



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC NO. 7 OF 2020

MARGARET MUTHONI NJOROGE.....PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY LIMITED.... 1ST DEFENDANT

KENNEDY ODHIAMBO KAWALA..... 2ND DEFENDANT

RULING

(Application for injunction to stop chargee from exercising its statutory power of sale; plaintiff being wife of 2nd defendant who charged the suit property; plaintiff arguing that she did not give consent to the charge and that she was not aware of the charge; plaintiff further claiming that the chargee has not complied with the requisite notices before embarking on sale and has not valued the suit property; 1st defendant, chargee, pointing out that the suit property was charged before the Land Act, 2012, and there before, consent of spouse was not a requirement; 1st defendant further demonstrating that the loan was taken to purchase the suit property; 1st defendant demonstrating that it has complied with all requisite notices and has valued the premises; jurisdiction also being contested; court holding that it has jurisdiction as the subject matter is the legality of the charge and the process of sale for which the court has jurisdiction; spousal consent becoming a requirement after the Land Act, 2012, and in any case, the loan was taken to purchase the property of which the plaintiff signed as a witness; plaintiff cannot claim not to be aware of the charge; all notices duly issued and valuation done; view of court that to avoid litigation on valuation, auctioneers' advertisement to indicate the value of premises and date of valuation; application dismissed)

1. The application before me was filed alongside the plaint and principally seeks orders of injunction to stop the 2nd defendant, a bank, from selling the property MN/Sec I/5976 situated in Nyali, Mombasa, until this suit is heard and determined.

2. Through a plaint filed on 23 January 2020, the plaintiff pleaded that she married the 2nd defendant in the year 1996, and that thereafter, they purchased the property LR No. MN/I/5976 (the suit property). It is pleaded that the purchase price for the suit property was jointly raised by the plaintiff and the 2nd defendant, even though the property was registered in the name of the 2nd defendant. It is pleaded that they have three children (though one unfortunately passed on, just a few days before this suit was filed) and that the plaintiff resides on the suit property together with her children. It is pleaded that on 13 January 2020, the plaintiff learnt that the 1st defendant had instructed an auctioneer to advertise the suit property for sale by public auction, and that an advertisement was placed in the Daily Nation newspaper of 6 January 2020, which auction was scheduled for 24 January 2020. The plaintiff avers that she inquired from the 2nd defendant why the property was being put up for sale, and she then learnt that the 2nd defendant had charged the property through a charge dated 11 November 2011 for the sum of KShs. 23,400,000/=. The plaintiff has pleaded that the charge is null and void for the following reasons :-

(a) The 1st defendant failed to do due diligence by physically inspecting the suit property before executing the charge dated 11 November 2011.

(b) The 1st defendant failed to recognize the plaintiff's overriding interest in the suit property even though the plaintiff has been in actual occupation of the suit property before the execution of the charge.

(c) The 2nd defendant is holding the suit property as a trustee of the plaintiff. As such, the 2nd defendant had no capacity to charge the suit property without consulting the plaintiff.

(d) The charge document is in violation of Article 45(3) of the Constitution of Kenya, 2010, which that (sic) the plaintiff and the 2nd defendant shall have equal rights to the suit property more so where, like in this case, the plaintiff contributed to the purchase of the suit property.

3. The plaintiff has further pleaded that she has not been served with any statutory notice leading to the intended sale. She has stated that she inquired from the 2nd defendant who mentioned that he was only served with a 45 days redemption notice. It is thus the position of the plaintiff that the intended sale is tainted with illegalities for non-compliance with mandatory provisions of the law. The following particulars of illegality are pleaded. That :-

(a) The 1st defendant has failed to notify the plaintiff about the existence of the charge yet the plaintiff's right over the suit property override any other interests thereon and there cannot be any disposition of the suit property without the consent of the plaintiff.

(b) The 1st defendant has not served the plaintiff with the ninety (90) days notice under Section 90 of the Land Act before the intended sale.

(c) The 1st defendant has not served the plaintiff with a forty (40) days notice under Section 96 (2) of the Land Act before the intended sale.

(d) The defendant has not served the plaintiff with a forty five (45) days notice as provided for under Rule 15 (d) of the Auctioneers Rules.

