



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

LAND SUIT E & L NO. 250 OF 2016

TARZAN LTD.....PLAINTIFF

-VERSUS-

KOIMA DEVELOPERS LTD.....1ST DEFENDANT

ELGEYO BORDER INVESTMENT LTD.....2ND DEFENDANT

RULING

PLAINT

Tarzan Ltd (hereinafter referred to as the Plaintiff) came to this court by way of plaint against Koima Developers Ltd and Elgeyo Border Investment Ltd (hereinafter referred to as the defendants) claiming that at all material times to this suit, the 1st defendant was the beneficial owner of a portion of land measuring approximately 2,700 acres of the parcels of land known as LR 10930, 6802 and 7557/2 having purchased same from the 2nd defendant. The Plaintiff contends that by an agreement entered into between herself and the 1st defendant, the 1st defendant agreed to sell and the plaintiff agreed to purchase the 1st defendants portion measuring approximately 100 acres of the parcel of land known as LR7557/2 at a consideration of Kshs. 55,000,000/= (Kenya Shillings Fifty Five Million).

It was a term of the contract between the plaintiff and the 1st defendant that a deposit of Kshs. 20,000,000/= (Kenya Shillings Twenty Million) would be paid at the execution of the agreement, a condition that the plaintiff fulfilled and the 1st defendant confirmed. The balance of Kshs. 35,000,000/= (Thirty Five Million) was agreed to be paid to the Vendors Advocate by way of Real Time Gross transfer (RTGS) within 60 days.

The contract between the plaintiff and the 1st defendant contained other terms including penalty for breach and compensation.

The Plaintiff avers that prior to the contract between her and the 1st defendant the 2nd defendant had vide its letter dated 9th August 2014 made an offer to the plaintiff for the sale of 100 acres of land contained in parcel land References No. 10930, 6802 and 7557/2 at a consideration of Kshs. 55,000,000/= (Kenya Shillings Fifty Five Million).

The conditions of the offer required the plaintiff upon acceptance to pay 50% of the consideration being Kshs. 27,500,000/= (Twenty Seven Million Five Hundred Thousand) and the balance therefore to be paid by way of Real Time Gross transfer (RTGS) to the 2nd defendants Bank Account Details namely; Elgeyo Border Investments Ltd **Transnational Bank, Eldoret Branch A/C No. [...]**.

The Plaintiff was further required to upon acceptance execute and confirm payment and that such acceptance would constitute a binding agreement between the parties. The Plaintiff claims that he accepted the defendants' offer and performed her part of the agreement by paying defendants Kshs. 100,000 being registration fee.

He executed the offer and paid Kshs 23,000,000 as deposit and executed the standard agreement for the purchase of 100 acres.

The Plaintiff offered to dispose of the property known as ELD/MUN BLOCK 14/29 to the 1st Defendant at a consideration of Kshs. 20,000,000. It was a mutual agreement that kshs. 10,000,000 would be paid to offset a loan facility that had been secured on the property No. ELD/BLOCK 14/29, by one Jeremiah Kosgei Borar and the balance was to be used in part payment for LR NO. 10930, 6802, 7557/2.

The Plaintiff avers that the defendants frustrated the agreement and that that the Defendants failed to present the certificate of title, failed to execute the instructions of transfer consent of the Land Control Board copies of the PIN photos passport sized photographs, ID cards, stamp duty valuation form. The plaintiff accuses the Defendants of fraud.

The Plaintiff claims for an order compelling the 1st and 2nd defendants jointly and severally to perform their part of the contract and to execute documents of transfer and to cause the transfer of portion of land measuring approximately 100 acres purchased by the plaintiffs in parcel known as LR.10930,6802 and 7557/2 in favor of the plaintiff.

In the alternative the plaintiff claims for an order of the refund by the 1st and 2nd defendants jointly and severally of the consideration for 100 acres at the current market and sale value as per paragraph 19 and an order that the agreement between the plaintiff and the 1st defendant for the purchase of parcel as Eldoret Municipality Bloc 14/29 has been rescinded by the plaintiff's director Phyllis Jerotich Mutwol and be cancelled and nullified.

