



**Muramba (Suing Through the Power of Attorney of Phoebe Nzale Kazungu) & 3 others v Kimani & another (Civil Suit 219 of 2016) [2023] KEELC 21450 (KLR) (6 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21450 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
CIVIL SUIT 219 OF 2016  
MAO ODENY, J  
NOVEMBER 6, 2023**

**BETWEEN**

**DAVID KAZUNGU MURAMBA (SUING THROUGH THE POWER OF ATTORNEY OF PHOEBE NZALE KAZUNGU) ..... 1<sup>ST</sup> PLAINTIFF  
ISSA KIPONDA CHOME ..... 2<sup>ND</sup> PLAINTIFF  
NOEL BAHA NDORO ..... 3<sup>RD</sup> PLAINTIFF  
RICHARD BARAKA NDORO (SUING AS THE ADMINISTRATORS OF THE ESTATE OF STEVEN KATANA NDORO - DECEASED) ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**PETER MBUGUA KIMANI ..... 1<sup>ST</sup> DEFENDANT  
VINGI PROPERTIES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By an a amended plaint dated 3<sup>rd</sup> March 2021 the Plaintiffs sued the Defendants seeking the following orders;
  - a. A declaration that a portion of seven (7) acres, three (3) acres and one and half (1.5) acres totaling to 11.5 acres of land situated at Mtondia Mwenzang'ombe in Kilifi County and specifically on Plot No. 12 S.R No 2628 (hereinafter referred to as the suit property) belong to the plaintiffs herein in their respective portions.
  - b. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents and or any other person acting under their authority from carrying out developments, trespassing upon, fencing, selling and/or in any other way dealing with the plaintiffs' portion of land.



- c. An order that the plaintiffs be allowed to survey the suit property measuring 7 acres, 3 acres and 1.5 acres respectively which is part of portion 18 (original number 12) and the 11.5 acres be registered in the names of Phoebe Nzale Kazungu on behalf of the estate of David Kazungu Mramba, Isaac Kiponda Chome and the administrators of the late Stephen Katana Ngoro alias Stephen Ngoro Msanzu.
- d. An order that the Deputy Registrar of this court to execute transfer form and any other relevant documents for registration of the 11.5 acres in favour of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs.
- e. An order for nullification and cancellation of the 2<sup>nd</sup> defendants' title or indenture dated 25<sup>th</sup> February 2016 in respect to 11.5 acres comprising the suit property if any and subsequent rectification of the register and records at the relevant registries.
- f. Special damages arising from the destruction of the plaintiff's trees and crops of Kshs. 356,670.
- g. Costs of the suit.

The 2<sup>nd</sup> Defendant filed a Defence and Counter Claim seeking the following orders;-

- a. A permanent injunction restraining the plaintiffs whether by themselves, servants, agents and/or other person from remaining on or continuing in occupation of the suit property.
- b. Vacant possession of the suit property.
- c. Costs of the suit.

#### **Plaintiffs' case**

- 2. PW1 Phoebe Nzale Kazungu adopted her statement dated 13/9/19 and produced two list of documents which comprised of a Sale Agreement between his late father and the late Johnson Samuel Kenga, entered into in 1978.
- 3. PW1 also testified that his late father purchased seven Acres of land and that she was raised on the suit property where they developed the place by planting trees, crops and rearing livestock. It was also her evidence that they have lived on the land without interference from anyone and that no formal transfer was done to their late father despite several requests that the same be done during her father's lifetime.
- 4. PW1 stated that all her siblings moved to their respective homesteads after marriage and after the death of her parents, they hired a caretaker to manage the property and together with her siblings, would always visit during Christmas. That in 2016, the 2<sup>nd</sup> Defendant entered their portion of land and vandalized their houses by removing doors and windows and also cutting down trees on the pretext that he had purchased the suit property from the 1<sup>st</sup> Defendant.
- 5. It was PW1's further evidence that the 2<sup>nd</sup> Defendant relied on a Judgment in Malindi ELC No. 32 of 2011 between Moses Shadrack Karisa And Racheal Nyevu Karisa –vs-peter Mbugua Kimani to remove the Plaintiffs, where he claimed that the 1<sup>st</sup> Defendant had been declared the land owner of ten (10) acres whereof their portion of land was among the portions sold.
- 6. PW1 stated that despite several attempts by his late father, they were not able to have the late Samuel Kenga formerly transfer the portion in their name hence the filing of this case for an order that the Deputy Registrar do assist in signing the transfers in their favour after a survey is done.
- 7. PW2 Isaac Kiponda Chome adopted his statement and stated that he bought his portion of land measuring three (3) acres in 1980 from Johnson Samuel Kenga and that he has developed the land by



building permanent and semi-permanent houses, planted trees and has also borne and brought up his children on the property.