(e) The intended sale offends Section 97(2) of the Land Act as read with Rule 11 (b) (x) of the Auctioneers Rules, which provides that the chargee shall before exercising the right of sale undertake a current valuation of the suit property. No current valuation of the suit property has been undertaken herein. For the avoidance of any doubt such a report under the law should not be more than 12 months up to the date of the intended date of sale of the property.

(f) The 1st defendant has not served the plaintiff with a Notification of Sale as provided for under Rule 15 (b) and (c) of the Auctioneers Rules.

4. The plaintiff has further pleaded that if the sale proceeds, she and her children will be left in the streets, and will suffer irreparable and substantial loss. She has further pleaded that under Article 53 of the Constitution, the best interest of children ought to be considered paramount thus interim protection should be given. She is apprehensive that if the sale is to continue, it will be below the best available price.

5. In the suit, the plaintiff has asked for the following orders (slightly paraphrased for brevity):-

(a) A declaration that the 2nd defendant is holding the suit property in trust for the plaintiff.

(b) A declaration that the plaintiff has a beneficial interest in the matrimonial home (the suit property) as part owner and wife of the 2nd defendant.

(c) That the charge dated 11 November 2011 over the suit property be declared null and void.

(d) A declaration that the purported public auction sale is illegal, null and void unless the 1st defendant strictly complies with the law.

(e) A permanent injunction restraining the defendants from selling or dealing with the suit property.

(f) Costs of the suit.

(g) Any other relief that this Honourable Court may deem fit to grant.

6. In her supporting affidavit, the plaintiff has more or less repeated the averments in the plaint. She has annexed a copy of the Certificate of Marriage evidencing her marriage to the 2nd defendant; a copy of the charge; a copy of notification from Josrick Merchants Auctioneers, dated 19 November 2019 indicating that the property will be sold on 24 January 2020, if payment is not received within 45 days.

7. After the application was filed, the plaintiff was granted interim orders which stopped the intended auction of 24 January 2020. I need to mention that thereafter, the 1st defendant filed an application to set aside the interim orders of injunction. I declined to set aside the orders and directed the 1st defendant to oppose the substantive motion of injunction.

8. To oppose the application, the 1st defendant has filed a replying affidavit sworn by Amos Wachira Mwangi, its Mombasa Branch Manager. He has in his affidavit reiterated the contents of his affidavit, which was filed with the application seeking to set aside the interim orders of injunction, and has added that in so far as the suit questions a charge securing a lending by the 1st defendant, this is a purely commercial issue, outside the jurisdiction of the Environment and Land Court. He has further deposed that the application is premised on a falsehood, as the plaintiff knew of the loan advanced to the 2nd defendant, and also knew of the creation of the charge as security for the loan. He has stated that the suit is based on a misapprehension that the Land Act, 2012, applies to a charge registered on 17 November 2011. He has deposed that the 1st defendant had earlier attempted to sell the suit property, but this was stopped through a temporary injunction issued in the case Mombasa HCCC No. 108 of 2016, which suit was dismissed on 13 June 2017. He has deposed that there was no duty to serve a fresh statutory notice since those issued in the year 2016 were undisturbed. He has stated that out of courtesy, the 1st defendant re-issued both the three month and the forty five day statutory notices. The three month statutory notice is said to be dated 18 February 2019 while the 45 day notice to sell is dated 28 May 2019. The same are annexed to his affidavit. He has averred that the notices were copied to the plaintiff

even though there is no legal requirement that they be copied to her. He has pointed out that the plaintiff has confirmed being served with the 45 days notice by the auctioneer under Rule 15 (c) of the Auctioneers Rules, 1997. He has deposed that the 1st defendant carried out a forced sale valuation of the suit property and obtained a valuation report dated 14 November 2019, prepared by M/S Joe Musyoki Consultants Limited, which he has annexed to his affidavit. He has stated that it is unfair for the plaintiff and the 2nd defendant to refuse to pay the very loan that they used to purchase what they call matrimonial property. He has deposed that it will be unjust to issue an injunction as the property is valued at KShs. 35,625,000/- while the loan as at 19 February 2020 stood at Kshs. 48,700,871.42/-. He is of opinion that no irreparable loss will be suffered if the suit property is sold since the house was acquired in the year 2011 with money borrowed from the 1st defendant and its value is capable of precise determination. He believes that the balance of convenience tilts heavily in allowing the 1st defendant to exercise its statutory power of sale, and cut its losses as soon as it can, and he has complained that the 2nd defendant has been in persistent default since the year 2016.

