

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ELC APPEAL NO. 18 OF 2019

SARAH JEPKORIR KOSEN

.....**APPELLANT**

VERSUS

MELENTA OLE KOSEN**1ST**

RESPONDENT

ALICE KOSEN**2ND**

RESPONDENT

THE CHAIRMAN

LAND DISPUTE TRIBUNAL, CENTRAL NAROK**3RD**

RESPONDENT

(Being an appeal from the Judgment and decree of Hon. T. Gesora, Senior Principal Magistrate, delivered on 30th day of July 2019 in Narok ELC No. 15 of 2018)

JUDGEMENT

A. Introduction

1. This is an appeal from the judgment of **Hon. T. Gesora, Senior Principal Magistrate**, delivered on **30th July 2019** in **Narok CMC-ELC No. 15 of 2018** (formerly **Narok ELC No. 405 of 2017**). The dispute concerns ownership of the parcel of land known as **CIS MARA/OLELESHWA/861**. The appellant, **Sarah**

Jepkorir Kosen, maintains that she became the registered proprietor of the suit property on **18th December 2003** pursuant to a confirmed grant issued to her in **Eldoret Succession Cause No. 146 of 1993** in respect of the estate of her late husband, **Livingstone Mapelu Kosen**.

2. Some years later, the **1st and 2nd respondents, Melenta Ole Kosen and Alice Kosen**, successfully prosecuted a claim before the **Narok Land Disputes Tribunal**; the award was adopted by the magistrates' court and, following a **Gazette Notice** issued on **8th May 2009**, the appellant's title was cancelled and a new title issued in the name of the 1st respondent.
3. The appellant then filed suit before the Environment and Land Court at Narok seeking cancellation of the respondents' title, restoration of her own, eviction of the respondents and injunctive relief. On transfer to the Chief Magistrate's Court, the suit was heard and dismissed. The learned magistrate found that the appellant was not a wife of the deceased; that her title had been validly revoked; that the respondents were not trespassers; and that a court of concurrent jurisdiction had no power to disturb the Land Disputes Tribunal award as adopted. Aggrieved, the appellant lodged this first appeal.

B. Appellant's Case Before the Trial Court

4. Before the trial court the appellant testified that the suit land traces back to **NAROK/MELILI/NAIRASIRASA/92**, an allocation to the deceased, **Livingstone Mapelu Kosen**, from

Nairasirasa Group Ranch. Following the deceased's demise, she petitioned the High Court at Eldoret in **Succession Cause No. 146 of 1993** and obtained a confirmed grant in **1995**, later rectified in **2013** to include additional assets. Armed with the confirmed grant, she approached officials of **Nairasirasa Group Ranch** who, upon verification, facilitated issuance of a title deed to her in respect of **CIS MARA/OLELESHWA/861** on **18th December 2003**.

5. She further produced proceedings and statements showing that ranch officials acknowledged her as the widow and beneficiary of the deceased, including a statement by **Joseph ole Sadera** recorded before the Tribunal acknowledging the lineage of the property from the ranch to the deceased and then to the appellant.
6. Her case was that, despite the subsisting succession orders, the **1st and 2nd respondents** in **2007** mounted proceedings before the **Narok Land Disputes Tribunal** claiming the same land, without notifying her and in a forum that lacked jurisdiction to deal with ownership of registered land. The Tribunal's award was subsequently filed for adoption in **Narok PMC Misc. Land Suit No. 17 of 2007** and a decree issued on **18th February 2008**.
7. When the decree was presented to the Land Registrar for implementation, the then District Land Registrar, **P. M. Mengi**, issued a letter dated **9th May 2008** addressed to the Principal Magistrate at Narok expressly stating that the decree did not

cater for cancellation of the appellant's title and did not authorise the Executive Officer to sign the necessary instruments. The appellant tendered that letter as **PExh 6** through the Land Registrar who testified as **PW2**.

