



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 11 OF 2020

PETER KIAMA MAINA..... PLAINTIFF/APPLICANT

VERSUS

INDUSTRIAL COMMERCIALB

DEVELOPMENT CORPORATION.....1ST DEFENDANT/RESPONDENT

JOSMAK COMPANY LIMITED.....2ND DEFENDANT/RESPONDENT

RULING

By a Notice of Motion Application dated 13th January 2020, the Plaintiff/ Applicant sought for the following orders:-

a) That this Honourable Court be pleased to grant a temporary Injunction restraining the Defendant, its auctioneers, agents, employees and or servants from selling, alienating transferring , parting with possessing or in any way dealing or interfering with the Plaintiff's/ Applicant's land premises known as Kiambu / Municipality Block 6/269 and 270 at Mushroom Garden Estate, Kiambu County pending the hearing and determination of this suit.

b) That the costs of the Application be in the cause.

The Application is premised on the grounds that the Plaintiff/ Applicant is the absolute owner of the suit properties both valued at **Kshs. 52,000,000/=** as at 29th May 2019. That by a letter dated 27th May 2016, the 1st Defendant/Respondent advanced the 2nd Defendant/ Respondent a further loan facility amounting to **Kshs. 18,400,000/=**. The Plaintiff/ Applicant guaranteed the said loan facility using the premises, but the Plaintiff/ Applicant did not receive any amount or benefit from the said loan facility. Further that the 1st Defendant/ Respondent instructed **Garam Investment Auctioneers** to sell the suit premises and the said auctioneers purported to issue a 14 days Statutory Notice for Sale dated 22nd November 2019, Notification of Sale on 27th September 2019, and Estimated Auctioneers fees. That the 1st Defendant /Respondent has not done a current valuation of the suit properties. Further that the Defendants/Respondents actions will render the Plaintiff/ Applicant to lose the suit property through auction at purchase prices that are far below the 75% of the value contrary to the Law.

That the Auctioneers purported 14 days **Statutory Notice of sale** dated 22nd November 2019, is illegal, unlawful and unreasonable and does not accrue as it is less than the mandatory period of **90 days** . That the 1st Defendant/ Respondent has threatened to sell the Plaintiff's/ Applicant's land premises any time after the intended sale on 10th December 2019, through **Garam Investment Auctioneers** failed to take place. Further that the 1st Defendant/ Respondent has sent potential purchasers to view the said premises through **Garam Investments Auctioneers** with an intention to sell the same illegally, unlawfully and without any Notice to the Plaintiff/ Applicant.

It was contended that the Plaintiff/ Applicant has been a minority shareholder of the 2nd Defendant/ Respondent holding less than **10 %** of the shares and he has not been involved in running of the said Company and sharing of any profits thereof. Further that the 1st Defendant/ Respondent has been illegally over charging the 2nd Defendant/ Respondent interest at over **20%** contrary to the provisions of Section of the Banking Act which does not allow any institution to charge more than **14 %** rate and therefore the mount claimed by the 1st Defendant/ Respondent amounting to **kshs. 46, 652,778** as at 30th September 2019 does not accrue and the same is unreasonable.

That the 2nd Defendant / Respondent did not regularly repay the said loan because its business premises was destroyed by fire in **2019**, and its Insurance Company failed to pay compensation . That the 1st Defendant/ Respondent cannot purport to sell the suit properties because it is relying on a valuation report that is over a year old and which does not reflect the true value of the suit property which is about **Kshs. 70,000,000/=**.

That the purported sale is in bad taste, unjust, unfair and unreasonable because the parties have not embraced negotiations in view of the circumstances as the 1st Defendant/ Respondent ought to pursue the recovery from the 2nd Defendant/ Respondent prior to contemplating selling the suit premises, That there would be no risk or loss if the Court stopped the purported auction by the Defendant/ Respondent.

In his supporting Affidavit, **Peter Kiama Maina** averred that it would be fair and just that his prayers are granted in order to avert a purported auction of the suit properties. That it would be nugatory for the Application to be allowed without injunctive orders .