9. The 2nd defendant only entered appearance, in person, and did not file anything towards the application.

10. I invited counsel to file written submissions which they did and I also allowed them an opportunity to orally highlight their submissions. Mr. K'Ongere, learned counsel for the 1st defendant, argued his submissions on four issues, being –

- (a) Whether this court has jurisdiction;
- (b) Whether the plaintiff is guilty of material non-disclosure;
- (c) Whether the plaintiff has demonstrated a prima facie case;
- (d) Whether the plaintiff will suffer irreparable injury absent an injunction.

11. On the first issue, he argued that this court does not have jurisdiction in this suit and relied on the Court of Appeal decision in the case of *Co-operative Bank of Kenya Limited vs Patrick Kangethe Njuguna & 5 Others (2017) eKLR*. On non-disclosure of material facts, he referred me to the affidavit sworn in support of the application to set aside the interim orders of injunction, and specifically to the Letter of Offer dated 24 August 2011, the plaint in Mombasa HCCC No of 2016, and an order issued in that case of 13 June 2017. He submitted that the plaintiff did not table these facts when she came to court. He submitted that the letter of offer was signed by the plaintiff as a witness, and that it demonstrates that the funds disbursed were for the purchase of the suit property, which is a house. He submitted that it was false for the plaintiff to allege that she was not aware of the charge. He submitted that it is difficult to believe that the plaintiff was not aware of the intended sale of the year 2016. He submitted that spousal consent was not a requirement when the charge was created. Counsel relied on other additional authorities to buttress his arguments.

12. On the part of the plaintiff, Mr. Gikandi, learned counsel, argued inter alia that the consent of the plaintiff was never sought before the charge was executed. Counsel relied on the Court of Appeal case of *Mugo Muiru Investment Limited vs EWB & 2 Others (2017) eKLR*. It was submitted that even if the plaintiff knew of the charge, that is not the equivalent of spousal consent, and the two terms cannot be used interchangeably. Counsel was of the view that a prima facie case has been established and that the plaintiff stands to suffer irreparable loss. Counsel also thought that the balance of convenience tilts in favour of the plaintiff.

13. I now take the following view of the matter.

14. I will start with the issue of jurisdiction, for if I am to hold that I have no jurisdiction, then I will need to down my tools. Counsel for the 1st defendant heavily relied on the case of *Co-operative Bank vs Patrick Kangethe & Others (supra)*. My view of that case is contained in my decision in the case of *Lydia Nyambura Mbugua vs Diamond Trust Kenya Limited, Nakuru ELC No. 296 of 2013 (ruling of 20 September 2018) eKLR*. I held the view, and I still hold that view, that in the case of *Co-operative Bank vs Patrick Kangethe & Others*, the Court of Appeal was of opinion that the case was one that was principally related to accounts. I do not believe that the Court of Appeal held that when this court sees the word “charge” in any pleadings, then it should drop its pen. I believe that it is this court which is vested with jurisdiction to determine the legality or otherwise of instruments related to disposition of land, and further to determine the legality or otherwise of sales over land, and that includes auction sales. This jurisdiction arises from Article 162 (2) (b) of the Constitution, 2010, and is elaborated in Section 13 of the Environment and Land Court Act, 2011, which at Section 13 (2) provides as follows :-

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;*
- (b) relating to compulsory acquisition of land;*
- (c) relating to land administration and management;*
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*
- (e) any other dispute relating to environment and land.*

15. You will see that at Section 13 (2) (d) is jurisdiction over contracts, choses in action, or other instruments granting any enforceable

interest in land. A charge is a contract over land and is also an instrument that grants an enforceable interest in land. I do not see how one can then argue that this court would not have jurisdiction over a dispute related to the legality of the instrument of the charge. An auction sale by chargee is similarly a sale related to land, and in the same way that this court will have jurisdiction to handle a dispute relating to a sale of land, so too, it is this court with jurisdiction to determine disputes relating to the manner in which a chargee is disposing or has disposed of the charged land. Of significance, the manner of exercise of the chargee's right of sale, is contained in the Land Act, 2012 and Land Registration Act, 2012, and both statutes provide that it is the Environment and Land Court (and the Magistrate's court, subject to pecuniary limits) which has jurisdiction to handle disputes arising from the matters in the said statutes. I really do not see the place of the argument that the Environment and Land Court has no jurisdiction to determine issues relating to a charge or the manner of exercise by a chargee of its statutory right of sale. It is my finding therefore that this court has jurisdiction to determine the dispute at hand and I in fact doubt whether the High Court would have jurisdiction in such a matter given the provisions of Article 165 (5) of the Constitution. Having held that I have jurisdiction, I will move to determine the merits or otherwise of the subject application.

16. Going through the plaint, I think the plaintiff raises two major complaints. The first is that she did not give her consent to the creation of the charge. She has in fact in her pleadings, stated that the 1st defendant failed to conduct due diligence by physically inspecting the suit property before executing the charge, and that she had been in occupation all along, even before the execution of the charge. She has also stated that she was not aware of the charge, and only came to know of it, after the advertisement in the Daily Nation of 6 January 2020. The second quarrel that the plaintiff has is under the claim that the 1st defendant failed to comply with the law in exercise of its power of sale, that is, failed to issue the appropriate notices before proceeding to advertise the property for sale.

17. The requirement that consent of the spouse be provided before matrimonial property may be charged was not explicitly set out in our law until the Land Act of 2012 which came into effect on 2 May 2012. There before, there was no law that required spousal consent before a charge could be created, and spousal rights were not recognised as overriding interests. The Court of Appeal addressed this point in the case of *Stella Mokeira Matara vs Thaddeus Mose Mangenya & Another*, Court of Appeal at Kisumu, Civil Appeal No. 63 of 2014 (2016) eKLR. In the suit, the plaintiff, wife of the 1st defendant, filed suit to stop a sale by chargee. The plaintiff contended that the property in issue was matrimonial property and she had not given her consent to the creation of a charge. The Court (Okong'o J) held the view that spousal consent was not a requirement before the Land Act, 2012, and was not persuaded to grant an injunction. The plaintiff appealed. The Court of Appeal did not see how the trial court could have been said to have wrongly exercised its discretion and dismissed the appeal. I also had occasion to address the same issue, that is whether spousal consent was a requirement before the Land Act, 2012, in the case of *Elizabeth Wanjiru Waweru vs John Waweru Chege & 3 Others* (2016) eKLR, where I declined to grant an injunction on the argument that consent of the spouse was not given to a charge created in the year 2011. There was no requirement in the law for spousal consent then, and I did not see how the bank could be victimised for failing to obtain one.

18. Counsel for the plaintiff heavily relied on the Court of Appeal decision in the case of *Mugo Muiro Investments Limited vs. EWB & 2 Others* (2017) eKLR. That case has some interesting facts. A property that was owned by the husband to the 1st respondent was sold by chargee in exercise of its statutory power of sale. The 1st respondent contested the sale and pleaded a trust in the property. All along the property was registered in the name of her husband. It did emerge that there had been an earlier charge over the property, aimed at purchasing it, which facility was cleared. The husband later created a subsequent charge, but without the knowledge of his spouse, and failed to repay the facility, resulting in the sale of the property. The Court thought that the sale by chargee was subject to the 1st respondent's overriding interest as an unregistered co-owner. I think the facts of that case are different and distinguishable from this case. From the evidence that has been presented, it does appear that the loan in default is the very loan that was used to purchase the suit property. The suit property was not therefore matrimonial property before the charge was created. In fact, the charge was created so as to enable the 2nd defendant (and plaintiff I may add) to purchase the property. It cannot be said that at the time of the charge, there was in existence a trust in favour of the plaintiff, since the property was not vested in favour of the plaintiff and 2nd defendant, before the charge was created. In fact, it is the charge which allowed the plaintiff and 2nd defendant to have an interest in the suit property. The plaintiff cannot also plead ignorance of the charge because she signed as a witness in the Letter of Offer. I am persuaded that she was aware of its creation and was also aware that the charge was being created to enable them have a place they can call home.

