REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 71 OF 2017

SIMBA HILLS FARM LTD.....PLAINTIFF

VERSUS

SULTAN HASHAM LALJI.....1ST DEFENDANT

ABDULAZIZ KANJI.....2ND DEFENDANT

MADATALLY SIDI.....3RD DEFENDANT

JAMES KIMOSBEI TUWEI.....4TH DEFENDANT

ISAAC CHEPSIROR.....5TH DEFENDANT

SYLVESTER BIWOTT.....6TH DEFENDANT

JUDGMENT

By a plaint dated 21st February 2006 the plaintiff herein sued the defendants jointly and severally for the following orders:

a) That pending the hearing and determination of this suit, a temporary injunction restraining the defendants, their servants, agents from interfering with trespassing onto, surveying, subdividing, alienating, selling, transferring or in any other way doing anything over and in respect of all that parcel of land namely LR No.8304 situated at Eldoret North, Moiben Division in Uasin Gishu District measuring 1680 acres.

b) That pending the hearing and determination of this suit, a permanent injunction restraining the defendants, their servants, agents from interfering with trespassing onto, surveying, subdividing, alienating, selling, transferring or in any other way doing anything over and in respect of all that parcel of land namely LR No.8304 situated at Eldoret North, Moiben Division in Uasin Gishu District measuring 1680 acres.

c) In the alternative, an order compelling the 1st 2nd and 3rd defendants to transfer the to the plaintiff title deed of the suit property.

d) Costs of this suit and interest.

This suit was originally filed as Eldoret HCC No. 22 of 2006 but was later transferred to Kitale as ELC 12 of 2013, then later transferred back to Eldoret as Eldoret ELC 71 of 2017

The back and forth transfers resulted in a delay in finalization of the matter.

PLAINTIFF'S CASE

PW1 testified and stated that they entered into a sale agreement in 1976 with the 1st defendant for purchase the entire land parcel No.LR 8304 Eldoret North Moiben Division measuring 1680 acres for a consideration of Kenya Shillings One Million Two Hundred Thousand (Kshs.1,200,000/=)

PW1 stated that on 15th September, 1977 pursuant to that sale agreement the Plaintiff paid Kenya Shillings Two Hundred Thousand (Kshs. 200,000/=) as part payment of the purchase price and the balance of Kenya Shillings One Million (Kshs. 1,000,000/00) was paid on the 27th

July, 1982.

It was PW1's evidence that 1st defendant put the plaintiff into possession of the suit land after payment of the purchase price and thereafter got a consent to subdivide and transfer the parcel of land. He further stated that parcels were given to various parties including non-members of the plaintiff company.

PW1 testified that third parties wanted to acquire the land through use of the office of the President and the then permanent Secretary Mr. Oyugi by purporting that the Plaintiff only bought 840 acres. PW1 also testified that the 4th 5th and 6th defendants purported to enter into an agreement in 1997 to buy the same land which had already been bought, subdivided and occupied by the plaintiff. That the purported agreement of 5th August 1997 was thus void as the subject matter did not exist as the land had already been bought in the 1970s and requisite consents given. The sale was admitted by DWI who confirmed that he had sold the land to his workers.

PW1 testified that the 1st Defendant was present at the Land Control Board in 1979 when the consent to transfer was given. Further that by a cheque No. 026071 dated 2nd November 1993 drawn on National Bank of Kenya plaintiff's account, PW 1 stated that the Plaintiff paid the balance since the 1st Defendant had not collected an equivalent amount from Agricultural Finance Corporation.

PW1 further stated that by a statement dated 10th October 2012 the 1st Defendant admitted that he initially gave 4 families 400 acres that is the Plaintiff's current 4 directors and the Late Kiprono Arap Kosgei. That a consent to subdivide and transfer was granted and the same has not been impugned. The plaintiff urged the court to grant the orders as prayed in the plaint.

1ST DEFENDANT'S CASE

The 1st Defendant denied the plaintiff's averments and filed a statement of defence and counterclaim dated 29th March, 2006 on 30th March, 2006 and in reliance on his adopted witness statement dated 10th October, 2012, filed on 22nd October, 2012 and his list of documents dated 6th August, 2010 and filed on 6th August, 2010.

DW1 testified that on or about September, 1969 he sought to transfer 400 acres to his Farm employees, who are the current directors of the plaintiff company at a consideration of Kenya Shillings Six Hundred Thousand (KShs. (600,000/=). The parties agreed that Kenya Shillings Two Hundred Thousand (KShs. 200, 000/=) was to be paid by September, 1969 and Kenya Shillings One Hundred Thousand (KShs. 100, 000/=) to be paid by December, 1969 however, the Plaintiff failed to pay the said consideration and hence the oral agreement was rescinded and rendered void ab initio.

DW1 further stated that in 1971 he was forcefully evicted from the suit land and sought assistance from the relevant authorities who were reluctant to help due to the political sensitivities of the matter.

DW1 testified that on 8th September, 1977, the Plaintiff through its' Advocates, Messer. A.H Malik & Company Advocates wrote to him offering to purchase 840 acres to be carved out of the suit property, at a consideration of Kenya Shillings Six Hundred Thousand (KShs. 600,000/=) and enclosed a cheque for Kenya Shillings Two Hundred Thousand (KShs. 200,000/=).. On 17th June, 1978 the Plaintiff's Advocate A. H Malik & Company Advocates wrote to DW1 enclosing the application for consent to subdivide the suit property into two portions and to transfer 840 acres to the Plaintiff.

Further that on 11th May 1979, DW1 upon discovering that the Land Control Board had disregarded the aforementioned applications for subdivision and consent to transfer 840 acres and instead issued a consent for the transfer of 1680 acres of the suit property at a consideration of Kenya Shillings One Million Two Hundred Thousand (KShs.1,200, 000/00), wrote to them to regularize this position.

It was DW1's evidence that on 26th July 1979 the Plaintiff's lawyer, A. H Malik & Company Advocates wrote to the him confirming that they had not given any consent both in respect of the sale of the 1680 acres of the suit property on his behalf through their employee one Mr. Chakava and requested the Plaintiff to cease writing to him on matters which were not agreed to by the parties.

