



**Melina Investments Limited v Sassi & another (Environment & Land
Case 221 of 2017) [2023] KEELC 17833 (KLR) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 17833 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 221 OF 2017**

MAO ODENY, J

JUNE 2, 2023

BETWEEN

MELINA INVESTMENTS LIMITED PLAINTIFF

AND

GIOVANNI SASSI 1ST DEFENDANT

PIERMARCO CICCIO 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 24th October, 2017 the Plaintiff herein sued the Defendants seeking the following orders;
 - a. A declaration that the Defendants have breached the sublease agreement dated 17th May, 2013 for nonpayment of the serve charge expenses and insurance premiums from the year 2013 to 2016 amounting to a total of Kshs 725,982.52/=
 - b. An order compelling the Defendants to pay the Plaintiff a sum of Kshs 725,982.52 for the service charge expenses and insurance premiums from the year 2013 to 2016 and interest thereon at prevailing rates until the sum is paid in full.
 - c. Damages for breach of the sublease agreement dated 17th May, 2013 and interest thereon at court rates.
 - d. An order compelling the Defendants to pay the Plaintiff the balance of the purchase price with respect to the residential premise of the subject sublease dated 17th May, 2013 a sum of Euros 10500 and interest thereon from the year 2013 until when the amount is fully settled.
 - e. Alternatively, an order directing the Defendants to surrender to the Plaintiff the sublease dated 17th May, 2013 registered in favour of the Defendants on 24th May, 2013.



- f. A declaration that the monies paid by the Defendant pursuant to the sub lease agreement dated 17th May, 2013 is not recoverable from the Plaintiff.
- g. An order of vacant possession and/or eviction of the Defendants from the premises subject of the sublease agreement dated 17th May, 2013.
- h. Costs of this Suit and interest thereon at court rates.

Plaintiff's Case.

- 2. PW1 Giusepinno Valsesia adopted his Witness Statement dated 24th October 2017 as his evidence in chief and stated that he is a shareholder and Director of the Plaintiff and produced a Board Resolution allowing him to represent the company. He testified that the company bought land and developed 17 units which were referred to as Nyumba Baharini Village on Chembe Kibabamshe Plot No 402.
- 3. PW1 stated that the Plaintiff is the legal registered Lessee from the Government of Kenya for a term of 99 years from 1st March 1992 of all that parcel of land known as of Plot No Chembe/Kibabamshe 402 together with all developments thereon measuring approximately 3 hectares or thereabouts situated in Malindi.
- 4. It was PW1's further testimony that Defendants are proprietors in common in equal shares of residential premise known as sub-lease unit Plot No Chembe/Kibabamshe 402/19 which they acquired vide a duly registered sub-lease agreement dated 17th May 201 for a period of the remainder of the term of Ninet Nine (99) years from 1st March 1992 at a valuable consideration of Euros 70,000/-.
- 5. PW1 testified that the house was then transferred to the Defendants through their lawyer who did a sub-lease Agreement on 17th May, 2013 which was later registered on 24th May, 2013. That the company received 59,500 Euros which amount was deposited in their KCB euro account leaving a balance of 10,500 Euros and despite numerous demands the Plaintiff has never received the balance.
- 6. PW1 stated that Clause 3 of the sublease required them to pay service charge and insure the premises but the Defendants have not been paying service charge in full and in time and at the time of filing this suit the Defendants owed Kshs 339,665/- and a further Kshs 386,000/ being money paid as insurance for the house.
- 7. On cross examination by Mr. Matini, PW1 stated that they appointed Musena Agencies in 2013 who were supposed to keep books of accounts for the premises. He also stated that they signed the Lease Agreement earlier to facilitate the transaction as they lived in Italy. He further stated that the lease agreement does not show there was a balance. And that the document was prepared by Aboo & Co. Advocates who have a record of the balance.
- 8. It was also his testimony that the document alleging that there was a balance was not executed before an Advocate as it came 4 months later. That in 2013 all the premises were owned by the Plaintiff and there was however an Agreement that the person buying the property should pay the premium.
- 9. PW1 admitted that the Lease shows that it was the Plaintiff's responsibility to pay insurance for common areas and further that it was the responsibility of the owner to pay insurance for any loss.
- 10. On further cross examination PW1 stated that he does not have anything to show that they paid insurance for the Defendant's house and that he was not aware that there was any Clause which required surrender of lease upon failure to pay service charge. According to him, they are demanding payment since they paid for the insurance and that they neither received 3,000/- Euros nor 30,000 Euros in Vienna from the Defendants.



