REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

E.L.C APPEAL CASE NUMBER E036 OF 2022

BETWEEN

GEOFFREY MAINA KIHARA…… APPELLANT

VERSUS

MARY NJERI KIHARA……1ST RESPONDENT
JOYCE WANJA NGOTHO……2ND RESPONDENT

(Being an Appeal against the Judgment and Decree of the Hon. P.M MUGURE, Principal Magistrate sitting in Wang'uru CMELC Case No. 9 of 2020 and delivered on 21.11.2022).

JUDGMENT

1. This Appeal is against the Judgment delivered by Hon. P.M. Mugure (P.M.) on 21st November 2022, in Wang'uru CMELC Case No. 14 of 2019. In the suit, the Trial Court observed that the Appellant who was the Plaintiff held a valid tenant card for the whole of Rice Holding Tebere/Gathigiriri/Rice Holding No. 739 Unit T. 21 (approximately 4.19 acres). The Learned Magistrate concluded that matters concerning the management and control of land in an Irrigation Scheme

are governed principally by the **Irrigation Act of 2019** and the **Irrigation General Regulations of 2021**, and not the **Land Registration Act No. 3 of 2012**. On that basis, The Learned Magistrate held that issues touching on succession should properly have been taken up with the National Irrigation Authority before the question of trespass could be adjudicated by the Court. The Trial Court further found that the Appellant had not proved special damages as required by the law. In light of the foregoing findings, the Learned Trial Magistrate dismissed the Appellant's suit and awarded costs to the Respondents.

2. The Appellant was aggrieved and dissatisfied with the Learned Magistrate's decision and has appealed to this Court against the Judgment. The Appellant has set out 7 grounds of appeal in his Memorandum of Appeal dated 2nd March 2020 as follows: -

    1) **That the Learned Magistrate erred in law and fact by deciding that the Court lacked jurisdiction to entertain the case and that they ought to have first had the issue dealt with by the National Irrigation Authority.**

2) **That the Learned Magistrate erred in law and fact by stating that the matter needed to go through succession yet the appellant is alive and has a valid tenant card showing he is the owner and the same is not challenged anywhere.**

3) **That the Learned Magistrate erred in law and fact in completely disregarding the evidence put forth by the Plaintiff/Appellant.**

4) **That the Learned Magistrate erred in law and fact by stating that the Plaintiff had not proved special damages yet the same was proved and receipts filed.**

5) **That the Learned Magistrate erred in law and fact by failing to appreciate that she had the jurisdiction to deal with the prayers sought.**

6) **That the Learned Magistrate erred in law and fact in failing to fairly evaluate the evidence tendered by the parties.**

7) **That the Learned Magistrate erred in law and fact by dismissing the Appellant/Plaintiff's case with costs.**

3. The background to this matter is that the Appellant filed a suit in the lower court by way of a Plaint dated 2nd March 2020. He sought orders for a permanent injunction restraining the Respondents from entering, cultivating, or otherwise interfering with Rice Holding No. Tebere/Gathigiriri/739 Unit T.21; eviction orders against the Respondents; special damages in the sum of Kshs. 560,000/- for alleged loss of income; and costs of the suit.

4. The Appellant's case was that he was the lawful tenant of the suit holding, measuring approximately 4.19 acres, and that he held a valid tenant card issued by the National Irrigation Board. He contended that in or about the years 2018 and 2019, the Respondents unlawfully entered and cultivated 1.0 acre of the rice holding without his consent. He averred that he earned approximately Kshs. 280,000/- per season from cultivation, and that the Respondents'

occupation for two consecutive seasons caused him loss of Kshs. 560,000/-.