The Application is opposed and the 1st Defendant/ Respondent through **Ernest Lewa Mwahui**, its Senior Investment Officer swore a Replying Affidavit dated **14th July 2020** and averred that the 2nd Defendant/ Respondent in which the Plaintiff/Applicant is both a shareholder and director is a customer of the 1st Defendant/ Respondent. That he has been advised by his Advocates which advice he believes to be true that the entire suit as drawn and presented is fatally defective and ought to be struck out as being a dispute arising from commercial lending transaction, this Court is not vested with the requisite jurisdiction to hear and determine the suit.

That the proceedings do not relate to any property that is in dispute neither do they concern any property being sold wrongfully in execution of a decree and hence the Court's jurisdiction as donated by the provisions of **Order 40 Rule 1 (a)** of the Civil Procedure Rules invoked in presenting the Application is not exercisable. That no breach of Contract or potential injury to the Plaintiff/ Applicant is demonstrated and hence the Court's jurisdiction as invoked by the provisions of **Order 40 Rule 2 of the Civil Procedure rules** is not exercisable.

That the entire proceedings are an abuse of the Court process as the 2nd Defendant/ Respondent has been joined as a party in the suit yet no complaint against it is made in the suit or any relief sought against it whatsoever, which points to a possible collusion and/or connivance between the Plaintiff/ Applicant and the 2nd Defendant/ Respondent is commencing the instant suit. That no substantive relief is sought that would require investigation and determination in a full trial.

Further that the Plaintiff/ Applicant has failed to meet the threshold established in **Giella...Vs...Cassman Brown** on the basis on which he would be entitled to orders of an injunctive relief at the interlocutory stage. That the 1st Defendant/ Respondent granted to the 2nd Defendant/ Respondent credit facilities in the form of loan for a principal sum of **Kshs. 18, 400,000/=** and a facility agreement in respect of the guarantee facility for **Kshs. 20,000,000/=** aggregating to **Kshs. 38, 400,000/=** exclusive of interest and other charges.

That the terms of the said facilities were that term loan was to be repayable over a period of 5 years, guarantee would be of a tenor of **one year** renewable, Interest chargeable could be variable being base rate plus three per cent per annum. That both term loan and guarantee issuance facilities would be secured by a legal charge over the suit properties. That the Plaintiff/ Applicant created the security by way of a legal charge dated **29th June 2016**, over the suit properties to secure the payment to the 1st Defendant/ Respondent of the Principal sum exclusive of interest and other charges.

Further that the term loan facility granted to the 2nd Defendant/ Respondent was disbursed in five tranches and utilized in full. That the term loan facility was not repaid in accordance with the terms of lending or at all, given that only 8 but inconsistent monthly installments were made with the last one being made on **31st January 2018**, and the entire loan balance of **Kshs.28,058,454.73** as at **30th June 2020** and continues to accrue contractual interest until payment in full.

That in order to facilitate issuance of letters of credit of overdraft facility to the 2nd Defendant/Respondent, the 1st Defendant/Respondent by way of a continuing security guaranteed to pay and satisfy to the Development Bank of Kenya Limited such sum as it would be due and owing to it from the 2nd Defendant/ Respondent and the 1st Defendant/Respondent provided Development Bank with a cash security of **Kshs.20,000,000/=** frozen and held in lien at 1st Defendant's/ Respondent's bank account held with Development Bank .

Further that the letter of credit facility granted to the 2nd Defendant/ Respondent by Development Bank was fully utilized but the same has not been repaid and as consequence, the Bank issued to the 2nd Defendant/ Respondent a final notice dated **5th March 2018** . That the Plaintiff/ Applicant as the registered owner of the suit properties created and registered a legal charge dated **29th June 2016**, over the said properties in favour of the 1st Defendant/Respondent to secure payment of the Principal sum of **Kshs. 38,400,000/=**.

He also averred that from the text of the charge, the Plaintiff/ Applicant guaranteed and covenanted to repay the credit facilities secured thereunder, represented and warranted to the 1st Defendant/ Respondent that the charge constituted valid and legally binding obligations, agreed with the 1st Defendant/Respondent that in the event that the Plaintiff/ Applicant failed to pay on the due date any money or discharge any obligation, the 1st Defendant/Respondent would become entitled to exercise its statutory power of sale.

