

**IN THE COURT OF APPEAL**

**AT MOMBASA**

**(CORAM: MURGOR, NGENYE & JOEL NGUGI, JJ.A.)**

**CIVIL APPEAL NO. E136 OF 2023**

**BETWEEN**

**SAADA HAMID MOHAMED.....APPELLANT**

**AND**

**THE BOARD OF MANAGEMENT**

**PENTROSE COMMUNITY SCHOOL.....1<sup>ST</sup>  
RESPONDENT**

**WAVECON ENTERPRISES LTD.....2<sup>ND</sup>  
RESPONDENT**

***(An Appeal from the Judgment of the Environment and  
Land Court at Mombasa (N.A. Matheka J.) delivered on the  
26th day of July, 2023***

***in***

***Land Case No. 26 of 2019)***

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

***The Appellant, Saada Hamid Mohamed*** instituted a  
suit against the Respondents seeking the following orders:

*a. A permanent injunction restraining the respondents by themselves their servants/agents from encroaching upon/trespassing onto/ passing through or occupying the suit property and/or in any other manner interfering with the indefeasible rights of ownership of the Appellant over the suit*

*property No. MN/1/11375.*

*b. An award of general damages for trespass and conversion of private property.*

*c. An award of special damages in the ascertained value as per the valuation report dated 4<sup>th</sup> February 2019 for re-building of the perimeter wall.*

*d. Costs of this suit.*

The Appellant claimed that, at all material times, she was the registered proprietor of the property known as Parcel No. MN/1/11375, (*the suit property*) located in Nyali and measuring approximately 0.054 hectares. She claimed that she was in actual possession of the suit property which she had fenced. She contended that the land was free from any third-party claims, that it did not encroach upon any public or private road, and that no third party had laid claim to the title. She stated that she bought the property in 2015 for Kshs. 3 million from one Ibrahim, and that when she bought it, she was told there was a case on the land and that she was the third owner.

The Appellant's case was that the 1<sup>st</sup> Respondent's School had commenced construction of classrooms and toilets on its parcel of land situated behind the suit property, and that the construction was being carried out by the 2<sup>nd</sup> Respondent. She further stated that she was informed that the Respondents had demolished part of her perimeter wall in 2018 to create an access road, which the 2<sup>nd</sup> Respondent used to transport

construction materials to the 1<sup>st</sup> Respondent's school; that the 2<sup>nd</sup> Respondent's trucks traversed her property on a daily basis while delivering building materials to the construction site and when removing waste materials therefrom. The

Appellant claimed that the Respondents' actions in demolishing her perimeter wall and creating a pathway across her private property amounted to trespass and conversion and were unlawful.

The Appellant reported the matter to Nyali Police Station, where she was issued with OB No. 77124101119. She further issued both oral and written demands to the Respondents, but the Respondents persisted with the impugned activities. The Appellant asserted that the Respondents' conduct constituted trespass onto private property and amounted to a wanton violation of her right to property as protected under Article 40 of the Constitution.

In response, the 1<sup>st</sup> Respondent denied the Appellant's claim and put her to strict proof thereof. In support of its case, the 1<sup>st</sup> Respondent called **Meck Rubia Naika, DW1**, the Chairman Board of Management of the 1<sup>st</sup> Respondent and the officer in charge of the school's resources. DW1 stated that the school was situated at Shauri Yako, which was a public land; that the school was registered in 2016 and had a population of over 1,000 pupils, with approximately 20 employees; that it initially operated as a non-formal institution under the Municipal Council of Mombasa, but had since been converted

into a public school and had been receiving government funding for some time.

According to DW1, from the time of its establishment, the school had continuously used an access road linking it to the main road, which enabled pupils to access the school with ease. He contended that around 2016, an individual emerged and began fencing off the access road, claiming ownership of the suit property, and in the process fenced off the school entrance; that this action caused a commotion within the community, leading to demonstrations by villagers against the alleged owner, who subsequently stopped developments on the suit property.

The 1<sup>st</sup> Respondent wrote to the Ministry of Lands seeking assistance through the Lands office, but no response was forthcoming. Subsequently, the Appellant claimed ownership of the access road, alleging that she had purchased it from the previous owners, whereupon she erected a wall that blocked access to the school; that the community was aggrieved by the Appellant's actions and staged demonstrations on the suit property, which resulted in the wall being brought down. The Respondents denied damaging the Appellant's property, and asserted that, granting the orders sought by the Appellant would interfere with the pupils' constitutional right to access free and fair education.

Upon considering the dispute, the trial court found as a fact that the Appellant was the registered proprietor of the suit property and that a Certificate of Title had been issued in her name. However, the Court held

that registration alone was not conclusive where the root of title was challenged, and that the Appellant bore the burden of demonstrating that her acquisition of the suit property was legal, procedural, and free from any illegality.

Upon evaluating the evidence, the court found that the survey plans dating back to 1974 showed that the suit property constituted an official access road to government land upon which the 1<sup>st</sup> Respondent's school was built. The court accepted the Respondents' evidence that the access road had existed long before the creation and subsequent registration of the Appellant's parcel, and that the school had continuously relied on the access road for the benefit of over 1,000 pupils.

The Court further found that the subdivision and allocation of the suit property was undertaken irregularly as the land was not available for allocation, having already been reserved for utilization as an access road. Consequently, the court held that the Appellant's title was acquired illegally and un-procedurally and, therefore, fell within the exceptions to indefeasibility of title under **Section 26(1)(b)** of the **Land Registration Act, 2012**.

In the result, the court found that the Appellant failed to

prove her case on a balance of probabilities, and in so doing, dismissed the suit thereby declining to grant the orders of trespass sought.

Aggrieved, the Appellant has filed an appeal to this Court on the grounds: that the learned Judge was in error in failing to address the issue of trespass and damage to property, but entertained issues that were not pleaded or prayed for; that the learned Judge failed to properly evaluate the evidence presented thereby arriving at a wrong conclusion; that the learned Judge wrongly relied upon and determined the suit on the basis of a survey report that was not produced or admitted on record, and in introducing matters that were not pleaded before the court.

When the appeal came up for hearing on a virtual platform, learned counsel **Mr. Ambwere** appeared for the Appellant, but there was no appearance for the 1<sup>st</sup> Respondent despite their having been served with a hearing notice, and neither did they file written submissions. As concerned the 2<sup>nd</sup> Respondent, following Mr. Ambwere application, the appeal against the 2<sup>nd</sup> Respondent was withdrawn.

In their written submissions, counsel for the Appellant submitted that the learned Judge failed to properly evaluate the evidence and to address the issues that were before the court. It was argued that the issue of title and ownership was never pleaded, framed, or submitted for determination, and that the

dispute before the trial court related strictly to trespass, destruction of property, and damages. Counsel maintained that the legality or illegality of the Appellant's title was neither pleaded nor canvassed by the parties, and

that the court therefore erred by determining an issue that was not before it. In support of this proposition, reliance was placed on the case of **Galaxy**

**Paints Co. Ltd vs Falcon Guards Ltd (CA EA Law Report (2002) 2 EA 385)**, and

**Kenya Commercial Bank vs Sheikh Osman Mohamed (Civil Appeal No. 179 of 2010)**.

Counsel further submitted that ownership of the suit property had previously been confirmed in *High Court Civil Case No. 244 of 2011* at Mombasa (H.M. Okwengu, J. (as she then was)).

Counsel went on to fault the learned Judge for relying on a survey report and other documents that were neither produced in evidence nor subjected to cross-examination; that in the judgment, the court wrongly relied on Survey Plan F/R 127/77 and related findings. It was argued that the survey report was never produced as an exhibit, and the letters allegedly dating back to 1999 were never tendered in evidence; that the school was not registered in 2014, nor was it fully operational in 2017, as stated by the court. Counsel submitted that reliance on unproduced and untested documents amounted to a fundamental misdirection which led to an erroneous decision.

Counsel further submitted that the learned Judge failed to properly evaluate the evidence on record. It was contended that the Judge ignored the evidence supporting trespass and destruction of the perimeter wall; that no evidence was adduced to demonstrate that the Appellant's title was illegally

or improperly acquired, and that reliance on an unproduced survey report was unjustified, particularly considering that survey reports are capable of variation depending on the circumstances. It was asserted that the conduct of public officers in accepting payments and issuing title documents, only to later claim that the land was acquired illegally, should not be visited upon innocent citizens. Counsel urged that the Court protects innocent Kenyans, particularly the Appellant.

We have considered the record, the grounds of appeal and the parties' submissions. This is a first appeal, where the duty of this Court is to reevaluate the evidence and arrive at our own independent findings and conclusions.

In the oft cited case of **Selle & Another vs Associated Motor Board**

**Company Ltd and Others [1968] 1 EA 123**, the Court of Appeal for Eastern

Africa set out the principles to be considered when determining an appeal from the High Court as:

***“An appeal from the High Court is by way of retrial and the Court of Appeal is not bound to follow the trial judge findings of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of the demeanour of a witness is inhabited with the evidence generally.”***

See also ***Nicholas Njeru vs Attorney General & 8 others [2013] eKLR (Civil***

***Appeal 110 of 2011).***

With the afore going principles in mind, we consider that the issues for determination are ; i) whether in determining the question of trespass on the suit property, the learned Judge rightly interrogated the Appellant's root of title; ii) whether the Appellant demonstrated that she had acquired a valid title; iii) whether the trial judge determined unpleaded issues; iv) whether the trial Judge took into account documents not properly produced; and v) whether the Appellant was entitled to the orders sought.

The Appellant's suit was premised on a claim of trespass by the 1<sup>st</sup> Respondent onto the suit property which belonged to her as the registered owner. She further claimed general damages for trespass and special damages for demolition of the wall.

The tort of trespass is provided for under **Section 3(1)** of the **Trespass Act**

which provides:

***“Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”***

Section 2 of the Act further defines private land as, *inter*

*alia*, land which is owned or occupied by any person by virtue of a freehold title, a certificate of ownership or lease. Trespass is therefore the unlawful intrusion by a person upon the land of another who is in possession and ownership thereof.

The textbook ***Clerk & Lindsell on Torts (21st Edition)*** at page **1345**, specifies that trespass occurs where there is entry onto another person's land without the consent of the owner or without lawful justification. So that, for trespass to be established, there must be a physical entry onto the land of another, and such entry must be without the permission of the landowner or without any reasonable or lawful excuse.

In the case of **Church Commissioners for Kenya of the Anglican Church of**

**Kenya vs Wayuga (Civil Appeal 111 of 2018) [2024] KECA 1048 (KLR)**, this

Court held that;

***“Trespass is described under the Trespass Act Cap 294 to mean “any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof...”***

So that, for a claim for trespass to be founded, the person alleging trespass must demonstrate a valid proprietary interest in the land in question.

In the instant case, however, the 1<sup>st</sup> Respondent challenged the validity of the title relied upon by the Appellant, contending that historically, the suit property constituted an

access road serving the public land upon which its School was established. It was argued that the land was, therefore, not available for allocation, and that the title having been irregularly and un-procedurally acquired by the Appellant, the question of trespass did not arise.

In addressing the question of whether the Appellant established trespass on her land, the trial Judge had this to say:

***“This is a school of over 1000 children and how are they to operate if they are land locked! It was only in 1996 when the plaintiff’s plot was created. The plaintiff’s deed plan which was produced as evidence is dated 25<sup>th</sup> June 2000. The first registration was on 1<sup>st</sup> June 1996 to Ali Mwatsahu, second on 23<sup>rd</sup> September 2022 to Ibrahim Hassan Abubakar and finally it was transferred to the plaintiff on 20<sup>th</sup> February 2015. I think it is common sense that the school had to have an access road...”***

The trial court went on to hold that:

***“I find that the suit parcel is an access road to the 1<sup>st</sup> defendant’s compound, the plaintiff clearly acquired it fraudulently and in an illegal manner. Be that as it may, and owing to the illegality and/or unprocedurality that informed the transaction in favour of plaintiff cannot be clothed with indefeasibility, either in the manner pleaded by the plaintiff or at all.”***

In other words, in the trial court’s view the 1<sup>st</sup> Respondent claim that the land was a public access road to its School, amounted to a challenge of the Appellant’s title, whereupon it became incumbent upon the Appellant to prove that the root of her title was acquired procedurally and legally.

As to whether the trial court was mandated to interrogate the Appellant’s title having regard to the circumstances of the

case, it is trite law that once a challenge to title is raised, the evidentiary burden shifts to the person claiming proprietorship to demonstrate that title was lawful, regular, and free from any illegality.

The reason for this is spelt out in **Section 26(1) of the Land Registration Act, 2012** which provides the sanctity and the indefeasibility of title to immovable property pertains only in the absence of fraud, misrepresentation or other unlawful conduct in its acquisition. The provision specifies:

***“The certificate of title issued by the registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—***

***a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***b. Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.”***

This Court in the case of **Munyu Maina vs Hiram Gathina Maina [2013]**

**eKLR** stated that:

***“...when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument that is under challenge and the registered proprietor must go beyond the instrument and prove legality of how he acquired the title and show that the acquisition was legal,***

***formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant's testimony."***

To wit, under **Section 26** of the **Land Registration Act**,  
a Certificate of Title issued by the Registrar upon registration or  
to a purchaser of land upon

transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner. However, this is subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the Certificate. Of significance is that the title of the proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation and where the Certificate of Title was acquired illegally, un-procedurally or through a corrupt scheme.

In the instant case, the 1<sup>st</sup> Respondent having challenged the validity of the title relied upon by the Appellant, when it contended that historically, the suit property constituted an access road serving the public land upon where the 1<sup>st</sup> Respondent's School was established, the evidentiary burden shifted to the Appellant to demonstrate that the title to the suit property was acquired lawfully, procedurally, and free from any illegality within the meaning of **Section 26(1)(b)** of the **Land Registration Act**.

On the basis of the challenge to the validity of the Appellant's root of title, the trial Judge had the mandate to interrogate her title to establish its validity before considering

whether she was entitled to the reliefs sought.

In the case of **Chemey Investment Limited vs Attorney General & 2 Others [2018] eKLR**, this Court rendered itself thus:

***“Decisions abound where courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor...”***

This position was also reiterated by the Supreme Court in the case of

**Funzi Development Ltd & Others vs County Council of Kwale, [2014] eKLR**

where it was held that:

***“...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”***

In the case of **Dina Management Limited vs County Government of**

**Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)**, the

Supreme Court reiterated that:

***“Article 40 of the Constitution entitled every person to the right to property, subject to the limitations set out therein. Article 40(6) limited the rights as not extending them to any property that had been found to have been unlawfully acquired. As the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter could not therefore be protected under Article 40.”***

In the case of **MFI Office Solutions vs Landlords**

**Limited & 3 others (Civil Appeal E351 of 2023) [2025]**

**KECA 1200 (KLR)**, this Court stated:

***“We are, however, not to be understood to be watering down the importance of title to land. Neither are we saying that, once allegations are made, however spurious, that the title was inappropriately obtained, the registered proprietor will thereby be called upon to prove the root of title. To take that casual view would open floodgates to for those whose aim is simply to cause mischief to conjure up fanciful allegations simply***

***to vex title holders for ulterior motives. Our view is that, in order to call upon title holders to prove the root of their title, there must be credible allegations and a basis laid for believing that acquisition of property may have not been made through proper channels. Only then is the registered proprietor called upon to prove the process through which that title was acquired.”***

Similarly, this Court in ***Presbyterian Foundation vs Kibera Siranga Self***

***Help Group Nursery School (Civil Appeal 64 of 2014)***  
***[2023] KECA 371 (KLR)***

stated as follows regarding a claim over the existence of two titles in respect of the same parcel land:

***“The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title, starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements: (a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question; (b) it must contain a recognizable description of the property; (c) it must not contain anything that casts any doubt on the title.”***

The above cited authorities are unequivocal that, where there are competing claims to property, a party claiming

ownership must not only demonstrate their proprietary interest, but also that their interest is founded on a good root of title, failure to which, a court of law cannot on the basis of indefeasibility of title ignore or disregard a title that was obtained illegally, irregularly or un-procedurally.

Having found as we have, we consider the Appellant's complaint that the trial Judge determined unpleaded issues to be unfounded and unjustifiable. We say this because, the 1<sup>st</sup> Respondent having challenged her title, the burden shifted to the Appellant to demonstrate that her title and its root were lawful, thus rendering it a material issue for consideration by the learned Judge, prior to determination of the question of trespass. See **Odd Jobs vs Mubia [1970] EA 476**. For this reason this issue lacks merit.

The next issue is whether the Appellant demonstrated that her proprietary interest was founded on a good root of title. It cannot be gainsaid that mere production of a title document did not, of itself, constitute conclusive proof of ownership where the root of that title is in dispute. The registered proprietor is required to demonstrate, beyond the instrument of title, that the process of acquisition from its inception was lawful and procedurally sound. The responsibility rests upon a purchaser to undertake careful due diligence prior to acquisition, including an inquiry into the root of the title, in order to ascertain that a valid title was capable of being conveyed. This position was affirmed by this Court in **Galaxy Realtors Limited**

**vs Kenya Forest Service [2024] eKLR and Thoya vs Mwaro (Civil Appeal E041 of 2022) [2025] KECA 931 (KLR).**

In the present appeal, the Appellant produced a title, a deed plan, a sale agreement, and transfer of the suit property. She did not however adduce any

evidence pertaining to the root of her title and whether it was lawfully and procedurally acquired, and nor did she demonstrate that she conducted adequate due diligence to establish a valid root of title capable of passing a good and indefeasible interest.

Crucially, she failed to rebut the evidence of the historical usage of the suit property as an access road serving public land. The record is clear that she was aware that access to the 1<sup>st</sup> Respondent's School was through the suit property. It is this knowledge that precipitated her action to construct a perimeter wall, and a gate to inhibit the students and members of the community from accessing the 1<sup>st</sup> Respondent's School through the suit property. The usage of the suit property as a public access, should have led the Appellant to further interrogate the root of the title to the suit property. Had she done so, she may have found that the land was unavailable for allocation *ab initio*, which fundamentally undermined the validity of the title she relied upon. Given that the Appellant failed to explain how the land became available for private allocation and registration, this burden was not discharged.

Furthermore, the existence of an access road constituted an overriding interest within the meaning of the Land

Registration Act, which did not require notation on the register and bound subsequent proprietors. As such, even assuming that the Appellant was an innocent purchaser, the title she

acquired could not defeat the pre-existing public right of way. The trial court was, therefore, entitled to conclude, and rightly so that the Appellant's title was impeachable and incapable of supporting the reliefs sought.

As pertains to the Appellant's submission that ownership of the suit property had been previously determined in *Mombasa High Court Civil Case No. 244 of 2011* (H.M. Okwengu, J. (as she then was)), this contention is without basis. First, the Appellant was not a party to those proceedings and cannot, therefore, rely on the outcome thereof to assert proprietary rights. Secondly, a perusal of the decision reveals that it was merely a ruling on an interlocutory application, in which the court made no final determination on ownership and issued no substantive orders.

On the contrary, the ruling expressly raised concerns regarding the validity of the seller's title, noting that the land in question was alleged to constitute an access road which had been fenced off, thereby obstructing access to other proprietors. Far from supporting the Appellant's claim, the ruling underscored the very challenge to title that persists in the present matter. Therefore, the Appellant's reliance on a prior interlocutory ruling in *High Court Civil Case No. 244 of*

*2011* was misplaced.

With respect to the next issue as to whether the trial Judge took into account documents not properly produced, the Appellant faulted the trial court for reliance on documents, particularly a survey report and historical

survey plans, which it was asserted, were not formally produced as exhibits or subjected to cross-examination. Reliance on unproduced documents would amount to a misdirection, as courts are bound to base their findings strictly on evidence properly tendered and tested during trial.

The case of **Kenneth Nyaga Mwige vs Austin Kiguta & 2 others [2015] KECA 334 (KLR)** held that:

***“The mere marking of a document for identification does not dispense with the formal proof thereof. How does a document become part of the evidence for the case? Any document filed and/or marked for identification by either party, passes through three stages before it is held proved or disproved. First, when the document is filed, the document though on file does not become part of the judicial record. Second, when the documents are tendered or produced in evidence as an exhibit by either party and the court admits the documents in evidence, it becomes part of the judicial record of the case and constitutes evidence; mere admission of a document in evidence does not amount to its proof; admission of a document in evidence as an exhibit should not be confused with proof of the document. Third, the document becomes proved, not proved or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents - this is at the final hearing of the case. When the court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a***

***document has been proved or disproved or not proved, the Court would look not at the document alone but it would take into consideration all facts and evidence on record.***

***19. The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of a document for identification has no relation to its proof; a***

**document is not proved merely because it has been marked for identification.**

**20. Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.”**

Whilst it is true that the historical survey report was not produced as evidence by the 1<sup>st</sup> Respondent, the objection to the court’s reliance on the report does not materially advance the Appellant’s cause. This is because, the existence of the access road and its historical usage was not established solely through the impugned documents, but was also supported by uncontroverted oral testimony and the surrounding factual matrix, including the long- standing and open use of the route by the school and the surrounding community. Additionally, the Appellant’s own admission that the suit property was previously involved in similar controversies was also revealing. So that, even without reliance on the disputed documents, the evidence pointed definitively to the existence

of an access road to where the suit property was located, thereby raising sufficient doubt as to the validity of the Appellant's title. This ground is without merit.

In sum, we are satisfied, as was the learned Judge, that the Appellant failed to establish a good root of title against the 1<sup>st</sup> Respondent's challenge to her title to the suit property with the result that the Appellant's claim for trespass could not be sustained.

In sum, the appeal is without merit and is hereby dismissed with costs to the 1<sup>st</sup> Respondent.

***It is so ordered.***

***Dated and delivered at Mombasa this 13<sup>th</sup> day of March, 2026.***

**A.K. MURGOR**

.....  
**JUDGE OF APPEAL**

**G.W. NGENYE-MACHARIA**

.....  
**JUDGE OF APPEAL**

**JOEL NGUGI**

.....  
**JUDGE OF APPEAL**

*I certify that this  
is the true copy  
of the original*

***signed***  
**DEPUTY**  
**REGISTRAR**