8. The record further showed that following the Registrar's stance, the respondents sought orders to cure the omission by an application dated **10th July 2008** praying for cancellation of the appellant's title and for the Executive Officer to execute transfer documents. That application was struck out on **18th December 2008** by **Hon. Kibiru, SRM**, on the basis that the court was functus officio and lacked jurisdiction to vary or review an award it had adopted. Proceedings in the miscellaneous cause were thereafter stood over generally on **9th April 2009** and never revived.
9. Despite the foregoing, a **Gazette Notice** dated **8th May 2009** was published reciting that the "Senior Principal Magistrate's Court at Narok" had ordered the Executive Officer to sign transfer forms to facilitate issuance of a title to the 1st respondent; on the strength of that notice, and without any new or different court order, the Registrar cancelled the appellant's title and issued a new one to the 1st respondent.
10. The appellant characterised the Gazette Notice as resting on a non-existent order and contended that, in any event, the Tribunal had no jurisdiction to determine ownership of registered land and

its award, even if adopted, could not defeat a prior High Court succession determination by which the appellant derived title. She pointed out that the 1st respondent had himself moved the High Court to revoke her grant, only to abandon the effort, leading to dismissal of the revocation application for want of prosecution on **28th July 2008**.

11. In her view, the respondents, having failed in the succession forum and then failed to obtain lawful implementation orders in the magistrates' court, resorted to an irregular administrative procedure to cancel her title. She asked the court to cancel the 1st respondent's title, restore her registration, declare the respondents' trespassers and issue eviction and permanent injunctive orders, together with costs.

C. Respondents' Case Before the Trial Court

12. The respondents did not contest that the Land Disputes Tribunal heard their claim in **2007** and ruled in favour of the 1st respondent, and that the award was filed in the magistrates' court and a decree issued on **18th February 2008**.

13. Their position was that the appellant, if aggrieved by the Tribunal's award or its adoption, ought to have pursued the appellate path prescribed by the now repealed **Land Disputes Tribunal Act**, namely an appeal to the **Provincial Appeals Committee** within **30 days** and thereafter, on points of law, to the High Court within **60 days**, or else to have moved the High

Court promptly for judicial review within **six months**.

14. They argued that, absent such steps, the adopted award stood, and the subsequent vesting of title in the 1st respondent was a lawful execution of that judgment. They further maintained that the **Gazette Notice of 8th May 2009** was a proper administrative instrument to regularise issuance of a new certificate where a registered proprietor failed to surrender an existing one upon transfer ordered by a court.
15. They insisted that the 1st respondent's title attracted the statutory protection of indefeasibility under **section 26 of the Land Registration Act**, there being no proof of fraud or misrepresentation to which he was party.
16. On standing and credibility, the respondents contended that the appellant had not proved a lawful marriage to the deceased; that her marriage documentation was impugned by a letter from the Registrar of Marriages; that the deceased had identified the 1st respondent as next of kin in dealings with **Ardhi Sacco**; that the appellant had been estranged from the deceased for years and did not know the circumstances of his death or burial; and that the suit property was not specifically listed in the **1995** confirmation of grant.
17. They also raised a challenge to the propriety of filing succession proceedings in Eldoret, arguing that the deceased neither resided there nor owned property there.

D. Grounds of Appeal

18. In her **Memorandum of Appeal dated 23rd August 2019** the appellant impugns the judgment on both law and fact. She contends that the learned magistrate imposed an unduly onerous standard of proof and failed to evaluate the evidence on a proper balance of probabilities.
19. She faults the court for anchoring its decision on peripheral matters particularly the appellant's marital status while overlooking the central legal question: by what lawful authority was the appellant's existing registered title cancelled and the 1st respondent registered.
20. The appellant asserts that the court ignored material evidence, notably the District Land Registrar's letter of **9th May 2008** stating in clear terms that the decree did not provide for cancellation nor authorise the Executive Officer to execute instruments. Equally, the court failed to appreciate that the application made to plug this very gap was struck out on **18th December 2008** and the file lay dormant thereafter, leaving no judicial warrant for cancellation or transfer.
21. The appellant therefore asks this Court to set aside the dismissal, enter judgment as prayed in her plaint, or alternatively order a retrial, with costs.

E. Parties' Submissions on Appeal

22. On appeal the appellant submits that the learned magistrate failed to discharge the duty to evaluate all material evidence and applicable law. She stresses that **PExh 6**, the District Land Registrar's letter of **9th May 2008**, was decisive: it confirmed that the decree did not provide for cancellation of the appellant's title and contained no clause authorising execution by the Executive Officer.
23. According to the appellant, the subsequent application of **10th July 2008** was struck out on **18th December 2008**, and the matter was then stood over generally on **9th April 2009**. In that legal vacuum, the **Gazette Notice** of **8th May 2009** reciting that the "Senior Principal Magistrate's Court at Narok" had ordered the Executive Officer to sign transfer forms was factually inaccurate and legally ineffectual.
24. The record further shows that on **5th July 2021**, the respondent's advocate, Mr. Kamwaro, together with the appellant's advocate, Mr. Mutai, appeared before the court to confirm the filing of submissions in the appeal. The appellant had already filed her submissions, but the respondent had not. Leave was granted to the respondent to file submissions within the prescribed time. However, no submissions were ever filed on behalf of the respondent.

F. Issues for Determination

25. Having considered the memorandum of appeal, the record of the trial court, the evidence adduced, and the submissions of the parties, the following issues arise for determination by this court:

- a) Whether the Narok Land Disputes Tribunal had jurisdiction to determine ownership of the suit property: **CIS MARA/OLELESHWA/861**, to order cancellation of the appellant's registered title, and whether the subsequent title cancellation together with the court's affirmation of that cancellation the Gazette Notice of **8th May 2009**, and the transfer to the 1st respondent were lawful.
- b) Whether the trial magistrate erred by focusing on the appellant's marital status and by failing to consider key evidence, including the **District Land Registrar's letter of 9th May 2008**.
- c) Whether the 1st respondent's title is protected under **section 26 of the Land Registration Act** or is impeachable for illegality.
- d) Whether the appellant is entitled to the reliefs sought and who should bear the costs of the appeal and trial.

G. Legal Analysis

26. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

27. In the case of **Mbogo and Another vs. Shah [1968] EA 93** where the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

28. The duty of the first appellate Court was settled long ago by Clement De Lestang, VP, Duffus and Law JJA, in the locus Classicus case of **Selle and another Vs Associated Motor Board Company and Others [1968] EA 123**, the court stated as follows;

“.. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the trial Court's finding of fact if it appears either that he failed to take account of particular circumstances or

probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally.”

29. The Court is to bear in mind that it had neither seen nor heard the witnesses. It is the trial court that has observed the demeanor and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them.

30. In the case of **Peters vs Sunday Post Limited [1958] EA 424**, court therein rendered itself as follows: -

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”

31. Having laid down the legal framework and guiding principles applicable to this court as a first appellate court, it is now necessary to turn to the specific issues arising in this appeal. I will address each issue with due regard to the pleadings, the evidence adduced before the trial court, the applicable statutory provisions, and the relevant judicial precedents, while bearing in mind the trial court’s advantage in observing the demeanor and credibility of the witnesses.

Whether the Narok Land Disputes Tribunal had jurisdiction to determine ownership of the suit property: CIS MARA/OLELESHWA/861, to order cancellation of the appellant's registered title, and whether the subsequent title cancellation together with the court's affirmation of that cancellation the Gazette Notice of 8th May 2009, and the transfer to the 1st respondent were lawful.

