



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. 5 OF 2020

WENSLEY BARASA.....PLAINTIFF

VERSUS

IMMACULATE AWINO ABONGO.....1ST DEFENDANT

SABASTIAN BUBIRU.....2ND DEFENDANT

J U D G M E N T

The land parcel **NO EAST BUKUSU/SOUTH KANDUYI/5778** (hereinafter the suit land), has a chequered past. That history is well captured in my ruling delivered on 26th June 2020 in which I up – held the Preliminary objection by **IMMACULATE AWINO ABONGO** (the 1st defendant) and dismissed the Preliminary Objection by **SABASTIAN BUBIRU** (the 2nd defendant) wherein both had claimed that this suit is res – judicata and sub – judice. This Court also dismissed the 1st and 2nd defendants’ challenge to it’s jurisdiction in handling this matter. No appeal was filed against that ruling.

In the year 2011, the 1st defendant moved to the High Court in Bungoma and filed **BUNGOMA HIGH COURT CIVIL CASE NO 93 of 2011** seeking to evict **WENSLEY BARASA** (the plaintiff herein) from the suit land. It was the 1st defendant’s case that she was the sole proprietor of the suit land having purchased it on 29th December 2010 from one **AGGREY MAURICE ADALA** at a consideration Kshs. 550,000/=. The plaintiff’s case was that he was infact the proprietor of the suit land having purchased it between 1987 and 1988 from one **EVANS MASIKA SIMIYU**.

The dispute was heard by **MUKUNYA J** who in a Judgment delivered on 28th October 2015 up – held the 1st defendant’s claim to the suit land and ordered that the plaintiff be evicted therefrom. On 28th October 2015, a decree was issued in the following terms: -

“IT IS ORDERED: -

- I. That an eviction order be and is hereby issued against the defendant on land parcel NO EAST BUKUSU/SOUTH KANDUYI/5778.***
- II. The structures be removed within 60 days or that the defendant shall have 60 days to remove all structures.***
- III. Each party to bear their costs.”***

Aggrieved by that Judgment and decree, the plaintiff filed a Notice of Appeal and an application seeking stay of execution of the Judgment pending the hearing and determination of an appeal.

That application for stay of execution was heard on 28th January 2016 and by an order issued on 2nd June 2016, the Court of Appeal directed as follows: -

“IT IS HEREBY ORDERED THAT: -

- 1. There be a stay of action, eviction and/or execution of a decree in Bungoma L & E Court Case No. 93 of 2011 pending hearing and determination of the intended appeal between WENSLEY BARASA .V. IMMACULATE AWINO ABONGO.***

2. The costs of the application shall abide the outcome of the Appeal.”

The plaintiff's appeal being Court of Appeal Civil Appeal No 115 of 2015 was subsequently heard and allowed by the Court of Appeal in a Judgment delivered on 28th September 2017. The Court made the following final order in allowing the plaintiff's appeal: -

“In view of these circumstances, the appeal is allowed, we set aside the Judgment and decree of the High Court ordering the eviction of BARASA from the suit property with costs to him.”

While that appeal was pending, the 1st defendant sold the suit land to the 2nd defendant in September 2015.

The plaintiff has now moved to this Court vide his plaint dated 10th February 2020 and filed on the same day seeking Judgment against the defendants jointly and severally in the following terms: -

(a) A declaration that the 2nd defendant is holding title to plot namely EAST BUKUSU/SOUTH KANDUYI/5778 in trust for the plaintiff and that the same be nullified or cancelled to effect transfer to the plaintiff by the Deputy Registrar.

(b) Eviction.

(c) Any other relief this Honourable Court may deem fit to grant.

(d) Costs and interest of the suit.

The basis of the plaintiff's suit is basically what I have already summarized at the commencement of this Judgment. The plaintiff also filed a witness statement in the same terms stating that notwithstanding the fact that the Court of Appeal had issued stay orders, the 1st defendant sold the suit land to the 2nd defendant who commenced construction of houses thereon. That this Court should protect his interests and grant him the prayers sought so that he can enjoy the fruits of his Judgment.

The plaintiff also filed the following documents in support of his case: -

- 1. Copy of Certificate of Search for parcel NO EAST BUKUSU/SOUTH KANDUYI/5778.**
- 2. Copy of Judgment and Decree in Bungoma High Court Case No 23 of 2011.**
- 3. Copy of Judgment and Decree in Kisumu Court of Appeal Case No 115 of 2015.**
- 4. Copy of Court of Appeal Ruling in Civil Application No 68 of 2015.**
- 5. Copies of photographs.**
- 6. Copy of title deed for the parcel NO EAST BUKUSU/SOUTH KANDUYI/5778.**
- 7. Copy of Order in Bungoma Chief Magistrate's Court Civil Case No 73 of 2018.**

The defendants filed separate defences. The 1st defendant filed her defence on 25th February 2020 in which she denied that the plaintiff has been in occupation of the suit land for over 30 years or at all. She admitted having sued the plaintiff in Bungoma High Court Civil Case No 93 of 2011 but denied that the plaintiff was evicted from the suit land. She pleaded further that the Court of Appeal never awarded the plaintiff the suit land adding that the plaintiff had filed Bungoma High Court Case No 181 of 2014 in an attempt to be declared the owner of the suit land by way of adverse possession but the case was dismissed thus effectively confirming the 1st defendant as the absolute owner of the suit land. That as at the time the 1st defendant sold the suit land to the 2nd defendant on 9th December 2015, the Court of Appeal sitting in Kisumu had not issued any orders restraining the 1st defendant from handling the suit land in any manner whatsoever. The 1st defendant pleaded further that the plaintiff's suit is res – judicata and sub – judice, incompetent, bad in law and therefore he is not entitled to the orders sought in his plaint.

The 1st defendant filed her statement dated 13th November 2020 which is a rehash of her defence. She also filed the following documents in support of her defence: -

- 1. Originating Summons in Bungoma High Court Case No 181 of 2014.**
- 2. Proceedings and Ruling in Bungoma High Court Case No 181 of 2014.**
- 3. Ruling in Bungoma Chief Magistrate's Court Environment and Land Case No 73 of 2018.**

The 2nd defendant filed his defence on 28th February 2020 in which he pleaded, inter alia, that the plaintiff has never occupied the suit land and that he had purchased the same from the 1st defendant above board with no encumbrances or inhibitions and is therefore the absolute

owner thereof. He denied that he holds the suit land in trust for the plaintiff and therefore the prayer for cancellation of the title is unfounded. He pleaded further that this suit is res – judicata, frivolous, scandalous, incompetent and an abuse of the process of this Court and should be dismissed with costs.

In his statement also filed on 28th February 2020, the 2nd defendant narrates how at the beginning of November 2015 he was approached by the 1st defendant who was desirous of selling the suit land. That he visited the said parcel of land which was un – occupied and undeveloped and also did due diligence and found it free from any encumbrances. He then purchased the suit land from the 1st defendant for Kshs. 2,550,000/= and it was transferred to him. That he is an innocent purchaser for value without notice yet the plaintiff has stopped his construction leading to wastage of his building material. That this suit is both res – judicata and sub – judice and should be brought to an end since it is his Constitutional right to own property. He therefore sought the dismissal of the plaintiff’s suit with costs.

The 2nd defendant filed the following documents in support of his case: -

1. **Land Sale agreement.**
2. **Copy of title deed for land parcel NO EAST BUKUSU/SOUTH KANDUYI/5778.**
3. **Certificate of Official Search for land parcel NO EAST BUKUSU/SOUTH KANDUYI/5778.**
4. **Valuation report.**
5. **Building plans**
6. **Originating Summons in Bungoma ELC Case No 181 of 2014.**
7. **Ruling dated 18th November 2016 in Bungoma ELC Case No 181 of 2014.**
8. **Ruling dated 19th March 2016 in Bungoma ELC Case No 181 of 2014.**

Prior to the hearing, this Court was called upon to determine whether the plaintiff’s suit was res – judicata and sub – judice an issue that had been raised by the defendants by way of a Preliminary Objection. In a ruling dated 26th June 2020, this Court found that the plea of res – judicata was well merited as against the 1st defendant but not the 2nd defendant. The suit against the 1st defendant was therefore struck out with costs as in any event, no orders were sought against her.

