



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC CASE NO. 130 OF 2018**

**(FORMERLY NAIROBI ELC 251 OF 2014)**

**CHARLES MULEI MATIKU.....PLAINTIFF**

**VERSUS**

**TITUS NZEKI MATIKU.....1<sup>ST</sup> DEFENDANT**

**BRINE AGENCIES LIMITED.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

By an Amended Plaintiff dated 2<sup>nd</sup> April 2014, the Plaintiff sought for Judgment against the Defendants herein jointly and severally for the following orders:-

- a) A permanent injunction restraining the Defendants either by themselves, their agents, servants and or whosoever claiming through them from subdividing, alienating, selling, transferring and / or in any manner dealing with three (3) acres comprised in title number 1/29200.***
- b) A declaration that three (3) acres comprised in title number 1/29200, lawfully belong to the Plaintiff.***
- c) Title number 1/29200, be subdivided and two titles do issue in favour of the Plaintiff with three (3) acres and 2<sup>nd</sup> Defendant four (4) acres.***
- d) That the Registrar of this Court signs the necessary transfer in favour of the Plaintiff.***
- e) Costs.***
- f) Any such other further relief the Honourable Court shall deem fit to grant.***

The Plaintiff had averred that the 3<sup>rd</sup> Defendant (**Nthoki Matiku**) who is his mother was the registered proprietor of **L.R 1/167**, which land was subsequently subdivided by the 1<sup>st</sup> Defendant to create title numbers **1/299199** and **1/29200**.

However, the suit against the 3<sup>rd</sup> Defendant was withdrawn on **30<sup>th</sup> October 2018**.

That before the subdivision and creation of the said titles, the 3<sup>rd</sup> Defendant (**Nthoki Matiku**) and her family agreed to subdivide the land into two portions with the said **Nthoki Matiku** getting **4 acres** and the 2<sup>nd</sup> Plaintiff **8 acres**. It was further averred that the Plaintiff and the **Nthoki Matiku** engaged a surveyor who surveyed the land and drew a sketch map according to the family agreement.

It was the Plaintiff's contention that the 1<sup>st</sup> Defendant connived with the **Nthoki Matiku** who is their mother and proceeded to subdivide the land contrary to and fraudulently in collusion with the 2<sup>nd</sup> Defendant and obtained two titles:- one in favour of the Plaintiff title number **1/29299- 5 acres** and the other in favour of the 2<sup>nd</sup> Defendant title number **1/29200-7 acres**. It was contended that the 2<sup>nd</sup> Defendant is not a bonafide purchaser for valuable consideration for not conducting due diligence before purchase and transfer and/or not paying valuable consideration to the 3<sup>rd</sup> Defendant (**Nthoki Matiku**). That title number **1/29200** measuring **7 acres** in the name of the 2<sup>nd</sup> Defendant was obtained fraudulently, since the same ought to have been **4 acres**, which was due to the (**Nthoki Matiku**). Further that

without the Plaintiff's knowledge, the Defendants excised **3 acres** from the Plaintiff's **8 acres** during subdivision to amalgamate the same into title **1/29200** and that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants acting in concert with the 2<sup>nd</sup> Defendant fraudulently disregarded the family agreement on subdivision of the original title.

The Plaintiff particularised **Fraud** and **Collusion** on the part of the Defendants as; fraudulently subdividing original title **No.1/167**, into two portions measuring **5** and **7 acres** instead of **8** and **4 acres** respectively, fraudulently taking the Plaintiff's **3 acres**, fraudulent sale and purchase of the Plaintiff's **3 acres** without paying any consideration to either the Plaintiff or the 3<sup>rd</sup> Defendant (**Nthoki Matiku**), forging and uttering false documents, dispossessing the Plaintiff of the **3 acres** with malafide intentions. It was further averred that the 2<sup>nd</sup> Defendant has commenced subdivision and is in the process of alienating title number **1/29200**.

The suit is contested and the 1<sup>st</sup> Defendant filed an Amended Defence dated **9<sup>th</sup> December 2016**, and denied all the allegations made in the Amended Plaintiff. It was the 1<sup>st</sup> Defendant's contention that the 3<sup>rd</sup> Defendant (their mother) as the registered owner of **L.R 167**, measuring **12 acres** and that he was authorized and instructed by the 3<sup>rd</sup> Defendant to subdivide the same into two portions, which instructions he commenced under the supervision of the 3<sup>rd</sup> Defendant (*who has since been removed from the suit*). He denied that the family members had agreed to allocate **8 acres**, to the Plaintiff and stated that all the deceased's sons got **6 acres** from the property after the same was distributed by the **3<sup>rd</sup> Defendant** (their mother) and their stepmother.