DW1 further stated that on 17th September 1980 he wrote to the Plaintiff, giving them fifteen days' notice to complete the oral agreement of which the Plaintiff failed and/or neglected to do so.

It was DW1's testimony that on 5th August 1997 the Plaintiff entered into a fresh written sale agreement with him over the sale and purchase of the suit property at a consideration of Kenya Shillings Thirty-Five Million (KShs. 35, 000,000/00). Plaintiff failed to honour the terms of the said agreement by failing to pay the full purchase price. DW 1 urged the court to dismiss the plaintiff's case and allow the counterclaim as prayed.

4TH 5TH AND 6TH DEFENDANTS' CASE

The 4th , 5th and 6th defendants denied all the averments in the plaint and filed a statement of defence dated 20th March, 2006 and amended on 12th February, 2008 and relied on their adopted statements dated 27th April, 2011.

It was their evidence that the 1st defendant is the proprietor and or registered owner of all that parcel of land known as L.R 8304 together with the 2nd and 3rd defendants as tenants in common in equal shares.

DW2 stated that in the year 1970 a group of people who wanted to purchase L.R NO. 8304 formed a company called Simba Hills Farm Limited and the directors were mandated to negotiate for the purchase of the farm from the 1st, 2nd and 3rd defendants.

It was further DW2's testimony that as per the first agreement made with the 1st defendant together with the other members of the company they made various contributions of the money amounting to Kshs. 1,550,591/ which was to be used for the purchase of the said Farm and gave this money to the directors of Simba Hills Farm Limited for onward transmission to the registered owners of the land.

DW2 stated that the past directors of the plaintiff that were removed did not pay the entire purchase price to the registered owner of the land and that they only paid Kshs. 200,000/= to the 1st defendant as part of the purchase price. That the past directors of the plaintiff used tricks to show that the entire Farm had been purchased for Kshs. 1,200,000/= and lied that consent to that effect had been applied for and obtained with consent of the registered owners.

DW2 further stated that the past directors of Simba Hills Farm embezzled part of the money that was collected for the purchase of land and applied for sub division of the entire Farm to make the members believe that they had paid the entire purchase price of the Farm and yet they knew that there was no way that the suit property could be transferred since the whole purchase price had not been paid.

DW2 testified that under the new directors of the plaintiff company, a second agreement was entered into dated 5th August, 1997 and the members raised Kshs 1,000,000/= and sent a cheque to the 1st defendant through their Advocate Birech towards clearing the purchase price of the said suit land but the 1st defendant did not receive the cheque for the reason that he wanted to be paid the current market price of the Farm as at November 1993.

DW2 further stated that in the year 1994 the members evicted the past directors of the plaintiff for reasons of embezzlement of the money that was to be used to pay the balance of the purchase price and again the plaintiff entered into fresh negotiations for a total of Kshs. 35,000,000/= which was to be paid in installments of 3.5 million a year for a period of 10 years.

That the first instalment for Kshs, 3,500,000/= was paid through advocate Birech as per the agreement made in 1997 but the balance of the purchase price has not be paid upto date. The defendant urged the court to dismiss the plaintiff's case with costs to the defendants.

PLAINTIFF'S SUBMISSIONS

Counsel for the plaintiff filed submission and listed the following issues for determination:

a) Whether the Plaintiff has locus to sue.

b) Whether consent to transfer was duly given.

c) Whether the oral agreement was valid.

d) Whether the orders sought in the counter claim by any of the Defendants can be granted.

e) Costs.

On the issue as to whether the plaintiff has capacity to sue, counsel submitted that from the evidence of the witness from the Companies registry it is clear that the Plaintiff is a registered company with returns filed. That the 4th 5th and 6th Defendants are not members of the Plaintiff hence cannot be directors of the private company limited by shares. That they purported to enter into another agreement in 2006, 27 years after the consent to transfer was given and that the 4th 5th and 6th Defendants confirmed that they are not shareholders. (the 6th Defendant never testified hence his defence is bear. Further that an agreement purported to be entered into by strangers does not bind the company.

Counsel stated that the agreement became void upon expiry of 6 months for lack of the Land Control Board. The 4th and 5th Defendants confirmed that they had been put in possession by the Plaintiff's directors the same one who incorporated the Company although they later chased away the directors and took their land.

Mr. Magare submitted that the 4th, 5th and 6th Defendants had no locus to buy land that is already paid for, consent to transfer given and possession effected from 1970s. Counsel relied on the case of Nairobi CACA 246 of 2013 — **Arthi Highway Developers —vs- West End Butheries ltd:**

> "Section 77 of the Companies Act (Repealed) further provides that notwithstanding anything in the Articles of a company, it shall not be lawful to register a transfer of shares or debentures of the company unless a proper instrument of transfer has been delivered to the company. "

That from the evidence, there were no returns of instruments registry change of directors or increasing members from 50 members to more than 50, thus the purported addition of directors is fraudulent. See the case of Arthi Developers (Supra) which held that:-

> "*There is no doubt in my mind that the said change of directors of the Plaintiff company was illegal and fraudulent. The effect is that the records in the company's registry do not reflect the true state of affairs of the Plaintiff Company and needs to be rectified*"

The court further held on to state in paragraph 16 as follows:-

> "*The law on removal of directors is also clear under Section 185 of the Companies Act, wherein it is provided that a company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and the said Director. The section provides in detail the procedures to be followed in making the resolution. The Articles of West End Butchery Ltd on the other hand have no specific provision for the removal or change of Directors and it is therefore follows that what was needed was a resolution to effect such a change.*

Mr Magare Counsel for the plaintiff submitted that the Plaintiff's witnesses testified to their having been no such resolution by the members of the Plaintiff Company and the Defendants did not bring evidence of any such resolution in rebuttal.