5. The Respondents, in their statement of defence dated 2nd April 2020, denied trespassing upon the Appellant's rice holding. They pleaded that the late Kihara Gathunwa, father to the Appellant and husband to the 1st Respondent, was the original legal licensee of Rice Holding No. 434 Tebere Section measuring 5.0 acres. The Respondents claimed the riceholding was shared equally between his two households, each having 2.5 acres, and that arrangement had been maintained to date.
6. They contended that the Appellant had separately been allocated Rice Holding No. 739 Unit 20 Tebere Section, measuring 3.0 acres, and had been in occupation of the same. They denied ever entering Rice Holding No. 739, insisting that their cultivation had always been confined to their 2.5-acre share out of Rice Holding No. 434. They pleaded that sometime in 1999, the Appellant unlawfully attempted to claim a portion of their holding, but the matter was referred to the village elders and the Assistant

Chief, where the Appellant agreed and undertook not to lodge such a claim again.

7. The Respondents further stated that in 2017, the Scheme Manager of the Tebere Section resolved that Rice Holding No. 434 be shared in such a way that they cultivate 2.5 acres and the other household the balance, and that arrangement has been respected since. They therefore denied ever trespassing upon the Appellant's land or causing him loss, and prayed that the suit be dismissed with costs.

8. In his Reply to Defence dated 15th September 2020, the Appellant reiterated his claim of ownership and clarified the extent of his holding. He averred that he owns 4.19 acres in total, being 1.0 acre in Unit T.21 and 3.19 acres in Unit T.20, both of which are reflected under Unit T.21 in his tenant identification card. He explained that he acquired the 3.19 acres directly from the National Irrigation Board, which were thereafter merged into his father's tenant card for Unit No. 434. According to him, this merger brought his

father's acreage to 8.19 acres, since his father initially held 5.0 acres.

9. The Appellant further averred that on 16th June 1997 and 19th October 1998, his father wrote letters expressing his intention to transfer 4.19 acres out of the 8.19 acres to him. He stated that the transfer was effected and that his father was notified to have his son collect his tenant card. Following the transfer, the Appellant contended, his late father was left with 4.0 acres, which he divided equally between his two wives at 2.0 acres each, and not 2.5 acres as alleged by the Respondents.

10. The suit was heard, and the parties adduced evidence in support of their respective positions. The Appellant testified in support of his case. The Appellant's evidence was that Rice Holding No. Tebere/Gathigiriri/739 Unit T.21, measuring 4.19 acres, belongs to him. He stated that the 1st Respondent is his stepmother and the 2nd Respondent is the wife of the 1st Respondent's son. He

accused them of unlawfully entering and cultivating 1.0 acre of his holding during the years 2018 and 2019, harvesting rice therefrom, and causing him loss of income.

11. In cross-examination, he explained that the National Irrigation Board allocated him 3.0 acres and that his late father gave him an additional 1.0 acre out of his 5.0 acres, making up his 4.19 acres. He confirmed that his father died in 1998 but maintained that the transfer to him had been effected before his death, though the tenant card was issued thereafter. He stated that he cultivates the entire 4.19 acres and insisted that the 1.0 acre gifted by his father was his absolutely and not held on behalf of anyone.

12. The Respondents, on their part, denied trespassing on the Appellant's holding. The 1st Respondent, who testified as DW1, stated that she was the second wife of the Appellant's father, who died in 1998. She stated that her late husband was the original tenant of Rice Holding

No. 434, Unit 21 Tebere Section, measuring 5.0 acres, which had been shared equally between the two households at 2½ acres each. She maintained that she did not know Rice Holding No. 739 and had never encroached upon it. Instead, she claimed that it was the Appellant who had taken ½ acre from her portion, reducing her share to 2.0 acres. She also stated that no succession had been undertaken in respect of Rice Holding No. 434, which remains in her late husband's name.

13. The 2nd Respondent, testified as DW2, and supported the evidence given by DW1. She testified that the Scheme Manager had authorized the 1st Respondent to cultivate 2½ acres while the other household cultivated the remainder. She added that in 1999 the Appellant had agreed to surrender ½ acre and that they had never interfered with the portion allocated to the other household.

14. Although DW2 conceded that the Appellant's tenant card showed 4.19 acres in his name, she said she did not know how he acquired it. Both Respondents insisted that they have never entered the Appellant's holding, that their use has always been confined to their share of Rice Holding No. 434, and that the dispute arises from unresolved succession issues relating to their late husband's land. On evaluation of the evidence, the Trial Magistrate rendered the impugned Judgment provoking the instant Appeal.