19. I do not therefore see how the plaintiff can be said to have established a prima facie case with a probability of success based on the argument that there was no spousal consent, when the law did not require one, and also on the assertion that the loan was taken behind her back, when she signed on the Letter of Offer as a witness, and must have known that the loan was being taken to enable them purchase the suit property, and pay it under an "owner-occupier" basis.

20. The second argument of the plaintiff is with the process of sale and it is her view that the appropriate notices were never issued. The first of the notices that she has mentioned is the Statutory Notice. It is the plaintiff's case that this was never issued. I have gone through the documents tendered by the 1st defendant and I am not in doubt that a statutory notice was issued. The 1st defendant has averred that it did issue the statutory notice through a letter dated 8 November 2012. It is said that despite this, another notice was issued on 18 February 2019. I have seen that this last notice was copied to the plaintiff, and there is annexed proof of postage of the letter to both the plaintiff and the 2nd defendant. To me, this is a good statutory notice issued under Section 90 of the Land Act, and at the moment, I have no problem with it, subject of course to being convinced otherwise after a full trial. It is therefore my finding that the 1st defendant has demonstrated, prima facie, that it did issue the requisite Statutory notice.

21. The plaintiff has of course stated that other notices were not issued. Let me go straight to Section 96 of the Land Act, which sets out the notices required to be issued. Section 96 provides as follows :-

96. Chargee's power of sale

(1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90(1), a chargee may exercise the power to sell the charged land.

(2) Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.

(3) A copy of the notice to sell served in accordance with subsection (2) shall be served on—

- (a) the Commission, if the charged land is public land;
- (b) the holder of the land out of which the lease has been granted, if the charged land is a lease;
- (c) a spouse of the chargor who had given the consent;
- (e) any lessee and sublessee of the charged land or of any buildings on the charged land;
- (f) any person who is a co-owner with the chargor;
- (g) any other chargee of money secured by a charge on the charged land of whom the chargee proposing to exercise the power of sale has actual notice;
- (h) any guarantor of the money advanced under the charge;
- (i) any other person known to have a right to enter on and use the land or the natural resources in, on, or under the charged land by affixing a notice at the property; and
- (j) any other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land. A chargee who has withdrawn from possession of charged land may not again enter into possession of that land, otherwise than by complying with the provisions of section 94 if the chargor is in a fresh default under the charge.

22. I think Section 90, and 96 above, of the Land Act, 2012, set out the notices required to be issued by a chargee. First is the statutory notice, issued under Section 90, and which crystallises the chargee's power of sale. This is a 90 day notice as stipulated in Section 90 (3) of the Land Act. Next, and this is under Section 96 (2), is a notice to sell, which is of at least 40 days, and the manner of service is provided in Section 96(3) above. At this time, the property may then be sold, and since sale will be through an auctioneer, the Auctioneers Rules, 1997 now kick in. This being a sale of land, Rule 15 of the Auctioneers Rules will apply, and it provides as follows :-

15. Immovable property

Upon receipt of a court warrant or letter of instruction the auctioneer shall in the case of immovable property—

- (a) record the court warrant or letter of instruction in the register;
- (b) prepare a notification of sale in the form prescribed in Sale Form 4 set out in the Second Schedule indicating the value of each property to be sold;
- (c) locate the property and serve the notification of sale of the property on the registered owner or an adult member of his family residing or working with him or where a person refuses to sign such notification, the auctioneer shall sign a certificate to that effect;
- (d) give in writing to the owner of the property a notice of not less than forty-five days within which the owner may redeem the property by payment of the amount set forth in the court warrant or letter of instruction;
- (e) on expiry of the period of notice without payment arrange sale of the property not earlier than fourteen days after the first newspaper advertisement.

