



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 646 OF 2017

DAVID MWANGI WAGACHA .....PLAINTIFF

VERSUS

ANNE MUTHONI WACHIRA .....1<sup>ST</sup> DEFENDANT

ANDREW MURIUKI WACHIRA.....2<sup>ND</sup> DEFENDANT

SARAH WANDIA WACHIRA.....3<sup>RD</sup> DEFENDANT

JUDGEMENT

By a Plaint dated 23<sup>rd</sup> June, 2017, the Plaintiff sought for Judgement against the Defendants jointly and severally for:-

**1. Specific performance.**

**2. Declaration that the Plaintiff is the lawful and legal proprietor of title number NDUMBERI/RIABAI/1513, upon payment of the balance of Kshs 1,000,000/=.**

**3. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their servants, agents and workmen from entering on the Plaintiff's said property or from erecting or causing to be erected any construction thereon, or from in anyway interfering with the Plaintiff's use and enjoyment of title number NDUMBERI/RIABAI/1513.**

**4. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their servants, agents and workmen from transferring, disposing off, alienating, wasting or in any manner interfering with title number NDUMBERI/RIABAI /1513.**

In the alternative;

**5. Refund of the deposit paid on purchase price together with interest.**

**6. Damages for breach of contract**

**7. Aggrevated damages on account of fraud.**

**8. Costs of this suit.**

**9. Interests thereon.**

**10. Any other relief the Court deems fit to grant.**

In his statement of claim, the Plaintiff stated that in the **year 2015**, the 1<sup>st</sup> Defendant made representation to the Plaintiff that she intended to sell her interest in the property that was registered in the name of her late husband **JOHN WACHIRA WANJAU**. He further averred that the 1<sup>st</sup> Defendant convinced him into purchasing title number **NDUMBERI/RIABAI/1513**, for the total sum of Kshs 2,000,000/= for which he paid a deposit of Kshs.1,000,000/= and was granted vacant possession. The 1<sup>st</sup> Defendant intimated that she did not have monies to run the affairs of the estate pending taking out letters of administration intestate. That the 1<sup>st</sup> Defendant had renounced her rights as an

administrator to the estate and refused to keep her word on the quiet enjoyment of the property.

He particularized fraud by the 1<sup>st</sup> Defendant as;

- a. **Misrepresentation that she had full authority from the beneficiaries of the estate and had capacity to sell title number NDUMBERI/RIABAI/1513 and misrepresentation that she had entitlement to title number NDUMBERI/ RIABAI/1513.**
- b. **Showing the Plaintiff documents that were purportedly letters of administration signed by all family members filed at Chief Magistrate Court Kiambu appointing her as an administrator.**
- c. **Acting in cahoots with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and filing of notices of withdrawal for application of grant dated 15<sup>th</sup> September 2015, resulting to her removal as an administrator to the estate of JOHN WACHIRA WANJAU in order to defraud the Plaintiff without duly informing the Plaintiff as to resultant effects.**
- d. **Filing a Succession Cause in the Chief Magistrate Court Kiambu knowing too well that the value of the estate exceeded that Court's jurisdiction in a bid to misrepresent to the Plaintiff that she had capacity to sell title number NDUMBERI/RIABAI/1513 as an administrator.**
- e. **Allowing the Plaintiff to make developments on title number NDUMBERI/RIABAI/1513, by granting him vacant possession upon execution and later going back on her word by colluding with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.**

He deposed that on or about the **20<sup>th</sup> August 2015**, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed at Chief Magistrate Court Kiambu a Petition by way of a Cross Petition citing that the 1<sup>st</sup> Defendant was fraudulent and on **18<sup>th</sup> September 2015**, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants caused the 1<sup>st</sup> Defendant to file a **Notice of withdrawal** of application for grant knowing too well that the 1<sup>st</sup> Defendant had used the same to convince him into buying the suit property.

He particularized fraud by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant as;

- a. **Colluding with the 1<sup>st</sup> Defendant to have her relinquish her position as an administrator of the estate of JOHN WACHIRA WANJAU in a bid to defraud the Plaintiff.**
- b. **Purporting that the 1<sup>st</sup> Defendant had no capacity to sell title number NDUMBERI/RIABAI/1513.**
- c. **Failure to declare the deposit paid to the estate as liability owed to the Plaintiff any papers lodged in Court for purposes of succession.**

The suit is contested and the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a Defence and a Counterclaim dated **23<sup>rd</sup> August 2017**, and filed on **24<sup>th</sup> August 2017** They denied all the allegations made in the **Plaint** and contended that the Plaintiff is an intermeddler in the estate of **JOHN WACHIRA WANJAU**, as the matter has already been determined by a competent Court and the Plaintiff was informed from the start that the title number **NDUMBERI/RIABAI/1513**, was the subject of the suit. They averred that the 1<sup>st</sup> Defendant upon receiving legal advice from her advocates returned to the Plaintiff the purported deposit of Kshs.1,000,000/=, but he declined to accept the same. The 1<sup>st</sup> Defendant avers that she has always been willing and ready to refund the sum of Kshs.1,000,000/=.

On Counterclaim, the Defendants claim a sum of **Kshs.327,800/=** utilized in executing the Court order in **Succession Cause No 81/2016**, regarding demolition of perimeter wall build by the Plaintiff. The Defendants claim exemplary damages for the loss of use of the plot and prays for the suit to be struck out with costs, judgement in regard to the Counterclaim of **Kshs.327,800/=** and costs of the suit.

The matter proceeded via *viva voce* evidence on the **23<sup>rd</sup> May 2018**, wherein the Plaintiff gave evidence for himself and called one witness. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants gave evidence for themselves and called one more witness.

#### **PLAINTIFF'S CASE**

**PW1 - DAVID MWANGI WAGACHA**, the Plaintiff herein adopted his witness statement and testified that he bought the suit property from **ANNE MUTHONI WACHIRA** and the purchase price was **Kshs.2,000,000/=** and a sale agreement was drawn on **30<sup>th</sup> July 2015**. He paid a deposit of **Kshs.1,000,000/=** after execution of the sale agreement and took possession of the property. That a friend by the name **BENJAMIN MBUGUA** introduced him to **ANNE MUTHONI WACHIRA**, who was purporting to sell a parcel of land. He paid **Kshs.1,000,000/=** and later the Chief of the area called him and informed him that there was a disagreement between the Defendants. That there was a Succession Cause at Kiambu Chief Magistrate's Court by the 1<sup>st</sup> Defendant and he later learned that her children had petitioned for the administration of the estate. Further that the Defendants had demolished his wall and if allowed, he would pay the remaining balance of **Kshs 1,000,000/=**. He urged the Court to allow him pay the balance of the purchase price and take possession of the land or the Defendants do refund him **Kshs 1,000,000/=** and damages at market value. That if the Defendant's family would pay him **Kshs.10,300,000/=**, then he would be comfortable. He attached his bundle of documents as exhibit 1.

On cross-examination, he stated that at the time of purchase, the seller had all legal documents and he went to Kiambu Law Courts with the 1<sup>st</sup> Defendant and she said that she had filed the Succession Cause and he confirmed the same. That he purchased the Kenya gazette and saw her name and those of her late husband. After confirmation, he went to see his advocate where a sale agreement was drafted. He further

testified that in the sale agreement, ANNE MUTHONI WACHIRA, was the proposed administrator of the estate of JOHN WACHIRA WANJAU, and that the agreement was to be completed within a period of 90 days.

He further stated that he had seen clause 3:1:1 which stated that the vendor was to procure letters of administration. He later reported the matter to the police and recorded a statement at Kiambu Police Station and lodged a complaint of fraud against the 1<sup>st</sup> Defendant. That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are biological children of the deceased and the mother had already filed a Succession Cause. That the deposit of the purchase price was never refunded to him and he did not accept the two cheques dated 23<sup>rd</sup> September 2016 of Kshs.500,000/= and the other one dated the same day of Kshs.500,000/= as it was not enough to pay the costs of the property as he had spent a sum of Kshs.1,000,000/= to do the fencing and he later on placed a caveat. That a ruling was delivered by the Kiambu High Court in the Succession Cause, but he did not know the outcome as he was out of the country.

On re-exam he confirmed, that he bought a transfer from ANNE and the transfer did not have any documents and it was sold to him by the Defendants and he paid them cash and took away the transfer. That he did not value the property as the initial amount was 2.2 million, but he negotiated to 2 million and gave the 1<sup>st</sup> Defendant kshs.1,000,000/= and the balance is kshs 1,000,000/=.

PW2 Benjamin Mbugua Waweru, adopted his witness statement and further testified that he knew the Plaintiff who is a friend of 15 years and he knows Anne Muthoni Wachira, the 1<sup>st</sup> Defendant as her late husband introduced her to him. That he introduced Anne to the Plaintiff as she was selling a parcel of land. He testified that Anne did not have money and could not access the late husband's accounts and wanted him to buy the plot. He further testified that he did not know about the other children.

