



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL SUIT NO. 627 OF 2012**

ANTHONY RAYMOND CORDEIRO.....1<sup>ST</sup> PLAINTIFF

ELAINE DESA CORDIERO.....2<sup>ND</sup> PLAINTIFF

TECHNOLOGY TODAY LTD.....3<sup>RD</sup> PLAINTIFF

-VERSUS -

ADRIAN NOEL CARVALHO.....1<sup>ST</sup> DEFENDANT

ARLET DOMINICA CAEVALHO.....2<sup>ND</sup> DEFENDANT

I&M BANK LIMITED.....3<sup>RD</sup> DEFENDANT

JAYANTLAL JIVAJ MEPAL SHAH.....4<sup>TH</sup> DEFENDANT

MANSUKHLAL JIVAJ MEPAL SHAH.....5<sup>TH</sup> DEFENDANT

DILIPKUMAR JIVAJ MEPAL SHAH.....6<sup>TH</sup> DEFENDANT

**RULING**

**ISSUES TO BE DETERMINED BY THE TRIAL**

**COURT AS DRAWN UP BY THE COURT**

The parties to these proceedings have been unable to agree on the issues which arise from the pleadings. Therefore, before the trial can commence, and in order to enable the parties appreciate the scope of matters about which they need to lead evidence, it has become necessary for the Court to settle the List of Issues.

Here below are the said Issues:

1. Did the 1<sup>st</sup> and 2<sup>nd</sup> defendants fraudulently procure themselves to be registered as the holders of 1750 and 23, 249 shares, respectively, in the 3<sup>rd</sup> plaintiff?
2. Did the registration of the 1<sup>st</sup> and 2<sup>nd</sup> defendants as the majority shareholders in the 3<sup>rd</sup> plaintiff, impose fiduciary duties upon them?
3. Was the sale and transfer of **LR NO. 1870/vi/145**, by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants void, for the lack of legal capacity on the part of the said 1<sup>st</sup> and 2<sup>nd</sup> defendants?
4. Should the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants be compelled to deliver up to the Registrar of Titles, the Transfer and Certificate of Title in **L.R NO. 1870/vi/145**, for cancellation of the transfer which was in favour of those defendants?
5. Are the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants liable to pay mesne profits to the 3<sup>rd</sup> plaintiff, with effect from 19<sup>th</sup> October 2011?

6. Are the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants liable to compensate the 3<sup>rd</sup> plaintiff by way of General Damages? If so, what is the quantum of the said damages?

7. If mesne profits or damages are awarded, should they attract interest? If so, at what rates and from what dates?

8. Did the 3<sup>rd</sup> defendant knowingly, **(or at all)**, take part in the alleged unlawful sale of **L.R NO. 1870/vi/145**?

If so, is the 3<sup>rd</sup> defendant liable to compensate the plaintiffs or any of them?

9. Who should pay the costs of the suit, and to whom?

**DATED, SIGNED and DELIVERED at NAIROBI, this 4<sup>th</sup> day of June 2018.**

**FRED A. OCHIENG'**

**J U D G E**