It was counsel's submission that the 4th , 5th and 6th Defendants thus used fraudulent means to add directors beyond the maximum 7 directors allowed under the Repealed Companies Act CAP 486 Laws of Kenya. Counsel relied on the case of **Nyeri CACA 6, 46 and 27 of 2011 — Macharia Mwangi —vs- Maina & 7 Others Davidson Mwangi kagin (2014)eKLR;**

> "*The totality of our re-evaluation of the facts and applicable law in this case leads us to conclude that the Honorable judge erred in failing to consider that the Appellants were in possession of the suit property, that the Respondent had created a constructive trust in favour of all individuals who had paid the purchase price for respective plots and the trial court erred in failing to note that consent of the Land Control Board is not required where a trust is created over agricultural land"*

Further, the court held in the case of **Gatimu Kinguru —vs Muya Gathangi (1976)KLR, 253** where it was stated:-

> *"The creation of a trust over agricultural land in a Land Control Board area does not constitute on "other disposal of or dealing" for the purposes of Section 6(1) of the Land Control Act and therefore does not require the consent of the Land Control Board"*

Counsel submitted that in this case however, there was a consent to transfer and the Plaintiff is not seeking to be put in possession as they are in possession. What they are seeking for is the title deed only. Counsel submitted that the conscience of humanity dictates that constructive trust and proprietary estoppel shall apply in such cases where a vendor receives purchase price and later plead that the agreement is void for lack of Land Control Board Consent.

That in the case of the 1st defendant who received purchase price from the Plaintiff's directors cannot be allowed to plead that the agreement for sale of land parcel No. LR 8304 now Moiben/L01kinyei Block 5 is now void since he is the one who put the purchasers in possession and received full purchase price. He also applied and received the consent to transfer.

Mr Magare further relied on the case of Macharia Mwangi (Supra) where the court held that:-

> "*A total of 16 acres of land situate at the site and where the Respondent had his home shall remain the property of the Respondent and shall be registered in his name. For avoidance of doubt, we reiterate that this judgment and all any orders made by this court shall and are hereby declared to be in respect to the property now known as LR No. 6324/10 in the name of the Respondent. Having received the purchase price from the Appellants, put then in possession of the suit property and reneged and/or refused to transfer the individual plots to the Appellants*"

Counsel submitted that the question therefore will be, will humanity, conscience, and good order dictate that parties who have been in possession for over 50 years, put in possession by the 1st Defendant, be mere trespassers? That the court quoted with approval the decision of **Steadman —vs- Steadman (1976) AC 536, 540 in Macharia Mwangi (Supra) where Lord Reid held that:-**

> *"If one party to an agreement stands by and lets the other party incur expenses or prejudice his position on the faith of the agreement being vad he will not then be allowed to turn around and assert that the agreement is unenforceable.* "

That having obtained a consent of the land control Board over 40 years ago, being in possession since 1969, on the entire 1680 acres and having fully paid to, the 1st Defendant, to cannot turn around and claim a nullify of the agreement.

Mr. Magare submitted that the counterclaim for mesne profits and eviction by the defendant is untenable and therefore ought to be dismissed with costs to the plaintiff. That the plaintiff is entitled to specific performance as the plaintiff has proved its case and discharged its part of the bargain by paying the full purchase price followed with possession and consent duly given.

Counsel submitted further that the defendant's claim is time barred, the plaintiff having taken possession in 1969 and trespass being a tort, the same ought to have been enforced by 1982 and as such it is equally time barred pursuant to Section 4 of the Limitation of Actions Act, CAP 22 Laws of Kenya. Counsel therefore urged the court to allow the plaintiff's claim as prayed with costs and dismiss the defendant's counterclaim with costs.

1ST DEFENDANT'S SUBMISSIONS

Counsel for the 1st defendant gave a brief background to the case and listed the following issues for determination

a) Whether there is a valid agreement between the Plaintiff and the 1st Defendant?

b) Whether the Plaintiff is entitled to the orders of specific performance, to compel the 1st Defendant to release the original title deed over L R No. 8304 Eldoret North — Moiben Division?

c) Whether the 4th , 5th and 6th Defendants were directors of the Plaintiff company as at 5th August 1997 when they entered into a sale agreement with the 1st Defendant?

d) Whether the 1st Defendant is entitled to the orders sought in his counterclaim?

On the first issue as to whether there is a valid agreement between the Plaintiff and the 1st Defendant, counsel submitted that there is no valid agreement written or otherwise between the Plaintiff and the 1st Defendant.

Counsel submitted that it is common ground that on or about September, 1969, the 1st Defendant sought to transfer 400 acres to his Farm employees, the current Plaintiff at a consideration of Kenya Shillings Six Hundred Thousand (KShs. (600,000/=) but the Plaintiff failed to pay the said consideration and hence the oral agreement was rescinded having been vitiated by non-completion on the part of the Plaintiff.

Counsel further submitted that the Plaintiff pleaded at paragraphs 5 and 7 of the Plaint and in its written submissions that, it entered into a sale agreement with the 1st Defendant in the year 1976 but no evidence was adduced to support the averments.

Mr. M' Court submitted that the operative and applicable law at the time of the oral agreement was the Law of Contract Act Chapter 23, 1968, Section 3 (3) of the Act which was introduced vide legal Notice No. 28 of 1968 which provides as follows:

"No suit shall be brought upon a contract for the disposition of an interest in land unless the agreement upon which the suit is founded or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it..."

Counsel submitted that being guided by the provisions of Section 3(3), the letter of offer dated 8th September, 1977 from the Plaintiff's advocate A. H Malik & Company Advocate does not constitute a memorandum or a note within the meaning of Section 3(3) of the Law of Contract Act, hence the said letter and/or agreement cannot form the basis of the present suit. That for a written document to constitute a sufficient memorandum or a note it has to describe the parties to the transaction, the terms of the agreements and has to be signed by the parties to the transaction as provided for under Section 3(2) and Section 3 (3) of the Law of Contract Act Cap 23 1968.

Counsel further submitted that the Plaintiff may plead that although the oral agreement in 1977 did not satisfy the statutory requirements of Section 3 (3), the proviso to that will come to their aid as they had paid part of the consideration, and are in possession of suit property. Counsel cited the proviso as:

"Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-

(i) has in part performance of the contract taken possession of the property or any part thereof; or

(ii) being already in possession, continues in possession in part performance of the contract and bas clone some other act in furtherance of the contract.

Counsel submitted that the above argument is not tenable as the said proviso does not provide a relief to the Plaintiff, as the Plaintiffs possession was obtained forcefully, illegally and un-procedurally, and while being in possession the Plaintiff did not undertake any measures or acts in furtherance of the completion of the contract, despite being given notice by the 1st Defendant to complete the agreement.

That DW1's testimony that in 1971 he was forcefully evicted from the suit land and sought assistance from the relevant authorities who were reluctant to help and further that the act of taking possession by the Plaintiff, was not in furtherance of the oral agreement made in 1977 as the Plaintiff illegally took possession in 1971 even before the said oral agreement was entered into in 1977.

Counsel cited the case of **Daudi Ledama Morintat v Mary Christine Karie & 2 others [2017] eKLR where Mutungi J**. held that,

'The contract is unenforceable as it related to a disposition of an interest in land and such a contract has to have been in writing and signed by the parties to it and witnessed as required under Section 3 (3,) of the Law of Contract Act. Possession of the plaintiff of the suit Property was Pursuant to the impugned agreement for sale and cannot give the plaintiff right of ownership and neither can it be relied upon to found a cause of action."

Counsel also cited the case of **Silverbird Kenya Limited —vs- Junction Ltd & 3 Others [2013] eKLR** where an application had been made by the 1st defendant to strike out the plaintiff's suit on the ground that the lease on which it was anchored had not been signed in contravention of Section 3(3) of the Law of Act.court stated inter alia:-

"*. . . In my view it matters not that the plaintiff had been let into possession of the Premises if the contract Pursuant to which the Plaintiff was granted Possession was not validated in accordance with the law. The letter of 19th August 2009 in my view does not satisfy the requirements of Section 3(3) of the Law of Contract Act to be the foundation of the Plaintiffs claim against the defendants. Section 3(3) of the Law of Contract Act is indeed couched in mandatory terms and does infact divest the court of jurisdiction in instances where there is no compliance as in the instant case. In the circumstances and by reason of the Law of Contract Act, the*

Plaintiffs suit must fail for being in contravention of Section 3(3) of the Law of Contract Act, Cap 23 Laws of Kenya.

Counsel therefore urged the court to find that the plaintiff's suit is founded on an oral agreement made in 1977 which does not comply with section 3(3) of the Law of Contract Act 1968 and dismiss it with costs.

In the case of **Patrick Tarzan Matu & Another —vs- Nassim Shariff Abdulla & 2 Others [20091 eKLR Azangalala, J**. (as he then was) struck out the plaintiff's case where he found the contract relied upon was in contravention of Section 3(3) of the Law of Contract Act and declined to entertain the claim for damages for breach of the contract and stated:-

> *'... The applicant in this case has satisfied me that there is no agreement between her and the Plaintiffs in terms of the Provisions of Section of the Law of Contract Act which the Plaintiffs can el(force against her. The plaintiffs are urging the view that their claim for damages for breach of the contract of sale is sound. With respect, that view cannot be correct. The claims are made Pursuant to an agreement that is contrary to the statute or at the very least does not comply with the law. So, the very foundation of their claim is untenable. "*

In the case of **Gladys Waniiru Ngacha V Teresia Chepsaat & 4 Others [2008] eKLR** the court held that,

> *"Although this oral agreement is allowed to have taken place sometimes in the month of August 1989, it is trite law that such oral agreement cannot sustain the instant action Pursuant to the Provisions of Section 3(3) of the Law of Contract Act as amended. Though the said provision of law has been the subject of several amendments since 1990, the bottom line is that this suit is unsustainable. "*

In the case of **Schon Noorani v Damji Ramji Patel & 2 others [20061 eKLR** the Court upheld a preliminary objection and struck out the Plaintiff's suit and held that by virtue of the provisions of Section 3 (3) of the Law of Contract Act (Cap 23) the Plaintiffs' oral sale agreement for the disposition of an interest in land is unenforceable.

On the second issue as to whether there was fraudulent misrepresentation perpetuated by the Plaintiff and its advocates in obtaining the consent from the Land Control Board Uasin Gishu for the transfer of 1680 acres in 1979, Counsel submitted that the oral agreement entered into by the Plaintiff and the 1st Defendant in 1977 was vitiated by the fraudulent misrepresentation made by the Plaintiff and its advocates in obtaining the consent to transfer and is therefore illegal null and void ab initio. Counsel gave the definition of misrepresentation as per the 'The Black's Law Dictionary, Edition, which defines misrepresentation as follows:

> "the act of making a false or misleading assertion about something with the intent to deceive'.

It defines a fraudulent misrepresentation as, a false statement that is known to be false or is made recklessly without knowing or caring whether it is true or false- and that is intended to induce a party to detrimentally rely on it.

That fraudulent misrepresentation is a question of fact and evidence and it is well established that he who alleges must prove, Sections 109 and 110 of the Evidence Act Cap 80.

Counsel relied on the case of **Mikooh Exquisite Limited v Simple Homes Development Consortium Limited & 2 others [20191 eKLR**, where the High Court stated that,

"For the Plaintiff in this suit to be successful, its allegations of fraudulent misrepresentation must be corroborated by way of cogent evidence."

Counsel highlighted the facts pointing to the fraudulent misrepresentation perpetuated by the Plaintiff as follows:

a) An Advocate called S. B. Chakava, who was employed by A. H. Malik and Company Advocates misrepresented to the Lands Control Board that he represented both the Plaintiff and the 1st Defendant and fraudulently obtained consent for the whole of Land Reference number 8304 being 1680 acres and not the agreed 840 acres (See page 69 MIN18/ 79(a) Plaintiff List of Documents).

b) The 1st Defendant on discovering this fraudulent misrepresentation immediately protested in a letter dated 11th May, 1979 addressed to the Land Control Board copied to the relevant parties (see page 7 of the IS/ Defendant List of Documents). The Plaintiff responded by their letter dated 27th June, 1979 (see Pages 8-9 of the I S/ Defendant List of Documents).

c) The 1st Defendant then wrote to A. H. Malik and Company Advocates holding them responsible for the misrepresentation and fraud by a letter dated 11th July, 1978 (see page 10 of the IS/ Defendant List of Documents).

d) A. H. Malik and Company Advocates by a letter dated 26th July, 1979 wrote to the 1st Defendant, copies to the Plaintiff, the Land Control Board and the District Commissioner in which A. H. Malik and Company Advocates confirmed that they act for Simba Hills Limited and not the 1 st Defendant and the sale was for 840 acres only and state:

> 'By copy of this letter we are requesting Simba Hills Firm Limited to desist from writing letters regarding matters which are not the subject of any agreement between the Company and yourself." (see page 11 of the 1s/ Defendant List of Documents).

e) A fraud was perpetuated at the Land Control Board by the Plaintiff on the 1st Defendant through their Advocate from A. H. Malik and Company Advocates representative S. B. Chakava.

f) The firm of A. H. Malik and Company Advocates was only acting for the Plaintiff, hence could not have represented the 1st Defendant at the Land Control Board meeting.

g) That Only Kenya Shillings Two Hundred Thousand (Kshs. 200,000/00) was paid in part consideration.

Counsel therefore submitted that the fraudulent misrepresentation perpetuated by the Plaintiff on the 1st Defendant vitiated any agreement between the parties and that in the event completion never occurred.

On the issue as to whether there was a valid written agreement between the Plaintiff through the 4th 5th and 6th Defendants in 1997 and the 1st Defendant, counsel submitted that there is no valid written agreement between the Plaintiff through, the 4th and 6th Defendants in 1997, and the 1st Defendant. Counsel reiterated the facts and evidence adduced as follows:

a) DW-I stated that in 1997 the Plaintiff again approached him and offered to purchase 1680 acres the whole suit property. To that end, he adduced a written Sale Agreement that was entered into by the parties dated 5th August, 1997 selling 1680 acres at a purchase price of Kenya Shillings Thirty Five Million (Kshs. 35,000,000/=) of which Kenya Shillings Three Million Five Hundred Thousand (Kshs. 3,500,000/00) Of a Ten percent (10%) deposit was paid to the 1st Defendant. (Reference is made to the 1st Defendant's List of Documents Pages 36-43 a copy of the agreement for sale dated 5/' August, 1977).

b) He further confirmed that the balance of the purchase price was to be paid by ten (10) annual instalments of Kenya Shillings Three Million, One Hundred and Fifty Thousand (Kshs. 3,150,000/00). The Plaintiff was represented by Birech and Company Advocates and the 1st Defendant by A. S. G. Kassam Advocates.

c) The Plaintiff failed to honour the terms of the Sale Agreement dated 5th August, 1997 and failed to pay the full purchase price to the 1st Defendant. Instead, the Plaintiffs Farm members fell into disagreement and created opposing camps, which resulted in a stalemate (Reference is made to the I S/ Defendant's List of Documents Page 35, a copy of Birech and Company Advocates' letter dated 2h April, 1998 on the I St Defendant List of Documents).

Counsel therefore submitted that the above constitutes a breach of the sale agreement dated 5th August, 1997 accordingly clause 14 b. of the agreement which entitled the 1 st Defendant to rescind the agreement, obtain vacant possession from the Plaintiff and retain the deposit paid as mense profit for the purchasers use and occupation of the property, which he rightfully did.

On the issue as to whether there was a Land Control Board Consent in respect of the written sale agreement of 1997, counsel submitted that the said agreement was void and therefore there was no LCB consent. That the transaction was a controlled one within the meaning of the Land Control Act Cap 302. Section 6 (1) is instructive as it provides that the controlled transactions enlisted therein are void unless the consent of the Land Control Board is obtained. Further at Section 8 (1) it is stated that an application for the said consent shall be made within six (6) months of making the agreement, by any party.

Counsel relied on the case of **Rose Wakanyi. Karanja & 3 others v Geoffrev Chege Kirundi. & another 2016 eKLR** where the Court of Appeal also considered the effect of lack of consent from the Land Control Board and stated as follows

"*There is a line of authorities on the effect of lack of consent of the Land Control Board. Initially, one had to obtain the consent Within three months but this period was later enlarged to six months. In Hiram; Ngraithe Githire v Wanjiku Munge [1979] KLR 50, Chesoni, J (as he then was) stated at page 52:*

'Section 6 of the Land Control Act is an express provision of a statute. It is a mandatory provision, and no principle of equity can soften or change ft. The court cannot do that; for it is not for us to legislate but to interpret what Parliament has legislated. So in this case that agreement between the parties having being entered in June 1969 became void for all purposes including the purpose of specific performance) at the expiration of three months from the date of making it; and since no consent had been obtained within that time, nothing can revise or resurrect such an agreement. Failure to obtain the necessary Land Control Board consent automatically vitiates an agreement to be a party to a controlled transaction, Section prohibits any dealing with agricultural land in a land control area unless the consent of the Land Control Board for the area is first obtained and any such dealing is not only illegal but' absolutely void for all purposes."

On the issue as to whether the Plaintiff is entitled to an order of specific performance to compel the 1st Defendant to release the original title deed over L R No. 8304 Eldoret North — Moiben Division to the Plaintiff, counsel submitted that the same is not tenable as the oral agreement of 1977 and written agreement entered into on 5th August, 1997 as the same was vitiated by the fraud perpetuated at the Land Control Board Uasin Gishu by the Plaintiff, non-performance and/or non-completion and failure to obtain the consent of the Land control board respectively.

The principles of granting the equitable remedy of specific performance were set out in the case of **Reliable Electrical Engineers Ltd.. ...Vs. ...Mantrac Kenya Limited (2006) eKLR**, wherein Justice Maraga (as he then was) stated that:-

"Specific Performance like any other equitable remedy is discretionary and the Court will only grant it on well principles"... 'The Jurisdiction of specific Performance is based on the existence of a valid enforceable contract. It will not be ordered the contract

suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. Even when a contract is valid and enforceable, specific Performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages an adequate remedy specific performance may still be refused on the ground of undue influenced or where it will cause severe hardship to the defendant. "

Counsel therefore urged the court to find that the Plaintiff has approached this Honourable court with tainted hands contrary to the well stated maxim of equity which states that, he who comes to equity must come with clean hands, and therefore is not entitled to the equitable remedy of specific performance.

On the issue as to whether the 4th, 5th and 6th Defendants were directors of the Plaintiff Company as at 5th August, 1997, when they entered into a sale agreement with the 1st Defendant on behalf of the Plaintiff, counsel submitted that the question is who between the Plaintiff and 4th , 5th and 6th Defendants represents the Plaintiff's Company, is it the Plaintiffs witnesses Bernard Sitienei Rotich and Daniel Kipsondin Arap Kutto or the 4th, 5th and 6th Defendants?

In response to the above counsel submitted that from the official search of the Plaintiff received from the Company Registrar, produced by DW-I dated 3rd March, 2006 reveals that the 4th, 5th and 6th Defendants as at 1992 were Directors of the Company. That the Plaintiff upon realizing the weakness of their suit filed backdated Annual Returns from 1994 to 2016 and belatedly filed a Supplementary List of Documents dated 9th November, 2016 and filed on 17th November, 2016 referred to as (Exhibit 116), That the witness stated that they filed whatever they were given and did not question the authenticity of the contents of the documents supplied. He stated that people slipped things into files and that you could file late Annual Returns at any stage, irrespective of whether the content of the Annual Returns was within your actual knowledge.

Counsel submitted that the Annual Returns were all filed by the Plaintiff's Advocate, even though that firm was not in existence till 2012 as per their own website www,magareadvocates.co.ke. The 4th and 5th Defendant in their testimony confirmed signing the sale agreement of 5th August, 1997 and the 1st Defendant Official Search dated 3rd March, 2006 confirms them as Directors as at 14th August, 1992, therefore the 1st Defendant had no reason to doubt them.

Counsel relied on the case of **Hendrik Potgieter road Ruimsig Pty v. Gobe1 (No.246/10) [2011] ZASCA105 (June 2011)** where the Supreme Court of South Africa pronounced itself thus:

'The rule, in essence, is that a Person dealing with a company in good faith is entitled to assume that the company has complied with its internal Procedures and formalities. "

Further in the case of Mohoney v. East Holyford Mining Co [18751 L.R. 7 HL 869 Lord Hatherly stated —

"when there are persons conducting affairs of a company in a manner which appears to be Perfectly consonant with the articles of association, then those dealing with them externally are not to be affected by any irregularities which take place in the internal management of the company.

That it is on record that some other members purporting to be Directors of the Plaintiff swore an Affidavit on 5th August, 1998, denying the validity of the sale agreement dated 5th August, 1997 and seeking a refund of the deposit paid to the 1st Defendant less Kenya Shillings One Million Two Hundred Thousand (Kshs. 1,200,000/00) (see page 95 of the Plaintiff List of Documents).

On the issue as to whether the 1st Defendant is entitled to the orders sought in his counterclaim, counsel submitted that the plaintiff has failed to prove its case against the 1st defendant for the reasons enumerated above namely, lack of a valid agreement, fraudulent misrepresentation by obtaining a consent for 1680 acres instead of 840 acres. , forceful eviction of the 1st defendant in 1971 and failure to honor the terms of the agreement dated 5th August 1997. By payment of the full purchase price.

Counsel therefore urged the court to dismiss the plaintiff's claim and enter judgment in terms of the counterclaim with costs to the 1st defendant, in the following terms,

a) General damages,

b) An order for vacant possession and eviction for the Plaintiff from the suit premises,

c) Mesne profits from the date of wrongful occupation until vacant possession of the premises is delivered to the 1st Defendant

d) The costs of this suit together with interest thereon at Court rates from the date of Judgment until payment in full.

4TH, 5TH AND 6TH DEFENDANTS SUBMISSSIONS

Counsel for the 4th 5th and 6th defendant gave a brief background to the case and reiterated the evidence of the parties and listed the following issue for determination

a) Whether the agreement which was made by the 4th, 5th and 6th defendants with the 1st defendant in 1997 was valid

b) Whether there was any fraud on the part of the 4th , 5th and 6th defendants

c) Whether the 4th , 5th and 6th defendants were bonafide shareholders of the plaintiff

d) Whether the 4th 5th and 6th defendants are among the lawful directors of the plaintiff company as at 5th August, 1997 when they entered into the sale agreement with the 1st defendant .

e) Who is to pay costs of the suit.

On the first issue as to whether the agreement which was made by the 4th, 5th and 6th defendants with the 1st defendant in 1997 was valid, counsel submitted that the 4th defendant was DW2 who gave evidence and stated that they talked to the 1st defendant and made an agreement with Birech and Company Advocates on 5th August, 1997. DW2 said that the agreement was signed by three people who the 5th defendant, Julius Chelugui and himself.

Counsel further submitted that DW2 also stated that as per the agreement of 5th August, 1997, they agreed on a current price of Kshs, 35 million which was Kshs 20,000/ per acre which was to be paid by instalments for 10 years. DW2 also said that as per the second agreement made in 1997 the members of Simba Hills Farm were to pay Kshs. 3,500,000/= each year.

Counsel submitted that DW2 testified that they paid the first defendant Kshs 3,500,000/== for one year only but when they wanted to pay the second instalment of Kshs. 3,500,000/= the three old directors of Simba Hills Farm who are Kiprono Koskei and Kipsondin Kutto incited members of the Farm not to pay for the second instalment.

Counsel submitted that from the above evidence it is clear that the plaintiff breached the terms of the first sale agreement that had been made with the 1st defendant which forced the 4th, 5th and 6th defendants to enter into another agreement in 1997 where there were fresh negotiations for the purchase of the suit land since the past directors had been removed. That the plaintiff also failed to honour the terms of the sale agreement dated 5th August, 1997 and to complete the payment of the full purchase price of the suit land.

PW2 also said that the members of Simba Hills Farm paid balance of Kshs.1,000,000/= in 1992 but the 1st defendant declined to receive the money. PW2 also told court that the 4th, 5th and 6th defendants have been sued because they raised money from the members of Simba Hills.

On the issue as to whether there was any fraud on the part of the 4th, 5th and 6th defendants, counsel submitted that the 4th, 5th and 6th defendants did not engage in any fraudulent transaction as any agreements and or negotiations between them and the 1st defendant were made in their capacity as the lawful directors of the plaintiff company.

Mr Chepkwony submitted that the other shareholders mandated the 4th, 5th and 6th defendants as the new directors to renegotiate with the registered owners of the suit land who were then willing to enter into fresh negotiations with the members at an agreed price of Kshs 35,000.000/= out of which 3,500,000/= was paid to him as down payment on 23th July, 1997 plus the initial deposit of Kshs 200,000/= which had earlier been paid and that the balance was to be paid over a period of ten years.

DW2 also told the court that the finance directors of the plaintiff were acting on behalf of 219 members of Simba Hills Farm and that they did not engage in any fraud since they had the consent of the members of Simba Hills Farm. Dw2 further clarified that only Kshs. 3,500,000/= was paid to the first defendant for the purchase of Simba Hills farm as per the second agreement made in 1997.

On the allegation of fraud counsel cited the case of **Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] eKLR (Civil Appeal No. 106 of 2000) Tunoi JA (as he then was) stated as follows:**

> *"It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts."*

On the issue as to whether the 4th, 5th and 6th defendants were bonafide shareholders of the plaintiff, counsel submitted that the 4th, 5th and 6th defendants are bonafide shareholders as they are among other members and the owners of the plaintiff company. DW2 who is the 4th defendant in his evidence said that the 5th and 6th defendants are members of Simba Hills Farm having been elected as finance director in 1992.

On the issue as to whether the 4th, 5th and 6th defendants are among the lawful directors of the plaintiff company as at 5th August, 1997 when they entered into the sale agreement with the 1st defendant, counsel relied on the evidence of Peterson Wachira from Registrar of Companies office in Nairobi who confirmed the registration of the company certificate of incorporation of Company Number 9082 which was incorporated on 28th April, 1970. The official search of the plaintiff which was received from the company Registrar dated 3rd March, 2006 reveals and confirms that the 4th, 5th and 6th defendants as at 1992 were directors of the company (See Pages 1-3 of the defendants list of documents).

PW1 also told court that the 4th defendant appears as one of the directors of Simba Hills Farm Limited. He is also said that the name of the 5th defendant also appears as one of the directors in form 203 A which is a notice of change of directors dated 30th March, 1992 and filed on 12th August, 1992.

In his evidence DW2 also said that James Kimosbei Tuwei who is the fourth defendant, Isaac Chepsiror the fifth defendant and Sylvester Biwott were members of the finance committee and that they were elected by members of the farm to collect Kshs, 1,000,000/=for the payment to the 1st defendant between 1992 and 1993.

Counsel therefore submitted that the 4th, 5th and 6th defendants are legally in office having been dully registered by the Registrar of Companies. On the issue as to who should pay costs, counsel submitted that the plaintiff should pay costs of the suit to the defendants as costs follow the even as per section 27(1) of the Civil Procedure Act.

ANALYSIS AND DETERMINATION

From the onset it is important to mention that this suit has been protracted in court since 2006 when it was filed in the Eldoret High Court as HCC No. 22 of 2006 was later transferred to Kitale as ELC No 12 of 2013 then retransferred to Eldoret as ELC No 71 of 2017. The fact that it has a 2017 No. is misleading on the age of the matter. It has also been handled by more than 9 Judges.

I have considered the pleadings, the documents produced, the evidence adduced and the submissions by counsel and find that the issues for determination in this case are as follows:

a) Whether the oral sale agreement between the plaintiff and the 1st defendant was valid.

b) Whether there was a valid agreement between the 1st defendant and the 4th 5th and 6th defendants.

c) Whether the full purchase price was paid to the plaintiff and how many acres were being sold to the plaintiff.

d) Whether there was fraud in the issuance of the land Control Board consent to subdivide and transfer.

e) Is the plaintiff entitled to specific performance?

f) Whether the 1st defendant is entitled to the counterclaim.

On the first issue as to whether the oral sale agreement between the plaintiff and the 1st defendant in 1969 was valid, it is not in dispute that there was an oral sale agreement between the two parties. What is in dispute is the validity of the oral agreement and how many acres the plaintiff was purchasing The plaintiff stated through its witnesses that they entered into the agreement and were put into possession by the 1st defendant and are still in possession todate.

Section 3(3) of the Law of Contract Act provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is writing, executed by the parties and attested. Section 3(7) of the Law of Contract Act excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection. Section 3(3) of the Law of Contract Act, came into effect on 1st June, 2003. The oral agreement in the current case was made in 1969. Prior to the amendment of Section 3(3) of the Law of Contract Act in 2003, the subsection read as follows:

(3) No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which, the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it;

Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-

(1) Has in part performance of the contract taken possession of the property or any part thereof; or

(11) Being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract. '

The oral agreement was followed by part performance of the contract by taking possession and occupation of the suit land with the permission of the 1st defendant. The 1st defendant also admitted to having entered into an agreement for sale of the land but what he defers with is the exact acreage. In one breath he stated that he was selling 400 acres to his employees who were residing on the suit land and in another he stated that he was selling 840 acres. The plaintiff is already in possession and continues to be in possession in part performance of the contract. The plaintiff also stated that they have developed the suit land which is an act in furtherance of the contract.

I find that notwithstanding the fact that the sale agreement made by the parties in 1969 was not in writing, the plaintiff has satisfied the court they took possession of the suit property in part performance of the said oral contract, and being in possession of the suit property, they continued in possession in part performance of the oral contract.

In the case of **Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR** the Court of Appeal held that

> *"We find that notwithstanding the fact that the sale agreement made by the parties in 1964 was not in writing, the plaintiff/respondent had to satisfy the trial court that he either, took possession of the suit property in part performance of the said oral contract, or that being already in possession of the suit property, he continued in possession in part performance of the oral contract"*

On the second issue as to whether there was a valid agreement between the 1st defendant and the 4th 5th and 6th defendants, it is clear that the plaintiff had already entered into an agreement with the 1st defendant which was a company to which the 4th 5th and 6th defendant were shareholders. The defendants also admitted that they were members of a finance committee of the plaintiff tasked with raising funds. The evidence on record from the Registrar of Companies also lists them as shareholders. Why would the defendants enter into a parallel agreement with the 1st defendant and yet the other agreement was still subsisting? I find that the plaintiff having entered into an agreement of sale of the suit land, and having not rescinded the agreement after the plaintiff had taken possession and continued being in possession without interruption, the second agreement with the 4th 5th and 6th defendants who are shareholders of the plaintiff company was null and void.

On the third issue as to whether the full purchase price was paid to the plaintiff and how many acres were being sold to the plaintiff, from the evidence on record, it is clear that the 1st defendant was selling the whole suit land but was not paid the full purchase price for the suit land. The plaintiff admitted that they paid a deposit of Kshs. 200,000/ which the 1st defendant acknowledged receipt of. The balance of Kshs. 100,000/ was to be paid vide a loan from AFC which was not granted to the plaintiff as the 1st defendant did not avail the original title. A cheque was later written to the 1st defendant but he declined to receive the payment. This shows that the 1st defendant was not paid the full purchase price.

Sections 39, 40, and 41 of the Land Act provides for the rights of a vendor in relation to a contract for sale of land and the procedure for obtaining an order of possession where the purchaser is in breach. Similarly, Section 42 provides for the rights of the purchaser against rescission of a contract for the sale of land and Section 42 (3) gives the court power to grant relief to the purchaser.

Lastly, Section 161 (2) of the Land Act provides:

> "All law relating to land shall be construed with the alterations, adaptations, qualifications and exceptions necessary to give effect to this Act."

On the fourth issue as to whether there was fraud in the issuance of the land Control Board consent to subdivide and transfer, the defendants claimed that there was fraud in the issuance of the land Control Board consent to subdivide and transfer but did not lead any evidence to prove the same. The 1st defendant neither reported the matter to the relevant agencies for investigation nor took any action to impeach the same.

In the case of Vijay ***Morjaria vs Nansingh Madhusingh Darbar & Another*** ***[2000] eKLR,*** where ***Tunoi, JA. (as he then was)*** stated as follows:

> ***"It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts."*** [Emphasis added].

The 1st defendant did not go a mile further to prove that there was fraud in the issuance of the consent to subdivide and transfer. If he had issues then he could have stopped the subdivision. The subdivision went ahead as per the consent granted.

In the case of ***R. G. Patel v. Lalji Makanji [1957] EA 314***, ***Koinange & 13 Others v. Koinange [1986] eKLR*** and ***Mutsonga v. Nyati [1984] EA 425***, the appellants submitted that the respondents were duty bound to prove fraud on more than a mere balance of probabilities, which they failed to do.

On the 5th issue as to whether the plaintiff is entitled to specific performance, having found that there was a valid agreement for sale of the suit land and there was no fraud in the issuance of the Land Control Board consent, and the plaintiff took possession with the permission of the 1st defendant, it follows that the plaintiff is entitled to the equitable relief.

In the case of ***Reliable Electrical Engineers Ltd…..Vs….Mantrac Kenya Limited (2006) eKLR,*** wherein Justice Maraga (as he then was) stated that:-

> ***"Specific performance like any other equitable remedy is discretionary and the Court will only grant it on well principles"***

> ***"The Jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages an***

adequate remedy specific performance may still be refused on the ground of undue influenced or where it will cause severe hardship to the defendant."

The Court of Appeal in the case of ***Gurdev Singh Birdi & Anor –vs- Abubakar Madhbuti C.A.*** *No.165 of 1996 held as follows;*

''It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been under all the obtaining circumstances in the particular case, it is just and equitable to do with a view to doing more perfect and complete justice. Indeed, as is set out in paragraph 487 of volume 44 of Halsbury's Laws of England., Fourth Edition, a Plaintiff seeking the equitable remedy of specific performance of a contract:

'' must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action. However, this rule only applies to terms which are essential and considerable. The court does not bar a claim on the ground that the Plaintiff has failed in literal performance, or is in default in some non- essential or unimportant term, although in such cases it may grant compensation. Where a condition or essential term ought to have been performed by the Plaintiff at the date of the writ, the court does not accept his undertaking to perform in lieu of performance but dismisses the claim.''

Damages would not be an adequate remedy in this case therefore the relief of specific performance is appropriate. If this remedy is not granted then the plaintiff will suffer hardship.

The plaintiff did not prove that the balance of the purchase price was paid in full therefore I order that the balance of the purchase price of Kshs. 1000,000/ together with interest from the time of filing this suit be paid to the 1st defendant.

I find that the plaintiff has proved its case on a balance of probabilities and make the following orders:

a) That a permanent injunction is hereby restraining the defendants, their servants, agents from interfering with trespassing onto, surveying, subdividing, alienating, selling, transferring or in any other way doing anything over and in respect of all that parcel of land namely LR No.8304 situated at Eldoret North, Moiben Division in Uasin Gishu District measuring 1680 acres.

b) An order is hereby issued compelling the 1st 2nd and 3rd defendants to transfer the to the plaintiff title deed of the suit property.

c) The 1st defendant's counterclaim is dismissed with costs.

d) The plaintiff to pay the 1st defendant Kshs. 1000,000/ being the balance of the purchase price with interest from the date of filing this suit.

e) Defendants to pay costs of this suit and interest.

DATED and DELIVERED at ELDORET this 4TH DAY OF MARCH, 2020

M. A. ODENY

JUDGE

JUDGMENT read in open court in the presence of Miss. Lagat for Plaintiff, Miss. Njoki holding brief for Mr. McCourt for 1st Defendant and Mr. Chepkwony for 4th, 5th and 6th Defendants.

Mr. Yator – Court Assistant