That the Plaintiff/ Applicant was explained to and confirmed to have understood the effect and consequences of creating the charge, and he signed the charge voluntarily. That the Plaintiff's/ Applicant's allegations that he did not benefit from the secured credit facilities or that he is a silent Director would not turn his obligations as a chargor. Further that the allegations that the charged interest offends an unspecified provision of the Banking Act have no foundation or bearing on the 1st Defendant/ Respondent's rights to enforce its statutory remedies. It was his contention that the Plaintiff/ Applicant is not deserving of the exercise of the Court's discretion. That it is misleading for the Plaintiff/ Applicant to link the default on a fire incidence that he alleges to have occurred in **2019**, when statement of account show that default on his repayment obligations had been since **31st January 2018**.

That the 1st Defendant/ Respondent complied with the requirement of the law for purposes of realization of the security. That by letter dated **28th February 2018**, it gave notice that the loan facility was in arrears and demanded that the same be regularized within a period of 30 days. Further that by an undated letter received by 1st Defendant/Respondent around **24th April 2018**, the 2nd Defendant/Respondent presented a purported repayment plan to regularize the default. That no repayments were made and the 1st Defendant/ Respondent issued to

the Plaintiff/ Respondent a **90 days** Statutory Notice dated **6th July 2018**, under **Section 90** of the **Land Act** which he personally received on **26th September 2018**. That **Garam Investments** issued to the Plaintiff/ Applicant a **45 days** Redemption Notice and notification both dated **27th September 2019**. That by a letter dated **17th October 2019**, the Plaintiff/ Applicant acknowledged receipt of the Auctioneers Notices and requested that the scheduled auction be called off and proposed to sell one of the suit properties to offset the debt.

That the 1st Defendant/ Respondent caused the suit properties to be valued in terms of the valuation report by **Primeland Limited** dated **29th May 2019** in which the forced sale valuation for each of the suit properties was set for **Kshs. 19, 500,000/=**. That the suit properties were advertised for sale by Public Auction on **10th December 2019** in the Daily Nation publication of **25th November 2019**.

That the 1st Defendant/ Respondent complied with the law and as a year has lapsed since the last valuation, the 1st Defendant/Respondent will ensure that a fresh valuation is carried out before any further attempt is made to dispose off the suit property, That the 1st Defendant/ Respondent wrote to the Plaintiff/ Applicant vide a letter dated **25th October 2019** confirming that it had no objection to his proposal to sell one of the suit properties by private treaty so that the proceeds may be utilized to repay the outstanding debt, but he never followed up on the same.

Further that there is no justification for the Plaintiff/ Applicant to state that he would suffer damages if the suit property he voluntarily charged were sold, as he was willing to have one suit property sold by private treaty. He contended that the continued delay in realization of the suit properties in exercise of the chargees statutory power of sale exposes the 1st Defendant/ Respondent to substantial prejudice and inconvenience as the combined forced sale value of the suit property is potentially realizable upon their sale in a public auction.

The Application was canvassed by way written submissions which the Court has carefully read and considered. It is the Court's considered view that the issue for determination are;

- 1. Whether the Court has jurisdiction to determine this matter**
- 2. Whether the Plaintiff/ Applicant is entitled to the Injunctive orders sought.**

1. Whether the Court has jurisdiction to determine the matter

The Jurisdiction of this Court has been called into question by the 1st Defendant/ Respondent who contends that this Court has no jurisdiction as the dispute arises from **Commercial** lending transaction . Jurisdiction is everything and without it, a Court of Law has no option but to down its tools. The Court must then first deal with the said issue.

The Court has gone through the pleadings by the parties and more particularly the instant Application. The Court does note that indeed the Plaintiff/ Applicant has raised issues as to whether the 1st Defendant/ Respondent charged the interest exorbitantly making the same a commercial issue. However, there are also various issues that were raised with regards to whether the Statutory Notice was proper, more particularly the Redemption Notice by Garam Auctioneers and whether the 1st Defendant/Respondent carried out a proper forced valuation.

