



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 914 OF 2004**

**PEARL HOLDINGS LTD.....PLAINTIFF/APPLICANT**

**VERSUS**

**ELI ALON..... DEFENDANT/RESPONDENT**

**RULING**

**A. THE BACKGROUND AND THE PRAYERS AND DEPOSITIONS**

The plaintiff's application by Chamber Summons dated 19<sup>th</sup> November, 2004 and filed on 24<sup>th</sup> November, 2004 was made within the ambit of a suit by plaint dated 13<sup>th</sup> August, 2004 and filed on 26<sup>th</sup> August, 2004.

In the pleadings in the suit it is stated that the plaintiff, a limited liability company incorporated in Kenya, was at all material times the registered proprietor of a property known as L.R. No. 209/8763/2 which was mortgaged to Savings & Loan (K) Ltd, and the defendant entered and occupied the same in January, 1998. It is stated that entry of the suit property as aforesaid was wrongful and unlawful. It is also stated in the alternative that the defendant's entry as aforesaid was by virtue of an invalid or void lease agreement; whence the further assertion is made, that the defendant has been and is occupying the suit premises as a trespasser. In the main suit, the plaintiff prays for delivery-up of possession by the defendant, and for *mesne* profits.

The foregoing provides the foundation of the said Chamber Summons which the plaintiff took out under Order VI, rule 13(1)(b), (c) and (d) of the Civil Procedure Rules. The plaintiff's prayers are:

- (i) that, the defendant's defence herein be struck out;
- (ii) that, the defendant be ordered to vacate the suit premises, failing which he be evicted therefrom;
- (iii) that, interlocutory judgement be entered for the plaintiff, against the defendant, and *mesne* profits be assessed by way of formal proof;
- (iv) that, costs be awarded to the applicant.

The general grounds upon which the application is premised are as follows:

- (a) that, the suit premises, namely L.R. No. 209/8763/2 is owned by the plaintiff;
- (b) that, the purported lease of the suit premises to the defendant by one **M.G. Okeyo** is illegal and

void;

(c) that, the purported lease by one **M.G. Okeyo** to the defendant is not binding on the plaintiff;

(d) that, the defendant is a trespasser on the suit property;

(e) that, the defence is an abuse of Court process and is intended to delay the determination of the instant matter.

Evidence to support the application is in the depositions of **Achola Pala Okeyo**, made on 19<sup>th</sup> November, 2004 and filed on 24<sup>th</sup> November, 2004. She depones that she is a director of the plaintiff company and is authorised to swear the affidavit. She avers that *the plaintiff company is the proprietor of the suit premises* which is under mortgage. She states that the defendant is wrongfully in occupation of the suit premises and as admitted in the statement of defence, *does not pay rent to the plaintiff*. The deponent avers that the plaintiff has defaulted in remitting mortgage-loan repayments to the mortgagee, and consequently M/s. Savings & Loan (K) Ltd has threatened to foreclose and sell the suit premises. The threat is contained in a letter addressed to Pearl Holdings Ltd., dated 30<sup>th</sup> May, 2003 and marked for the attention of **Amb. Michael Okeyo**. The reference is to Loan Account

No. 201-904-925, in respect of L.R. No. 209/8763/2, Gem Lane, Kileleshwa (the suit premises). The letter states:

*“We refer to our letter dated 13-4-03 and regret to note that you have failed to call on us as we had requested therein.*

*“The position of your account as at 30-5-03 is as follows -*

*OUTSTANDING BALANCE: Kshs.625,838/61*

*UNPAID INSTALMENTS: Kshs.496,907/17*

*“We also note that the loan was due for full redemption by 31-5-2003. You are therefore being requested to arrange to clear the total outstanding by 30-6-2003.”*

On 3<sup>rd</sup> July, 2003 the mortgagee wrote again to Pearl Holdings Ltd., this time without the reference to **Amb. Michael Okeyo**. The letter thus reads:

*“We refer to the above [i.e. L.R. No. 209/8763/2 GEM LANE, KILELESHWA] and advise that after depositing Kshs.12,000/= on 30-06-03, your account still reflected an outstanding balance of Kshs.519,562/30 as at 1-7-03 which amount was due for full redemption by 31-5-03.*

