



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**CORAM: D. S. MAJANJA J.**

**CIVIL CASE NO. E417 OF 2019**

**BETWEEN**

**BEATRICE ATIENO ONYANGO.....PLAINTIFF**

**AND**

**HOUSING FINANCE COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENTS AUCTIONEERS.....2<sup>ND</sup> DEFENDANT**

**JAMES MWATHI KUNGU.....3<sup>RD</sup> DEFENDANT**

**ILEEN NJERI NDUNGU.....4<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction**

1. At the time material to this case, the Plaintiff was the registered owner of the property known as NAIROBI/BLOCK 32/584 situated in Golf Course Estate within Nairobi (“the suit property”). She charged the suit property in favour of the 1<sup>st</sup> defendant (“the Bank”) to secure a loan of Kshs. 10,200,000.00. She has filed this suit to set aside the sale of the suit property by public auction which took place on 5<sup>th</sup> November 2019 at which the 3<sup>rd</sup> and 4<sup>th</sup> Defendants emerged the highest bidders.

2. The Plaintiff filed a Notice of Motion dated 26<sup>th</sup> February 2020 seeking interlocutory injunctions restraining the Bank from interfering with of transferring the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and other orders, *inter alia*, under **Order 40** of the **Civil Procedure Rules**. The application is supported by the Plaintiff’s affidavit sworn on 26<sup>th</sup> February 2020. The Bank opposed the application through the affidavit of its Legal Officer, Joseph Lule, sworn on 30<sup>th</sup> April 2020 while the 3<sup>rd</sup> and 4<sup>th</sup> Defendants opposed the application through the affidavit of the 3<sup>rd</sup> Defendant, James Mwathi Kungu sworn on 16<sup>th</sup> March 2020.

**Plaintiff’s Case**

3. The Plaintiff’s case is set out in the Amended Plaint dated 19<sup>th</sup> February 2020 and her supporting affidavit. She admitted that she fell into arrears and when the Bank evinced its intention to sell the suit property by public auction, she requested for indulgence to seek a purchaser for the suit property. According to her, the Bank demanded that in consideration for stopping the sale, she was required to deposit Kshs. 1,000,000.00 which she did. On 16<sup>th</sup> January 2019, the Plaintiff entered into a sale agreement with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants who agreed to purchase the suit property for Kshs. 16,000,000.00. The sale collapsed in May 2019 as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were no longer interested in the suit property.

4. Thereafter the Bank instructed the 2<sup>nd</sup> Defendant (“the Auctioneer”) to sell the suit property by public auction. The Auctioneer advertised the property for sale and the auction took place on 5<sup>th</sup> November 2019. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants emerged the highest bidders.

5. The grounds upon which the Plaintiff’s seeks to set aside the sale are set out in paragraph 29 of the Amended Plaint as follows:

29. *The purported auction allegedly held on 5<sup>th</sup> November 2019 was therefore illegal, premature and void as:*

*I. There was no notice given to the plaintiff as required by law.*

*II. The 1<sup>st</sup> defendant failed to serve a Forty (40) days' notice as require(d) under section 96 of the Land Act.*

*III. That the 3<sup>rd</sup> and 4<sup>th</sup> defendants emerged the highest bidder and yet they are the same purchasers with whom the plaintiff brought and had been engaging both the 1<sup>st</sup> defendant and the plaintiff.*

*IV. The plaintiff had not undertaken a forced sale valuation as required by section 97(2) of the Land Act.*

*V. The 3<sup>rd</sup> and 4<sup>th</sup> defendants were the only bidders and at the fall of the hammer purportedly the highest bidders.*

*VI. That the property was sold at Kshs. 13,100,000.00 which was under the undervalue and under the sale of the current market price of the said suit property and thus is a clear fraud.*

6. The Plaintiff's contention is that the Bank did not validly exercise its statutory power of sale consequently the sale of the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> defendants was null and void. She sought a raft of orders including declarations voiding the sale of the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and an injunction restraining transfer of the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