The Environment & Land Court has its root in **Article 162(2) (b) of the Constitution** which provides as follows;-

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to: -

- a. Employment and labour relations; and**
- b. The environment and the use and occupation of, and title to, land.**

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

To give effect to **Article 162 (2) (b)** of the **Constitution**, Parliament enacted the **Environment and Land Court Act Section 13** of the said Act which provides as follows:

(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the court shall have power to hear and determine disputes relating to environment and land, including disputes-

- a) Relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;**
- b) relating to compulsory acquisition of land;**
- c) relating to land administration and management;**
- d) relating to public, private and community land and contracts, choses in action or other**

instruments granting any enforceable interests in land; and

e) any other dispute relating to environment and land.

(3) –

(4) –

(5) –

(6) –

7) – In exercising of its jurisdiction under this Act, the court shall have power to make any order and grant any relief as the court deems fit and just, including –

a) Interim or permanent preservation orders including injunctions;

b) Prerogative orders;

c) Award of damages;

d) Compensation;

e) Specific performance;

f) Restitution;

g) Declaration; or

h) costs.

The 1st Defendant/ Respondent has relied in the Court of Appeal decision in the case of Cooperative Bank of Kenya –v- Patrick Kangethe Njuguna (2017) wherein the Court of Appeal held that the High Court was the only one seized with the Jurisdiction to deal with accounting problems.

The Court notes that the Plaintiff/ Applicant has brought forth the issue of charging of exorbitant interests. To this end, as per the decision in the above stated case, the Court finds and holds that it does not have jurisdiction to deal with the said prayers on whether or not exorbitant interests were charged.

However on the issue of whether the Auctioneer’s 45 Days Redemption Notice and Auctioneer’s Notification of Sale upon the Plaintiff/Applicant was a nullity in law, the issue of valuation and the permanent injunction sought, it is the Court’s considered view that the said prayers fall within the jurisdiction of the **Environment & Land Court**. The Land Act & Land Registration Act also provide for the Jurisdiction of the Environment & Land Court as the two Acts address the land transactions and dispositions of land. The process through which a chargee can exercise its statutory power of sale is found in the said Acts and therefore the Jurisdiction of the Environment and Land Court (ELC) in dealing with the same is justified. See the case of Lydia Nyambura Mbugua ...vs...Diamond Trust Bank Kenya Limited & another [2018] eKLR where the Court held that;-

“It will thus be seen from the above that it is the ELC and the empowered subordinate courts, which have jurisdiction to hear disputes relating to matters in the Land Act and Land Registration Act. This jurisdiction will inevitably cover all instruments created within these statutes, which must also encompass charges, and generally all proprietary transactions. The process of sale by chargee, which is what is questioned in this case, is a process that is laid down in the Land Act and Land Registration Act, (formerly in the Registered Land Act now repealed) and these statutes provide that the court with jurisdiction is the ELC. You see, the sale of a charged property by chargee, is really no different from a sale by one private individual to another (see the case of Stephen Kibowen –vs- Agricultural Finance Corporation (2015) eKLR). Both sales involve title and the process of acquisition of title to land. If one argues that the ELC has no jurisdiction to hear a dispute over the process of sale by a chargee, then it can as well be argued that the ELC has no jurisdiction to hear a dispute over a sale of land by one individual to another, which argument, I believe, will sound absurd. Let me reiterate again, that the process of sale of a charged property is governed by the Land Act and Land Registration Act, and these statutes provide that it is the ELC and the empowered subordinate courts which have jurisdiction.”

Further in the case of Alphose Yankulije ...Vs... One Twiga Road Limited & 2 others [2019] eKLR the Court held that;-

“Other statutes that give the Environment and Land Court jurisdiction are the Land Act, 2012 and the Land Registration Act, 2012. Part of what these statutes address are land transactions and dispositions including charges.

