



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**E.L.C. NO. 1080 OF 2004**

**KENYA AIRPORTS AUTHORITY.....PLAINTIFF**

**VERSUS**

**CITY COUNCIL OF NAIROBI .....DEFENDANT**

**JUDGMENT**

**INTRODUCTION**

1. This suit pits the Kenya Airports Authority against the City Council of Nairobi. The Kenya Airports Authority, which is the Plaintiff herein, sued the City Council of Nairobi vide its' plaint dated 12<sup>th</sup> October 2004 seeking the following orders:

- a) A permanent injunction to restrain the Defendant, its servants, agents, or any person acting under the Defendant's authority or instruction from interfering with, trespassing upon or in any other manner dealing with L.R. No. 9042/667;
- b) A permanent injunction to restrain the Defendant, its servants, agents or any person acting under the Defendant's authority or instruction from demanding rent, evicting or in any other manner dealing with the occupants of houses erected and being on L.R. No. 9042/667;
- c) General damages for trespass;
- d) Costs of the suit;
- e) Interest on (c) and (d) at court rates;
- f) Any other remedy that this Honourable Court may deem fit to award.

2. The Plaintiff's authority claimed that it was the registered proprietor of the parcel of land known as L.R. No. 9042/667 measuring 15.24 Hectares or thereabouts which was comprised in a Grant registered in the Land Titles Registry in Nairobi as L.R. No. 77020/1 and whose boundaries were delineated in Land Survey Plan Number 218610 deposited in the Survey Records Office in Nairobi (herein referred to as the "suit land").

3. It averred that on diverse dates from 1958, the government erected a housing estate known as Embakasi Village on the suit land, for provision of housing for persons employed by the then Department of Aerodromes and other civil servants who were working within the Jomo Kenyatta International Airport or its predecessor, the Embakasi Airport. The government entrusted the control and care of Embakasi Village to the Aerodromes Department and thereafter transferred Embakasi Village and other properties owned by the Aerodromes Department to the Plaintiff by a vesting order dated 7<sup>th</sup> June 1994.

4. In January 1998, the Defendant, under the misguided notion that it owned the suit land, issued notices to everyone occupying the houses in Embakasi Village to pay rent to it or be evicted from the houses. That compelled the Plaintiff to file H.C.C.C. No. 1683 of 1998 which culminated in a consent order entered into between the Plaintiff and the Defendant on 19<sup>th</sup> November 1998, whereby the Defendant relinquished all claim over the suit land and that suit was marked as settled.

5. The Plaintiff claimed that notwithstanding, the Defendant, through its officers, evicted its employees from their houses in Embakasi Village on 6<sup>th</sup> October 2004 alleging that it was the owner of the houses and demanding the Plaintiff's employees pay rent to it. These acts by the Defendant prompted the Plaintiff to file the instant suit. The Plaintiff averred that the Defendant's actions were in breach of the terms of the consent order issued in H.C.C.C. No. 1683 of 1998 and thus urged the court to grant the orders set out above.

6. The Defendant filed a statement of Defence dated 28<sup>th</sup> October 2004, opposing the Plaintiff's suit and objecting to the court's jurisdiction to handle the matter by virtue of Section 7 of the Civil Procedure Act. In the alternative, the Defendant claimed that its actions were limited to its own premises which could not have been appropriated by the Plaintiff under the Grant and which were not the Plaintiff's institutional houses as specified in the consent decree dated 19<sup>th</sup> November 1998. It asserted that the vesting order dated 7<sup>th</sup> June 1994 was inapplicable to its properties and urged the court to dismiss the suit.

## **THE EVIDENCE**

7. The hearing of the matter proceeded before me during service week in Nairobi in 2018 and 2019. I heard the Plaintiff's witness on 2<sup>nd</sup> November 2018 but the Defendant did not avail its witnesses on that day or on 7<sup>th</sup> May 2019 or 10<sup>th</sup> May 2019, when the matter was scheduled for hearing. The Defendant's case was thus marked as closed without any witnesses testifying in support of its case.