The 1<sup>st</sup> Defendant further contended that the only instructions that were given to him by the 3<sup>rd</sup> Defendant, were to implement the wishes of their deceased father which were written down on **22<sup>nd</sup> November 1986**. It was further contended that the 2<sup>nd</sup> Defendant is a bonafide purchaser for value having paid the full consideration to the registered owner of the property and a good title was passed thereof to it upon conducting of due diligence. He denied that there was fraud on the part of the Defendants during subdivision and that the claims are intended on creating disharmony between the 3<sup>rd</sup> Defendant (their mother) and the other Defendants and to unjustly enrich himself. He denied that the Plaintiff is entitled to the **3 acres** and further averred that the Plaintiff has no *locus standi* over **Donyo Sabuk /Komarock Block 1/29200**, and has no claim over the said property.

The 2<sup>nd</sup> Defendant filed a Statement of defence dated **24<sup>th</sup> September 2014**, and denied all the allegations made in the Plaintiff. It was its contention that it duly purchased **6 acres** out of **L.R Donyo sabuk / Komarock Block 1/167**, and paid the purchased price to the 3<sup>rd</sup> Defendant (**Nthoki Matiku**), who subdivided the land and transferred **6 acres** to it. It was its contention that it has further subdivided **L.R 29200**, into numerous parcels of land which have been transferred to other 3<sup>rd</sup> parties. Further that **L.R 167** and **29200** no longer exists consequently the suit has been overtaken by events and should be dismissed.

#### PLAINTIFF'S CASE

**PW1 Elizabeth Nthoki Matiku** (who was initially the 3<sup>rd</sup> Defendant) adopted her witness statement dated **3<sup>rd</sup> December 2018**. She testified that **Charles** and **Titus Nzeki Matiku** are her sons. It was her testimony that on **15<sup>th</sup> March 1992**, the family of **Matiku** met and agreed on some issues. That she sold **L.R 1/167** which belonged to her. That **Josphat Matiku Kamale** was her husband and he had another wife who is settled in his other land in Komarock. That each wife had their portion of land and each son was also given his portion of the land. She further testified that she sold her portion in Komarock and she sold it after subdivision. That she was given the money and she cannot claim anything from the persons she sold the property to. That each of her children got their portion of land.

Further that she sold the land in the presence of her sons and she told them to give her money, though she could not remember who gave her the money. That she did not sign because the land was hers. She further testified that she only sold her portion which was small.

**PW2 Charles Mutei Matiku** adopted his witness statement dated **6<sup>th</sup> March 2014** as his evidence. It was his testimony that the suit property originally belonged to his father and when he died, the same was transferred to his mother (PW1). That the plan to subdivide the land came after his father's death. Further that they had signed the plan on how to transfer the land in **1986**, and the agreement for the subdivision was recorded on **15<sup>th</sup> March 1992**.

That in the agreement, he was to get **8 acres** and all his family was present, when the said agreement was drawn. He produced the family agreement as Exhibit 1. That his brothers did not object to the mode of distribution, and they entrusted the process of Survey to the 1<sup>st</sup> Defendant, who called a surveyor and drew a sketch of how the land was to be subdivided. He further testified that he had put a caution in the **year 2010**, as the 1<sup>st</sup> Defendant had threatened to sell the suit property. He produced the sketch map as **Exhibit 2**. That the subdivision was to be done as per the agreement and he was to get **8 acres** and his mother was to get **4 acres** and his brothers had been given land elsewhere. He further testified that when his mother gave him his title deed, he discovered it had less acreage since the land was **5.8 acres** instead of **8 acres** and that the remainder was sold to the 2<sup>nd</sup> Defendant. Further that when the family met in **1992**, the **1986** agreement became **null and void** and that he was never given any document to sign for the transfer of the land. He produced the title deeds as Exhibit 3. He testified that the acreage of the land **L.R Komarock Ndonyosabuk/167** is **4.867 ha**. He further produced the title deeds in favour of **Charles Matiku** dated **6<sup>th</sup> March 2012** as **Exhibit 4** and a letter dated **17<sup>th</sup> August 2010**, from his mother as MFI 5.