15. The Appeal was canvassed by way of written submissions.

16. The Appellant filed his written submissions dated 21st February 2025. He submitted that there was no dispute as to his ownership of Rice Holding No. Tebere/Gathigiriri/739 Unit T.21, as he had produced the tenant card issued by the National Irrigation Board and other documents affirming his ownership of the said plot. He emphasized

that the tenancy card was the conclusive instrument of proof of ownership within the scheme and that no Appeal or challenge had ever been lodged against its issuance.

17. He argued that the Respondents had refused to abide by the directives of the National Irrigation Board and continued to interfere with his rice holding despite repeated summons and warnings. According to him, the Trial Magistrate misdirected herself in holding that the matter was one of succession, noting that he is alive and the tenant cardholder, and therefore, no succession proceedings could arise with respect to his land. He distinguished the Respondents' claim to Rice Holding No. 434, which he said belonged to his late father, from his own Riceholding No. 739, which was distinct and separate from his late father's plot and therefore not subject to succession.

18. On jurisdiction, the Appellant submitted that the trial Court had jurisdiction to entertain a claim for injunction

and damages for trespass, and that the reference to the National Irrigation Authority was misplaced since the dispute was not about allocation or management of the scheme but rather interference with his proprietary rights.

19. With respect to special damages, the Appellant contended that he had produced receipts evidencing the losses incurred when the Respondents interfered with his cultivation, and that the trial Magistrate erred in disregarding this evidence. Finally, on costs, he argued that the trial Court ought not to have condemned him to pay costs to the Respondents, bearing in mind that the dispute was between family members.

20. The Respondents filed their written submissions dated 18th March 2025. They raised a preliminary objection on the competency of the appeal, submitting that under **Order 42 of the Civil Procedure Rules**, an appeal must be accompanied by a certified copy of the judgment and decree. They argued that the Appellant had failed to

extract and file a formal certified decree, and even the judgment annexed to the record was not certified as a true copy. On this basis, they submitted that the Appeal was incompetent and fatally defective in law and ought to be dismissed with costs.

21. On the merits, they submitted that the Appellant was allocated Rice Holding No. 739 Unit T.21 measuring 4.19 acres by virtue of his late father's holding but subsequently surrendered 1.0 acre to his son, Kennedy Mwangi, who obtained a separate tenant card for Rice Holding No. 739(B). They stated that Kennedy later sold the 1.0 acre to a third party, one Beth Wanjiru King'ang'i. They argued that the present claim for trespass relates to that 1.0 acre, which no longer belongs to the Appellant, and hence, he lacked the locus to maintain the suit.

22. The Respondents further submitted that the claim for special damages of Kshs. 560,000/- was not specifically pleaded and strictly proved as required in law, and the

trial Court was correct in dismissing it. They reiterated that they have never trespassed upon Rice Holding No. 739(A) or 739(B) and that their use has always been limited to 2.5 acres out of the original Rice Holding No. 434. They relied on the decision of the National Irrigation Board dated 27th September 2017 confirming the distribution of Rice Holding No. 434.

23. The Respondents placed reliance on the authorities of **Gulam Hussein Mulla Jivanji & Another v Ebrahim Mulla Jivanji** (1930) and **Joseph Nderitu Githinji v Esther Wanjiru Githinji**, Civil Appeal No. 47 of 1988, to support their position that the Appellant's claim had no merit and that the appeal should be dismissed with costs.

24. This Court, being an Appellate Court of first instance, is obligated to consider and re-evaluate the evidence and material that was before the Learned Trial Magistrate at the time he rendered the impugned Judgment to satisfy itself whether or not the decision of the Learned Trial

Magistrate was justified. This was in keeping with the principle established by the Court of Appeal in the case of **Selle & Another vs East African Motor Boat & Others (1968) EA 123.**

25. I have reviewed the Memorandum of Appeal, the Record of Appeal, and the evidence presented before the Lower Court and have duly considered the parties' submissions. The main issues for determination are whether the Trial Court erred in holding that it lacked jurisdiction; whether the Appellant proved trespass and special damages; and whether the Trial Court erred in awarding costs to the Respondent.