*“Kindly arrange to pay off the above amount within 21 days from the date of this letter failing which we shall instruct our lawyers to proceed with the recovering of the entire debt in any way they deem fit.”*

On 10<sup>th</sup> December, 2003 M/s. Savings and Loan (K) Ltd wrote, in respect of the suit premises, to the deponent herein, **Dr. Achola Pala Okeyo**, at a New York address in the USA. The short letter, which came from the Branch Manager of savings and Loan Kenya Ltd. thus read:

*“We refer to your letter dated 7<sup>th</sup> December, 2003 and advise that we have neither signed any tenancy agreement nor have we received any rental proceeds from the tenant.”*

The defendant's replying affidavit, dated 17<sup>th</sup> January, 2005 and filed on 18<sup>th</sup> January, 2005 is to be seen against the background of his statement of defence dated and filed on 27<sup>th</sup> September, 2004. The material elements in these pleadings are as follows:

(i) that, according to the lease agreement the proprietor of the suit premises is one Mr. M.G. Okeyo, and the plaintiff is a stranger;

(ii) that, there was a valid lease agreement entered into by the defendant and the said M.G. Okeyo, the same being witnessed by an advocate, one Mr. Mbijiwe Mugo;

(iii) that, the defendant is in valid possession of the suit property on the basis of the said lease agreement;

(iv) that, the defendant is not liable to pay mesne profits and that he is not a trespasser as he pays rents due regularly.

In his replying affidavit dated 17<sup>th</sup> January, 2005 and filed on 18<sup>th</sup> January, 2005 the defendant avers as follows:

(a) that, **Mr. M.G. Okeyo** gave him tenancy of the suit premises, and tenancy was expressed to commence on 1<sup>st</sup> march, 1999 at a monthly rental of Kshs.60,000/= payable quarterly in advance, and the said **Mr. Okeyo** is the deponent's landlord;

(b) that, at the beginning of the tenancy, the deponent did pay the sum of Kshs.60,000/= which was received personally by the said **Mr. Okeyo**;

(c) that, at the time of making of the lease agreement for the suit premises, the lawyers acting for the said **Mr. Okeyo** were M/s. Mbijiwe Mugo & Co. Advocates;

(d) that, by a letter dated 4<sup>th</sup> May, 2001 the said **M.G. Okeyo** informed the deponent that he was proceeding to the USA, and in his absence rents due should be paid over to his daughter, **Mrs. Violet A. Wasunna**;

(e) that, when subsequently the tenancy agreement expired, the said **M.G. Okeyo** made a verbal agreement with the defendant that he should continue as a tenant at the suit premises;

(f) that, only on 8<sup>th</sup> September, 2003 did the deponent come to know of **Dr. Achola Pala Okeyo** as a Co-Director of Pearl Holdings Ltd, and only then did he learn from the said **M.G. Okeyo** that he was a Director of Pearl Holdings Ltd; and he knew of **Dr. Achola Pala Okeyo** through a letter of 8<sup>th</sup> September, 2003 from M/s Judy Thongori & Co. Advocates who wrote on her behalf;

(g) that, M/s. Judy Thongori & Co. Advocates wrote to the deponent on 15<sup>th</sup> January, 2004 asking him to vacate the suit premises;

(h) that, the deponent received a letter of 4<sup>th</sup> December, 2003 from M/s. Judy Thongori & Co. Advocates the caption of which read "**Ambassador Michael Okeyo v. Dr. Achola Pala Okeyo**", which letter asked the deponent to confirm having handed over the suit premises;

(i) that, the said **M.G. Okeyo** assured the deponent that he could retain tenancy of the suit premises, and that all rents due have been regularly paid to him;

(j) that, the said **M.G. Okeyo** permitted the deponent to continue occupying the suit premises in his capacity as a Co-Director of the plaintiff company;

(k) that, the deponent is not occupying the suit premises as a trespasser, but as a tenant, with the full knowledge of the said **M.G. Okeyo** as a Co-Director who has affirmed that **Achola Pala Okeyo** has no authority to terminate the tenancy;

(l) that, the deponent "occupied and came [into] possession of the suit premises with the full

consent and permission of **Ambassador M.G. Okeyo**, a Co-Director of the plaintiff [who] represented to me that he had authority on behalf of the plaintiff company to offer the tenancy of the suit premises to myself”;

(m) that, the deponent was not made aware that the suit premises was charged to Savings and Loan (K) and such a possibility was of no concern to him;

(n) that, the deponent pays rent regularly to **Ambassador G.M. Okeyo** and he (the deponent) has never been in breach of the terms of the tenancy.

