IN THE COURT OF APPEAL
AT MOMBASA

(CORAM: MURGOR, LAIBUTA & NGENYE,

JJ.A.) CIVIL APPEAL NO. E007 OF 2023

BETWEEN

JACOB KAWITI LUMUNGE.....APPELLANT

AND

CHINA CITY CONSTRUCTION

COMPANY
LIMITED ..... 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND

RESPONDENT KENYA NATIONAL HIGHWAYS
AUTHORITY 3RD
RESPONDENT *(An appeal from the Judgement of the Environment and Land Court of Kenya at Mombasa (Matheka, J.) delivered on 27th September 2022*

in

Mombasa ELC Case No. 234 of 2017)
****

JUDGMENT OF THE COURT

1. This appeal emanates from the decision of ***Matheka, J.*** in Mombasa Environment and Land Court ***Case No. 234 of 2017 (the ELC)*** delivered on 27th September 2022.

2. The dispute as pleaded by the appellant in his amended plaint dated 2nd November 2017 is that, at all times material to the suit, he was the registered owner of ***Plot No. L.R. 4118/340 (the suit property***) situate along

Voi-Taveta Road within Taveta Town; that, while the 1st respondent's

contractors were working on the Mwatate-Taveta (A23) Road and Taveta-Voi Bypass Road ***('the road project'***), they encroached on and thereby trespassed on a portion of the suit property; that the encroachment on the suit property amounted to compulsory acquisition of his land for which he was not compensated; that he ran a petroleum business (petrol station), but that for the acquisition, he was unable to carry out normal day to day activities on the suit property; and that, as a result, he had suffered loss and damage.

3. The appellant urged that the respondents be held liable for the loss occasioned by the encroachment which affected his business. He prayed for compensation to the tune of Kshs. 14,925,000/= based on a valuation report which he produced in court. He particularised the loss as follows:

    a) Land value – Kshs. 3,000,000
    b) Fuel Tanks & Pumps – Kshs. 7,300,000
    c) Developments – Kshs. 3,000,000
    d) Total – Kshs. 13,300,000
    e) Add 15% severance Kshs. 1,995,000
    f) Total Kshs. 14,925,000

4. The appellant further particularised the alleged trespass by the respondents and/or their authorised agents as follows:

    "i. Entering into the said plot without permission and/or consent of the appellant and continuing to construct a road on part of the appellant's suit plot No. L.R. 4118/340 situate along Taveta-Holili Road Taveta Town, hence causing the appellant to suffer irreparable loss and damage.

ii. *Ignoring the appellant's right to quiet possession, use and enjoyment of his parcel of land.*

iii. Failing to give the appellant adequate compensation after compulsory acquisition of his land."

5. The appellant therefore prayed for judgement against the respondents jointly and severally for:

"a. An order of injunction to issue restraining the 1st respondent by itself, its agents, servants and/or any other persons from encroaching and/or trespassing and/or working and/or constructing and/or extending road in any part of the suit property situate along Voi - Taveta Holili road at Taveta Town until the suit is heard and determined;

b) a declaration that the said suit property belongs to the appellant and he is thereof entitled to be compensated in the event of compulsory acquisition;

c) a declaration that the appellant is entitled to adequate compensation upon compulsory acquisition of the suit property which belongs to him;

d) the appellant be awarded Kshs. 14,925,000/= compensation for the area of the suit property compulsorily acquired and/or encroached;

e) general and exemplary damages;

f) costs and interests of the suit at court rates; and

g) any other relief the court may deem fit and just to grant."

6. In its statement of defence dated 30th November 2020, the 1st respondent denied in totality the appellant's claim and

reiterated that:

i. it was not a trespasser to the appellant's alleged suit property situate along Voi–Taveta Road at Taveta Town;

ii. the 1st respondent was and is an agent of a known principal, being Kenya National Highway Authority (KENHA);

iii. vide Contract No. KeNHA/D & C/1296/2013 dated 13th December 2023, the 1st respondent bided and was awarded a contract for upgrading of Mwatate Taveta (A23) Road and Taveta Bypass Road;

iv. the 1st respondent's construction specifications as a contractor were issued by its employer –KeNHA and it has no business in either acquisition or compensating property owners; and

v. that the appellant's claim against the 1st respondent was thus misplaced, frivolous and vexatious and incapable of enforcement.

