



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND COURT**

**AT KERUGOYA**

**ELC MISC. APPLICATION NO. 12 OF 2020**

**(FORMERLY ELC. MISC. APPLICATION NO. 4 OF 2014 (NYERI))**

**(ORIGINALLY H.C. MISC. APPLICATION NO. 22 OF 2002 (NYERI))**

**IN THE MATTER OF LAND PARCEL NO. NGARIAMA/MERICHI/742,417 AND 743**

**AND**

**IN THE MATTER OF LAND PARCEL NO. NGARIAMA/MERICHI/461 –**

**JACKSON KARIUKI GIKANDO (Suing as the Legal Administrator of the Estate of**

**NJINE MWARA).....APPLICANT**

**VERSUS**

**STEPHEN NDEGWA MWANGI.....1<sup>ST</sup> RESPONDENT**

**FRIDAH GACHERI KARIML.....2<sup>ND</sup> RESPONDENT**

**IRENE WOTHAYA.....3<sup>RD</sup> RESPONDENT**

**RULING**

By way of a Notice of Motion dated 19<sup>th</sup> February, 2020 brought under *Article 35, 50 (1), 159 of the Constitution of Kenya, Section 1A, 1B, 3A, 18, 60 100 of the Civil Procedure Act, Section 3,13, 19 of the Environment and Land Court Act, order 51 of the Civil Procedure Rules, Rule 49 & 73 of the Probate & Administration Rules*, the Applicant sought the following orders: -

- (1) Spent.**
- (2) That this Honourable Court be pleased to transfer this file before the ELC Judge in Kerugoya for directions.**
- (3) That upon transfer, this Honourable court be pleased to set aside all subsequent court orders that were issued by the ELC Court since the suit assumed the character of an Environment and land Court matter.**
- (4) That following the issuance of prayer 3 above, this file be transferred before the High Court to resume its original character as a probate suit.**
- (5) That costs be provided for.**

**GROUND UPON WHICH THE APPLICATION IS PREMISED**

- (1) The applicant is the administrator of the Estate of Njine Mwara (deceased) vide a grant issued on 13<sup>th</sup> May 2020.
- (2) There is another ELC suit pending in the ELC Court Kirinyaga being ELC No. 25 of 2019 where the subject land is situated.