32. The factual background is not in dispute. The appellant was the registered owner of parcel **CIS MARA/OLELESHWA/861**. The 1st respondent lodged a claim before the Narok Land Disputes Tribunal, essentially challenging the appellant's ownership and seeking transfer to herself. The Tribunal heard the claim and purported to award the land to the 1st respondent. This award was subsequently filed at the Narok Principal Magistrate's Court and adopted as a judgment. Based on that judgment, the District Land Registrar cancelled the appellant's title and issued a new title to the 1st respondent. A Gazette Notice dated **8th May 2009** was then published to that effect.

33. In entertaining the dispute between the parties herein, the Tribunal was exercising powers bestowed upon it by the now **repealed Land Disputes Tribunal Act. Section 3 (1)** of that Act circumscribed the Tribunal's jurisdiction as follows: -
"Subject to this Act, all cases of a civil nature involving a dispute as to;

- a) ***the division of or the determination of boundaries to land, including land held in common;***
- b) ***a claim to occupy or work land; or***
- c) ***trespass to land shall be determined by a Tribunal established under Section 4***

34. The dispute herein involved title to registered land and there is a long line of authorities from the Superior Courts to the effect that a Tribunal exercising its jurisdiction under the repealed Land Disputes Tribunal Act had no jurisdiction to entertain a dispute involving title to registered land.

35. One such case is **JOTHAM AMUNAVI VS CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL NO. 256 of 2002** where the Court stated that:-

“It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3 (1) of the Land Disputes Tribunal Act. By Section 159 of the Registered Land Act such a dispute can only be tried by the High Court or by the Resident Magistrate’s Court in cases where such Court has jurisdiction”

36. As was held in the case of **OWNERS OF THE MOTOR VEHICLE "LILLIAN S" VS CALTEX OIL (KENYA) LTD 1989 K.L.R 1 at page 14**

“Jurisdiction is everything, without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”

37. Similarly, in **DESAI VS WARSAMA 1967 E.A 351**, it was held that a Court cannot confer jurisdiction upon itself and where a Court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, those proceedings and determination are a nullity.

38. That caution of course applies to a Tribunal such as the one that handled the dispute involving the parties herein which exceeded its jurisdiction in not only determining a dispute that did not fall under the provisions of **Section 3 (1) of the repealed Land Disputes Tribunal Act** but also by ordering the revocation of a title deed which could only be done by the High Court.

39. The Magistrate’s Court’s role under section 7(2) of the Land Disputes Tribunal Act was purely ministerial to enter judgment in accordance with the Tribunal’s award. However, if the award

itself was made without jurisdiction, the Magistrate's Court could not breathe life into it. As the Court of Appeal held in **MACFOY VS. UNITED AFRICA CO. LTD [1961] 3 ALL E.R. 1169** Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

40. It follows that the cancellation of the appellant's title by the District Land Registrar, being founded on an unlawful Tribunal award and its equally unlawful adoption, was also without legal basis. The **Registered Land Act** required that cancellation of a registered title be ordered by a court of competent jurisdiction after due process. The Gazette Notice of **8th May 2009** did not, and could not, confer legality on an otherwise void act. A Gazette Notice is merely a medium of public notification; it cannot be an independent source of authority.

41. In the result, I find that the Tribunal lacked jurisdiction, the Magistrate's Court's adoption of the award was a nullity, and all

consequential actions including the cancellation of the appellant's title, registration of the 1st respondent, and the Gazette Notice were **null and void ab initio**.

Whether the trial magistrate erred by focusing on the appellant's marital status and by failing to consider key evidence, including the District Land Registrar's letter of 9th May 2008.

42. The role of a trial court in a civil matter is to evaluate all evidence placed before it, apply the relevant law, and make reasoned findings supported by the record. This obligation is anchored in Sections 1A and 1B of the Civil Procedure Act and reaffirmed in **Peters v Sunday Post Ltd [1958] EA 424**, which held that an appellate court will interfere with findings of fact where the trial court has failed to consider relevant matters or considered irrelevant ones.