7. The 1st respondent contended that the appellant failed to come to court with clean hands. On a 'without prejudice' basis, the 1st respondent averred that it was aware of the negotiations between the appellant and the 2nd respondent for purposes of compensation to the appellant for the portion of the suit property acquired for the construction of the road project, and which compensation was already made; and that, for this reason, it (the 1st respondent) would raise a preliminary objection to have the suit struck out for being a non-starter, bad in law and incurably defective.

8. The 3rd respondent was joined to the suit by way of third-

party proceedings upon issuance by the 1st respondent of a

Third-Party Notice dated 22nd January 2021. The 3rd respondent was consequently named as a Third Party.

9. The 3rd respondent entered appearance and filed a statement of defence dated 10th May 2021 in which it averred: that, in line with its statutory mandate under Sections 3, 4, 22, 23 and 24 of the Roads Act, it embarked on construction of the road project which commenced in the month of May 2014 and completed it in May 2017; that the importance of the road project was to improve transport within the coastal region and alleviate stiff congestion and traffic snarl-ups by increasing the road capacity, thereby enhancing movement of vehicles; and that, as a matter of right, it had a reserve of 60 meters width along its total length including nine (9) kilometres of Taveta Bypass, but that the reserve was reduced to thirty (30) metres in the urban town of Taveta.

10. The 3rd respondent further averred that the road project was to inevitably affect privately owned parcels of land, thereby necessitating compulsory land acquisition; that among those affected were traders operating along the road reserve and were eligible for compensation as per the financiers, African Development Bank's ***(AfDB)*** policy; that the appellant was identified as one of the Project Affected Persons ***(PAPs)***, being a trader operating in three locations within the thirty (30) metre wide road reserve in Taveta Town and at Timbila area where he had erected several structures; that, pursuant to a report prepared in the year 2012, all the PAPs participated in a census

survey, consultative meetings and in-depth discussions with stakeholders; and that, in line with Article

67 of the Constitution, the 2nd respondent conducted a valuation of the appellant's affected businesses and proposed a compensation of Kshs.6,624,600.

11. The 3rd respondent's position was that the appellant was compensated for land developments on the road reserve and loss of business thereon, but that there was no compensation for the suit property as it was not affected by the road project; and that, for this reason, the suit property was not gazetted for compulsory acquisition.

12. The 3rd respondent contended that the appellant's claim for trespass was misconceived since he was compensated for purposes of relocating and/or removing his affected structures that had encroached on the thirty (30) meter wide road corridor in June 2016 as per its obligation under Section 111(1) of the Land Act, Cap 280; and that, any further compensation for land not compulsorily acquired would be absurd and an abuse of the court process. It thus prayed that the suit be dismissed with costs.

13. The 2nd respondent neither entered appearance nor filed a statement of defence.

14. At the hearing, the appellant ***(PW1)*** adopted his witness statement dated 27th June 2017. He also produced a list of documents of even date and a further list of documents dated 2nd November 2017. He denied that he received any compensation for the petrol station, which he asserted was built on the suit property. He stated that, as per the valuation

report dated 5th April 2017, he suffered loss of Kshs.14,000,000. It was his case that he was compensated for a different plot and not the subject suit property which the respondents encroached upon.

15. Mr. David Chege Kariuki ***(PW2),*** a registered and licensed valuer, testified that, on 5th April 2017, he prepared a report concerning the suit property; that the suit property measured
1.019 acres, and that, by the time he conducted the valuation, the petrol station pumps had been removed; that he valued the land and the developments thereon; and that, in his opinion, the same together with severance cost was estimated at Kshs.14,00,000. He produced his report in evidence.

16. Edward Mareye Kiguru ***(PW3)***, a Land Surveyor, testified that, with instructions of the appellant, he was tasked to establish the beacons on the suit property, which he did. He stated that there was an existing *'tarmac'* road encroaching on the suit property, which covered an area of 178 square metres or 0.0178 Ha. He prepared a survey report dated 5th June 2017, which he produced as an exhibit.

17. Bartholomew Chachuri Mwanyungu ***(PW4),*** also a Land Surveyor, testified that there was an encroachment of 0.043 Ha upon the suit property. He prepared and produced a report dated 5th November 2021 in this regard.