26. Before considering the merits of the Appeal herein, it is necessary to deal with the issue raised by the Respondents concerning the competency of the Appeal in that the appellant failed to annex a certified copy of the decree being appealed against, contrary to the provisions of **Order 42 Rule 1 and 2 of the Civil Procedure Rules 2010** and **Section 2 of the Civil Procedure Act.**

27. Having perused the record of appeal before this Court, the record of appeal as filed did not contain the decree appealed from. This omission brings into focus the provisions of Order 42 Rule 2 of the Civil Procedure Rules, which require that a memorandum of appeal be accompanied by the decree or order appealed against. **Order 42 Rule 2 of the Civil Procedure Rule** provides as follows:

42(2) Where no certified copy of the decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible and in any event within such time as the court may order, and the court need not consider whether to reject the appeal summarily under section 79B of the Act until such certified copy is filed.

28. The Respondents have submitted that this omission rendered the Appeal incompetent.

29. The question then is whether failure to include a certified copy of the decree is fatal to the Appeal. **Section 2 of the Civil Procedure Act** defines a decree as including a judgment. The Section provides that:

> **"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final; it includes the striking out of a plaint and the determination of any question within section 34 or section 91, but does not include—**
>
> **(a) any adjudication from which an appeal lies as an appeal from an order; or**
>
> **(b) any order of dismissal for default:**
>
> **Provided that, for the purposes of appeal, "decree" includes judgment, and a judgment shall be appealable notwithstanding the fact that a formal decree in pursuance of such**

judgment may not have been drawn up or may not be capable of being drawn up;

30. The proviso to that definition makes it clear that a judgment shall be appealable notwithstanding that a formal decree in pursuance of it has not been drawn. The effect is that where a certified copy of the judgment is available, an appeal may properly proceed even if the decree has not been extracted.

31. The Court of Appeal in the case of **Emmanuel Ngade Nyoka v Kitheka Mutisya Ngata, Civil Appeal No. 63 of 2016 [2017] eKLR**, addressed a similar question and held that a Record of Appeal which contains a certified copy of the judgment is competent notwithstanding the absence of a formal decree. The Court emphasised that to hold otherwise would elevate form over substance and run counter to the constitutional imperative to administer justice without undue regard to procedural technicalities under **Article 159 of the Constitution**. The Court further noted that striking out an

appeal in such circumstances would undermine the overriding objective of the **Civil Procedure Act** as set out in sections 1A and 1B.

32. The Court of Appeal inter alia stated as follows:

“Starting with the first issue, it is true that the record of appeal before the first appellant court at the time of filing did not contain the decree appealed from. This omission brought into focus the provisions of Order 42 Rule 2 of the Civil Procedure Rules ……the Respondent did not take advantage of this provision to subsequently file a certified copy of the decree so that the appeal proceeded to hearing in the absence of the decree appealed from. Was this omission fatal to the appeal? The Appellant thinks so, as according to him, the requirement is couched in mandatory terms. The Judge did not agree with his reasoning that: “The word 'decree' has been defined by the Civil Procedure Act, Cap 21, to include judgment. In fact, the Civil Procedure Act, as provided at Section 2 that the judgment shall be appealable notwithstanding the fact that a formal decree in pursuance of a judgment may

not have been drawn up or may not be capable of being drawn up". This is the essence of the proviso to the definition of the term "decree". According to the Judge, the record of appeal before him had a certified copy of the judgment of the trial court; consequently, he reasoned the record of appeal was competent notwithstanding the fact that a formal decree had not been included in the record. We entirely agree with the reasoning of the learned Judge on this aspect. In any event, this was a mere technicality that could not have sat well with the current constitutional dispensation that calls upon the court to go for substantive justice as opposed to technicalities. Further, holding otherwise would have run counter to the overriding objective as captured in Sections 1A and 1B of the Civil Procedure Act. Finally, one would ask what prejudice the Appellant suffered with the omission of the certified copy of the decree in the record of appeal. We do not discern any."

[Also See Kenya Women Micro Finance Ltd V Martha Wangari Kamau (2020).

33. In the present case, although the Appellant did not annex a certified copy of the decree to the Record of Appeal, he did include a copy of the judgment. Certified copies of the judgment and decree are also available in the lower court file before the Court. Similarly, the Respondents have not demonstrated any prejudice occasioned to them by the omission.

34. While the Appellant should have annexed the certified decree, the omission is not fatal. The Appeal is saved by the presence of the judgment in the Record of Appeal, the certified copies of the judgment and the decree and by the constitutional and statutory duty of this Court to render substantive Justice without paying undue regard to procedural technicalities where no injustice is suffered by either. I understand that to be the dictate of **Article 159(2)(d) of the Constitution** that enjoins Courts to administer justice without undue regard to procedural technicalities.

35. I accordingly hold that the appeal is properly before this Court.

36. Turning to the substantive issues herein, the second issue concerns whether the trial magistrate erred in holding that she lacked jurisdiction to entertain the dispute and that the matter should first have been addressed before the National Irrigation Authority.

37. Jurisdiction is foundational. As was held in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1,** without jurisdiction, a court must down its tools.

38. Nyarangi, JA, expressed himself as follows on the issue of jurisdiction: -

> **"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 a continuation of proceedings…"

39. It is also settled that jurisdiction flows from the Constitution and statute, as the Supreme Court decided in **Samuel Kamau Macharia v Kenya Commercial Bank Ltd & Others [2012] eKLR.** The Court held that:

> **"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings … where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer**

jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

40. With respect to this issue, the Trial Magistrate misdirected herself in two significant respects.

41. First, there was a conflation relating to two separate and distinct riceholdings. It is not in dispute that the deceased, Joseph Kihara Githinji, was the registered tenant of Rice Holding No. 434 Tebere Section. Succession proceedings have indeed not been undertaken in respect of that holding. This fact was undisputed. That, however, was not the subject of the suit before the Trial Court. The dispute before the Learned Magistrate related to Rice Holding No. 739 Unit T.21, measuring 4.19 acres, in respect of which the Appellant produced a valid tenant card issued in his own name by the National Irrigation

Board. The court expressly acknowledged the validity of that tenant card.

42. Once it was accepted that Rice Holding No. 739 belonged to the Appellant, then the question of succession in relation to his late father's holding No. 434 was immaterial. The Learned Magistrate therefore fell into error by treating the dispute as though it arose from the undivided estate of the deceased when in fact it concerned land already transferred and registered in the name of the Appellant.

43. Second, the Trial Court erred in directing the parties to go back to the National Irrigation Authority. While it is true that under the **Irrigation Act, 2019**, the Authority is charged with management, regulation and allocation of land within irrigation schemes, the cause of action pleaded before the Magistrate's Court was trespass and a prayer for eviction and injunction. Once the tenancy card had been issued by the Authority to the Appellant, he was bestowed with ownership rights in regard to that

riceholding. Ownership was not in issue, the Appellant was seeking orders of restraint, which orders the NIA cannot grant and/or enforce. The NIA completed its adjudicative and administrative function when it issued the Appellant a rental card for plot No. 739 measuring 4.19 Acres.

44. **Section 26 of the Environment and Land Court Act**, read together with **Section 9 of the Magistrates' Courts Act**, confers jurisdiction on designated magistrates to hear and determine civil claims relating to land use and occupation, subject to pecuniary limits. A claim for trespass is a classic land use dispute within that jurisdiction. The exhaustion doctrine cannot be used to shut out Courts where what is sought is the enforcement of existing rights rather than the allocation of rights.

45. By holding that succession had to be completed and that the matter ought first to be referred to the National Irrigation Authority, the trial Court confused the status of Rice Holding No. 434 (belonging to the deceased) with Rice Holding No. 739 (belonging to the Appellant). The

Court abdicated jurisdiction when clearly it had jurisdiction. This was an error in law on the part of the trial Magistrate.

46. Having determined that the trial Court had jurisdiction, the next issue is whether the Appellant discharged the burden of proof on his claim for trespass and special damages.

47. The Appellant's case was that he is the holder of the tenancy card for Rice Holding No. 739 Unit T.21, measuring 4.19 acres, and that the Respondents unlawfully entered and cultivated one acre thereof. The tenancy card issued by the National Irrigation Board was produced in evidence and was not challenged. On the contrary, the Respondents in their evidence admitted that the Appellant holds that card, though they attempted to suggest that part of the land was surrendered to the Appellant's son, Kennedy Mwangi, who subsequently sold it to a third party.

48. The law on trespass is settled. Trespass to land occurs when a person unlawfully enters upon land in the possession of another, or remains upon it, or places any object upon it without lawful justification. The tort is actionable at the instance of the person in possession, regardless of whether actual damage has been caused. See *Clerk & Lindsell on Torts*, 21st Edition at paragraph 18-01. See *M'Mukanya v M'Mbijiwe* [1984] KLR 761.

49. The Respondents' own evidence reveals that they have been cultivating portions of land which they associate with the family's entitlement under Rice Holding No. 434. Yet, they did not produce any tenant card in their names with respect to Rice Holding No. 739. If indeed they were cultivating portions of Rice Holding No. 739 which they said they did not know, but simultaneously claimed user rights over then such entry and use amounted to trespass in the absence of the Appellant's consent. The tenancy card being in the Appellant's name is conclusive

evidence of entitlement within the scheme, and the Respondents' denial could not override that documentary proof.

50. However, the position of the claim for special damages is different. The Appellant pleaded that he lost Kshs. 560,000/- in income due to the Respondents' interference. The Trial Magistrate found that this claim was not proved with the particularity and strictness required in law. I agree. It is trite that special damages must be specifically pleaded and strictly proved, see **Jogoo Kimakia Bus Services Ltd v Electrocom International Ltd [1992] KLR 177.**

51. While the Appellant produced some receipts, they were not clearly tied to the alleged acts of trespass or to specific loss of yield traceable to the Respondents' actions. No independent expert evidence or assessment was called to demonstrate the alleged financial loss. In the circumstances, the Appellant did not discharge the strict burden required to sustain an award of special damages.

52. Accordingly, I find that the Appellant proved trespass on a balance of probabilities, but failed to prove his claim for special damages.

53. The final issue concerns the order of costs. **Section 27(1) of the Civil Procedure Act** provides that costs shall follow the event unless the court, for good reason, orders otherwise. Having dismissed the suit, the Trial Magistrate awarded costs to the Respondents.

54. This Court has found that the Trial Court erred in declining jurisdiction and further erred in dismissing the claim for trespass. The Appellant has therefore substantially succeeded on Appeal. Ordinarily, he would be entitled to costs both in the trial Court and before this Court.

55. However, two factors persuade me to depart from the strict rule. First, the dispute is between close family

members, where equity and policy considerations call for restraint in the imposition of costs. Second, the Appellant himself was not without fault, having failed to annex a certified copy of the decree to his Record of Appeal. He was only saved by the oxygen principles under **Sections 1A and 1B of the Civil Procedure Act** and the constitutional sanction in **Article 159 of the Constitution of Kenya** to administer justice without undue regard to procedural technicalities.

56. In those circumstances, I find it just to set aside the Trial Court's order of costs and direct that each party bear its own costs both in the Lower Court and in this Appeal.

57. Consequently, the judgment of the trial Court delivered on 21st November 2022 is hereby set aside. In its place, judgment is entered for the Appellant against the Respondents for:

a) **A declaration that the Respondents have trespassed on Rice Holding No. 739 Unit T.21 belonging to the Appellant and are hereby**

ordered to vacate therefrom within 30 days of the date of this Judgment failing which an eviction order to issue on application.

b) An order of permanent injunction restraining the Respondents, whether by themselves, their servants or agents, from entering, cultivating, or in any way interfering with the Appellant's quiet use and possession of Rice Holding No. 739 Unit T.21 measuring 4.19 acres.

c) The parties shall bear their own costs of the Court below and of the Appeal.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12TH DAY OF NOVEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE