

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC COURT CASE NO. 51 OF 2017**  
**(Formerly Nakuru ELC Case No. 133 of 2015)**

**SAMMY KANYI KAREITHI ..... PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MUGA AUCTIONERS &  
GENERAL MERCHANTS ..... 2<sup>ND</sup>**

**DEFENDANT**

**KENYA LIVESTOCK FINANCE TRUST..... 3<sup>RD</sup> DEFENDANT**

**ROSS XAVIER WITHEY ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. This suit was first filed at the Environment and Land Court at Nakuru as ELC Case No. 133 of 2015. It was transferred to this Court in the year 2017 and given its current reference.
2. By a Plaint dated 5<sup>th</sup> May 2015, Sammy Kanyi Kareithi (the Plaintiff) sought for judgment against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as follows: -

- a) **A declaration that the purported auction by the 2<sup>nd</sup> Defendant is null and void;**
- b) **An order nullifying/voiding any purported transfer of the suit property to a third party;**
- c) **An order directing the 1<sup>st</sup> Defendant to register a discharge of the charge dated 9<sup>th</sup> February, 1996 and release the original title of the suit property in its custody to the Plaintiff;**
- d) **An order of permanent injunction restraining the Defendants, their agents, servants and or employees from trespassing, further interfering or in any way dealing with the Plaintiff's property known as LR No. Naromoru Block 1/Ragati/391;**
- e) **General and exemplary damages;**
- f) **Costs of this suit; and**
- g) **Any other relief that this Honourable Court deems fit to grant.**

3. Those prayers arise from the Plaintiff's contention that the 1<sup>st</sup> Defendant had purported to exercise its statutory power by selling the Plaintiff's property through its agents - the 2<sup>nd</sup>

Defendant, by way of a public auction on 17<sup>th</sup> April 2015 for an unknown and non-existent debt. It was further the Plaintiff's case that he had not been served with any statutory notices as by law required.

4. The Plaintiff asserted that the 1<sup>st</sup> Defendant had sometime in February 1996 advanced him a loan facility which he secured with his property known as L.R. No. Naromoru/Ragati/391. It was the Plaintiff's case that the said loan was guaranteed by the 3<sup>rd</sup> Defendant's predecessor - Kenya Veterinary Association Privatisation Scheme (KVAPS) and that the loan had been settled in full by the 3<sup>rd</sup> Defendant.
5. Arising from the foregoing, it was the Plaintiff's case that the exercise of the statutory power of sale and the intended transfer of the suit property to a third party by the 1<sup>st</sup> Defendant was unfair, illegal and fraudulent as the 1<sup>st</sup> Defendant had no legal interest in the property. He accused the 1<sup>st</sup> and 3<sup>rd</sup> Defendants of entering into an illegal agreement on 6<sup>th</sup> March 1995 which allowed the 3<sup>rd</sup> Defendant to act as the agent of the 1<sup>st</sup> Defendant for purposes of recovering sums advanced to the Plaintiff and

other beneficiaries. It was his case that the 3<sup>rd</sup> Defendant had not served him with any notice to reimburse the sums paid to the 1<sup>st</sup> Defendant by the 3<sup>rd</sup> Defendant.

6. Barclays Bank of Kenya Limited (the 1<sup>st</sup> Defendant) and Muga Auctioneers & General Merchants (the 2<sup>nd</sup> Defendant) are opposed to the suit. In their joint Statement of Defence dated 17<sup>th</sup> May 2018, they aver that the 1<sup>st</sup> Defendant had exercised its statutory power of sale pursuant to a contractual obligation and due to the Plaintiff's default in redeeming the loan advanced to him.
7. The 1<sup>st</sup> Defendant avers that it duly served the Plaintiff with the requisite statutory notices to his last known address and that whereas the 3<sup>rd</sup> Defendant settled the amount due and owing from the Plaintiff, the 1<sup>st</sup> Defendant had contractual obligations to the 3<sup>rd</sup> Defendant. In addition, the 1<sup>st</sup> Defendant denies that it had acted fraudulently as pleaded by the Plaintiff.
8. Kenya Livestock and Finance Trust (the 3<sup>rd</sup> Defendant) is equally opposed to the suit. In its Statement of Defence dated 11<sup>th</sup> June 2015, the 3<sup>rd</sup> Defendant avers that the suit

filed herein is inept, incompetent and that the same does not raise any triable issue and is filed in abuse of the court process. In addition, the 3<sup>rd</sup> Defendant denies that its predecessor – the Kenya Veterinary Association Privatisation Scheme (KVAPS) had guaranteed the Plaintiff's loan.