The plaintiff further seeks an order compelling the 1st defendant by itself, its director David Bett Langat or any other shareholder, appointee, nominee, agent or servant of the 1st defendant company to return the certificate of lease for parcel no. Eldoret Municipality Block 14/29 back to the plaintiff and an order of permanent injunction to restraining the 1st and 2nd defendants by themselves, their appointees, agents, servants or any purported subsequent beneficiary of the parcel of land known as Eldoret Municipality Block 14/29 from entering into, fencing, developing, leasing out, transferring, disposing off or in any other way dealing with or interfering with the plaintiffs ownership, use and enjoyment of land known as Eldoret Municipality Block 14/29.

DEFENCE AND COUNTER CLAIM

The 1st Defendant filed defence and counter claim stating that the true and factual position in the matter is that on the 26th August, 2014 the 1st defendant entered into a sale agreement with Phyllis Jerotich Mutwol for the purchase of Eldoret Municipality/Block 14/29 for an agreed consideration of Kshs. 20,000,000.00 and it was agreed that the sum of Kshs. 10,000,000.00 be paid by the 1st defendant to the charge Equitorial Commercial Bank Ltd directly on execution of the agreement and the remaining amount be paid directly to Phyllis Jerotich Mutwol bank account and was paid.

The chargee (bank) received Kshs. 10 million directly and the other sum was paid directly to Phyllis Jerotich Mutwol account.

The 1st defendant avers that having received the full purchase price over the sale of Eldoret Municipality/Block 14/29, the said Phyllis Jerotich Mutwol has no further claim to that property and the ownership now vests in the 1st defendant. That Phyllis Jerotich Mutwol executed transfer of lease over Title Number Eldoret Municipality Block 14/29 to the 1st defendant and surrendered the original Title deed to the said property to the 1st defendant upon payment of the full purchase price.

The 1st defendant states that the parcel of land Eldoret Municipality/Block 14/29 is not related to land known as L. R. No. 10930, 6802 and 7557/2. They are separate in the way of ownership and location and have nothing in common and that the 1st defendant has no claim or connection to the L. R. No. 10930, 6802 and 7557/2.

The 1st defendant denies the contents of particulars of fraud set out in the plaint and more specifically the 1st defendant denies all the particulars of fraud to the extent that it refers to the 1st defendant.

The 1st defendant claims not to have received a single cent from the plaintiff regarding its claims to parcel of land L. R. No. 10930, 6802 and 7557/2 and the whole of the plaintiff claim to land against the 1st defendant is misdirected and misconceived. Further one Phyllis Jerotich Mutwol and is not a Litigant before court no longer has any claim or interest over Eldoret Municipality/Block 14/29 and ought to be compelled by an order of the court to perform the specific performance and transfer the above property to the 1st defendant. After all she readily admits receiving the full purchase price from the 1st defendant, the said sum being the full purchase price for the parcel No. Eldoret Municipality/Block 14/29.

The 1st defendant states that he has no power to transfer the parcel of land known as L.R. No. 10930, 6802 and 7557/2 to the plaintiff.

The 1st defendant states that there is no ground for the cancellation and nullification of the sale agreement with respect to the sale of Eldoret Municipality Block 14/29. The vendor Phyllis Jerotich Mutwol received the agreed consideration in full and has no claim whatsoever to the said land. That on the contrary the appropriate order would be for the said Phyllis Jarotich Mutwol be ordered to transfer the L.R. No. Eldoret Municipality/Block 14/29 to the 1st defendant by an order of specific performance.

The 1st defendant avers that the plaintiff has no claim or any reasonable cause of action against the 1st defendant either generally or as regards the parcel of land known as Eldoret Municipality/Block 14/29 and will at the earliest opportunity or during the hearing of the suit pray that the plaintiff claim against the 1st defendant be struck out and/or dismissed with costs to the 1st defendant for a misjoinder, for no nexus, for no cause of action and/or for being scandalous, frivolous, vexatious and an abuse of the process of the court and prays that the plaintiff suit against it be dismissed with costs.

The 1st defendant states that the 2nd defendant in the counterclaim not only signed a transfer of lease of the Title Number Eldoret Municipality/Block 14/29 to the plaintiff in the counterclaim but also surrendered the original title to the plaintiff in the counterclaim signifying that she no longer had any interest over the property.

The 1st defendant (plaintiff in the counterclaim claim) states that his rights to land deserves the protection in law and particularly the provisions under Article 40 of the Constitution of Kenya 2010 and section 24, 25 and 26 of Land Registration Act 2012 which in a nutshell provides for the absolute ownership of land to the purchaser of land for value.