11. It was PW1's evidence that the Lease Agreement referred to Arbitration under Paragraph 7 but the matter was never referred for Arbitration and upon being shown the Defendant's List of documents he stated that the document showed that they received 227,590 Euros in respect of service charge upto 2017 which payment was made in June, 2017 but denied knowledge of any payment made to Aboo Advocate and receipt of 7000 Euros as indicated in the letter from Bonfico.
12. On reexamination, he told the court that the purchase price was 70,000/- Euros and that they received 59,500/- Euros noting that all payments were done through their KCB Euro Account. That payment was made as follows;
 - 24.2.2012 Euros 6,978.00
 - 26.9.2012 Euros 10,000.00
 - 3.10.2012 Euros 9,978.00
 - 3.4.2013 Euros 16,000.00
 - 4.4.2013 Euros 6,976.00
 - 4.4.2013 Euros 6,976.00
 - 24.6.2013 Euros 2,500.00
13. It was his evidence that they did not receive any further payments and the issue of service charge at the time was being handled by Musena Agencies who had been demanding payment from the Defendants and that at the time the sum of Kshs 227,000/- was paid they were already in court and there were no receipts indicating that the Defendants had paid insurance.
14. PW2 Kafya Mansoor Naji adopted her witness statement and stated that she had been instructed by Valsessi not to admit documents and was told by Aboo Advocate to have the Defendants sign a commitment stating that they would pay Euros 10,000/- by 30th August 2014. That the undertaking was executed by Emmanuel Sassi who is Giovanni Sassi's father who signed on behalf of the 1st Defendant.
15. On cross examination PW2 informed the court that the undertaking she presented to court was signed by Emmanuelle and not the Defendants who have never come to her office and she did not have anything to show the two Defendants authorized him to execute the document. She confirmed that she had not stated in her statement that she consulted Aboo before she released the documents.
16. PW2 also informed the court that she is the one who prepared the undertaking before forwarding it to Aboo and that she did not have anything to show that she forwarded the same to Aboo Advocates. According to her, the amount of the lease was not fully paid but there was nothing in writing to show there was a balance.
17. On being shown the Lease Agreement dated 17th May, 2013 PW2 confirmed that at Paragraph 1 of the Lease it shows that the money was paid and there was no indication that there was a balance to be paid. She also stated that the document she handed over indicated that the 70,000/- Euros purchase price had been paid.
18. On re-examination, she confirmed that Emmanuelle Sassi signed the document with authority as he was buying the property for the son. She also stated that 4,000 Euros was in respect to Aboo's legal charges.



