



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC APPEAL NO. 38 OF 2019**

**SOLOMON NDEGWA KAMAU.....APPELLANT**

**AND**

**LAWRENCE HINDU.....1<sup>ST</sup> RESPONDENT**

**WITEITHIE GWAKA INVESTMENT LTD.....2<sup>ND</sup> RESPONDENT**

*(Appeal from the decision of the Senior Resident Magistrate, the Hon. G. Omodho delivered on the 17<sup>th</sup> day of April, 2019 in the Chief Magistrate's Court at Thika, Civil Case No. 890 of 2014 )*

**BETWEEN**

**SOLOMON NDEGWA KAMAU.....PLAINTIFF**

**VERSUS**

**LAWRENCE HINDU.....1<sup>ST</sup> DEFENDANT**

**WITEITHIE GWAKA INVESTMENT LTD.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

The Appellant **Solomon Ndegwa Kamau**, was the Plaintiff in **Thika CMCC No. 890 of 2014**, while the Respondents were the Defendants in the said suit. Vide an Amended Plaint dated **18<sup>th</sup> February 2015**, the Appellant(Plaintiff) had sought for the following orders against the Respondents (Defendants);

- a) A Declaration that the Plaintiff is the bonafide and legal owner of Plot 176.**
- b) That an order of eviction, demolishing of any structures or an order giving vacant possession to be rendered by the Defendants and to allow the Plaintiff peaceful occupation and possession thereof.**
- c) A cancellation of the 1<sup>st</sup> Defendant title to land parcel Juja/Kalimoni block 10/176 and the same to be registered in the Plaintiff's names.**
- d) Costs and interests of the suit**
- e) Any other relief that this Honourable Court may deem fit and just.**

In his statement of Claim, the Plaintiff(Appellant) averred that he is a member of the 2<sup>nd</sup> Defendant(2<sup>nd</sup> Respondent ) and harbors a Share **Certificate No. 4666**, and also records depicting the same . That the Plaintiff ( Appellant) was the absolute owner of **Plot 176**, depicted by the mentioned share certificate which was issued by the 2<sup>nd</sup> Defendant( Respondent) to prove ownership of land on **27<sup>th</sup> March 1991**. Further that the Plaintiff( Appellant) had not sold or disposed off the said land to anyone especially the 1<sup>st</sup> Defendant( 1<sup>st</sup> Respondent ), and that the land is not co owned with the 1<sup>st</sup> Defendant(1<sup>st</sup> Respondent). That the Defendant (Respondent) had illegally, fraudulently and unprocedurally invaded onto the Plaintiff's (Appellant's) plot and started committing acts of waste and wanton damage by putting up a permanent house.

The Plaintiff (Appellant) particularized fraud on the part of the Defendants (Respondents) as; encroaching or invading the Plaintiff's (Appellant's) plot without consent, permission or authority, building permanent house thereon without the Plaintiff authority or permission; trespass to private property, by the 2<sup>nd</sup> Defendant illegally allocating the suit plot to the 1<sup>st</sup> Defendant; the Defendants working in cahoots with each other to defraud the Plaintiff's land, by the defendants working in cahoots to obtain registration by false pretenses and concealing material facts.

The suit was contested and the 1<sup>st</sup> Defendant (1<sup>st</sup> Respondent) filed a statement of Defence dated **17<sup>th</sup> November 2014**, and denied all the allegations made in the Plaintiff. He contended that the suit is misconceived, bad in law and the Plaintiff has no genuine claim against him.

The 2<sup>nd</sup> Defendant (2<sup>nd</sup> Respondent) filed a Defence dated **20<sup>th</sup> November 2014**, and denied all the allegations made in the Plaintiff. It averred that the purported share certificate had been tampered with making it void and further no proof of ownership of the suit property had been demonstrated by the Plaintiff (Appellant). Further, that there is no claim and cause of action against it and urged the Court to dismiss the suit.

The matter proceeded by way of *viva voce* evidence, wherein the Plaintiff (Appellant) called one witness and the Defendants (Respondents) called two witnesses.