On cross-examination, he stated that he knew the property belonged to the late **John Wachira Wanjau**. That he did not know how the agreement was drawn and that the late **John Wachira Wanjau** was known to him and he also attended his burial.

## **DEFENCE CASE**

**DW1 Anne Muthoni Wachira** adopted her witness statement as evidence and further she stated that her late husband **John Wachira Wanjau** died on **1<sup>st</sup> May 2015**. She testified that she has four adult children and she wanted to sell the land for normal maintenance of the family and the plot title number is **NDUMBERI/RIABAI/1513**. That they agreed with the Plaintiff the purchase price of **Kshs.2,000,000/=** and the Plaintiff paid a down payment of **1 million** before she filed the Succession Cause. That she filed the Succession Cause alone and later the children objected. She contended that he wanted to pay the money to **Wagacha** but he refused then the Court ruled that she gives **Wagacha** back the money and the sale of the plot was cancelled. That she asked the Plaintiff to stop putting up a fence, but he refused and finally she sought a Court order to remove his development. She further testified that he got someone to bring down the wall and she spent around **Kshs.232,000/=** for the whole job, debris was removed with cash of **Kshs.91,000/=** and she has a counterclaim filed in Court. She produced photographs of the development and ruling of the Court as exhibits 1 and 2 respectively. She stated that she had valued the property which came to Kshs.10million. She finally testified that she had no capacity to sell the property as she had not taken out letters of administration.

On cross examination, she stated that she sold the land for her own maintenance and she did not involve the children in the sale. She had not filed a Succession Cause prior to signing the sale agreement. She further stated that she was removed as an administrator of the estate as the family had not consented to the sale of the land. She finally acknowledged that she has the Plaintiff's money.

On re-exam, she said that she sold the land **two** months after the death of her husband and the children had objected to the sale.

**DW 2 Andrew Muriuki Wachira** adopted his witness statement and further stated that **ANNE** is her mother and their father died on **1<sup>st</sup> May 2015**. That he was not involved in the sale of the said plot and the family did not refund the money to **Wagacha**, as he had refused to take the money. The value of the plot was assessed at between **8-9 million**. That their mother had filed a Succession Cause without their knowledge and they objected to the same. That they pulled down the Plaintiff's wall and have a counterclaim of **Kshs.423,400/=** as costs of demolition.

On cross-examination, he stated that his mother had filed a Succession Cause at Kiambu Law Courts and he did not consent to the same. He said he did not know how his mother obtained his signature. He further stated that they had not discussed and consented to sale of the property. That he did not report to the Police that he was forced to sign the documents at the Chief's office and that the Chief put pressure on them to sign the documents. He further testified that his mother sold the land without their consent. On re-examination, he stated that he made payments for demolitions and filling of the holes.

**DW 3 - John Waweru Gachoka** testified that he is in construction business and deals with excavation business called **Pullman Construction**. The Court adopted his witness statement. He stated that he was shown a Court Order by his client and he did demolition while being supervised by officers from Kiambu Police Station. That he charged for his job and he produced two invoices in Court as exhibits 7A and B Receipts 8A and B.

On cross examination, he stated that he demolished the wall because there was a Court Order and he was shown the Court Order on the day of demolition. Further the Court order read that **Wagacha** was to demolish the wall and he did not know whether **Wagacha** was served with the said Court Order.

The Court directed that parties do file written submissions and in line with the said directions, the Defendants through the **Law Firm of GN Gichongi Gichuhi & Co. Advocates**, filed their written submissions on the **13<sup>th</sup> December 2020**. The Plaintiff's submissions were filed on **4<sup>th</sup> December 2020**, through the Law Firm of **Kibatia & Co Advocates**. The Court also notes that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants gave the 2<sup>nd</sup> Defendant authority to sue on their behalf.

## ANALYSIS AND DETERMINATION

From the evidence tendered before this Court, the issues that arise for determination are:

- a. Whether the suit is *Res judicata*.
- b. Whether the counterclaim is sustainable.
- c. Whether the Plaintiff is entitled to prayers sought.
- d. Who is to bear the costs.