That upon the conclusion of the sale agreement dated 26th August, 2014 the plaintiff in the counterclaim moved to take possession of the suit property, put a contractor on the site, submitted plans for approval and because of the dispute herein by the 1st and 2nd defendants in the counterclaim, the plaintiff in the counterclaim is losing the sum of Kshs. 3,000,000.00 on a monthly basis which sum the plaintiff claims from the 1st and 2nd defendants in the counterclaim from the 24th April, 2016 (date of full payment) until judgement in the counterclaim and/or until such time that the 1st and 2nd defendants in the counterclaim fully surrenders the suit land to the plaintiff in the counterclaim together with the 2nd defendant in the counterclaim coloured photographs, copy of ID card, Pin No. rates and land rent clearances certificate, receipts for payment of rent and rates.

The parties to the contract for the sale of 100 acres to be excised from L.R. No 10930, 6802 and 755/2 and the sale of ELDORET MUNICIPALITY/BLOCK 14/29 are different parties with different causes of action, rights and the agreement dated 26.08.2014 for the sale of ELDORET MUNICIPALITY/BLOCK 14/29 is in no way intertwined or related to that for the sale of 100 acres to be excised from L.R. No. 10930, 6802 and 755/2 and therefore the 1st Defendant to the counterclaim cannot be heard to claim that the two agreements are mutually symbiotic.

The 1st Defendant prays for a declaration that that vide a sale agreement dated 26th August 2014 between the plaintiff and the 2nd defendant in the counterclaim over parcel of land Title No. Eldoret Municipality/Block 14/29 and the plaintiff in the counterclaim having paid the sum of Kenya Shillings Twenty Million (Kshs. 20,000,000.00) in full payment of the purchase price, then the suit property above vests in the plaintiff in the counterclaim and thereby entitled to the ownership and exclusive possession of the said parcel of land.

He further prays that the Honourable court be pleased to issue an order of specific performance directing the 2nd defendant in the counterclaim to in addition to the executed transfer form for the parcel of land known as ELDORET MUNICIPALITY/BLOCK 14/29 to the plaintiff in the counterclaim together with the Original Title in respect of the property to avail to the plaintiff in the counterclaim Copies of the vendor's identity Card, three (3) passport sized photographs as well as the vendors' (the defendant in the counterclaim) Pin Certificate, rates and land rent clearance certificates, receipts for payment of rent and rates, any other document required to transfer the property in the name of purchaser, Certificate of Incorporation of the Company and such other completion documents within 14 days of the order failing which the Deputy Registrar of the court is empowered and authorized to effect the transfer of the suit land known as ELDORET MUNICIPALITY/BLOCK 14/29 to the plaintiff in the counterclaim herein.

Moreover, he prays for an order of permanent injunction do issue restraining the 1st and 2nd defendants in the counterclaim by themselves, servants, agents and/or employees from entering, from developing, from constructing, from disposing, from selling. From charging, from subdividing, from farming and/or in any way from having any dealings with the parcel of land known as ELDORET MUNICIPALITY/BLOCK 14/29 and that the Honorable court be pleased to issue judgement in favour of the plaintiff in the counterclaim and against the 1st and 2nd defendants in the counterclaim for the sum of Kshs. 3,000,000.00 per month from the 24th April, 2016 until judgement in the counterclaim and/or until possession is fully given up by the defendants in the counterclaim whichever is earlier.

Lastly, an order lifting the restriction that is registered over the suit property. Costs of the counterclaim and interest thereon.

2ND DEFENDANT'S DEFENCE

The 2nd Defendant filed a statement of defence admitting the averments in the plaint and stating that the orders of specific performance cannot be issued by the court without a valid component of the relevant authority that is the Land Control board and a refund cannot be on a current market rate but on a specific rate as per the agreement if the plaintiff is entitled to.

THE APPLICATION

The 1st Defendant filed an application dated 30/8/2019 praying that this Honourable court be pleased to strike out the suit against the 1st defendant for being scandalous, frivolous, vexatious and/or for being otherwise an abuse of the process of the court and in the alternative this Honourable court be pleased to issue order striking out the plaintiff suit against the 1st defendant for disclosing no cause of action and/or for the 1st defendant and/or for the 1st defendant having being improperly enjoined in this proceedings.