9. The 3<sup>rd</sup> Defendant avers that the trustees of its said predecessor had entered into an agreement with the 1<sup>st</sup> Defendant for the sole purpose of promoting Private Veterinary Services in Kenya. For that reason, a Loan Guarantee Fund was created under the Agreement for purposes of insulating the 1<sup>st</sup> Defendant before any recoveries were done. The 3<sup>rd</sup> Defendant denies that it was to take up the Plaintiff's or other borrowers' obligations under the charge executed by the Plaintiff and the 1<sup>st</sup> Defendant.
10. By an application dated 30<sup>th</sup> August 2019, Ross Xavier Withey (the 4<sup>th</sup> Defendant) sought to be enjoined in the suit asserting that he had purchased the suit property in a public auction conducted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that he had hitherto been unaware of the existence of this suit. On 5<sup>th</sup>

May 2021, the said application was allowed and Ross Xavier Withey was enjoined in this suit as the 4<sup>th</sup> Defendant.

11. In his Statement of Defence and Counterclaim dated 17<sup>th</sup> May 2021, the 4<sup>th</sup> Defendant avers that he is the bonafide purchaser of L.R. No. Naromoru Block 1/Ragati/391 having purchased the same from an auction conducted by the 2<sup>nd</sup> Defendant on 17<sup>th</sup> April 2015. The 4<sup>th</sup> Defendant denies having been involved in any fraudulent and/or illegal actions in respect of the purchase of the suit property.
12. By way of the Counterclaim, the 4<sup>th</sup> Defendant prays for judgment in its favour and for orders as follows:-
  - a) **The Plaintiff's suit is dismissed with costs to the 4<sup>th</sup> Defendant;**
  - b) **It is declared that the 4<sup>th</sup> Defendant, Ross Xavier Withey is the bonafide purchaser of the suit property registered under the title deed Naromoru Block 1/Ragati/391 situate in Nyeri County lawfully purchased on 17<sup>th</sup> April 2015 at the auction conducted that day by the 2<sup>nd</sup> Defendant Muga Auctioneers & General Merchants and is entitled to have the property**

**transferred to him and registered in his name;  
and**

**c) There shall be such other order or direction as the court deems just in the circumstances of this case.**

13. In his Reply to the 4<sup>th</sup> Defendant's Defence and Counterclaim, the Plaintiff avers that the 4<sup>th</sup> Defendant ought to have instituted a separate suit against the Defendants and asserts that the 4<sup>th</sup> Defendant could not obtain any rights to the Plaintiff's land as the person purporting to sell the same did not possess any right to sell the land.

### **Analysis and Determination**

14. At the trial herein, the Plaintiff called one witness who testified in support of his case. The Defendants on the other hand called three (3) witnesses who testified in support of their respective positions.

15. I have carefully perused and considered the pleadings filed, the testimonies of the witness as well as the evidence adduced at the trial. I have similarly perused and considered

the submissions and authorities placed before the court by the Learned Advocates representing the parties herein.

16. By his suit as filed herein, the Plaintiff prays for a declaration that the auction conducted by the 2<sup>nd</sup> Defendant on 17<sup>th</sup> April 2015 is null and void and that the purported transfer to the 4<sup>th</sup> Defendant was equally null and void. He also urges the court to issue an order directing the 1<sup>st</sup> Defendant Bank to register a discharge of the charge dated 9<sup>th</sup> February 1996 and to release the original title of the suit property in its custody to himself. The Plaintiff also prays for general and exemplary damages as well as an order of injunction to issue permanently restraining the Defendants from dealing with the suit property in any manner whatsoever.
17. It is the Plaintiff's case that he had come to learn that the 1<sup>st</sup> Defendant had purported to exercise its statutory power of sale by selling the Plaintiff's property at a public auction conducted by the 2<sup>nd</sup> Defendant on 17<sup>th</sup> April 2015. The Plaintiff told the court that the said auction was conducted for an unknown and non-existent debt and that he was not served with any statutory notices as required by law.

18. The 1<sup>st</sup> Defendant Bank does not deny that it conducted the auction as stated. On the contrary, the 1<sup>st</sup> Defendant avers that it did carry out the auction through the 2<sup>nd</sup> Defendant Auctioneers in the exercise of its statutory power of sale following the Plaintiff's default in redeeming a loan that the Bank had advanced to himself.

19. That position was supported by both the 3<sup>rd</sup> Defendant who had offered some sort of guarantee for the loan and the 4<sup>th</sup> Defendant who told the court he had purchased the suit property at the auction conducted by the 2<sup>nd</sup> Defendant.

20. From the material placed before me, there were two (2) major issues that arose for the court's determination, viz;

**(i) Whether the sale conducted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was proper and lawful; and**

**(ii) Whether the 4<sup>th</sup> Defendant had acquired valid ownership of the suit property.**

**(i) Whether the sale conducted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was proper and lawful**

21. There was no dispute that on or about 8<sup>th</sup> February 1996, Sammy Kanyi Kareithi (the Plaintiff) was advanced the sum of

Kshs. 600,000/= by the 1<sup>st</sup> Defendant. That loan was secured by a charge created over the Plaintiff's parcel of land being LR. No. Naromoru/Block 1/Ragati/391. While the parties were not unanimous about the amount of the loan outstanding, it was clear to me that the Plaintiff had defaulted in repaying the loan thereby triggering the circumstances that led to the filing of this suit.

22. It was apparent that the Plaintiff did not apply for the loan under very ordinary circumstances. His application for the loan was either informed or encouraged by the fact that he was a member of the Kenya Veterinary Association Privatization Scheme (KVAPS) which was the predecessor to the 3<sup>rd</sup> Defendant herein. Testifying at the trial herein Dr. Harry Stephen Ndungu Kinyiia (DW2) who is the 3<sup>rd</sup> Defendant's Chief Executive Officer told the court that the Plaintiff had qualified as a member of the said Association to apply for the loan.

23. A year before the Plaintiff had applied for the loan, the Association had on 6<sup>th</sup> March 1995 entered into an Agreement with the 1<sup>st</sup> Defendant Bank to promote private

veterinary practitioners in Kenya. DW2 told the court that sometime around the year 1990-91, the Government of Kenya stopped absorbing veterinarians and the Kenya Veterinary Association then approached the European Union (EU) for help. Upon receipt of a grant of Kshs. 25,000,000/= from the EU, the 3<sup>rd</sup> Defendant's predecessor appointed the 1<sup>st</sup> Defendant to manage the disbursement to and collection of such credit from eligible veterinarians.

24. In that respect, Clause C (viii) of the Agreement provided as follows:

**“(viii) In consultation with the Project Manager, the Bank will be responsible for monitoring loan repayments and for debt collection the cost of which shall be recoverable from the borrower as per normal banking procedures.”**

25. As to the conditions attached to the loans, Clause 4 (viii), (ix) and (x) provided as follows:

**“(viii) In the event of default in repayment or in meeting other terms of the loan for a period of sixty (60) days the loan will become immediately repayable and the Bank will give fourteen (14) days’ notice to the borrower to**

**pay the arrears thereof or as the case may be to meet the terms in default failing which the Bank will recall the entire loan as well as the security pledged by the borrower provided it shall be a requirement on the Bank to serve copies of its demand letters on the Project Manager;**

**(ix) If the borrower fails to meet the fourteen (14) days' notice stipulated in Clause 4 (viii) the Bank will give the Trustees through the Project Manager on the Loan Guarantee Fund Account for the relevant amount including principal, interest and bank charges. In the event of failure by the Trustees to make payment to the Bank within such period the Bank will be at liberty to draw on the Loan Guarantee Fund without recourse to or consultation with the Trustees.**

**(x) After drawing on the Loan Guarantee Fund in accordance with Clause 4 (ix) the Bank will proceed, as agent for and on behalf of the Trustees, to expeditiously dispose of the security pledged by the borrower either through a public auction or private treaty as the Bank deems fit and the sale proceeds net**

