



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 172 OF 2013

KAZUNGU FONDO SHUTU

HABEL KAHINDI CHARO.....PLAINTIFFS

VERSUS

JAPHETH NOTI CHARO.....1ST DEFENDANT

AFRI-SINE LIMITED.....2ND DEFENDANT

JUDGMENT

BACKGROUND

1. Before me for determination is a matter arising from two consolidated suits relating to more or less the same parcel of land. The first suit Malindi ELC No. 172 of 2013 as amended on 17th September 2017 was filed by Kazungu Fondo Shutu and Habel Kahindi Charo against their 'half-brother' Japhet Noti Charo seeking an injunction to restrain their defendant brother from further trespassing, encroaching into, dealing with or interfering with the Plaintiffs' quiet possession and enjoyment of their share of 1 ½ acres of land comprised in the land portion known as Plot No. C Malindi 10840. In addition, the Plaintiffs sought a declaration that they are the rightful, legal, beneficial and bonafide owners of the said parcel of land.
2. The basis for the first suit was the Plaintiffs' contention that they had acquired ownership of their portion of the land from the original parcel which comprises 2.237 Ha on the strength of numerous family and Provincial administration deliberations which culminated into an agreement with the Defendant on 7th December 2005. It was the Plaintiffs' case that after the said agreement they had been in possession and occupation of the said portion of land until sometime in September 2013 when the Defendant started interfering with their quiet possession and challenging their ownership thereof.
3. In a Written Statement of Defence and Counterclaim dated 26th November 2013, Japhet Noti Charo (the 1st Defendant) denied that the Plaintiffs were entitled to the parcel of land in dispute in the manner pleaded or at all. On the contrary he averred that he was the registered proprietor of the concerned parcel of land situated at Mbuzi Wengi within Malindi Town.
4. The 1st Defendant further stated that the Agreement dated 7th December 2005 was executed under duress after the Plaintiffs threatened to kill him and as advised by the Assistant Chief of the Area, he had only signed it to save his life. Accordingly, the Defendant also sought an order of injunction to restrain the Plaintiffs from trespassing onto the land as well as a declaration that the agreement dated 7th December 2005 and the transfer resulting therefrom was null and void.
5. On 28th April 2015, as the first suit was pending hearing, Messrs Afri-Sine Limited filed the second suit being Malindi ELC No. 65 of 2015 against Messrs Kirimo Fondo Shutu, Abel Kahindi Charo (the 2nd Plaintiff in the first suit) and Kazungu Fondo Shutu (the 1st Plaintiff in the first suit).
6. The Plaintiff in the second suit prays for an injunction to restrain the said Defendants from trespassing, gaining ingress, erecting any structures and/or in any manner interfering with the Plaintiff's quiet and peaceful enjoyment of 13 pieces of land listed therein as CR 45435, Portion No. 12274, CR No. 45438 Portion No. 12271, CR No. 45439 Portion No. 12273, CR No. 45440 Portion No. 12271, CR No. 45433, Portion No. 12278, CR No. 45437 Portion No. 12275, CR No. 45434 Portion No. 12277, CR No. 45432 Portion No. 12279 and CR No. 45436 Portion No. 12276, CR No. 45430 Portion No 12282, CR No. 45428 Portion No. 12282, CR No.45429 Portion No. 12283 and CR No. 45431 Portion No 12280.

7. The 13 listed parcels are said to be sub-divisions of the Original Plot No. C Malindi 10840(as cited in the first suit) and the Plaintiff seeks a mandatory injunction to compel the Defendants who are said to have trespassed thereto in or about 2015 to demolish forthwith and remove all structures that they have erected on the land on account that the Plaintiff is the registered proprietor thereof.

8. In their Statement of Defence filed two years later on 6th September 2017, the three Defendants aver that it is not in their knowledge that the Plaintiffs are the registered owners of the listed titles. It is however within their knowledge that there is a pending suit being the first suit herein wherein the 1st Defendant Japhet Noti Charo, sued as the Defendant therein has categorically stated that he is the registered owner of Plot No. C 10840, the mother title to the sub-divisions whose titles the Plaintiff claims to be registered in its name.