Moreover, that the orders of injunction issued by this Honourable court on the 7th December, 2018 against the 1st defendant be set aside, vacated and/or discharged in their entirety. That costs of the application be provided by the plaintiff.

The application is based on grounds that there is no relationship and/or nexus between the plaintiff herein and the 1st defendant over the germane matters in Litigation before the court. That the initial agreement dated the 26th day of January, 2014 was frustrated/overtaken by events when the plaintiff herein received an offer from the 2nd defendant herein dated 9/8/2014.

The 1st defendant/applicant contends that in the letter of offer dated 9/8/2014, Elgeyo Border Investment Limited offered to the Tarzan Ltd, an offer of sale of 100 acres of land to be excised from Land Reference Number 10930, 6802 and 7557/2 on terms and conditions set out therein. Important to note that the vendor therein is Elgeyo Border Investment Ltd P.O. Box [....]- 30100, Eldoret and the purchaser is Tarzan Ltd.

Thereafter, Tarzan Limited and the Elgeyo Boarder Investment Ltd transacted over a 100 acre of land to be excised from L. r. Nos. 10390, 6802 and 1557/2. That transaction did not involve and did not concern the 1st defendant, a different legal entity altogether.

The 1st defendant did not call for and did not receive any payments from the plaintiff with regard to the purchase of the property offered to

the plaintiff above and owned by the 2nd defendant.

That the 1st defendant and Phylis Jerotich Mutwol entered into an agreement dated the 26th day of August, 2014 over Title Number Eldoret Municipality/Block 14/29 for the sum of Kenya Shillings Twenty Million (Kshs. 20,000,000.00) which sum was paid in full by the 1st defendant to Phylis Jerotich Mutwol.

That arising from the above agreement that is the sale agreement dated 26/8/2014 the 1st defendant through the instructions of Phylis Jerotich Mutwol (instruction dated 16th September 2014) paid to the Bank on Jeremiah Koskei Bowen's account at Equatorail Commercial Bank Ltd the sum of Kenya Shillings Ten Million (Kshs. 10,000,000.00) on the 17th day of September, 2014 and subsequently to the plaintiff directly through her Barclays Bank Account No. 016-[....] the sum of Kenya Shillings Seventeen Million (Kshs. 17,000,000.00) on the 29th day of April 2016.

That subsequent to the compliance with the conditions/terms set out in the agreement dated the 26th day of August, 2014 which was purely for Title number Eldoret Municipality/block 14/29, the vendor therein Phylis Jerotich Mutwol signed the transfer of lease and released the original title deed to the transaction lawyers Kipkenda & Company Advocates for registration of transfer in favor of the 1st defendant.

That there is therefore no connection between the 2nd defendant,s L.R. No. 10390, 6802 and 1557/2 and the 1st defendant LR. No. Eldoret Municipality Block 14/29.

The applicant contends that the details and a copy of the sale agreement dated the 26th August, 2014 between Phylis Jerotich Mutwol and the 1st defendant has been withheld and/or suppressed and was not availed before the Honourable court in the plaintiff filings. Important to say that it was not availed during the arguments for and against the injunction application on record. The plaintiff succeeded in that application and obtained an injunctive order. It is on record.

That the 1st defendant transacted with one Phylis Jerotich Mutwol and not Tarzan Limited over Title Number Eldoret Municipality Block 14/29. Phylis Jerotich Mutwol has not come to court to complain and has not filed any Litigation before the court of law.

The plaintiff has intentionally and mischievously withheld this crucial information from this Honourable court. That further the plaintiff demand for refund of purchase price of land 100 acres to be excised from Land Reference Number 10390, 6802 and 1557/2 was addressed to Elgeyo border Investment Ltd. The demand letter is drawn by Ongicho –Ongicho & Company Advcoates dated 5th February 2016.

In an affidavit of Joseph Toroitich Cheronu one of the Directors of Elgeyo Boarders Ltd dated 10/5/2018, he states that it is true that the plaintiff agreed to purchase 100 acres comprising of parcels of land known as L. R. 10390, 6802 and 7557/2 known as KAPJAGIR at an agreed consideration of Kshs. 55,000,000.

The plaintiff only paid Kshs. 17,000,000 leaving a balance of 38,000,000 unpaid to date. The land cannot be transferred until the entire purchase price is paid.