18. Geoffrey Mbogho Mwakulomba ***(DW2),*** the 1st

respondent’s Human Resource Manager, adopted his witness statement

dated 22nd June 2021 and produced in evidence the contract agreement dated 31st December 2013 between itself and the 3rd respondent. He testified that the contract agreement instructed the 1st respondent to construct the road project and that, before starting the road project, they considered and relied on the survey of the project as conducted by the 3rd respondent. DW2 denied breaching any term of the contract, and accordingly advised the appellant to direct his complaint to the 3rd respondent as the party responsible for the project.

19. On behalf of the 3rd respondent, Daniel Kariuki Muteti ***(DW1),*** a Land Surveyor, adopted his witness statement dated 10th May 2021. His testimony was that the persons who had undertaken developments on the 30 metres' road reserve were to be compensated in terms of the agreement between it and the financier (AfDB) for purposes of facilitating them to relocate; that all the land that was to be compulsorily acquired for the project was gazetted; that the road reserve was not gazetted because it was not part of the land that was compulsorily acquired; that the compensation paid to the persons who had encroached on the road reserve was pursuant to valuation done by the 2nd respondent; that the appellant was accordingly compensated; and that he was not entitled to any further compensation. He produced a report in evidence in line with his testimony.

20. On cross-examination, DW1 stated that the road project did not encroach on the suit property; and that, in any

event, the appellant was compensated in the sum of over

Kshs.6,000,000 pursuant to the valuation report by the 2nd respondent for the structures he had erected on the road reserve.

21. The 2nd respondent did not participate in the proceedings before the trial court.

22. In her judgment, the learned Judge ***(Matheka, J.)*** observed that there was no dispute that the suit property belonged to the appellant as was evidenced by the Certificate of Lease dated 1st June 1991; and that both the appellant and the 3rd respondent relied on the evidence of the Survey Plan Form F/R No. 214/47 for the suit property dated 20th August 1991. Upon scrutiny of the Survey Plan, the learned Judge held that there was a 30-metre road reserve sitting next to the suit property; and that, from the Land Acquisitions Drawings presented by the 3rd respondent, the appellant's developments were located within the 30-metre-wide road reserve for which the appellant was fully compensated in June 2016, a fact he did not challenge.

23. As to the claim of Kshs.14,925,000, being the amount claimed on the basis of the valuation report dated 5th April 2017, comprising the value of the land, fuel tanks, pumps and other developments, the learned Judge held that the same was not proved for the reasons that the two survey reports produced reported a different magnitude of encroachment by the 3rd respondent, and that none of the surveyors called as witnesses by the appellant could

explain to the court the real extent of the encroachment; and that the

appellant failed to demonstrate the manner in which he was able to value the fuel tanks and pumps in his petrol station, or even produce documents to show that he was running a petrol station.

24. In the ultimate, the learned Judge found that the appellant was fairly and justly compensated for the developments he had undertaken on the road reserve next to the suit property; that there was no encroachment on the suit property by the 3rd respondent as he alleged; and that there was no compulsory acquisition by the 2nd respondent of the portion of land the appellant occupied for the benefit of the 1st respondent. Accordingly, the appellant's case was dismissed with costs to the 1st and 3rd respondents.

25. Aggrieved by the trial court's decision, the appellant is now before this Court on appeal. In his Memorandum of Appeal dated 23rd January 2023, he has raised eight (8) grounds of appeal, namely that the trial Judge erred in both law and in fact:

    i. ***for failing to consider his evidence which led her to arrive at a wrong conclusion and decision;***

    ii. ***for failing to consider the Survey Reports he relied upon, which confirmed that there was encroachment on the appellant's land;***

    iii. ***by failing to properly evaluate the evidence he and his witnesses adduced which evidence supported his claim of illegal encroachment;***

iv. by arriving at a conclusion that he failed to prove encroachment, and yet the two Surveyors' reports were clear and were produced in evidence;

v. by failing to direct herself and find that the claim was about encroachment on land, and not a claim for compensation of structures on the said land, leading to her arriving at a wrong conclusion;

vi. by concluding that he had sought compensation for Kshs.14,925,000 for compulsory acquisition of the suit property, and yet the valuation report was clear on the categories of compensation he was seeking, and that this led the court to arriving at a wrong conclusion;

vii. by making conclusion that the 3rd respondent produced a survey report rebutting the report produced by his Surveyors, and yet there was no Surveyor's report produced by the 3rd respondent, and this conclusion was detrimental to his case leading to the dismissal of the suit; and

viii. that the evidence produced before the trial court did not support the decision the trial Judge arrived at, and particularly the decision to dismiss his case.

