

**IN THE COURT OF APPEAL
AT NAIROBI**

**(CORAM: MUSINGA (P), JOEL NGUGI & ODUNGA,
JJ.A) CIVIL APPEAL NO. 224 OF 2020**

BETWEEN

CITY FINANCE LIMITED.....APPELLANT

AND

NYANJA HOLDINGS LIMITED.....1ST RESPONDENT

**GEORGE NJAU MBUGUA NYANJA.....2ND
RESPONDENT**

**MRS. ENID N. NYANJA.....3RD
RESPONDENT**

**REDMARS HOLDINGS LIMITED4TH
RESPONDENT**

As Consolidated With

CIVIL APPEAL NO. E166 OF 2021

REDMARS HOLDINGS LIMITED.....APPELLANT

AND

NYANJA HOLDINGS LIMITED & 3 OTHERS.....RESPONDENTS

AND

CIVIL APPEAL NO. E174 OF 2021

JAMES GITAU SINGH.....APPLICANT/APPELLANT

AND

NYANJA HOLDINGS LIMITED & 4 OTHERS.....RESPONDENTS

*(Being appeals from the Judgment and decree of the High Court of
Kenya at Nairobi, Milimani Commercial Court (Kasango, J.) dated 30th
July, 2020*

in

HCCC No 251 of 2008

As Consolidated With

HCCC 1965 of 1991)

JUDGMENT OF THE COURT

1. These consolidated appeals arise from the judgment of the High Court of Kenya (Commercial & Tax Division)(*Kasango, J.*) delivered on 30th July, 2020 in **HCCC No. 1965 of 1991** (consolidated with

HCCC No. 251 of 2008), in which the learned Judge rendered a far-reaching decision touching on the exercise of statutory power of sale, alleged overpayment and illegality of interest, purchaser protection, and the personal conduct of an advocate who was not a party to the suit.

2. The litigation has a long, complex, and chequered history explained in considerable detail in the impugned judgment itself. For present purposes, it suffices to note that the dispute originates in a series of lending transactions between City Finance Bank Limited, (the appellant in **Civil Appeal No. 224 of 2020**, hereafter, “the Bank”) and the 1st Respondent in all the three consolidated appeals (Nyanja Holdings Limited, hereafter, “the 1st Respondent”) dating back to the early 1990s, secured by a mortgage over, inter alia, the property known as **L.R. No. 7583/1 Karen Estate, Nairobi** (the suit property). George Njau Mbugua Nyanja (hereinafter, “the 2nd Respondent”) and Mrs. Enid Nyanja (hereinafter, “the 3rd Respondent”) were the directors of the 1st Respondent. The suit property was registered in the name of the 2nd Respondent.
3. Over time, disagreements arose concerning the quantum of indebtedness, the interest applied, and the propriety of the Bank’s accounting. These disputes spawned at least two suits, interlocutory applications, injunctions, and appeals over nearly three decades, culminating in the consolidated proceedings before the High Court. By that time, the Bank had exercised its statutory power of sale and sold the suit property by private treaty to recover the amounts it claimed were due.
4. In the impugned judgment, the learned Judge undertook an extensive review of the historical record, including bank

statements,
correspondence, valuation reports, and expert testimony. She

ultimately made findings that the Bank had charged illegal and unconscionable interest, that the 1st Respondent had, in fact, overpaid the loan, and that the sale of the suit property by private treaty was unlawful.

5. The learned Judge further granted reliefs cancelling the sale, ordering re-transfer of the property to the 2nd Respondent, dismissing the Bank's counterclaim, and making adverse observations concerning the role of Mr. James Singh Gitau, Advocate, notwithstanding that he was not a party to the proceedings.
6. Aggrieved by those determinations, three separate appeals were lodged. **Civil Appeal No. 224 of 2020** was filed by the Bank; **Civil Appeal No. E166 of 2021** by Redmars Holdings Limited, the purchaser of the suit property by private treaty (hereafter, "Redmars"); and **Civil Appeal No. E174 of 2021** by Mr. James Singh Gitau (hereafter, "Mr. Gitau"), an advocate for Redmars who was adversely mentioned in the impugned judgment. The appeals were subsequently consolidated by an order of this Court.
7. At the plenary hearing held on 16th December, 2025, learned counsel appeared for all the parties: **Mr. Allan Gichuhi**, appearing together with **Mr. Kiguta**, for the Bank; **Mr. James Singh Gitau**, appearing together with **Mr. Dennis Owuor**, for Redmars; **Mr. Steve Kimathi** for Mr. Gitau; and **Mr. J. P. Machira**, appearing together with **Mr. Alex Thangei**, for the **1st, 2nd and 3rd Respondents** across the consolidated appeals. All counsel highlighted their written submissions and addressed us orally on the central issues raised in the appeals.
8. As a first appellate court, our mandate is well settled. We are