It was his testimony that his father had **12 sons**, six from each family. That a meeting was called on **25<sup>th</sup> December 1986**, and the agreement was that each son was to get **6 acres**, himself included and that those were their late father's wishes. He testified that their father passed on in **1990**, and another meeting was convened in **1992**, by the sons of **Nthoki Matiku**. That **5** out of **6** sons attended the meeting and the parcel of land was **12 acres** wherein he was to get **8 acres** and **4 acres** was to go to their mother (**Nthoki Matiku**). That the 1<sup>st</sup> Defendant subdivided the land as per the sketch plan, and he denied signing any documents. That he was only given the title deed and he denied that the title deed is a forgery. That the minutes of the meeting were taken by **Barbanas Matiku**. He also denied that his mother sold the suit property and that he is in occupation of the same.

It was his testimony that his mother is no longer the Plaintiff though she was initially a Plaintiff. He acknowledged that his mother in her evidence, testified that she sold the land and that she complained that she was defrauded. That she only sold a small portion and testified that he was not aware of the subdivisions as he had not seen any occupant on the suit property. That he was not present when the land was sold to **Brine Agencies** and that his mother was misled. Further that he was to get the land near **Athi River** and his other brothers were to get land at **Kaseveni**.

## DEFENCE CASE

**DW1 Titus Nzeki Matiku** adopted his witness statement dated **28<sup>th</sup> March 2014** as his evidence. He produced his list of documents as **Exhibit 1**. He testified that there was a family meeting on **25<sup>th</sup> December 1986**, convened by his father with the agenda being how his property was to be shared. That there was a witness who signed, but he denied that there was any other meeting held for distribution of their father's property. That the family has followed their father's directions to date. He denied knowledge of the meeting held on **15<sup>th</sup> March 1992**, as he did not attend the meeting.

He denied that the said signature was his. It was his testimony that each son was to get **6 acres** from their father's land. That he got his portion from **Block 20A** and the Plaintiff got his 6 acres from **20B** and also got  $\frac{3}{4}$  acres from **20A**. That their mother's portion was sold after she expressed her wishes to sell the same and that she attended the **Land Control Board** for **Consent** and the property was bought by **Brine Agencies**. That their mother was the registered owner of the suit property that was sold to the 2<sup>nd</sup> Defendant and it was the surveyor who had subdivided the land.

He further testified that two titles came out in the name of the Plaintiff and his mother and that he had been entrusted by the Plaintiff and his mother with the process of subdivision. That there was a consent to transfer and due process was followed, but he did not have any of the documents used for the transfer and registration of the land. Further that their mother attended the **Land Control Board** and that he interpreted the document to her and she signed and he gave the titles to his mother. He further testified that he did not know how much his mother was paid for the sale of the land. That he was appointed by his brothers to represent them in the transaction and that his actions had blessings of the other family members. He further testified that the sale of the land was done above board and that the transaction was done in the year **2013**.

**DW2 Barbanas Mutuku Matiku** adopted his witness statement dated **25<sup>th</sup> March 2014**, as his evidence. He testified that on **25<sup>th</sup> December 1986**, there was a resolution and since their father was polygamous each of his sons was to get **6 acres** of land. He denied knowledge of the meeting held on **15<sup>th</sup> March 1992**. He further testified that he did not attend the said meeting and that the signature is not his and that there was no meeting in **1992**. He denied writing the resolution of **1992**. He also denied that the Plaintiff was to get more land than the rest. That their mother sold her portion of **6 acres** to the 2<sup>nd</sup> Defendant and that she has never complained that she was tricked. He further testified that during the family meetings, anyone could write the minutes and denied that he had been paid to say the land is not for the Plaintiff.

**DW3 Benson Ndambuki** adopted his witness statement and testified that on **25<sup>th</sup> December 1986** their father called a meeting and resolved that his land was to be shared amongst each of his sons with each receiving **6 acres**. He denied that there was ever any other meeting called to discuss the distribution. That he is satisfied with his portion of land and he did not attend the meeting in **1992**. It was his further testimony that he did not have any quarrel with the Plaintiff. That he did not know how much his mother was paid when she sold her land and she had voluntarily decided to sell her portion of land.