In assessing the decision of the Court of Appeal in the case of Cooperative Bank of Kenya –v- Patrick Kangethe Njuguna (supra), I wish to associate myself with the decision of Munyao Sila, J in the case of Lydia Nyambura Mbugua –v- Diamond Trust Bank & Another (2018) eKLR in which he stated as follows:

“My own understanding of the above decision, is that the Court of Appeal was of opinion that the particular dispute was more in relation to accounts of which the High Court had jurisdiction to hear. I do not think that the Court of Appeal was holding the position that once the Environment & Land Court (ELC) sees the word “charge” mentioned in any pleadings, then the ELC should down its tools, for if that were the case, this would conflict with what the Constitution under Article 162 (2)(b), Parliament under Section 13 of the Environment and Land Court Act No.19 of 2011, have prescribed as being the jurisdiction of the ELC. This would also go contrary to the Supreme Court decision in the case of R Karisa Chengo & 2 Others (2017)eKLR where the Supreme Court stated as follows at paragraph 51 of its decision:-

“...in this instance, the jurisdiction of the specialized courts is prescribed by parliament, through the said enactment of legislation relating, respectively to the ELC and ELRC.”

Taking into account the above decisions, the Court finds and holds that it has jurisdiction to deal with the question whether the Redemption Notices are a nullity, valuation of the land and the permanent injunction.

2. Whether the Plaintiff/ Applicant is entitled to the injunctive orders sought

The Plaintiff/ Applicant is seeking for injunctive orders which the Court can either deny or grant . The guiding principles in granting the same are to be found in the case of Giella...Vs...Cassman Brown Co. Ltd 1973 EA 358 and later enumerated in the case of Kibutiri...Vs...Kenya Shell, Nairobi High Court, Civil Case No.3398 of 1980 (1981) KLR, as follows:-

*“The conditions for granting a temporary injunction in East Africa are well known and these are: **First**, the Applicant must show a prima facie case with a probability of success. **Secondly**, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages. **Thirdly**, if the Court is in doubt, it will decide an application on the balance of convenience. See also E.A Industries ..Vs..Trufoods (1972) EA 420.”*

It is not in doubt that the three principles as set out in the case are to be applied in a sequential manner so that the Plaintiff/ Applicant must satisfy all the three and failure to satisfy even one does not entitle him to the injunctive orders sought.

First the Plaintiff/ Applicant must establish a prima facie case with a probability of success at the trial. The Court of Appeal in the case of Mrao Ltd ...Vs,,,First American Bank of Kenya Limited and 2 Others [2003] eKLR held that a prima facie case is;

“a case in which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter.”

Has the Plaintiff/ Applicant established a prima facie case?

It is not in doubt that the Plaintiff/ Applicant is the registered owner of the suit properties. Further it is not in doubt that the said properties have been charged by the 1st Defendant/ Respondent. Further as per the provisions of law, if the Plaintiff/ Applicant defaults in payment, then the 1st Defendant/ Respondent has an obligation to ensure the provisions of law are followed including the issuing of the 90 days demand notice , 40 day **Notice** of sale and the Redemption Notice . The Plaintiff/Applicant has averred that the **Redemption Notice** was not properly served, If indeed the Court was to find out that the Redemption Notice was not properly served, then the Plaintiff’s/ Applicant’s rights would have been breached.

The Plaintiff/ Applicant does not dispute that he charged the suit properties on behalf of the 2nd Defendant/ Respondent to the 1st Defendant/Respondent who is indebted to the 1st Defendant/ Respondent. The Plaintiff/ Applicant has however faulted the process that was undertaken by the 1st Defendant/ Respondent as outlined in the Land Act.In order for the Court to make a determination on whether the Plaintiff’s/ Applicant’s rights have been infringed and determines if he has established a prima facie case, the Court will look at the procedures as set out in the Land Act and whether the same were complied with.

The Land Act provides that the 1st Defendant/ Respondent must issue a notice under **section 90** of the **Land Act**, when the chargor defaults in any of its obligations under the Charge. If the chargor does not comply with the demand within 90 days after service of the **Notice**, the chargee may proceed to sell the charged property. It is at this point that it is said the Statutory Power of sale has crystallised. In this case, the Plaintiffs/Applicants do not dispute the fact that the he was served with the Statutory Notice under **section 90** of the **Land Act** dated **28th February 2018**.