43. From the record, the trial magistrate's reasoning focused substantially on the appellant's marital status and residence, rather than the central legal question of whether the title cancellation was lawful. Marital status is not a criterion for the validity of proprietorship under the Registered Land Act (Cap 300) (repealed) or the Land Registration Act. Once lawfully registered, a proprietor enjoys absolute ownership rights under Sections 27 and 28 of the repealed Act, subject only to legally recognised overriding interests. Emphasis on marital ties was therefore legally irrelevant.

44. In addition, the trial court failed to give due weight to the District Land Registrar's letter of 9th May 2008. Addressed to the Principal Magistrate, Narok, the letter expressly stated that the cancellation of the appellant's title and registration of the 1st respondent were irregular and contrary to law. As the Land Registrar is the statutory custodian of land records, this evidence was directly material to the lawfulness of the transfer and could not be ignored.
45. Omission to address such material evidence is a recognised ground for appellate interference. In **Selle v Associated Motor Boat Co. Ltd [1968] EA 123**, the Court held that an appellate court must reconsider the evidence and draw its own conclusions where the trial court has ignored material facts. Similarly, in **Ephantus Mwangi & Another v Duncan Mwangi Wambugu [1982-88] 1 KAR 278**, it was held that interference is warranted where a finding is based on no evidence, misapprehension of the evidence, or irrelevant considerations.
46. By focusing on irrelevant personal factors and disregarding critical documentary evidence, the trial court misdirected itself on both the law and the facts. This misdirection went to the heart of the dispute, as the legality of the title cancellation was the foundation of the respondent's claim. Had the court properly evaluated the District Land Registrar's letter and applied the correct legal principles, the outcome would likely have been different. I therefore find that appellate interference is justified.

The third issue is whether the 1st respondent's title attracts statutory protection under section 26 of the Land Registration Act or whether it is impeachable for having been obtained unlawfully or through a process tainted with illegality.

47. Section 26(1) of the **Land Registration Act, No. 3 of 2012** provides that a certificate of title issued by the Registrar is to be taken as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner, subject only to the encumbrances, easements, restrictions and conditions contained in the register. However, subsection (1)(a) and (b) expressly allow impeachment of such title on grounds of fraud, misrepresentation to which the proprietor is a party, or where the title has been acquired illegally, unprocedurally or through a corrupt scheme.

48. In this case the 1st respondent's registration flowed directly from the Narok Land Disputes Tribunal award, which, as discussed under **Issue 1**, was made without jurisdiction. Nevertheless, that award was unlawfully adopted by the Magistrate's Court, and on that adoption, the District Land Registrar cancelled the appellant's title and registered the 1st respondent. The **Gazette Notice dated 8th May 2009** merely announced the unlawful actions already undertaken.

49. The question, therefore, is whether a title founded on such a process can attract statutory protection. The Court in **Elijah**

Makeri Nyang'wara v Stephen Mungai Njuguna & Another [2013] eKLR. Mutungi J held that even innocent purchasers cannot be protected under section 26 if their titles were procured through processes that were void ab initio.

50. By stating: **“The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent”**

51. It is therefore immaterial that the 1st respondent may not have personally engaged in fraud. The Court in **Funzi Island Development Ltd & 2 Others v County Council of Kwale & 2 Others [2014] eKLR** observed that: **“A court of law cannot, on the basis of indefeasibility of title, sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”**

52. Here, the Tribunal's lack of jurisdiction rendered its award a nullity; the Magistrate's Court could not validate it; and the Land Registrar acted without lawful authority in effecting the transfer. The chain of events was tainted from inception.

53. The legal position was reiterated in **Chemey Investment Limited v Attorney General & 2 Others [2018] eKLR**. “We must hasten to add that title to property that is obtained fraudulently or illegally in violation of the provisions of the statute is and was not sacrosanct and did not enjoy protection of the law under the repealed Act.”

54. Similarly, in, **Denis Noel Mukhulo & Another v Elizabeth Murungari Njoroge & Another, CA No. 298 of 2013**, this Court explained the situation as follows: ***“While we agree with the appellants that title registered under the Registered Land Act was sacrosanct, we are not able to agree that the Act protected title registered under it in all and sundry cases, irrespective of how the title was acquired. By section 27 of the Act, the registration of a person as a proprietor of land vested in him the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto, while section 28 of the Act insulated the rights of a proprietor from challenge except in the manner set out in the Act, which really does not afford the blanket protection that the appellants claim it did. Section 143 of the Act, which granted the court power to order rectification of the register provided as follows...The effect of the above provision is that the court had power to order rectification, save in the case of a first registration, where the registration was obtained by fraud or mistake to which the registered person was***

party.”

55. On the basis of these authorities and the facts, I find that the 1st respondent's title, though supported by a certificate of title, was acquired illegally and unprocedurally within the meaning of Section 26(1)(b) of the Land Registration Act. It cannot, therefore, enjoy the statutory protection ordinarily accorded to registered proprietors.

H. Remedies and Costs

56. Having found under Issue 1 that the Narok Land Disputes Tribunal and the Magistrate's Court acted without jurisdiction, under Issue 2 that the trial court failed to properly evaluate the evidence, and under Issue 3 that the 1st respondent's title was acquired illegally and unprocedurally, it follows that the foundation of the 1st respondent's ownership is void. The law is settled that a court will not allow a party to retain property obtained through an unlawful process.

57. As earlier noted in **Macfoy v United Africa Co. Ltd [1961] 3 All ER 1169**, the principle is that once an act is declared void, it is treated as a nullity in law, incapable of supporting any rights or obligations.

58. Section 80(1) of the Land Registration Act empowers the court to order rectification of the register by cancelling any registration obtained by fraud or mistake. Where such rectification involves reinstating a former proprietor unlawfully deprived of their title,

the court must do so unless exceptional circumstances exist. In this case, no such exceptional circumstances are present.

59. On the remedy of eviction, it is trite that a registered proprietor has the right to exclusive possession under Sections 24 and 25 of the Land Registration Act. Having determined that the appellant is the lawful owner, it follows that she is entitled to possession and to restrain the respondents from trespassing on the property.

60. Regarding costs, Section 27 of the Civil Procedure Act provides that costs follow the event unless the court orders otherwise. The respondents' defence has failed in its entirety, and there is no justification to deprive the appellant of her costs at both the trial and appellate levels. Awarding costs to the successful party not only compensates them for expenses incurred but also deters unlawful deprivation of property.

Final Orders and Disposition

61. Having carefully considered the record of appeal, the submissions of the parties, and the applicable law, and for the reasons set out under Issues 1 to 4 above, the Court finds merit in this appeal. Accordingly, the appeal is hereby **allowed** and it is ordered as follows:

- a) It is hereby **declared** that the decision of the **Narok Land Disputes Tribunal** in **Claim No. 12 of 2007**, delivered on **28th February 2008**, together with its **adoption by the**

Magistrate's Court and all consequential actions, including the Gazette Notice of 8th May 2009, was null and void for want of jurisdiction.

- b) The **Judgment and decree** of the **Senior Principal Magistrate** in **Narok CMC-ELC No. 15 of 2018** are hereby **set aside**.
- c) It is hereby **declared** that the **appellant** is and remains the **lawful proprietor** of land parcel **CIS MARA/OLELESHWA/861**.
- d) The respondents, their agents, servants, or assigns shall **vacate** the suit property within **ninety (90) days** from the date of this judgment, failing which eviction shall issue without further order.
- e) The appellant is awarded the **costs of this appeal** and the costs in the trial court, together with interest thereon at court rates from the date of taxation until payment in full

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **9th** day of

October, 2025.

MOHAMMED N. KULLOW
JUDGE

Judgement delivered in the presence of: -

N/A..... for the Plaintiff

N/A..... for the Defendants

Philomena W..... Court Assistant

Original File Copy