**DW4 Thomas Matiku** adopted his witness statement as his evidence and further testified that the Plaintiff is his step brother and that the land was parcel **No. 21A** and it was to be shared between their two mothers. Each mother was to get equal acreage and the sons were to each get 6 acres. It was his testimony that his step mother sold her land to the 2<sup>nd</sup> Defendant and that land was **12 acres** and had been subdivided between their mother and the Plaintiff.

## 2<sup>ND</sup> DEFENDANT'S CASE

**DW5 Raphael Mungai Mwangi** the Director of the 2<sup>nd</sup> Defendant, a Quantity Surveyor by profession, adopted his witness statement dated **7<sup>th</sup> July 2017** as his evidence. He produced his list of documents as Exhibit 1 and his further list of document dated **4<sup>th</sup> June 2019** as Exhibit 2. That he entered into a sale agreement with **Elizabeth Matiku** and she was selling a portion of **L.R 167**. That the subdivision was done and he bought about 6 acres and he was given a title deed in the name of the 2<sup>nd</sup> Defendant. It was his further testimony that the value of land was **Kshs. 7,000,000/=** to which he paid a deposit of **Kshs. 700,000/=** and later paid the balance of **Kshs. 6,300,000/=** and subdivided the suit property into 42 portions. That his title was closed upon subdivision and that he has sold  $\frac{2}{3}$ <sup>rd</sup> of the subdivisions to third parties. He further testified that he followed due process.

It was his testimony that he identified the land through a search and that he paid all the consideration though he did not have any acknowledgement that the **Kshs. 7,000,000/=** was paid to **Nthoki**, although he paid through the bank. He further testified the vendor acknowledged receipt of the purchase price from the sale agreement and that no one has complained that he had not paid the purchase price.

The parties thereafter filed written submissions which the Court has carefully read and considered. The Court renders itself as follows;-

It is not in doubt that the Plaintiff and the 1<sup>st</sup> Defendant are biological brothers. It is the Plaintiff's contention that the family held a meeting and in the said meeting of **15<sup>th</sup> March 1992**, an agreement was arrived at. It was agreed that in regard to **L.R 1/167**, the Plaintiff would get **8 acres** of the said property and that his mother would get **4 acres**. However, this Contention has been refuted by the 1<sup>st</sup> Defendant, who averred that there was never any such meeting and that the subdivision of **L.R 167**, was done in accordance with their father's wishes and as per the agreement made on **15<sup>th</sup> December 1986**.

The Plaintiff called his mother as a witness and the 1<sup>st</sup> Defendant called his brothers as witnesses during the viva voce hearing. The Court notes that the Plaintiff withdrew the suit against the 3<sup>rd</sup> Defendant, who is their mother and later PW1. However, the Amended Plaintiff and the Amended Defence were never Amended to reflect the same. But all the same the case as against the 3<sup>rd</sup> Defendant stands withdraw .

The issues for determination are;

1. *Whether the Plaintiff has locus standi to bring the instant suit*
2. *Whether the Agreement dated 15<sup>th</sup> March 1992 is Valid*
3. *Whether the Plaintiff is entitled to the orders sought*
4. *Who should bear the costs of this suit*

**1. Whether the Plaintiff has locus standi to bring the instant suit**

It is the 2<sup>nd</sup> Defendant's contention that the Plaintiff does not have the requisite *locus standi* to bring this suit as the plaintiff never entered into any contractual agreement with him to subdivide the suit property. That the only existing agreement was between the registered owner and the 2<sup>nd</sup> Defendant. It is not in doubt that jurisdiction is everything and without jurisdiction a Court has no option but to down its tools. In this instant, if the Plaintiff has no locus standi, then the Court does not have jurisdiction as the issue of locus standi goes to the Jurisdiction of the Court.

In the case of **Law Society of Kenya ...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000**, the Court held that :-

*“Locus Standi signifies a right to be heard, A person must have*

*sufficiency of interest to sustain his standing to sue in Court of Law”*. Further in the case of **Alfred Njau and Others ..Vs.. City Council of Nairobi ( 1982) KAR 229**, the Court also held that;-

*“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”*.

**Locus standi** is the right to appear and be heard in Court or other proceedings and literally, it means **‘a place of standing’**. Therefore, if a party is found to have no **locus standi**, then it means he/she cannot be heard even on whether or not he has a case worth listening to.

Does the Plaintiff herein have sufficient interest? It is not in doubt that the suit property was subdivided amongst the Plaintiff and PW1 who is their mother. The Plaintiff has testified that the 1<sup>st</sup> Defendant was to subdivide the suit property with him getting **8 acres** and their mother getting **4 acres**. However, the 1<sup>st</sup> Defendant went against the family wishes and did not subdivide as it had been agreed. If indeed this is held to be the case, then the Court might order the return of the acres due to the Plaintiff. Therefore, the Court finds that the Plaintiff has sufficient interest and has a right to appear before Court. The Plaintiff therefore possesses the requisite locus standi.

**2. Whether the Agreement dated 15<sup>th</sup> March 1992 is Valid**

The 1<sup>st</sup> Defendant has submitted that the issue before this Court is whether the agreement dated **25<sup>th</sup> December 1986**, amounts to their father's will. It is the Plaintiffs contention that the issue for determination is the validity of the **15<sup>th</sup> March 1992**, agreement *vis a vis* the Agreement **25<sup>th</sup> December 1986**.

However, it is the Court considered view that it has no jurisdiction to determine whether the said Agreement was a **will** or not. Further that the issue for determination cannot be the validity of the **1992**, agreement *vis a viz* the **1986**, agreement as having perused the two agreements , the Court notes that there are various issues that were dealt with in the **1986** agreement, that were not dealt with in the **1992** agreement . The 1<sup>st</sup> Defendant denies the validity of the **1992**, agreement while the Plaintiff contends that the agreement was what formed the basis of the subdivision, of **LR 167**. The Court finds that the validity of the agreement will determine various issues in dispute and whether or not the Plaintiff is entitled to the orders sought.

It is the Plaintiffs contention that the Matiku's family had a meeting and agreed that the Plaintiff would get **8 acres** out of **L.R 167**, while his mother would get **4 acres**. To support his claim, he has produced the Agreement dated **15<sup>th</sup> March 1992**. However, the 1<sup>st</sup> Defendant has denied these allegations and also denied that there was a meeting in **1992** that made such a resolution or even that he was present and signed the said agreement. In his Defence, the 1<sup>st</sup> Defendant has contended that the land was subdivided according to his father's wishes and in accordance with the **1986**, agreement that all the sons were to get their equal shares and that is what had indeed happened. It has also been the 1<sup>st</sup> Defendant's contention that everything was done as per the agreement of **1986** and that nothing has been altered.

As to whether there was any departure from the agreement dated **25<sup>th</sup> December 1986**, the Plaintiff has submitted that it cannot be that everything was done in accordance with the agreement of **1986**, as the agreement had stated that all sons were to be given land situated in **Kaseveni 20A** and his land was in **Athi River** and not **Kaseveni** and that that was an implementation of the **15<sup>th</sup> March 1992**

agreement.

The Court agrees with the Plaintiff that it is clear that as per paragraph 2 of the agreement dated **25<sup>th</sup> December 1986**, all the sons were to get **six acres** from the land situated at **Kaseveni** and the fact that he was getting the land situated in **Athi River** away from where all the other sons were getting their land, there must have been an alteration of whatever was agreed upon by the parties in the **1986** meeting.

However does this factor alone indicate that the agreement dated **15<sup>th</sup> March 1992** was valid? It is the Court's opinion that this cannot be the only factor that determines the validity of that agreement. PW1 who is the Plaintiff's and the 1<sup>st</sup> Defendant's mother testified that the family had a meeting in **1992** corroborating the Plaintiff's evidence that there was such a meeting. However, the 1<sup>st</sup> Defendant and his witnesses including DW2 the person the Plaintiff claims to have taken the minutes of the said meeting testified in Court and denied signing the said minutes and or being in attendance of the said meeting.