There is no doubt herein that one **John Wachira Wanjau** died on **1<sup>st</sup> May 2015**. There is also no doubt that land parcel title number **NDUMBERI/RIABAI/1513**, was registered in the name of **John Wachira Wanjau**. Further there is no doubt that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the children of the deceased and the 1<sup>st</sup> Defendant is the wife of **John Wachira Wanjau** (deceased). It is also clear that **John Wachira Wanjau**, died on **1<sup>st</sup> May 2015**, wherein letters of Administration were obtained on the **22<sup>nd</sup> September 2016**, wherein both the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were named Administrators of the deceased's estate.

Before the Court embarks on determining the merit of the case it has to first determine whether what has been raised by the Defendants in their statement of defence paragraph 16 herein satisfy the ingredients of **Res judicata**. The Defendants strictly rely on the decision from **Succession Cause No. 81 of 2016**, and they have herein attached a Ruling.

Were the issues raised in the instant Plaintiff the same issues and facts which were raised and canvassed in the Succession Cause? For the Court to determine whether the issues herein were directly and substantially in issue in the said Succession Cause, the Court will have to ascertain facts by having to call for the said proceedings and pleadings. The Court finds that an issue of *Res judicata*, involves probing of evidence and therefore the same cannot be determined by just looking at the ruling only with the pleadings and evidence tendered. As was held in the case of ***George Kama Kimani & 4 Others...Vs...County Government of Trans-Nzoia*** (*supra*) the best way to raise the issue of *res judicata* is by way of **Notice of Motion** where in the pleadings would be annexed to allow the Court consider whether the issues in the previous suit are similar to the issues in the suit being in issue. The Court finds that an issue of *res judicata*, raised by the Defendants is misplaced.

The Court have perused the sale agreements dated **30<sup>th</sup> July 2015**, and note that the same was done prior to the Confirmation of the grant. The letters of administration were issued on **22<sup>nd</sup> September 2016**. This Court borrows heavily from the decision of the High Court from the Ruling by **Hon. Justice Joel Nguni**, attached by the Defendants and finds that the sale clearly was in violation of the provisions of **Section 80 (2) and 82 (b)** of the Law of Succession Act. The same provides thus:

**“No immovable property shall be sold before confirmation of grant”.**

Since the present case is based on the dispute regarding parcel No. **NDUMBERI/RIABAI/1513**, the Court shall restrict itself to the said parcel of land as it has no jurisdiction to deal with the Succession bit of it.

The 1<sup>st</sup> Defendant in her testimony readily admits that she wanted to sell the land for normal maintenance of the family, being the plot title number **NDUMBERI/RIABAI/1513** and that they agreed with the Plaintiff the purchase price of Kshs.2,000,000/= The purported seller (1<sup>st</sup> Defendant) in the first place had no permission to sell the deceased's land to anyone before the Confirmation of the grant, hence the alleged sale was tainted with illegality. A void transaction is in law a nullity. It is not only bad, but incurably bad and every proceeding or perceived right which is founded on it is not only bad but incurably bad. The Court can do no better than **quote Lord Denning M.R** in the case of ***Macfoy V United Africa Co. Ltd [1961] 3 All Er 1169 At Pg. 1172*** that:

**“...If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”**

To this end therefore, the Court finds that the sale agreements made on the **30<sup>th</sup> July 2015** between **Ann Muthoni Wachira** and **David Mwangi Wagacha** in so far as it relates to the sale of the deceased's parcel of land known as **NDUMBERI/RIABAI/1513**, is **null and void** and therefore could not pass any right or interest to the Plaintiff.

From the said sale agreement over the parcel **NDUMBERI/RIABAI/1513**, and the discourse above and having found that the proprietor of the suit land was the deceased **John Wachira Wanjau**, it goes without saying that the said **Anne Muthoni Wachira**, who was neither the registered owner nor a beneficiary to the estate of the deceased, had no interest on the land to pass. Further, the said sale transaction was carried out **2 months** after the death of the proprietor of the suit land and before a grant of representation had been issued. That amounted to intermeddling with the deceased's estate.

The provisions of **Section 26 of the Land Registration Act, Act No.3 of 2012** provide as follows:-

**The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the**

**absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—**

**(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.**

As it may be observed, the law is extremely protective of title, but the protection can be removed and title impeached, on two instances. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The import of **Section 26** of the **Land Registration Act** was considered in the case of ***Elijah Makeri Nyangwara vs- Stephen Mungai Njuguna & Another [2013] eKLR*** where **Munyao J**, answered the question as to whether title is impeachable under **section 26 (1) (b)** of the said Act as follows;

**“First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”**

Having found that deceased **John Wachira Wanjau** was the proprietor of land parcel No. **NDUMBERI/RIABAI/1513**, even after his death, it follows that **Anne Muthoni Wachira** could not sell the same without Confirmation of Grant and thus the sale to the Plaintiff was through misrepresentation. Although there was no evidence adduced that pointed out to the Plaintiff as being party to the said misrepresentation and that he might have been an innocent purchaser for value, the Court finds that **Anne Muthoni Wachira** could not pass any good title to the Plaintiff and any transaction she undertook before Confirmation of grant was **null and void**.

