



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

CIVIL CASE NO. 85 OF 2009

ANNAH NABUKWANGWA (Suing as the

Attorney of ANDREW PANI WASIKE

MUNYOLE (DONOR).....PLAINTIFF

VERSUS

PIUS JUMA MANYILILA.....1ST DEFENDANT

SAULO WANYAMA.....2ND DEFENDANT

MARTIN WAFULA OSALE.....3RD DEFENDANT

CONSOLIDATED WITH

ELC CASE NO. 84 OF 2013

MARTIN WAFULA OSALE (Suing as

Administrator of the estate of

JOSHUA OSALE MALIKA.....APPLICANT

VERSUS

ANDREW PANI WASIKE MUNYOLE.....RESPONDENT

J U D G M E N T

This Judgment is in respect to the following two consolidated suits: -

1. BUNGOMA HIGH COURT CIVIL CASE NO 85 OF 2009

2. BUNGOMA ENVIRONMENT AND LAND COURT CIVIL CASE NO 84 OF 2013

In **BUNGOMA HIGH COURT CIVIL CASE NO 85 OF 2009** and later further amended on 25th June 2008, **ANNAH NABUKWANGWA** (hereinafter the plaintiff) and suing as the holder of a power of attorney donated by **ANDREW PANI WASIKE MUNYOLE** (hereinafter the Donor) sought Judgment against **PIUS JUMA MANYILILA** and **MARTIN WAFULA OSALE** (hereinafter the 1st and 2nd defendants respectively) in the following terms:-

(a) An order of permanent injunction to restrain the defendants jointly and severally from entering the plaintiff's donor's land parcel number EAST BUKUSU/SOUTH KANDUYI/761.

(b) An order of eviction to remove the 2nd defendant, his properties, family and relatives from land parcel number EAST BUKUSU/SOUTH KANDUYI/761.

(c) Costs of the suit and interest at Court rates.

The basis of the suit against the defendants is that at all material times, the donor was the registered proprietor of the land parcel **NO EAST BUKUSU/ SOUTH KANDUYI/761** (the suit land). However, on or about the year 2006, the 1st defendant without any colour of right trespassed and started cultivating on the suit land and on or about the year 2007, the 2nd defendant also without any colour of right trespassed onto the suit land and constructed a home where he stays. In or about December 2006, the defendants without the consent of the Donor encroached onto the suit land, sub – divided it and occupied 7 acres thus necessitating this suit.

The suit is defended.

The 1st defendant filed a defence and Counter – Claim in which he denied having trespassed onto the suit land. He added that the portion he occupies was purchased in 1977. He pleaded further that there exists another case being **CHIEF MAGISTRATE’S CIVIL CASE NO 48 OF 2002**.

In his Counter – Claim, the 1st defendant pleaded that vide an agreement dated 4th August 1977, he had purchased from **WANJALA PANI** and **SAMSON WANYONYI PANI** a portion measuring 2¼ acres from the suit land which was then registered in the names of **WABWILE KHWATENGE** who was then deceased but which portion was to be transferred to the 1st defendant after succession. That the 1st defendant immediately occupied the said portion and has remained thereon for 37 years as at the time the suit was filed. That in 2002 following a vesting order issued in **BUNGOMA CHIEF MAGISTRATE’S COURT LAND DISPUTE CASE NO 48 OF 2002**, both him and the 2nd defendant were awarded 2 acres each out of the suit land which was sub – divided accordingly to give effect to that vesting order. The 1st defendant therefore sought a declaration that the plaintiff holds 2 acres out of the suit land in trust for him and that the plaintiff do effect the transfer of the said land to the 1st defendant and in default, the Executive Officer of this Court be authorized to do so.

The 2nd defendant in his defence denied having trespassed onto the suit land adding that his father purchased in 1975 4 acres out of the suit land which he now occupies and has obtained title thereto by way of adverse possession and therefore the plaintiff is not entitled to the orders sought in the plaint. He pleaded further that he had filed an Originating Summons in **BUNGOMA ENVIRONMENT AND LAND COURT CASE NO 84 OF 2013** and sought the dismissal of the plaintiff’s suit.

Indeed, in the said Originating Summons dated 28th March 2013 and which, as I have already indicated above, was consolidated with the plaintiff’s suit, the 2nd defendant sought against the Donor orders that he has acquired by adverse possession a portion measuring 4 acres out of the suit land which his father had purchased from the Donor’s uncles namely **WANJALA KHWATENGE PANI, LUBAO PANI, SAMSON PANI, SIKAUTI WANAMBUKO** and **NYONGESA WANAMBUKO** in 1975 and has peacefully and continuously lived and established a home thereon and therefore the Donor’s title to the said 4 acres had been extinguished by operation of the law.

The Originating Summons was contested and the Donor filed a replying affidavit denying that the 2nd defendant and his family have occupied the suit land for 36 years as alleged or at all. He pleaded further that there exist other cases involving the suit land being: -

1. **BUNGOMA HIGH COURT CIVIL CASE NO 45 OF 1997** and;
2. **BUNGOMA HIGH COURT CIVIL CASE NO 85 OF 2009**

He added that the 2nd defendant’s occupation of a portion of the suit land is less than 12 years and does not therefore amount to adverse possession and that the Originating Summons is full of falsehoods and the orders sought therein should not be granted.

On 12th July 2018, it was agreed by consent that the plaint in **BUNGOMA HIGH COURT CIVIL CASE NO 85 OF 2009** be the Plaint and the Originating Summons in **BUNGOMA ENVIRONMENT AND LAND COURT CASE NO 84 OF 2013** be the defence and Counter – Claim.

The hearing commenced on 28th May 2019 and the plaintiff was the only witness in support of her case. She told the Court that Donor is her son and she adopted as her evidence has statement dated 25th June 2018 and list of documents dated the same day.

In the said statement, she asserts that the Donor is the registered proprietor of the suit land since 22nd April 1993 but in 2006, the defendants encroached thereon without his consent and the 2nd defendant proceeded to construct a house in 2007 in which he lives. She urged the Court to injunct them and evict the 2nd defendant. She added further that the 2nd defendant’s claim to the suit land by adverse possession is not tenable since his occupation thereof has not been open, continuous, peaceful and un – interrupted and his claim should be dismissed.

The defendants also adopted as their evidence their respective statements filed herein together with their list of documents.

In his statement dated 17th June 2014, the 1st defendant states that on 4th August 1977, he entered into an agreement with **WANJALA PANI** and **SAMSON PANI** for the purchase of 2½ acres out of the suit land then registered in the names of **WABWILE KHWATENGE** then deceased. That he has lived on the portion which he purchased for 37 years and still lives there to-date. That following a Court order issued on 17th March 2003, he was awarded 2 acres out of the suit land and no appeal was preferred against the said award. He therefore asked the Court to authorize the plaintiff to transfer the 2 acres to him and in default, the Deputy Registrar to sign the transfer forms as per his Counter – Claim.

On his part, the 2nd defendant in his statement dated 13th June 2013 asserts that by an agreement dated 3rd November 1975, his father purchased from **SAMSON PANI KHWATENGE, LUBAO PANI KHWATENGE** and **WANJALA PANI KHWATENGE** 4 acres out of the suit land at a consideration of Kshs. 3,800/= and that he has lived thereon all his life having been born there.

The 2nd defendant also relied on his supporting affidavit in his Originating Summons. In the said supporting affidavit dated 28th March 2013, he depones, inter alia, that on 3rd November 1975 his father purchased 4 acres from the Donor's uncles out of the suit land and took immediate possession of the same and has lived there since then peacefully. He adds that he is therefore entitled to the 4 acres out of the suit land by way of adverse possession.

The defendants called as their witness **BENEDICT WANGILA (DW 3)** who similarly adopted as his evidence the witness statement dated 13th June 2013. In the said statement, he states that in 1974 the late **WABWILE KHWATENGE** directed his wife **AGNETA NAMAEMBA WABWILE** and her brother – in – law to sell part of his land in the event of his death and that the 2nd defendant bought land from the family of the late **WABWILE KHWATENGE**. He adds that he does not know how the Donor who is not a son of the late **WABWILE KHWATENGE** acquired the land.

Submissions were thereafter filed both by the firm of **A. MUMALASI ADVOCATES** for the plaintiff and **M. SITUMA ADVOCATES** for the defendants.

I have considered the evidence by all the parties as contained in their witness statements, affidavits and oral testimony, the documentary exhibits filed and the submissions by counsel.

While the plaintiff seeks to evict the defendants for being trespassers on the suit land, the defendants on their part claim that they are entitled to portions thereof by way of trust (in the case of the 1st defendant) and by way of acquisition through adverse possession (in the case of the 2nd defendant). I shall examine the parties respective claims to the suit land.

In my view, the two broad issues that I need to determine are: -

1: Whether the defendants are trespassers on the suit land and ought to be permanently enjoined from continuing to trespass thereon by being evicted.

2: Whether the plaintiff's ownership of the suit land has in fact been extinguished by the 2nd defendant's adverse possession and further, that the plaintiff in fact holds a portion of the suit land in trust for the 1st defendant.

3: Who shall meet the costs of the suit.

It is common ground that the suit land has since 2nd January 1969 been registered in the names of **WABWILE WAKHWATENGE** before it was registered in the names of the Donor on 22nd April 1993. That is clear from the Green Card and the Certificate of Search. Therefore, the Donor, acting through his Attorney the plaintiff herein, is entitled to all the rights of a registered proprietor protected by **Sections 27 and 28 of the repealed Registered Land Act** (under which the suit land was registered) to enjoy all the rights and privileges belonging or appurtenant thereto. Similar provisions are found in **Sections 24 and 25 of the new Land Registration Act 2012**. Such rights include the right to eject trespassers from the suit land.

However, both **Section 28 of the repealed law** and **Section 25 of the new Land Registration Act** recognize that the registration of a person as the proprietor of land does not relieve him of his obligation as a trustee. Similarly, **Section 30 of the repealed law** and **Section 28(h) of the new land law** recognize as among the overriding interests, the rights acquired by virtue of the law relating to limitation. Those are the claims that the defendants are pursuing. The 1st defendant is litigating for a trust in his Counter – Claim while the 2nd defendant is litigating for a claim to a portion of the suit land through adverse possession.

Prima facie therefore, whereas the Donor, as the registered proprietor of the suit land enjoys the title of absolute owner thereof and is entitled to the orders sought in his plaint, that is always subject to the overriding interests that the defendants are agitating for. I shall now examine those claims.

1ST DEFENDANTS'S CLAIM IN TRUST: -

In paragraph 19 of his Counter – Claim, the 1st defendant has pleaded as follows: -

19: "The 1st defendant's claim against the plaintiff is for a declaration that the plaintiff is holding 2 acres of land comprised in land title NO E. BUKUSU/S. KANDUYI/761 in trust for the 1st defendant."

What the 1st defendant is pleading is, in my view, a constructive trust with respect to 2 acres out of the suit land. Such a trust is a matter of fact and is an overriding interest that need not be registered but will nonetheless affect registered land.

Section 28(b) of the Land Registration Act provides that: -

"Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may

for the time being subsist and affect the same, without their being noted on the register –

(a) –

(b) *Trusts including customary trusts*”

Such trusts, like any other trusts, must however be proved because that is a question of fact. In **MUMO .V. MAKAU 2002 1 E.A 170**, the Court of Appeal held that: -

“ trust was a question of fact to be proved by evidence.”

Under **Section 107 of the Evidence Act**, the 1st defendant, as the party who has pleaded that the Donor holds a portion of the suit land in trust for him, has the burden to prove the same. However, each case shall be determined on its own peculiar circumstances but among the issues that the Court will consider is whether for instance, the land is family/ancestral land or the party alleging a trust is relying on a sale or gift, a beneficiary etc. A Court will however not imply a trust except in cases of absolute necessity. In **MBOTHU & OTHERS .V. WAITIMU & OTHERS 1980 KLR 171**, the Court of Appeal stated as follows: -

“The law never implies, the Court never presumes a trust but in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied.”

In his statement dated 17th June 2014, the 1st defendant states, as the basis of his claim in trust, that he bought a parcel measuring 2½ acres from **WABWILE KHATENGE** in 1977 and has lived there to-date. He also refers to a vesting order issued in **BUNGOMA CHIEF MAGISTRATE’S COURT LDT CASE NO 48 OF 2002** which directed that he be awarded 2 acres. These are the relevant paragraphs of his statement: -

3: “That in the year 1977 August 4th I entered into a sale agreement with WANJALA PANI and SAMSON WANYONYI PANI.”

4: “That I agreed to buy and they agreed to sale to me land measuring 2 ½ acres of land which land was registered in the name of WABWILE KHWATENGE who was deceased.”

6: “That I have been staying in the said land for 37 years and I am still staying there today.”

8: “That vide a Court order dated 17/3/2003, I was awarded 2 acres of land to be hived from land parcel NO E. BUKUSU/S. KANDUYI/761.”

9: “That there was no appeal preferred against the said ruling hence the same stands unchallenged.”

In her statement dated 25th June 2018 however, the plaintiff denies that the defendants purchased any portion of the suit land and with regard to when the defendants entered the said land, the plaintiff asserts that it was only in 2006 when the defendants encroached on a portion thereof and started using it.

From the evidence on record, it cannot be true that the 1st defendant only entered the suit land in 2006. And although the plaintiff asserts that the defendants entered the suit land without consent or any colour of rights, there is a sale agreement produced by the 1st defendant and dated 4th August 1977. The said agreement is clear that on that day, and in the presence of witnesses, the 1st defendant purchased 2¼ acres out of the suit land from **SAMSON WANYONYI** and **WANJALA PANI** at a consideration of Kshs. 2,320/= . That fact is also confirmed by the letter from the Chairman of the **BAYEMBA CLAN** dated 7th June 2014 and which is also part of the 1st defendant’s documents. In paragraph one of the said letters the Chairman addresses the Chief **MUSIKOMA LOCATION** as follows: -

“Dear Sir

RE: WABWILE WAKHWATENGE – DECEASED

The above named person was a member of our clan. He died on 9/9/1974. He left 11 acres. Before his death, he left a word and allowed the clan to sell part of his land and part of it to be given to his wife Agneta Namaemba Wabwile who also died on 25/11/1996. The clan sold Joshua Osale 4 acres on 3.11.1975. And again, sold Pius Juma Manyilila 2 ¼ acres on 4.8.1977. The other acres remained to the widow.”

Of course, when **WANJALA PANI** sold a portion of the suit land to the defendant by the agreement dated 4th August 1977, he had no capacity to do so because the suit land was then registered in the names of the original owner **WABWILE WAKHWATENGE** and it was not until 22nd April 1993 that the Donor acquired ownership of the same. That notwithstanding, the fact is that the 1st defendant took possession of the 2¼ acres out of the suit land. There is also evidence that a vesting order was issued in favour of the 1st defendant on 17th March 2003 in **BUNGOMA CHIEF MAGISTRATE’S COURT LDT CASE NO 48 OF 2002**. This Court is not convinced, as the plaintiff would like it to believe, that the 1st defendant purchased the 2¼ acres out of the suit land in 1977 and, for some inexplicable reasons, stayed away from it until 2006. In doing so, I take Judicial notice of the fact that the land in dispute, from the photographs I have seen

annexed to the 2nd defendant's Notice of Motion dated 26th September 2017, is in a rural area. This Court finds as proved, that the 1st defendant, albeit by virtue of a contract of sale that was not enforceable, purchased 2 ¼ acres out of the suit land and took possession thereof. That is why in 2002 he moved the **CHIEF MAGISTRATE'S COURT BUNGOMA** to obtain a vesting order so that full legal title could be vested in him.

Although **WANJALA PANI** and **SAMSON WANYONYI PANI** had no capacity to sale a portion of the suit land to the 1st defendant, he took possession of the 2¼ acres in 1977 and remains on it to-date. The 1st defendant is, in my view, entitled to make a claim to that portion of the suit land by virtue of a constructive trust which is really an equitable remedy meant to guard against unjust enrichment. In this case, the Donor's uncles had already sold 2¼ acres out of the suit land to the 1st defendant who took possession and therefore, even as he registered himself as the proprietor of the suit land in 1993, the Donor remained a trustee. He ought to have recognized the rights of the 1st defendant even as he had the whole suit land registered in his names. It was wrong on his part to trash the 1st defendant's interest in a portion of the suit land in the face of the sale agreement recognized even by the Chairman of his clan and acquire ownership of the whole suit land solely in his names. As the Court of Appeal held in **TWALIB HATAYAN TWALIB HATAYAN & ANOR .V. SAID SAGGAR AHMED AL – HEIDY & OTHERS 2015 eKLR**.

“A constructive trust is an equitable remedy imposed by the Court against one who has acquired property by wrong doing”

The Court went on to add that: -

“Imposition of a constructive trust is thus meant to guard against unjust enrichment.”

Similarly, in **HUSSEY .V. PALMER 1972 3 ALL E.R 744**, the Court defined a constructive trust as one imposed by law whenever justice and good conscience require it. In the circumstances of this case, I am satisfied that whereas the Donor retains the ownership of the suit land by virtue of being the registered owner, the 1st defendant, by virtue of a constructive trust, is entitled to a declaration that he be registered as the owner of 2 acres out of the suit land which is the portion that he has claimed in paragraph 19 of his Counter – Claim.

2ND DEFENDANT'S CLAIM IN ADVERSE POSSESSION: -

In his Originating Summons dated 28th March 2013, the 2nd defendant sought a determination of various questions including whether the Donor is the absolute proprietor of the suit land, whether the 2nd defendant's father bought 4 acres out on the suit land from the Donor's uncles and has lived peacefully and continuously on the said parcel since 1975 and whether therefore the 2nd defendant is entitled to the said 4 acres by way of adverse possession the Donor's interest therein having been extinguished by operation of the law.

That the Donor is the registered proprietor of the suit land is not in dispute. The Green Card shows that he became the registered proprietor of the suit land on 22nd April 1993.

The 2nd defendant has pleaded however that his father purchased 4 acres out of the suit land from the Donor's uncles on 3rd November 1975. He has produced as part of his documentary evidence the sale agreement and added that his late father took possession of the 4 acres in 1975 where the 2nd defendant has lived peacefully for the last 36 years. That the 2nd defendant is in possession and occupation of 4 acres of the suit land is not really in dispute and that indeed is why the plaintiff seeks for an order of his eviction together with his properties and family. Again, as he did with the 1st defendant, the Donor's case is that the 2nd defendant entered the suit land in December 2006. I am equally not persuaded, as I did in the case of the 1st defendant, that the 2nd defendant purchased the 4 acres of land in 1975 and only moved therein in December 2006 and constructed a house. The fact that he too obtained a vesting order in 2003 pursuant to orders obtained in **BUNGOMA CHIEF MAGISTRATE'S LDT CASE NO 48 OF 2002** is clear proof that he did not enter the suit land in 2006 as alleged by the Donor.

As the registered proprietor of the suit land, the Donor is entitled to all the rights and privileges belonging or appurtenant thereto. Those rights which are protected by **Sections 27 and 28 of the repealed Registered Land Act** and **Sections 24 and 25 of the Land Registration Act 2012** include the right to eject trespassers. That is the remedy that the Donor seeks. However, both **Section 30 of the repealed law** and **Section 28(h) of the new Land Law** recognize that the said registration of the Donor as proprietor of the suit land is subject to rights acquired by virtue of the law relating to the Limitation of Actions or by prescription. That is the right that the 2nd defendant seeks to enforce with respect to the 4 acres which he and his family have occupied for the last 36 years.

Section 38 of the Limitation of Actions Act entitles a person who claims to have become entitled by way of adverse possession to land registered under any of the Acts cited in **Section 37** of the said Act or land comprised in a lease, to apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as the proprietor thereof. In **KASUVE .V. MWAANI INVESTMENT LTD & OTHERS 2004 1 KLR 184**, The Court of Appeal set out what a person claiming to be entitled to land by way of adverse possession must prove. It said: -

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner of his own volition.”

And, as was held in **SAMMY MWANGANGI & OTHERS .V. COMMISSIONER OF LANDS & OTHERS C.A CIVIL APPEAL NO 30 OF 2013 [2018 eKLR]**, such possession must also be: -

“..... actual, open peaceful, uninterrupted, notorious and exclusive for a period of at least 12 years.”

In **KIMANI RUCHINE .V. SWIFT RUTHERFORDS & CO LTD 1980 KLR 10, KNELLER J** (as he then was) held as follows: -

“The plaintiffs have to prove that they have used this land which they claim as of right nec vi, nec claim nec precario (no force no secrecy no evasion).”

In contesting the 2nd defendant’s claim to a portion of the suit land by way of adverse possession, the plaintiff has stated as follows in paragraph 8 of her statement dated 25th June 2018.

“The 2nd defendant’s claim of adverse possession is untenable as his occupation on the suit land has not been open, continuous, peaceful and uninterrupted for a period of over 12 years.”

There is evidence that the 2nd defendant’s father first took possession of 4 acres of the suit land following a sale agreement with the Donor’s uncles on 3rd November 1975. From the various copies of agreements produced by the 2nd defendant, it is clear that the purchase price of Kshs. 3,800/= was paid by the 2nd defendant’s father in instalments. The last instalment of Kshs. 850/= was paid on 23rd October 1981 as per the copy of acknowledgement slip signed by the vendors. This is also confirmed in paragraph 6 of the 2nd defendant’s witness statement dated 13th June 2013 and filed together with the defence to the plaintiff’s suit in **BUNGOMA HIGH COURT CIVIL CASE NO 85 OF 2009** where he states as follows: -

6: “That my father finished the payment on the 23.10.1981.”

He also adds in paragraph 7 thus: -

“That since I was born, all along I have known that the land is ours.”

Therefore, the 2nd defendant’s father entered the suit land with his family on 3rd November 1975 as a purchaser and completed paying the full consideration on 23rd October 1981. In **PUBLIC TRUSTEE .V. WANDURU 1984 KLR 314**, it was held that a purchaser in possession of the land purchased after having paid the purchase price is a person in whose favour the limitation period can run and the time is reckoned from the date of payment of the purchase price. Whether the time is calculated from 3rd November 1975 when the 2nd defendant’s father made the first payment or 23rd October 1981 when he made the last payment, it is clear that by the time the 2nd defendant filed his Originating Summons on 28th March 2013, the statutory limitation period of 12 years had lapsed.

There is no evidence that the Donor as the registered proprietor of the suit land had filed any suit to evict the 2nd defendant from the portion of land that he has occupied for the last 36 years having been born thereon. Further, there is no evidence to suggest that the 2nd defendant’s occupation has been interrupted or has not been peaceful until 11th November 2009 when the Donor filed this suit in the High Court. However, by then, the 2nd defendant and his family had already been in peaceful, open and un-interrupted occupation of the 4 acres purchased out of the suit land since 1975 well beyond the 12 years required in law.

The record shows that the suit land was originally registered in the names of **WABWILE WAKHWATENGE** on 2nd January 1969 before it was transferred to the Donor on 22nd April 1993.

However, as was held in **GITHU .V. NDEETE 1984 K.L.R 776**, the mere change of ownership of the land which is occupied by a party under adverse possession does not interrupt such party’s adverse possession. Further, a claim for adverse possession can be for only a portion of the land in dispute and not necessarily the whole land that is the position herein.

From the evidence on record, I am satisfied that the 2nd defendant has also proved that he is entitled to 4 acres out of the suit by way of adverse possession.

Ultimately therefore, there shall be Judgment for the defendants in the following terms: -

1. The plaintiff’s suit is dismissed.

2. Judgment is entered for the defendants as against the plaintiff as follows: -

(a) The Donor holds 2 acres out of the land parcel NO EAST BUKUSU/SOUTH KANDUYI/761 in trust for the 1st defendant.

(b) The 2nd defendant has acquired 4 acres out of the land parcel NO EAST BUKUSU/SOUTH KANDUYI/761 by way of adverse possession.

3. The Donor, through the plaintiff, shall within 30 days of this Judgment execute the necessary documents to facilitate the transfer of 2 acres out of the land parcel NO EAST BUKUSU/SOUTH KANDUYI/761 to the 1st defendant and 4 acres out of

the same parcel to the 2nd defendant.

4. In default, the Deputy Registrar of this Court shall execute the said documents on behalf of the Donor who is the registered proprietor thereof.

5. The plaintiff shall meet the Costs of the dismissed plaint and the Originating Summons and Counter – Claims.

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Boaz N. Olao.

J U D G E

23rd January 2020.

Judgment dated, delivered and signed in Open Court this 23rd day of January 2020 at Bungoma.

Mr Otsiula for Ms Mumalasi for the plaintiff present

Mr Kundu for the defendants present

Plaintiff present

1st defendant present

2nd defendant present

Joy/Okwaro - Court Assistants

Right of Appeal explained.

Boaz N. Olao.

J U D G E

23rd January 2020.