8. The Plaintiff's sole witness, Rashid Abdullahi (PW1), who stated that he was a Land Surveyor working with the Plaintiff, adopted his witness statements, a bundle of documents and a map sheet filed on 20<sup>th</sup> September 2017 as his evidence before the court. He testified that the suit land, L.R. No. 90421 /667 measuring 15.24 Ha was registered as L.R. 77020 in the name of the Plaintiff in 1998. The land had staff houses belonging to the Plaintiff which had been built in 1958 to accommodate staff who were working at the airport and was known as Embakasi Village. Apart from the Plaintiff's staff, the Kenya Civil Aviation Staff were also accommodated in the houses.

9. PW1 told the court that before the land was transferred to the Plaintiff, it was owned by Kenya Aerodromes Department. Subsequently, a vesting order vide Legal Notice No. 201 of 7<sup>th</sup> June 1994 transferred the land and the houses to the Plaintiff. He stated that according to Map Sheet No. 48, parcel no. L.R. No. 9042/34 9042/35, 9042/36, 9042/30, 9042/31, 9042/32, 9042/33, 9042/15 and 9042/37 all belonged to the Defendant. He stated that the Defendant had issued notices to the Plaintiff's staff living in houses no. P.15, H2, H3 and P2. The notices issued to the Plaintiff's staff were issued wrongfully as the houses they lived in did not fall within the Defendant's land.

10. Rashid testified that it had been settled in HCCC No. 1683 of 1998 that the houses on L.R. No. 9042/667 all belonged to the Plaintiff but the market and social hall would be ceded to the Defendant. However, after the matter had been settled by consent, the Defendant still went on disturbing the peace of the Plaintiff's staff. He testified that the Plaintiff also owned 1942/665 measuring 4.127 Ha, L.R. No. 9042/668 measuring 1.3 Ha, 1942/670 measuring 0.119 Ha which boarded the Embakasi Village. He urged the court to grant orders that the houses falling within L.R. No. 1942/667 belonged to the Plaintiff. He also asked the court to issue a permanent injunction restraining the Defendant from interfering with the occupants of the houses and for damages for trespass.

11. During cross examination, PW1 reiterated that L.R. No. 1942/30, 1942/31, 1942/32, 1942/33, 1942/34 and 1942/ 35 belonged to the Defendant. He also acknowledged that the Defendant had not contested the proprietorship of L.R. No. 1942/667 in its defence and admitted that the Defendant owned other parcels of land within L.R. No. 1942/667 including a Primary School which stood on L.R. No. 9042/41, a social hall and the market. He however maintained that houses No. P.15, H2, H3 and P2 which had been issued with notices by the Defendant belonged to the Plaintiff. He explained that the suit had been filed after notices were issued to some houses belonging to the Plaintiff and that the crux of the suit was for the court to determine who owned which houses at Embakasi Village.

## **PARTIES' SUBMISSIONS**

12. The parties took directions to file closing submissions in support of their positions. The Plaintiff's learned counsel filed his submissions on 6<sup>th</sup> November 2020, but none were filed by the Defendant's counsel.

13. The Plaintiff's stance that it was the registered owner of L.R. No. 9042/667 and that the Defendant had no right to claim ownership of the land or demand rent from the plaintiff's tenants who occupied the houses on the suit land was emphasized in the written submissions in support of the suit. The 42 houses located on L.R. No. 9042/27, 9042/31, 32 and 34 were however, not within the suit property and the plaintiff had no claim over them.

14. Regarding the issue of *res judicata*, the Plaintiff's counsel argued that the issues arising in the instant suit were not similar to the issues raised in HCCC 1683 of 1998 since the acts of trespass in this suit started in 2004, 6 years after the determination of H.C.C.C No. 1683 of 1998. It was counsel's submissions that every act of trespass is a new tort which raises an independent cause of action.

15. On the issue of damages for trespass, the Plaintiff's counsel urged the court to award the Plaintiff exemplary as well as general damages for the arbitrary manner in which the Defendant had acted. A sum of Kshs. 20,000,000/= was proposed as exemplary damages and Kshs. 10,000,000/= was proposed as general damages for trespass. The court was also urged to award the plaintiff costs of the suit.