It is trite that he who alleges must prove. The Plaintiff having alleged the existence of the said meeting and the authenticity of the said minutes had the onus to prove that indeed the minutes were authentic. The Plaintiff could have done more to prove the authenticity of the minutes as the alleged author had also denied authoring the said minutes. If indeed this was his handwriting, the party was in Court, and the Plaintiff should have taken the said author to task on the issue of his handwriting

The Court cannot uphold the authenticity of the minutes merely based on the fact that the parties must have departed from the agreement of **1986**; The Court needed to be satisfied that the minutes presented in Court were authentic which sadly the Plaintiff failed to prove. Therefore, the Court finds and holds that it cannot hold that the Minutes of **1992**, are valid while the alleged signatories have denied its validity and the Plaintiff has not proved its authenticity. Consequently, the Court finds and holds that the Agreement dated **15<sup>th</sup> March 1992** is **not** valid.

### ***3. Whether the Plaintiff is entitled to the orders sought***

The Plaintiff has sought for a permanent injunction against the Defendants and further sought that **3 acres** to be excised from **L.R 1/29200** as the said 3 acres lawfully belonged to him. The Court has already held and found that the Agreement dated **15<sup>th</sup> March 1992**, is **not** valid. It is this agreement that the Plaintiff was relying upon to claim the **3 acres** from the said property. The Court therefore finds and holds that the Plaintiff is not entitled to the orders sought in his Plaintiff.

PW1 who was the registered owner of **L.R 167** and subsequently **L.R 1/29200**, testified that she authorized the 1<sup>st</sup> Defendant to subdivide the land. She further testified that she sold the suit property to the 2<sup>nd</sup> Defendant and that she was paid the purchase price and that she did not have any claim as against the people whom she sold the land to. The 2<sup>nd</sup> Defendant has contended that it is a bonafide purchaser for value. The Court notes that the details of the sale are sketchy as the PW1 testified that she did not know who she sold the land to and was not even aware how she received the money. The 2<sup>nd</sup> Defendant claims to have paid **Kshs. 7,000,000/=** to the vendor (Nthoki Matiku) but has not put in evidence a shred of evidence that the money was ever exchanged considering the large amounts.

Be it as it may, the registered owner of the property (Nthoki Matiku – PW1) has in her evidence testified that she did not have any claim as against the 2<sup>nd</sup> Defendant and that she received the full purchase price. In the case of **Katende ...Vs... Haridar & Company Limited [2008] 2 E.A.173** the Court of Appeal in Uganda held that:

***“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongfully. For a purchaser to successfully rely on the bona fide doctrine, ... (he) must prove that:***

- (a) he holds a certificate of title;***
- (b) he purchased the property in good faith;***
- (c) he had no knowledge of the fraud;***
- (d) he purchased for valuable consideration;***
- (e) the vendors had apparent valid title;***
- (f) he purchased without notice of any fraud;***
- (g) he was not party to any fraud.”***

There is no evidence before Court that the 2<sup>nd</sup> Defendant is a party to any fraud or that there was any fraud and given that PW1 has confirmed that she was paid consideration, the Court finds and holds that the 2<sup>nd</sup> Defendant is a bonafide purchaser for value.

Further the Court will point out as already held that there is no evidence that the Plaintiff was entitled to more than the **6 acres** and given that the suit property was registered to PW1 before she sold it, then the Plaintiff will then have no locus to challenge the sale of the suit property to the 2<sup>nd</sup> Defendant.

**4. Who should bear the costs of this suit**

**Section 27 of the Civil procedure Act** gives the Court discretion to grant costs. It is not in doubt that costs usually follow the event. However, there are circumstances that the Court may depart from the same. In this instant looking at the circumstances of the case, it the Court's considered view that each party should bears it won costs.

Having carefully considered the pleadings herein and the annexures thereto, the available evidence as adduced by the parties and the written submissions, the Court finds and holds that the Plaintiff has failed to prove his case against the Defendant herein on the required standard of balance of probabilities.

For the above reasons, the Court further finds that the Plaintiff's claim is **not merited** and the same is dismissed entirely with each party bearing its own costs of the suit.

**Dated, signed and Delivered at Thika this 19<sup>th</sup> day of November 2020**

**L. GACHERU**

**JUDGE**

**19/11/2020**

**Court Assistant - Lucy**

**ORDER**

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

**With Consent of and virtual appearance via video conference – Microsoft Teams Platform**

**M/s Musa for the Plaintiff**

**Mr. Kisini for the 1<sup>st</sup> Defendant**

**Mr. Karoki for the 2<sup>nd</sup> Defendant**

**L. GACHERU**

**JUDGE**

**19/11/2020**