REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

CIVIL CASE NO. 26 OF 2011 (O.S)

IN THE MATTER OF LAND REFERENCE NO. NDIVISI/NDIVISI/1640

AND

IN THE MATTER OF SECTIONS 7, 17 AND 38 OF THE LIMITATIONS OF ACTIONS ACT

AND

IN THE MATTER OF ADVERSE POSSESSION

BETWEEN

JOSEPH MUMERO WANYAMA .....PLAINTIFF

VERSUS

JARED WANJALA LYANI ..... 1ST DEFENDANT

HESBORN MURULE LUSWETI ..... 2ND DEFENDANT

R U L I N G

With the consent of the parties, the following three applications were canvassed simultaneously by way of written submissions. These are:-

1. The plaintiff's Notice of Motion dated 5th July 2018 seeking the following orders:-

a. That a Vesting Order do issue to vest land parcel Number NDIVISI/NDIVISI/1640 in the name of the plaintiff herein MR JOSEPH MUMERO WANYAMA.

b. That the Deputy Registrar of this Court be authorized to sign all the documents transferring land parcel Number NDIVISI/NDIVISI/1640 in the name of the plaintiff.

c. That costs be provided for.

2. The 1st defendant's Notice of Motion dated 21st September 2018 seeking the following orders:-

a. That it pleased the Honourable Court to set aside the ex-parte Judgment on record and all consequential orders.

b. That the suit be set down for fresh hearing with costs being in the cause.

3. The 2nd defendant's Notice of Motion dated 15th October 2018 seeking the following orders:-

a. That the ex-parte Judgment entered against the 2nd defendant on 20th December 2017 and other consequential orders be and are hereby set aside.

b. The 2nd defendant be and is hereby granted leave to comply and the suit be listed for inter – parte hearing.

c. Costs of this application be provided for.

I shall first determine the 1st and 2nd defendants' applications dated 21st September 2018 and 15th October 2018 respectively because if I allow them, then there will be no need to consider the plaintiff's application dated 5th July 2018 even though it was the first application to be filed herein.

First, a brief summary of the dispute.

By an amended Originating Summons dated 19th May 2012, the plaintiff sought the main order that he has become entitled to the land parcel **NO NDIVISI /NDIVISI/1640** (the suit land) by way of adverse possession and should therefore be registered as the proprietor in place of the 1st defendant. He also sought an order that the 2nd defendant has unlawfully entered the suit land and should be evicted. The amended Originating Summons was accompanied by the plaintiff's Supporting Affidavit, sale agreement between him and the 1st defendant dated 22nd May 1996 for the purchase of two acres of land to be hived from land parcel **NO NDIVISI/NDIVISI/1552**, a Certificate of Search and Green Card showing that the suit land is registered in the names of the 1st defendant and a map showing the location of the suit land.

The record shows that on 28th April 2011 the firm of **M. KIVEU ADVOCATE** entered appearance for the 1st defendant and filed a Replying Affidavit in which the 1st defendant admitted having entered into a sale agreement with the plaintiff over the suit land but added that the plaintiff breached it and so the 1st defendant sold it to the 2nd defendant who is in occupation thereof and it is not true that the plaintiff has occupied the suit land exclusively openly and continuously since May 1996. He annexed to his Replying Affidavit a letter dated 12th February 2002 addressed to the plaintiff, a letter dated 28th March 2011 requesting the Land Registrar to remove a caution on the suit land, a notice issued by the Land Registrar dated 29th March 2011 advising the plaintiff of the intention to remove the caution and a sale agreement dated 14th March 2011 between him and the 2nd defendant with respect to the suit land.

The 2nd defendant, acting in person, filed his Replying Affidavit dated 8th November 2016 in response to the plaintiff's amended Originating Summons. He deponed therein, inter alia, that having been informed that the 1st defendant wanted to sell land, he conducted a search and found that the title was clean. So on 14th March 2011 he entered into a sale agreement with the 1st defendant, paid the consideration and took possession immediately. That he has put up a home on the land on which he does farming. He therefore urged the Court to strike out the suit against him as he has been wrongly enjoined.