The trial therefore proceeded with the plaintiff and the 2nd defendant as the only witness. They adopted their respective statements as their evidence and produced the documents filed herein in support of their cases.

Submissions were thereafter filed both by **MR J SICHANGI** instructed by the firm of **J. W. SICHANGI & COMPANY ADVOCATES** for the plaintiff and by **MR WAMALWA** instructed by the firm of **EMMANUEL WANYONYI & COMPANY ADVOCATES** for the 2nd defendant.

I have considered the evidence by the parties and the submissions by Counsel.

Before I delve into the evidence, there is an issue which Counsel for the 2nd defendant has raised in his submissions and which I must first address. In his submissions, Counsel for the 2nd defendant has submitted that the plaintiff’s suit is fatally defective for failure to comply with **Order 4 Rule 1(2)** of the **Civil Procedure Rules** which require that a plaint be accompanied by the plaintiff’s affidavit. It was submitted therefore that since the plaintiff denied having signed the verifying affidavit, the suit is defective and should be struck out. Counsel cited the Supreme Court decision in the case of **GIDEON SITELU KONCHELLAH .V. JULIUS SUNKULI 2018 eKLR**.

Order 4 Rule 1(2) of the **Civil Procedure Rules** reads that: -

“The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in the 1(1) (f) above.”

It is true as submitted by **MR WANYONYI** that in the course of the hearing, the plaintiff denied having signed the verifying affidavit. This is what he said in cross – examination: -

“I have only one signature. This is it (signs). It is not me who signed the verifying affidavit or the witness statement dated 10th February 2020. I ask the Court to adopt it as my evidence. I also filed my list of documents dated 10th February 2020. I ask the Court to adopt them as my exhibits in this case.”

The verifying affidavit dated 10th February 2020 and which bears the plaintiff’s name is signed and commissioned. I have no doubt in my mind that the signature is different from that appearing in another affidavit dated 15th November 2018 and filed in **BUNGOMA CHIEF MAGISTRATE’S CIVIL CASE No 73 of 2018**. In the case of **GEDION KONCHELLA .V. JULIUS SUNKULI** (supra), the impugned

affidavit was not signed, commissioned or dated. The Court stated as follows at paragraph 8 of its ruling delivered on 7th September 2018: -

“We have no hesitation in finding that the purported replying affidavit filed by the 1st Respondent is fatally defective as the same contravenes all the legal requirements for the making of an affidavit. Hence it has no legal value in the matter before us. We have checked all the eight copies of the Replying affidavit as filed in the Court Registry and confirmed that none of the copies was signed, commissioned and dated. Consequently, as the same is defective, it is deemed that there is no Replying affidavit on record filed by the 1st Respondent.”

Counsel for the 2nd defendant also cited the case of **PIUS NJOGU KATHURI .V. JOSEPH KIRAGU MUTHURA 2018 eKLR** that an affidavit must be sworn.

In my view, the cases cited by Counsel for the 2nd defendant are distinguishable from the circumstances obtaining in this case. In those two cases, the verifying affidavit had not been signed by the plaintiff or any other person at all. In this case, the plaintiff did clarify that this suit was filed on his instructions. The verifying affidavit is signed, dated and commissioned and there is nothing to suggest that it is not the plaintiff who has filed this suit. The mischief intended to be cured by the provisions of **Order 4 Rule 1(2)** of the **Civil Procedure Rules** was to ensure that a party does not pursue a claim that had already been determined in another suit. In this case, the plaintiff has disclosed in his plaint the previous suits involving the same subject. No prejudice has been caused to the defendants and there is nothing to suggest that they did not know which party or what property they were dealing with. I consider this to be a minor infraction or lapse which should not result in the drastic step of striking out the plaint. There is no doubt that it is the plaintiff herein who filed this suit. Striking out his plaint would be a draconian step to be resorted to only in the clearest of cases – **D. T. DOBIE & COMPANY (KENYA) LTD .V. JOSEPH MBARIA MUCHINA & ANOTHER 1980 eKLR**. And unless there is evidence of fraud or intention to overreach or steal a march on the other party, Courts should aim at sustaining and determining disputes on their merits rather than throwing away parties from the seat of justice. In the circumstances, and given the fact that the plaintiff confirmed that he is the one who instructed Counsel to file this suit, I am not persuaded that the suit is for striking out.