Defence Case

19. DW 1 Enrico Cicco told the court that he knows the Plaintiff as his son bought a piece of land from him in Watamu. That they jointly bought the house known as Nyumba Baharini from the Plaintiff for a consideration of 70,000 Euros which they paid and that his son together with the 1st Defendant executed a sublease agreement dated 17th May 2013.
20. It was DW1's testimony that the paid money through bank transfer although some were paid in cash. That they paid the entire amount with the first installment of 7,000/- Euros being paid on 17.2.2012 and the second installment of 10,000/- Euros being paid on 27.9.2012.
21. It was his testimony that he made payments as follows, 2nd payment was by Bank transfer from credit Bank to KCB Bank.
3rd payment was 10,000/- Euros on 24.9.2012.
4th payment was on 28.3.2013 two transfers both of 7,000/-Euros, 5th payment on 28.3.2013, 16,000/- Euros a Bank transfer from Milano to the Plaintiff.
Two cheques of 2,500/- Euros each paid on 28.3.2013 Cheque No 0261843087 and Cheque No 0261843088
Payment in cash o 4,000 Euros to Aboo on 28.3.2013. total amount paid was 70,000/ Euros
22. Upon being shown the letter dated 23.8.2013 in the Plaintiff's Exhibits, he stated that he did not sign the said letter and on that date he was already in Italy. He also stated that he has been paying service charge all the years and that he had receipts showing payment. It was his testimony that in a letter dated 25.3.2015 they confirmed that all payments had been done.
23. On cross examination by Mr. Mbura, he told the court that the proprietors of the premises are the 2 Defendants and that his son is the 2nd Defendant. He confirmed that he did not sign the sub lease as either as proprietor or witness. He also told the court that the fact that he paid some money in cash indicates that he was involved in the negotiations.
24. On being shown the Statements of Account he stated that the purchase price was to be paid at the Plaintiff's Bank in Malindi and that he never confirmed that all the amount was paid into the account amounted to Euros 59,000/-.
25. DW1 stated that the Directors of the Plaintiff signed the Agreement showing the money was paid to them and that they did not need to acknowledge receipt of the cash payments separately. He also informed the court that he was aware of the contents of the Lease and it was true they were to pay service charge but they were not to pay insurance. That there was a condominium agreement following a meeting they attended in Milan that specified how payment of service charge was to be made.
26. He testified that he was aware that they were to insure the premises with a reputable insurance company when they took possession in April, 2013 and further that the Defendant took out insurance as required but in 2013 they did not do so as the transfer was effected in August. DW2 also told the court that he paid service charge of 227,000/- in December, 2017 and this case was filed on 14.11.2017 and it was possible that by the time they paid the case had been filed.
27. On re-examination by Mr. Matini he told the court that the annual insurance was 800 Euros which was for a cover against fire and theft. That there was a different cover of 150 Euros and there was no outstanding service charge.



28. DW2 Sassi Emanuele told the court that they paid everything as opposed to what the Plaintiff is claiming. That the purchase price was 70,000/- Euros which amount was paid and acknowledged in the Lease. He testified that at the time of the agreement they had paid 5000 Euros to cater for insurance and other expenses in 2013 which they paid from March to December, 2013.
29. DW2 stated that on 28.12.2017, they paid Kshs 227,590/- being service charge to Musena Agencies which was the balance as that 2017 and there was nothing owing as at the end of 2017. That they took out insurance cover against fire, theft and other hazards on their own initiative. He confirmed that he is the one who collected the sub lease in August 2013 and on the said date, he did not sign any other agreement purporting to be an undertaking.
30. DW3 Giovanni Sassi adopted his Witness Statement dated 27.12.2018 and the List of documents dated 25.4.2018 produced exhibit 1 to 43 and confirmed that there was no outstanding payment of the purchase price.
31. According to him, the payments were made as follows;
 1. Swift Transfer Euro 7,000 on 17.2.2012
 2. Bank Transfer Euro 10,000 on 24.9.2012
 3. Bank Transfer Euro 10,000 on 27.9.2012
 4. Cash Payment Euro 5,000 on 26.3.2012
 5. Swift Transfer Euro 7,000 on 28.3.2013
 6. Bank Transfer Euro 7,000 on 28.3.2013
 7. Bank Transfer Euro 16,000 on 28.3.2013
 8. Cash payment Euro 4,000 on 28.3.2013
 9. 2 Bank Cheques Euro 2,500 each on 28.3.2013
 10. Cash Payment Euro 4,000 on 28.3.2013.
32. That the above payments made a total of Euro 75,000 being the purchase price, insurance and taxes.
33. It was his evidence that he never signed any document indicating that he owed the Plaintiff any money and that by the time they were collecting the lease, they had cleared the purchase price. He testified that the Plaintiff did not pay any insurance on their behalf as they did not give them the policy.
34. DW3 also stated that they had paid Kshs 444,155.12/- to Musena Agencies for 2016 – 2017, Kshs 225,489.60/- in December 2017 and on 28.12.2017 paid Kshs 227,590.12/- which was the balance of the service charge. That the demand letters for payment of service charge were written before they made payment.
35. On cross examination by Mr. Mbura, he told the court that the amounts were paid to Melina Investments account in Kenya. On being referred to the KCB statement, he stated that the amount paid into the KCB Account was Euro 59,000 and cash payment to Aboo.