## **ISSUES FOR DETERMINATION**

16. From the pleadings, the evidence before this court and the submissions, I find that the issues arising for determination are:

- a) Whether this suit is *res judicata*;
- b) Whether the Defendant trespassed onto the Plaintiff's land; and
- c) Whether the Plaintiff is entitled to the reliefs sought.

## **ANALYSIS AND DETERMINATION**

17. The principle of *res judicata* is provided for in **Section 7** of the **Civil Procedure Act** thus;

*“7. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”*

18. The elements to be proved by a party who invokes the doctrine of *res judicata* from section 7 above are that the matter directly and substantially in issue in the subsequent suit or issue is the same matter which was directly and substantially in issue in the former suit; the former suit was a suit between the same parties or between the same parties under whom they or any of them claim; the parties were litigating under the same title in the former suit and the court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised. The principle of *res judicata* applies not only to the points raised in the former suit but also to any point which the parties ought, by due diligence, to have brought up in the former suit. (See **Uhuru Highway Development Ltd v Central Bank of Kenya & others, Civil Appeal No. 36 of 1996**)

19. The Defendant contended that this suit is *res judicata* for the reason that the issues raised in the present suit were determined by the court in H.C.C.C. No. 1683 of 1998. The existence of H.C.C.C. No. 1683 of 1998 is admitted by the Plaintiff. The purported disobedience of the consent order issued in that suit is in fact a basis of the Plaintiff’s claim against the Defendant in this matter.

20. The Plaintiff furnished this court with a copy of the aforementioned consent order which shows that the Plaintiff had sued the Defendant before the High Court in Nairobi vide Civil Suit No. 1683 of 1998 and the matter was settled by consent on 19<sup>th</sup> November 1998 in the following terms:

- a) That the Defendant has no legal right, interest or claim in or over any of the Institutional Houses (hereinafter called “the Institutional Houses”) listed in exhibit “JO-A (pg. A-18 hereof) and falling within L.R. No. 9042/667 annexed to the further affidavit of Janet Ongera sworn and filed on 7<sup>th</sup> October, 1998.
- b) That all the eviction Notices issued by the defendant in respect of the said Institutional Houses are and each of them is invalid and withdrawn.
- c) That the Defendant undertakes not to interfere with, hinder or obstruct whether by itself, its servants or agents or otherwise howsoever the control, management or administration by the Plaintiff of the said Institutional Houses.
- d) That the Defendant do pay the Plaintiff the costs of the application dated 29<sup>th</sup> July, 1998 and of the Suit herein to be agreed upon or, in default of such agreement, to be taxed.
- e) That the application dated 29<sup>th</sup> July, 1998 as amended on 6<sup>th</sup> November, 1998 and the Suit herein be marked as settled.

21. This court does not have the benefit of the pleadings in Civil Suit No. 1683 of 1998 or the affidavit of the said Janet Ongera referred to in the consent order above. However, it is clear that the present suit and Civil Suit No. 1683 of 1998 are between the same parties and concern the same issues relating to the same parcel of land. It is evident from the consent order that the Plaintiff had sued the Defendant in the former suit to prohibit it from interfering with its houses located on L.R. No. 9042/667. Similarly, the Plaintiff’s main grouse in this suit, is the issuance of notices of eviction and the eviction of its tenants residing in houses situated in L.R. No. 9042/667. The only difference between the two suits is when the cause of action arose.

22. In a similar case, the Court of Appeal in **Isaack Ben Mulwa v Jonathan Mutunga Mweke Civil Appeal No 60 of 2015 [2016] eKLR** held thus:

*Each action of trespass constitutes a fresh and distinct cause of action. It is inconceivable that a claim based on an action for trespass committed in 2015 would be res judicata simply because the same parties or their parents litigated over the same matter in 1985. It is a well-settled principle that continuous injuries to land caused by the maintenance of tortuous acts create separate causes of action barred only by the running of the statute of limitation against each successive acts. As explained by the learned authors Winfield and Jolowicz in WINFIELD AND JOLOWICZ ON TORT, 11<sup>th</sup> Edition, Sweet and Maxwell, London, 1979 at page 342:*

*“Trespass, whether by way of personal entry or by placing things on the plaintiff’s land may be continuing and give rise to actions de die in diem so long as it lasts. Nor does a transfer of the land by the injured party prevent the transferee from suing the defendant for continuing trespass.”*

*The learned Judge was therefore in error in holding that the present suit was res judicata that of 1985.*

23. The Court of Appeal in **Isaack Ben Mulwa (supra)** echoed the finding in **Nguruman Limited v Shompole Group Ranch & 3 Others [2007] Civil Appeal 73 of 2004 eKLR** where it had similarly held as follows:

*“Whatever happened, the trespass in the year 2000 appears from the plaint to have been a different trespass from the one in 1991. We have perused the work of Clerk and Lindsel on Torts 16th Edition paragraph 23-01. It states:-*

*“Every continuance of a trespass is a fresh trespass in respect of which a new cause of action arises from day to day as long as the trespass continues.”*

24. Applying the principles laid out in the above decisions to this case, I find that although the issues raised by the Plaintiff in Civil Suit No. 1683 of 1998 appear similar to those raised in the present suit, the cause of action relied upon by the Plaintiff in this suit was a new cause of action that arose a few years after the former suit had been settled. The Plaintiff could not have anticipated any subsequent trespass by the Defendant to its land when it filed the former suit. I therefore hold that the Plaintiff was not barred from instituting this suit against the Defendant by the principle of *res judicata* as continued trespass into its property raised a separate and distinct cause of action each day as long the trespass persisted.

25. The second issue for determination is whether the Defendant trespassed onto the Plaintiff's land as claimed. **Clerk & Lindsell on Torts** in the 17<sup>th</sup> Edition at page 923 define trespass as any unjustifiable intrusion by one person upon the land in the possession of another.

26. The Plaintiff's claim of ownership of the suit land is unchallenged and has been established by the production of a title issued under the repealed Registration of Titles Act on 1<sup>st</sup> May 1998. Section 23 of the repealed Act provided:

*“23. (1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”*

27. Being the registered proprietor of the suit land, the Plaintiff was in constructive possession of the suit land and the houses erected thereon. As held in the case of **Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR** actual possession of any property by a licensee is constructive possession thereof by the licensor. The Plaintiff was therefore entitled to quiet enjoyment of its property.

28. A few years after the consent order dated 19<sup>th</sup> November 1998 was issued, the Plaintiff's advocates wrote a letter to the Defendant on 21<sup>st</sup> December 2004, complaining that its officers had threatened to evict the plaintiff's employees in occupation of the houses referred to in the consent order. The Defendant responded in a letter dated 22<sup>nd</sup> December 2004 claiming it was dealing with 42 houses which were not within the suit land and that the plaintiff was the one that had improperly evicted its tenants in houses situated on land parcel 9042/27,31,32, 33 and 34 which were not within the suit land.

29. Soon thereafter, the Plaintiff wrote another letter to the Defendant on 11<sup>th</sup> January 2005 claiming that the Defendant had issued illegal eviction notices to its staff. The Defendant responded in a letter dated 12<sup>th</sup> January 2005 insisting that it was only evicting tenants whose houses did not fall within the Plaintiff's land. It also stated that if the Plaintiff's staff were living in houses belonging to the Council and were not paying rent, the Council would evict them. The Defendant also accused the Plaintiff of interfering with its houses by evicting its tenants and removing doors from houses which the Plaintiff had not returned despite being informed that the houses were not within the suit land.

