



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 736 OF 2013

DAVID MATHERI WARUINGE.....PLAINTIFF

VERSUS

JORETH LIMITED.....1ST DEFENDANT

GEORGE MWANGI MACHERU.....2ND DEFENDANT

JUDGMENT

Introduction

1. The dispute in this suit relates to ownership of **Land Reference Number 13330/387 (the suit property)**. The land was surveyed as a sub-division out of **Land Reference Number 13330** which belonged to Joreth Limited (**the 1st defendant**). In September 2012, the 1st defendant advertised the suit property for sale and subsequently entered into a sale agreement with the 2nd defendant for a consideration of Kshs 7,000,000. The 2nd defendant was financed by **Kenya Commercial Bank**, through a legal charge against the title. Upon purchase, the 2nd defendant moved into the suit property, triggering this suit. The 2nd defendant has developed a school on the suit property.

2. Consequently, on 24/6/2013, the plaintiff, David Matheri Waruinge, took out an originating summons dated 24/6/2013 under **Order 37 rule 7** of the **Civil Procedure Rules** and **Section 38** of the **Limitation of Actions Act**, seeking the following verbatim determinations against the two defendants, Joreth Limited and George Mwangi Macheru:

1) That David Matheri Waruinge be declared to have acquired title by adverse possession to the suit premises known as Plot No 488 in Thome Farmers No 5 Limited and also known as LR No 13330/387

2) That the registration of Joreth Limited and George Mwangi Macheru as proprietors of LR No 13330/387 and or any other person deriving title from Joreth Limited based on the land previously known as Plot No 488 and now Known as LR No 13330/387 be cancelled forthwith and the Chief Land Registrar of Titles do rectify the register to enter the name of the plaintiff as registered proprietor of the said property LR No 13330/387 in place of the 1st and 2nd Defendants or anyone deriving title from the defendants.

3) The costs of these proceedings be borne by the defendants

Plaintiff's Case

3. The originating summons was supported by the Plaintiff's affidavit sworn on 24/6/2013 and witness statement dated 23/11/2016. The case of the plaintiff was that he owned one share in Thome Farmers No 5 Limited which entitled him to the suit property. He purchased the said share from Riiri Dancers in 1989. He paid full purchase price for the share. Upon purchase of the said share, he was shown Plot No 488 which measured ½ of an acre, and he entered the Plot in 1989. He had continued to cultivate and generally use the Plot without interruption from 1989 to the time of taking out the originating summons in 2013. He believed that he had acquired the title to the suit property by adverse possession.

1st Defendant's Case

4. The 1st defendant opposed the originating summons through a replying affidavit sworn on 9/7/2013 by Duncan Nderitu Ndegwa, a director of the 1st defendant. In addition, the 1st defendant filed a written statement dated 23/11/2016 by Robertson Nderitu. The 1st defendant's case was that they were at all material times the lawful owners of the suit property. The suit property was a sub-division parcelled after an amalgamation of Parcel Nos LR 4920/3/2 and LR 4921/3/1 into Parcel No LR 13330. The title to Parcel No LR 13330 was issued to the 1st defendant in the year 2000. Subsequent to issuance of the title relating to LR no 13330 in 2000, the 1st defendant subdivided the said parcel into six hundred and forty-two (642) plots, the suit property being one of the plots.

5. The 1st defendant further contended that the plaintiff had never, at any one given time, been in actual possession of the suit property as the same had always been in the exclusive possession of the 1st defendant. The 1st defendant added that at the time of selling the suit property to the 2nd defendant in September 2012, the same was vacant. The 1st defendant further contended that in 1992, they filed **Nairobi HCCC No 6206 of 1992** against several persons who had trespassed onto LR No 13330 and the said suit was determined in the year 2002 through a consent order. The 1st defendant urged the court to dismiss the plaintiff's suit.