8. PW2 testified that he approached the late Mr. Kenga on several occasions for purposes of obtaining Land Control Consent to enable him subdivide the property and hive off his parcel but in vain and the situation continued until the late Kenga passed on.
9. PW2 further stated that he was approached by the 1<sup>st</sup> Defendant who informed him that he had bought Ten (10) acres from the late Johnson Samuel Kenga and that his property formed part of the property he was claiming. He stated at that particular time there was an ongoing suit in Malindi where the 1<sup>st</sup> Defendant had been sued by his neighbour Moses Shadrack Karisa claiming twenty (20) acres of land from the same property.
10. PW2 testified that on the strength of the Judgment in Malindi ELC No.132 of 2011 between Moses Shadrack Karisa & Another –vs- Peter Mbugua Kimani, the 2<sup>nd</sup> Defendant in 2016 came to him claiming that his portion of land formed part of the land he purchased from the 1<sup>st</sup> Defendant and started destroying his plants and crops and also the other Plaintiffs houses in a bid to forcefully take possession.
11. PW3 Noel Baha adopted his statement and testified that his late father purchased 1.5 acres of land from the late Johnson Samuel Kenga in 1980 and that together with his siblings; they have lived on the said portion of land since then.
12. PW 4 Mohammed Ashur Senior Court Administrator Malindi , produced the Court file in Malindi ELC No.132 of 2011 Moses Shadrack Karisa & Rachael Nyevu Karisa –vs- Peter Mbugua Kimani as PW-5 and 6 officers from the Department of Agriculture and Department of Environment National Resources and Forestry respectively testified and produced reports on the destruction done by the 2<sup>nd</sup> Defendant on the suit property in an effort to forcefully take vacant possession.
13. On cross examination PW4 stated that there was neither an appeal in respect of that matter nor an application to set aside the judgment.

#### **Defendants' case**

14. DW1 Paul Karisa Kahimoi, a holder of a power of Attorney that was filed on 28<sup>th</sup> February 2022 adopted his Witness Statement, and relied on the documents attached as evidence.
15. On cross-examination, DW1 confirmed that the suit property initially measured Eighty (80) acres and he is aware that his late uncle, Johnson Samuel Kenga had previously sold some portions to other people before selling ten (10) acres to the 1<sup>st</sup> Defendant in 1991. He further stated that he is not related to the 1<sup>st</sup> Defendant and that even after the purported sale of ten (10) acres to the 1<sup>st</sup> Defendant in 1991, the 1<sup>st</sup> Defendant never took possession and/or lived on the suit property.
16. It was DW1's testimony that he never witnessed the Sale Agreements between the late Mr. Johnson Samuel Kenga and Mr. Peter Kimani done in 1991 since by then he was young. He also testified that he was not a witness to the Sale Agreement between the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant but he is aware that the 1<sup>st</sup> Defendants' property was later in 2010 sold to the 2<sup>nd</sup> Defendant. He further stated that he is aware of the Judgment in Malindi Civil Case No.132 of 2011 where the 1<sup>st</sup> Defendant was granted ten (10) acres of land by the Court.
17. DW2 Moses Mathews Osoro testified that he is the Director of Vigingi properties Limited and stated that he bought the land in 2010 from the 1<sup>st</sup> Defendant. It was his testimony that he did not take



possession then as there was a Court case Malindi ELC No, 132 of 2011 and produced a copy of the Judgment as an Exhibit.

18. DW2 further testified that when he purchased the suit property in 2010 there was no construction and that the property that had the Malindi case is the one that was sold to him by the 1<sup>st</sup> Defendant.
19. It was DW2's evidence that after the Judgment, he started fencing the property when the Plaintiffs threatened his workers and that he is ready to settle Mr. Isaac Chome the 3<sup>rd</sup> Plaintiff on a 1.5 acre portion of land since he is quite old and he is known to him.
20. The 3<sup>rd</sup> Defendant's suit was withdrawn vide a Notice to withdrawal dated and filed on 22<sup>nd</sup> August 2017.

### **Plaintiffs' submissions**

21. Counsel for the Plaintiffs' listed the following issues for determination;
  - a. Whether there was a purchase of 11.5 acres of the suit property by the Plaintiffs in the 1970's or thereabout.
  - b. Did the Plaintiffs occupy their portions of land and develop the same for over twelve (12) years and did their right to adverse possession accrue?
  - c. Did the said Johnson Samuel Kenga have any right to sell the suit property to the 1<sup>st</sup> Defendant in the year 1996 after he had already sold the same to the Plaintiffs?
  - d. Is the 2<sup>nd</sup> Defendant a bonafide purchaser for value?
  - e. What remedies ought to be granted to the Plaintiffs in the circumstances?
22. On the first issue on whether the Plaintiffs purchased 11.5 acres in 1970s, counsel relied on the testimony of PW1, PW2 and PW3 and the sale agreement to confirm that there was indeed a purchase.
23. On the 2<sup>nd</sup> issue of occupation for a period of more than 12 years counsel further relied on the Plaintiffs' evidence that they have been in occupation since purchase in 1970 and cited the cases of Macharia Mwangi Maina & 87 Others –vs- Davidson Mwangi Kagiri (2014) eKLR and Chevron (K) Ltd –vs- Harrison Charo Wa Shutu (2016)eKLR)
24. On the 3<sup>rd</sup> issue whether Johnson Samuel Kenga had any right to sell the suit property to the 1<sup>st</sup> Defendant in 1996 after he had already sold the same to the Plaintiffs, counsel submitted in the negative as the property had been sold to the Plaintiffs in 1970s.
25. Counsel further stated that the 1<sup>st</sup> Defendant could not therefore have sold the suit property to the 2<sup>nd</sup> Defendant as the land was not available for sale and that the 1<sup>st</sup> Defendant never took possession of the same since the Plaintiffs were already in possession.
26. On the issue whether the 2<sup>nd</sup> Defendant was a bona fide purchaser, counsel submitted in the negative as the Plaintiffs had bought the land in 1970, took possession hence the 1<sup>st</sup> Defendant did not have proper title to pass to the 2<sup>nd</sup> Defendant.
27. Counsel relied on Section 26 of the [Land Registration Act](#) and the case of Alice Chemutai Too –vs- Nickson Kipkurui Korir & 2 Others (2015) eKLR and urged the court to grant the orders as prayed.



## **1<sup>ST</sup> Defendant's Submissions**

28. Counsel reiterated the evidence on record and submitted that evidence shows that the Plaintiffs did not obtain the necessary Land Control Board consent for the sale of the land.
29. Counsel stated that it is trite law that an agreement for the sale of land is voidable if consent of the relevant Land Control Board is not obtained within 6 months of the execution of the agreement.
30. Counsel relied on the cases of *Hirani Ngaithe Githire v Wanjiku Munge* [1979] KLR, *Onyango & Another v Luwayi* [1986] KLR 513, *SBI International Holdings Ag (Kenya) v Reuben Kipkorir J.T. Bore* [2014] eKLR
31. Mr. Ole Kina submitted that there is no claim for adverse possession pleaded in the plaint and there was no direct evidence adduced to formulate a claim for adverse possession and urged the court to disregard the claim.
32. Counsel relied on the case of *Gabriel Mbui v Mukindia Maranya* [1993] eKLR on the ingredients of adverse possession and stated that the Plaintiffs had not met the same as they were permitted by the deceased with the hope that the transaction would be finalized. Further that the fact that the transaction did not benefit from the consent of the Land Control Board it became voidable.
33. Mr. Ole Kina submitted that there has been no evidence tendered to suggest that there was any interest registered against the title that was ignored when the transaction leading to the vesting of the property in the name of the 2<sup>nd</sup> Defendant was effected. The Plaintiffs were not lawfully on the land and they did not have any accruing rights.

## **2<sup>ND</sup> Defendant's Submissions**

34. Counsel listed two issues for determination namely, whether the 2<sup>nd</sup> Defendant is entitled to a permanent injunction against the Plaintiffs and vacant possession of the suit property and whether the 1<sup>st</sup> Plaintiff is entitled to special damages in the sum 356,670/- for alleged destruction of trees.
35. On the 1<sup>st</sup> issue on injunction, counsel relied on the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others*, CA No. 77 of 2012; [2014] eKLR, and submitted that the 2<sup>nd</sup> defendant has established a prima facie case confirmed by the judgment in *Malindi ELC No. 132 OF 2011 BETWEEN Moses Shadrack Karisa AND RACHEAL NYEVU KARISA VS PETER MBUGUA KIMANI* and further that the sale agreement produced by the plaintiffs were null and void as they did not obtain Land Control Board Consents.
36. Counsel relied on the case of *David Sirona Ole Tukai v Francis Arap Muge & 2 others* [2014] eKLR and the case of *Marco Munuve Kieti Vs Official Receiver and Interim Liquidator Rural Urban Credit Finance & another* (2010) eKLR and submitted that the claim for adverse possession was not pleaded hence cannot be granted.
37. Ms Mwangi submitted that the Plaintiffs are not entitled to the special damages as the Forest Officer was not able to identify the plot that he visited in the report and urged the court to dismiss the Plaintiffs' claim and allow the 2<sup>nd</sup> Defendant's counterclaim with costs.

## **Analysis And Determination**

38. The issues for determination is whether the Plaintiffs bought 11.5 acres of the suit land in 1970s, whether they are in possession of the suit land , whether Johnson Samuel Kenga had a right to sell the land to the 1<sup>st</sup> Defendant in 1996 and whether the 2<sup>nd</sup> Defendant was a bona fide purchaser for value.



39. The PW1 gave evidence a produced a sale agreement between her late father and the late Johnson Samuel Kenga which they entered into in 1978 whereby her father bought 7 acres.
40. PW2 also stated that he bought 3 acres from Johnson Samuel Kenga in 1980 and developed the same. PW3 stated that his late father bought 1.5 acres from the late Johnson Kenga in 1980 and have lived on the suit property with his siblings since then.
41. The parties entered into the sale agreement with an intention that the terms of the agreement would be binding. The Plaintiffs took possession immediately after signing the agreements are there is no evidence to the contrary that they are in possession. The 2<sup>nd</sup> Defendant admitted that he has not taken possession of the suit property.
42. Since parties are bound by their Agreements, the Court would not doubt that upon execution of the Sale Agreements in 1978, 1980 respectively, that PW1 took possession of one (7) acres, PW2 (3) acres, and PW3 (1.5) acres. The Plaintiffs are still in possession to date.
43. In the case *National Bank of Kenya Limited Vs Pipeplastic Samkolit (K) Ltd & Another*, Court of Appeal No.95 of 1999 (2002) 2 EA 503, where the Court held that:-  
 ‘A court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded or proved.’
44. There was no evidence of fraud, coercion or undue influence at the time of entering, writing and signing the agreement by the parties. If there was such then the seller would not have allowed the Plaintiffs’ to take possession and remain on the suit property to date.
45. In the case of *William Kipsoi Sigei v Kipkoech Arusei & another* [2019] eKLR the Court of Appeal citing the case of *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR the court noted that:  
 “the phrase ‘declaration of trust of agricultural land’ refers to an express creation of a trust by parties over agricultural land by deed or instruments envisaged by section 36 as read with section 66 of the *Land Registration Act* or section 126 of the repealed Registered *Land Act*, not a constructive trust or trust created by operation of the law.”
- In addition, in the same case, the Court noted that equity is one of the national values that the Courts must apply in interpreting *the Constitution* stating as follows:  
 “Thus since the current Constitution has by virtue of Article 10(2)(b) elevated equity as a principle of justice to a constitutional principle and requires the courts in exercising judicial authority to protect and promote that principle, amongst others, it follows that the equitable doctrines of constructive trust and proprietary estoppel are applicable to and supersede the *Land Control Act* where a transaction relating to an interest in land is void and enforceable for lack of consent of the Land Control Board.”
46. The late Johnson Kenga entered into a valid sale agreement for the sale of specific portions to the Plaintiffs; he received the full purchase price and gave the Plaintiffs possession of the portions purchased. This created a constructive trust and proprietary estoppel, which superseded the *Land Control Act* where the transaction would have been void and unenforceable for lack of a consent from the Land Control Board.



47. The doctrine of constructive trust was expounded in the case of *Twalib Hatayan & another v Said Sagar Ahmed Al-Heidy & 5 others* [2015] eKLR

“Dealing with the first issue, according to the Black’s Law Dictionary, 9th Edition; a trust is defined as

- “1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

Under the *Trustee Act*, “...the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property... Trusts are created either expressly (by the parties) or by operation of law. An express trust arises where the trust property, its purpose and beneficiaries have been clearly identified (see. Halsbury’s Laws of England vol 16 Butterworths 1976 at para 1452). In this case, we have a definite property and beneficiary. The purpose/intent for which the property was bought remains in dispute. This negates the existence of an express trust herein. In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrongdoing. (see Black’s Law Dictionary) (Supra). It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust.”

48. Similarly in the case of *Peter Ndungu Njenga vs. Sophia Watiri Ndungu* (2000) eKLR the Court stated that;

“The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the court may presume a trust. But such presumption is not to be arrived at easily. The courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust is implied.”

49. On the 2<sup>nd</sup> issue whether the Plaintiffs are in possession of the suit land, it is not in dispute that the Plaintiffs took possession after the purchase of the land. It is also not in dispute that the 2<sup>nd</sup> Defendant is not in possession of the suit land as his attempt to take possession was thwarted.
50. The Plaintiff had raised an issue of adverse possession but the court will not deal with it as it does not apply in this case.
51. On the issue whether Johnson Kenga had the right to sell the portions of land already sold to the Plaintiffs to the 1<sup>st</sup> Defendant, as earlier stated that the Plaintiffs and Johnson Kenga had a valid sale agreement which was executed by the parties and the full purchase price paid, Johnson Kenga could only sell other parcels of land that he owned if any to the 1<sup>st</sup> Defendant other than the portions that he sold to the Plaintiffs. He was therefore estopped from selling the Plaintiffs’ portions having committed himself in an agreement and allowed the Plaintiff’s to take possession.
52. The 2<sup>nd</sup> Defendant’s remedy lies in the doorstep of the 1<sup>st</sup> Defendant who sold the land to him knowing that there were people in occupation who had similar rights as purchasers. The 2<sup>nd</sup> Defendant cannot



qualify as a bona fide purchaser and therefore the counterclaim for vacant possession and permanent injunction cannot be sustained.

53. in the case of *Weston Gitonga & 10 others v Peter Rugu Gikanga & another* [2017] eKLR the Court of Appeal held as follows as regards a bona fide purchaser:

“

“23. Black’s law Dictionary 8th Edition defines “bona fide purchaser” as: “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

24. In the Ugandan case of *Katende v. Haridar & Company Limited* [2008] 2 E.A.173 it was held:-“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

- a. he holds a certificate of title;
- b. he purchased the property in good faith;
- c. he had no knowledge of the fraud;
- d. he purchased for valuable consideration;
- e. the vendors had apparent valid title;
- f. he purchased without notice of any fraud;
- g. he was not party to any fraud.

A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

54. The 2<sup>nd</sup> Defendant relied on the 1<sup>st</sup> Defendant’s assurance that he had a good title to pass hence purchased the parcel of land which was already purchased by the Plaintiffs. It was DW2’s evidence that he was ready and willing to settle Mr. Isaac Chome the 3<sup>rd</sup> Plaintiff on a 1.5-acre portion of land since he is quite old and he knows him. The question is why the 3<sup>rd</sup> Plaintiff and not the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs who are also in occupation of the suit land. This is an admission that the Plaintiffs are in occupation of the suit land.

55. I have considered the pleadings, the evidence on record together with the documents produced and the submissions by counsel and find that the Plaintiffs have proved their case on a balance of probabilities. The Plaintiffs led evidence to prove the special damages for the destruction of the trees and is therefore allowed.

56. The Defendants have not proved their counterclaim and is therefore dismissed with costs to the Plaintiffs.

57. The court therefore issues the following specific orders :

- a. A declaration is hereby issued that a portion of seven (7) acres, three (3) acres and one and half (1.5) acres totaling to 11.5 acres of land situated at Mtondia Mwenzang’ombe in Kilifi County



and specifically on Plot No. 12 S.R No 2628 belong to the plaintiffs herein in their respective portions.

- b. A permanent injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents and or any other person acting under their authority from carrying out developments, trespassing upon, fencing, selling and/or in any other way dealing with the plaintiffs' portion of land.
- c. An order is hereby issued allowing the Plaintiffs to survey the suit property measuring 7 acres, 3 acres and 1.5 acres respectively which is part of portion 18 (original number 12) and the 11.5 acres be registered in the names of Phoebe Nzale Kazungu on behalf of the estate of David Kazungu Mramba, Isaac Kiponda Chome and the administrators of the late Stephen Katana Ngoro alias Stephen Ngoro Msanzu.
- d. An order is hereby issued to the Deputy Registrar of this court to execute transfer forms and any other relevant documents for registration of the 11.5 acres in favour of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs.
- e. An order is hereby issued for the nullification and cancellation of the 2<sup>nd</sup> defendants' title or indenture dated 25<sup>th</sup> February 2016 in respect to 11.5 acres comprising the suit property if any and subsequent rectification of the register and records at the relevant registries.
- f. The Plaintiffs to be paid special damages arising from the destruction of the plaintiff's trees and crops worth Kshs. 356,670.
- g. 2<sup>nd</sup> Defendant's counterclaim is hereby dismissed with costs.
- h. Costs of the suit to be paid by the Defendants.

**DATED, SIGNED AND DELIVERED AT Malindi THIS 6<sup>TH</sup> DAY OF NOVEMBER 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.

