Kamau v Mary (Civil Appeal 165 of 2023) [2025] KEHC 9497 (KLR) (3 July 2025) (Judgment)

Neutral citation: [2025] KEHC 9497 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL 165 OF 2023

BK NJOROGE, J

JULY 3, 2025

BETWEEN

NAOMI WANJIRU KAMAU ..... APPELLANT

AND

JOSEPH CHEGE MARY ..... RESPONDENT

(Being an appeal from the judgment of the Small Claims Court at Thika (Hon. O.J. Muthoni, Adjudicator/Resident Magistrate) delivered on 25th May 2023 in Thika Small Claims Court Case No. SCC COMM E029 of 2023)

JUDGMENT

1. This judgment arises from the decision rendered by the Small Claims Court on 25th May 2023, by Hon. O.J. Muthoni, Adjudicator/Resident Magistrate, in Thika Small Claims Court Case SCC COMM NO. E029 of 2023.

Background Facts

2. The Appellant was the Respondent and the Landlord in the Small Claims Court while the Respondent was the original Claimant and the Tenant.

3. The Small Claims Court entered judgment in favour of the Claimant as against the Respondent in the following terms:

    a. Kshs.329,500/=.

    b. Costs.

    c. Interest on [a] and [b] above, at Court rates, from the date of this judgment until payment in full.

4. The Appellant, by way of a Memorandum of Appeal dated 21st June 2023, seeks the following reliefs from this Honourable Court:

    a. That the Appeal be allowed.

    b. The Appellant be awarded costs both on Appeal and in Small Claims Court.

5. The grounds of appeal, as set out in the Memorandum of Appeal dated 21st June 2023, are as follows;

    a. The learned Magistrate erred in law by failing to consider the principles of contract law, particularly that parties are bound by the terms of contract the terms of contract thereby arriving at an erroneous decision.

    b. The learned Magistrate erred in law by misinterpreting the terms of the contract between the Appellant and the Respondent thereby arriving at an erroneous decision.

    c. The learned Magistrate erred in law by failing to appreciate and/or analyse the evidence before here thus arriving at a wrong decision.

    d. The learned Magistrate erred in law by shifting the burden of proof upon the Appellant to prove the attempts made to reach the Respondent to collect his belongings, whereas the burden of proof that the Appellant was wrongfully withholding the Respondent's belongings solely laid upon the Respondent, thereby arriving at a wrong decision.

    e. The learned magistrate erred in law by putting into consideration irrelevant matters, and failing to identify the dispute between the parties thereby arriving at a wrong decision.

    f. The Judgement of the learned Magistrate is a miscarriage of justice.

6. In the Statement of Claim dated 14th November 2022, the Claimant avers that he intended to lease certain premises for monthly rental. Upon undertaking renovations on the said premises, the Respondent denied him access and instead leased the space to another party.

7. The Claimant asserts that Ms. Naomi Wanjiru Kamau had expressed her intention to lease the space to him, and he proceeded with renovations on that basis. However, the Respondent subsequently took possession of the renovated premises without refunding the renovation costs, which amounted to Kshs.384,500/=. The Claimant contends that the Respondent should be compelled to refund the renovation costs, having denied him the opportunity to use the premises for his intended purpose.

8. In the Response to the Statement of Claim dated 24th January 2023, the Respondent replied to the Claimant's Statement of Claim dated 14th November 2022 as follows:

    a. The Respondent doesn't owe the Claimant any money.

    b. The Respondent rented out the premises to the Claimant. That in March, 2020 when Covid struck, the Claimant left the premises. The Respondent called the Claimant at around June 2020 asking of his whereabouts who then informed the Respondent that he undertook to be back to business but failed to do so. up,

    c. Further, the Claimant was summoned by the area chief in August, 2020 but failed to turn prompting the respondent to accommodate a new tenant in around September 2020 who only worked for less than 6 months but also left.

    d. The place is vacant to date and it is the Claimant who deserted.

e. That the Claimant had refused and/or failed to be back, only for the Respondent to receive Notice of the Claim.

f. That the alleged renovation costs are exaggerated and it is not provided anywhere in the agreement that the claimant would be refunded as alleged or at all.

9. The Respondent avers that in January 2020, she and the Claimant entered into a tenancy agreement whereby she agreed to lease one room to the Claimant for the purpose of operating a business. The agreed monthly rent was Kshs.6,500, with a requirement that the Claimant pays a six-month rent deposit. The Claimant, however, requested to initially pay a deposit equivalent to two months' rent, amounting to Kshs.13,000, with the assurance that the balance would be paid at a later date. Additionally, the Claimant sought permission to make alterations to the premises to suit his business needs, at his own cost, which the Respondent permitted.

10. In March 2020, following the outbreak of the COVID-19 pandemic, businesses were compelled to cease operations, and the Claimant shut down his butchery business. The Claimant vacated the premises without notifying the Respondent; however, his equipment and tools of trade remained on the premises. Around July 2020, the Respondent contacted the Claimant to inform him that business operations had resumed and invited him to return and continue with his business.

11. The Respondent further avers that the Claimant initially indicated he would return to the premises but failed to do so. Despite multiple attempts to contact the Claimant via telephone, he did not respond. Due to the continued presence of the Claimant's belongings on the premises and his apparent refusal to collect them, the Respondent reported the matter to the Assistant Chief of Weitethie Ward, Juja Sub-County. In the Respondent's presence, the Assistant Chief contacted the Claimant, who answered the call and expressed a preference for a face-to-face meeting, promising to attend the following day. However, the Claimant failed to appear as promised. The Respondent made three further visits to the Assistant Chief's office to follow up, but was informed that the Claimant had not presented himself.

12. Subsequently, the Respondent, accompanied by the Assistant Chief and a village elder, removed the Claimant's belongings from the leased room and relocated them to another room within the premises. To date, the Claimant's items remain on the Respondent's property, occupying additional space. The Respondent contends that the Claimant has willfully refused or neglected to retrieve his belongings, allegedly for fear of being required to settle outstanding rent arrears. The Respondent believes that the present suit is a veiled attempt by the Claimant to recover his belongings while avoiding payment of the said arrears.

13. Moreover, the Respondent asserts that the amount claimed includes costs for the Claimant's tools of trade and other personal items, which he has deliberately declined to collect. The Respondent further states, without prejudice, that such tools of trade were not part of the tenancy agreement and thus do not form a legitimate basis for the present claim. The Respondent denies any contractual or legal obligation to compensate the Claimant for the amount claimed and urges that the claim be dismissed with costs.

14. Pursuant to the directions of this Court, the Appeal was disposed of by way of written submissions duly filed by both parties.

Appellant's Submissions

15. The Court has considered the Appellant's written submissions dated 31st July 2024.

16. In the submissions, the Appellant contends that, as this is a first appeal, the Court is vested with the duty to re-evaluate the entirety of the evidence presented before the Trial Court, subjecting it to fresh and exhaustive scrutiny, and drawing its own conclusions therefrom—while bearing in mind that it did not have the benefit of seeing and hearing the witnesses firsthand. In support of this position, the Appellant cited the case of Mursal & Another v Manese [suing as the legal administrator of Dalphine Kanini Manesa] [2022] KEHC 282 [KLR], Civil Appeal No. E20 of 2021, delivered on 6th April 2022.

17. The Appellant further submitted that parties to a contract are bound by the express terms therein, and it is not the Court's role to rewrite or amend the contract by including terms it considers ought to have been incorporated. In the present case, the Appellant leased a shop to the Respondent pursuant to a tenancy agreement dated 13th January 2020, under which the Appellant permitted the Respondent to renovate the premises. The Respondent carried out renovations but was unable to utilize the shop due to the COVID-19 pandemic. Notably, the agreement contained no provision for the refund of renovation costs in the event the Respondent was unable to occupy the premises.

18. Accordingly, the judgment ordering the Appellant to refund the renovation costs effectively enforces a term not agreed upon by the parties, amounting to a rewriting of the contract by the learned Magistrate. The Appellant relied on the authority of National Bank of Kenya Ltd v Pipeplastic Samkolit [K] Ltd & Another [2000] eKLR, which emphasizes that Courts must uphold the contractual terms as agreed. Furthermore, the Respondent has not alleged any coercion, fraud, or undue influence in relation to the execution of the agreement.

19. On the issue of the burden of proof, the Appellant submitted that the burden lies on the party who would fail if no evidence is adduced by either side, pursuant to Section 107[1] of the *Evidence Act*, Cap 80, Laws of Kenya, and as explained in Halsbury's Laws of England, 4th Edition, Volume 17, paragraph *13*.

20. The Appellant further contended that the Trial Magistrate erred in law by shifting the burden of proof onto the Appellant to demonstrate efforts made to contact the Respondent regarding retrieval of his belongings. The correct position, the Appellant argued, was that the Respondent, who alleged wrongful withholding of his property, bore the burden of proof to establish this claim on a balance of probabilities. The Respondent failed to provide evidence of any attempts to recover his belongings from the Appellant. Reliance was placed on the decision in Evans Nyakwana v Cleophas Bwana Ongaro [2015] eKLR, to support the principle that the burden of proof rests on the party making the allegation.

21. The Appellant further explained that the tenancy agreement was frustrated by the COVID-19 pandemic. She made several attempts to contact the Respondent to collect his belongings, including involving the Assistant Chief to assist in tracing him, but all efforts proved unsuccessful. Consequently, the Appellant rented the shop to another tenant, as she could no longer wait indefinitely for the Respondent whose whereabouts were unknown.

22. In light of the foregoing, the Appellant respectfully urged this Honourable Court to uphold her submissions by allowing the appeal, setting aside the judgment of the Small Claims Court, and awarding costs to the Appellant both in this appeal and in the Small Claims Court.

Respondent's Submissions

23. The Court has considered the Respondent's submissions dated 20th August 2024.

24. On the issue of whether the Court considered the principles of contract, the Respondent submitted that the Court duly applied these principles by relying on the evidence on record to reach its final

decision. The Respondent referenced the case of County Government of Migori v Hope Self Help Group [2020] eKLR and Ahmed Mohammed Noor v Abdi Aziz Osman [2019] eKLR, which reaffirm that the role of an Appellate Court is settled in Selle & Another v Associated Motor Boat Co. Ltd [1968] EA 123.

25. The Appellate Court is duty-bound to revisit the evidence on record, evaluate it, and reach its own conclusions. However, it must not interfere with findings of fact made by the Trial Court unless such findings were based on no evidence, or resulted from a misapprehension of the law or demonstrably incorrect principles. This position was further upheld in Mwanasokoni v Kenya Bus Service Ltd [1982-88] KAR 278 and Kiruga v Kiruga & Another [1988] KLR 348.

26. The Respondent submitted that the Claimant pleaded for the sum of Kshs.384,500 and produced receipts totaling Kshs.329,500. Although some petty cash vouchers were also submitted, the Court declined to admit them as evidence due to lack of proof of payment. The Court, having considered the evidence on record, awarded the Respondent the sum of Kshs.329,500 to be paid by the Appellant. There was sufficient proof that the Appellant owed the Respondent this amount, as evidenced by the admitted receipts totaling Kshs.329,500.

27. The Respondent submitted that parties to a contract are bound by the express terms of that contract, and it is not the duty of the Court to rewrite or introduce terms it considers ought to have been included. The Respondent further asserted that the Trial Court did not rewrite the contract but based its decision on the evidence presented by both parties, as reflected in the judgment dated 25th May 2023. Regarding the issue of the burden of proof, the Respondent submitted that it is a well-established principle of law that the party making a claim bears the burden of proving it. The Respondent contended that the Appellant bore the burden to prove the efforts made to contact the Respondent to collect his belongings. The Trial Magistrate was therefore correct in holding as such and did not improperly shift the burden of proof to the Appellant. In support of this position, reliance was placed on Alice Wanjiru Ruhiu v Messiac Assembly of Yahweh [2021] eKLR, which in turn cited Muriungi Kanoru Jeremiah v Stephen Ungu M'mwarabua [2015] eKLR

28. On the issue of whether the judgment of the learned Magistrate amounts to a miscarriage of justice, the Respondent submitted that no such miscarriage occurred. The learned Magistrate carefully considered the evidence on record before reaching her decision. Further, the Respondent emphasized that he provided all necessary evidence in court to substantiate his claims, whereas the Appellant failed to prove her case. It is therefore in the interest of justice that this appeal be dismissed with costs awarded to the Respondent.

29. In conclusion, the Respondent submitted that the Appellant has not established a prima facie case warranting the relief sought in this appeal. Accordingly, the Respondent respectfully requests this Honourable Court to dismiss the appeal with costs.

Analysis

30. Section 38 of the *Small Claims Court Act* provides as follows:

    1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;

    2. An appeal from any decision or order referred to in sub section [1] shall be final.

31. It therefore follows that appeals from the Small Claims Court to this Court may only be brought on points of law. Consequently, this Court lacks jurisdiction to interfere with the factual findings made

by the Trial Court in such appeals. The role of this Court in handling such matters is thus akin to that of the Court of Appeal when exercising its jurisdiction as a second Appellate #Court.

32. In the case of Mwita v Woodventure [K] Limited & another [Civil Appeal 58 of 2017] [2022] KECA 628 [KLR] [8 July 2022] [Judgment], the Court of Appeal stated: -

> " This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of Stanley N. Muriithi & Another v Bernard Munene Ithiga [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse."

33. Similarly, in Kenya Breweries Ltd v Godfrey Odoyo [2010] KECA 498 [KLR] in which it was held that:

> " In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse."

34. The Court has duly considered the Memorandum of Appeal, the #Record of Appeal, and the submissions filed by the parties. In light of the foregoing legal principles, it is evident that this Court's jurisdiction in the present appeal is limited strictly to issues of law as raised in the Memorandum of Appeal. The factual findings of the Trial Court must be upheld unless it is demonstrated, through the record, that such findings were so unreasonable that no reasonable Court or Tribunal properly directing itself could have reached the same conclusions.

Issues for determination

35. Bearing in mind that this Court's mandate is to address only legal issues—including factual determinations by the trial court where such findings are perverse or irrational—it is this Court's finding that the two issues of law for determination are as follows:

    i. Whether the Learned Adjudicator applied the correct legal principles in interpreting whether the tenancy agreement was validly terminated, and if so, by which party the termination was effected.

    ii. Whether the Learned Adjudicator correctly applied the relevant legal principles in ordering the Appellant to reimburse the Respondent for the renovation works carried out on the rental premises.

i. Whether the Learned Adjudicator applied the correct legal principles in interpreting whether the tenancy agreement was validly terminated, and if so, by which party the termination was effected.

36. The tenancy agreement dated 13th January 2020 between Naomi Wanjiru Kamau [the Landlady] and Joseph Chege Mary [the Tenant] constitutes a legally binding contract. This agreement meets all the essential elements required for a valid contract under the law. Firstly, the agreement includes an offer —specifically, the offer of tenancy in exchange for rent. This offer was accepted by the tenant, Joseph Chege Mary, thereby establishing mutual consent. Secondly, the element of consideration is clearly present in the form of rent payments and a security deposit, which the tenant agreed to pay in return

for the right to occupy the premises. Furthermore, the intention to create legal relations is evident from the formal nature of the document. The agreement is clearly worded, outlines the obligations of both parties, and was executed in writing. It was duly signed by both the landlady and the tenant and witnessed by two individuals. These formalities not only reflect the parties' serious intention to be legally bound but also enhance the agreement's enforceability under the law.

37. The tenancy agreement anticipates a scenario in which the tenant may, at some point, discontinue renting the premises. While the document employs the phrase "ceases to rent," it does not provide a precise definition or a structured framework for determining what exactly constitutes cessation. As a result, the interpretation of this term must be informed by the conduct of the parties, the surrounding circumstances, or any mutual understanding that may have developed between them over the course of the tenancy. Importantly, "ceasing to rent" should not be interpreted unilaterally. Any conclusion regarding whether the tenant has ceased to rent must be based on objective indicators and shared intentions, rather than on the sole assertion of one party. Despite this ambiguity, the agreement clearly outlines the tenant's responsibilities in the event of termination of the tenancy. These include an obligation to return the premises to its original condition by removing certain modifications made during occupancy. Specifically, the agreement requires the tenant to leave the room intact, which includes dismantling certain alterations such as a metallic structure and mirrors, and restoring the wall to its former state. Although these obligations are clearly stated, the absence of a definition for the term "ceases to rent" leaves room for differing interpretations unless clarified through the parties' actions or mutual agreement.

38. The tenancy agreement includes a clear mechanism for termination in the event of a breach by the tenant. It explicitly provides that should the tenant fail to fulfill any of the stipulated conditions or breach any provision of the agreement; the landlady has the contractual right to terminate the tenancy. The agreement states: “We have also agreed that if he fails or breach any of the above-mentioned conditions or agreement the Landlady is entitled to end the agreement and be issued with a letter of vacating.” This clause empowers the landlady to initiate termination procedures in response to violations such as non-payment of rent or failure to adhere to the agreed terms.

39. The Tenancy created does not specify the specific ter. It is said that rent would be reviewed annual for five years. This suggests the term is for five years. The Tenancy also has a break clause. All this bring the tenancy within the provisions of the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act*, Cap. 301. Hence this is a controlled tenancy.

40. This provision aligns with the legal framework established under the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act*, Cap. 301. According to the Act, a landlord seeking to terminate a controlled tenancy or to alter, to the tenant’s detriment, any term, right, or service under the tenancy, must issue a formal notice to the tenant in the prescribed manner. The agreement’s clause mirrors this statutory requirement by acknowledging the landlady’s entitlement to issue a notice to vacate in the event of breach.

41. Accordingly, should a breach occur, the landlady’s legal recourse would involve the issuance of a proper notice to vacate. Additionally, she may pursue any rent arrears through the appropriate legal forum, namely the Business Premises Rent Tribunal. In the event of continued default, the landlady would also be within her rights to levy distress for rent in accordance with the applicable legal provisions.

42. If the landlady intends to terminate the tenancy, she must comply with the mandatory requirements set out under Section 4 of the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act*, Cap. 301. This section outlines the formal procedure for termination of a controlled tenancy, including the requirement to issue a proper notice of termination. In particular, Section 4[2] of Cap. 301 provides

that a landlord who seeks to terminate a controlled tenancy must serve the tenant with a written notice in the prescribed form. This notice must state the grounds for termination and be served not less than two months before the intended date of termination. Therefore, to lawfully seek the tenant's eviction, the landlady must demonstrate to the Business Premises Rent Tribunal that she has issued the required termination notice in compliance with Section 4[2]. Only upon satisfying the Tribunal that proper notice was served in accordance with the law can the landlady be granted an order for eviction. Failure to comply with this statutory requirement renders any attempt to terminate the tenancy or evict the tenant legally defective.

43. This requirement is grounded in the provisions of Section 4[1] and 4[2] of the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act*, Cap. 301, which state as follows:

Section 4[1]:"Notwithstanding the provisions of any other written law, the landlord shall not terminate a controlled tenancy or alter, to the detriment of the tenant, the terms or conditions in, or any right or service enjoyed by the tenant under, such a tenancy, otherwise than in accordance with the following provisions of this Act."

Section 4[2]:"A landlord who wishes to terminate a controlled tenancy or to alter, to the detriment of the tenant, any term or condition in, or any right or service enjoyed by the tenant under, such tenancy, shall give notice in that behalf to the tenant in the prescribed form."

44. While the tenancy agreement provided a mechanism for termination, it did not grant the landlady the authority to unilaterally enforce that termination through self-help measures. In particular, the landlady was not legally permitted to carry out a forceful eviction or take possession of the premises without due process. The law strictly prohibits landlords from evicting tenants or interfering with their tenancy outside the framework established by the *Landlord and Tenant [Shops, Hotels and Catering Establishments] Act*, Cap. 301 and other applicable legal provisions.

45. In the present case, the landlady's actions—specifically, renting out the premises to a third party while claiming to have made unsuccessful attempts to contact the tenant and even involving the assistant chief—constitute an unlawful eviction. Such conduct amounts to self-help and is in direct violation of the tenant's legal rights. Regardless of the landlady's reasons or frustrations in attempting to reach the tenant, she was still required to follow the lawful process, including the issuance of a proper notice under Section 4 of Cap. 301 and obtaining an eviction order from the Business Premises Rent Tribunal.

46. The Lease specifically provided for the following

> " We have also agreed that if he fails or breach any of the above mentioned conditions or agreement the Landlady is entitled to end the agreement and be issued with a letter vacating."

47. There is no evidence or proof of the Landlady issuing a letter to the Tenant, officially terminating the lease, yet this is what the parties had agreed.

ii. Whether the Learned Adjudicator correctly applied the relevant legal principles in ordering the Appellant to reimburse the Respondent for the renovation works carried out on the rental premises.

48. The Parties had an agreement on what would happen if the Tenant ceased to rent the room.

> " In addition to these changes, if he, Mr. Chege ceases to rent the said room in the future, he shall leave the room intact, i.e. without altering the changes made apart from removing the added constructed metallic meat display and mirrors on the walls.

And upon demolishing the constructed meat display, he shall rebuild/reconstruct the wall supporting it."

49. To this Court, the parties had already predetermined what would happen in the event of a fall out in terms with the tenancy. The Tenant would remove his developments and leave the rented room as it was prior to the commencement of the tenancy. There is no reference as to compensation for the developments made.

50. This is what the parties had contracted to and agreed.

51. It has been submitted by the Appellant that it is not in the business of the Court to rewrite contracts entered into and agreed upon by the parties. This Court agrees.

52. The Court of Appeal in National Bank of Kenya Ltd v Pipeplastic Samkolit [K] Ltd & another [2001] eKLRA has restated the law as follows;

> " Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge."

53. Though it may appear to the Learned Adjudicator as if the Claimant boxed himself into a corner in the Tenancy Agreement, the Court of Appeal in the decision aforesaid restated as follows;

> " As was stated by Shah JA in the case of *Fina Bank Limited v Spares & Industries Limited [Civil Appeal No 51 of 2000]* [unreported]:
>
> "It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain".

54. Having found that the Claimant did not continue with the lease due to the reasons alluded to by both sides, the Learned Adjudicator ought to have looked for the reliefs set out in the Lease agreement. If the Lease provided for the reliefs, all the Court should have done was to enforce them and give them their full effect.

55. The Lease dated 13th January, 2020 provided that the Tenant removes his developments.

56. The Court does not see any evidence provided by the Respondent that the Landlady prevented the Tenant from removing the developments and returning the premises back to its original status. This should have been the step taken prior to filing any suit in Court. The reason for this becomes clear because once the Respondent is able to remove his developments and return the premises to its original status, the lease does not anticipate any further claims.

57. The Learned Adjudicator overlooked or ignored the clear evidence in the lease or misinterpreted the law relating to Courts not interfering with the freedom to contract. The Learned Adjudicator thus arrived at an erroneous decision and this Court is entitled to interfere with the decision of the Trial Court.

58. The Court would not allow the claim for Kshs.329,500 as it runs contrary to the lease agreement.

59. As to costs, the Court notes that the Respondent did not take up his obligations to pay rent as and when due. The Appellant on the other hand did not follow the terms of the lease in issuing a termination

letter. As costs are issued at the discretion of this Court, the fair order is that let each party bear its own costs in this Appeal and in the Court below.

Determination

60. The Appeal is merited and the Court makes the following orders;

    a. The Judgement and Decree of the Learned Adjudicator dated 25th May, 2023 by Hon. O. J Muthoni [Mrs.] in [Thika] Scc.coom Case No. E029 Of 2023 Joseph Chege Mary v Naomi Wanjiru Kamau is set hereby set aside. It is substituted with a Decree dismissing the Claimant's suit. Each party is to bear his/her own cots of the suit.

61. Each party to bear her/his own cost of this Appeal.

62. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 03RD DAY OF JULY, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the Presence of

Miss Anyango for the Appellant for the Appellant.

Mr. Wanyoike for the Respondent.

Court Assistant: Mr. Luyai