The record shows that the suit came up for hearing before **MUKUNYA J** on 10th May 2017 when **MS MUMALASI ADVOCATE** appeared for the plaintiff while **MS AKINYI ADVOCATE** was also present holding brief for the **MR KIVEU ADVOCATE** for the 1st defendant who was not present and neither was the 2nd defendant who was acting in person. I shall revert later to what transpired on that day. Suffice it to state that **MUKUNYA J**, having been satisfied that service was properly effected on the 1st and 2nd defendants, proceeded to hear the plaintiff and his witness and in a reserved Judgment delivered on 20th December 2017, found that the plaintiff had proved his case and entered Judgment for him as prayed in the amended Originating Summons. A decree followed.

That Judgment provoked the two applications by the 1st and 2nd defendants referred to at the commencement of this ruling.

In support of his Notice of Motion dated 21st September 2018, **JAFRED WANJALA LYANI** the 1st defendant swore a Replying Affidavit dated 27th September 2018 in which he deponed, inter alia, that he had instructed the firm of **KIVEU ADVOCATE** to represent him in this matter and was therefore surprised when he was served with the plaintiff's application dated 5th July 2018 seeking that a Vesting Order be issued with respect to the suit land. When he reached his advocate, he told him that he was no longer on record for him. It was then that he rushed to Court only to find that his advocate had filed a notice to cease acting for him yet he had not been served. It was then that he discovered that the case proceeded for hearing without notice to him and a Judgment had been entered against him ex-parte yet his advocate kept telling him that diaries were full. That he should be given an opportunity to ventilate his case since his absence from the Court was neither deliberate nor authored by him. That it would be unfair to implement a Judgment that was entered without his knowledge.

On his part, the 2nd defendant **HESBORN MURULE LUSWETI** filed an affidavit dated 15th October 2018 in support of his application of even date and deponed, inter alia, that he bought the suit land by an agreement dated 14th March 2018 and had also filed a Replying Affidavit in response to the plaintiff's amended Originating Summons. That he was not invited to take a hearing date. That having been served on 7th December 2016 with a hearing notice for 10th May 2017, he instructed the law firm of **WAFULA WABWIRE ADVOCATE** through a person called **GILBERT**, who he believed works in that firm, to appear for him. That on the hearing date, he was engaged in **MBONI FOREST** at the **COAST** for a security operation and it was not until 11th October 2018 that he discovered that the suit had been heard and determined in his absence. When he went to the offices of **WAFULA WABWIRE ADVOCATES**, he discovered that they were closed and the said **GILBERT**, now works with the firm of **OMUKUNDA & COMPANY ADVOCATES** his current advocate who he instructed to file this application. That he has a good defence and should not be condemned un-heard because of the mistake of his advocate who even failed to come on record on his behalf. That most of the documents were served on his wife and that he had a home on the suit land.

The plaintiff opposed both applications by way of Replying Affidavits.

In response to the 1st defendant, Notice of Motion, the plaintiff filed a Replying Affidavit dated 15th October 2018 and stated, inter alia, that when the case came up for hearing on 10th May 2017, the 1st defendant was represented by a advocate called **AKINYI**, that although this case was filed seven years ago, the 1st defendant has never appeared in Court yet the case belongs to him and not the advocate. That the 1st defendant has not been vigilant and has come to Court with un-clean hands and no good reason has been advanced as to why the Judgment

therein should be set aside and this Court is now functus officio.

With respect to the 2nd defendant's application, the plaintiff filed a Replying Affidavit dated 26th October 2018 and deponed, inter alia, that the application lacks merit and is in bad faith since on all occasions, the 2nd defendant has been served but has never bothered to come to Court and neither has he been interested to prosecute his defence. That the 2nd defendant is not candid when he says he instructed an advocate yet all along he has been acting in person. That he has not come to Court with clean hands and his claim that he instructed one by the name **GILBERT** whom he thought worked for the firm of **WAFULA WAWIRE ADVOCATES** is just an afterthought and is not supported by any shred of evidence and is also not supported by any affidavit by the said **GILBERT**. That the 2nd defendant was fully aware about the progress of this case and his application is a delaying tactic to prevent the plaintiff from enjoying the fruits of his Judgment and should be dismissed with costs.

The 2nd defendant filed a further affidavit dated 7th November 2018 to which he annexed two letters dated 20th June 2014 and 30th May 2015 by the Deputy Inspector General Administration Police Service deploying him to **LAMU** for Security operations.

The applications were with the consent of the parties, canvassed by way of written submissions. These were however only filed by **MS MUMALASI ADVOCATE** for the plaintiff and **MR SICHANGI ADVOCATE** for the 1st defendant. **MR OMUKUNDA** for the 2nd defendant did not file any submissions.

I have considered the 1st and 2nd defendants applications, the rival affidavits and annextures as well as the submissions by counsel.

I shall first consider the 1st defendant's Notice of Motion dated 21st September 2018 which seeks the main prayer that the ex – parte Judgment entered against him and all consequential orders be set aside. It is based on the main ground that the advocate then on record for him, **KIVEU ADVOCATE,** ceased acting for him without any notice and that the case proceeded to hearing without any notice to him.

Setting aside of ex – parte Judgments is a daily occurrence in our Courts and in doing so, the Court exercises it's wide discretion which must however be exercised in a judicious manner. This power was described as follows in the case of **MAINA .V. MUGIRA C.A CIVIL APPEAL NO 27 OF 1982 [1983 eKLR]** which has been cited by **MS MUMALASI**:-

> **"First, there are no limits or restrictions on the Judgment's discretion given it by the rules – PATEL .V. E.A CARGO HANDLING SERVICES LTD 1974 E.A 75 at 76 C and E.**
>
> **Secondly, this discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice – SHAH .V. MBOGO 1967 E.A 116"**

The Court then proceeded to add:-

> **"The nature of the action should be considered, the defence if one has been brought to the notice of the Court, however irregularly, should be considered, the question as to whether the plaintiff can reasonably be compensated by costs for the delay should be considered and finally, it should be remembered that to deny the subject a hearing should be the last resort of a Court – JAMNADAS .V. HEMRAJ 1952 7 ULR 7"**

This Court shall be guided by the above broad principles and others in considering both the 1st and 2nd defendants applications.

From the record herein, there is no doubt in my mind that the 1st defendant was duly served with summons in this case. He instructed the firm of **KIVEU AND COMPANY ADVOCATES** who entered appearance for him and filed a Replying Affidavit to the Originating Summons. That is not really in dispute. However, it cannot be claimed that the case against him proceeded ex-parte. It is now the right time to look at the record of what transpired on the hearing date on 10th May 2017. On that date, the 1st defendant was absent but his advocate **MR KIVEU** was represented by **MS AKINYI** who sought an adjournment to file a formal application to cease acting for the 1st defendant for lack of instructions. **MS MUMALASI** for the plaintiff objected on the grounds that this was an old case and the hearing date had been taken way back in December 2016. **MUKUNYA J** having found that the parties were served six months ago and the case was five years old, any application by the 1st defendant's Counsel to cease acting should have been filed earlier. He ordered that the suit proceeds to hearing whereupon the plaintiff and his witness testified. **MS AKINYI** who was holding brief for **MR KIVEU** for the 1st defendant does not appear on the record as having cross – examined the plaintiff and his witness and the only conclusion that this Court can arrive at is that she must have walked out of the Court when her application for adjournment was disallowed. Alternatively, if she remained in Court, then she can only be said to have refused to participate in the proceedings any further. Either way, in such a scenario, the proceedings of 10th May 2017 cannot be said to have been ex-parte – **DIN MOHAMED .V. LALJI VISRAM 1937 EACA 1**. In that case, as is the position herein, the defendant's counsel applied for an adjournment by the ground that his principal witness was ill and that he was unable to cross – examine the plaintiff's witness. The Court held that the case must proceed at all events as far as the plaintiff's case was concerned. The defendant's counsel withdrew from the suit and the case proceeded. The matter went upto the then Court of Appeal for Eastern African which held that where a counsel duly instructed leaves the Court and takes no further part in the case upon being denied an adjournment, that does not constitute the proceedings having been ex – parte.

The 1st defendant cannot really complain in this case that he was condemned un-heard and adverse orders were made against him without notifying him. The proceedings of 10th May 2017 show clearly that **MR KIVEU** was still acting for him and that is why he instructed **MS AKINYI** to hold his brief and seek an adjournment so he could file an application to cease acting for the 1st defendant. So this is not really an error of a counsel having made a mistake which should therefore not be visited on his client as **MS MUMALASI** has submitted citing

various authorities. The facts of this case are that Counsel for the 1st defendant was present in Court but deliberately refused to participate in the trial. The resulting Judgment was a regular Judgment.

The 2nd defendant also seeks the setting aside of the Judgment dated 20th December 2017. It has also been opposed by the plaintiff who has deponed that the 2nd defendant was duly served with summons and is not being candid when he says he instructed counsel because the record shows he has always been acting in person.

I have looked at the record and it is clear that the 2nd defendant was served with the amended Originating Summons on 1st September 2012 at his home in **SILUNGAI VILLAGE NDIVISI DIVISION** by a Process Server known as **CHARLES SIFUNA OTUNGA**. He accepted service but declined to sign saying he must consult first. It was not until 8th November 2016 that he filed a Replying Affidavit in person and no mention was made with reference to the claim that he had instructed the firm of **WAFULA WAWIRE ADVOCATES** through one **GILBERT** to appear for him. The record is also clear that though served either personally or through his wife **DORCAS** or by postal service, the 2nd defendant did not once appear in Court either for mention or hearing. I will refer to some of those dates:-

> **1. On 28th June 2014, the said CHARLES SIFUNA OTUNGA a Process Server of this Court served the 2nd defendant through his wife DORCAS who accepted service on behalf of the 2nd defendant who was at work. She acknowledged service by signing.**
>
> **2. On 16th May 2015, the same Process Server served DORCAS at the 2nd defendant's home. She accepted service but declined to sign.**
>
> **3. On 15th April 2016, the 2nd defendant was again served through his wife DORCAS.**
>
> **4. On 7th December 2016, the 2nd defendant was served personally at his office in Jogoo House Nairobi this time by one EMMANUEL S. WANYONYI also a duly authorized Process Server.**
>
> **5. On 25th November 2016, the 2nd defendant was served by registered post as per receipt NO M 50200 – 11161143773.**

I have not heard the 2nd defendant deny the Process Server's averment that **DORCAS** is his wife. If anything, the 2nd defendant has acknowledged that **DORCAS** is his wife. There is nothing to suggest that **DORCAS** had no authority to accept service on his behalf. This Court is satisfied that there was proper service upon the 2nd defendant and that is why he personally filed a Replying Affidavit. The claim that he instructed the firm of **WAFULA WAWIRE ADVOCATES** through one **GILBERT** to act for him cannot therefore be true. Firstly, the said firm did not enter any appearance to act for him and secondly, the said **GILBERT** is a person well known to him who he says now works for the firm of **OMUKUNDA AND COMPANY ADOVATES** his current advocate and it is not clear why the said **GILBERT** could not depone to that fact if it was indeed true. The 2nd defendant is clearly not deserving of any orders for setting aside the Judgment obtained against him because he has not been candid. He may have gone to **MBONI** forest as per the letters annexed to his further affidavit dated 7th November 2018. However, by the time he was being deployed to **MBONI** forest for operational duties on 26th June 2014 and 4th May 2015, he had been served with processes in this suit as far back as 22nd March 2014 through his wife DORCAS. As per paragraph 4 of the affidavit of service by **CHARLES SIFUNA OTUNGA** dated 28th March 2014, it is deponed that:-

> ***"On arrival, I met MRS DORCAS the wife to the 2nd Respondent who was known to me before. After a brief conversation with her and upon inquiry on the whereabouts of the 2nd Respondent herein, she informed me that he was at work and added that she had authority to accept service on his behalf."*** Empasis added.

Having been properly served, the Judgment obtained against the 2nd defendant was a regular one and while the Court retains the discretion to set it aside:-

> **"The discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or errors but is not designed to assist a person who had deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice" - SHAH .V. MBOGO** (supra).

There is really no explanation why the 2nd defendant did not instruct his wife as far back as 28th March 2014 to pass the documents served upon her to an advocate. The only reason this Court can find for the 2nd defendant's action is that he was determined ***"to obstruct or delay the cause of justice."*** There is no other explanation for his conduct.

The view that I take of this matter is that the Judgment entered against the defendants herein was a regular Judgment. Indeed as I have already found, the Judgment against the 1st defendant was not even an ex-parte one.

Having said so, however, this Court is expected to consider the 1st and 2nd defendants defences to the plaintiff's Originating Summons because, as was held in **PATEL .V. E.A CARGO HANDLING SERVICES LTD 1974 E.A 75** at page 76 by Sir **DUFFUS. P**,

> **"The main concern of the Court is to do justice to the parties and the Court will not impose conditions on itself to fetter the wide discretion given it by the rules. I agree that where it is a regular Judgment as is the case here, the Court will not usually set aside the Judgment unless it is satisfied that there is a defence on merits. In this respect, defence on the merit does not mean, in my view, a defence that must succeed. It means as SHERIDAN J put it "a triable issue" that is an issue which raises**

a prima facie defence which should go to trial for adjudication." Emphasis added.

I must therefore also consider if the defendants defences raise triable issues that should go for trial.

In his Originating Summons as amended on 19th May 2012, the plaintiff claimed that he has been in open, continuous and peaceful occupation of the suit land since 22nd May 1996 having purchased it from the 1st defendant and that he has been growing maize, beans and vegetables. That it was not until 12th March 2011 that he saw strange people including the 2nd defendant enter and start cultivating it. That is when he placed a caution on it but the 1st defendant still went ahead and sold it to the 2nd defendant. He alleged therefore that the 1st defendant had no title to pas to the 2nd defendant. He therefore sought orders that he is entitled to the suit land by adverse possession having occupied it for over 14 years.

In response to the original Originating Summons, the 1st defendant by his Replying Affidavit dated 28th April 2011, and which I have already alluded to, confirmed that indeed he had an agreement with the plaintiff but added that there were trees, bananas and other developments on the suit land which were to be the subject of further negotiations before the transfer is done. In breach of that agreement, the plaintiff harvested crops and destroyed the 1st defendant's trees. In 2002 the 1st defendant wrote to the plaintiff to pay him Kshs. 78,900/= but to no avail. Instead the plaintiff cautioned the suit land and it was only after a notice to remove the caution was issued to him that he moved to Court. Meanwhile, the 1st defendant sold the suit land to the 2nd defendant who has now developed it and therefore the plaintiff's occupation has not been exclusive, open continuous uninterrupted or adverse.

On his part, the 2nd defendant by his Replying Affidavit dated 8th November 2016 and which I had already referred to at the beginning of this Judgment, deponed that on 14th March 2011, he purchased the suit land from the 1st defendant having done a search and confirmed that the title was clean. He obtained the necessary consent, paid the full purchase price and is now using it for farming having also constructed a home thereon. He added that the agreement, if any, between the plaintiff and 1st defendant could only have been for a different title and that he is wrongly sued and the suit against him should be struck out.

Do those defences raise triable issues? In my view, they do. A person claiming land registered in the names of another by way of adverse possession must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner of his own volition – **KASUVE .V. MWAANI INVESTMNT LTD & FOUR OTHERS 2004 1 KLR 184**. There is no doubt that the plaintiff went into occupation of the suit land in 1996 following the agreement with 1st defendant dated 22nd May 1996. But that occupation lasted only upto 2011 when the land was sold to the 2nd defendant who, by from his Replying Affidavit, has put up a home and is now in occupation.

The agreement between the parties that the value of trees and development would be negotiated was breached. The fact that the plaintiff went into occupation and possession of the suit land in 1996 is confirmed by the 1st defendant himself who, by his letter dated 12th February 2002, addressed the plaintiff as follows:-

> **"REF: AGREEMENT OF SALE OF NDIVISI/NDIVISI/1552**
>
> **I hereby draw your attention to the above agreement, since you entered contract with me you sold my 22 trees and 38 banana stems to someone who has destroyed bananas and you are aware that you had not purchased them. See para*graph 3 in our agreement which states carefully.***
>
> **That now you have done this without my concern. I want you to pay me for the above items as follows:-**
>
> **1: 38 bananas @ 50 = 1,900**
>
> **2: 22 trees @ 3,500 = 77,000**
>
> ***Kshs. =78,900***
>
> **Seventy eight thousand nine hundred only.**
>
> **That you have leased my parcel to Mr. Eliud Musamba without even informing me. Which means you are doing business in my parcel, therefore I want you to come and clear my money for items you sold and also I have sub-divided my parcel and sold then and done transfers. So please come and pay my money to enable me transfer portion to you. Failure to payment I shall sale the portion to someone else and refund your money minus the above amount. It will mean you would have broken the agreement.**
>
> **Please your early response will be much appreciated.**
>
> **Yours truly**
>
> **J S W Lyani"**

From the tone of the above letter, it is clear to me that whereas the plaintiff's occupation of the suit land at least from 1996 to 2011 cannot be

disputed, it was not peaceful because six (6) years into the agreement, the 1st defendant was still complaining to the plaintiff about the compensation for the bananas, trees and other development. There is nothing on record to show that the plaintiff responded to that letter. In **MTANA LEWA V KAHINDI NGALA MWAGANDI 2015 eKLR** the Court of Appeal stated that an essential pre requisite of adverse possession is that it should ***"neither be by force or stealth."*** While I am cautious not to appear to be determining this case at this stage, it is clear that the 1st defendant's defence raises triable issue. And should the 1st defendant be able to demonstrate that the plaintiff's occupation of the suit land was not peaceful, then that would defeat the plaintiff's claim in adverse possession meaning that the 2nd defendant was able to acquire a proper title. Those will be issues for the trial. All that I am required to consider at this state is whether the defendants' respective defences to the plaintiff's claim raises **"triable issues."** In my view, I think they do and the thread that runs through cases such as **CHEMWOLO & ANOTHER .V. KUBENDE 1986 KLR 492** and **MAINA V KARIUKI 1984 KLR 407** is that where there are triable issues disclosed in the defence, the defendant should be given an opportunity to defend the claim against him but on terms that are just.

Given those circumstances and notwithstanding the fact that there is a regular Judgment in this case, I find that the defences raise triable issues that merit the setting aside of the Judgment dated 20th December 2017. In doing so, I must also consider the prejudice that may be caused to the plaintiff. The plaintiff was actually in possession only from 1996 to 2011 when the 2nd defendant went into occupation and has now put up a home. Indeed in his own Supplementary Affidavit dated 3rd October 2011 in support of his application for injunction against the 1st defendant, the plaintiff deponed in paragraph 14 thereof that the 2nd defendant who was yet to be enjoined in the proceedings ***"was hurriedly putting up structures on the suit land in disobedience of the Court Order."*** That application was dismissed by **MUCHELULE J** in a ruling dated 8th November 2011 who went on to suggest that the 2nd defendant be enjoined as he was not a party then.

Therefore, not much prejudice will be caused to the plaintiff because he was dispossessed of the suit land in 2011 by the 2nd defendant.

Ultimately therefore, although the Judgment dated 20th December 2017 is a regular Judgment, the defences of the 1st and 2nd defendants raise triable issues which should go to trial and further, the plaintiff will not suffer any prejudice, other than the delay occasioned to him, because he is no longer on the suit land. An appropriate order for costs should suffice. I find this an appropriate case to set aside the Judgment dated 20th December 2017.

Having set aside the said Judgment, it must follow that the plaintiff's Notice of Motion dated 5th July 2018 seeking a Vesting Order in his name with respect to the suit land and for the Deputy Registrar to be authorized to sign all the documents to transfer it to him need no consideration at this point because there is now no Judgment on which it can be founded.

The up-shot of the above is that having considered all the matters herein, I make the following orders:-

1. The Judgment dated 30th July 2017 is hereby set aside.

2. Each of the defendants shall within 30 days of delivery of this Judgment pay to the plaintiff the sum of Kshs. 15,000/= being thrown away costs.

3. In default of (2) above, the order setting aside the Judgment shall stand discharged and vacated and the said Judgment shall be reinstated.

4. Costs of the 1st defendant's application dated 21st September 2018 and the 2nd defendant's application dated 15th October 2018 are awarded to the plaintiff and shall be determined at the end of the trial. This is because of the defendants' conduct in this matter.

5. As this is an old matter filed in 2011, the parties are advised to take the earliest hearing date.

Boaz N. Olao.

J U D G E

23rd May 2019.

Ruling dated, signed and delivered in Open Court this 23rd day of May 2019.

Ms Mumalasi for plaintiff absent

Mr Sichangi for 1st defendant absent

Mr Omukunda for 2nd defendant absent

Plaintiff – present

1st defendant – absent

2nd defendant – absent

Joy/Felix – Court Assistants present

Boaz N. Olao.

J U D G E

23rd May 2019.