9. The Defendants in the second suit further aver that if any such registration as alleged by the Plaintiff has occurred, the same was done *pendente lite* ELC No. 172 of 2013 and in contempt of injunction orders issued therein on 5th September 2014, and has no legal force, is null and void *ab initio*.

10. On 6th March 2017, following an application made in that behalf, the two suits were consolidated with the consequence that the Plaintiff in the second suit became the 2nd Defendant in the consolidated suit.

THE PLAINTIFFS'S CASE

11. In support of their case the Plaintiffs called two witnesses.

12. PW1- Kazungu Fondo Shutu told the Court that the 1st Defendant is his cousin. He further told the Court that the land in dispute initially belonged to their grandfather Shutu Masha who is now deceased. The land passed to their father Mzee Charo Shutu thereafter.

13. According to PW1, sometime in 1966, the Municipal Council of Malindi allocated much of Mzee Shutu's land to strangers. Thereafter around 1992, the Council commenced deliberations with a view to allocating alternative land to Mzee Shutu. The Charo Shutu family then appointed Japhet Noti Charo (the 1st Defendant) to spearhead the efforts aimed at compensating Mzee Shutu's large family.

14. It was PW1's testimony that the 1st Defendant made a follow up and acquired land on behalf of the family. However in abuse of the trust bestowed upon him, the 1st Defendant proceeded to register all the land given as compensation in his own name. Overtime, he started selling and disposing off the land thereby rendering some family members as squatters.

15. As a result the family through area elders held meetings in different places to resolve the issue. By an agreement dated 7th December 2005 the 1st Defendant agreed and voluntarily donated 1 ½ acres of the 2.237 Ha (5.52 acres) of land that he had registered in his name to be shared by PW1 and two others. However when PW1 later on started the process of transferring the donated portion to his name, the 1st Defendant moved to the same portion and fenced it off. The 1st Defendant then moved to Court and obtained orders of injunction against PW1.

16. PW2-Samuel Kariuki Mwangi was a Land Registrar stationed at the Lands Registry, Mombasa. He told the Court that the records in respect of Land Portion No. 10840 Malindi indicated that the said title was closed on 21st April 2009 upon sub-divisions. These were sub-division numbers 12241, to 12283 which constituted the whole parcel of land. Some of the sub-divisions have since changed hands from the first owner who was indicated thereon as Japhet Noti Charo (1st Defendant). Only 11 of those initial 42 sub-divisions remain in the 1st Defendant's name.

THE DEFENCE CASE

17. The Defence called three witnesses. On 9th May 2018, the parties agreed by consent to adopt the statement of one Nichodemus Mayele Ndundi (DW1) filed herein on 5th March 2018 without calling the maker and/or being subjected to cross-examination.

18. In the said Statement DW1 indicates that he is the Assistant Chief Shella Sub-Location, a position he has held since 2004. It is DW1's testimony that on 5th November 2005, he was called by the area chief to resolve a dispute involving the Shutu family who live within Mbuji Wengi Area within his Sub-Location. DW1 proceeded there with four elders and they met the Plaintiffs accompanied by about twenty other people.

19. DW1 states that he was then led to a bar run by the 1st Defendant in the area. On arrival he heard people shouting at the 1st Defendant urging him to sign a document which the people had prepared. On scrutiny, he realised the document was an agreement and a transfer of land form and the 1st Defendant was urged to sign it or face death in DW1's presence. On realizing that the 1st Defendant's life was in danger, DW1 advised him to sign the agreement to save his life but to remember to later on report the incident to the police.

20. DW2-Japhet Noti Charo is the 1st Defendant. As his evidence-in-chief he adopted his Statement as filed here in Court on 5th March 2018. In the said Statement, he states that he is the son of the late Charo Wa Shutu who was the beneficial owner of a parcel of land known as Plot M5 Malindi. Some twenty years ago, DW2 commenced the process of getting a title document for the land. However upon realizing the difficulties involved in processing title for the whole parcel, he opted for title to be issued for the smaller portions.

21. Eventually when DW2 was issued with the title for the Portion No. 10840, the 1st Plaintiff started claiming that he was entitled to a portion thereof. One day, the Plaintiffs in a group of other men approached him and demanded that he signs an agreement and transfers a portion of the suit property. They threatened to kill him unless he complied. The crowd locked up DW2 in his office when he refused to

sign and set the office on fire. DW2 escaped but with severe burns on his body.