To his affidavit, the defendant has attached several annexures. One of these is a “Lease Agreement” which bears no date, relates to L.R. No. 209/8763/2, Gem Lane, Kileleshwa (the suit premises), is drawn by M/s. Mbiyiwe Mugo & Co. Advocates, and the parties to which are shown as **M.G. Okeyo** (landlord) and **Eli Alon** (tenant). The “lease agreement” opens by declaring that *the landlord is registered as proprietor of the suit premises*; and that landlord is named as M.G. Okeyo. So the “lease agreement” which is the basis of the defendant’s tenancy makes no reference to the plaintiff, and is mute on the management set-up in the plaintiff company, so that there is no reference to **M.G. Okeyo** as “Co-Director”, just as there is no reference to **Achola Pala Okeyo** as “Co-Director”. Truly, therefore, neither Pearl Holdings Ltd, nor M.G. Okeyo as Co-Director, nor **Achola Pala Okeyo** as Co-Director is anything but a stranger to the defendant as a “tenant” of the suit premises. The defendant founds his tenancy exclusively upon a person, **M.G. Okeyo**, as his landlord, and it is to nobody but **M.G. Okeyo** that he *pays all his rents*. The defendant assumes the suit premises is not only free of any encumbrance, but is also property that is exclusively at the disposal of **M.G. Okeyo** as landlord.

Other documents annexed to the defendant’s affidavit are:

(i) defendant’s letter to **M.G. Okeyo** as landlord, dated 19<sup>th</sup> February, 1999;

(ii) **M.G. Okeyo’s** acknowledgement of rent payment received from the defendant, dated 9<sup>th</sup> February, 1999;

(iii) **M.G. Okeyo’s** letter of 4<sup>th</sup> May, 2001 to the defendant, asking him to pay three months’ rent to Okeyo’s daughter, **Mrs. Violet A. Wasunna**, while he is away in the USA;

(iv) letter from M/s. Judy Thongori & Co. Advocates to defendant dated 8<sup>th</sup> September, 2003 asking him to give vacant possession of the suit premises to **Dr. Achola Pala Okeyo**, a Co-Director of the plaintiff company;

(v) letter from M/s. Judy Thongori & Co. Advocates to the defendant’ lawyer, **Mr. M.A. Khan**, Advocate seeking confirmation that the defendant has given vacant possession of the suit premises;

(vi) letter from M/s. Judy Thongori & Co. Advocates to the defendant, dated 15<sup>th</sup> January, 2004 indicating that legal proceedings would be instituted against him if he did not forthwith hand over vacant possession of the suit premises;

(vii) letter from M/s. Adere & Co. Advocates to **M.A. Khan**, Advocate requesting a copy of the lease agreement which was the basis of the defendant’s occupancy of the suit premises; M/s. Adere & Co. Advocates were taking over the conduct of this matter for the plaintiff, from M/s. Judy Thongori & Co. Advocates.

## **B. SUBMISSIONS FOR THE APPLICANT**

Hearing of this application took place on 20<sup>th</sup> January, 2005 when **Mr. Adere** represented the plaintiff/applicant, while **Mr. Mwangi** (holding brief for **Mr. Khan**) represented the defendant.

When learned counsel, **Mr. Adere** began his submissions he made a statement which has not come through clearly from the depositions, that *the suit premises belongs to a Co-Director who at the moment was homeless*. While it is true that the defendant, strictly speaking, recognises no Co-Director at all, neither do the depositions made in support of the plaintiff's case convey unequivocally that the suit premises is the property of a particular Co-Director. Therefore, this is an issue which, entirely by itself, cannot lead to any finding in this application. What emerges quite clearly from the depositions made for the plaintiff, is that the suit premises is the property of *the plaintiff*, namely, **Pearl Holdings Limited**.

Learned counsel remarked, from the affidavit evidence, that the mortgagee had threatened to exercise its power of sale over the suit premises, for non-servicing of the mortgage loan; and that if at all the defendant had been paying any rents in respect of that premises, this was *not going to the proprietor of the suit premises*, and so was not servicing the mortgage loan.