#### **PLAINTIFF'S (APPELLANT'S) CASE**

**PW1, Solomon Ndegwa Kamau** testified that he bought Plot **no. 176** from **Kimani Kangethe**, through Share Certificate dated **1991** for **KShs. 15,000/=**. That the seller was shareholder at the 2<sup>nd</sup> Defendant. He produced the agreement and translations as **Exhibit 1**. That after he did the transfer, he got share **certificate No. 4666** through the 2<sup>nd</sup> Defendant. He produced the share certificate as **Exhibit 2**. That he had a chance to peruse the 2<sup>nd</sup> Defendant's register and his name was there. He produced an extract of the register as **Exhibit 3**. Further on the original register which he bought from **Kimani Karuga**, whose name is on page 9, his certificate **No. 325** was transferred to **4666 Plot No. 176**. That he paid all dues to the 2<sup>nd</sup> Defendant. He produced the **1991** Share Certificate as **Exhibit 4**. He further testified that the 1<sup>st</sup> Defendant (1<sup>st</sup> Respondent) developed his land, but he got a Court order to stop it. That he was shown a certificate at purchase, but he did not have a copy as the 2<sup>nd</sup> Defendant (2<sup>nd</sup> Respondent) went with the share certificate.

That he learnt that the 1<sup>st</sup> Defendant (1<sup>st</sup> Respondent) was constructing on the suit property and he visited the 2<sup>nd</sup> Defendant (2<sup>nd</sup> Respondent) to inform them that someone was developing his land. That he had not paid for the processing of the title and that there was no stamp on his documents and the 2<sup>nd</sup> Defendant did not show him the plot but the seller took him to the plot.

He further testified that he bought the plot from **Kimani Karanja** and the 2<sup>nd</sup> Defendant was in charge of the transfer. That he did not have any ballot nor an abstract. It was his testimony that during the sale, he was not shown ownership documents. That he never signed the sale agreement in the Kikuyu version. That the seller died 6 months ago and the property was vacant.

That at the purchase, **Kimani Karanja** had a ballot and took him to the plot together with a surveyor. That he got documents from the 2<sup>nd</sup> Defendant's and the Chairman signed the documents.

#### **DEFENCE (RESPONDENTS) CASE**

**DW1, Lawrence Kamau Hindu** the 1<sup>st</sup> Defendant testified that he was the registered owner of **Block 10/176**, having bought the same from **Evans Mwangi** in **2003**. He relied on his Replying Affidavit dated **25<sup>th</sup> November 2014**, in its entirety together with the list of documents. That **Evans Kanyoki Mwangi** had share certificate **No. 390 Plot 176** and on register **Johnson Kamunyu Muhari** transferred share certificate **394**. That Certificate **No. 394** for **Peter Wakoma Macharia** was transferred to share certificate **1538** as **Jelinda Wanjiku Kamange**. Further that **1074**, is a transfer from **394**. Further that **1017** is **Njoroge Gicharu**. He denied forging documents with the 2<sup>nd</sup> Defendant. That before the purchase, the 2<sup>nd</sup> Defendant (2<sup>nd</sup> Respondent) confirmed that **Evans Mwangi** was the lawful owner and it gave him a share certificate. That he did not know why the register did not have **Evans Kanyoko Mwangi**. He further testified that Mboha Advocate register did not have a cover, stamp and no title. That he had been in occupation till **2003**, when he got a Court Order.

On re-examination, he testified that the share certificate he got was **No. 394** and it came from **390**. That he paid all fees. That certificate **No. 1017**, showed all details and he bought the land for value.

**DW2 Anthony Kigamba Hato**, adopted his witness statement dated **24<sup>th</sup> October 2018**. He testified that they have 2 registers for each farm and that they have 5 farms and hence 10 registers. That on **Page 9 No. 253 Kimani Karanja**, was a member as per the register. That Share Certificate **No. 325** transferred to **4666**. That the owner of **4666** was in the register book **2**, which was in the office. That a copy has **Solomom Ndegwa** as **4666**. That **Plot 176** belonged to the 1<sup>st</sup> Defendant who bought it from **Evans Kanyoko** and they issued **No. 1017**, as per Certificate, but as per the register **1017** is **Gichagu Njoroge**. Further that **No. 394**, should belong to **Kanyoko**, but on the register, it is **Peter Macharia**, and they are not the same people. That **1538** belongs to **Jephuriga Waruge Kamunge** transferred to **1307**. That as per the register, the 1<sup>st</sup> Defendant should own **1017**, which is not in Court. That there can never be 2 share certificates.

He further testified that the share Certificate has a problem as it is not signed by the Secretary, it is not Farm No. 1 and it is altered with a pen. Further, that there is no ballot accompanying it. That he had declined to register the Certificate thrice as the date on it is illegible. That share Certificate by **Kanyoko** is genuine as it is signed. Further that they received fees and processed the transfer. That the share certificate is proof of membership, but does not give ownership of plot. That it should accompany a ballot to entitle someone to property. That the certificate should have two signatures.

After the *viva voce* evidence, the parties filed their written submissions and on 17<sup>th</sup> April 2019, the trial Court entered Judgment in favour of the Defendants (Respondents) plus costs and stated as follows;

*“I have carefully considered the evidence on record, parties’ submissions and authorities. And I make a finding that the Plaintiff has failed to demonstrate that the documents he seeks to rely on for ownership of the suit property are lacking in credibility due to the alterations and failure to be signed by the authorized signatories. Against the 1<sup>st</sup> Defendant full documentations. I make a finding that the 1<sup>st</sup> defendant has shown good title for lack of proof of fraud by the Plaintiff. In the circumstances I dismiss the Plaintiff’s suit with costs to the Defendants.*

The Appellant was aggrieved by the above determination of the Court and Decree thereon and he has sought to challenge the said Judgment through the Memorandum of Appeal filed on 17<sup>th</sup> May 2019. The Appellant sought for orders that;

- a) *The Appeal be allowed.*
- b) *The Judgment in favour of the Respondents be set aside.*
- c) *The order made by the learned Magistrate in the subordinate Court as to Interest and costs be set aside.*
- d) *The Appellant be awarded the costs of this Appeal and in the subordinate Court.*

The grounds upon which the Appellant sought for the Appeal to be allowed are;

1. *That the learned Magistrate erred in Law and in fact in finding the Appellant’s case unmeritorious and dismissing the same with costs*
2. *The Learned Magistrate erred in finding that the Appellant failed to demonstrate that the documents he sought to rely on for ownership of the suit property were lacking in credibility due to the alteration and failure to be signed by the authorized signatories.*
3. *The Learned Magistrate erred in Law and in fact in finding from the Respondents when there was clear indication that the Appellant was a shareholder of the 2<sup>nd</sup> Respondent and that the 2<sup>nd</sup> Respondent’s register had been altered from which the 2<sup>nd</sup> Respondent did not tender any explanation before the Court.*
4. *The Learned Magistrate erred in Law and in fact in finding in favour of the 1<sup>st</sup> Respondent whereas no explanation was given by the Respondents as to why the 1<sup>st</sup> (1<sup>st</sup> Respondent’s) name was missing from the register as well as that of Evans Mwangi who sold suit property to 1<sup>st</sup> Defendant.*
5. *That the Learned Magistrate erred in law by failing to have due regard and take into account the various issues raised in the pleadings, witness statements and evidence produced by the Appellant.*
6. *The Learned Magistrate erred in fact by failing to take into account and to consider the evidence adduced on behalf of the Appellants.*
7. *The Learned Magistrate failed to appreciate the submissions of the Learned Counsel for the Appellant by finding in favour of the Respondents herein and more so failing to uphold evidence that the Appellant had bought an already existing land that had been balloted, described, demarcated and known and not a share.*
8. *The Learned Magistrate erred in Law and in Fact by finding that the Plaintiff had failed to prove his claim against the 2<sup>nd</sup> Defendant and proceeded to award costs to both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants rather than the 2<sup>nd</sup> Defendant only.*
9. *The Learned Magistrate erred in Law and in fact by finding in favour of the Respondents despite finding that the Respondents were evasive with the truth as to the history of the land.*
10. *The Learned Magistrate erred in Law and in fact by finding in favor of the Respondents whereas there was no evidence that the 1<sup>st</sup> Defendant had bought the suit property from one Evans Mwangi as well as the purchase by Evans Mwangi from Gicharu Njoroge who as per the evidence adduced was still holding share certificate 1017.*
11. *The Learned Magistrate erred in Law and in fact in finding against the Appellant whereas there was no evidence that the purported share certificate No. 1017 held by one Gicharu Kimani as per the 2<sup>nd</sup> Respondents register and that this share certificate should be owned by the 1<sup>st</sup> Defendant.*
12. *The Learned Magistrate erred in Law and in fact in dismissing the Appellants suit despite there being contradiction evidence on record by DW2 on ownership of the suit property and particulars of the share certificate as appearing on the 2<sup>nd</sup> Respondent’s register.*

**13. That in all the circumstances of the case, the Learned Magistrate failed to do justice before her based on the pleadings and the findings of the Learned Magistrate are insupportable in law or on the basis of the evidence adduced.**

The Appeal was canvassed by way of written submissions and the Appellant through the Law Firm of **Kiarie Joshua & Company Advocates** filed his written submissions on **6<sup>th</sup> July 2020**, and submitted that from the evidence adduced, the trial Court failed to Consider his evidence and misapplied it against the law. It was submitted that the root of the 1<sup>st</sup> Respondent's title was questionable, yet the Court ruled he was the bonafide owner. That the 1<sup>st</sup> Respondent could not have bought land from a non-existent person. That the trial Court placed the burden on the Appellant to prove his documents were lacking in credibility. That the Appellant's name as well as the person he bought the property from were in the register.

It was further submitted that **DW2** was in a position to confirm who owned the share certificate, and who was the legal proprietor, yet he did not adduce any documents to confirm his allegations.

The 1<sup>st</sup> Respondent through the **Law Firm of Waithira Mwangi & Co Advocates** filed his written submissions dated **4<sup>th</sup> June 2020**, and submitted the Appellant did not offer any credible evidence in the lower Court to necessitate a finding in his favour. He relied on the case of **Gabriel S.Chepkwony ...Vs.... Gidion Nzioki Mbili & Another (2018)eKLR**.

That the Appellant's evidence has negated averments. That the documentary evidence he tendered and relied on offered little support to his claim as the authenticity of the documents were doubted and the alleged source disowned them. The Court was urged to dismiss the Appeal.

The 2<sup>nd</sup> Respondent through the **Law Firm of Mwihia & Mutai Advocates**, filed its written submissions on **2<sup>nd</sup> September 2020**, and submitted that the Appellant has not taken a Decree, hence the Appeal is fatally defective. That the Appellant admitted that he had no ballot and no abstract was shown of loss. That the sale agreement was not signed by the Appellant. That share certificate is mere proof of ownership and a ballot paper is the sole genuine genesis proof of ownership. The court was urged to dismiss the Appeal.

The Court has carefully read and considered the written submissions, the Memorandum of Appeal and the relevant provisions of law and renders itself as follows;

The Court has also carefully considered the findings of the trial court, the rival written submissions by the Counsels and finds as follows:-

In making a determination of this Appeal, the Court recognizes that it neither saw nor heard the witnesses, and must therefore give allowance to that.

As this is a first appeal, it is the Court's duty to analyze and re-assess the evidence on record and reach its own independent decision in the matter as provided by **Section 78 of the Civil Procedure Act**. See the case of **Selle ....Vs... Associated Motor Boat Co. [1968] EA 123** where the Court held that;

***“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif vs. Ali Mohamed Sholan(1955), 22 E. A. C. A. 270).***

Further as the Court determines this Appeal, it takes into account that it will only interfere with the discretion of the trial Court where it is shown that the said discretion was exercised contrary to the law or that the trial Magistrate misapprehended the applicable law and failed to take into account a relevant factor or took into account an irrelevant factor or that on the facts and law as known, the decision is plainly wrong. See the case of **Mbogo vs Shah (1968) EA at Page 93** where the Court held that:-

***“I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior Court unless it is satisfied that its decision is clearly wrong because it has misdirected itself or because it has acted on matters on which it should not have acted on because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”***

In its submissions, the 2<sup>nd</sup> Respondent has submitted that the instant Appeal is fatally defective as the Appellant did not take out a Decree. It is not in doubt that the Appellant has attached a Decree to the Record of Appeal. However, the Court finds that a **Decree** is just but a manifestation of the pronouncement of the Judgment. It is the Court's further holding that cases that tend to lean against allowing dismissal were decided before the enactment of **Sections 1A and 1B of the Civil Procedure Act and Article 159 (2) (d) of the Constitution of Kenya, 2010**, which enactments require Courts to administer justice **“without undue regard to procedural technicalities,”**. See the case of **Monicah Nyawira Wahome ...Vs... Veronica Wambui [2016] eKLR** where the Court held that;

***Therefore, on the first issue of whether the application as presented without an extract order or decree is fatally defective, the case of Stephen Boro Gittha Vs Family Finance Building Society & 3 Others Civil Appeal Nairobi 263/2009 is relevant. In that case, the Court held that:-***

***“The overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with and whatever is***

*in conflicts with it must give way. A new dawn has broken forth and we are challenged to reshape the legal landscape to satisfy the needs of our time. The Court must warn the litigants and counsel that the Courts are now on the driving seat of justice and the Courts have a new call to use the overriding objective to remove all the cobwebs hitherto experimented in the civil process and to weed out as far as is practicable the scourge of the civil process starting with unacceptable levels of delay and cost in order to achieve resolution of disputes in a just, fair and expeditious manner. If the often talked of backlog of cases is littered with similar matters, the challenge to the Courts is to use the new broom” of overriding objective to bring cases to finality, by declining to hear unnecessary interlocutory application and instead to adjudicate on the principle issues in a full hearing if possible.*

*In this case, the plaintiff’s counsel did annex copy of the judgment which is sought to be reviewed. The extraction of a decree or order sought to be reviewed no doubt stems from the judgment and is a purely procedural omission which should not be used to impede access to justice. Furthermore, Section 99 of the Civil Procedure Act gives latitude to this Court to amend judgments, decree or orders. It states Clerical or arithmetical mistakes in judgments, decree or orders or errors rising therein from any accidental slip or omission, may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”*

*Therefore, failure to extract decree in this case is not fatal to an application for review. I am not persuaded by the cases cited by the Defendant, which cases were decided before the enactment of Sections 1A and 1B of the Civil Procedure Act and Article 159 (2) (d) of the Constitution of Kenya, 2010, which enactments require the Courts to administer justice “without undue regard to procedural technicalities,” and especially, where in the omission like the one in the instant case is not demonstrated to occasion any prejudice or injustice to the defendant, and which prejudice cannot be adequately compensated by an award of costs.”*

With the above mind, the Court finds that the Appeal before this Court is properly before it, and therefore will overlook the procedural technicalities.

The Court will then decide whether the Appeal is merited. The Appellant has laid various grounds of appeal amongst them faulting the trial Court for failing to take into account various issues, failing to find that the Appellant was a shareholder and making a finding that the Appellant has failed to prove his case.

In his statement of claim, the Appellant had laid claim to the suit property. It was his contention that he had bought the suit property from one **Kimani Kangethe**, and they entered into a Sale Agreement. He contended that the 1<sup>st</sup> Respondent entered into the suit property without his permission and he was thus seeking for eviction of the 1<sup>st</sup> Respondent from the suit property.

On the other hand, the 1<sup>st</sup> Respondent denied the claims that he was wrongfully on the suit property and testified that he bought the suit property from **Evans Kanyoki** and thus he acquired a good title. His contention was further supported by the 2<sup>nd</sup> Respondent, who averred that according to their register, the 1<sup>st</sup> Respondent was the owner of the suit property. The 2<sup>nd</sup> Respondent through DW2 also testified and denied that all the documentations held by the Appellant emanated from it. It was therefore the Respondents’ contention that the documents held by the Appellant were a forgery.

The Court made its determination and held that the Appellant had failed to prove his case and allowed the suit in favour of the 1<sup>st</sup> Respondent with costs.

The Appellant being aggrieved has appealed to this Court. The Court having carefully evaluated the evidence in the subordinate Court finds that it is not in doubt that the 1<sup>st</sup> Respondent holds a title to the suit property. The Appellant called into question the title held by the 1<sup>st</sup> Respondent and it then became imperative for the 1<sup>st</sup> Respondent to prove the root of his title. See the case of **Munyu Maina...Vs.. Hiram Gathiha Maina [2013] eKLR**, held as follows:

*“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”*

**To be able therefore to determine whether this Appeal is merited, it is the Court’s considered view that it will evaluate who between the Appellant and the 1<sup>st</sup> Respondent had satisfactorily proved their root of title.**

*The Appellant also was to prove the root of his title. The trial Court in its Judgment held that the Appellant had failed to prove his case based on the fact that the documents he sought to rely on for ownership of the suit property are lacking in credibility due to the alterations and failure to be signed by the authorized signatories. The Appellant herein has not satisfied the Court why the documents that he produced in Court had either not been signed or had alterations that could not be explained. The Court has gone through the Appellant’s documents produced in evidence and notes that he had produced a Share Certificate in his name. However, he has failed to produce a share certificate in the name of the person who sold the suit property to him. It is not in doubt that two persons cannot have the same number of Share Certificate as the same are issued on different times and upon transfer, a new share Certificate is issued to the vendor, which the Appellant has failed to prove.*

Further the Court also notes that the said Share Certificate has alterations that have not been countersigned and the same has not been properly executed. Based on the documentations produced in evidence and the evidence from **DW2**, that there are no records from their offices that show that the Appellant was the owner of the suit property, the Court finds and holds that the Appellant did not show the root of his title

The Appellant being the Plaintiff had the onus of proving his case on the required standard of balance of probability. The Plaintiff sought to rely on documents that had alterations and not properly executed, without any justifiable reason, and therefore, the appellant failed to prove his case on the required standard at the trial court.

The 1<sup>st</sup> Respondent testified that he bought the suit property from one Evans Kanyoki. It was the evidence of DW2 who represented the 2<sup>nd</sup> Respondent that for one to be a shareholder, the person must have a share certificate and a ballot as a share certificate is only indicative of membership and not ownership of land. Further that the names of the shareholders are entered into the register. DW1, the 1<sup>st</sup> Respondent herein produced in evidence a share certificate that he had gotten from the said Evans Kanyoki. He further produced a share Certificate in his name evidencing that he is the owner of Plot 176, and further produced receipts for payment. Further DW2 who was the Chairman of the 2<sup>nd</sup> Respondent Company which was the initial owner of the suit property also testified that as per their records, the 1<sup>st</sup> Respondent was the owner of the suit property and that his name is in the register. The Court is thus satisfied that the 1<sup>st</sup> Respondent was able to show how he acquired proprietorship of the suit property and therefore has shown the root of his title. As the 1<sup>st</sup> Respondent was able to show the root of his title, the Court is thus satisfied that he holds a valid title and there is no basis upon which to impugn his title since it was procedurally acquired.

Having now carefully re-evaluated and re-assessed the available evidence before the trial Court and the Memorandum of Appeal together with the written submissions, the Court finds that the trial Magistrate did **not err** and arrived at a proper determination.

The upshot of the foregoing is that the Appellant's Appeal herein is **not merited** and consequently the said **Appeal is dismissed** with costs to the Respondents and the **Judgment and Decree of the trial Court is hereby upheld.**

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THIS 4TH DAY OF JUNE 2021.**

**L. GACHERU**

**JUDGE**

**4/6/2021**

**Court Assistant – Lucy**

**ORDER**

In view of the declaration of measures restricting Court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

**With Consent of and virtual appearance via video conference – Microsoft Teams Platform**

**No appearance for the Appellant**

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

**Mr. Mboha for the 2<sup>nd</sup> Respondent**

**L. GACHERU**

**JUDGE**

**4/6/2021**