30. The Plaintiff has also annexed a series of letters written to the Defendant by its advocate. From those letters, it would appear that some of the Plaintiff's staff resided in the 42 houses referred to above and were evicted by the Defendant's officers. In a letter dated 18<sup>th</sup> January 2005, the Plaintiff's advocate acknowledged that there was confusion as to whether the 42 houses, which he stated were the subject of this suit, were within the suit land. Following a visit to the site on 20<sup>th</sup> January 2005, it was resolved that the 42 houses were not within the suit land and were located in land parcels no. 9042/30, 31, 32 and 33. According to the advocate's letter dated 23<sup>rd</sup> January 2005, both the Plaintiff and the Defendant were claiming ownership of those parcels of land. In that letter counsel stated that there was no dispute that L.R. Nos. 9042/34,35 and 36 belonged to the defendant and that L.R. Nos. 9042/667,9042/25,26,27, 28 and 29 were owned by the plaintiff. Counsel further indicated that the defendant was collecting rent from Houses No. P 15, H3 and P2 which were located in the plaintiff's parcel of land.

31. In a letter dated 17<sup>th</sup> June 2005, the Plaintiff's advocate stated that the Plaintiff did not have a claim over the 42 houses erected on L.R. No. 9042/30, 31, 32 and 33. However, houses No. P15, H3 and H2 were located on the suit land and the Defendant had erroneously issued rent cards and collected rent from the occupants of the house. The Plaintiff's advocate drew up a consent to the effect *inter alia* that houses numbered P15, H3 and P2 belonged to the Plaintiff as they were erected on the suit land but the consent was not signed. Thereafter, the Defendant wrote to the Plaintiff on 1<sup>st</sup> December 2005 to inform them that they had notified the occupants of houses no. P15 and P2 that they were to pay rent to the Plaintiff.

32. A few years later, specifically on 8<sup>th</sup> June 2009, the Plaintiff's advocates wrote to the Defendant complaining that the Defendant had issued rent arrear notices to the Plaintiff's tenants. On 15<sup>th</sup> February 2010, the Defendant wrote to the Plaintiff stating that its position was that it owned the Embakasi Houses. The Plaintiff's advocates reminded the Defendant in letters dated 16<sup>th</sup> March 2010 and 14<sup>th</sup> April 2011 that the Defendant did not have any legal right over the houses situated within Embakasi Village.

33. These correspondences between the Plaintiff and the Defendant show that there has been constant push and pull between the parties over the ownership of houses situated on the suit land and its environs. Initially, it was not clear whether the 42 houses in respect of which the Plaintiff accused the Defendant of issuing eviction notices belonged to the Plaintiff but investigations revealed that they were situated on L.R. No. 9042/30, 31, 32 and 33 which belonged to the Defendant. Other than the 42 houses, the Defendant was also accused of improperly issuing notices to houses number P15, H3 and P2. Efforts were made to settle the matter amicably and by the end of 2005, the parties seemed to have identified the houses that belonged to each party. The consensus was short lived. The Defendant went back to claiming that the Embakasi Houses belonged to it. In June 2009, the Plaintiff's advocates wrote a letter protesting the issuance of rent arrear notices to the plaintiff's tenants by the Defendant.

34. The evidence shows that the Defendant has consistently gone back on its undertaking to desist from issuing notices for payment of rent to the Plaintiff's tenants in houses located on the suit land. PW1's testified that even after the consent order was issued, the Defendant or its predecessor went on disturbing the peace of the Plaintiff's staff.

35. The Defendant did not lead evidence to rebut the Plaintiff's position that it had interfered with the suit land. In **CMC Aviation Ltd. vs. Cruisair Ltd. (No. 1) [1976-80] 1 KLR 835**, Madan, J held:

*“Pleadings contain the averments of the parties concerned. Until they are proved or disproved, or there is an admission of them or any of them, by the parties, they are not evidence and no decision could be founded upon them. Proof is the foundation of evidence. Evidence denotes the means by which an alleged matter of fact, the truth of which is submitted for investigation. Until their truth has been established or otherwise, they remain un-proven. Averments in no way satisfy, for example, the definition of “evidence” as anything that makes clear or obvious; ground for knowledge, indication or testimony; that which makes truth evident, or renders evident to the mind that it is truth.”*

36. The Defendant's claim that it had not trespassed onto the Plaintiff's property was not supported by evidence as no witnesses were called to substantiate the averments made in its defence. This meant that the Plaintiff's claim that the Defendant's officers had gone and disturbed the peace of its tenants on the suit land was unchallenged. Consequently, the Plaintiff sufficiently proved that the Defendant had trespassed onto its property and is therefore entitled to the reliefs sought in the plaint.