26. The appellant prays that: the appeal be allowed as prayed; the Judgement of Hon. Matheka, J. in Mombasa ELC Case No. 234 of 2017 be set aside; judgement be entered in his favour against the respondents for special damages, and that the Court assesses general damages as prayed for in

the plaint plus costs and interest; the Court awards costs and interest of the appeal; and that the Court awards any remedy it deems fit in the circumstances of the appeal.

27. We heard this appeal on 29th May 2025. Learned counsel ***Ms. Mwanzia*** appeared for the appellant while learned counsel ***Ms. Kiiru*** appeared for the 1st respondent. There was no appearance for and on behalf of the 2nd and 3rd respondents. Both counsel relied on their respective parties' written submissions. Despite its non appearance, the 3rd respondent filed written submissions to which we shall shortly turn.

28. In his written submissions dated 28th December 2023, the appellant contended that, although the suit property was not gazetted for compulsory acquisition, the 3rd respondent encroached on it while constructing the road project; that he was only compensated for the structures on the suit property, but not the land itself; that some of the developments thereon such as five fuel tanks were removed to pave way for the construction of the road project for which he was also not compensated; that, taking into account that the construction of the road project went beyond the 30 metres' road reserve radius, the 2nd respondent was obligated to gazette the suit property for compulsory acquisition; that, in the absence of such gazettement, his right to property under ***Article 40*** of the ***Constitution*** was violated; that the 2nd respondent did not file a defence before the trial court to demonstrate the process followed to acquire the suit property before allocating it to the 3rd respondent; and that, there was no evidence that the suit property was procedurally acquired, and therefore the 3rd respondent could not claim to have undertaken the road project

legally.

29. The appellant faulted the trial court for relying on the valuation reports which depicted varied measurements of the land encroached on by the road project; that, on his part, he was able to demonstrate that the suit property had been encroached upon to the extent that he was forced to relocate fuel tanks so as to create way for expansion of the road project; and that, in the event we arrive at the conclusion that compulsory acquisition of the suit property was not necessary, we should find and hold that he ought to have been compensated for damage of the property and developments thereon.

30. In emphasising that no notice of intention to acquire a portion of his land was issued, and that neither was he paid any compensation for the portion encroached upon by the road project, the appellant relied on the decision of the Supreme Court in ***Attorney General vs. Zinj Limited (2021) KESC 23 (KLR)*** where it was held, *inter alia,* that compulsory acquisition ought to be in conformity with ***Article 40(3)*** of the ***Constitution*** which upholds a person's right to property.

31. The 1st respondent relied on submissions dated 3rd March 2025 by which it contended that the appellant did not proof his case to the required standard, on a balance of probabilities. It maintained that it was contracted by the 3rd respondent to upgrade the road project, a fact that is not disputed by the 3rd respondent's witness (DW1); that, on this ground, it had no independent mandate in compulsory land acquisition for the project; that the right

of way (access) to the project was solely determined by the 3rd respondent; and

that, consequently, it cannot be held liable for the acts performed within the scope of its agency. Reliance was placed on the provisions of ***Section 4(1)*** and ***(2)*** of the ***Kenya Roads Act*** which provides that the 3rd respondent is to be responsible for the management, development, rehabilitation and maintenance of national roads and that, therefore, the authorization of the road project was the sole mandate of the 3rd respondent.

32. It was argued that the issues surrounding compulsory acquisition of the suit property lay with the 2nd respondent and that, for all intents and purposes, the appellant was duly compensated for the acquisition of his property. The decision of the Environment and Land Court sitting at Kericho in ***Unilever Tea Kenya Limited vs. National Land Commission & 2 Others*** ***(2018) KEELC 1271 (KLR)*** was cited in which case ***(Unilever Tea Kenya Limited),*** the 3rd respondent's application was allowed, the effect of which was that the suit against it was struck out for failure to disclose a reasonable cause of action; and that, for the same reason, the trial court cannot be faulted for holding that the 1st respondent herein was acting on instructions of a third party and that, therefore, it did not encroach on the suit property. We were accordingly urged to dismiss the appeal.

