



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 917 OF 2005

PATRICIA WAIRIMU KUNG’U.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....1ST DEFENDANT

FATUMA MOHAMED ALI.....2ND DEFENDANT

CONSOLIDATED WITH

1. HIGH COURT CIVIL SUIT NO. 5245 OF 1988

BENNY ROESCH.....PLAINTIFF

VERSUS

PATRICIA WAIRIMU KUNG’U.....DEFENDANT

AND

2. HIGH COURT CIVIL CASE NO. 4886 OF 1988

PATRICIA WAIRIMU KUNG’U.....PLAINTIFF

VERSUS

WOLFGANG ROESCH.....DEFENDANT

JUDGEMENT

1. Robert Mungai Kung’u owned the house erected on land reference number (L.R. No.) 37/260/29, Codi Road, Nairobi West (“the Suit Property”). Upon his demise, his widow Patricia Wairimu Kung’u (Patricia) filed **HCCC No. 4886 of 1988** against the tenant Wolfgang Roesch (Wolfgang) seeking delivery of vacant possession of the Suit Property together with full payment of the rent arrears. She also sought damages for trespass and mesne profits. Wolfgang filed a defence on 8/2/1989 in which he averred that he had agreed with Patricia’s late husband that no further payment of rent would be made while there were outstanding amounts of money lent to her late husband. Wolfgang added that his wife, Benny was in possession of the Suit Property as a contractual purchaser pursuant to an agreement partly in writing and partly verbal signed by Patricia’s late husband, Robert Mungai Kung’u in 1987 which had been partly performed by possession and part payment. He averred that the tenancy came to an end in 1984.

2. Benny Roesch (Benny) sued Patricia as the widow of Robert Mungai Kung’u in **HCCC No. 5245 of 1988** seeking an order of specific performance for Patricia to transfer the Suit Property to her. Benny claimed that she entered into an agreement with Patricia’s late husband in 1984 and 1985 vide which he was to sell the Suit Property to her. She averred that it was agreed that she would cease to be a tenant from July 1984 and would continue to occupy the house as a purchaser. Benny claimed that she had paid Kshs. 350,154.40 to Robert Mungai Kung’u leaving a balance of Kshs. 149,845.60 and that Mr. Kung’u died intestate before he had executed a transfer to her. Patricia filed a defence on 1/2/1989 and averred that Benny’s claim was fraudulent and unmaintainable and added that Benny was to vacate the Suit Property which at that point belonged to her.

3. Patricia filed **HCCC No. 917 of 2005** against Kenya Commercial Bank Limited (KCB) and Fatuma Mohammed Ali (Fatuma) seeking a declaration that the transfer of the Suit Property to Fatuma and its charge to KCB was irregular and unlawful for lack of consideration. She

averred that Fatuma approached her in 1991 and offered to purchase the Suit Property for Kshs. 1,100,000/=. Fatuma was to obtain a loan facility to purchase the Suit Property from KCB who at the time was her employer. KCB was to register a charge against the Suit Property as security for the repayment of the loan. Patricia averred that Fatuma and KCB proceeded to transfer and charge the Suit Property without releasing the purchase money to her, which she claimed was irregular and fraudulent.

4. KCB in its defence filed on 31/1/2020 denied Fatuma's claim and averred that Fatuma applied for a loan under KCB's house loan scheme which was to be secured by a legal charge over the Suit Property. At the time KCB had advanced sums to Patricia's husband which were secured by a charge over the Suit Property. It was agreed that Oraro and Rachier Advocates (Oraro Advocates) would act for KCB and discharge the earlier charge and register a transfer in favour of Fatuma alongside a new charge over the Suit Property after which the loan proceeds held by Oraro Advocates would be released to Patricia less the sums due from her to KCB. KCB admitted that the discharge of the earlier charge, transfer to Fatuma and a charge over the Suit Property were duly registered.

5. Before the loan proceeds could be released to Patricia, KCB learnt that the Suit Property was the subject of litigation in **HCCC No. 4886 of 1988 and HCCC No. 5245 of 1988** and was advised by Oraro Advocates not to proceed with the transaction over the Suit Property. The loan proceeds were recalled and an unsuccessful application was made for the cancellation of the transfer and second charge at the lands office. Patricia paid off the sums she owed to KCB and the title was released to her. KCB urged the court to dismiss Patricia's claim.

6. In the Amended Defence and Counterclaim filed in court on 30/4/2009, Fatuma admitted that she entered into an agreement with Patricia for the purchase of the Suit Property at Kshs. 1,000,000/=. She denied that the contract for sale was frustrated or that it was rescinded. She averred that she had been ready and willing at all material times to pay the purchase price but Patricia had been reluctant. Further, she averred that the full purchase price was forwarded to Patricia's advocates in completion of the sale at the agreed time and the remittance of the money was an issue between Patricia and Oraro Advocates. Fatuma maintained that the contract between her and Patricia was valid and enforceable. She added that she expended monies and altered her position to her own detriment in furtherance of the agreement of sale and that Patricia was not entitled to breach the agreement. She averred that any supervening circumstances that may have led to non-completion of the sale was brought about by Patricia and she should not therefore be made to suffer any prejudice. She stated that the tenant had vacated the Suit Property and she had possession. She contended that the suit was time barred.

7. In her counterclaim, Fatuma claimed that she had expended Kshs. 79,000/= on stamp duty, transfer and legal fees and other incidentals in fulfilment of her role in the sale agreement dated 25/9/1991. She averred that Patricia's suit did not disclose any fraud which she participated in that would deprive her of her title in the Suit Property. She added that Patricia was the author of her own misfortune for failing to disclose at the time of the agreement that she had suits pending over the Suit Property. She claimed that she was entitled to the Suit Property and possession and faulted KCB for defaulting in the payment of the purchase price to Patricia. She further faulted KCB for releasing the title over the Suit Property to Patricia. Oraro Advocates acted for the three parties in the sale and charge transactions.

8. Fatuma sought an order to pay the agreed contract price only and to have Patricia deliver to her the title over the Suit Property and the discharge of charge over the Suit Property. Patricia filed a defence to Fatuma's counterclaim and averred that Fatuma did not lay any claim to the Suit Property until she had left the employment of KCB. She averred that Fatuma was guilty as a party to the fraud and that she sought to enrich herself unjustly.

9. Patricia gave evidence. The Suit Property was registered in her late husband's name, Robert Mungai Kungu who died on 30/9/1987. She obtained letters of administration over his estate and transferred the Suit Property to her name. She had to clear a debt of Kshs. 250,000/= which her late husband owed to KCB. Thereafter she used the title over the suit land to secure an overdraft security of Kshs. 200,000/= from KCB. She had not repaid this sum by the time she entered into the agreement with Fatuma to sell her the Suit Property.

10. The Suit property was leased to Benny Roesch. When she went to demand rent the tenant informed her that she had entered into an agreement to purchase the Suit Property from her late husband. She sued Benny Roesch in **HCCC No. 4886 of 1988** to recover rent. She was not aware of the sale of the Suit Property and stated that being an educated man, her late husband was organised and kept his documents in good order. Benny Roesch and her husband sued Patricia in **HCCC No. 5245 of 1988** claiming ownership of the Suit Property. Patricia stated that she presented the documents relied on by the couple for examination to the Criminal Investigation Department Headquarters. She relied on the report of the Document Examiner who found that the documents were forged.

11. She decided to sell the Suit Property to Fatuma. They discussed and agreed on the price of Kshs. 1,000,000/=. Fatuma informed her that she was working with KCB who were to give her a loan to purchase the Suit Property. Oraro Advocates prepared the sale agreement on 25/9/1991 which she and Fatuma executed. Oraro Advocates acted for KCB and had to discharge the title before the Suit Property could be transferred to Fatuma. After execution of the sale agreement no money was paid to Patricia since the purchase price was to be released by KCB after the Suit Property had been transferred to Fatuma's name and a charge registered in favour of KCB. She signed the transfer on 18/12/1991 and the transfer and charge to KCB were registered simultaneously. The charge was for Kshs. 1,100,000/=. KCB sent a cheque for Kshs. 1,078,977/= being the purchase price, legal fees, stamp duty and other incidental costs to Oraro Advocates on 15/1/1992.

12. Oraro Advocates wrote to Benny Roesch on 6/1/1992 asking her to move out of the Suit Property which had changed hands. Various correspondence was exchanged between Oraro Advocates and Daly and Figgis Advocates who were acting for Benny Roesch and her husband. Daly and Figgis contended that the Suit Property could not have been the subject of any sale since Benny Roesch was in possession as a contractual purchaser and there was a suit pending in court over her claim to the Suit Property.

13. Owing to this development, Oraro Advocates acting on instructions from KCB withdrew from the sale transaction and asked the Land Registrar to reverse the transaction and refund the stamp duty paid. The Land Registrar refused to do this on the ground that only a court order could reverse the transaction. Patricia stated that she continued using the title over the Suit Property for overdraft facilities given to her by KCB after the title was returned to KCB to await the outcome of the case between her and Benny Roesch. She took additional loans from KCB using the Suit Property as security including the one she took in 1998 for Kshs. 300,000/=. KCB wrote to Fatuma on 25/2/1999 asking her to meet the costs of having the title over the Suit Property revert to her name. She did not have money and contended that that cost should have been met by Fatuma and KCB.

14. She sued KCB in 2005 seeking to recover her property. KCB released the title to her. She later learnt that Fatuma bought a different property using the same facility that KCB had given to her. After Fatuma left KCB's employment she went to the Suit Property in July 2008, evicted Benny Roesch and took possession of the Suit Property which she then rented out. Patricia sought an order for Fatuma to move out of the Suit Property and to be compelled to sign all documents so that the Suit Property could revert to her once KCB discharged the charge registered against the land.

15. Patricia maintained that KCB and Fatuma pulled out of the sale transaction owing to the existence of the suit filed by Benny Roesch. She confirmed that Oraro Advocates acted for KCB, Fatuma and her in the transaction. She stated that at that time Fatuma verbally informed her that she was not interested in the Suit Property. She maintained that the sale bounced and that Fatuma and KCB did not pay the purchase price to her. She produced copies of the correspondence exchanged together with a copy of the sale agreement. She also produced copies of the letters KCB wrote to her.

16. Milcah Mwarania, a Credit Administrator at KCB's Moi Avenue Branch gave evidence. She stated that Fatuma worked for KCB until 28/8/2000 when she retired under the voluntary early retirement scheme. She confirmed that Patricia borrowed various sums from KCB which were secured by charges over the suit land. Fatuma applied for a loan of Kshs. 950,000/= to purchase the suit land under KCB's house loans scheme and a commercial loan of Kshs. 150,000/= both of which were to be secured by a legal charge for Kshs. 1,100,000/= over the Suit Property.

17. One of the conditions for the house loan under KCB's house loan scheme was that the property had to be transferred to Fatuma and a charge registered in favour of KCB before the sale proceeds would be released to the vendor. Additionally, the property being bought had to be vacant at the time of registration of the transfer. KCB instructed Oraro Advocates to prepare and register the discharge of charge by Patricia, the transfer to Fatuma and the charge in favour of KCB. KCB was already holding the title. The discharge, transfer to Fatuma and charge in favour of KCB were registered against the suit property on 18/12/1991.

18. The witness stated that there was no drawdown on the loan since the Suit Property was occupied hence Patricia could not give vacant possession. KCB discovered that when Patricia entered into the sale agreement with Fatuma, **HCCC No. 4886 of 1988** and **HCCC No. 5245 of 1988** were pending in court over the Suit Property. KCB was advised that it would not be prudent to proceed with the sale in light of the pending suits.

19. She produced a copy of Fatuma's handwritten letter received at KCB Moi Avenue Branch on 30/3/1992 in relation to the insurance payments over the Suit Property. The letter stated at paragraph 2 that

"note that I did not purchase the said property due to unavoidable circumstances (see attached copy of letter from Oraro and Rachier for further details)".

The letter requested the KCB's payroll department to cancel the monthly deduction of insurance payments of Kshs. 753/= from Fatuma's salary and a refund of the sum recovered for March 1992.

20. Ms. Mwarania stated that the loan facility was therefore cancelled and KCB recalled both the title and the loan proceeds from Oraro Advocates. Oraro advocates refunded the sum of Kshs. 1,047,477/= and returned the title to KCB. The Principal Registrar of Titles declined to cancel the transfer to Fatuma and the charge to KCB. Fatuma subsequently applied for and obtained a house loan from KCB for the purchase of Nairobi/Block 82/2400, which was approved on 18/2/1993. She produced a copy of KCB's letter of offer which Fatuma accepted on 24/2/1993. There was no basis for KCB to continue holding the title over the Suit Property the transaction having been cancelled. KCB handed over the title to Patricia. Fatuma serviced her loan with KCB and repaid it in full. She wrote to KCB on 7/11/2000 and requested it to release the title for Nairobi/Block 82/2400 to her. The title over Nairobi/Block 82/2400 was discharged and released to Fatuma.

21. She produced the correspondence exchanged over the transaction together with the documents in relation to Fatuma's purchase of a different house. She confirmed that no money was paid by KCB to Patricia in respect of the Suit Property. KCB agreed to finance Fatuma to purchase a different property when it realised that there were other interests in the Suit Property. She clarified that as an employee of KCB, Fatuma was only entitled to one staff house loan under its mortgage scheme. She confirmed that a loan account was opened in Fatuma's name and a cheque issued. Fatuma was required to pay insurance and monthly instalments to defray the loan.

22. Fatuma gave evidence. She maintained that she was a contractual purchaser in possession of the Suit Property which she bought from Patricia. She worked for KCB. Oraro Advocates were to represent them in the transaction. The Suit Property was transferred to her name and a charge registered in favour of KCB on 18/12/1991. She averred that the purchase price was paid to Patricia through a cheque for Kshs. 1,078,977/= which KCB forwarded to Oraro Advocates vide a letter dated 15/1/1992. She stated that Patricia did not disclose the existence of the pending suits which resulted in the delay of the remittance of the money from KCB to Patricia. The funds were held by Oraro Advocates.

23. She stated that the tenant on the Suit Property defaulted in the payment of rent and she levied distress and sued the tenant for vacant possession in **HCCC No. 9687 of 2003**. The tenant vacated the Suit Property and she took over possession sometime in 2008. She stated that she had on numerous occasions sought a discharge of charge from KCB and release of the title over the Suit Property but KCB had failed to deliver these to her despite her having settled the entire amount owed to KCB. She contended that KCB had not claimed that any amount was outstanding and she was puzzled that they were frustrating her efforts to get the title back. She produced a copy of her lawyers demand letter to KCB.

24. She added that it had become clear that KCB was unwilling to forward the purchase price to Patricia and attempted to rescind the sale on her behalf yet she had not given such instructions. She contended that she had spent considerable time, effort and monies developing the Suit Property and could not therefore have rescinded the contract. She urged the court to allow her to pay the agreed purchase price to the Plaintiff and to have an order directing the Plaintiff deliver to her the original title to the Suit Property together with the discharge of charge.

25. Fatuma stated that when the tenant moved out of the house and she took possession of the Suit Property in 2008, she was collecting rent of Kshs. 20,000/= per month. At the time of hearing of the suit the rent was Kshs. 60,000/=. She conceded that clause 8 of the sale agreement stipulated that the sale was subject to financing by KCB. It was also subject to the existing tenancy. Special condition A provided that the purchase price was to be paid in 90 days. She claimed not to know whether the purchase price was paid to Patricia. She stated that KCB informed her that it was waiting for vacant possession of the Suit Property. She also confirmed that she went to Oraro Advocates to inquire why Patricia had not been paid but could not recall when this happened. This must have been before she bought another property. She confirmed that she obtained another loan from KCB to buy Nairobi/Block 82/2400.

26. She later changed her evidence and agreed that Patricia was not paid the purchase price and contended that the other monies for stamp duty and costs were never refunded to her. When she discovered that there were problems with the Suit Property, she went ahead and bought another property which was financed by KCB. The second transaction went on very smoothly. She maintained that she was not involved in the correspondence exchanged between Oraro Advocates and Daly and Figgis Advocates. When questioned about her letter which was received at KCB Moi Avenue Branch on 30/3/1992, she persisted that she did not know what letter from Oraro Advocates she was referring to. She stated that she had not signed any other documents countering the sale agreement, transfer and charge over the Suit Property.

27. Fatuma maintained that there was a drawdown while KCB urged that there was no drawdown. The court sought clarification from KCB's witness on the meaning of the term "drawdown" in banking terms. The witness explained that when one applies for a loan, the bank opens a loan account and pays the seller of the property while the customer continues paying the monthly instalments until the loan is paid in full. If for some reason the loan account is opened and the purchase does not go through, the refund cheque is used to pay off the loan and it is then said that there was no drawdown. The court also asked the witness the number of houses a KCB staff member was eligible to purchase under the staff house loan mortgage scheme. Milcah Mwarania responded that an employee could only purchase one house under the KCB staff house loan scheme.

28. Parties filed submissions which the court has considered. The issues for determination can be summarised as follows:

- a. Whether the agreement for sale of the Suit Property dated 25/9/1991 between Patricia and Fatuma was valid and enforceable;
- b. Did Fatuma rescind the sale agreement?
- c. Should the court grant the orders sought by Patricia or those sought by Fatuma?
- d. Should the court grant the orders sought in HCCC No. 4886 of 1988 and those sought in HCCC No. 5245 of 1988?

29. Patricia submitted that since Benny Roesch was claiming ownership of the Suit Property as a contractual purchaser, the contract was not enforceable based on the *lis pendens* rule pursuant to Section 52 of the repealed Indian Transfer of Property Act (ITPA). She submitted that there was no valid contract since no consideration was paid by Fatuma who went ahead to purchase another property. Patricia urged the court to grant the reliefs she sought.

30. KCB also relied on Section 52 of ITPA in urging that there was no valid agreement after Fatuma rescinded the sale in March 1992. It argued that after Fatuma rescinded the sale, it was incapable of performance as a result of the withdrawal of the financing seeing that the agreement was subject to financing from KCB. KCB submitted that Patricia had failed to prove fraud on its part. It further contended that it could not have paid the purchase price to Patricia after Fatuma rescinded the sale. KCB conceded that Patricia did not receive any consideration for the Suit Property.

31. Fatuma submitted that there had been a mistrial and improper representation due to conflict of interest with Oraro Advocates acting for Patricia, KCB and herself in the transaction. She relied on the entries in the title document showing that the Suit Property was transferred to her name and urged that the security was perfected upon registration of the charge against her title on 18/12/1991. She maintained that by the time Daly and Figgis informed Oraro Advocates of the existence of litigation over the Suit Property, the transaction was already complete.

32. Fatuma faulted Patricia for failing to disclose the existence of the suits and faulted KCB for attempting to cancel the transaction without her participation. She contended that title properly passed to her and that Patricia could only seek payment of the sale proceeds while relying on Section 23 of the repealed Registration of Titles Act which protected the sanctity of title. She maintained that her title was sacrosanct, indefeasible and protected by the law. She claimed that she had fully serviced the bank facility.

33. The court will first deal with **HCCC No. 4886 of 1988** and **HCCC No. 5245 of 1988**. Patricia did not lead evidence in support of her claim for vacant possession and rent arrears in **HCCC No. 4886 of 1988** which she filed against Wolfgang Roesch. This may be due to the fact that the claim was overtaken by events when Fatuma evicted the tenant from the Suit Property and took possession of the suit premises sometime in 2008. The court dismisses that claim with no orders as to costs.

34. Benny Roesch filed **HCCC No. 5245 of 1988** against Patricia seeking to have the Suit Property transferred to her on the basis that she had purchased it from Patricia's late husband. Benny Roesch did not participate in the hearing of this suit despite her advocates, Kyalo and Associates being served and notified of the hearing date. It would seem that Benny may have lost interest in the suit when she was evicted from the Suit Property by Fatuma in 2008. The court dismisses that suit with no orders as to costs.

35. Turning to **HCCC No. 917 of 2005**, the dispute revolves around whether or not Fatuma purchased the Suit Property from Patricia. Patricia entered into a sale agreement with Fatuma dated 25/9/1991 vide which Fatuma was to purchase the Suit property for Kshs. 1,000,000/=. Clause 8 of the agreement stipulated that the sale was subject to Fatuma, the purchaser obtaining a loan from KCB for the entire purchase price. The property was sold subject to the existing tenancy by Wolfgang Roesch. Completion under Special Condition A was to be within 90 days of the date of the sale agreement. Condition C stated that the purchaser would pay the vendor the balance of the purchase price on the completion date or within 7 days of the purchaser receiving the documents of title duly registered at the lands registry.

36. From the evidence adduced, after the transfer to Fatuma and charge in favour of KCB were registered against the Suit Property at the Lands Registry, KCB forwarded the loan sum constituting the sale proceeds to Oraro Advocates for onward transmission to Patricia but these advocates advised KCB against the release of the funds when the existence of **HCCC No. 5245 of 1988** came to the fore. Both KCB and Patricia concede that the sale proceeds were never paid to Patricia. Fatuma prevaricated in her evidence and at some point urged that she should be allowed to pay the purchase price agreed upon in the sale agreement. It is not in dispute that due to the stalemate over the purchase of the Suit Property owing to the existing suits over it, Fatuma identified and purchased a different property being Nairobi/Block 82/2400 under KCB's staff loan scheme. She repaid this loan and KCB released the title over this property to her.

37. That the sale aborted was a fact well within Fatuma's knowledge, for she wrote the letter received at KCB Moi Avenue on 30/3/1992 requesting KCB's payroll department to cancel the monthly deduction of Kshs. 753 from her salary. She pointed out in the letter that she did not purchase House No. L.R. No. 37/260/29, which is the Suit Property due to unavoidable circumstances and made reference to Oraro Advocate's letter which she attached. The court finds that Fatuma rescinded the contract. Oraro Advocates wrote to KCB on 29/1/92 advising KCB that it was neither in KCB's nor Fatuma's interest to release the sale proceeds to Patricia owing to the pending litigation being **HCCC No. 4886 of 1988** and **HCCC No. 5245 of 1988**. The Advocates forwarded a cheque for Kshs. 1,012,477/= to KCB being the refund of the purchase price less disbursements already incurred. KCB acknowledged receipt of the refund vide its letter dated 4/2/1992.

38. KCB wrote to Fatuma on 4/2/1992 informing her that it received the refund of the house loan proceeds from Oraro Advocates. The letter stated that KCB had credited the funds to her commercial loan and the balance to her loan account leaving a nil balance in respect of the Suit Property. The bank sought instructions from Fatuma on how to proceed and forwarded a copy of Oraro Advocates' letter of dated 29/1/92.

39. Oraro Advocates' in their letter to Daly & Figgis of 2/12/92 stated that their client, the purchaser had decided to pull out of the transaction. The Advocates were to apply for cancellation of the registration of the transfer and charge of the Suit Property and seek a refund of the stamp duty.

40. Fatuma's lawyers, Muriuki Ngunjiri & Company Advocates wrote to KCB on 13/2/2006 and stated thus "*Due to technical difficulties, the full amount secured at accrued interest were repaid to yourselves almost as soon as the facility was availed.*" Fatuma did not lead any evidence to show that she repaid the loan sum to KCB in the manner the letter appears to suggest.

41. Fatuma did not lead any evidence to show that she took any other loan from KCB to finance the purchase of the Suit Property. Patricia was not paid any consideration by Fatuma for the Suit Property and the contract was therefore not valid and enforceable in spite of the fact that the Suit Property had already been transferred to Fatuma and a charge registered against the land. Fatuma failed to prove that the Suit Property was transferred to her name as a purchaser for valuable consideration. The purported sale of the Suit Property to Fatuma by Patricia fails for want of consideration.

42. The court agrees with Patricia that Fatuma unjustly enriched herself when she evicted Patricia's tenant from the Suit Property in 2008 and started collecting rent from it after leaving KCB's employment. Fatuma testified that she was collecting monthly rent of Kshs. 20,000/= in 2008 and Kshs. 60,000/= in 2020 from the Suit Property. It would be unconscionable for Fatuma to retain the rent proceeds that she collected from the Suit Property which she was not entitled to. Fatuma is directed to reconstitute to Patricia all the monies she collected as rent from the Suit Property within 45 days of this judgement.

43. Clause 7 of the sale agreement initially provided that Oraro Advocates were acting for the purchaser and the vendor, Patricia, was to act in person. This was amended by hand to show that Oraro and Rachier Advocates were acting for both the purchaser and the vendor in the sale transaction.

44. Patricia has proved her case on a balance of probabilities. The court grants prayers (i), (ii) and (iii) of the plaint dated 21/7/2005 together with the costs of this suit to be borne by the 2nd Defendant. The 2nd Defendant failed to prove her counterclaim dated 23/4/2009, it is dismissed with costs to the Plaintiff.

Delivered virtually at Nairobi this 5th day of May 2020

K.BOR

JUDGE

In the presence of:-

Mr. John Gikonyo for the Plaintiff

Mr. D. Okoth holding brief for Mr. G. Darr for the 1st Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 2nd Defendant