obliged to reconsider and re-evaluate the evidence on record
and draw our

own conclusions, bearing in mind that we neither saw nor heard the witnesses testify. At the same time, we must accord due deference to the findings of fact by the trial court unless they are shown to have been based on no evidence, on a misapprehension of the evidence, or on wrong principles (see ***Selle v Associated Motor Boat Co. Ltd [1968] EA 123; Jabane v Olenja [1986] KLR 661***).

9. The appellants advanced extensive and overlapping arguments challenging the High Court's approach to pleadings, evidence, and reliefs. In essence, the Bank contended that the learned Judge decided issues not pleaded, misapprehended the evidence on accounts and interest, ignored purchaser protection, and granted remedies unavailable once the statutory power of sale had been exercised.
10. Redmars similarly argued that, as a purchaser for value, its title was protected in law; that no fraud had been pleaded or proved against it; and that the High Court erred in cancelling the sale and ordering re-transfer of the property.
11. Mr. Gitau's appeal was narrower, but raised serious concerns of principle. He complained that the learned Judge condemned him unheard, made adverse findings affecting his professional reputation without jurisdiction, and relied on evidence in a manner that violated fundamental principles of natural justice.
12. The 1st to 3rd Respondents, on their part, urged us to uphold the judgment, contending that the High Court was entitled to interrogate the entire transaction history, that the Bank had acted unlawfully, and that the reliefs granted were justified on the evidence and the law.

13. Before turning to the specific issues arising in these appeals, it is necessary to set out, albeit in a compressed form, the procedural history of the dispute before the High Court, which spans nearly three decades and provides the context within which the impugned judgment was rendered.
14. The relationship between the Bank and the 1st Respondent commenced in the early 1990s, when the Bank advanced various lending facilities secured by legal charges over several properties, including the suit property. Difficulties soon arose regarding repayment, interest computation, and restructuring, leading to the institution of **High Court Civil Case No. 1965 of 1991** by the Bank seeking recovery of monies allegedly due and owing from the borrowers and enforcement of its securities.
15. Over the years, that suit generated numerous interlocutory applications, including applications for injunctions restraining the exercise of the statutory power of sale, applications relating to accounts, and challenges to the validity of statutory notices. Interim injunctive relief was granted, varied, discharged, and reinstated at different stages, with the consequence that the equity of redemption remained a live issue for an extended period.
16. In 2008, a further suit, **High Court Civil Case No. 251 of 2008**, was instituted by the 1st to 3rd Respondents challenging, among other matters, the accounts, interest charged, statutory notices, and the Bank's entitlement to exercise the statutory power of sale. This suit raised overlapping issues relating to the same lending relationship and securities. By an order of the High Court, the two suits were eventually consolidated for hearing and determination.

17. The consolidated suits proceeded to a full hearing. The parties adduced extensive documentary evidence, including bank statements spanning several years, correspondence between the parties, valuation reports, and expert evidence on accounts and interest computation. The Bank also lodged a counterclaim seeking recovery of alleged outstanding sums.
18. Following a ruling delivered by Ochieng, J. (as he then was) on 28th January, 2011, in which the learned Judge confirmed that there were no subsisting orders of injunction restraining the Bank from realizing its security — earlier injunctive orders having been variously granted, vacated, or allowed to lapse in the course of the protracted interlocutory history — the Bank proceeded to exercise its statutory power of sale. It, thereafter, sold the suit property by private treaty to Redmars. That sale, and the circumstances in which it was concluded, became a central focus of the consolidated trial before the High Court.
19. In a detailed judgment running into several pages, the learned Judge undertook a painstaking review of the evidence. She made specific findings that the Bank had charged interest rates that were not contractually or statutorily permissible, that the accounts were tainted by illegality, and that, on a proper reckoning, the 1st Respondent had in fact overpaid the loan.
20. On the sale of the property, the learned Judge found that the statutory power of sale had not been lawfully exercised, faulted the process leading to the sale by private treaty, and concluded that the sale could not stand. On that basis, she granted orders cancelling the sale and directing re-transfer of the property.