23. Upon being instructed, The Auctioneer needs to prepare a notification of sale and serve it in the manner provided in Rule 15 (c) above. There is also supposed to be issued, by the auctioneer, a 45 days notice, giving the owner of the property notice to redeem. After expiry of these 45 days, if no payment is made, the auctioneer can arrange to sell the property. A sale cannot be conducted before lapse of 14 days of the first advertisement.

24. Let me now assess if these notices were issued. I have gone through the affidavit of the 1st defendant. As I mentioned earlier, I have seen the statutory notice and I am satisfied with it. The next notice is the 40 day notice. I have seen the letter dated 28 May 2019, which is said to be issued pursuant to the provisions of Section 96(2) of the Land Act, and it is a 40 day notice. It is addressed to the 2nd defendant and copied to the plaintiff and there is proof of dispatch of this notice. The 40 day notice, as far as I can see, was therefore properly issued. The next would be the Auctioneer's 45 days redemption notice. I can see that in this case, the auctioneer combined both the Notification of Sale, and the 45 days redemption notice. I don't see anything wrong in that. The plaintiff does not deny that this notice was issued as she has annexed it to her affidavit. From the above, it looks to me, prima facie, subject to being convinced otherwise at trial, that all requisite notices were issued by the 1st defendant.

25. There is another issue raised, which is valuation. The plaintiff has complained that before embarking on the sale, no valuation was done

pursuant to the provisions of Rule 11 (b) (x) of the Auctioneers Rules. This rule requires that the letter of instruction to the Auctioneer be accompanied by the reserve price based on a professional valuation carried out not more than 12 months prior to the proposed sale. The 1st defendant has annexed a valuation of the property prepared by M/s Joe Musyoki Consultants. That valuation is dated 14 November 2019 and is therefore within the 12 months stipulated before the sale, which was scheduled for 23 January 2020. It is therefore apparent that there was a valuation of the property before the sale.

26. Let me add a little of my own thoughts on this issue of valuation. I see a lot of cases filed complaining of lack of valuation. If you ask me, this can be dispelled by placing in the auctioneer's newspaper advertisement, the date of valuation and the name of the valuer, and providing clearly the reserve price and the market price of the property. An auction sale is supposed to be an open public sale, and it is good, for every person looking at the advertisement, and that includes the chargor, to know the reserve price of the property. This will not only assist any potential buyers of the property make a decision on whether or not to bid for the property, but also make clear to the chargor, that the property has been valued and what is expected to be fetched from the sale. I would advise chargees, to instruct their appointed auctioneers to do this, not only for openness, but also for the benefit of potential buyers. There is no need of putting a potential buyer at the mercy of the auctioneer so as to be provided with the reserve and market price of the property. In the same breath, there is no need of letting the chargor wonder whether or not a valuation was done; if the value is placed in the newspaper advertisement, the chargor will not have a basis to complain that there has not been a valuation. Importantly, an auction sale, especially of immovable property should be very transparent, and not leave room for speculation. That includes disclosure on the value and expected price of the property. I think going forward, banks and other chargees, ought to seriously consider the above.

27. Coming back to the application, I have not forgotten the pleadings that allowing the sale will not be in the best interest of the children living in it. I think the plaintiff is clutching at straws here, for one cannot purchase an item through loan, then argue that he is entitled to default on the loan because there is a child benefiting from it. I cannot give an injunction based on that argument, at least, not within the circumstances of this case. The plaintiff can however try and persuade the court of the veracity of that argument at the hearing of the matter.

28. From the foregoing, it is clear that I see no merit in this application and I have no option but to dismiss it. I do not do this because of lack of sympathy for the plaintiff and her children, but because the law is not on the plaintiff's side. I in fact have quite some sympathy for the plaintiff, who disclosed in her pleadings and application, that she has recently lost a child. I am sorry to her and to the 2nd defendant for this loss. I can only imagine the pain that they are going through. I sincerely hope that the plaintiff and her family will find some peace.

29. This application, dated 23 January 2020, is hereby dismissed with costs. The result is that the plaintiff will have to pursue her case without the benefit of an order of injunction and nothing stops the 1st defendant from proceeding to sell the suit property if it so wishes.

30. Orders accordingly.

DATED AND DELIVERED THIS 20TH DAY OF MAY, 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA.