaintiffs

Philomena/Yvette/Sagina : Court Assistants

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**MOGENI J**



**JUDGE**