Plaintiff's Submissions

36. Counsel identified two issues for determination namely: whether the Defendants are indebted to the Plaintiff Euros 10500 in respect to the purchase of the residential plot known as sub-lease unit Plot



No Chembe/Kibabamshe 402/19 and whether the Defendants breached the terms of the sub lease agreement for failing to pay service charge and insurance premiums.

37. On the 1st issue counsel submitted that the total purchase price as per the sub lease agreement was Euros 70,000/- and that the Defendants only deposited Euros 59,500 which evidence counsel submitted that was uncontroverted by the Defendants.
38. According to counsel, the Defendants did not produce any evidence to demonstrate that they had fully paid the purchase price. It was his submission that PW2 led evidence to the effect that Mr. Emmanuelle Sassi came to their offices and signed an undertaking dated 23rd August, 2013 on behalf of the Defendants that they will pay to the Plaintiff Euros 10,000 on or before the 30th August, 2014.
39. On the second issue, Mr. Mburu submitted that the Defendants were in breach of the sub lease agreement for failing to insure the subject residential unit in a reputable insurance firm and for failing to pay service charge in time.
40. Counsel stated that the Defendants breached Clause 3 (a) of the sublease which provided that the Defendants were to pay service charge in the manner provided in the sub lease and relied on Section 3 of the Law of Contract Act, Cap 23 as read together with the provisions of Section 38 (1) of the Land Act.
41. Counsel further relied on the cases of Gabiri Limited v Ogilvy East Africa Ltd (2014) eKLR, National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another (2001) eKLR and that of Woodar Investment Developments Ltd v Wimpey Construction (U.K) Ltd, HI, 1980 on the issue of breach of contract.

Defendants' submissions

42. Counsel reiterated the evidence of the parties and submitted on facts that are uncontested as follows;
 1. That Musena Agencies were the sole appointed agents appointed to manage and or administer the condominium.
 2. That the lease agreement was the principal document governing the relations between the two parties.
 3. That at paragraph 2, of the duly signed lease agreement confirms full payment of the agreed consideration of the lease was made.
 4. That at the point of executing the lease there was neither a document nor an agreement signed by the parties to reflect the existence of any balance outstanding against the purchase price. This remained so even at and after the point of registration.
 5. That none of the parties to the agreement signed any document known to law or otherwise to reflect the existence of a balance or was there any provision in the agreement to show that the parties would sign and register the lease transfer without the consideration being fully paid. Indeed, plaintiff did not produce any or allude to resolutions reflecting such an arrangement.
 6. That the plaintiff neither produced any records to show how service charge was paid over the years, how it was calculated, how much was paid and when, how much was expected, how much was due nor how it was utilized.



7. That the plaintiff did not produce any evidence of having paid insurance on behalf of the defendants for the defendant's house.
8. That there is neither a clause nor provision in the lease requiring surrender of the lease.
9. That the sublease produced before court gave arbitration as the only mode for dispute resolution and there's no evidence whatsoever to show that the dispute went for arbitration. The question of the validity of the suit before court on account of lack of jurisdiction.
10. That there is no outstanding service charge as at today's date.
11. That there's no dispute that the house in question was destroyed having been gutted down by fire and does not exist hence is the Court acting in vain or giving orders in a vacuum.
13. Counsel identified six issues for determination as follows:
 - a. Whether the Defendants owe the Plaintiff Euros 10,500 as a balance of the purchase price of the suit property?
 - b. Whether the plaintiff has proved that Defendants failed to pay service charge from 2013 to 2016?
 - c. Whether the Defendants failed to pay insurance premiums from 2013 to 2016 and if so but which is denied whether the plaintiff has proved that it paid the said premiums specifically for the defendant's house?
 - d. Whether there was breach of the Sub-lease agreement and by who?
 - e. Whether the plaintiff has adhered to the procedure of dispute resolution provided for under lease. That is to say arbitration.
 - f. Who should bear the costs of this suit?

43. On the first issue counsel relied on clause 1 of the agreement that reads;

‘In pursuance of the abovementioned agreement and in consideration of the sum of Euros Seventy Thousand (€ 70,000) only now paid by the Lessee to the Lessor...’