37. In assessing the quantum of damages for trespass I am guided by the principle that trespass to land is actionable *per se* and there is no need to prove specific damage or loss for general damages to be awarded. (See **Duncan Nderitu Ndegwa v. KP& LC Limited & Another [2013] eKLR**)

38. In **Park Towers Ltd v John Mithamo Njika & 7 others [2014] eKLR** where **J.M Mutungi J.**, held:

*“I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case...”*

39. The courts have come up with different criteria for assessing damages for trespass to land including a consideration of the size of land involved, the length of trespass, the location of the property among others. (See **Park Towers Ltd(supra)**)

40. In **Philip Ayaya Aluchio v Crispinus Ngayo [2014]eKLR** the court held:

*“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff's property immediately after the trespass or the costs of restoration, whichever is less See Hostler – VS – Green Park Development Co. 986 S. W 2d 500 (No. App.1999).*

41. In **Nakuru Industries Limited v S S Mehta & Sons [2016] eKLR** the court similarly held:

*“A similar situation pertains in the present case. The exact value of the land before and after the trespass is not proved. However, I have found the defendants did trespass onto the plaintiff's land and conduct some excavation. For this reason I award the defendant damages in the amount of Ksh 500,000/= (five hundred thousand only) plus interest and costs of this suit from the date of this judgment until payment in full.”*

42. The Plaintiff's counsel urged this court to award the Plaintiff exemplary damages in the sum of Kshs. 20,000,000/= and general damages for trespass in the sum of Kshs. 10,000,000/=. No basis was given for this proposal by counsel.

43. The Plaintiff produced a valuation report dated October 2007 relating to its residential houses in Embakasi. According to the report, the value of the suit land is Kshs. 351,600,000/=. The evidence however is that not all houses in the suit land were trespassed upon by the Defendant. According to PW1's evidence only 4 houses being houses No. P 15, H2, H3 and P2 were affected. There was no evidence that the defendant had caused any destruction to the properties. Taking all this into account, I find that an award of Ksh. 1,000,000/= is adequate compensation for the plaintiff as general damages.

44. I also find that the Plaintiff is entitled to exemplary damages. In **Titus Gatitu Njau v Municipal Council of Eldoret [2015] eKLR** Justice Sila Munyao held:

*“In my view, this is a fit case for the award of exemplary damages. In the case of *Rookes v Barnard (1964) 1 All ER 367*, it was held that exemplary damages may be awarded in two classes of cases; first where there is oppressive, arbitrary or unconstitutional action by the servants of the government, and secondly, where the defendant's conduct was calculated to procure him some benefit, not necessarily financial, at the expense of the plaintiff.*

45. The persistent trespass by the Defendant which is part of government, into the Plaintiff's land with the intent of collecting rent from the Plaintiff's tenants warrants an award of exemplary damages. The Plaintiff is awarded a sum of Kshs. 500,000/=.

46. The upshot is that the Plaintiff's has proved its case on a balance of probabilities and I enter Judgment for the Plaintiff in the following

terms:

- a) A permanent injunction is hereby issued restraining the Defendant, its servants, agents, or any person acting under the Defendant's authority or instruction from interfering with, trespassing upon or in any other manner dealing with L.R. No. 9042/667;
- b) A permanent injunction is hereby issued restraining the Defendant, its servants, agents or any person acting under the Defendant's authority or instruction from demanding rent, evicting or in any other manner dealing with the occupants of houses erected and being on L.R. No. 9042/667;
- c) The Plaintiff is hereby awarded the sum of Kshs. 1,500,000/= comprising Kshs. 1,000,000/= as general damages for trespass; and Kshs. 500,000 exemplary damages;
- d) Interest on (c) above is awarded at court rates from the date of this judgment.
- e) The Plaintiff is awarded the costs of the suit;

**Dated, and signed** this 8<sup>th</sup> day of April, 2021.

**J.M. ONYANGO**

**JUDGE**

**Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of April, 2021.**

**S. OKONG'O**

**JUDGE**