According to the 2nd Defendant, the agreement is in respect of parcel number ELD/MUN/BLOCK 14/29 is purely between the plaintiff and the 1st defendant.

In opposition to the application, Phylis Jrotich Mutwol and relied on the affidavit sworn on the 16th of September 2019 wherein she states that she is the director of Tarzan ltd. states that the application is not merited as the plaintiff has disclosed a cause of action against the 1st defendant/applicant. According to the plaintiff/respondent sometimes in 2014 she received an offer from the 2nd defendant to purchase 100 acres of land situated within Uasin Gishu County known as KAJAGIR. She went to the ground and was shown the parcel. The offer was made on the 9th August 2014, she agreed and made arrangements to pay. The deposit was ksh 27,000,000 and agreed to dispose of the property known as Eldoret Municipality block 14/19, which was bought by Koima investments ltd the 1st defendant. The consideration was used to pay the 2nd defendant directly as the deposit for the purchase price. The plaintiff further paid ksh 100, 000 to the 2nd defendant as the registration fee. The plaintiff executed an agreement of purchase with the 1st defendant on the wherein the 1st defendant agreed to dispose of her interest of 100 acres to the plaintiff and that the 1st defendant together with the 2nd defendants have frustrated the agreement.

ANALYSIS AND DETERMINATION

The application herein is brought under Order 2 rule 15 of the Civil Procedure Rules. Subrule (1) of the said provision provides as follows:

At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

- (a) it discloses no reasonable cause of action or defence in law; or**
- (b) it is scandalous, frivolous or vexatious; or**
- (c) it may prejudice, embarrass or delay the fair trial of the action; or**
- (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment**

to be entered accordingly, as the case may be.

In the exercise of the courts discretion under the said provision there are certain well established principles that a court of law is to follow.

The import of the said provisions is the striking out of an action or defence, that is a jurisdiction that must be exercised sparingly and in clear and obvious cases and unless the matter is plain and obvious, a party to civil litigation is not to be deprived of his right to have his suit tried by a proper trial. The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case or striking out a defence for not disclosing a reasonable cause of action defence for being otherwise an abuse of the process of the court.

If a pleading raises a triable issue even if at the end of the day, it may not succeed then the suit ought to go to trial. However, where the suit is without substance or groundless of fanciful and or is brought is instituted with some ulterior motive or for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process, the court will not allow its process to be a forum for such ventures. To do this would amount to opening a front for parties to ventilate vexatious litigation which lack bona fides with the sole intention of causing the opposite party unnecessary anxiety, trouble and expense at the expense of deserving cases contrary to the spirit of the overriding objective which requires the court to allot appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

The 1st ground upon which the application was based were that the defence filed was scandalous, frivolous, vexatious and was otherwise an abuse of the process of the Court.

A pleading is scandalous if it states (i) matters which are indecent; or (ii) matters that are offensive; or (iii) matters made for the mere purpose of abusing or prejudicing the opposite party; or (iv) matters that are immaterial or unnecessary which contain imputation on the opposite party; or (v) matters that charge the opposite party with bad faith or misconduct against him or anyone else; or (vi) matters that contain degrading charges; or (vii) matters that are necessary but otherwise accompanied by unnecessary details. However, the word "scandalous" for the purposes of striking out a pleading under Order 2 rule 15 of the *Civil Procedure Rules* is not limited to the indecent, the offensive and the improper and that denial of a well-known fact can also be rightly described as scandalous. I do not find any scandalising facts in the pleadings.

A matter is said to be vexatious when (i) it has no foundation; or (ii) it has no chance of succeeding; or (iii) the defence (pleading) is brought merely for purposes of annoyance; or (iv) it is brought so that the party's pleading should have some fanciful advantage; or (v) where it can really lead to no possible good. I do find that the pleadings are not vexatious.

Pleadings tend to prejudice, embarrass or delay fair trial when (i) it is evasive; or (ii) obscuring or concealing the real question in issue between the parties in the case. It is embarrassing if (i) it is ambiguous and unintelligible; or (ii) it raises immaterial matter thereby enlarging issues, creating more trouble, delay and expense; or (iii) it is a pleading the party is not entitled to make use of; or (iv) where the defendant does not say how much of the claim he admits and how much he denies.