44. Counsel therefore submitted that the consideration was paid in full upon execution of the said agreement which was acknowledged by the Plaintiff. It was counsel's further submission that the Sub-lease agreement does not indicate that there was any balance outstanding from the transaction, and that there was no written agreement produced as evidence to show the existence of any such balance.

45. Counsel relied on the case of *Prudential Assurance Company of Kenya Limited v Sukhwinder Singh Jutley & another*, Civil Appeal 23 of 2005, where the court held that no parole evidence is admissible to contradict, vary or alter the terms of the deed or any written instrument. Mr. Matini submitted that the Plaintiff cannot be allowed to offend the parole evidence rule to vary the terms of the agreement.



46. Mr. Matini listed the following payments made to the Plaintiff: Euros 57,000/ (which sum is agreed and admitted by the Plaintiff) paid to Melina Inv. Bank account 111638XXXX at KCB bank by Cicco Piermarco and SASSI Emmanuele.
- a. Euros 20,000 paid in cash on 15/09/2012 as shown by a receipt issued in Trani signed by Giuseppino Valsesia.
 - b. Euros 30,000 paid in cash on 13/03/2013 as shown by a receipt issued in Biella and signed by Giuseppino Valsesia and Dr. Roberto Sasso, the legal representatives of Melina Investments Limited.
 - c. Euros 5,000 paid through two Italian Bank Cheques of Euros 2,500 each, drawn on the Credem Spa Bank paid to Accounts No 026184XXXX and 026184XXXX.
 - d. Euros 8,000 paid in cash on 3/8/2013 by Cicco Piermarco And Sassi Giovanni, with two receipts of Euros 4,000 each, issued on the same date, one on a paper where the two cheques of Euros 2,500 were photocopied and issued to Cicco , while the other was issued to Sassi Giovanni on a headed paper of Aboo Insurance Brokers Ltd.
 - e. Euros 5,000 issued in cash to Melina Investments ltd, through its lawyer Hamid Aboo on 3/23/2013. A sum received from CICCICO and SASSI.
47. On the second issue whether the Plaintiff has proved that the Defendant failed to pay service charge, it was counsel's submission that he who alleges must prove and that the Plaintiff has not brought any evidence to prove that the Defendant did not pay service charge.
48. Mr. Matini submitted that DW4 stated during trial that the Defendants had honored all their demand letters by ensuring that they paid service charge of which the Defendants produced payment receipts.
49. On the issue whether the Defendants failed to pay insurance premiums from 2013 to 2016 and whether there's proof that the Plaintiff paid insurance premium for the Defendants house, counsel submitted that DW1 during trial confirmed that the transfer of the house was effected in August 2013, and that the Sub-lease agreement had a clause that required all service expenses which include insurance premiums under part 1 of the 4th schedule to be paid on the 1st day of January and 1st day of June.
50. Counsel submitted that since the transfer was undertaken in August, during the said period, the property vested in the Plaintiff and not the Defendants' hands. That as for the year 2014, the Defendants paid a sum of Euros 4000 in cash evidenced by the receipt that DWI produced before this Court.
51. On the issue whether the Plaintiff paid insurance on behalf of the Defendants, counsel submitted that there was no evidence or payment receipt to show that such happened. Counsel further submitted that the Defendants did not breach the terms of the contract as alleged by the Plaintiff.
52. Mr. Matini therefore submitted that the Plaintiff has not proved its case against the Defendants hence should be dismissed with costs.

Analysis And Determination.

53. The issue for determination are as to whether the Defendants owe the Plaintiff Euros 10500 as balance of purchase price and whether the Defendants are in breach of contract for failure to pay insurance and service charge.



54. There has been an elaborate chronology in the evidence about how the transaction of purchase of residential plot known as sub-lease unit Plot No Chembe/ Kibabamshe 402/19 by the Defendants at a consideration of Euros 70,000. The issue is whether this amount was paid in full.
55. The Plaintiff gave evidence that the Defendants only paid Euros 59,500 leaving an unpaid balance of 10,500. The Defendants however stated that they paid the full purchase price and hence there was no outstanding balance. That the sublease agreement that they signed acknowledged full payment of the purchase price and that is why a transfer was effected in their favour.
56. This explanation is feasible as the release of the documents and the transfer of lease would not have been effected without the full payment of the purchase price unless there was a legal undertaking to that effect and the mode of payment of the outstanding balance.
57. It is on record that PW2 informed the court that the undertaking she presented to court was signed by Emmanuelle and not the Defendants who have never come to her office and she did not have anything to show that the two Defendants authorized him to execute the document. She confirmed that she had not stated in her statement that she consulted Aboo before she released the documents.
58. DW1 told the court that they jointly bought the house known as Nyumba Baharini from the Plaintiff and a consideration of 70,000 Euros which they paid in full and that his son together with the 1st Defendant executed a sublease agreement dated 17.5.2013.
59. It was DW1's evidence that they made payment as follows;
- Swift Transfer Euro 7,000 on 17.2.2012, Bank Transfer Euro 10,000 on 24.9.2012, Bank Transfer Euro 10,000 on 27.9.2012, Cash Payment Euro 5,000 on 26.3.2012, Swift Transfer Euro 7,000 on 28.3.2013, Bank Transfer Euro 7,000 on 28.3.2013, Bank Transfer Euro 16,000 on 28.3.2013, Cash payment Euro 4,000 on 28.3.2013, 2 Bank Cheques Euro 2,500 each on 28.3.2013 and Cash Payment Euro 4,000 on 28.3.2013.
60. The above payments made a total of Euro 75,000 being the purchase price, insurance and taxes which amounts have not been challenged by the Plaintiff or given contrary evidence to refute the payments made.
61. This is a case of misunderstanding of amounts paid but the evidence on record shows that the defendants paid the purchase price in full. The mode of payment was through bank transfers and cash payment which were acknowledged by the plaintiff.
62. On the issue of whether the Defendants have breached the contract on payment of service charge and insurance for the house, DW1 testified that he was aware that they were to insure the premises with a reputable insurance company when they took possession and that the Defendant took out insurance as required but in 2013 they did not take insurance because the transfer was done in August hence 2013 was the responsibility of the Plaintiff.
63. The Sub-lease agreement had a clause that required all service expenses which include insurance premiums under part 1 of the 4th schedule to be paid on the 1st day of January and 1st day of June and it should be noted that the Defendants executed the agreement in August 2013.
64. DW2 stated that on 28.12.2017, they paid Kshs 227,590/- being service charge to Musena Agencies which was the balance as that 2017 and there was nothing owing as at the end of 2017. DW4 who was in charge of management of the condominium confirmed that before 20th December 2017 the Defendants had some arrears which they continued paying and cleared the service charge by 28th



December 2017. This evidence was from a person who was charged with the collection of service charge and he confirmed that the same was paid. This evidence has not been controverted.

65. It should also be noted that this case was filed in 2017 and the Defendants continued paying service and by 28th December 2017 the arrears were paid in full as was confirmed by DW4. I therefore find that the Defendants paid the service charge and there was no any outstanding amount.
66. The Plaintiff did not produce any records to show how service charge was paid over the years, the Defendant on the other hand has produced copies of receipts of service charge of diverse dates between 30.11.2015 and 28.12.2017 for an amount of Kshs 828,639/- being payment of service charge.
67. In the case of *Muriungi Kanoru Jeremiah v Stephen Ungu M'mwarabua* [2015] eKLR the court held as follows with regard to the burden of proof:

“....As I have already stated, in law, the burden of proving the claim was the appellant’s including the allegation that the respondent did not pay the sum claimed as agreed; i.e. into the account provided.....The trial magistrate was absolutely correct in so holding and did not shift any legal burden to the appellant.....The appellant was obliged in law to prove that allegation; after the legal adage that he who asserts or alleges must prove.... In the circumstances of this case, the respondent bore no burden of proof whatsoever in relation to the debt claimed. By way of speaking, the shifting of burden of proof would have arisen had the trial court magistrate held that the respondent bore burden to prove that he deposited the sum of Kshs 98,200/= the debt being claimed herein.”

68. I have considered the pleadings, the evidence on record, counsel’s submission and the relevant authorities and find that the Plaintiff has failed to prove its case on a balance of probabilities and therefore the same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 2ND DAY OF JUNE, 2023.

M.A. ODENY

JUDGE

NB: In view of the Public Order No 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