22. It was DW2's testimony that on another day, the same group proceeded to his office with an already prepared sale agreement and compelled him to sign or face death. The area chief who was called to the scene advised him to sign the agreement and other documents. The chief also advised him to report the matter to the Police. He did as advised and some of those involved were arrested and charged in Court.

23. DW2 told the Court that he later on sub-divided the property and sold it out and he was not therefore the registered owner as at the time this suit was filed.

24. DW3-Simon Kinyanjui told the Court that he is a Director of Afri-Sine Ltd, the 2nd Defendant herein. He told the Court that Afri-Sine Ltd is the proprietor of 13 properties registered as CR 45435 Portion No. 12274, CR 45438 Portion No. 12272, CR 45439 Portion No. 12273, CR 45440 Portion No.12271, CR 45433 Portion No. 12278, CR, CR 45437 Portion No. 12275, CR 45334 Portion 12276, CR 45432 Portion No 12279, CR 45436 Portion No 12276, CR 45430 Portion No. 12282, CR 45428 Portion No. 12282, CR 454429 Portion No 12283 and CR 45431 Portion No. 12280 all registered as such in the Malindi District Lands Registry.

25. According to DW3, the company purchased the said properties in 2014 and was duly issued with Certificates of Titles. However in or about February 2015, the Plaintiffs started encroaching and erecting semi-permanent structures therein. On 23rd April 2015, DW3 sent a contractor to fence the properties by erecting a concrete wall around them. The Plaintiffs however, with the help of some hired people chased away the contractor and pulled down a section of the wall that had been built.

26. DW3 avers that the Plaintiffs occupation of the said properties is illegal and unlawful and he urged this Court to protect their right to the property by ejecting the Plaintiffs from the said 13 parcels of land.

ANALYSIS AND DETERMINATION

27. I have carefully perused and considered the pleadings filed herein, the testimony of the witnesses from both sides and the evidence produced at the trial herein. I have also considered the submissions filed and the authorities to which I was referred by the Learned Advocates for the parties.

28. According to the 1st and 2nd Plaintiffs, they own 1 ½ acres of land comprised in land portion no. C 10840 Malindi. The 1st Defendant who they say is their half brother holds title in respect to the said Portion No. C 10840 Malindi in trust and on their behalf and therefore the suit property is part of their ancestral land that originally belonged to their father Mzee Charo Shutu.

29. A huge chunk of the family land was erroneously allocated to strangers by the defunct Municipal Council of Malindi sometime around 1992 and the family was left without land. When they pointed this out to the authorities, negotiations began towards restoring alternative land to them. In this regard, according to the Plaintiffs, the family picked on the 1st Defendant to be their representatives in negotiations which took place sometime far away in Nairobi.

30. However, when the family succeeded in its pursuit, the 1st Defendant in abuse of breach of the trust imposed upon himself by the larger family proceeded to register all the land given to them as compensation in his own name. Before long, the 1st Defendant even embarked on selling and disposing off the land thereby rendering the Plaintiffs and other family members squatters with no land of their own.

31. The Plaintiffs told the Court that they then decided to negotiate and resolve the matter with the help of the elders. After protracted negotiations and by an agreement dated 7th December 2005, the 1st Defendant agreed and voluntarily donated the said 1 ½ acres from a larger portion of land measuring 5.52 acres to be shared by the Plaintiffs. When the Plaintiffs moved to transfer the donated portion of the land to themselves however, the 1st Defendant reneged on the said agreement and proceeded to fence off the land.

32. On his part, the 1st Defendant denies that the suit property was ancestral land. He told the Court that the portion of land in dispute was part of a large portion known as Plot No. M5 Malindi which land belonged to his father the late Charo Wa Shutu. He stated that he inherited the land from his father and that when he obtained title for the Portion presently in dispute, the Plaintiffs started laying a claim thereon.

33. In regard to the Agreement dated 7th December 2005, the 1st Defendant told the Court that the Plaintiffs have been fighting him for a long time over the suit property and at one point, they locked him up in his office and set the building on fire. The 1st Defendant told the Court that he escaped from the burning office with severe burns and some of those involved were later arrested and charged.

34. It was his case that the Plaintiffs and a group of hired people managed to corner him a second time during which they came with a prepared agreement and transfer documents and threatened to kill him unless he signed the same. The 1st Defendant told the Court that he was therefore coerced into signing the Agreement after the area Assistant Chief who had been called to the scene advised him to do so to save his life.

35. The 1st Defendant told the Court that he reported the matter to the Police and thereafter decided to sub-divide and sell the property. As at the time this suit was filed, he had sold the property and was not the owner thereof.

36. The 2nd Defendant apparently bought 13 of the sub-divided parcels from the original Portion No. C 10840 Malindi. According to its Director DW3, their company purchased the 13 parcels in the year 2014 but the Plaintiffs later on invaded the same and erected various semi-structures thereon.

37. As I understood them, the Plaintiffs claim to the suit property is twofold. First, they assert that the suit property is their ancestral land. That assertion however appears to me to be rather tenuous given the circumstances herein. According to PW1 the suit property previously belonged to their grandfather Shutu Masha. After their grandfather's death, it was PW1's case that the land passed by way of inheritance to their father Mzee Charo Shutu who was then deprived of the land by the authorities leading to the negotiations in which they were represented and led by the 1st Defendant herein.

38. During cross-examination however, PW1 conceded that Charo Wa Shutu was not his father but the elder brother of his father-Fondo Shutu Masha. PW1 further conceded that the said Charo Wa Shutu was the father of the 1st Defendant. It was not made clear to the Court why the said Charo Wa Shutu would inherit all the land from PW1's grandfather Shutu Masha when PW1's own father was alive and had his own children. There was indeed nothing placed before me to demonstrate that the family had agreed that the 1st Defendant's father would hold the land to the benefit of the others.

39. At any rate, the concession by PW1 that the said Charo Shutu was not his father was a major turn around on his part as in both his Witness Statement filed herein on 1st October 2013 and his oral testimony –in-chief before the Court, he purported that the said Charo Wa Shutu was his father and that the 1st Defendant was his half-brother.

40. Be that as it may, the Plaintiffs asserted that at some point in time, the larger Charo Shutu family were deprived of their land by the authorities and that thereafter the family embarked on the process of reclaiming the same, a process through which they would be led by the 1st Defendant. When their lost land was somehow restored to them however, the 1st Defendant caused them to be registered solely in his name. It then took a series of negotiations with elders and the Provincial Administrations before the 1st Defendant agreed to transfer 1 ¼ acres of the Portion he acquired to the Plaintiff's vide an agreement dated 7th December 2005.

41. The 1st Defendant equally denies this second limb of the Plaintiffs' claim on the suit property. While the Plaintiffs assert that the agreement was signed voluntarily by all parties, the 1st Defendant avers that he was coerced into signing the same at the risk of losing his life.

42. I have perused and considered the Agreement dated 7th December 2005 in which the 1st Defendant is referred to as "The Donor" while the Plaintiffs are referred to as "Shareholders". I must say that even though the Plaintiffs assert that it was voluntarily executed, it did not strike me like one borne of a situation where the 1st Defendant was voluntarily donating the land to the Plaintiffs.

43. The Agreement required the Donor to co-operate in every possible way to assist the donees to sub-divide the land and secure titles to their land and to ensure the transfer of the stated portion was done not later than thirty days from the date of sub-division. The "Donor" was equally required to give vacant possession of the property to the 'shareholders' immediately upon execution of the Agreement. He was further required to guarantee peaceful takeover by the shareholders and to reimburse anyone who may require to be compensated as a result of the donation he was making.

44. While he does not deny executing the Agreement, the 1st Defendant avers that he did so under duress and/or coercion. In *Ghandhi & Another –vs- Ruda(1986) KLR 556*, the definition of duress was rendered thus:-

“Duress at common law, or what is sometimes called legal duress, means actual violence or threats to violence to the person, i.e threats calculated to produce fear of loss of life or bodily harm. The threat must be illegal in the sense that it must be a threat to commit a crime or tort.”

45. Discussing the concept of economic duress in *Kenya Commercial Bank Ltd & Another –vs- Samuel Kamau Macharia & 2 Others(2008) eKLR*, the Court of Appeal observed that:-

“Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree... that in a contractual situation commercial pressure is not enough. There must be present some fact on which could in law be regarded as a coercion of his will, so as to vitiate his consent.....In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy, whether he was independently advised; and whether after entering the contract he took steps to avoid it.”

46. In the matter before me, the 1st Defendant testified that prior to the date he signed the said Agreement, the Plaintiffs together with a group of people had tried to force him to give them the land and that when he declined, they locked him up in his office and set it up on fire. It was his testimony that he managed to escape from the building but not before he suffered severe burns. He reported the matter to the Police and some of those involved were arrested and charged in Court for the offence of attempted murder.

47. While the 1st Defendant did not provide any documentary evidence of this occurrence, PW1 admitted during cross-examination that he was aware that one of his brothers had been charged in Court with the offence of "burning" the 1st Defendant. He however denied that the incident happened before the date of the Agreement.

48. The 1st Defendant testified that on the date he signed the said Agreement, the Plaintiffs had gone to his bar with a mob urging him to sign documents which were already prepared. In his Witness Statement which was adopted by the consent of the parties, the Area Assistant Chief (DW1) stated that on the fateful day, he arrived at the scene upon instructions by the Area Chief. When he arrived, at the Mbuji Wengi Area, he was directed to the 1st Defendant's Bar whereupon he found a group of people shouting and demanding that the 1st Defendant should sign certain documents.

49. Dw1 stated that on close scrutiny of the documents, he realised it was a sale agreement and a transfer form. Realising that the 1st Defendant's life was in danger, DW1 advised the 1st Defendant to sign the documents and to later on report the matter to the Police. It is telling that the parties adopted the said Statement by consent and that DW1 was never cross-examined or challenged on the same.

50. Granted the circumstances in which the parties were operating and given the evidence of DW1 in corroboration of the 1st Defendant's testimony, I did not think that the 1st Defendant had any opportunity to negotiate, seek legal advice and/or exercise his free will in appending his signature to the said documents. The Agreement signed cannot therefore in my view form the basis of an enforceable contract as between the Plaintiffs and the 1st Defendant herein.

51. As it were and regardless of the terms of the purported Agreement, the 1st Defendant failed and/or refused to transfer the said Portion of land to the Plaintiffs. Instead, according to him, he sub-divided the parcels and sold them out to third parties. It was the 1st Defendant's testimony that as at the time his case was filed, he had sold the whole disputed portion and was no longer the owner thereof.

52. The 2nd Defendant is one of those third parties through whom the 1st Defendant was said to have alienated the property. It was the Plaintiff's position that the said sale if at all it occurred was fraudulent and meant to defeat the Plaintiff's interest herein. According to the 2nd Defendant however they purchased the 13 parcels presently registered in their name on 25th September 2014 and in February 2015.

53. They contend in that regard that they were bonafide purchasers for value without notice and that they were unaware of the fact that the parcels of land they bought were the subject of litigation. It is accordingly their prayer by way of counterclaim that the Plaintiffs herein be restrained by an order of injunction from trespassing, gaining ingress, erecting any structures and/or in any manner whatsoever interfering with their quiet and peaceful enjoyment of the said 13 parcels of land.

54. In his Statement filed herein on 26th April 2015, Simon Kinyanjui Gicharu (DW3) a director of the 2nd Defendant avers that they purchased the properties in 2014 and that they were thereafter issued with Certificates of Title. In support of their case, the 2nd Defendant produced various Certificates of Title all of which were registered sometimes between 25th September 2014 and 20th January 2015.

55. While no Sale Agreements were attached, the 2nd Defendant contended that the said properties were bought from the following persons:

Seller

i) CR NO. 45436	Lilian Japheth Noti
ii) CR NO. 45440	Fondo Japheth
iii) CR NO. 45435	Saji Noti Charo
iv) CR NO. 45438	Fondo Noti Charo
v) CR NO. 45439	Safi Noti Charo
vi) CR NO. 45436	Lilian Japheth Noti
vii) CR NO. 45434	Japheth Noti Charo as Trustee of Kelvin Charo
viii) CR NO. 45437	Japheth Noti Charo as Trustee of Georgina Noti Charo
ix) CR NO. 45430	Stella Kirimi Charo
x) CR NO. 45428	Erick Mwakombe
xi) CR NO. 45429	Eddi Fondo
xii) CR NO. 45431	Gabriel Katana
xiii) CR NO. 45432	Japheth Noti Charo as Trustee of Naomi Japheth
xiv) CR NO. 45433	Japheth Noti Charo as Trustee of Brian Japheth Noti

56. From the said list, it is apparent that while the 1st Defendant contended that he had sold the mentioned parcels of land to other parties prior to the commencement of this suit, the same were as late as 24th September 2014 either in his names or the names of his immediate family members and/or his close relatives. Indeed according to the Plaintiffs herein, those transferees were invariably the 1st Defendant's wife and his children. Whoever they are, this Court was not persuaded that the transfer of the said parcels of land as aforesaid could have happened without the knowledge of the 1st Defendant.

57. It is not disputed that the 1st Defendant was first sued in the first suit herein on 21st October 2013. Filed together with the said suit was an application dated 30th September 2013 seeking orders of injunction against the 1st Defendant. On 5th September 2014, some three weeks before the transfers started the Honourable Justice Angote then seized of the matter, having heard the said application allowed the same restraining the 1st Defendant, his servants and/or agents from alienating, transferring or charging the suit premises.

58. Thus while it may be true as the 2nd Defendant herein contends that it purchased the properties between September 2014 and February 2015, there was at the time of the transfer a valid Court Order in place restraining the 1st Defendant from alienating and/or transferring the suit properties. Again while the 2nd Defendant has taken the position that the suit properties are different from Portion No. C 10840 Malindi, the copies of titles produced at the trial herein show that the 13 parcels were sub-divisions out of Portion No. C 10840.

59. In actual fact, those Certificates of Title clearly show that the initial registered proprietor was Japhet Noti Charo, the 1st Defendant herein. As Turner J stated centuries back in ***Belleny –vs- Sabine(1857) 1 Dej 566, 584:-***

“Where a litigation is pending between the Plaintiff and the Defendant as to the right of a particular estate, the necessities of mankind require that the decision of the Court in the suit shall be binding not only on the litigating parties but also on those who derive title under them by alienating pending the suit whether such alienees had or had no notice of proceedings. If that were not so, there could be no certainty that the proceedings would ever end....”

60. Addressing the purpose of the principle of *lis pendens* and its applicability in our laws in ***Mawji –vs- US International University & Another(1976) KLR 185***, Madan J.A observed that:-

“The doctrine of lis pendens under Section 52 of the TPA is a substantive law of general application. Apart from being in the Statute, it is a doctrine equally recognised by common law. It is based on the expediency of the Court. The doctrine of lis pendens is necessary for final adjudication of the matters before the Court and in the general interest of public policy and good effective administration of justice. It therefore overrides Section 23 of the RTA and prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other....”

61. In the same case, the Learned Judges of Appeal observed that:-

“Every man is presumed to be attentive to what passes in the Courts of justice of the State or Sovereignty where he resides. Therefore purchase made of a property actually in litigation pendene lite for a valuable consideration and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had notice and will accordingly be bound by the Judgment or decree in the suit.”

62. The necessity of the doctrine of *lis pendens* in the adjudication of land matters pending before the Courts cannot be gainsaid, more so due to its expediency as well as the need to ensure an orderly and efficacious disposal of matters. The purposes of that doctrine as was captured at Section 52 of the Transfer of Property Act (now repealed) are still echoed under Sections 1A and 1B of the Civil Procedure Act in regard to the overriding objectives of this Court.

63. Applying the doctrine to the circumstances before me, it is obvious that the 1st Defendant had no authority to deal with the suit properties in the manner he purported. Similarly and consequently, the 2nd Defendants did not acquire any rights and/or interest in the suit properties capable of enforcement in the manner they sought when they filed Malindi ELC No. 65 of 2015.

64. In the result, I make the following Orders:-

- i) The Plaintiffs’ suit is hereby dismissed in its entirety.***
- ii) The 1st Defendant’s Counterclaim is hereby allowed.***
- iii) The 2nd Defendant’s suit and/or Counterclaim is dismissed.***
- iv) Each party shall bear their own costs.***

Dated, signed and delivered at Malindi this 28th day of March, 2019.

J.O. OLOLA

JUDGE