- (3) The current Misc. Application is concerned about Land Parcel No. NGARIAMA/MERICHI/461 situated in Kirinyaga County and therefore pursuant to territorial jurisdiction, this matter ought to be placed before the ELC Kerugoya.
- (4) The parties in this current Misc. Application No. 4 of 2014 have misled this court to believing that this is a suit capable of surviving on itself yet there no substantive pleadings in the nature of either a plaint, an originating summons, petition before it.
- (5) There are court orders obtained in this Misc. Appl. No. 4 of 2014 that are affecting the subject matter of the suit being NGARIAMA/MERICHI/461 being the orders issued on the 6<sup>th</sup> February 2014, 29<sup>th</sup> January 2014, 4<sup>th</sup> May 2015, 17<sup>th</sup> March, 2016.
- (6) The 1<sup>st</sup> and 2<sup>nd</sup> respondents have interchangeably and fraudulently taken the position of the Plaintiff/Applicant and thus edging out the real parties to the suit hence misleading this Honourable Court as evidenced in the court orders issued on diverse dates as 6<sup>th</sup> February 2014, 29<sup>th</sup> January 2014, 4<sup>th</sup> May 2015, 17<sup>th</sup> March 2016.
- (7) The current applicant is the grandson to the original applicant (Mary Njine in Nyeri Misc. Application No. 122 of 2002 when the matter had a succession and probate character.
- (8) The applicant herein is the administrator of the estate of Njine Mwara jointly with Mary NjineMwara (deceased) vide certificate of confirmation of grant issued in Embu High Court Succession Cause No. 289 of 2009.
- (9) The subject matter of Succession Cause No. 289 of 2009 was Land Parcel NGARIAMA/MERICHI/461, which is the same as what is before Kerugoya ELC No. 25 of 2019 as well as what is before Misc. application No. 4 of 2014 filed in Nyeri.
- (10) For expeditious disposal of the matter and conclusion of the dispute relating to parcel No. NGARIAMA/MERICHI/461, it is only good that this matter be transferred to Kerugoya ELC Court.
- (11) The original character in this matter was that of a succession nature before it was transferred to the Environment and Land Court and became ELC Misc. Application No. 4 of 2014 and thus mixing the issue of revocation of grant with other pertinent issues.
- (12) What was before the High Court Judge in Nyeri Misc. Application No. 122 of 2002 was an application for revocation of grant by Mary Njine (deceased) that was subsequently revoked vide Justice Mary Kasango ruling delivered on the 2<sup>nd</sup> October 2007 and the resulting orders of revocation dated 2<sup>nd</sup> October 2007.
- (13) After the orders of Justice Mary Kasango that were issued on the 2<sup>nd</sup> May of October 2007 and another one for 9<sup>th</sup> October 2007 in favour of the Applicant- then -Mary Njine (deceased) Misc. Application File No. 122 of 2002 was deemed closed, and neither Mary Njine (deceased) while she lived nor the estate of Njine Mwara has constructively dealt with the matter.
- (14) Pursuant to Justice Mary Kasango orders of 2<sup>nd</sup> October 2007 and 9<sup>th</sup> October 2007, any title registration and any sub-division on Land Parcel No. NGARIAMA/MERICHI/461 that had been affected pursuant to the impugned certificate of confirmation of grant dated 21<sup>st</sup> June 1998 (now revoked) were cancelled which include NGARIAMA/MERICHI/742, NGARIAMA/MERICHI/1416 - registered in the name of the 2<sup>nd</sup> respondent and NGARIAMA/MERICHI/1417.
- (15) After the grant was revoked, Mary Njine and her grandson Jackson Kariuki Gikando filed a Succession Cause No. 289 of 2009 before Embu High Court to administer the only property belonging to the Estate of Njine Mwara property.
- (16) Unknown to Mary Njine (deceased) who was the Applicant in Nyeri High Court Misc. Application No. 22 of 2002, the respondents proceed with the Misc. Application No. 122 of 2002 in Nyeri without the involvement of the Estate.
- (17) Subsequent to the orders of Justice Mary Kasango of 9<sup>th</sup> October, 2007 the next orders were obtained on 6<sup>th</sup> February 2014, by the order issued on 29<sup>th</sup> January 2014 dated 6<sup>th</sup> February 2014.
- (18) This order issued on 6<sup>th</sup> February 2014 was obtained by the 1<sup>st</sup> and 2<sup>nd</sup> respondents as both the applicants and the respondents an indication that it was an application as between themselves.
- (19) The last orders to be obtained by Mary Kanini (deceased) in Nyeri Misc. Application No. 122 of 2002 were those orders issued on 9<sup>th</sup> October 2007.
- (20) Post the orders of 9<sup>th</sup> October 2007, Mary Kanini died on the 26<sup>th</sup> March 2010 where upon the 2<sup>nd</sup> respondent fraudulently took out an Ad Litem allegedly for purposes of substituting Mary Kanini (deceased) in Succession Cause No. 289 of 2009 filed in Embu.
- (21) The 2<sup>nd</sup> respondent fraudulently cleverly took out an Ad Litem after the death of Mary Njine purportedly to represent the interest of Mary Njine in Misc. Application No. 122 of 2002 in Nyeri, whereas the same was purposed to mislead the court in vacating the orders issued by Justice Mary Kasango on the 2<sup>nd</sup> October 2007 and 9<sup>th</sup> October 2007.
- (22) To conceal the fraud, the 2<sup>nd</sup> respondent rather than taking over the Succession Cause No. 289 of 2009 in Embu High Court,

the 2<sup>nd</sup> respondent moved the court in Misc. Application No. 122 of 2002 to set aside (partially) the orders of revocation of grant that had been granted by Justice Mary Kasango on the 2<sup>nd</sup> October 2007.

(23) The effect of setting aside the orders (partially) is that the status of NGIRIAMA/MERICHI/461 is reinstated to the earlier position as if were in regard to parcel No. NGIRIAMA/MERICHI/742, NGIRIAMA/MERICHI/1416, NGIRIAMA/MERICHI/1417 where the respondent was a beneficiary of fraud detected vide the ruling of Justice Mary Kasango.