The granting of the equitable remedy of specific Performance is discretionary and as such the Court should in deciding whether or not to grant the orders look at the merits of the case, based on a case to case basis and whether there is an adequate alternative. See the Case of ***Reliable Electrical Engineers Ltd.....Vs....Mantrac Kenya Limited (2006) eKLR***, wherein Justice Maraga (as he then was) stated that:-

**“Specific performance like any other equitable remedy is discretionary and the Court will only grant it on well laid principles.”**

**“The Jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or unenforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages are adequate remedy specific performance may still be refused on the ground of undue influence or where it will cause severe hardship to the Defendant.”**

Further it is clear from the Exhibits presented before this Court that the Plaintiff made payments of Kshs 1,000,000/=. It is also clear that the 1<sup>st</sup> Defendant is ready and willing to reimburse the same to the Plaintiff as she had indicated and drawn cheques in favor of the Plaintiff. This Court finds that an order of specific performance is not tenable herein. However, the Plaintiff is entitled to refund of the purchase price as the Defendants are in a position to deliver/refund **kshs.1,000,000/=** which was the money paid to the 1<sup>st</sup> Defendant.

On the Counterclaim the Defendants claim a sum of **Kshs.327,800/=** was utilized in executing Court order in **Succession Cause No. 81 of 2016**. It is trite law that he who alleges must prove. **Section 107 of the Evidence Act** provides that: -

**"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."**

It is thus trite that in civil cases, a party who wishes the Court to give a judgment or to declare any legal right dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts. The party must present to the Court all the evidence reasonably available on a litigated factual issue. **Section 109 and 112 of the Evidence Act** provides for the evidential burden of proof. The two provisions were dealt with in ***Anne Wambui Ndiritu vs. Joseph Kiprono Ropkoi & Another [2005] 1 EA 334***, in which the Court of Appeal held that: -

**“As a general proposition under section 107(1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the Court to believe in its existence which is captured in sections 109 and 112 of the Act.”**

The Court notes that there was no reply to the Defendants' Counterclaim of **Kshs.327,800/=**. The Defendants availed **DW3 John Waweru**

**Gachoka**, who produced documents in form of invoices and receipts marked as Exhibits 7a, 7b, 8a and 8b for the work done. The same receipts and the amounts indicated therein were never challenged by the Plaintiff's counsel upon cross examination. This evidence was not challenged at all and therefore remains uncontroverted thus the Court awards the same as prayed.

Having carefully considered the available evidence, the Court finds that the Plaintiff has failed to prove his case on the required standard of balance of possibilities apart from claim of refund of the purchase price of **kshs.1,000,000/=**. For the above reasons the Plaintiff's other prayers apart from refund of purchase price are dismissed.

The Defendant have proved on the required standard their claim in the Counter claim and are entitled to payment of **Kshs.327,800/=** as prayed in the said Counter claim.

In a nutshell, the Court enters Judgment in the following terms:-

- 1. The Plaintiff's Complaint dated 23<sup>rd</sup> June 2017 is hereby dismissed.**
- 2. The Defendants to reimburse a sum of Kshs 1,000,000/= without interest to the Plaintiff within 60 days from the date of this Judgment.**
- 3. Defendants are entitled to the amount claimed in the counterclaim of Kshs. 327,800/= as prayed.**
- 4. Each party to bear its own costs.**

**It is so ordered.**

**DATED, SIGNED AND DELIVERED AT THIKA THIS 15<sup>TH</sup> DAY OF APRIL 2021**

**L. GACHERU**

**JUDGE**

**15/4/2021**

**Court Assistant - Phyllis**

**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 His Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Judgement** has been delivered to the parties online with their consents. 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. Karuga for the Plaintiff**

**No appearance for the 1<sup>st</sup> Defendant**

**No appearance for the 2<sup>nd</sup> Defendant**

**No appearance for the 3<sup>rd</sup> Defendant**

**L. GACHERU**

**JUDGE**

**15/4/2021**