Under Section **96(1)** and **(2)** of the **Land Act**, Upon crystallization of the power of sale, the chargee is required to issue and serve on the chargor a 40-day notice to sell. **the Section** provides as follows:

96(1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90 (1), a chargee may exercise the power to sell the charged land.

(2) Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.

(3) A copy of the notice to sell served in accordance with subsection (2) shall be served on –

(h) any guarantor of the money advanced under the charge:

In furtherance of the said Section the Court has seen the 3 months statutory Notice dated **6th July 2018**, that was received by the Plaintiff/ Applicant a fact that has not been denied by the Plaintiff/ Applicant.

Further the Law also requires the Chargee to issue a Notification of Sale under **Rule 15 (d)** of the **Auctioneers Rules** which provides as follows:

15. Upon receipt of a court warrant of letter of instruction the auctioneer shall in the case of immovable property-

(d) Give in writing to the owner of the property a notice not less than forty-five days within which the owner may redeem the property by payment of the amount set forth in the court warrant or letter of instruction.

Though the Plaintiff/ Applicant has averred that the Redemption Notice by the Auctioneer was not proper, its illegality as not been explained as what the Plaintiff/ Applicant avers is that the value of the properties have since risen from the time the Auction was set to take place. The Court has seen the Redemption Notice dated **27th September 2019** that listed the auction date as **10th December 2019**. The Court finds and holds that the same is proper as the 1st Defendant/ Applicant has attached a Valuation Report that was carried out.

The Court notes that in instances when the Chargor alleges that the Statutory Notices were not served or improper. It becomes the burden of the bank to prove that the same were served. See the case of **Moses Kibiego Yator ...Vs... Eco Bank Kenya Limited NKU E& L No. 426 of 2013 [2014] eKLR** where the Court held that:-

In instances where a chargor alleges that he did not receive the statutory notice, the burden shifts to the chargee, to demonstrate prima facie, that the statutory notice was served. If there is material to show that the notice was received or acknowledged, say, through an acknowledgement letter, that will clearly demonstrate that the notice was duly served and received. If the notice was served by way of registered post, the chargee ought to place before the court sufficient material to demonstrate prima facie, that the document was duly dispatched to the proper address of the chargee, and that in the ordinary course of events, the notice must have reached the chargee.

The Court finds that the 1st Defendant/ Respondent has proved that the Statutory Notices were duly served and received by the Plaintiff/ Applicant . The provisions of law are mandatory and since the Court finds that all the said procedures were adhered to, it cannot then be said that there is a right of the Plaintiff/ Applicant that is likely to be breached as the law was complied with. The Plaintiff/ Applicant was fully aware of the consequences of charging the suit property. The Court therefore finds and holds that the Plaintiff/ Applicant has not established a prima facie case.

The principles as set out in the case of **Giella ...Vs... Cassman Brown** are sequential in nature and the fact that the Plaintiff/ Applicant has not established a prima facie case, means that the other two principles must also fail too.

The Court therefore finds and holds that the Plaintiff/ Applicant is not entitled to the injunctive orders sought. The Court further notes that the Plaintiff/ Applicant was concerned that the property did not sell and since then the value of the properties have risen, However, by the time the 1st Defendant/ Applicant sought to exercise its statutory power of sale , it did carry out a forced valuation and has further averred that it would still carry out a fresh valuation on the suit properties.

Having now carefully read and considered the instant Application the Affidavit in support, the Replying Affidavit and the written submission by the parties, the Court finds and holds that the Notice of Motion Application dated **13th January 2020**, is not merited and the same is dismissed entirely with costs to the 1st Defendant/ Respondent.

For the avoidance of doubt, the interim orders in place are hereby vacated.

It is so ordered

DATED, SIGNED AND DELIVERED AT THIKA THIS 18TH DAY OF MARCH, 2021

L. GACHERU

JUDGE

18/3/2021

Lucy - Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic and in light of the directions issued by the Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With Consent of and virtual appearance via video conference – Microsoft Teams Platform

Mr. Kurauka for the Plaintiff/Applicant

Mr. Mutua for the 1st Defendant/Respondent

L. GACHERU

JUDGE

18/3/2021