A pleading which tends to embarrass or delay fair trial is described as a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve expenses, trouble and delay and that which contains unnecessary or irrelevant allegations which will prejudice the fair trial of the action and lastly a pleading which is abuse of the process of the court really means in brief a pleading which is a misuse of the Court machinery or process. I do find that the pleadings herein do not qualify to be prejudicial or an embarrassment or a delay to fair trial.

On the 26th of January 2014, the 1st defendant as a vendor entered into an agreement of purchase with the plaintiff in respect of a piece of land measuring 100 acres to be excised from LR NO 7557/2 measuring 1668 acres at an agreed price of ksh 55,000,000 only. Ksh 20,000,000 was paid as the deposit.

On the 26th August, 2014 the 1st defendant entered into a sale agreement with Phyllis Jerotich Mutwol, a director of the plaintiff for the purchase of Eldoret Municipality/Block 14/29 for an agreed consideration of Kshs. 20,000,000.00 and it was agreed that the sum of Kshs. 10,000,000.00 be paid by the 1st defendant to the chargee Equatorial Commercial Bank Ltd directly on execution of the agreement and the remaining amount be paid directly to Phyllis Jerotich Mutwol bank account and was paid.

The transaction was between the 1st defendant and Phyllis Jerotich Mutwol the latter who is not a party in this suit whereas the plaintiff was not a party to the transaction. The said Phyllis Jerotich Mutwol received the full purchase price for the sale of parcel number Eldoret Municipality/Block 14/29 being the agreed consideration of Kshs. 20,000,000.00. Upon receiving the money, she executed the transfer of lease over the property.

On the 9th of August 2014, the 2nd defendant made an offer sale of 100 acres of land to the plaintiff to be excised from land reference numbers 10930, 6802, and 7557/2 subject to contract. The purchase price was ksh 55,000,000 and a deposit of 27,000,000 was to be paid.

The parcel of land known as Eldoret Municipality/Block 14/29 has no nexus with LR 10930, 6802 and 7557/2/. The 1st defendant has no claim in the latter but paid the plaintiff's director ksh 20,000,000 as the purchase price for the former. The 1st defendant has no power to transfer LR 10930, 6802 and 7557/2/ to the plaintiff as he is not the registered owner.

The agreement dated 26th January 2014 was superseded with another agreement dated 09/08/2014 between Tarzan Ltd as purchaser and Elgeyo Border Investment Ltd as the vendor.

The purchase price was Kshs. 55,000,000. The Deposit payable was 50% of purchase price being a sum of Kshs 27,000,000.

The balance of the purchase price was to be 23,500,000 pursuant to this agreement, the plaintiff paid the registration fee of Kshs. 100,000/=.

The plaintiff further paid a deposit of Kshs. 20,000,000. The balance of Kshs. 35,000,000 was to be paid within 60 days. The 2nd defendant states that the plaintiff has failed to pay the balance.

I do find that having accepted the offer by the 2nd Defendant on 9th August 2014 and having paid the deposit and registration fee, the 1st agreement between the plaintiff and the 1st Defendant became null and void and therefore the plaintiff's action could only be directed against the 2nd defendant. The plaintiff has no cause of action against the 1st defendant.

Moreover, the 1st Defendant having paid Phylis Jerotich Mutwol the consideration for purchase of ELD/BLOCK 14/29 and to Phyllis Jerotich Mutwol having surrendered the parcel documents and having signed a transfer after receiving a consideration of Kshs. 20,000,000, the plaintiff has no cause of action against the 1st Defendant in respect of the parcel of land known as Eldoret Municipality Block 14/29 as the same was registered in the names of Phylis Jerotich Mutwol and not the plaintiff.

I do find the application dated 30th August 2019 merited and do grant order striking out the plaintiff suit against the 1st defendant for disclosing no cause of action and/or for the 1st defendant and/or for the 1st defendant having being improperly enjoined in this proceedings. Moreover, that the orders of injunction issued by this Honourable court on the 7th December, 2018 against the 1st defendant are hereby set aside, vacated and/or discharged in their entirety. That costs of the application be provided by the plaintiff.

SIGNED, DATED AT KISUMU THIS 12TH DAY OF APRIL, 2021.

A. O. OMBWAYO

JUDGE

DELIVERED AND SIGNED AT ELDORET THIS 21ST DAY OF APRIL 2021

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE