



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO. 15 OF 2014

**ST. LAVINA MEDICAL & LABORATORY**

**SERVICES LIMITED.....PLAINTIFF**

**-Versus-**

**THE NATIONAL HOSPITAL INSURANCE FUND**

**BOARD OF MANAGEMENT.....DEFENDANT**

**JUDGMENT**

**Plaintiff: Pay our balance**

[1] The plaintiff **St. Lavina Medical & Laboratory Services Limited** pleaded that it entered into a contract with the defendant for the provision of primary healthcare and treatment services to civil servants and members of disciplined services. The plaintiff stated that it discharged its obligations under the said contract from **18 February 2012 to 21 November 2013** when the defendant unilaterally terminated the contract vide its letter dated 3<sup>rd</sup> October 2013. The said letter was received by the plaintiff on 21 November 2013. The plaintiff averred that it rendered services between 18<sup>th</sup> February 2012 and 21<sup>st</sup> November 2013 worth Kshs. 13,379,987 out of which the defendant has paid Kshs. 3,948,625 leaving a balance of Kshs. 9,431,362. The plaintiff contended that it has severally demanded for the payment of the balance but to no avail, thus, the institution of this suit. Now they seek payment of the said balance plus interests and costs of the suit.

**Defendant: No contract between us**

[2] The defendant filed their defence and stated that the plaintiff at all material times was owned by Joab Indech Wakhu, an employee of the defendant, and his wife Maureen Anjeline Malo. Wakhu, by virtue of his office and influence procured the purported registration and gazettelement of the plaintiff without following the laid down procedures. This is in spite of knowing that the plaintiff was barred from participating in any tender to supply goods or services to the defendant. The defendant further pleaded that the plaintiff or Wakhu did not disclose to the defendant of their relationship prior to the tender at all. Thus, the contract was illegal, injurious to good governance and in perpetuation of fraud. The plaintiff and Wakhu violated **Articles 10, 75, 99 (1) (b), 193 (1) (b) and 232** of the Constitution, **Section 12** of the Public Officer Ethics Act and **Section 8, 10, 13, 16 (2) and (3), 16 (5) (d) and (6), 17 and 26** of the Leadership and Integrity Act. The Defendant urged that the court should not entertain the plaintiff's claim to recover proceeds of its crime and illegality. In any event, the defendant claimed that the sums paid by the defendant were made out of honest mistake and it shall seek a refund.

[3] A reply to defence was filed. The plaintiff denied having procured registration and gazettelement illegally; it claimed it followed the due process required and denied the particulars of illegality and fraud. The plaintiff denies being owned and or controlled by Joab Indech and Maureen Anjeline Malo as alleged. The plaintiff puts the defendant to strict proof.

**Evidence**

[4] The plaintiff called one witness, **PW1 David Olunga Obwori** the clinical officer and overall manager in charge of the plaintiff since December 2011. He adopted in evidence his statements dated 23<sup>rd</sup> June 2014, 26<sup>th</sup> June 2014 and 8<sup>th</sup> June 2016. The two filed bundles of documents dated 23<sup>rd</sup> June 2014 and 9<sup>th</sup> June 2016 were tendered in as evidence.

[5] PW1 stated that he is conversant with ownership of the plaintiff. As of 8<sup>th</sup> September 2004 the owner of St. Lavina Medical & Laboratory Services was Joab Indech Wakhu. The contract with the defendant was signed on 7<sup>th</sup> February 2012 at which time the owners were Samuel Omuchere and Joan Anindo who had acquired it from Joab and Maureen on 23<sup>rd</sup> December 2011. There was a formal registration of sale on 6<sup>th</sup> January 2012 and a certificate of incorporation was issued to them on 2<sup>nd</sup> April 2012. License of clinical officers' council covers private medical practice and as of January and February 2012 the license of one George Mbala Akima was operative for at that time Joab was not the owner and his license could not cover the plaintiff. Therefore, it was transferred to George because he has over 10 years' experience.

But, he said that he has never met the said George and does not know where he works. In July 2012 NHIF made a requirement that all providers must acquire a license from Kenya Medical Pharmacist and Dentistry Board (KMPD) and license was issued thereto. This requirement was not there at the time of signing the agreement. That same year health facilities were re-inspected by NHIF and the plaintiff was one of them. Joab was not one of the people who did the re-inspection.

[6] PW1 continue to give testimony. He told the court that NHIF processes accreditation, carries out inspection and assessment approval by the board; gazettement by government is done and then the contract is signed. The successful person is given a code to operate under NHIF Act. The code was issued to the plaintiff on 14<sup>th</sup> February 2012. License is taken out annually and the requirement for licensing by KMPD Board came in July 2012, prior to that they were licensed by Clinical Officers Council. Certificate of registration as private medical institution issued to St. Lavina Medical and Laboratory Services was issued on 17<sup>th</sup> September 2012 which was after signing the contract. He contended that they were licensed by KMPD board at the time of signing the contract. He admitted that he knows Maureen for she is his colleague as administrator of the plaintiff and her junior but initially she was an owner until 23<sup>rd</sup> December 2011. He confirmed to court that, according to documents filed in court the plaintiff is a limited liability company. But the contract of January 2012 was with St. Lavina Medical and Laboratory services. It is not indicated limited liability company but they are the same persons despite that.

### **Defendant's evidence**

[7] The defendant called one witness **DW1 Joseph Tunoi**, an officer of the defendant working in the human resources department who adopted his witness statement. He testified that by a letter of appointment dated 17<sup>th</sup> December 2004 the defendant employed Joab Indech Wakhu as a Benefits and Quality Assurance Officer III working at Meru branch. He was thereafter promoted on 1<sup>st</sup> November 2008 to a Benefits and Quality Assurance Officer II and later transferred to Embu Branch. On 1<sup>st</sup> March 2012 he was promoted to Senior Benefits and Quality Assurance Officer and on 17<sup>th</sup> July 2012 he was transferred to Nyeri branch. On 9<sup>th</sup> August 2010 the defendant advertised in the dailies for a health service provider to provide outpatient services to civil servants throughout the country. One was to apply through the branch which would organize the assessment of the facility. The assessment is sent to head office for board approval. Applications that have been approved by the board are then gazetted. Thereafter, both parties sign the contract.

[8] DW1 stated that following the advertisement, Joab and his wife Maureen incorporate their business known as St. Lavina Medical and Laboratory Services, on 17<sup>th</sup> September 2010. But, in accordance with the appointment letter, clause II, Joab was prohibited from trading with or making profit out of engagement with the defendant, his employer. The Human Resource Procedure Manual also restricted employees trading with the employer. According to him, Joab being an owner and employee of the defendant at the same time was in violation of the law. He said that Joab and his wife seem to have entered into an agreement with two other persons on 23<sup>rd</sup> December 2011 for the sale of their business but the document is not stamped for purposes of tax duty. He spoke on the notice of change in respect of St. Lavina Medical & Laboratory Services and said that it shows they resigned with effect from 5<sup>th</sup> January 2012. On 2<sup>nd</sup> April 2012 notice of change of particulars was signed but it was after the contract between the St. Lavina Medical and Laboratory Services and the defendant had been signed in January 2012. DW1 said that the plaintiff could not have been accredited as a health provider on 10<sup>th</sup> January 2012 prior to its incorporation on 8<sup>th</sup> August 2012. The plaintiff signed a contract with the defendant for 2 years which was signed by Maureen Malo, wife to Mr. Wakhu. The plaintiff was allocated a code on 14<sup>th</sup> February 2012. Accreditation of the plaintiff could not be possible for it was neither registered nor licensed to carry out business under the Medical Practitioners and Dentists Act. Certificate of registration as a private medical institution was issued later on 17<sup>th</sup> September 2012.

[9] DW1 went on: Sometime on 24<sup>th</sup> July 2012 the Defendant received information that the said Mr. Wakhu together with his wife had irregularly obtained accreditation under the name St. Lavina Medical and Laboratory Services. That is when he hurriedly converted his business into a limited liability company. The defendant had already made three payments to the plaintiff before they realized the illegality involved. They then terminated payment. It was converted to a limited liability company as the plaintiff on 8<sup>th</sup> August 2012. But, the contract herein was between the defendant and St. Lavina Medical & Laboratory Services and not between the defendant and the plaintiff herein. To him, these two are distinct persons. They were not even notified that the plaintiff was incorporated. It was incorporated on 17<sup>th</sup> August 2012 which was after the signing of the contract.

### **Submissions by the Plaintiff**

[10] The plaintiff in their submissions dated 23<sup>rd</sup> August 2017 argued that the amount due to the plaintiff is not disputed but only the legality of the contract entered into between the parties. Therefore, the issue for determination is whether the contract between the plaintiff and defendant is legal and enforceable or is it illegal and unenforceable. The burden of proof lies on the person who alleges illegality and the standard of proof is higher than that of ordinary civil suit as stated in **EVANS OTIENO NYAKWANA vs. CLEOPHAS BWANA ONGARO [2015] EKL.R.**

### **Submissions by the defendant**

[11] The defendant in their submissions dated 9<sup>th</sup> October 2017 contended that the plaintiff herein was not a party to the contract of January 2012 and cannot, therefore, enforce it by way of this suit. The plaintiff cannot seek payment for it was not licensed under the Medical Practitioners and Dentist Act at the time of entering into the contract in January 2012 thereby contravening Section 14, 15 and 17 of the Act and Clause 2.2 of the said contract. The said contract was procured in contravention of Section 33, 41 and 43 of the Public Procurement Act, Constitution, Public Officers Ethics Act, the Leadership and Integrity Act and the defendant's Tender Guidelines and Human Resource Policy. Consequently, the issue for determination before this court is whether a contract was entered into between the plaintiff and defendant in January 2012 and whether it is legal and enforceable.

### **ANALYSIS AND DETERMINATION**

[12] The plaintiff saw only one issue for determination; i.e., whether the contract between the parties herein is valid and enforceable or invalid and unenforceable. The defendant sees it differently; the issue is whether there was a contract between the parties in this suit. Careful consideration of the pleadings, evidence adduced and arguments presented by parties, reveals the following to be the issues for determination:-

**1. Whether there was any contract entered into between the plaintiff and defendant. Here, I will discuss the legal personality of the plaintiff.**

**2. Inextricable to (1), whether the contract herein is legal and enforceable.**

### **Was there was any contract between the parties**

[13] A little on law of contract is useful here. A contract is usually between the parties. And, except in instances provided in law, no person can sue on a contract he is not a party to. See eminent literary work by Bryan A. Garner, *Black's Law Dictionary*, 1999 Seventh Edition, at page 1217 which defines privity of contract to be:

***“The relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so.”***

[4] See also *Halsbury's Laws of England*, 4<sup>th</sup> Edition, Volume 9(1) Para 748 that:

***“The general rule: the doctrine of privity of contract is that, as a general rule, at common law a contract cannot confer rights or impose strangers to it. That is, persons who are not parties to it. The parties to a contract are those persons who reach agreement and, whilst it may be clear in a simple case who those parties are, it may not be so obvious where there are several contracts, or several parties, or both, for example in the case of multilateral contracts; collateral contracts, irrevocable credits contracts made on the basis of the memorandum and articles of a company; collective agreements, contracts with unincorporated association; and mortgage surveys and valuation.”***

[15] Another useful guide; the decision of the Court of Appeal in the case of **WILLIAM MUTHEE MUTHAMI vs. BANK OF BARODA [2014] eKLR** where it held:

***“It is elementary learning, that as a general rule, according to the common law doctrine of privity of contract, rights and obligations under a contract are only conferred or imposed on the parties to that contract.”***

Accordingly, except in instances known to law, a contract only binds the parties to the contract and gives them the right to sue on the cause of action arising therefrom. What are the facts of this case?

### **Business firm vs. incorporated company**

[16] I stated earlier that the two issues are inextricable. In this case, the contract in contention bears January 2012 on the cover page. It does not bear any other date anywhere else. This will be discussed later. Meanwhile, of importance is that the said contract is between St. Lativa Medical & Laboratory Services and NHIF. Maureen Anjeline Malo signed for St. Lativa Medical & Laboratory Services and affixed the stamp for the said business firm. The defendant stated that the business firm and the plaintiff are two different parties. **PW1** asserted that the plaintiff was incorporated on 8<sup>th</sup> September 2004. No evidence was provided to support that assertion. Nonetheless, according to the certificate of registration of business name, St. Lativa Medical & Laboratory Services was formed and registered on 17<sup>th</sup> September 2010 under Registration of Business Name Act. It is a business firm of individuals. The said certificate is conclusive of the registration thereto. The certificate shows that the proprietors were Joab Indenche Wakhu and his wife Maureen Anjeline Malo; and this is not disputed. In the law on registration of business names, persons indicated in the certificate of registration constitute the proprietors of the business firm. Therefore, St. Lativa Medical & Laboratory Services was a firm of individuals named in the certificate of registration of business. It was not a limited liability company. St. Lativa Medical & Laboratory Services was already one of the service providers contracted by the defendant to provide healthcare at the time the proprietors thereto entered into an agreement dated 23<sup>rd</sup> December 2011 selling the business to Samuel Omuchere and Joan Anindo.

[17] According to the notice of change dated 5<sup>th</sup> January 2012, Wakhu and Maureen resigned from St. Lativa Medical & Laboratory Services with effect from 5<sup>th</sup> January 2012. The notice was received by the Registrar on 6<sup>th</sup> January 2012. On 2<sup>nd</sup> April 2012 certificate of registration of change of particulars was issued. What is surprising, and has not been explained is when exactly the agreement in issue was signed. Again, it is insidious that, despite the change of particulars for St. Lativa Medical & Laboratory Services which saw Joab and Maureen resign from the business, Maureen Anjeline is the one who signed for St. Lativa Medical & Laboratory Services in January 2012. The omission in the date is ominous. That notwithstanding, it is clear that the parties to the contract herein- whether valid or not- are the business firm known as St. Lativa Medical & Laboratory Services and the Defendant.

### **Plaintiff is a limited liability company**

[17] The plaintiff is a limited liability company which was incorporated on 8<sup>th</sup> August 2012 vide Certificate of Registration NO. CPR/2012/81109 under the provisions of the Companies Act. For emphasis, the plaintiff is called **ST. LAVINA MEDICAL & LABORATORY SERVICES LIMITED**. It was and still is governed by the Companies Act. Upon incorporation as a limited liability company, the plaintiff acquired corporate legal personality; it is a legal person distinct from the people who compose it. This is the greatest innovation of law borne of the famous case of *Salmon vs. Salmon*. In particular, see the opinion of Lord Macnaghten that:-

***“The company is at law a different person altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act”.***

[18] The plaintiff is therefore distinct from the business firm known as St. Lativa Medical & Laboratory Services. The latter is a business firm composed of individuals and the plaintiff is an incorporated company; the two are different entities with different features and personalities. A company incorporated under the Companies Act is obliged in law to use the word limited at the end of its name unless it is exempted as by law required. It must also transact as such with all and sundry. See Section 21 of the repealed Companies Act and the present 54 and 55 of the Act; the latter sections states that:

***“54. Registration of private limited companies***

***A company that is both a limited company and private company may be registered only with a name that ends with the word "limited" or the abbreviation "Ltd."***

***55. Exemption from requirement to use of "limited" The Cabinet Secretary may, by notice given to the company, exempt a private company from using the word "limited" or "Ltd as required by section 54.”***

[19] It bears repeating that the contract herein was signed Anjeline Wakhu for ‘St. Lativa Medical & Laboratory Services; it was not signed by or for the plaintiff, ‘St Lativa Medical & Laboratory Services Limited’. The contract does not refer to the plaintiff company whatsoever. In any event, the plaintiff was incorporated on 8<sup>th</sup> August 2012. See the certificate of incorporation. The plaintiff company was not in existence in January 2012 when it is purported to have signed the contract in issue. It was not legally possible for the unborn plaintiff to have entered into a contract with the defendant.

[20] One other thing; the court was not provided with evidence that; (1) the plaintiff purchased the business of ‘St. Lativa Medical & Laboratory Services’ or (2) the business of the said firm was transferred to the plaintiff company. Accordingly, I find and hold that the contract of January 2012 was not between the plaintiff and the defendant. There was no contract between the parties herein. It follows therefore that the plaintiff cannot sue on the said contract. This case fails on that account alone. Nevertheless, let me examine whether the contract would be valid and enforceable in any event.

**Validity or enforceability of contract**

[21] The above notwithstanding, the plaintiff alleges that the defendant owes him Kshs. 9,431,362/- for the services rendered from 18 February 2012 to 21 November 2013. The plaintiff could not have rendered services before incorporation. Validity and enforceability of the contract in question has nonetheless been challenged on the front of illegality. According to the evidence adduced by witnesses of both parties, for one to be a health provider for the defendant you have to be accredited and gazetted. Thereafter, the contract is signed and a code is issued upon the signed contract. The contract herein was signed in January 2012 and it is alleged that the plaintiff was issued with the code on 14<sup>th</sup> February 2012. The evidence filed in this court shows that St. Lativa Medical & Laboratory Services was accredited on 22<sup>nd</sup> March 2013 and gazetted on 15<sup>th</sup> June 2012. It is obscure how the contract was signed and code issued before the requisites steps were met. After its gazettement, on 24<sup>th</sup> July 2012 the defendant realized that St. Lativa Medical & Laboratory Services had illegally acquired accreditation. Other pertinent matters which came to the fore include that: First; Wakhu was a senior Benefits and Quality Assurance Officer at that time. His department, the Benefits and Quality Assurance Department is charged with the duties *inter alia* of considering applications for accreditation by health facilities to assess the suitability of such health facilities and to ensure that they maintain the requisite quality standards. The said Joab and his wife Maureen registered and were owners of St. Lativa Medical & Laboratory Services. The two purportedly transferred the business to Anindo and Another. Her wife signed the contract in issue despite pretense that the two had resigned from the firm. The evidence show that both were quite instrumental figures and the controlling minds in all transactions of St. Lativa Medical & Laboratory Services from inception, and up to the incorporation of the plaintiff. He and his wife traded with the Defendant. The transfer of the business and eventual incorporation of the plaintiff may be part of the scheme for Joab to continue trading with the Defendant and to conceal his footprints. It is not uncommon in Kenya and the world for unscrupulous persons to use corporate vehicle to commit fraud and corruption. It is also not uncommon that numerous transactions and transfers are created by unscrupulous individuals in order to confuse or conceal the trails of illegal transactions. Evidence show that at the time Joab was an employ of the defendant, he procured tenders to provide health care services without making full disclosures thereto; this is contrary to the law. Such are red flags for investigation by relevant authorities.

[22] All the above underlying factors taints the contract by St. Lativa Medical & Laboratory Services and is null and void for illegality. The defendant has shown this in the evidence tendered. And the fact that the plaintiff received payment under such contract does not make the transaction valid or enforceable. Any such sum paid would be recoverable under the doctrine of unjust enrichment.

[23] Secondly, according to clause 2.2 of the contract:

***“The Healthcare Provider shall be licensed to provide medical care and treatment services and has hereby agreed to provide medical care defined and treatment services to beneficiaries under the Contract. The engagement is subject to NHIF confirming that the Healthcare Provider is licensed as per the requirements of the Medical Practitioners and Dentists Board.”***

[24] This clause makes it mandatory that the Healthcare Provider must be licensed for it to provide the services required under the contract. The plaintiff stated that, before getting their license to operate as a private medical institution on 17<sup>th</sup> September 2012, they operated under the license of one George from the Clinical Officers Council who was a clinical practitioner. The plaintiff alleged that the requirement to be registered under KMP&D Act was not there at the time of signing the contract but they were either way licensed by KMPD board before the

contract. This claim was not corroborated by evidence. Section 17 of the Medical Practitioners and Dentists Act states:

***“No person shall be entitled to recover a charge for medical or surgical advice or attendance, or for the performance of an operation as a medical practitioner or dentist, or for medicine which he has prescribed and supplied as a medical practitioner or dentist, unless he is at the time appropriately licensed under section 15.”***

[25] From the foregoing, I make these conclusions. There is deliberate inter-twinning of *St. Lativa Medical & Laboratory Services*, the business firm of individuals with *St. Lativa Medical & Medical Laboratory Services Limited*, a limited liability company. But the court using the judicial lenses is able to see through it clearly; this suit relates to and is by *St. Lativa Medical & Laboratory Services Limited*. The said company did not enter into any contract in January 2012 with the defendant. The said contract was between *St. Lativa Medical & Laboratory Services*, a business firm of individuals and the defendant. There was no evidence of any transfer or sale of the business of *St. Lativa Medical & Laboratory Services* to the plaintiff. The plaintiff cannot therefore stake a claim under the purported contract herein. The basis of this reasoning is that, the plaintiff is a limited company- a legal entity distinct from the persons who compose it. It is not the same as the business firm called *St. Lativa Medical & Laboratory Services*. In any case, the business was formerly owned by Joab and Maureen. Joab being an employee of the defendant, which was the procuring entity at that time, together with his relatives were prohibited from entering into a contract to provide healthcare for the defendant. Section 33(1) of the Public Procurement and Disposal Act states that:

***“Except as expressly allowed under the regulations, a procuring entity shall not enter into a contract for procurement with-***

***(a) an employee of the procuring entity or a member of a board or committees of the procuring entity;***

***(b) a Minister, public servant or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Minister;***

***(c) a person, including a corporation, who is related to a person described in paragraph (a) and (b).”***

Section 41 of the same Act states:

***“(1) No person shall be involved in a fraudulent practice in any procurement proceeding.***

***(2) If a person contravenes subsection (1) the following shall apply –***

***(a) the person shall be disqualified from entering into a contract for the procurement; or***

***(b) if a contract has already been entered into with the person, the contract shall be avoided at the option of the procuring entity.”***

[26] After selling the business, the said Maureen became an employee of the plaintiff of which PW1 is her senior at work. She had signed the contract for the business firm and not the company. A document signed for the company must be in accordance with the law. See Section 37 (2) of the Companies Act on how documents should be executed:

***“(2) A document is validly executed by a company if it is signed on behalf of the company— (a) by two authorised signatories; or (b) by a director of the company in the presence of a witness who attests the signature.”***

[27] Secondly, as per the law the plaintiff is required to have a license which is provided for by the Medical Practitioners and Dentists Board and not the Clinical Officers Council which was obtained on 17<sup>th</sup> September 2012. The plaintiff was incorporated in August 2012 and acquired its license in September 2012. Therefore, the plaintiff was operating and providing healthcare services without the proper license.

[28] The plaintiff having been incorporated on 8<sup>th</sup> August 2012 cannot be said to be a party to the contract executed before its existence unless it is a merger, take-over or purchase of rights. The exception is not the case here. This is not an case where the company was the future generation of the business firm as to benefit under sustainable development. Having been incorporated on 8<sup>th</sup> August 2012, there is no evidence of any communication made to the defendant to notify it of its incorporation. Any services purportedly provided by the plaintiff from 8<sup>th</sup> August 2012 to 21<sup>st</sup> November 2013 was tainted with illegality.

[29] In the upshot, the plaintiff has not proved its case on balance of probabilities that there was a contract between them and the defendant. Invariably, therefore, they are not owed the sum claimed. Any payment made under a contract that is vitiated by illegality is made under a mistake and may be recoverable by the public entity. Such payment does not validate the contract or make the plaintiff a party to or confer rights upon the plaintiff in the purported contract. Therefore, it cannot seek for enforcement of rights which do not belong to it. See the case of Mistry Amar Singh v Serwano Wofenira Kulubya [1963] EA 408 the court relied upon the case Scott v Brown, Doering, McNab & Co. (3), [1892] 2 Q. B 724, Lindley, L. J., at p.728 expressed:

***“Ex-turpicausa non oritur action. This old and well known legal maxim is founded on good sense, and expresses a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract of transaction which is illegal, if illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court not to assist him.”***

[30] As a consequence of my findings above, this suit is a candidate for dismissal and it is hereby dismissed with costs to the defendant. It is so ordered.

**Dated, signed and delivered in open court at Meru this 8<sup>th</sup> day of May 2018**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

M/s. Mara advocate for Mr. Makambo advocate for defendant

M/s. Nelima advocate for Mr. Kariuki advocate for plaintiff.

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**F. GIKONYO**

**JUDGE**