I think there is no doubt that the suit premises is on mortgage, which, of course, places *a legal duty on the proprietor to repay the mortgage loan*. It is an intriguing matter which must be resolved in this application, that the defendant says he is a total stranger to that mortgage; he knows nothing about it; he doesn't want to hear about it. To the defendant, there is one and only one landlord, namely **M.G. Okeyo** who has "leased" his house to the defendant free of encumbrance as far as a tenant's needs are concerned. Ultimately the question to be decided is: on whose side does "right" lie, the tenant or the property owner? And, besides, *how does the property owner reveal its presence?* Through one Co-Director, namely **M.G. Okeyo**? Through two Co-Directors, namely **M.G. Okeyo** and **Achola Pala Okeyo**? Or are there other Co-Directors apart from the two? Are the Co-Directors conducting themselves properly as the representatives of the plaintiff company? *How should the plaintiff company's property be handled under the law*, so as to create legal rights of possession and confer the same, in respect of the suit premises, upon the defendant? Does the defendant have legal rights of possession over the suit premises which is truly the *property of the plaintiff company*?

How can the Court determine the legal mode by which the plaintiff company's property could be conferred in some measure upon the defendant? The plaintiff has not brought before the Court the constitutive legal documents of Pearl Holdings Ltd. But it is only from those documents that it could have been determined whether **M.G. Okeyo** is allowed *on his own* to "lease" the suit premises. It is clear from the depositions of the defendant that **M.G. Okeyo** regarded himself as landlord and indeed, as *owner* of the suit premises, and he considered himself entitled to the rents all on his own without reference to anyone else. He personally received the rent monies and, when he was not in Kenya, he directed the same to be paid over to his married daughter. It is clear that the defendant knew of nobody else as owner or even co-owner of the suit premises and he dealt only with **M.G. Okeyo**. The defendant also deposed that only much later after he agreed with **M.G. Okeyo** that he occupies the suit premises, did his landlord inform him that he, **Mr. Okeyo**, was a Co-Director of a company; but it is not clear from those depositions that **Mr. Okeyo** as much as admitted that the suit property was the property of the company of which he was a Co-Director. The tenant (the defendant) therefore *considered himself justified in not inquiring about the said company* or about any other Co-Director or Co-Directors; and he continued to regard **Mr. Okeyo** as, for all practical purposes, the owner of the suit premises and as his landlord. Thus in his statement of defence the defendant "craves leave of the Court to refer to the said lease agreement"; asserts that "he is in valid possession of the suit property as a result of an express agreement entered between himself and the landlord"; and avers in his replying affidavit of 17<sup>th</sup> January, 2005 that "I have a valid defence and I be permitted to defend this matter and justice be done to me."

Learned counsel, **Mr. Adere** stated what is not seriously contested, that the suit property is owned by the plaintiff, and submitted that *the statement of defence carries no answer to that reality*. In the circumstances, counsel remarked, the plaintiff had expected that the only plea the defendant would have would be for a little more time to vacate, but on the contrary the defendant denies the content of the application and seeks to keep the plaintiff out of the suit premises.

The effect of that submission is that *the defendant has an agreement entered into with somebody who is not the owner of the suit premises*. To that extent counsel's submission would, with respect, carry validity if the alleged landlord was not the plaintiff company. Since a company is a *corporate entity* whose

authority is to be given by formal entries under seal, it must be correct, as **Mr. Adere** submits, that the defendant *contracted for tenancy with someone who was not the owner of the suit premises*. It was the defendant who wanted possession of the suit premises; so it was his binding duty to ascertain the ownership of the suit property before contracting for it. He would have done so simply by checking he records in the Lands Office. If he failed to do so, that would be at his peril, as transactions in landed-property cannot be undertaken without complying with certain procedures. The flip side of the foregoing point is that **Mr. M.G. Okeyo** had *no legal right to lease the suit property to the defendant*, as that property belonged to the plaintiff company, and any transactions with it ought to have been conducted only within the terms set out in the constitutive legal documents of the plaintiff company, and properly executed with the seal of the said company. No other method would have reposed validity in the transactions by which the defendant came to occupy the suit premises.

The foregoing are basic considerations of law that must weigh heavily in the determination of the outcome of this matter. But, as must be appreciated at this stage, the question also must be addressed whether it is exclusively **Dr. Achola Pala Okeyo** who represents the official state of affairs at the plaintiff company, considering that she is described as Co-Director, just as **Mr. M.G. Okeyo** is described as Co-Director.

### C. SUBMISSIONS FOR RESPONDENT

Learned counsel, **Mr. Mwangi**, who represented the defendant, contested the plaintiff's prayer that the statement of defence be struck out. He submitted that the only proper basis for striking out the statement of defence, was that it carried *no reasonable cause of action*. **Mr. Mwangi** submitted that the application was more in the nature of a prayer for summary judgement, and was not the kind of application envisaged under Order VI of the Civil Procedure Rules. He contended that the application had not contended that the defence filed was not a reasonable defence, nor that it was an incompetent defence. Counsel contended that the plaintiff's second prayer, "that the defendant be ordered to vacate the suit premises failing which he be evicted therefrom", would determine the entire suit, and hence it ought not to be obtained at the interlocutory stage. Granting such a prayer, counsel submitted, would be "short-circuiting the main suit". Counsel submitted that the plaintiff had not laid a basis for the striking out of the defence under Order VI. He submitted that it was a most relevant question *how the defendant got into the premises*; and that this issue properly belonged to the trial of the suit. He contended that there was in existence a *lease*, as the *legal basis of the defendant's occupancy*, and that the validity of this lease could only be determined at the trial. He remarked that since the purported landlord who let the suit premises to the defendant, **M.G. Okeyo**, says he is a Co-Director, and **Dr. Achola Pala Okeyo** also claims to be a Co-Director, it has to be determined *who has authority to act for the plaintiff company*. Counsel asked the apt question: "Are they acting in the interests of the company?" In counsel's view, this matter must be determined in full trial.

**Mr. Mwangi** considered particularly significant in the resolution of the instant matter the fact that the defendant had possession of the premises and his *convenience* had some considerable weight. Counsel, however, considered it to bear no relevance to the defendant, the fact that the suit premises might be on mortgage to Savings and Loan (K) Ltd. In his words: "Such [mortgage] has nothing to do with the defendant. He was not a party to a contract involving Savings and Loan". Counsel did not bear in mind the fact that such a claim could be self-defeating, considering that a mortgagee does indeed have a *statutory power of sale* and if it came to that, there is no way in which the defendant, as he sought his own convenience, would be able to repulse the mortgagee's power of sale.

Therefore, I must rule at this point that the *mortgagee's entitlement to sell the suit premises*, in a proper case, is an important factor in this matter and must be taken into account in determining the instant application.

Learned counsel challenged **Achola Pala Okeyo's** affidavit as incompetent, for not making depositions on the tenancy question. Yet even the depositions of the defendant have no account on the place of **Dr. Achola Pala Okeyo's** role as Co-Director, in relation to the said tenancy. So I cannot attribute incompetence to **Dr. Achola Pala Okeyo's** affidavit just because it is laconic about the alleged tenancy.

**Mr. Mwangi** submitted that the defendant had a reasonable defence and a right to be heard thereon.

#### **D. APPLICANT'S REJOINDER**

In his rejoinder, learned counsel, **Mr. Adere** restated the point that the defendant's occupancy at the suit premises was trespassory and, as an interlocutory matter, this trespass should be terminated pending proof of damages – and the damages would be in respect of *mesne* profits.

Learned counsel raised the elemental point, which I have illuminated earlier on, that the defendant has been reluctant to address the question of *ownership* of the suit premises. Counsel submitted that only a recognition of correct ownership would disclose whether or not the tenancy is lawful, as there can be no tenancy in which the purported landlord has no colour of right to let the premises in question. Thus, counsel submitted, the averments in the supporting affidavit had not been answered. Counsel noted that the defendant had admitted paying rent to a person other than the plaintiff, who is the registered owner of the suit premises.

**Mr. Adere** impugned the alleged lease between **Mr. M.G. Okeyo** and the defendant for being *undated* and *invalid*; *not stamped*; no stamp duty paid; *not registered*. He submitted that such a lease could not be relied on by the defendant. He submitted that, while there was no dispute about *occupation* of the suit premises, the defendant was a trespasser. He submitted that the defence was not an answer to the plaint, and should be struck out. Counsel submitted that the defendant, who was a trespasser, should be ordered to vacate the premises.

#### **E. FURTHER ANALYSIS, AND ORDERS**

I think it is already quite clear that the defendant contracted with a *person other than the owner* of the suit premises, which premises he occupies and in respect of which he is seeking to defend occupancy rights as a tenant. The suit property *belongs to the plaintiff company*, and not to **Mr. M.G. Okeyo**. This, obviously, seriously undermines the legal foundation of the alleged tenancy.

The alleged tenancy is said to be founded on a lease document which is being presented as a valid legal instrument. However, just as learned counsel for the plaintiff has shown, that "lease agreement" has major defects, notwithstanding that it was drawn by advocates. How could the advocates draw a lease without first conducting a search? They could not advise the defendant properly that the property was not owned by the purported landlord. They did not date the agreement. They did not have the "lease agreement" stamped. They did not register the "lease agreement". Therefore, I have to say that the said "lease agreement" was **void ab initio**. It was not a legal document and it could thus create no rights for the defendant.

In so far as the defendant in his statement of defence craves leave to defend on the strength of a clearly *void agreement*, it is not possible for the Court to sustain that defence and create an opportunity for trial on the basis of clearly invalid and void pleadings.

Therefore, there is no alternative but to strike out the statement of defence as prayed by the plaintiff.

This leads to the next question: What is the position of the plaintiff? As already noted, the plaintiff is a body corporate, and from the evidence on record, that company seems to have two Co-Directors. The constitutive documents of the company were not produced in Court; and therefore it is not clear how the two Co-Directors are required to conduct the business of the company. It is clear that the company is the proprietor of the suit premises. And it is clear that one of the two Co-Directors, without disclosing at the beginning that he was a Co-Director, and that there was another Co-Director of the company owning the suit premises, did act as if the suit premises were *his own personal property*; he entered into a void "lease agreement" with the defendant, and for several years collected and appropriated the proceeds accruing from the suit premises. To-date, as is apparent, the "landlord" is still collecting rents from the defendant, appropriating the same, and not even applying the same, to meet the mortgage-repayments outstanding on the suit property, with the consequence that the suit property is now under threat of sale by the mortgagee.

As I proceed to my final orders I should like to note that the Co-Directors of the plaintiff, or one of them, will need to bring an application in the appropriate Division of the High Court for the *winding-up of the company*, as its substratum of management and continuation can be said to have collapsed. And since the suit property is shown to be under mortgage, appropriate arrangements may be made with the mortgagee to undertake *receivership*, so that it may repay to itself the mortgage loan dues from such “rents” as have been or are being paid for the suit premises.

In the absence of the constitutive documents of the plaintiff company, it would remain relatively unclear *who*, specifically, is to be the beneficiary of the orders sought by the plaintiff, in the Chamber Summons of 19<sup>th</sup> November, 2004. The information before the Court shows the existence of two Co-Directors, one of them being the defendant’s alleged landlord; the other being the deponent in support of the plaintiff’s application. I must take it that the *Co-Director who is the alleged landlord is not in a position to see to the best interests of the plaintiff company*, for the reasons already set out. The other Co-Director, who has sworn an affidavit in support of the plaintiff’s case, appears to be the only remaining shareholder who can see to the affairs of the company; and therefore I do order that *this second Co-Director shall bear responsibility for ensuring compliance with the orders of the Court*. Those Orders are as follows:

- 1. The statement of defence filed by the defendant on 27<sup>th</sup> September, 2004 is hereby struck out.**
- 2. The defendant shall, within sixty days of the date hereof, vacate the suit premises failing which he shall be subject to eviction therefrom.**
- 3. Interlocutory judgement is hereby entered for the plaintiff against the defendant.**
- 4. The plaintiff shall take a date at the Registry, which date shall be given on the basis of priority, for formal proof of damages in the form *mesne profits*, against the defendant.**
- 5. The defendant shall bear the costs of the plaintiff in the instant application.**

***Orders accordingly.***

DATED and DELIVERED at Nairobi this 18<sup>th</sup> day of February, 2005.

**J. B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court clerk: Mwangi**

**For the Plaintiff/Applicant: Mr. Adere, instructed by M/s. Adere & Co. Advocates**

**For the Defendant/Respondent: Mr. Mwangi, instructed by M/s. M.A. Khan Advocates.**