



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Wajibu Ventures Limited v Mungai; Muthui (Third party) (Environment & Land Case 187 of 2019) [2022] KEELC 15247 (KLR) (5 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15247 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 187 OF 2019**

**JG KEMEI, J**

**DECEMBER 5, 2022**

**BETWEEN**

**WAJIBU VENTURES LIMITED ..... PLAINTIFF**

**AND**

**STEPHEN KAMAU MUNGAI ..... DEFENDANT**

**AND**

**JOHNSON KARANJA MUTHUI ..... THIRD PARTY**

**JUDGMENT**

1. The Plaintiff filed suit in 2019 seeking the following orders;
  - a. A declaration that the continued occupation by the Defendant on Thika Municipality Block 20/404 (the suit land) is illegal and an act of trespass.
  - b. An order requiring the Defendant to cause the illegal structures he has erected on the suit land to be demolished and failure of which the Plaintiff to be at liberty to do so at the expense of the Defendant.
  - c. Costs of the suit.
2. The Plaintiff's case is that he purchased the suit land from one Johnson Karanja Muthui on the 12/9/2011. He demanded vacant possession from the Defendant who was in occupation in vain. That the continued occupation of the suit land by the Defendant amounts to trespass.
3. The Defendant denied the Plaintiff's claim vide his statement of defence dated the 4/5/2020 and, contended that he was the beneficial owner of a portion of the suit land measuring 35 by 100 feet having purchased the same from Johnson Karanja Muthui and that the Plaintiff purchased the suit land subject to his interest on the said land measuring 35 by 100 feet. Additionally, he stated that he is



a bonafide purchaser of the disclosed portion for value, a position admitted by the said Muthui vide in his witness statement dated the 3/9/2019 filed together with the Plaint. That the said Muthui has failed to transfer the said portion to him despite several requests and promises to do so. That his interest takes precedence over that of the Plaintiff given that he purchased the portion of land in 2008 and the Plaintiff did so in 2011. Further that he has possession of the portion on which he has developed rental units.

4. In his counterclaim the Defendant sought the following orders;
  - a. A declaration that the Defendant is a bonafide purchaser for value a beneficial Owner of part of the property known as THIKA MUN BLOCK 20/404 measuring 35 feet by 100 feet (his claim).
  - b. That the Plaintiff be ordered to subdivide the title to hive off a title measuring 35 feet by 100 feet to be transferred to the Defendant at the Defendant's cost.
  - c. Costs of the counterclaim.

### **The third-party Notice**

5. The Defendant filed a third party notice against one Johnson Karanja Muthui. The Defendant disputes the claim of the Plaintiff as set out in the defence and in the event that he is held liable to the Plaintiff he is entitled to indemnity from the third party on the grounds that; he is a bonafide purchaser for value and beneficial owner of part of the suit property measuring 35 by 100 feet having purchased the same at the sum of Kshs 375,000/- vide an agreement dated the 31/7/2008 and paid in full; he has been in peaceful and quiet occupation of the portion of the property since 2008; erected rental houses for his and family's livelihood; the Plaintiff purchased the suit land subject to his interest over the portion he is claiming being 35 by 100 feet; despite repeated undertaking refused to transfer the portion; purchaser was well aware or ought to have been of his claim at the time of purchase.

### **The amended Plaint (29/1/2021)**

6. In the year 2015 the Plaintiff subdivided the suit land into two portions THIKA /MUN/ BLOCK 20/2884 and 2885 necessitating the amended Plaint in which the suit land is now THIKA /MUN/ BLOCK 20/2885 (suit land).

### **The amended defence**

7. The Defendant filed an amended defence in which he sought the following prayers;
  - a. A declaration that the Defendant is a bonafide purchaser for value a beneficial Owner of part of the property known as THIKA MUN BLOCK 20/404 measuring 35 feet by 100 feet (his claim).
  - b. That the Plaintiff be ordered to subdivide the title to hive off a title measuring 35 feet by 100 feet to be transferred to the Defendant at the Defendant's cost.
  - c. That in the alternative to prayer b) a mandatory order directed at the Plaintiff to release the original title and transfer parcel No THIKA/MUN/BLOCK20/2885 resulting from the subdivision of the mother title namely parcel 404 to the Defendant within the next 30 days of the judgement being delivered.
  - d. That in the event that the Plaintiff does not comply with the order in c above the Deputy Registrar of this Honourable Court be authorised to sign the transfer forms and all the



documents necessary to facilitate the transfer of parcel No 2885 or subdivision thereof and transfer of a portion of parcel 404 measuring 35 by 100 feet to the Defendant.

- e. That in the event the Plaintiff does not comply with the order in c above the Land Registrar be ordered to cancel the title in respect of parcel 2885 in the Plaintiff's possession. Further the Land Registrar be ordered to dispense with the production of the said original title when transferring title parcel 2885 to the Defendant.
  - f. A prohibitory order directed at the Plaintiff not to interfere with the Defendants quiet and peaceful enjoyment of the property known as parcel 404 measuring 35 by 100 feet and or parcel 2885.
  - g. Costs of the amended counterclaim.
8. In reply to the amended defence and counterclaim the Plaintiff avers that when he purchased the property it was made clear to him by the vendor in writing that the Defendant was a trespasser with no right on the suit land.
  9. In defence to the third-party notice, the third party averred that the Defendant illegally entered into his property and constructed a house on the portion, measuring 35 by 100 feet and later on his request entered into a sale agreement for the portion on the 31/7/2008. Subsequently the Defendant encroached onto more land not in the agreement thus frustrating the agreement of sale. That he refunded the sums paid to the Defendant and caused a letter to be written to him directing him to collect his monies from the advocates and to demolish the houses illegally constructed on the portion of the land. See letter dated the 30/10/2012 which was ignored by the Defendant. That the agreement of sale was breached by the Defendant and is no longer enforceable.

### **The evidence**

10. PW1 - Catherine Waithira Mwangi testified and introduced herself as an Advocate of the High Court of Kenya practising as such under the name and style of Waithira Mwangi & Co. She produced the letter dated the 31/10/2012 written on instructions of the 3<sup>rd</sup> party to the Defendant stating that because of his encroachment on the excess land than in the agreement, he had breached the agreement and as such the same was no longer binding on him and directed him to vacate / demolish the structures of the land and collect the refunds from his lawyers. The witness informed the Court that she does not know if the letter was received and the outcome if any.
11. PW2 - Solomon Mbuthia Kimani stated that he is a director of the Plaintiff Company and that both the Plaintiff and the third party are known to him. He relied on his written statements dated the 3/9/19 and 23/4/2021 as his evidence in chief and produced documents listed in the List of Documents dated the 3/9/2019.
12. That at the time he purchased the property he knew the Defendant was in occupation of part of the land as a trespasser and as to whether he was aware of the agreement between the Defendant and the third party the witness answered in the negative. That he entered into an agreement dated the 12/9/2011 with the third party and the title was issued to him on the 14/10/2011. That thereafter there was an understanding between him and the third party that he would vacate the suit land after one year to no avail. That he subdivided the suit land in 2016 into two portions and the Defendant has trespassed on the parcel 2885.
13. In reexam the witness stated that he met the Defendant in 2016/2017 and that there was an arrangement between him and the third party that he would remove the Defendant from the land.



14. DW1 - Stephen Kamau Mungai testified and relied on his witness statement dated the 5/3/2021 as his evidence in chief and produced the documents listed as DEX No 1-8. He stated that he is the owner of a portion of the land having purchased it from the third party in 2008 at the cost of Kshs 375,000/- which he paid in full. That he has been in occupation for the last 14 years and constructed several rental houses.
15. In further testimony he stated that though he does not live on the land he has tenants who have rented the houses and collects rental income therefrom. That he has never been asked by the third party to vacate the suit land and in that regard was emphatic that he did not receive the letter dated the 31/7/2012 purporting to terminate the agreement of sale and asking him to vacate the portion of the land. That he is not a trespasser but a purchaser of the portion of the land. That the Plaintiff purchased the land including his portion. He denied that his entry was based on trespass but his entry was after execution of the agreement in 2008. That by the time the third party wrote the letter in 31/10/2012 he had already sold the land to the Plaintiff in 2011 and therefore had no interest in the land then.
16. DW2 - David Njuguna Nyambura relied on his witness statement dated the 14/7/2021 as his evidence in chief and stated that he witnessed the agreement of sale between the Defendant and the third party. He confirmed to the Court that his signature is not on the document though he was present when the same was entered into in Muranga Town. That he witnessed the third party being paid by the Defendant.
17. DW3 - Johnson Karanja Muthui stated that he inherited the land from his late father Mucheru. He relied on his Replying Affidavit dated the 16/7/2021 as his evidence in chief and also produced the documents marked as DEX No. 1-3. He stated that the Defendant entered the land while the succession cause was ongoing and had constructed a house on it which he rented out.
18. The witness admitted that he sold the Defendant land measuring 35 by 100 feet and that he terminated it in 2011 vide the letter dated the 23/10/2012. That he entered into an agreement with the Plaintiff on the 12/9/2011 and the Plaintiff became registered on the 14/10/2011 and that by the time he issued the notice on the 23/10/2012 he was still the owner of the suit land. He stated that he terminated the agreement with the Defendant because he encroached on 20 meters on the land without his permission and authority. That the land was subdivided into two portions by the Plaintiff after he completed the purchase. That the Plaintiff was aware that that the Defendant was on the land and that he had refunded his money.

### **The written submissions**

19. As to who is the registered owner of the land, it was submitted that the Plaintiff is on grounds that he purchased the entire property on the 12/9/11 at the costs of Kshs 5 Million which agreement remains unchallenged; became registered and obtained title in 2011; subdivided the land in 2011 into two portions 2884 and 2885; the Defendant has not challenged the title of the Plaintiff on any grounds contemplated under Section 26 of the [Land Registration Act](#), that is to say fraud, misrepresentation and or unprocedurality, illegality and corrupt scheme.
20. That having not challenged the title of the Plaintiff and having not shown any reason for the continued occupation of the land the Defendant remains a trespasser and going by the provisions of section 3 of the [Trespass Act](#), the Defendant ought to be removed from the suit land. That the Plaintiff was informed by the third party that the contract between him and the Defendant had been rescinded and that the Defendant was a mere trespasser. That the Defendant has not exhibited anything to show that he has the permission of the Plaintiff to continue on the land.



21. Further the Plaintiff states that there is no privity of contract between it and the Defendant to warrant the granting of the orders of specific performance against it pleaded in the counterclaim. Further that the agreement between the Defendant and the third party must fail for want of attestation in addition to lack of land control board consent, it being agricultural land which required the parties to obtain consent as per the provisions of section 8 of the *Land Control Board Act*. In that regard the Plaintiff argues that the sale is rendered null and void and unenforceable.
22. It was further submitted that all in all the Plaintiff has no relief to offer to the Defendant for lack of contractual relationship between itself and the Defendant and the Defendant's claim should be directed to the third party for refund of the money deposited prior to the rescission of the contract.
23. As to whether the Defendant is the bonafide purchaser of the portion of the suit land, the Defendant submitted that the sale of the portion of the land to the Defendant was expressly admitted by the third party. What was pending was specific performance on the part of the third party with respect to the transfer of the title to the Defendant. The contract having been performed, the third party had no capacity to so terminate the same.
24. Relying on the decision in *Lawrence P Mukiri Vs A.G & 4 Others* (2013) eKLR the Defendant submits that it is a bonafide purchaser for value without notice of the 35 by 100 feet or 0.0618 Ha having purchased the same from the third party without any notice of defect.
25. Further that the purported breach agreement and termination is not supported by any service upon the Defendant of the termination notice. That there was no breach of the said agreement on the part of the Defendant as he had performed his part of the bargain and what remained was the transfer of the property in his name. The third party failed to show that he deposited any monies with the said advocates or paid to the Defendant. That PW1 and PW2 denied receiving any monies on account of refund to the Defendant. On the issue of alleged frustration on contract by the Defendant it was submitted that it does not lie as it is being alleged one year after the third party had transferred the land to the Plaintiff and was no longer the registered owner of the land as at the 23/10/2012 when he purportedly issued the notice to terminate. He had lost capacity to terminate any contract. That the notice appears to have been issued by the Plaintiff in collusion with the third party given that the Plaintiff admitted to the payment of legal fees for the said purported notice.
26. That the third party held the title in trust for the Defendant to the extent of the land purchased on account of actual physical possession, accrued equitable interest and control of the property giving rise to an overriding interest.
27. The Defendant submits that the Plaintiff acquired the property subject to the beneficial interest of the Defendant in the suit land. That the sale agreements produced by both the Plaintiff and the third-party bear evidence that the Defendant was in occupation of the suit land and that the claim of trespass do not lie. The Defendant's overriding interest cannot be defeated by the Plaintiff on account that the Plaintiff did not acquire a good title.
28. The Defendant cited the case of *Allan Kiama Vs Ndia Muthunya & Others* (1998) eKLR where the Court held that if a purchaser ignores occupation he cannot get a valid title. That the interest of the Defendant formed an apparent third party interest which was ignored by the Plaintiff at his own peril. That the Plaintiff knew that the Defendant was in occupation, had constructed rental units on the land, facts which were expressly acknowledged in both the agreement and the pleadings of both the Plaintiff and the third party and therefore acquire the property subject to the beneficial interest of the Defendant on the disclosed portion of the land. That the Plaintiff in recognition of this interest has



admitted in his amended Plaint that it subdivided the land and curved out the portion occupied by the Defendant which is 35 by 100 feet or 0.0618 ha namely parcel 2885.

29. The Defendant urged the Court to exercise its mandate under Section 80 of the *Land Registration Act* and order the rectification of the title and transfer to the Defendant on account of a bonafide interest in the land.
30. The Defendant argued that the Plaintiff has failed to proof that he is a bonafide purchaser for value without any notice of defect of title on account that the Plaintiff acknowledged the occupation of the Defendant; the Plaintiff had knowledge of the adverse claim of the Defendant; the third party had no apparent valid title for the portion of the land claimed by the Defendant ; the Plaintiff failed to demonstrate that it purchased the suit land without notice of any fraud by the third party or any adverse claim by the Defendant.
31. That having demonstrated that the Defendant was in possession and claimed beneficial interest in respect of the portion of the suit land, it is evidence that by disposing the suit land the Plaintiff and the third party acted fraudulently with the aim of defeating the interest of the Defendant. For that reason the Plaintiff cannot claim to be a bonafide purchaser for value without notice because it had notice of the Defendant's interest. That the third party had no interest or right to convey to the Plaintiff given that he had already sold it to the Defendant. Ultimately the interest received by the Plaintiff is subject to that of the Defendant to the extent of 35 by 100 feet which portion was encumbered with the beneficial interest in favour of the Defendant.
32. It was further submitted that the Plaintiff and the third party colluded to transfer the property despite the obvious occupation and control of the portion of the land by the Defendant.
33. Finally, it was submitted that the Plaintiff's evidence should be disregarded on account that there was no authority under seal of the company authorising the director to adduce evidence on behalf of the Plaintiff Company. That in the circumstances the Plaintiff did not comply with Order 9 Rule 2 (c) of the *Civil Procedure Rules*. That the oral testimony written statements produced by PW1 are inadmissible as evidence and the same should be expunged and should not be relied on by the Court as the PW1 lacks the locus standi to issue statements and adduce evidence on behalf of the Plaintiff.
34. On bonafide purchaser for value without notice, the third party submitted that the Defendant was a trespasser ab initio even before they entered into the agreement for sale with the third party. Further that the Defendant failed to complete the payment of the purchase price. Thirdly that he encroached onto 20 meters into the larger parcel of land without the consent of the third party. As a result it was submitted that the reliefs he has sought are not available to the Defendant on account of the above enumerated breaches.
35. Further the third party submitted that the Defendant has not pleaded fraud nor led evidence to support the same. That there is no constructive trust between the Defendant and the third party, the same having not been pleaded nor proved.
36. Having carefully considered the pleadings, the evidence adduced during trial, the rival submissions of the parties and all the material placed before me the issues that commend themselves for determination are;
  - a. Whether there was any bonafides on the part of the Plaintiff and the Defendant in the acquisition of the suit land.
  - b. Who meets the costs of the suit?



37. The Plaintiffs case is that it is the registered proprietor of the suit land having purchased it from the third party vide the agreement of sale dated the 12/9/2011. Upon purchase the Plaintiff proceeded to subdivide the suit land into two parcels one of which is parcel 2885 (suit land) on which the Defendant has trespassed. He seeks declaratory orders that the continued occupation of the suit land by the Defendant is illegal and amounts to trespass; eviction and demolition of the structures on the suit land.
38. The Defendant's claim is that he is the bonafide purchaser of 35 by 100 feet portion of the suit land from the third party and that the Plaintiff purchased the suit land subject to his interest. He seeks interalia orders that 35 by 100 feet be transferred to him.
39. The third party has joined issues with the Plaintiff and argues that the Defendant is not entitled to the suit land on account that the agreement of sale entered into in 2008 was rescinded and no longer in force; the Defendant was trespasser ab initio even prior to entering the agreement of sale; the Defendant failed to pay the full purchase price; the purchase price was refunded through his law firm.
40. It is not in dispute that the original land parcel 404 was the property of the third party having inherited it pursuant to a successful probate vide certificate of confirmation of grant issued on the 23/7/2016 in which parcel 404 devolved absolutely to him. It is also commonly accepted that the Defendant is in occupation of the suit land. It is not in dispute that the third party sold 35 by 100 feet to the Defendant in 2008. It is also common that the third party sold the whole of parcel 404 to the Plaintiff in 2011 after which the Plaintiff subdivided the same into parcel 2884 and 2885. The parcel 2885 is the subject of this suit.
41. Is the Plaintiff the bonafide purchaser of the suit land? The 9th Edition of the Blacks Law dictionary defines a bonafide Purchaser as 'one who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; One who has in good faith paid valuable consideration for property without notice of prior adverse claims.
42. A bona fide purchaser for value without notice is a good-faith buyer who has paid a stated price for a property without knowledge of existing prior claims or equitable interests. For simplicity, the term can be broken down as follows: the party purchased in good faith (no ill/deceptive intention); the party must have bought the property, not been a beneficiary of a gift; the price paid must be a full and fair amount which reflects the value of the property; the party had no actual, constructive, or imputed knowledge of existing adverse claims to the property.
43. To answer the issues I shall first analyse the case of the Defendant to find out if he was a bonafide purchaser for value or a trespasser and secondly whether the agreement of sale between him and the third party was terminated.
44. Evidence was led by both the Defendant and the third party that they entered into a sale agreement in 2008 to sell 35 by 100 feet portion of land to the Defendant. It is commonly acknowledged that the Defendant has constructed rental premises on the suit land. The third party led evidence that the Defendant paid fully the purchase price. His submissions that the full purchase price was not paid is therefore not supported by any evidence.
45. The third party has argued that the Defendant was a serial trespasser and that he had trespassed onto the land even before entering into the agreement. Even if that may be so (which is denied) the act of entering into an agreement meant that the third party acquiesced into the trespass if any and the parties readily entered into a contract which now governed their relationship. The third party has argued that the agreement was terminated vide the notice issued in 2012. I have perused his evidence and I find that the land was transferred to the Plaintiff in 2011 and by 2012 the third party had ceded his rights



to the Plaintiff. He therefore had no capacity to issue any notice to vacate since he no longer owned the land. Secondly neither the Plaintiff nor the third party has demonstrated evidence to show that the said letter was served upon the Defendant. The Defendant has refuted the Plaintiffs and third party's claim that he was served. Similarly there is no evidence of any encroachment of 20 metres of land and in any event the Defendant is not claiming more land than was contracted in the agreement. The long and short of it is that the agreement between the Defendant and the third party still subsists. This was a valid agreement that created a valid interest that of a purchaser's interest in the land in favour of the Defendant. The act of transferring the whole land including the portion of the Defendant was an exercise to defeat the interest of the Defendant. This was a deceitful act on the part of the Plaintiff and the third party.

46. I have also noted that the Plaintiff and the third party colluded in sending the letter of 2012 in a feigned attempt to terminate the agreement of sale. The Plaintiff admitted to paying the costs to the advocate who sent the letter. There is no evidence that the purchase price paid by the Defendant has been refunded to him. The law frowns on unjust enrichment whereby the third party has sold the land twice, first to the Defendant and later to the Plaintiff.
47. I find that the Defendant was a bonafide purchaser for value of the land measuring 35 by 100 feet and is entitled to his claim. He is on the land pursuant to a purchaser right and not as a trespasser.

#### **Was the Plaintiff a bonafide purchaser?**

48. There may be cases in which someone claims to be a bona fide purchaser, but in fact was aware of problems with the transaction and choose to proceed anyway. If this can be proved in Court, the purchaser will forfeit the property to the rightful owner as he acquired an interest that was encumbered.
49. In the case of *Katende vs Haridar & Company Limited* it was held that a bonafide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly
50. In this case the Plaintiff adduced an agreement for sale between it and the third party in which para 2 and 3 stated as follows;
  - a. There stands rental premises by one Stephen Kamau Mungai without the consent authority and or permission of the seller.
  - b. The said Stephen Kamau Mungai has had notice to vacate by the vendor but has not heeded accordingly.
51. It was the evidence of the Plaintiff's witness that he was informed by the third party that the Defendant was to vacate the land. From the evidence tendered at the trial he informed the Court that he knew both the Defendant and the third party and was aware that the Defendant was a trespasser on the land.
52. It is commonly acknowledged that the Defendant is in possession of the suit land. In the case of *Peter Mbiri Michuki vs Samuel Mugo Michuki* [2014] eKLR this Court dealt with the issue, in relevant parts, as follows:
  - “ 34. In *Mwangi & Another v Mwangi*, (1986) KLR 328, it was held that the rights of a person in possession or occupation of land are equitable rights which are binding on the land and the land is subject to those rights ....”
53. The case of *Mwangi & Another vs Mwangi*, (1986) KLR 328, establishes the principle that the rights of a person in possession or occupation of land are equitable rights which are binding on the land ....



In the instant case, the Plaintiff was in occupation of the suit property and his possessory rights are not only equitable rights but an overriding interest binding on the land. Section 18 of the *Limitation of Actions Act* provides that subject to Section 20(1), the Act applies to equitable interests in land ... and accordingly a right to action to recover the land ... accrues to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

54. The *Mwangi case supra* the Court held that;

“It is our considered view that when the appellant entered into a sale agreement with the Plaintiff in 1964 and received the purchase price for the suit property, the appellant became a trustee holding the suit property in favour of the Plaintiff. The Plaintiff having paid the purchase price and took possession acquired an equitable beneficial interest in the suit property.”

55. It is trite that the occupation of land by a third party constitutes constructive notice to the purchaser of equitable or legal rights that may have accrued to the occupier. In the case of *Jones vs Smith* 20 (1841) 1 hare 43, the Court held that a purchaser has constructive notice of a fact if he had actual notice that there was encumbrance on the land and a proper inquiry would have revealed it but for callousness carelessness and negligence abstained from making those inquiries which a prudent purchaser would have made. The object of inspection of land by a prudent purchaser is to discover whether there are adverse interests on the land both physically and on the title to avoid consequences of adverse claims being visited on him at a later stage.

56. Para 2 and 3 of the agreement above shows that the evidence of the occupation of the Defendant was available for all to see. It was upon the Plaintiff to inquire from the Defendant the nature of his occupation on the land. In Kenya even a trespasser has rights which cannot be wished away. The fact that the Plaintiff proceeded into the transaction despite evidence of the apparent adverse claim by the Defendant is testament that it had constructive notice of the said claims. He cannot then claim to have acquired a good title devoid of the claims of the Defendant. Had he inquired from the Defendant he would have found that the Defendant’s claim was premised on a purchaser’s right pursuant to the sale agreement of 2008. The Plaintiff therefore did not acquire a good title.

57. I find that the Plaintiff was not a bonafide purchaser of the suit land to the extent of 35 by 100 feet and its claim of trespass therefore collapses.

58. In the end I find that the claim of the Plaintiff fails and the Defendants counterclaim succeeds.

59. It is the third party’s and to a certain extent the Plaintiffs that have caused the filing of this suit and I do not hesitate to condemn them to pay costs of the suit to the Defendant jointly and severally.

60. Final orders;

- a. The Plaintiffs case fails. It is dismissed.
- b. The Defendants Counterclaim succeeds and I enter Judgment in his favour in terms of the Counterclaim.
- c. The Defendant shall have the costs of the suit and the Counterclaim.

61. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 5<sup>TH</sup> DAY OF DECEMBER, 2022 VIA MICROSOFT TEAMS.**



**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Ms. Waigwa for Plaintiff

Oguye HB Kimani for Defendant

Nyamu HB Gachau for 3<sup>rd</sup> Party

Court Assistant – Phyllis / Kevin