33. The 3rd respondent filed written submissions dated 7th February 2025 by which it isolated the issue for determination, namely whether the trial court properly evaluated and considered the appellant's evidence. It was

submitted that, under ***Section 107(1)*** and ***108*** of the

Evidence Act, the standard of proof of facts lies on the person who claims the existence of those facts as was held by the High Court in Bungoma in ***Election Petition No. 2 of 2017 Suleiman Kavuti Murunga vs. IEBC & 2 Others (2018) KEHC 8305 (KLR);*** and that the trial court properly evaluated the evidence adduced before it; and that, in this case, the appellant's evidence was found to be inconsistent and insufficient.

34. According to the 3rd respondent, it was demonstrated that the suit property was not earmarked for compulsory acquisition; and that, in any case, the appellant was duly compensated for purposes of relocation of his business structures that encroached on the road reserve; that the compensation was done in accordance with the Resettlement Action Plan by AfDB; and that the appellant had no proprietary interest in a road reserve, and was therefore not entitled to compensation as was correctly held by the superior court (the ELC sitting Kitui) in ***Kyambia & 10 Others vs. Kenya National Highways Authority & 2 Others (2024) KEELC 226 (KLR)***

35. The 3rd respondent was emphatic that, contrary to the appellant's claim of trespass, the appellant was the aggressor as it was him who had encroached upon the road reserve; that the survey maps and Land Acquisition Drawings confirmed that the road project was confined within the designated 30 metres wide corridor, being the road reserve; and that, by dint of ***Section 89(1)*** of the ***Evidence Act***, the maps and drawings having been made

or published by the authority of the government or a government department are

presumed to represent an accurate position as regards the extent of the road project, and whether the suit property had been encroached upon by the road project. Reliance was placed on the decision of the High Court of ***Karanja Karenju vs. Attorney General & Another (2008) KEHC 3104 (KLR)*** for the proposition that maps and drawings made or published by the authority of the government, or a government department represent the accurate position of the land in issue; and that, there being no evidence to the contrary, the appellant had no valid basis for his claim, as a result of which the appeal ought to fail.

36. As the first appellate Court, our mandate as provided under ***rule 31(1)*** of this ***Court's Rules, 2022*** is to re-appraise the evidence adduced before the trial court and draw inferences of fact. This Court in ***Geoffrey Muthinja & another vs. Samuel Muguna Henry & 1756 others (2015) KECA 304 (KLR)*** elaborated on this mandate as follows:

> ***"As this is a first appeal, our mandate is a broad one and involves, by dint of Rule 29(1) (now Rule 31(1) of the Court of Appeal Rules, a fresh and exhaustive examination, re- evaluation and re-analysis of the entire record with a view to drawing our own inferences and making our own independent conclusion, on all the material before us. We pay a measure of deference to the findings of the first instance Court but are free to depart from them in appropriate cases, where they are founded on no evidence, constitute a***

misapprehension of the law or are plainly wrong. The latitude to depart is wider where, as in this case, there was no trial involving the taking of viva

voce evidence in which case the first instance Judge would have had the added advantage of hearing and seeing the witnesses and so would have been better placed to judge their credibility and make a more informed judgment on the veracity of the opposing cases."

37. Our mandate as a first appellate court was also expounded in the case of ***Makube vs. Nyamuro (1983) KECA 29 (KLR)*** as follows:

"However, a Court of Appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching the findings he did."

38. We have considered the record of appeal, the respective parties' written submissions, the authorities relied upon by the parties and the law. The issues that fall for determination are: whether the appellant's suit property was compulsorily acquired within the province of the law; and whether, to that end, he was entitled to compensation.

39. The common ground is that the appellant was at all material times the registered owner of the suit property L.R. No. 4118/340. A Certificate of Title dated 1st June 1991 attests to this undisputed fact. The 1st and 3rd respondents' position is that it is the appellant who encroached on the road reserve by putting up a petroleum business and constructing other structures thereon. To them, the

appellant was already compensated and was not therefore entitled to further

compensation as the suit property was never compulsorily acquired.

40. The answers to the issues in dispute lie with the scrutiny of the evidence adduced before the trial court.

41. In order to determine the extent of the alleged encroachment to the suit property by the 3rd respondent, the appellant instructed two separate surveyors who prepared different reports. The first report dated 5th June 2017 was prepared by Mr. Edward J. Kiguru ***(PW3).*** As per the instruction letter, he carried out a boundary survey of the suit property in accordance with Survey Regulations. He concluded that there was a road encroachment of an area covering 0.0178 Hectares.