(24) The whole intention of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in continuing with Nyeri Misc. Application No. 122 of 2002 is to ensure that the land that had been transferred to them through the impugned certificate of confirmation of grant (revoked) reverts back to them.

(25) The order of 6<sup>th</sup> February 2014 does not set aside the orders of Justice Mary Kasango partially, to the extent that the same relates to parcel of land registered in the names of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents and/or their transferees.

(26) The fraud occasioned in this matter is solely by abuse of court process by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in order to defraud the Estate of Njine Mwara the property in NGIRIAMA/MERICHI/461 and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are not beneficiaries in Succession Cause No. 289 of 2009 before the Embu High Court.

(27) Order No. 2 of the Court orders issued on February 2014 is the one that gave the matter the character of an ELC matter despite it not having substantive suit for the ELC to determine.

(28) Following order No. 2 of the court orders issued on 6<sup>th</sup> February 2014, the respondents have had this matter proceed with the sole intention of reinstating the impugned status quo of land parcel Numbers NGIRIAMA/MERICHI/742, NGIRIAMA/MERICHI/1416, NGIRIAMA/MERICHI/1417.

(29) All the proceedings post the revocation orders of Mary Kasango were schemed towards granting the 1<sup>st</sup> and 2<sup>nd</sup> respondents title to land that had been cancelled vide the orders of 9<sup>th</sup> October 2007 cancelling the title 1<sup>st</sup> and 2<sup>nd</sup> respondents and their transferees.

(30) It is the prayer of the applicant that all the orders of the ELC Court issued when the matter is an ELC character in the nature of ELC Misc. Application No. 4 of 2014 be hereby set aside.

(31) It is the prayer of the applicant that all the orders issued in Nyeri Misc. Application No. 122 of 2002 post Mary Kasango J order of 9<sup>th</sup> October 2007 be set aside as the same were obtained by misrepresentation and material facts.

#### **APPLICANTS SUMMARY OF FACTS**

The applicant filed an affidavit in support of the said application and made the following depositions: -

(1) That I am a male adult of sound mind and the administrator of the Estate of Njine Mwara and thus conversant with the facts of this matter and thus competent to swear this affidavit.

(2) That I am the administrator of the estate of Njine Mwara (deceased) vide a grant issued on 13<sup>th</sup> May 2010 dated 11<sup>th</sup> November 2010 which grant is valid to date and has not been revoked (annexed herewith and marked JKG-1 is a copy of the certificate of confirmation of grant).

(3) That there is another ELC suit pending in the ELC Court Kerugoya ELC No. 25 of 2019 where the subject land is situated. (Annexed herewith and marked JKG – 2 is a copy of the ELC Kerugoya Suit No. 25 of 2019).

(4) That this current Misc. Application is concerned about land parcel No. NGIRIAMA/MERICHI/461 situated in Kirinyaga County and therefore pursuant to territorial jurisdiction, this matter ought to be placed before the ELC Kerugoya.

(5) That the parties on this current Misc. Application No. 4 of 2014 have misled this court to believing that this is a suit capable of surviving on itself yet there are no substantive pleadings in the nature of either a plaint, an originating summons, petition before it.

(6) That there are court orders obtained in this Misc. Application No. 4 of 2014 that are affecting the subject matter of the suit being NGIRIAMA/MERICHI/461 being the orders issued on the 6<sup>th</sup> February 2014, 29<sup>th</sup> January 2014, 4<sup>th</sup> May 2015, 17<sup>th</sup> March 2016.

(7) That the 1<sup>st</sup> and 2<sup>nd</sup> respondents have interchangeably and fraudulently taken the position of the Plaintiff/Applicant and thus edging out the real parties to the suit hence misleading this Honourable Court as evidenced in the court orders issued on diverse dates as 6<sup>th</sup> February 2014, 29<sup>th</sup> January 2014, 4<sup>th</sup> May 2015, 17<sup>th</sup> March 2016.

(8) That the current applicant is the grandson to the original applicant (Mary Njine) in Nyeri Misc. Application No. 122 of 2002 when the matter had a succession and probate character.

(9) That the applicant herein is the Administrator of the estate of Njine Mwara, jointly with Mary Njine Mwara (deceased) vide

certificate of confirmation of grant issued in Embu High Court Succession Cause No. 289 of 2009.

(10) That the subject matter of Succession No. 289 of 2009 was land parcel NGARIAMA/MERICHI/461 which is the same as what is before Kerugoya ELC No. 25 of 2019 as well as what is before Misc. Application No. 4 of 2014 filed in Nyeri.

(11) That for expeditious disposal of the matter and conclusion of the dispute relating to parcel No. NGARIAMA/MERICHI/461, it is only good that this matter be transferred to Kerugoya ELC Court.

(12) That the original character in this matter was that of a succession nature before it was transferred to the Environment and Land Court and became ELC Misc. Application No. 4 of 2014 and thus mixing the issue of revocation of grant with other pertinent issues.

(13) That what was before the High Court Judge in Nyeri Misc. Application No. 122 of 2002 was an application for revocation of grant by Mary Njine (deceased) that was subsequently revoked vide Justice Mary Kasango ruling delivered on the 2<sup>nd</sup> October 2007 and the resulting orders of revocation dated 2<sup>nd</sup> October 2007.

(14) That after the orders of Justice Mary Kasango that were issued on the 2<sup>nd</sup> day of October 2007 and another one for 9<sup>th</sup> October 2007 in favour of the applicant then Mary Njine (deceased) Misc. Application file No. 122 of 2002 was deemed closed, and neither Mary Njine (deceased) while she lived nor the estate of Njine Mwara have constructively dealt with the matter.

(15) That pursuant to Justice Mary Kasango orders of 2<sup>nd</sup> October 2007 and 9<sup>th</sup> October 2007, any title registration and any subdivision of land parcel NGARIAMA/MERICHI/461 that had been effected pursuant to the impugned certificate of confirmation of grant dated 21<sup>st</sup> June 1998 (now revoked), were cancelled with include NGARIAMA/MERICHI/72, NGARIAMA/MERICHI/1416, registered in the name of the 2<sup>nd</sup> respondent and NGARIAMA/MERICHI/1417.

(16) That after the grant was revoked – Mary Njine and her grandson Jackson Kariuki Gikando filed a Succession Cause No. 289 of 2009 before Embu High Court to administer the only property belonging to the estate of Njine Mwara property.

(17) That unknown to Mary Njine (deceased) who was the applicant in Nyeri High Court Misc. Application No. 122 of 2002, the respondents proceeded with Misc. Application No. 122 of 2002 Nyeri without the involvement of the estate.

(18) That subsequent to the orders of Justice Mary Kasango of 9<sup>th</sup> October, 2007 the next orders were obtained on 6<sup>th</sup> February 2014 by the order issued on 29<sup>th</sup> January 2014.

(19) That this order issued on 6<sup>th</sup> February 2014 was obtained by the 1<sup>st</sup> and 2<sup>nd</sup> respondents as both the applicants and the respondents an indication that it was an application as between themselves.

(20) That the last orders to be obtained by Mary Kanini (deceased) in Nyeri Misc. Application No. 122 of 2002 were those orders issued on 9<sup>th</sup> October 2007.

(21) That post the orders of 9<sup>th</sup> October 2007, Mary Kanini died on the 26<sup>th</sup> March 2010 where upon the 2<sup>nd</sup> respondent fraudulently took out an Ad Litem allegedly for purposes of substituting Mary Kanini (deceased) in Succession Case No. 289 of 2009 filed in Embu.

(22) That the 2<sup>nd</sup> respondent fraudulently cleverly took out an Ad Litem after the death of Mary Njine, purportedly to represent the interests of Mary Njine in Misc. Application No. 122 of 2002 in Nyeri, whereas the same was purposed to mislead the court in vacating the orders issued by Justice Mary Kasango on the 2<sup>nd</sup> October 2007 and 9<sup>th</sup> October 2007.

(23) That to conceal the fraud, the 2<sup>nd</sup> respondent rather than taking over the Succession Cause No. 289 of 2009 in Embu High Court, the 2<sup>nd</sup> respondent moved the Court in Misc. Application No. 122 of 2002 to set aside (partially) the orders of revocation of grant that had been granted by Justice Mary Kasango on the 2<sup>nd</sup> October 2007.

(24) That the effect of setting aside the orders (partially) is that the status quo of NGARIAMA/MERICHI/461 is reinstated to the earlier position as if were in regard to parcel No. NGARIAMA/MERICHI/742, NGARIAMA/MERICHI/1416, NGARIAMA/MERICHI/1417 where the respondent was a beneficiary of fraud detected vide the ruling of Justice Mary Kasango on 2<sup>nd</sup> October 2007.

(25) That the whole intention of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in continuing with Nyeri Misc. Application No. 122 of 2002 is to ensure that the land that had been transferred to them through the impugned certificate of confirmation of grant (revoked) reverts back to them.

(26) That the order of 6<sup>th</sup> February 2014 does not set aside that orders of Justice Mary Kasango partially, to the extent that the same relates to parcels of land registered in the names of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> respondents and/or their transferees.

(27) That the fraud occasioned in this matter is solely by abuse of court process by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in order to defraud the estate of Njine Mwara the property in NGARIAMA/MERICHI/461 and they 1<sup>st</sup> and 2<sup>nd</sup> respondents are not beneficiaries in

Succession Cause No. 289 of 2009 before the Embu High court.

(28) That order No. 2 of the court orders issued on 6<sup>th</sup> February 2014 is that one that gave the matter the character of an ELC matter despite it not having substantive suit for the ELC to determine.

(29) That following order No. 2 of the court orders issued on 6<sup>th</sup> February 2014, the respondents have had this matter proceed with the sole intention of reinstating the impugned status quo of land parcel Numbers NGARIAMA/MERICHI/742, NGARIAMA/MERICHI/1416, NGARIAMA/MERICHI/1417.

(30) That all the proceedings post the revocation orders of Justice Mary Kasango were schemed towards granting the 1<sup>st</sup> and 2<sup>nd</sup> respondents title to land that had been cancelled vide the orders of 9<sup>th</sup> October 2007 cancelling the titles to the 1<sup>st</sup> and 2<sup>nd</sup> respondents and their transferees.

(31) That it is the prayer of the applicant that all the orders issued at the ELC Court issued when the matter is an ELC character in the nature of ELC Misc. Application No. 4 of 2014 be hereby set aside.

(32) That it is the prayer of the applicant that all the orders issued in Nyeri Misc. Application No. 122 of 2002 be set aside as the same were obtained by misrepresentation of material fact.

(33) That all what is deponed hereinabove is true to the best of my own knowledge and belief.

(34) The respondent did not file a replying affidavit or grounds of opposition in response thereto.

### **LEGAL ANALYSIS AND DECISION**

I have considered the application dated 19<sup>th</sup> February 2020 and the supporting affidavit of the applicant sworn the same date. I have also considered the annexures to the supporting affidavit and the applicable law.

The applicant is seeking five prayers. Three of the prayers are of a procedural nature while one is of substantive nature.

The first prayer is for certification of the application as urgent and directions that the same be heard on priority basis. Though the application was filed under certificate of urgency on 19<sup>th</sup> February 2020, the same was not placed before me for directions. However, on 1<sup>st</sup> March 2021, the matter came up for mention where the counsel holding brief for Mr. Ndegwa instructed by the applicant took an ex-parte hearing of the said application for 24<sup>th</sup> March 2021. The first prayer therefore becomes spent.

As regard the 2<sup>nd</sup> prayer, the applicant is seeking an order to transfer Misc. Application Case No. 4 of 2014 (Nyeri) to this Honourable Court for hearing and determination.

Upon perusal of the pleadings and proceedings herein, I noticed that Misc. Application No. 4 of 2004 and another file being Misc. Application No. 122 of 2002 (Nyeri) had been ordered to be transferred by the ELC Judge in Nyeri to this Honourable Court for hearing and determination on 1<sup>st</sup> July 2020. Again, I find the second prayer spent.

The third prayer is for setting aside all subsequent court orders that were issued by the ELC Court since the suit assumed the character of an Environment and Land Court matter.

The guiding principles for setting aside judgment and orders are set out under **Order 10 Rule II CPR** which stipulates as follows:-

*“Where judgment has been entered under this order, the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just”*

Our Procedural Rules demand that where a party fails to comply with procedural requirement owing to explanations or reasons which the court considers as excusable or reasonable, the courts are granted discretion to allow such a party leave to make good such an irregularity or lapse as it may deem fit and just in the interest of justice. The discretion to set aside is usually applicable where an irregular judgment has been entered as was succinctly put in the case of **Frigonken Ltd. Vs Value Pak Food Ltd. HCCC No. 424 of 2010 (UR)** where it was held as follows: -

*“If there is no proper or any service of summons to enter appearance to the suit, the resulting default judgment is an irregular judgment liable to be set aside by the court ex-dibito justitiae. Such a judgment is not set aside in the exercise of discretion but as a matter of judicial duty in order to uphold the integrity of the judicial process”.*

The principle objective of setting aside orders or decrees was put into perspective by the Court of Appeal where **Ouko J.A** observed in **Nicholas Salat Vs. I.E.B.C & 6 Others, C.A (Application) No. 228 of 2013 (U.R)** as follows: -

*“Deviation from and lapses in form and procedures which do not go to the jurisdiction of the court, or to the root of the dispute or which do not all occasion prejudice or miscarriage of justice to the opposite party ought not be elevated to the level of criminal offence attracting such heavy punishment of the offending party, who may in many cases be innocent since the rules of procedure*

*are complex and technical. Instead, in such instances, the court should rise to its highest calling to do justice by sparing the parties the draconian approach of striking out pleadings. It is globally established that where a procedural infraction causes no injustice by way of injurious prejudice to a person, such infraction should not have an invalidating effect. Justice must not be sacrificed on the altar of strict adherence to provisions of procedural law which at times create hardship and unfairness.”*

It is clear from the above decisions that the grounds for setting aside a decree and/or order is only limited to the deviation from and lapses in form and procedure. The applicant in the application herein is seeking a blanket order to set aside all orders issued in this suit and all former suits consolidated in this case being Misc. Application No. 122 of 2002 and Misc. Application No. 4 of 2014. The applicant has not given any specific decree and/or order which were given in the aforementioned cases as a result of procedural infraction and therefore liable to be set aside as a matter of right or judicial discretion. It is therefore untenable to grant such an omnibus order without specifying any order in particular.

The 4<sup>th</sup> prayer is for the transfer of this case to the High Court, Probate and Administration Division. The subject matter of this case is land parcel No. NGARIAMA/MERICHI/461 which is now sub-divided into land parcels number NGARIAMA/MERICHI/742, NGARIAMA/MERICHI/1416 registered in the name of 2<sup>nd</sup> defendant and land parcel No. NGARIAMA/MERICHI/1417 respectively. The parties had initially commenced succession proceedings where the grant was subsequently confirmed. The opposite parties filed objection proceedings giving rise to Misc. Application Cases No. 122 of 2002 and Misc. Application No. 4 of 2014. The latest orders emanating from these two cases which have now been transferred to this court have not been set aside or appealed against. To my mind, the dispute arising from the succession proceedings have been heard and determined and nothing remains to be heard by the High Court.

The fourth prayer equally fails and the same is disallowed.

The fifth and last prayer is for cost. **Section 27 of the Civil Procedure Act Cap 21 Laws of Kenya** is instructive on costs and the same provide as follows: -

*(1) “Subject to such conditions and limitations as may be prescribed, and the provisions of an law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the Court or Judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers.*

*Provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order”.*

The upshot of my findings is that the Notice of Motion dated 19<sup>th</sup> February 2020 is dismissed with no order as to costs as the application was not defended.

***Ruling READ, DELIVERED physically and SIGNED in open Court at Kerugoya this 4<sup>th</sup> day of June 2021.***

.....

**E.C. CHERONO**

**ELC JUDGE**

*In the presence of: -*

1. M/s Kimatta holding brief for Ndegwa for Applicant
2. Defendant – absent
3. Kabuta – Court clerk.