21. The learned Judge further dismissed the Bank's counterclaim in its entirety and made adverse findings touching on the role of Mr. Gitau, Advocate, in the transaction. It is those findings and reliefs that provoked the present appeals.
22. Although the consolidated appeals raise numerous grounds, they ultimately distil into four interrelated questions which structure our analysis. These are: *first*, whether the learned Judge erred in nullifying the statutory sale and ordering restoration of the property instead of limiting the available remedies to damages or accounts; *secondly*, whether alleged irregularities in statutory notice entitled the court to impeach a completed sale; *thirdly*, whether the learned Judge erred by failing to substantively determine the Bank's counterclaims and reach consequential conclusions thereon; and *finally*, whether the learned Judge erred by determining issues not pleaded and by making adverse findings against a non-party, Mr. Gitau, without affording him a hearing.
23. We begin with the first and most consequential issue: whether, upon the suit property having been sold in exercise of the statutory power of sale, the learned Judge erred in nullifying the sale and ordering restoration of the property to the chargor, rather than limiting the available remedies to damages or accounts.
24. On this issue, the appellants were largely aligned. The Bank and Redmars submitted that once the suit property was sold pursuant to the statutory power of sale, the equity of redemption was extinguished and the court's remedial jurisdiction was correspondingly circumscribed. They argued that, even if irregularities existed in interest computation, accounting,

valuation, or the manner of sale, such matters could not, in law, justify the setting aside of a completed sale or an order for re-transfer,

particularly where the purchaser was entitled to statutory protection, and no fraud or collusion had been pleaded and proved against it.

25. In developing that position, the appellants relied on a consistent line of authorities from this Court holding that a completed statutory sale is unimpeachable except where fraud or collusion involving the purchaser is specifically pleaded and strictly proved. They further invoked section 69B(2) of the repealed Indian Transfer of Property Act, contending that the purchaser's title could not be impeached on grounds relating to the propriety of the power of sale or compliance with notice requirements.
26. The 1st - 3rd Respondents urged a different approach. They submitted that the learned Judge was entitled to interrogate the entire lending relationship and to grant restorative reliefs where the evidence disclosed illegality, unconscionable interest, overpayment, and abuse of statutory power. In their view, the sale of the suit property was so tainted by illegality that it could not attract statutory protection, and the court was, therefore, entitled to cancel the sale in order to do substantive justice.
27. We have carefully considered these competing arguments. The law on the remedies available to a chargor once a charged property has been sold in exercise of the statutory power of sale is settled and admits of little controversy. Once a valid sale has taken place, the equity of redemption is extinguished and the court's remedial jurisdiction is limited.
28. In ***Mbuthia v Jimba Credit Finance Corporation Ltd [1988] KLR 1***, this Court stated in emphatic terms:

“Once a sale of charged property has taken place

in exercise of a statutory power of sale, the equity of

redemption is extinguished. The court cannot set aside the sale; the remedy of the chargor lies in damages.”

29. The same principle was reiterated in ***Palmy Company Limited v Consolidated Bank of Kenya Limited [2014] eKLR***, where the Court observed:

“The law is now settled that once a property is sold in exercise of a statutory power of sale, even if the sale is subsequently shown to have been irregular, the sale cannot be set aside unless fraud is pleaded and proved against the purchaser. The chargor’s remedy is in damages.”

30. In ***Arthi Highway Developers Limited v West End Butchery Limited & 6 Others [2015] eKLR***, this Court further cautioned that courts must be slow to disturb completed conveyances, particularly where third-party rights have intervened, and underscored the importance of certainty and finality in commercial transactions.

31. That jurisprudential position is reinforced by statute. Section 69B(2) of the repealed Indian Transfer of Property Act provided that a purchaser’s title shall not be impeached on the ground that no case had arisen to authorise the sale, that due notice was not given, or that the power was otherwise improperly exercised.

32. Read together, the authorities and the statute establish a clear rule: absent fraud or collusion to which the purchaser is a party, a completed sale in exercise of the statutory power of sale is unimpeachable, and the court cannot grant orders cancelling the sale or directing re-transfer of the property.

33. Applying that law to the present case, the learned Judge could only have impeached the sale if fraud or collusion involving the

purchaser had been specifically pleaded and strictly proved. A careful reading

of the pleadings shows that while fraud was pleaded, its particulars were confined to allegations of undervalue, speed of registration, the use of a private treaty, and alleged subsisting court orders. There was no pleading of conspiracy involving advocates, no allegation of professional misconduct against Mr. Gitau, and no pleading of collusion implicating the purchaser. Yet it was on the strength of these matters that the learned Judge proceeded to nullify the completed statutory sale. In our view, that conclusion rested on a factual and legal foundation that was not supported by the pleadings or by strict proof at the trial.

34. Moreover, fraud must not only be pleaded, but strictly proved to a standard higher than a balance of probabilities. As this Court stated in ***Vijay Morjaria v Nansingh Madhusingh Darbar & Another*** [2000] eKLR, and reiterated in ***Central Bank of Kenya v Trust Bank Limited & 4 Others*** [1996] eKLR, suspicion, conjecture, or inference cannot suffice. In the present case, the findings of fraud rested largely on inference and perceived gaps in documentation rather than on cogent evidence directed at pleaded particulars. The available quantum of evidence was simply insufficient to sustain a finding of fraud or collusion.

35. We, therefore, conclude on this first issue that the learned Judge erred in nullifying the sale and ordering restoration of the property. In law, such relief was unavailable absent proper pleading and strict proof of fraud or collusion, neither of which was established.

36. The second issue is whether the learned Judge was entitled to impeach the sale on the basis of alleged irregularities in the service or content of statutory notices.

37. On this point, the respondents contended that no valid statutory notice had been served, and that the sale was, therefore, unlawful *ab initio*. They argued that failure to comply with the mandatory notice requirements deprived the Bank of the right to exercise the statutory power of sale.
38. The appellants responded on two levels. First, they pointed out that in a ruling delivered on 28th January, 2011, Ochieng, J. expressly confirmed that there were no subsisting orders of injunction restraining the Bank from exercising its statutory power of sale. The Bank was, therefore, not acting in defiance of any court order when it proceeded with the sale and had been given judicial imprimatur to proceed with the sale. Secondly, and more fundamentally, they submitted that even where defects in statutory notice are established, the remedy does not lie in undoing a completed sale to a protected purchaser.
39. We agree with the appellants. The confirmation by Ochieng, J. that no injunctive orders subsisted is dispositive of the argument that the sale was conducted in contempt of court: the record is clear that there were no subsisting court orders injunctioning the sale. Beyond that, the law is clear that defects in statutory notice, even if proved, do not revive the equity of redemption or justify cancellation of a completed sale. Such defects may found a claim in damages against the chargee, but they do not entitle a court to unravel a sale protected by statute. In ***Trust Bank Ltd v Eros Chemists Ltd* [2000] 2 EA 550**, this Court stated so in unequivocal terms:

“Failure to serve a valid statutory notice may give rise to a claim for damages but does not, of itself, invalidate a sale that has already taken place.”

40. The same position was reiterated in ***Gitau v National Bank of Kenya Ltd [1999] 2 EA 321***, where the Court held:

“The only remedy available to a chargor where the statutory power of sale has been irregularly exercised is damages. The court has no jurisdiction to set aside a completed sale.”

41. These authorities make plain that even where irregularities in notice are established, the law confines the chargor’s remedy to damages or accounting against the chargee, and does not permit the setting aside of a completed statutory sale.

42. The third issue concerns whether the learned Judge erred in dismissing the Bank’s counterclaims without substantively determining them or reaching clear consequential conclusions thereon.

43. The appellants submitted that the counterclaims were pleaded causes of action which the learned Judge was obliged to determine. While the judgment made extensive findings on accounts, interest, and alleged overpayment, it did not proceed to determine the counterclaims in a manner that yielded clear and final conclusions.

44. On this question, the 1st to 3rd Respondents took the position that the learned Judge was entitled to treat it as having been effectively disposed of by her substantive findings on the accounts and the lending relationship. They argued that having undertaken an exhaustive examination of interest computation, overpayment, and illegality in the Bank’s accounting, and having concluded that the borrowers had in fact overpaid the loan and that the Bank’s conduct was unlawful and unconscionable, there was no logical or legal basis upon which the counter-claim for

further sums could survive. In the respondents' view, the dismissal of the counter-claim did not require

a separate or formal determination, because its factual and legal foundation had been extinguished by the court's primary findings. They further contended that remitting the counter-claim would amount to reopening matters already conclusively resolved, undermine finality, and work an injustice by permitting the Bank to relitigate claims that the High Court had, in substance, rejected.

45. We are unable to accept that submission. While it is true that the learned Judge made extensive findings on the accounts and on the Bank's conduct, those findings did not obviate the need for a clear and express determination of the counter-claim as a pleaded cause of action. A counter-claim is not an incidental appendage to a suit; it is a substantive claim which must be determined on its own terms. Where a court reaches findings that would defeat a counter-claim, it must still say so plainly and reach clear consequential conclusions. The absence of such determination leaves the judgment internally incomplete and the parties without finality on issues squarely placed before the court.

46. Moreover, once it is accepted — as we have held — that the learned Judge erred in granting reliefs that were unavailable in law and in extending her findings beyond the pleadings, it follows that the accounting findings upon which the dismissal of the counter-claim was said to rest cannot, without more, be treated as conclusive. In those circumstances, remittal of the counter-claim for determination on properly framed issues is not a reopening of settled matters, but a necessary step to restore procedural coherence and ensure that all pleaded claims are resolved in accordance with the law.

47. The fourth and final issue concerns whether the learned Judge

erred by determining matters that were neither pleaded nor litigated, and by making adverse findings against Mr. Gitau, who was not a party

to the consolidated suits, without affording him an opportunity to be heard.

48. In his submissions, Mr. Gitau complained that the learned Judge fundamentally erred by making adverse findings against him notwithstanding that he was not a party to the proceedings and had no opportunity to be heard. He argued that the judgment went beyond narrating evidence and instead attributed to him impropriety, collusion, and unethical conduct in the transaction, thereby impugning his professional reputation without due process. According to Mr. Gitau, no pleading alleged fraud, conspiracy, or professional misconduct against him, nor was he joined to answer any such allegations. He submitted that the learned Judge nonetheless introduced issues concerning alleged advocate partnerships, conflicts of interest, and improper influence on the Bank's decision-making, which were neither pleaded nor litigated. Mr. Gitau further contended that these findings offended the *audi alteram partem* rule and exceeded the court's jurisdiction, as a court cannot lawfully condemn a non-party unheard. He, therefore, urged this Court to set aside and expunge all adverse findings, remarks, and observations made against him in the judgment of the High Court.

49. The 1st -to 3rd Respondents, for their part, sought to justify the learned Judge's remarks by contending that the findings complained of merely flowed from the evidence on record and were incidental to the court's evaluation of the transaction as a whole. According to the 1st to 3rd Respondents, the learned Judge did not purport to determine Mr. Gitau's rights or liabilities, but merely made observations arising from the factual matrix placed before the court.

50. We disagree with the 1st to 3rd Respondents on this point. It is common ground that Mr. Gitau was not a party to the proceedings. Nonetheless, the learned Judge went beyond neutral narration of evidence and made adverse findings touching on his conduct and propriety. At paragraphs 110-111 of the judgment, the learned Judge stated:

“Nyanja in his evidence accused the bank lawyer of colluding with Redmars. I would respond to that accusation by saying that, my view after reviewing the evidence before me is that, that accusation is not farfetched. I venture to explain myself, with the greatest respect to persons I will discuss.”

51. The learned Judge, then, proceeded to attribute impropriety, collusion, and undue influence to Mr. Gitau in terms that were definitive and condemnatory. In particular, the judgment questioned his professional independence on the basis of alleged business and professional associations between Mr. Gitau and persons connected to the purchaser, including their shared directorship in Chester Insurance Brokers Limited, and an asserted partnership or close professional relationship between Mr. Gitau and the firm of Mukite Musangi & Company Advocates, which acted for Redmars Holdings Limited. On the strength of these associations, the learned Judge suggested that Mr. Gitau’s role as the Bank’s advocate may have facilitated or concealed irregularities in the sale.

52. These findings were made notwithstanding that no pleading alleged professional misconduct, conspiracy, or collusion involving Mr. Gitau. The pleaded particulars of fraud were confined to allegations of undervalue, speed of registration, the use of a private treaty, and alleged subsisting court orders. No

issue concerning advocate

partnerships, conflicts of interest, or improper influence on the Bank's board was pleaded or framed for determination. These findings were also made notwithstanding that Mr. Gitau was not a party to the proceedings and was afforded no opportunity to respond to those allegations

53. The law on this point is settled. Parties are bound by their pleadings, and a court may not determine issues not pleaded or litigated. As the Supreme Court stated in ***Independent Electoral and Boundaries Commission v Stephen Mutinda Mule & 3 Others*** [2014] eKLR:

“The parties are bound by their pleadings and any evidence adduced outside the pleadings cannot be considered. A court of law should not make determinations on issues not pleaded.”

54. More fundamentally, the making of adverse findings against a non-party offends the *audi alteram partem* rule, a cornerstone of procedural justice. A court cannot, consistently with due process, pronounce itself on the conduct, reputation, or professional propriety of a person without affording that person an opportunity to be heard. As this Court stated in ***Onyango Oloo v Attorney General*** [1986- 1989] EA 456:

“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly.”

55. In the present case, Mr. Gitau was condemned without notice, without joinder, and without a hearing. To that extent, the learned Judge acted without jurisdiction. The adverse findings against Advocate James Singh Gitau cannot stand and must be set aside. On this issue alone, his appeal succeeds.

56. Drawing these four strands together, we are satisfied that the learned Judge fell into multiple and material errors. She granted reliefs that were unavailable in law once the statutory power of sale had been exercised and the property sold to a purchaser entitled to statutory protection; she treated alleged defects in a statutory notice as a basis for undoing a completed sale when the law confines the remedy to damages; she failed to substantively determine pleaded counterclaims and reach clear consequential conclusions thereon; and she departed from the pleadings and the rules of natural justice by making adverse findings against a non-party who was unheard. Each of these errors independently undermines the impugned judgment. Considered cumulatively, they render it unsustainable.

57. In the result, having considered the entire record, the judgment of the High Court, and the submissions of all parties, we dispose of the consolidated appeals as follows:

(a) The consolidated appeals are hereby allowed.

(b) The judgment and decree of the High Court dated 5th May, 2020 (*Kasango, J.*) are hereby set aside and, in particular the following orders granted therein are set aside, namely:

- i. the declaration that the sale of **L.R. No. 7583/1 Karen Estate, Nairobi, to Redmars Holdings Limited** was illegal, unlawful, null and void;
- ii. the order cancelling the conveyance dated 21st August, 2007 in favour of **Redmars Holdings Limited**;
- iii. the order restoring **L.R. No. 7583/1 Karen**

**Estate, Nairobi, to George Njau Mbugua
Nyanja; and**

- iv. the permanent injunction restraining **Redmars Holdings Limited** from dealing with the said property.
- (c) It is hereby declared that the transfer and registration of **L.R. No. 7583/1 Karen Estate, Nairobi**, in favour of **Redmars Holdings Limited** shall not be impeached, no fraud having been specifically pleaded and strictly proved against the purchaser within the meaning of section 69B(2) of the repealed Indian Transfer of Property Act.
- (d) All adverse findings, observations, and remarks made in the judgment of the High Court against **Mr. James Gitau Singh, Advocate**, are hereby expunged in their entirety, the said advocate not having been a party to the suit and not having been afforded an opportunity to be heard.
- (e) It is further declared that the respondents' remedies, if any, arising from alleged irregularities in the exercise of the statutory power of sale lie in damages and/or accounting against the chargee, **City Finance Bank Limited**, and not in the setting aside of the transfer to the purchaser. Such remedies may be considered by the High Court, if properly pleaded and proved, upon remittal pursuant to paragraph
- (f) below.
- (f) The dismissal of the Bank's counter-claim in **HCCC No. 251 of 2008** is hereby set aside, and the said counter-claim is remitted to the High Court for determination on its merits, limited strictly to issues of accounts,

indebtedness, interest, and any consequential relief, but
without

disturbing the title of **Redmars Holdings Limited** to **L.R. No. 7583/1 Karen Estate, Nairobi.**

(g) For the avoidance of doubt, no order of injunction shall issue restraining **Redmars Holdings Limited** from possession, occupation, or dealings with **L.R. No. 7583/1 Karen Estate, Nairobi**, pending the determination of the remitted issues.

(h) Costs of the suits in the High Court shall abide the outcome of the remitted proceedings.

(i) Costs of the appeals are awarded to the appellants, jointly and severally, against the respondents.

58. Orders accordingly.

Dated and delivered at Nairobi this 30th day of January, 2026.

D. K. MUSINGA, (PRESIDENT)

.....
JUDGE OF APPEAL

JOEL NGUGI

.....
JUDGE OF APPEAL

G. V. ODUNGA

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed
DEPUTY REGISTRAR