Having said so, I have identified the following as the issues for my determination in this dispute: -

- 1. Whether the 2nd defendant holds the title to the suit land in trust for the plaintiff.**
- 2. Whether the 2nd defendant was an innocent purchaser.**

It is not in dispute that the 2nd defendant is the registered proprietor of the suit land. He holds the title thereto issued to him on 9th December 2015. By virtue of that registration, the 2nd defendant is the absolute and indefeasible owner of the suit land. **Section 25(1)** and **(2)** of the **Land Registration Act** however provides as follows: -

25(1) “The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject -

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register;

and

(b) to such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee. Emphasis added

It is well settled that the registration of land in the name of a party does not relieve him of any duty or obligation which he owes another as a trustee – **KANYI .V. MUTHIORA 1984 KLR 712**. It is this claim based on trust that the plaintiff is pursuing against the 2nd defendant in this case.

In my view, the plaintiff’s interest in the suit land was settled beyond doubt the moment the Court of Appeal rendered its decision in **KISUMU COURT OF APPEAL CASE No 115 of 2015** in which it recognized and upheld – held the plaintiff’s overriding interest in the suit land. At page 11 of the said Judgment, the Court of Appeal addressed that issue as follows: -

“Evidently, BARASA’s occupation of the suit property started long before IMMACULATE became the registered owner, and therefore, in terms of Section 30 of the retired Registered Land Act, his rights were in the nature of an overriding interest over the land. The change of ownership of the suit property did not affect those rights as they were attached to the land in question, in this case, the suit property.” Emphasis added

In the last paragraph of their Judgment, the Judges concluded thus: -

“In view of these circumstances, the appeal is allowed, we set aside the Judgment and decree of the High Court ordering the eviction of BARASA from the suit property with costs to him.”

The Judges did not make any further orders with regard to the suit land. Perhaps, with deference to the Judges, it may have been necessary to bring this dispute to a conclusive end by directing that the plaintiff be registered as the proprietor of the suit land. I say so because, the 1st defendant **IMMACULATE**, taking advantage of the fact that her title remained intact, proceeded to transfer the suit land to the 2nd defendant thus necessitating this suit. I intend to make those orders at the end of this Judgment.

Suffice it to state that the Appellate Court having found that the plaintiff's rights to the suit land "**were in the nature of an overriding interest over the land,**" as recognized by **Section 30** of the repealed **Registered Land Act**, that in essence was a declaration that the suit land is the property of the plaintiff. That provision which has now been replicated in **Section 28** of the new **Land Registration Act 2012** provided, as far as is relevant, as follows: -

30: "unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register –

(a)

(b)

(c)

(d)

(e)

(f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription.

(g) the rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed."

Section 28 of the new **Land Registration Act 2012** and which was already the law when this suit was filed in 2020 has similar provisions but now includes specifically under **Section 28(b)** that among those overriding interests are: -

28(b) "trusts including customary trusts."

In the circumstances of this case, the trust that the plaintiff is clearly pursuing is a constructive trust. Such a trust was considered in the case of **TWALIB HATAYAN & ANOTHER .V. SAID SAGGAH AHMED AL HEIDY & OTHERS 2015 eKLR** where the Court of Appeal held as follows: -

"A constructive trust is an equitable remedy imposed by the Court against one who has acquired property by wrong doing. 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. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit

As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment."

In the circumstances of this case, from 28th September 2017 when the Court of Appeal in Civil Appeal No 115 of 2015 recognised the plaintiff's interests in the suit land, the 1st defendant became a constructive trustee holding the title thereto on behalf of the plaintiff. She could not therefore treat it as her personal property by purporting to sell it to the 2nd defendant as she did by an agreement executed on 16th November 2015. She was a trustee with no personal interest in the suit land. She therefore could not pass any title in the suit land to the 2nd defendant or any other person for that matter. If the 1st defendant had any interest, legal or equitable in the suit land, the Court of Appeal would not have set aside the order for the eviction of the plaintiff from the suit land. The plaintiff's claim to the suit land by way of trust is well merited and I allow it.

There is also another reason why the 2nd defendant's title to the suit land cannot enjoy the protection of **Article 40** of the **Constitution** or **Section 26(1)** of the **Land Registration Act**. Prior to the hearing and determination of the plaintiff's appeal in **Civil Appeal No 115 of 2015**, the Court of Appeal determined the plaintiff's application for stay of execution of the impugned Judgment. Upon hearing that application in **Court of Appeal Civil Application No 68 of 2015**, the Court issued the stay of execution orders which I have already referred to earlier in this Judgment. The import of those orders was that the 1st defendant should not take any precipitate action with regard to the suit land, including transferring it to third parties, pending the hearing and determination of the appeal. However, as is now clear, the 1st defendant transferred the suit land to the 2nd defendant when the stay order was still in place and alive. That order was essentially in the nature of an injunctive relief and the 1st defendant was well aware of what was expected of her. In purporting to transfer the suit land in the face of that very clear order, the 1st defendant was in Contempt of Court. On that front, the sale agreement between the 1st and 2nd defendants with respect to the suit land stands faulted for being illegal, null and void. No interest in the suit land could therefore pass to the 2nd defendant. His Counsel has submitted that the 2nd defendant acquired a good title because no caution had been placed on the suit land.

However, that does not aid the 2nd defendant because the 1st defendant who knew about the existence of the order of stay was obliged to obey it.

Counsel for the 2nd defendant has also submitted that the plaintiff should have filed another suit for adverse possession when his Originating Summons was dismissed in **BUNGOMA HIGH COURT CIVIL CASE No 1818 of 2014** for want of prosecution. Further, that the Court of Appeal did not direct that the plaintiff be registered as the proprietor of the suit land. The plaintiff was entitled to pursue whatever cause of action he deemed fit so long as he achieved his goal. He has elected to seek orders on the basis of a trust. That is well within his rights.

On the submission that the Court of Appeal did not pronounce that the plaintiff be registered as the proprietor of the suit land, I have already alluded to that earlier on in this Judgment. That is not fatal to the plaintiff's claim. It has not been suggested that this claim is barred by any law including the statute of Limitation.

The 2nd defendant also pleaded, and his Counsel submitted, that he is an innocent purchaser for value without notice. Reliance was placed on the case of **JOSE ESTATE LTD .V. MUTHUMU FARM LIMITED & OTHERS 2019 eKLR** as well as the case of **MOSES PARANTAI & PERIS WANJIKU MUKURU .V. STEPHEN NJOROGI MACHARIA 2020 eKLR**. Both those cases adopted and followed the case of **KATENDE .V. HARIDAR & COMPANY LTD [2008] 2. E.A 173** where the doctrine of innocent purchaser was described as follows: -

“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 a party to any fraud.”***

The 2nd defendant did not specifically plead that he was a bona fide or innocent purchaser for value without notice. The nearest he came to doing so was in paragraph 5 of his defence where he pleaded as follows: -

5: “In response to paragraph 6 of the plaint, the 2nd defendant states that he purchased the suit land from the 1st defendant above board as there was no encumbrance as well as inhibitions on L.R NO E. BUKUSU/S. KANDUYI/5778 at the time of the purchase. Consequently, the 2nd defendant being the absolute registered owner of the suit land has all rights and privileges to construct houses on the same.”

In paragraph 8 of his statement dated 27th February 2020, he was more direct and said: -

8: “That the plaintiff cannot purport to execute an order of evicting the suit parcel (sic) when I am an innocent purchaser for value.”

Whether or not one is an innocent or bona fide purchaser for value without notice is really a matter to be determined on the circumstances of each case. A party alleging to be a bona fide or innocent purchaser for value without notice bears the responsibility of leading evidence to prove that fact. He who pleads the existence of a fact must prove it. That is trite law. The burden was therefore upon the 2nd defendant to lead cogent evidence to prove that allegation. **Section 107(1)** 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.”

Sections 109 and 112 of the same Act provide that: -

109: “The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

112: “In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

In his oral testimony, the 2nd defendant stated how he did a search and found that there were no encumbrances before purchasing the suit

land at a consideration of Kshs. 2,550,000/=. However, when he was cross – examined by **MR SICHANGI** on how he paid that sum, he said: -

“I paid the purchase price to the account of IMMACULATE AWINO ABONGO. It was Kshs. 2,550,000/= million. I have not produced any document to show that I deposited the money in her account.”

If the 2nd defendant indeed paid the sum of Kshs. 2,550,000/= as consideration for the suit land into the account of the 1st defendant as he alleged, nothing would have been easier than for him to produce as his evidence the bank deposit slip to prove that fact. He did not do so. It must be remembered that a claim that one is a bona fide or innocent purchaser for value without notice is a complete legal defence as against the claim of any prior equitable owner. Therefore, such a defence must be backed by cogent evidence. The fact that the 2nd defendant has been unable to demonstrate the ***“he purchased for valuable consideration”*** – **KATENDE .V. HARIDAR** (supra) – only goes to prove that the purported sale agreement between him and the 1st defendant was a scheme to defeat the Judgment of the **Court of Appeal in Civil Appeal No 115 of 2015** and thereby frustrate the plaintiff’s interest in the suit land. On the facts of this case, the 2nd defendant cannot claim that he purchased the suit land in good faith without notice of any fraud which is a requirement if he is to be shielded by the doctrine of bona fide or innocent purchaser. That protection is clearly not available to the 2nd defendant.

Ultimately therefore and having considered all the evidence herein, this Court is satisfied that the plaintiff has proved his case as required in law.

There shall be Judgment for the plaintiff as against the 2nd defendant in the following terms: -

- 1. A declaration is hereby issued that the 2nd defendant holds the title to the land parcel NO EAST BUKUSU/SOUTH KANDUYI/5778 in trust for the plaintiff.**
- 2. That trust is hereby determined and the 2nd defendant shall within 30 days of this Judgment execute all the relevant documents to facilitate the transfer of the land parcel NO EAST BUKUSU/SOUTH KANDUYI /5778 in the name of the plaintiff.**
- 3. In default of (2) above, the Deputy Registrar shall execute all such documents on behalf of the 2nd defendant.**
- 4. The Land Registrar Bungoma shall rectify the register accordingly to reflect the plaintiff as the registered proprietor of the land parcel NO EAST BUKUSU/SOUTH KANDUYI/5778.**
- 5. The 2nd defendant shall also vacate the land parcel NO EAST BUKUSU/ SOUTH KANDUYI/5778 and remove all his structures thereon within three (3) months of this Judgment failure to which he shall be evicted therefrom.**
- 6. The 2nd defendant shall meet the plaintiff’s costs.**

BOAZ N. OLAO.

J U D G E

4TH NOVEMBER 2021.

JUDGMENT DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 4TH DAY OF NOVEMBER 2021 BY WAY OF ELECTRONIC MAIL IN KEEPING WITH THE COVID – 19 PANDEMIC GUIDELINES.

BOAZ N. OLAO.

J U D G E

4TH NOVEMBER 2021.

Explanatory notes: -

THIS JUDGMENT WAS DUE ON 5TH OCTOBER 2021. HOWEVER, I WAS UN – WELL AND OUT OF THE STATION. THE DELAY IS REGRETTEED.

BOAZ N. OLAO.

J U D G E

4TH NOVEMBER 2021.