2nd Defendant's Case

6. The 2nd defendant opposed the originating summons through a replying affidavit sworn on 19/8/2013. His case was that he was the registered proprietor of the suit property, LR No 13330/387. He purchased the suit property from the 1st defendant in September 2012 for Kshs 7,000,000. Part of the purchase price was financed by Kenya Commercial Bank who registered a charge against the title. At the time of purchasing the suit property, the same was registered in the name of the 1st defendant and there was no encumbrance or restriction registered against the title by the plaintiff to indicate any interest in the suit property. Further, at the time of purchasing the suit property, there was no one in occupation of the suit property. He added that the bank would not have financed him if the property was occupied by a squatter. He emphasized that the suit property was neither occupied nor under cultivation at the time he purchased it.

Plaintiff's Evidence

7. Hearing of the originating summons proceeded by way of *viva voce* evidence. The plaintiff testified as PW1 and closed his case. In summary, his evidence was that in 1989, he purchased a plot in the entity known as Thome Farmers No 5 Limited. His registration as a shareholder of Thome Farmers No 5 was preceded by his acquisition of a share from Riiri Dancers. He paid full purchase price for the share. He paid survey fees to Thome Farmers No 5 Limited and was issued with a ballot card. Thome Farmers No 5 Limited issued him with Share Certificate No 1283 which represented Plot No 488 on the ground. He took full possession of the plot immediately upon purchase in 1989. Upon taking possession, he started cultivating the Plot and planted thereon assorted crops over the years. He had developed the Plot and used it extensively and openly. He also put up a workman's house on the Plot.

8. The plaintiff further testified that on 18/6/2013, strangers went to the Plot. Upon enquiry by his worker, the strangers indicated that they were the new owners of the Plot. The strangers proceeded to fence the Plot and erected structures thereon. They demolished his worker's house. He subsequently established that the 1st defendant had sold the Plot to the 2nd defendant. Because he had been in possession of the Plot for 24 years preceding the initiation of this suit, he did not recognize the defendants' ownership of the suit property.

9. During cross-examination by Mrs Koech, counsel for the 1st defendant, he stated that he acquired the suit property from Riiri Dancers. The sale agreement between him and Riiri Dancers had two dates; 22/12/1989 and 29/9/1992. The correct date of purchase was 29/9/1992. His Share Certificate was dated 8/2/1993. That is the date when Thome Farmers No 5 Limited issued him with the Share Certificate. The Share Certificate represented the suit property. He took possession of the suit property in 1990. In his supporting affidavit, he had deposed that he took possession of the suit property in 1989. The Title to LR No 13330 was issued in 2000 while the title relating to the suit property was issued in 2011. The deed plan for the suit property was dated 10/3/2006. He was shown the Plot by Thome Farmers No 5 Limited. The *mabati* structure which he erected on the suit property did not require building approvals. He did not live on the suit property. The user for the suit property was residential. His worker was ejected from the suit property.

10. During cross-examination by Mr Gachuhi, counsel for the 2nd defendant, he stated that he owned three other properties in Thome. He had developed one of the properties, Plot No 520, and lived on it. He had a pending case against Thome Farmers No 5 Limited in which he sought title relating to a different property. He paid Kshs 250,000 to the 1st defendant's previous conveyancing advocates in 2005. He was supposed to pay Kshs 200,000 per plot. The office of Joreth Limited was closed and he was referred to Joreth's new Advocates, Ms Chege Wainaina & Co Advocates. His claim was based on the fact that he bought the suit property and he had possession thereof for more than 12 years. By the time he brought this suit, the 2nd defendant was in possession of the suit property. The 2nd defendant was the registered proprietor of the suit property. The suit property was charged to Kenya Commercial Bank. The 2nd defendant had built a school on the suit property.

11. In re-examination, he stated that he purchased the suit property in 1989 and moved into it in 1990. Apart from the *mabati* structure he erected on the suit property, he used to cultivate it. The 2nd defendant demolished the *mabati* structure when this case was already in court. The developments on the suit property were erected while this suit was pending in court. He paid some money to the 1st defendant's advocates, Kimani Kahiro & Associates. The payments related to Seven (7) plots.

The 1st Defendant's Evidence

12. The 1st Defendant called one witness, Robertson Nderitu - DW1. He stated that he was a manager of the 1st defendant. He adopted his witness statement dated 23/11/2016 as part of his sworn evidence-in-chief. His evidence was that the plaintiff and Thome Farmers No 5 Limited had never been in possession of the suit property. He stated that the 1st defendant owned **LR No 4920/3** and **LR No 4921/3**. The 1st defendant amalgamated the two parcels to create **LR No 13330**. The suit property was a subsequent sub-division out of **LR 13330**.

13. DW1 added that Joreth Limited and Thome Farmers No 5 Limited were two distinct entities and the latter did not own shares in the former. In 1992, the 1st defendant instituted a suit against all persons who had at that time trespassed on Land Reference Number 13330. Subsequently, a consent was recorded in court pursuant to which it was agreed that all parties in the suit who could provide the 1st defendant with genuine documents of payment of money in relation to the plots they claimed were allocated to them by Thome Farmers No 5 Limited were to pay the 1st defendant a sum of Kshs 200,000 after which the 1st defendant would transfer the plots to them subject to them paying stamp duty and other expenses connected with the transfer. The 1st defendant placed notices in the newspapers inviting interested persons to come out and pay the money. The plaintiff did not pay the sum of Kshs 200,000 per plot as required. Consequently, the suit property was sold and transferred to the 2nd defendant.

14. DW1 added that the suit property had never been occupied by the plaintiff. DW1 further testified that, in any event, **Nairobi HCCC No**

6206/1992 which the 1st defendant instituted against several persons who had trespassed on the LR No 13330 constituted an interruption. The plaintiff owned other plots within Joreth. Kimani & Kahiro Associates were the 1st defendant's advocates. The plaintiff paid only Kshs 25,000 per plot. The plaintiff could not assert ownership rights because by the time he was paying Kshs 100,000, the 1st defendant had moved to court.

15. In cross examination, he stated that he was involved in the sale of the suit property to the 2nd defendant. The suit property was included in the plots which the plaintiff was paying for. There was no evidence that the suit property was a swamp. The 2nd defendant did not indicate in his earlier evidence that the photographs the plaintiff exhibited did not relate to the suit property.

16. In re- examination, he stated that the plaintiff was not among those sued by the 1st defendant.

The 2nd Defendant's Evidence

17. The 2nd defendant testified as DW2. He adopted his replying affidavit filed on 19/8/2013 as his sworn evidence-in-chief. His evidence was that, he bought the suit property from the 1st defendant for a consideration of Kshs 7,000,000. Subsequently, the suit property was transferred and registered in his name. The suit property was vacant at the time of purchase. There were no structures on the suit property. He added that he obtained a search which revealed that the suit property was owned by the 1st defendant. He charged the suit property to Kenya Commercial Bank to secure the purchase price advanced to him by the Bank.

18. During cross examination, he stated that he inspected the suit property before purchasing it. He did not demolish the structures alleged by the plaintiff. The suit property was bare at the time of purchase.

Plaintiff's Submissions

19. The originating was canvassed through written submissions dated 18/5/2020. Mr. Kingara, counsel for the plaintiff, submitted that time started running against the 1st defendant as the registered proprietor of the suit property in 1989 when the plaintiff entered the suit property. He added that the 1st defendant's title was extinguished in 2001 after expiry of 12 years from 1989. Relying on **Court of Appeal** decision in **Civil Appeal No 213 of 1996 – Benjamin Kamau Murima & Others v Gladys Njeri**, counsel argued that the plaintiff had fully satisfied the legal ingredients required of a party who lays claim to title by adverse possession, namely, the claimant must show that the possession was adequate in continuity; in publicity; and in extent. Counsel added that the fact that the plaintiff erected a workman's house on the suit property and cultivated the suit property was evidence of adverse possession.

20. Relying on the decision in **Githu v Ndeete (1964) KLR 776**, counsel for the plaintiff submitted that the fact that there was a change of ownership of the suit property by transfer to the 2nd defendant on 27/2/2013 did not affect the plaintiff's adverse title. Counsel added that **Nairobi HCCC No 6206 of 1992** had no relevance to this suit because the plaintiff was not a party to the suit. Counsel invited the court to make an inference of fraudulent misrepresentation on part of the 1st defendant by dint of the fact that they received Kshs 250,000 from the plaintiff and proceeded to convey the suit property to the 2nd defendant.

21. Lastly, counsel for the plaintiff submitted that the plaintiff's interest in the suit property was overriding; was protected under **Section 28(b)** of the **Land Registration Act**; and did not require noting in the encumbrances section of the parcel register. Relying on the **Court of Appeal** decision in **Munyu Maina v Hiram Gathiha Maina (2013) eKLR**, counsel submitted that the 2nd defendant's contention that he was the registered proprietor was not a basis for rejecting the plaintiff's plea for orders of adverse possession. Counsel urged the court to grant the plea for orders of adverse possession or admission of adverse possession.

1st Defendant's Submissions

22. The 1st defendant filed written submissions dated 15/7/2020. Mrs Koech, counsel for the 1st defendant, submitted that the plaintiff had not satisfied the ingredients of adverse possession as set out by the Court of Appeal in **Kweyu v Omutut (1990) KLR 709**, namely; open, uninterrupted, notorious, exclusive and continuous possession for 12 years. Counsel further cited the High Court decision in **Gabriel Mbui v Mukinda Manyara (1993) eKLR** and argued that the plaintiff had not proved the three ingredients of continuity, publicity and extent.

23. Counsel added that the plaintiff had confirmed in his testimony that he had never resided on the suit property, and that his only claim of possession of the suit property was the picture of a makeshift structure allegedly used by the plaintiff's caretaker who had not been called to corroborate the plaintiff's evidence. Mrs Koech added that no evidence had been adduced to support the allegation that the plaintiff used to plant crops on the suit property.

24. On the plaintiff's counsel's contention that DW1 had admitted that the plaintiff had illegally and without any colour of right entered into the suit property and purported to put up illegal structures without the consent of the 1st defendant, counsel submitted that the averment was made as a response to the plaintiff's assertion on the activities he alleged to have carried out on the suit property and should not be construed as proof or admission of adverse possession.

25. Counsel added that in 1992, the 1st defendant asserted its rights over LR No 13330 by initiating Nairobi HCCC No 6206 of 1992 against all identifiable trespassers on LR No 13330 and the said suit was concluded through a consent in 2002 hence time cannot be said to have been running against the 1st defendant between 1992 and 2002. Counsel added that the plaintiff had not satisfied the criteria for annulling a registered title under Section 26 of the Land Registration Act. Lastly, counsel submitted that a claim of adverse possession cannot co-exist alongside a claim of purchaser's interest. Counsel urged the court to reject the plaintiff's claim.

2nd Defendants Submissions.

26. Counsel for the plaintiff identified the following as the two issues falling for determination in the originating summons: (i) whether the plaintiff has been in possession and/or occupation of the suit property and has therefore acquired title by way of adverse possession; and (ii) whether the transfer of the suit property to the 2nd defendant by the 1st defendant was done legally and procedurally and which issue is not pleaded in the originating summons though the plaintiff has referred to the same in his submissions.

27. Counsel submitted that the plaintiff had failed to prove the essential ingredients of adverse possession, namely; continuous, open, exclusive and uninterrupted possession of the suit property for a period of 12 years and above. Counsel argued that the plaintiff had confirmed in his testimony that he lived elsewhere in the same estate and he had never taken possession of the suit property. Counsel added that whereas the plaintiff alleged adverse possession through an agent, he did not call that agent as a witness. Further counsel argued that the 2nd defendant had confirmed to the court that by the time he purchased the suit property in September 2012, the same was vacant, unfenced, marshy and uncleared. Counsel for the 2nd defendant added that the plaintiff's allegation that the 2nd defendant demolished his structures on the suit property were baseless because destruction of private property or illegal eviction would attract criminal sanction yet there was no evidence of any report made to the police.

28. On the 2nd issue, counsel submitted that allegations of illegal acquisition of title by the 2nd defendant were raised in the plaintiff's written submissions but were never pleaded. Counsel urged the court not to consider the issue. Lastly, counsel submitted that since the plaintiff was aware that the title to the suit property was charged to Kenya Commercial Bank and had elected not to join the Bank as a party to this suit, adverse possession title cancelling the order and/or rectifying the parcel register would not lie. Counsel urged the court to reject the originating summons.

Analysis & Determination

29. I have considered the originating summons, the responses thereto, the evidence presented to the court in support of and against the originating summons, and the parties' respective submissions. I have also considered the relevant legal framework and jurisprudence on the key issues falling for determination in the originating summons.

30. Parties did not agree on a common statement of issues. Nonetheless, the following are the three key issues falling for determination in this originating summons: (i) Whether an order of adverse possession would lie against a title and a parcel register encumbered by a legal charge without joinder of the chargee as a party to the suit; (ii) Whether the plaintiff has satisfied the criteria upon which title to land is acquired under the doctrine of adverse possession, as against the two defendants; and (iii) Whether the plaintiff has satisfied the criteria for annulling a title under Section 26 of the Land Registration Act as against the 2nd defendant. I will make brief sequential pronouncements on the three issues in the above order, starting with the first issue.

31. The plaintiff moved the court on 24/6/2013 through an originating summons dated 24/6/2013. He asked the court to exercise jurisdiction under Section 38 of the Limitation of Actions Act; find that the plaintiff was entitled to the suit property under the doctrine of adverse possession; cancel the registration of the current proprietor; and rectify the parcel register to reflect him (the plaintiff) as the proprietor. Annexed to the supporting affidavit was a copy of Title No IR 129793 registered on 22/2/2011, in which the suit property, LR No 13330/387, is comprised. Entry No 2 in the said Title indicates that the suit property was transferred to the 2nd defendant on 27/2/2013. Entry No 3 indicates that the suit property was on the same day charged to Kenya Commercial Bank. That means, at the time of initiating this suit, Kenya Commercial Bank held the said title as security for money advanced to the 2nd defendant. The 2nd defendant deposed that the Bank financed his purchase of the suit property.

32. It therefore emerges that the plaintiff did not bother to join the Bank as a party to this suit despite knowing very well that the Bank had an interest in the title and in the parcel register in respect of which he seeks cancellation and rectification orders. In my view, notwithstanding the legal framework in Section 38(2) which protects all entries subsisting in the land parcel register, the plaintiff was obligated to join the Bank as a party to the suit because the Bank is a party that will be adversely affected by an order cancelling the title which it holds as security and or rectifying the parcel register. Consequently, it is my finding that failure to join the Bank as a party to this suit disentitles the plaintiff to the draconian orders of cancellation of title and/or rectification of the parcel register sought in the originating summons herein.

33. The second issue is whether the plaintiff has satisfied the criteria upon which title to land is acquired under the doctrine of adverse possession, as against the two defendants. The key ingredients of adverse possession were summarized by *Gicheru JA in Kweyu v Omutut [1990] KLR 709* in the following words:

“By adverse possession is meant a possession which is hostile, under a claim or colour of title, actual, open uninterrupted, notorious, exclusive and continuous. When such possession is continued for the requisite period (12 years) it confers an indefeasible title upon the possessor”

34. The Court of Appeal quoted, with approval, in *Mtana Lewa v Kahindi Ngala Mwangandi (2015) eKLR* and in *Isaac Imaku Kioi v Phyllis Waithera Kinyungu & 3 Others 92018] eKLR* the following essential ingredients of adverse possession as summarized by the Supreme Court of India in *Karnataka Board of Wakf v Government of India & Others [2004] 10 SCC 799*:

“ In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner, even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period”.

35. To succeed, the plaintiff was therefore required to demonstrate through evidence that: (i) the two defendants were the true owners of the

suit property at all material times; (ii) he peacefully and openly dispossessed the two defendants of the suit property; and (iii) he remained in actual, visible, exclusive, hostile, and continued possession of the suit property for a period exceeding twelve years.

36. The plaintiff tendered contradictory evidence on the date of purchase of the share which allegedly entitled him to the suit property. Similarly, the plaintiff tendered contradictory evidence on the date/year when he allegedly took possession of the suit property.

37. Further, the plaintiff testified that at all material times, he did not reside on the suit property. He resided on a different parcel of land within the same estate. He further testified that his possession of the suit property took the form of erection of an unapproved makeshift structure in which his workman lived. He added that he grew crops on the suit property. These averments were contested by the defendants. DW1 testified that the suit property was vacant throughout. He added that identifiable shareholders of Thome Farmers No 5 Limited who trespassed onto Parcel No LR 13330 (the bigger parcel from which the suit property was parceled) were resisted by the 1st defendant through **Nairobi HCCC No 6062 of 1992**. DW2 testified that the suit property was vacant at the time of purchase and the Bank inspected it before agreeing to accept it as security.

38. The plaintiff did not identify the agent(s) who occupied the suit property on his behalf. Similarly, he did not lead evidence by the said agent(s). Thirdly, he did not produce evidence of any approved or permanent development by him on the suit property. He nonetheless urges the court to find that he dispossessed the defendants of the suit property and occupied it through unidentified and unknown agent(s). I do not think the scenario projected by the plaintiff meets the criteria upon which title under the doctrine of adverse possession crystallizes. The plaintiff had an evidential duty to identify the agent(s) who adversely occupied the land on his behalf and demonstrate to the court that the defendants knew or had reasonable opportunity to know that the agent(s) was/were occupying the land as adverse possessors on his behalf.

39. Besides the above, the plaintiff has not demonstrated that the 2nd defendant was a co-proprietor of the suit property for a period of 12 years preceding the initiation of this suit to warrant the plea for an adverse possession order under Section 38 of the Limitation of Actions Act against him.

40. The totality of the foregoing is that the plaintiff has failed to satisfy the criteria for acquisition of title under the doctrine of adverse possession as against the two defendants herein.

41. The third issue is whether the plaintiff has satisfied the criteria for annulling a title under Section 26(1) of the Land Registration Act as against the 2nd defendant. Evidence before court indicates that the suit property was a subdivision parceled out of LR No 13330. Prior to the sub-division, the land belonged to the 1st defendant. The 2nd defendant purchased the suit property in September 2012 and became registered proprietor in February 2013. Consequently, it cannot be said that the requirement for a 12 year period for the crystallization of title under the doctrine of adverse possession had been satisfied against the 2nd defendant as at the time of initiating this suit in 2013. It therefore follows that, to nullify the title held by the 2nd defendant on account of the plaintiff's claim of adverse possession, the plaintiff was required to first satisfy the requirement for acquisition of title under the doctrine of adverse possession as against the 1st defendant. Secondly, as against the 2nd defendant, the plaintiff was required to satisfy the requirements for nullification of the 2nd defendant's title under Section 26(1) of the Land Registration Act.

42. Section 26 (1) of the Land Registration Act provides as follows:

26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

43. My interpretation of the above framework is that, in the absence of proof of the essential ingredients of adverse possession against the 2nd defendant, the plaintiff was required to establish one of the grounds set out in Section 26(1) of the Act in order to impeach the 2nd defendant's title. Looking at the evidence placed before court, no attempt was made by the plaintiff to establish any of the grounds set out in Section 26. Instead, the plaintiff proceeded as if the suit property was still registered in the name of the 1st defendant at the time of initiating this suit. Consequently, my finding on the third issue is that the plaintiff has failed to satisfy the criteria upon which a registered title is impeached and annulled under Section 26(1) of the Land Registration Act.

Disposal Orders

44. In light of the above findings, the court makes the following determinations in the originating summons dated 24/6/2013:

a) The plaintiff has failed to prove to the required standard that he acquired title to Land Reference Number 13330/387 through adverse possession.

b) There is no basis for impeaching the previous title held by the 1st defendant and the current title held in the name of the 2nd defendant in relation to the suit property.

c) Even if the plaintiff had satisfied the requirement for acquisition of title under the doctrine of adverse possession, Order No (2) of the originating summons would not issue in the absence of Kenya Commercial Bank who have a subsisting charge against

the suit property and hold the original title thereof.

d) The plaintiff shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF NOVEMBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Mr. Kingara for the Plaintiff

Mr Banji holding brief for Mrs Koech for the 1st Defendant

Mr. Gachuhi for the 2nd Defendant

Court Clerk - June Nafula