### **1<sup>st</sup> and 2<sup>nd</sup> Defendants' Case**

7. Mr Lule deponed that by a letter dated 8<sup>th</sup> March 2018, the Plaintiff admitted her indebtedness and sought the Bank's indulgence to restructure the loan. He further deponed that the Bank issued statutory notice dated 22<sup>nd</sup> May 2018 under **section 90** of the **Land Act, 2012** ("the **Land Act**") informing the Plaintiff that she was in arrears of Kshs. 1,812,750.24 and a total outstanding sum of Kshs 12,118,802.38 as at 31<sup>st</sup> May 2018. He further deponed that the statutory notice was sent to the Plaintiff by an email dated 13<sup>th</sup> June 2018 and the same acknowledged by her on 22<sup>nd</sup> June 2018. He attached the notification of sale dated 7<sup>th</sup> September 2019 issued under **section 96(2)** of the **Land Act** which was sent to the Plaintiff by email on the same day. It was also served by registered post and hand delivered as evidenced by the affidavit of service of Samuel Mutahi Gathogo, a process server, sworn on 18<sup>th</sup> September 2018. The Bank also stated that the Auctioneer issued the 45-day notice under the **Auctioneers Rules** dated 22<sup>nd</sup> November 2018 which the Plaintiff acknowledged on 27<sup>th</sup> November 2018 when she was served.

8. As regards the valuation of the suit property, the Bank produced a valuation report dated 20<sup>th</sup> November 2018 prepared by Njihia Muoka Rashid Co, Ltd. The valuers assessed the market value of the suit property at Kshs. 15,000,000.00 and the forced sale value at Kshs. 11,250,000.00.

9. Mr Lule deponed that the suit property was sold to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants at the auction on 5<sup>th</sup> November 2019. The purchasers executed a memorandum of sale and paid the deposit on the bid price.

### **3<sup>rd</sup> and 4<sup>th</sup> Defendants' Case**

10. The 3<sup>rd</sup> and 4<sup>th</sup> defendants opposed the application through the affidavit of the 3<sup>rd</sup> Defendant, James Mwachu Kungu sworn on 16<sup>th</sup> March 2020. He deponed that following the auction, he and the 4<sup>th</sup> Defendant became the owners of the property. Prior to the auction, they had entered into a Sale Agreement dated 16<sup>th</sup> January 2013 with the Plaintiff. The agreed purchase price for suit property was Kshs. 16,000,000.00 payable by a deposit of Kshs. 1,600,000.00 and the balance of Kshs. 14,400,000.00 within 14 days of registration and receipt of the transfer and duly registered charge in favour of their financier.

11. Mr Kungu deponed that by a letter dated 6<sup>th</sup> September 2019, their advocates informed the Plaintiff's advocate to furnish the Capital Gains Tax (CGT) Acknowledgment Slip within 30 days otherwise they would terminate the agreement. As the Plaintiff failed to furnish the CGT slip, their advocates terminated the agreement by issuing a termination notice dated 23<sup>rd</sup> October 2019. They also demanded Kshs. 600,000.00 which had been paid to her as part of the deposit.

12. Mr Kungu further deponed that after termination of the agreement, he came across the Auctioneer's advertisement for sale of the suit property by public auction. He duly attended the auction and successfully bid for the suit property as the sale agreement with the Plaintiff had been terminated at that time. He and the 4<sup>th</sup> defendant put in a bid for Kshs. 13,100,000.00 which the Auctioneer accepted. They paid the deposit of Kshs. 3,275,000.00 being 25% of the purchase price and executed the memorandum of sale which provided that the sale would be completed in 90 days.

### **Issues for determination**

13. The parties filed written submissions in support of their respective positions. As this is an application for an interlocutory injunction, the parties agree on the applicable principles. They cited several authorities but I think the case of **Nguruman Limited v Jane Bonde Nielsen and 2 Others NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR** is apposite as the Court of Appeal reiterated the conditions for grant of an interim injunction settled **Giella v Cassman Brown [1973] EA 360** as follows:

*In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;*

*(a) establish his case only at a prima facie level,*

*(b) demonstrate irreparable injury if a temporary injunction is not granted, and*

*(c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.*

*These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See **Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86**). If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between.*

### **Whether Prima Facie Case Established**

14. Although the Plaintiff admitted that she was indebted to the Bank and that she had defaulted in making monthly payments, she complained that the property was purchased by the 3<sup>rd</sup> and 4<sup>th</sup> defendants in circumstances that implied fraud as she was engaging with them before they turned around and purchased the suit property at the auction as the only bidders.

15. The Plaintiff submitted that she was not served with the 90-day notice of default under **section 90** of the **Land Act** hence the right of the Bank to sell the suit property had not accrued. Counsel for the Plaintiff further submitted that since the Bank did not comply with **section 90** of the **Land Act**, it could not issue a 40-day notification of sale under **section 96** of the **Land Act**. The Plaintiff also relied on **rule 15** of the **Auctioneers Rules, 1997** which requires the auctioneer to issue a 45-day notification of sale prior to the public auction. Counsel for the Plaintiff submitted that the chargor must, at all times, have the right to redeem the property and in the absence of notices informing the chargor of default, it would be much easier for an unscrupulous chargee to rid the chargor of the equity of redemption.

16. Counsel submitted that the Plaintiff was denied the opportunity to redeem the property because of the failure to issue and serve her with the statutory notices as required by the law consequently the sale of the suit property lacked any legal basis. The Plaintiff relied on **Maina Wanjigi & Another v Bank of Africa Kenya Ltd & 2 others [2015] eKLR** where the court held that an unlawful process was incapable of conferring any title or proprietary right to a successful bidder.

17. The Plaintiff also relied on **section 97** of the **Land Act** to impugn the auction sale. This provision imposes on the chargee a duty of care to obtain best price reasonably obtainable at the time of sale. The Plaintiff submitted that the Bank had not undertaken a forced sale valuation of the suit property as required by **section 97(2)** as read with **section 97(3)** of the **Land Act** which prohibits the sale of the subject property below 25% of the market value. Counsel further submitted that the Bank did not conduct a forced sale valuation of the suit property and that the sale price of Kshs. 13,100,000.00 was an undervalue. Counsel cited **Minolta Limited v National Bank of Kenya Limited KJD HCCC No. 32 of 2018 [2018] eKLR** where the court held that the Kenyan Market as far as the sale of property is concerned rarely depreciates in value. In the Plaintiff's view, Kshs. 13,000,000.00 was an undervalue since the initial price agreed between her and the 3<sup>rd</sup> and 4<sup>th</sup> defendant was Kshs. 16, 000,000.00 meaning that the suit property lost value by Kshs. 3,000,000.00 in a 6-month period.

18. In answer to the Plaintiff's submissions, the Bank's case was that it served all the statutory notices in accordance with the law. It contended that the statutory power of sale had arisen and in view of the admitted indebtedness, the Bank was entitled to sell the suit property by public auction. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' position was that the sale agreement between them and the Plaintiff had collapsed and that they were entitled to bid for the suit property at the auction once it was advertised. The Defendants took a common position in regard to the legality and effect of the sale. They submitted that since the auction had taken place, the Plaintiff's equity of redemption had been extinguished, the sale could not be reversed and under **section 99** of the **Land Act**, the Plaintiff's remedy was in damages.

19. Before exercising the statutory power of sale, the Bank must issue a 90-day notice in writing under **section 90(1)** of the **Land Act**. The notice which must state the nature and extent of the default by the chargor and if the default consists of the non-payment of any money due under the charge, it must state the amount that must be paid to rectify the default and the time, being not less than three months, by the end of which the payment in default must have been completed. The notice must also state the consequence that if the default is not rectified within the time specified in the notice, the chargee will proceed to exercise any of the remedies referred to in the section, including sale of the property, in accordance with the procedures provided. The notice must also state the right of the chargor to apply to the court for relief in respect of certain remedies.

20. The 90-day notice is a prerequisite for the exercise of the chargee's remedies including the power of sale. It must be served on the chargor in order to give him or her the opportunity to remedy the breach or otherwise redeem the property as security. In **Nyagilo Ochieng & Another v Fanuel Ochieng & 2 Others [1995-1998] 2 EA 260**, the Court of Appeal held that the burden of showing that the statutory notice has been served is on the chargee. Once the chargor alleges non receipt of the statutory notice, it is for the chargee to prove that such a notice was in fact served. In this instance, the Bank has the burden of showing that it served the defendant with the notice under **section 90** of the **Land Act**. In **Moses Kibiego Yator v Eco Bank Kenya Limited NKU E& L No. 426 of 2013 [2014] eKLR** that:

*In instances where a chargor alleges that he did not receive the statutory notice, the burden shifts to the chargee, to demonstrate prima facie, that the statutory notice was served. If there is material to show that the notice was received or acknowledged, say, through an acknowledgement letter, that will clearly demonstrate that the notice was duly served and received. If the notice was*

served by way of registered post, the chargee ought to place before the court sufficient material to demonstrate prima facie, that the document was duly dispatched to the proper address of the chargee, and that in the ordinary course of events, the notice must have reached the chargee.

21. The Plaintiff admitted in her email dated 22<sup>nd</sup> June 2018 that she had received the notice and that she would pay the balance before the time elapses. In light of the clear and uncontroverted admission, I find that the Plaintiff was served with the 90-day statutory notice under **section 90** of the **Land Act** consequently the Bank was entitled to exercise its statutory power of sale in accordance with the prescribed procedures. There is also evidence that the 40-day notification of sale issued under **section 96** of the **Land Act** was sent by registered post as per the certificate of postage annexed to the deposition of Mr Lule. Likewise, the 45-day notice was delivered to the Plaintiff and indeed acknowledged by her. The Plaintiff did not controvert all this evidence placed on record. I therefore find and hold that the Plaintiff was indeed served with all the notices and the Bank was entitled to exercise its statutory power of sale.

22. The Plaintiff relied on **section 97** of the **Land Act** which provides as follows:

*97(1) A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any chargee under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of sale.*

*(2) A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.*

*(3) If the price at which the charged land is sold is twenty-five per centum or below the market value at which comparable interests in land of the same character and quality are being sold in the open market—*

*(a) there shall be a rebuttable presumption that the chargee is in breach of the duty imposed by subsection (1); and*

*(b) the chargor whose charged land is being sold for that price may apply to a court for an order that the sale be declared void, but the fact that a plot of charged land is sold by the chargee at an undervalue being less than twenty-five per centum below the market value shall not be taken to mean that the chargee has complied with the duty imposed by subsection (1).*

23. Under **section 97** of the **Land Act, 2012** the chargee has a duty of care to the chargor to obtain the best price reasonably obtainable at the time of sale and in that regard, it is required to ensure a forced sale valuation is obtained. Under **Rule 11(b)(x)** of the **Auctioneers Rules**, a professional valuation of the reserve price must be carried out not more than 12 months prior to the proposed sale. The collective effect of these provisions is that the Bank is required to obtain a forced sale value of the property within the year of the intended sale.

24. The Bank produced a professional valuation that was conducted on 20<sup>th</sup> November 2018 within the prescribed period. The Plaintiff contested this valuation by comparing it with the price based on the agreement she had entered into with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. In order to assess the fair and reasonable value, the law requires a valuation of the charged property to be conducted by a professional valuer hence in order to displace a professional valuation, the Plaintiff must produce clear evidence that the valuation is wrong or at least doubtful. On this issue the court in **Palmy Company Limited v Consolidated Bank of Kenya Limited ML HCCC No. 527 of 2013 [2014] eKLR** observed as follows:

*The court needs cogent evidence and material in order to say that prima facie, there has been an undervaluation of the suit property which is an infringement of **section 97(2) of the Land Act** by the Defendant as to entitle the court to call for an explanation or rebuttal from the Defendant. That approach is necessary to prevent defaulters from filing valuation reports with value way beyond the open market value just to obtain an injunction. Needless to state that having an arguable point, as is the case here, is not sufficient to establish a prima facie case for the grant of an injunction especially in cases of exercise of the power of sale by a chargee who has shown that the Applicant has defaulted and continue to be in default. It should be known that, as long as it is lawfully exercised, the Statutory Power of Sale is not a favour that the chargor extends to the chargee or an infringement on the right of or a foreclosure of the chargor's equity of redemption; it is a statutory remedy which is inextricably tied to the right of the chargee to recover its money-which is property guaranteed under **Article 40 of the Constitution**.*

25. In **Silas Misoi Yego t/a Siro Investments v Transnational Bank Limited & Another HC COMM N0. E101 of 2020 [2020] eKLR**, I expressed the following view, in similar circumstances,

*[26] The Plaintiff based his case on the fact that he has entered into a sale agreement with a third party for Kshs. 200,000,000.00. What the law requires is that the chargor must, "obtain the best price reasonably obtainable at the time of sale." A reasonable price is not based on one proposed sale but is grounded on various other factors like comparative sales. The Plaintiff did not produce another valuation or challenged the valuation with cogent evidence. The sale price of the property does not, in my view, amount to a valuation though it is a factor to consider in assessing the value of property. Based on the material on record, I am unable to find that the Plaintiff has established that the Bank has violated **section 97** of the **Land Act**.*

26. The valuation produced by the Bank falls within the time the auction was conducted. The Plaintiff has not produced cogent evidence to undermine the valuation hence I am not prepared to find, at least at this stage, that the sale of the suit property was at an undervalue or was in breach of **section 97** of the **Land Act**.

27. As to whether the 3<sup>rd</sup> and 4<sup>th</sup> defendants could purchase the suit property, the evidence is clear that by the time the auction took place, the agreement for sale between the Plaintiff and the 3<sup>rd</sup> and 4<sup>th</sup> defendants had already been terminated. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants were therefore entitled to bid for the suit property at the auction. Moreover, the auction was duly advertised and open to the public as required by **section 98** of the **Land Act** which provides:

98(2) If a sale is to proceed by public auction, it shall be the duty of the chargee to ensure that the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the charged land and that the provisions relating to auctions and tenders for land, are near as may be, followed in respect of the sale.

28. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants emerged the highest bidders and once the property was sold to them, the Plaintiff's equity of redemption was extinguished. The Defendants relied on **section 99** of the **Land Act** to submit that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants are protected once the sale is completed at the fall of the hammer at the auction. The section provides:

99 (1) This section applies to—

(a) A person who purchases charged land from the chargee or receiver, except where the chargee is the purchaser; or

(b) A person claiming the charged land through the person who purchases charged land from the chargee or receiver, including a person claiming through the chargee if the chargee and the person so claiming obtained the charged land in good faith and for value.

(2) A person to whom this section applies—

(a) is not answerable for the loss, misapplication or non-application of the purchase money paid for the charged land;

(b) Is not obliged to see to the application of the purchase price;

(c) Is not obliged to inquire whether there has been a default by the chargor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

(3) A person to whom this section applies is protected even if at any time before the completion of the sale, the person has actual notice that there has not been a default by the chargor, or that a notice has been duly served or that the sale is in some way, unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the chargee, of which that person has actual or constructive notice.

(4) A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.

29. The purpose of the aforesaid provision is to extinguish the chargor's equity of redemption and protect the purchaser from any action to set aside the sale. In **Joyce Wairimu Karanja v James Mburu Ngure & Another KBU HCCA No. 118 of 2017 [2018] eKLR**, Ngugi J., held that:

[30] This section seems quite clear that a purchaser of property sold in the exercise of a chargee's statutory power of sale is protected even in cases where the person had actual notice that the chargee had not properly realized that statutory power of sale in terms of procedure. In this case, there is no evidence to show that the Appellant had any notice of any irregularities in the planned sale – and evidence suggests that there were none anyway. The point is that the Appellant is then inoculated by section 99 from any action to recover the Suit Property from her.

30. The same position was reiterated by Havelock J., in **Simon Njoroge Mburu v Consolidated Bank of Kenya Ltd [2014] eKLR** who stated that:

That section [99] now statutorily encompasses the right of the charger prejudiced by unauthorized, improper or irregular exercise of the power of sale to have a remedy in damages. .... What is clear is that once a property has been knocked down and sold in a public auction by a chargee in exercise of its statutory power of sale, the equity of redemption of the charger is extinguished. The only remedy for the charger who is dissatisfied with the conduct of the sale is to file suit for general or special damages...

31. I find that the auction took place and the 3<sup>rd</sup> and 4<sup>th</sup> defendants successfully bid for suit property. The Plaintiff's right to redeem the suit property was thus extinguished by the auction sale.

#### **Whether damages are an adequate remedy**

32. Since the suit property has already been sold, the court cannot restrain the Bank from transferring it to the 3<sup>rd</sup> and 4<sup>th</sup> defendants in light of **section 99** of the **Land Act**. The fact that the statute contemplates that damages are the remedy for any irregular sale disposes of the second condition for grant of an interlocutory injunction.

#### **Balance of Convenience**

33. For the same reasons, the balance of convenience lies against granting an injunction. The Plaintiff, who is already indebted to the Bank, may not be in a position to compensate the 3<sup>rd</sup> and 4<sup>th</sup> defendants if the suit fails. On the other hand, the Bank will be in a position to compensate her for any loss she may incur if her suit is successful.

## **Conclusion**

34. Having considered the pleadings, deposition and submissions, I find that the Plaintiff admitted that she was indebted to the Bank. She was served with a 90-day statutory notice under **section 90** of the **Land Act** which she duly acknowledged. Before the auction which took place on 5<sup>th</sup> November 2020, the Plaintiff was served with the 40-day notice under **section 86** of the **Land Act** and the 45-day notice under the **Auctioneers Rules**.

35. I also find that a valid auction took place on 5<sup>th</sup> November 2020 where the 3<sup>rd</sup> and 4<sup>th</sup> defendants, who were entitled to attend the auction, emerged the highest bidders and upon the fall of the hammer, the Plaintiff's equity of redemption was extinguished. Based on these findings, I hold that the Plaintiff has not made out a case to warrant the grant of an injunction.

## **Disposition**

36. The Notice of Motion dated 26<sup>th</sup> February 2020 is now dismissed with costs to the defendants.

**DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JULY 2020.**

**D. S. MAJANJA**

## **JUDGE**

Ms Achola instructed by Kithi and Company Advocates for the plaintiff.

Mr Molo instructed by Mutua Waweru and Company Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

Mr Mose instructed by Joe Mwanthi and Company Advocates for the 3<sup>rd</sup> and 4<sup>th</sup> defendants.