**the cost of realization shall be paid back into the Loan Guarantee Fund Account on advice to the Project Manager. The saleability of a borrower's security will solely be determined by the Bank after taking such factors as the cost effectiveness of a sale or the timing of a sale process into account. In the event that the Bank will decide not to proceed with such sale the Bank will advise the project manager about its decision."**

26. Arising from the foregoing, it was evident to me that while the 3<sup>rd</sup> Defendant denied in its pleadings that it had guaranteed the loan that was advanced to the Plaintiff, that was in fact what it had done when its Trustees executed the Agreement dated 6<sup>th</sup> March 1995. That Agreement described the Loan Guarantee Fund as the principal security for the loans with the borrower's security being the secondary security. That fact was admitted at the trial by the Bank's Legal Recoveries Officer Samuel Njuguna (DW1) as well as the 3<sup>rd</sup> Defendant's witness (DW2).
27. The Agreement gave the 1<sup>st</sup> Defendant under clause (ix) the right to draw from the Loan Guarantee Fund account for the

outstanding principal, interest and bank charges in the event of default of repayment by the borrower. While the 3<sup>rd</sup> Defendant and the Bank were not unanimous on the amount outstanding from the Plaintiff, it was clear to me that as at the time the Bank initiated the recovery process from the Plaintiff, it had already recovered the sum of Kshs. 314,000/=, which according to the 3<sup>rd</sup> Defendant was the amount outstanding, from the Loan Guarantee Fund account and that the Bank was now only acting in pursuance of Clause (x) of the Agreement between the parties.

28. From the material placed before the court, it was apparent that other than the Plaintiff, a number of the members of the Association defaulted in the loan repayment and the 1<sup>st</sup> Defendant Bank had resorted to the Loan Guarantee Fund and made drawals therefrom without pursuing the defaulters. Unhappy with that situation, the 3<sup>rd</sup> Defendant initiated Nakuru CMCC No. 1276 of 2012 against the 1<sup>st</sup> Defendant herein essentially accusing the 1<sup>st</sup> Defendant of failing to comply with clause 4(x) of their Agreement.

29. A perusal of the 3<sup>rd</sup> Defendant's Complaint dated 14<sup>th</sup> November 2012, as filed in the said suit reveals that they were seeking judgment against the 1<sup>st</sup> Defendant Bank for a total sum of Kshs. 3,228,203.00 inclusive of the sum of Kshs. 314,162/= deducted from the Fund on 20<sup>th</sup> April 2000 on account of default by the Plaintiff. At paragraphs 5 and 7 of the Complaint, the 3<sup>rd</sup> Defendant pleads as follows:

- "5. It was a further express or otherwise implied term of the contract that if any loanee defaulted on the repayment of the loan, the defendant would recourse to the guarantee but would in turn realise the securities that were deposited by the loanee and revert the funds thus realized to the Plaintiff account (Loan Security Fund); and**
- 7. The Plaintiff avers that upon the aforementioned applicants' failure to repay the advanced loan facilities, the defendant realised the amount from the loan guarantee fund (primary security) and abdicated its responsibility of realizing the security obtained from the applicants (secondary security) exposing the Plaintiff to loss."**

30. While it was apparent to me that it is the institution of that suit in the Magistrate's Court that jolted the 1<sup>st</sup> Defendant into initiating the recovery process, I was not persuaded that it was open for the 1<sup>st</sup> Defendant to purport to exercise its statutory power of sale after it had recovered what was due to it including the costs from the Loan Guarantee Fund. As was stated by the Court of Appeal of England in the case of

***Ibrahim -vs- Barclays Bank PLC (2012) 2 All ER 1167:***

**“Payment by a third party to a creditor under legal compulsion on account of a debt owed by a debtor automatically discharges the debtor's debt even if the legal compulsion arose out of a contractual obligation voluntarily assumed by the third party, irrespective of whether or not the payment by the third party was made as agent for the debtor.”**

31. Arising from the foregoing, it was clear to me that the Plaintiff's liability to the 1<sup>st</sup> Defendant had been discharged when the 1<sup>st</sup> Defendant drew the money from the Loan Guarantee Fund. The Bank could not thereafter purport to

exercise its statutory Power of sale under Section 90(1) and (2) of the Land Act, 2012.

32. When the 1<sup>st</sup> Defendant purported to exercise its statutory power of sale by issuing the first notice on 21<sup>st</sup> March 2014, it had ceased to be a chargee for all intents and purposes as the debt pursuant to which the charge was created had been discharged. In my considered view, the 1<sup>st</sup> Defendant was now merely a debt recovery agent acting for and on behalf of the 3<sup>rd</sup> Defendant pursuant to Clause 4(x) of the Agreement dated 6<sup>th</sup> March 1995.
33. I was not persuaded that the statutory power of sale could be conferred by contract as the parties had purported to do under the said Clause 4(x) of the Agreement. The remedy was not available to a debt recovery agent and I find and hold that the exercise of the statutory power of sale in the circumstances was irregular and unlawful.
34. Even assuming this court was wrong in that conclusion, it was apparent from my perusal of the said Agreement that in the event of default by a borrower, the 1<sup>st</sup> Defendant was required to first give fourteen (14) days' notice to the

borrower to pay the arrears with copies of the demand notice being served upon the Project Manager. The Plaintiff herein has denied receipt of any statutory or other notice from the 1<sup>st</sup> Defendant prior to the public auction of its property.

35. According to the 1<sup>st</sup> Defendant, the Plaintiff was served with a ninety (90) days' statutory notice dated 21<sup>st</sup> March 2014 and that another forty (40) days' notice was served by a letter dated 27<sup>th</sup> August 2014. A perusal of those notices reveals that they were addressed to the Plaintiff at an address stated as "Post Office Box 66 Nakuru".
36. A perusal of the charge document dated 8<sup>th</sup> February 1996 reveals that the Plaintiff's address was indicated therein as "Post Office Box 398 Rongai". Questioned about the discrepancy, DW1 who testified on behalf of the 1<sup>st</sup> Defendant told the court that he had no knowledge how the Bank came about with the new address of Post Office Box 66 Nakuru. As it turned out, that address belonged to the Bank's Nakuru Branch and no notice had therefore been sent to the Plaintiff in regard to his default.

37. As the Court of Appeal did state in ***Nyagilo Ochieng & Another -vs- Fanuel Ochieng and 2 Others (1996)*** eKLR:

**“..... Unless the receipt of statutory notice is admitted, posting thereof must be proved and upon production of such proof the burden of proving non-receipt of such notice or notices shifts to the addressee as is contemplated by section 3(5) of the Interpretation and General Provisions Act, Cap 2, Laws of Kenya.”**

38. In the matter herein, the 1<sup>st</sup> Defendant while alleging that it served the Plaintiff with the notices which have the wrong address have not even exhibited any certificate of posting in demonstration of the fact that those notices were posted anywhere. Considering the issue in the case of ***Nyagilo Ochieng & Another -vs- Fanuel Ochieng and 2 Others (Supra)***, the Court of Appeal stated thus:

**“The appellants stated, in their plaint, that they did not receive any statutory notices. This averment should have put the bank on guard. It is for the chargee to make sure that there is compliance with the requirements.... That burden**

is not in any manner on the chargor. Once the chargor alleges non-receipt of the statutory notice it is for the chargee to prove that such notice was in fact sent. It must be understood that in face of the denial of receipt of statutory notice or notices it is incumbent upon the chargee to prove the posting. It would have been a very simple exercise for the bank to produce a slip or letters containing statutory notice or notices. The bank did not do so. Instead an officer from the bank simply produced file copies of the notices to prove that the same were sent. Even on a balance of probability it is not sufficient to say that a file copy is proof of posting. Unless the receipt of statutory notice is admitted, posting thereof must be proved and upon production of such proof the burden of proving non-receipt of such notice or notices shifts to the addressee as is contemplated by section 3(5) of the Interpretation and General Provisions Act, Cap 2, Laws of Kenya. It is quite possible that such notices were sent but that fact, in the face of the denial of receipt, must be proved.... In the absence of proof of such posting the Court is constrained to hold that the sale by auction was void.”

39. Arising from the foregoing, it was clear to me that the 1<sup>st</sup> Defendant did not comply with the legal requirements of issuing a statutory notice and that the Plaintiff had not been served with any statutory notice as by law required. The resultant sale of the suit property was therefore void in law.

**(ii) Whether the 4<sup>th</sup> Defendant acquired valid ownership of the suit property.**

40. In his pleadings and testimony before the court, the 4<sup>th</sup> Defendant asserted that he had purchased the suit property at a public auction conducted by the 2<sup>nd</sup> Defendant on 17<sup>th</sup> April 2015 and that he was as such a bonafide purchaser.

41. In support of his case the 4<sup>th</sup> Defendant produced an advertisement published in the Daily Nation Newspaper of 14<sup>th</sup> April 2015 by the 2<sup>nd</sup> Defendant. In addition, the 4<sup>th</sup> Defendant produced a Memorandum of Agreement and Auction Terms and Conditions dated 17<sup>th</sup> April 2015 between himself and the 2<sup>nd</sup> Defendant. He also produced copies of Bankers Cheques issued on 11<sup>th</sup> May 2015 towards the purchase of the suit property.

42. While it was apparent to me that the 4<sup>th</sup> Defendant participated in the public auction in good faith, it was clear to me that he had unfortunately not acquired any valid title to the suit property. That public auction was held at the behest of the 1<sup>st</sup> Defendant which had failed to comply with the law before initiating the exercise.

43. In the case of ***Nyagilo Ochieng & Another -vs- Fanuel Ochieng & 2 Others (Supra)*** the Court of Appeal concluded as follows:

**“In our view, a sale which is void does not entitle the purchaser at such sale to obtain proprietorship or title to the land so sold. It is therefore clear that the second respondent did not acquire proper titles to the suit properties. Her remedy is against the bank primarily to obtain a refund of the consideration paid.”**

44. In the matter herein, this court has found that there was no basis upon which the 1<sup>st</sup> Defendant had purported to issue the statutory notices and that even if the same were validly issued, they were not served upon the Plaintiff as required by law as the same were sent to the wrong address. That being

the case and despite the compliance by the 4<sup>th</sup> Defendant of the terms of the sale, the said sale was null and void *ab initio*. In those circumstances, it was not proper for the 4<sup>th</sup> Defendant to join this case and file a Counterclaim against the Plaintiff. His recourse lay in section 99(4) of the Land Act, 2012 which provides thus:

**“A person prejudiced by an unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.”**

45. It follows that I did not find merit in the 4<sup>th</sup> Defendant's Defence and Counterclaim dated 17<sup>th</sup> May 2021. On the contrary, the court was satisfied that the Plaintiff had proved his case on a balance of probabilities. Accordingly, I hereby enter judgment for the Plaintiff and make orders as follows:

- a) The 4<sup>th</sup> Defendant's Counterclaim is hereby dismissed with no order as to costs.**
- b) A declaration is hereby made that the auction conducted by the 2<sup>nd</sup> Defendant on behalf of the 1<sup>st</sup> Defendant on 17<sup>th</sup> April 2015 is null and void.**

- c) **A declaration is hereby made that the sale and/or transfer of Land Parcel No. Naromoru/Block 1/Ragati/391 by the 1<sup>st</sup> Defendant to the 4<sup>th</sup> Defendant was null and void.**
- d) **The 1<sup>st</sup> Defendant is hereby directed to register a discharge of the charge dated 9<sup>th</sup> February 1996 and to forthwith release the original title of Land Parcel No. Naromoru/Block 1/Ragati/391 to the Plaintiff.**
- e) **An order of a permanent injunction is hereby issued restraining the Defendants, their agents and/or servants from trespassing upon, further interfering with or in any way dealing with the Plaintiff's property known as LR No. Naromoru/Block 1/Ragati/391.**
- f) **The costs of the suit shall be borne by the 1<sup>st</sup> Defendant.**

46. It is so ordered.

**Judgment dated, signed and delivered in open court and virtually at Mombasa this 18<sup>th</sup> day of December, 2025**

.....  
**J.O. OLOLA  
JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Busiega Advocate for the Plaintiffs
- c) Mr. Mutua Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant
- d) Mr. Muriithi Advocate for the 3<sup>rd</sup> Defendant
- e) Mr. Mwenesi Advocate for the 4<sup>th</sup> Defendant

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