42. The second survey report dated 5th November 2021 was prepared by B. C. Mwanyungu ***(PW4),*** a licensed surveyor. The scope of the survey was to determine the position of the suit property; carry out a topo-cadastral survey so as to note any alleged encroachment by the 3rd respondent in construction of the road project; mark out the size of the encroachment in hectares; and to note any other details.

43. PW4 relied on Survey Plans Nos. 136/174, 312/16 and 214/47, which were authenticated by the Director of Survey. He observed that the suit property abuts 30 metre road reserve for the Kenya-Tanzania Highway in Taveta Town. The total area of the suit property was found to be 0.4124 Ha on the survey plan FR No. 214/47. The

constructed road

pavement by the 3rd respondent encroached into the suit property covering an area of 0.0431.

44. A scrutiny of the Survey Map F/R214/47 of the suit property and the abutting maps – F/Rs 312/16 and F/R 136/174 depicts that there was a 30-metre-wide road provision on either side of the highway. The topo-cadastral survey map produced by PW4 clearly indicated that the road next to the suit property where the road to Tanzania was expanded covered a 30 metres' radius.

45. It follows therefore that the 30-metres' road radius provision was an automatic right and/or reservation given to the 3rd respondent for future road expansion program. There was therefore no need to compulsorily acquire what had already been made provision for. A further interrogation of the topo - cadastral map shows that the suit property remains intact. What was affected in the expansion of the highway, was the 30-metre boundary, that being a portion of land that was already delineated to cater for future road projects and/or expansion. So that, the prevailing situation on the ground, resulted in the expansion of the side of the road leading to Tanzania on the 30-metre road reserve as designated.

46. By constructing a petrol station on a road reserve, the appellant ought to have known that that was land amenable for use by the government and, in this case, the 3rd respondent. Out of good will, he was one of the persons identified for compensation of the structures erected on

the

road reserve prior to their demolition. To that end, he was paid a tidy sum of Kshs.6,624,600.

47. The road having not passed through the appellant's suit parcel, we reach the ineluctable conclusion that there was no reason for the suit property to be compulsorily acquired, and conversely, the 3rd respondent had no business in compulsorily acquiring a road reserve.

48. The foregoing conclusion also addresses the second issue as to whether the appellant was entitled to any compensation. Since the road was not constructed on the appellant's land, but on the road reserve, the government did not compulsorily acquire the appellant's land. Consequently, the appellant was not entitled to any compensation. Indeed, he is fortunate to have undeservedly benefited from a sum of Kshs.6,624,600 notwithstanding the fact that he was the aggressor, having encroached on a road reserve.

49. In dismissing the appellant's suit, the learned Judge held that:

> ***"I find that the plaintiff was fairly compensated for the developments he made on the road reserve and received just compensation for it. The suit property was not compulsorily acquired by the 2nd defendant for the benefit of the Third Party since the same was not gazetted as one of the affected parcels of land. From the material before court, I find that the 1st defendant acting on the instructions of the Third Party did not encroach onto the suit***

property. The plaintiff has failed to establish on a balance of probability that the

road encroached onto his suit property and the prayers sought in the amended plaint dated 2nd November 2017 are dismissed with costs to the 1st defendant and the Third Party."

50. In the circumstances, it cannot be said that the trial court dismissed the appellant's suit on flimsy grounds. In our view, the appellant has not demonstrated that the learned Judge misdirected herself in law or in fact as alleged on any of the grounds of appeal to warrant our interference with her decision. We find nothing on which we can fault the learned Judge for concluding that the appellant was not entitled to any compensation.

51. Consequently, we find that this appeal lacks merit and is hereby dismissed with costs to the 1st and 3rd respondents.

Dated and delivered at Mombasa this 27th day of February, 2026.

A. K. MURGOR

.....
JUDGE OF APPEAL

DR. K. I. LAIBUTA CArb, FCIArb.
.....
JUDGE OF APPEAL

G. W. NGENYE-MACHARIA
.....
JUDGE OF APPEAL

I certify that this is the true copy of the original

signed
DEPUTY REGISTRAR