

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC NO. 1 OF 2021

JULIE CHEPTARUS KANDIE.....
PLAINTIFF

VERSUS

GODFREY OFUNYA OMONDI WANYIMBI.....1ST
DEFENDANT

THE LAND REGISTRAR, ELDORET, UASIN GISHU.. 2ND
DEFENDANT

THE ATTORNEY GENERAL..... 3RD
DEFENDANT

JUDGMENT

Introduction

1. By a plaint dated 8th January, 2021, the Plaintiff sought the following reliefs against the Defendants:
 - a. **A declaration that registration of the 1st Defendant as the owner of the suit land – Eldoret Municipality Block 14/1153 and subsequent issuance of Certificate of Title by the 2nd Defendant was fraudulent, unlawful and illegal and void ab initio as such violated the Plaintiff’s constitutional rights to property ownership and to quiet enjoyment and possession of private property as enshrined under Article 40 of the Constitution of Kenya.**
 - b. **An order directing the cancellation of the Certificate of Title issued to the 1st Defendant and revert the land parcel Title Number – Eldoret Municipality Block 14/1153 in the name of the Plaintiff.**
 - c. **Permanent injunction to restrain the 1st Defendant from interfering with the ownership, use and possession by the Plaintiff or encroaching and trespassing on the suit property.**
 - d. **Costs of the suit and interest**

e. Any other and/or further relief the Honourable court deems fit to grant.

Plaintiff's evidence

2. The Plaintiff testified that she is daughter to the late Atnas Suter Kandie (deceased) who died in 1981. The Deceased's estate was being administered by the Public Trustee of the Republic of Kenya. The deceased who was polygamous had a number of properties some of which were in the upmarket Estate of Elgon View within Eldoret City.
3. The Plaintiff was given four properties which were all at Elgon View. The properties given to the Plaintiff were Eldoret Municipality Block 14/1137, 1145, 1147 and 1153. In 2009 she went and picked titles for Eldoret Municipality Block 14/1137, 1146 and 1147. In December 2020, she went to Eldoret Lands Registry to pick title for Eldoret Municipality Block 14/1153 whereby she was informed that she had already transferred the title to the 1st Defendant.
4. It is her evidence that she did not know the 1st Defendant and that she had never transferred Eldoret Municipality Block 14/1153 (suit property) to the 1st Defendant. She was advised to engage the services of a lawyer. She went and reported the transfer to Langas police station and later engaged the services of a lawyer who went to the lands office.
5. The Plaintiff gave her specimen signatures which were analysed by a forensic document examiner who produced his report in court. The Plaintiff stated that she sold Eldoret Municipality Block 14/1137.

First Defendant's Case

6. The 1st Defendant testified that in the year 2010, he was desirous of purchasing land in Elgon View. He contacted Hon. Daniel Rono the proprietor of Maestro Properties Limited who connected him to an agent called Edwin Kiptoo. Edwin Kiptoo informed him that the Plaintiff was

selling her property at Elgon View. He organized for a meeting with the Plaintiff. The 1st Defendant requested for a copy of title from the Plaintiff which the Plaintiff gave him.

7. The 1st Defendant gave a copy of the title to his advocate who conducted due diligence and confirmed that the suit property belonged to the Plaintiff. The 1st Defendant paid the purchase price through Hon. Daniel Rono. The 1st Defendant then came to Eldoret where a sale agreement was drafted the purchase price of Kshs.800,000/= having been paid to the Plaintiff through Hon. Rono. The Plaintiff and the 1st Defendant signed the sale agreement and other completion documents. The Plaintiff surrendered the original certificate of lease agreement and the 1st Defendant's lawyer proceeded to lodge the documents at the Lands Registry and title was duly issued to the 1st Defendant.
8. The 1st Defendant fenced the suit property in the year 2010. In the year 2021 the 1st Defendant was surprised when the Plaintiff claimed that she did not know him and that she did not sell the suit property to him.
9. The 1st Defendant called Hon. Daniel Rono as witness. Hon. Rono testified that he is a former MP for Keiyo South and is proprietor of Maestro Properties Limited which has offices in Eldoret, Nairobi and Mombasa. He confirmed that the 1st Defendant approached him and told him that he wanted to purchase a property at Elgon View. Hon. Rono then contacted Edwin Kiptoo a property agent in Eldoret to look for a property at Elgon View.
10. As Hon. Rono wanted to secure his commission, he asked the 1st Defendant to make payment through him. The 1st Defendant agreed and paid the purchase price through him which he then paid the Plaintiff in the presence of Edwin Kiptoo. The Plaintiff surrendered the title to the suit property to the 1st Defendant's lawyer after signing completion documents. His role ended there. He was surprised later when the 1st Defendant informed him that the

Plaintiff had filed a suit against him alleging that she did not sell the suit property to him.

11. The 1st Defendant called the advocate who conducted the transaction between him and the Plaintiff. The advocate is Brenda Oduor who was then working in the firm of Magare & Co. Advocates but she since joined the Office of the Deputy Public Prosecutor as prosecution counsel.

12. The Advocate testified on how she drafted a sale agreement in the presence of the Plaintiff and the 1st Defendant and how she signed a transfer after the clerks from the office confirmed that the suit property belonged to the Plaintiff. She was summoned by the DCI officers from Langas who wanted to confirm whether she had signed the transfer in issue. She confirmed that she had witnessed the signing of the transfer and proceeded to lodge completion documents at Lands Office through the clerks in the law firm. She stated that she was being summoned after over ten years from the time she signed the documents.

13. The 1st Defendant called a document examiner who produced a report he prepared at the request of the 1st Defendant's counsel.

Second and Third Defendants' case

14. A Land Registrar from Eldoret Lands Registry Naomi Rop produced the parcel file in respect of the suit property. She stated that according to the records held by the office, the first entry in the register was that of the Public Trustee of the Republic of Kenya made on 18th August, 1994 as administrators of the Estate of Atnas Suter Kandie deceased. The second entry was in the name of Julie Cheptarus Kandie by way of transmission. The third entry was made on 31st August, 2010 in the name of Godfrey Ofunya Omondi Wanyimbi through transfer.

15. The witness stated that there was payment of stamp duty and that transfer documents were booked in the presentation book. The original certificate of lease in the name of the Plaintiff was surrendered and it was cancelled and a

new one issued in the name of the 1st Defendant. She stated that there is no officer from lands office who has ever been charged for forgery or improper registration and that there was no complaint made by the Plaintiff from the time of transfer until 2021 when a first complaint was raised by the Plaintiff.

Parties Submissions

16. The parties were directed to file written submissions on 16th July, 2025. The Plaintiff filed submissions dated 21st August, 2025. The 2nd and 3rd Defendants filed submissions dated 17th September, 2025. As at 18th September, 2025 the 1st Defendant had not filed submissions. His counsel applied for 14 days to file submissions. The 1st Defendant filed his submissions dated 2nd October, 2025.

Plaintiff's Submissions

17. The Plaintiff identified four issues for determination in her submission as follows:

- i. Whether there was a valid sale.**
- ii. Whether the transfer and registration of the suit property to the 1st Defendant by the 2nd Defendant was fraudulent and unlawful.**
- iii. Whether 1st Defendant acquired good title.**
- iv. Whether the Plaintiff should be granted the orders sought.**

18. On the first issue, the Plaintiff submitted that the burden was on the 1st Defendant to prove that there was a sale agreement. Reliance was placed on Section 109 of the Evidence Act which provides as follows:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”.

19. The Plaintiff further relied on Section 3(3) of the Law of Contract Act which states as follows:

No suit shall be brought upon a contract for the disposition of an interest in land unless—

- a. **The contract upon which the suit is founded—**
 - (i) **Is in writing;**
 - (ii) **Is signed by all the parties thereto; and**
- b. **The signature of each party signing has been attested by a witness who is present when the contract was signed by such party:**

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

20. When it comes to decided cases, the Plaintiff relied on the following cases as regards the first issue. **Reuben K. Arap Serem –vs- Zipporah Meli (2017) KEELC 2092 (KLR), Francis Maina Njogu –vs- Nicolas Kiragu Ngacha (2017) KEELC 3303 (KLR), Wafula –vs- Mwangi & 4 Others (2025) KEELC 4074 (KLR) and James Gatoru Kamande –vs- Ntari Ole Sankaire & Another (2020) KEELC 2147 (KLR).**

21. On the second issue, the Plaintiff submitted that due process must be followed in acquisition of title and that in the present case, the title held by the 1st Defendant was not acquired lawfully. Reliance was placed on the case of **Ngethe –vs- Kenyua Anti-Corruption Commission & Another (2024) KECA 1608 KLR** where the Court of Appeal relied on two of its previous decisions in **Daudi Kiptugen –vs- Commissioners of Lands & Others 2015** and **Funzi Island Development Limited & 2 others –vs- County Council of Kwale & 2 Others (2014) KECA 882 (KLR)** where it was held as follows:

“The necessary Council Resolution was not proved to have been made and the consents/approvals of the Minister for Local Government and the Commissioner of Lands were not sought or obtained prior to the transfer in the Appellant’s name. As the court

held in **Daudi Kiptugen –vs- Commissioner of Lands & 4 Others (2015) eKLR**”.

22. On the third issue, the Plaintiff relied on the case of **Daudi Kiptugen –vs- Commissioners of Lands & Others (Supra)** where it was held that one has to prove the root cause of the title.

23. On the fourth issue, the Plaintiff submitted that she had proved her case and that the title held by the 1st Defendant should be cancelled.

The 1st Defendant’s Submissions

24. The 1st Defendant submitted that the Plaintiff had not proved her case. The allegations of fraud were never proved and that the Plaintiff tried to advance her case based on submissions. The 1st Defendant submitted that submissions cannot take the place of evidence.

25. The 1st Defendant further submitted that the Plaintiff failed to prove the fraud which was attributed to him. He relied on the case of **Vijay Morjaria –vs- Nansingh Madhisingh Darbar & Another (2000) KECA 223 (KLR)** where it was held as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”.

26. The 1st Defendant further relied on the case of **Kinyanjui Kamau –vs- George Kamau (2015) eKLR** where the Court of Appeal stated as follows:

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo –vs- Ndolo (2008) 1KLR (G&F) 742* wherein the court stated that: “...We start by saying that it was the Respondent who was alleging that the will was a forgery and the

burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases....". In cases where fraud is alleged, it is not enough to simply infer fraud from the facts".

27. On the Plaintiff's contention that the transfer was irregular for lack of a sale agreement, the 1st Defendant submitted that Section 3(3) of the Law of Contract does not speak of a sale agreement, but a contract for the disposition of land. He submitted that a transfer meets the requirement of Section 3(3) of Law of Contract Act. He relied on the case of **Demutilla Nanyama Pururmu –vs- Salim Mohamed Salim (2021) eKLR (2021) KECA 595 (KLR)** where it was held as follows:

"As found by the learned Judge, the transfer was signed by the parties in the presence of Onyinkwa Advocates. The Appellant also signed the application for the consent of the Land Control Board in the presence of the chief".

28. The 1st Defendant further relied on the case of **Odam (Suing as the administrator of the Estate of Konel Adam Omollo (Deceased) & Another –vs- Odingo & 11 Others (2022) KEELC 14446 (KLR)** where it was held as follows:

"Section 100 of the Evidence Act Cap 80 Laws of Kenya provides that when language used in a document is plain, and it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts. In this case, the language in the transfer clearly shows that the original land parcel was transferred by Magdalena Olang Chek who thumb printed on the transfer, Jacob

Oyoo Muok also thumb printed and Odama Omolo who signed the transfer from before an advocate Mr. Olago Aluoch. It is this court's view that the Plaintiffs cannot contradict the contents of the transfer from that clearly indicates that there was transfer of the property to the 1st Defendant....Coming back to the case before me, there is a duly executed transfer of land and registered by the Land Registrar. The land was transferred to the 1st Defendant by virtue of the transfer instrument. The 1st Defendant obtained consent of the Land Control Board to subdivide and caused the subdivided land to be transferred to third parties. Due to the above I do find that the Plaintiffs have failed to prove fraud”.

29.The 1st Defendant further relied on the case of **Awuonda –vs- Muia & 6 Others (2024) KEELC 3495 (KLR)** where it was held as follows:

“It is my considered view that, since the Plaintiff obtained the requisite consent of the land Control Board in accordance with Section 6 of the Land Control Act, which was not withdrawn and had the duly executed transfer forms, noting that under the repealed Registered Land Act and Land Registration Act, a duly executed transfer form is a contract for disposition of land and is registrable, I find that this created a proprietary interest on the said land, on behalf of the Plaintiff and he was not wrong to register a caution over it, so as to protect his interest”.

30.On the issue of payment of stamp duty, the 1st Defendant submitted that franking is evidence of payment of stamp duty. He relied on the case of **Scotia Holdings Ltd –vs- Ravji & Another (2022) KEELC 2425 (KLR)** where it was held as follow:

“On the transfer is a stamp from the collector of stamp duty, a revenue stamp is affixed. This confirms that stamp duty had been paid even though the receipts was not availed”.

31. Lastly, the 1st Defendant submitted on the evidence of the expert and relied on the case of **Kinini Wang’ondu –vs- The Ark Limited (2016) KEHC 3449 (KLR)** where it was held as follows:

“Firstly, expert evidence does not “trump all other evidence”. It is axiomatic that judges are entitled to disagree with an expert witness. Expert evidence should be tested against known facts, as it is the primary factual evidence which is of the greatest importance. It is therefore necessary to ensure that expert evidence is not elevated into a fixed framework of formula, against which actions are then to be rigidly judged with a mathematical precision.

Secondly, a judge must not consider expert evidence in a vacuum. It should not therefore be “artificially separated” from the rest of the evidence. To do so is a structural failing. A court’s finding will often derive from an interaction of its views on the factual and the expert evidence taken together. The more persuasive elements of the factual evidence will assist the court in forming its views on the expert testimony and vice versa. For example, expert evidence can provide a framework for the consideration of other evidence.

Thirdly, where there is conflicting expert opinion, a judge should test it against the background of all the other evidence in the case which they accept in order to decide which expert evidence is to be preferred.

Fourthly, a judge should consider all the evidence in the case, including that of the experts, before making any findings of fact, even provisional ones.

A further criteria for assessing an expert’s evidence focuses on the quality of the expert’s reasoning. A court should examine each relation to all the evidence presented. In *Routestone Ltd –vs- Minorities Finance Ltd and Another* Jacob J. observed that what really mattered in most cases was the reasons given for an expert’s opinion, noting that a well-

constructed expert report containing opinion evidence sets out both the opinion and the reasons for it. The judge pithily commented “if the reasons stand up the opinion does, if not, not”. A court should not therefore allow an expert merely to present their conclusion without also presenting the analytical process by which they reached that point, it is the court’s task to justify its preference for one over the other by an analysis of the underlying material and of their reasoning.

It is my view it’s correct to state that a court may find that an expert’s opinion is based on illogical or even irrational reasoning and reject it. A judge may give little weight to an expert’s testimony where he finds the expert’s reasoning speculative or manifestly illogical. Where a court finds that the evidence of an expert witness is so internally contradictory as to be unreliable, the court may reject that evidence and make its decision on the remainder of the evidence. The expert’s process of reasoning must therefore be clearly identified so as to enable a court to choose which of competing hypotheses is the more probable.

It is a trite principle of evidence that the opinion of an expert, whatever the field of expertise, is worthless unless founded upon a sub-stratum of facts which are proved, exclusive of the evidence of the expert, to the satisfaction of the court according to the appropriate standard of proof. The importance of proving the facts underlying an opinion is that the absence of such evidence deprives the court “of an important opportunity of testing the validity of process by which the opinion was formed, and substantially reduces the value and cogency of the opinion evidence.” An expert report is therefore only as good as the assumptions on which it is based.

An expert gives an opinion based on facts. Because of that, the expert must either prove by admissible means the facts on which the opinion is

based, or state explicitly the assumptions as to fact on which the opinion is based.

The Second and Third Defendants' Submissions

32. The 2nd and 3rd Defendants submitted that the Plaintiff had not proved fraud against the 2nd Defendant. They relied on the case of **Central Bank of Kenya Ltd –vs- Trust Bank Ltd & 4 Others Civil Appeal No. 215 of 1996 (UR)** where the Court of Appeal held as follows:

“The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary Civil Case”.

33. The 2nd and 3rd Defendants further relied on the case of **Ndolo –vs- Ndolo (2008) 1KLR 742** where it was held as follows:

“...We start by saying that it was the Respondent who was alleging that the will was forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.....”.

Analysis and Determination

34. I have carefully considered the evidence adduced by the Plaintiff and that of the Defendants. I have also considered the submissions by the parties. The issues which emerge for determination are as follows:

- i. Whether the 1st Defendant paid the purchase consideration and other statutory payments.*
- ii. Whether the transfer of the suit property from the Plaintiff to the 1st Defendant was fraudulent.*

- iii. *Whether the registration of the suit property by the 2nd Defendant was fraudulent.*
- iv. *Whether the Plaintiff is entitled to the reliefs sought.*

i. Whether the 1st Defendant paid the purchase consideration and other statutory payments

35. When the first Defendant expressed his intention to purchase a property at Elgon View Estate in Eldoret, he contacted Hon. David Rono a former Member of Parliament for Keiyo South. This witness testified that he was willing to look for a property through a property agent at Eldoret. He found a property through Edwin Kiptoo.

36. To secure his commission, Hon. Rono asked the 1st Defendant to give him money to pay the Plaintiff. Edwin, the 1st Defendant and the Plaintiff went and inspected the property. Hon. Rono and Edwin met the Plaintiff and the Plaintiff was paid the purchase price. The Plaintiff was paid the purchase price in cash by Hon. Rono. The 1st Defendant had given Hon. Rono Kshs.800,000/=. She surrendered the original title and signed transfer form before an advocate.

37. The suit property was valued at Kshs.800,000/= for purposes of stamp duty. The 1st Defendant paid stamp duty as evidenced by franking on the transfer. Requisition for stamp duty had been duly made. He also paid registration fees for the transfer. I therefore find that the purchase price and all other statutory payments were made by the 1st Defendant.

ii. Whether the transfer of the suit property from the Plaintiff to the 1st Defendant was fraudulent

38. The transfer of the suit property was duly signed before an advocate called Brenda Oduor. This advocate was called as DW4. She testified that the Plaintiff and the 1st Defendant appeared before her. A sale agreement was drafted and the parties signed a transfer form. The Plaintiff then surrendered

the original title for purposes of transfer. The transfer was duly lodged and the property changed to the name of the 1st Defendant.

39. In her testimony before the court, the Plaintiff admitted that the signature on the transfer was made by her. The photograph was hers. During cross examination by both counsel for the 1st Defendant and counsel for the 2nd and 3rd Defendants, she maintained that she was the one who signed the transfer.

40. The evidence of PW2 Commissioner of Police Geoffrey Chania that the signatures on the transfer was not that of the Plaintiff, is therefore wrong. As was held in the case of **Kinini Wang'ond** (**Supra**) evidence of an expert witness cannot "trump all other evidence". The Plaintiff herself admitted more than thrice during the hearing that she is the one who signed the transfer form. The expert evidence could not therefore dislodge this evidence. In any case, the evidence of this expert witness was contradicted by that of another expert. DW1 Daniel Gutu who found that the transfer form had been signed by the Plaintiff. This witness went on to state that the expert who was called by the Plaintiff used a video spectro comparator a machine which is a junk at the DCI and is no longer in use.

41. The 1st Defendant's expert stated that the report by the Plaintiff's was misleading as the expert could not purport to know the Plaintiff's signature better than the Plaintiff herself. As was stated in the **Kinini Wang'ond** **case** a court cannot just accept evidence of an expert. The expert evidence has to be weighed against existing evidence. I therefore reject the evidence of the Plaintiff's expert as it contradicts her own evidence given on oath in court.

42. The Plaintiff had applied for consent of the Commissioner of Lands for the transfer of the suit property. This consent was granted on 18th August, 2010. Though the consent erroneously indicated the suit property as Eldoret Municipality Block 14/1155, this must have been a typing error. I say so because as at 19th August, 2008 the parcel No. Eldoret Municipality Block

14/1155 had already been sold as per the Plaintiff's own exhibit 1. It is therefore clear that parcel 1155 would not have been the subject of consent in August, 2010 when the same was listed in exhibit 1 as having been sold as at 19th August, 2008 when the proposed distribution of the deceased's estate was made.

43. The Plaintiff did not disown her photograph. She had not reported anywhere that her documents including photographs had been stolen. The Plaintiff had listed particulars of fraud against the 1st Defendant. She did not prove any of the alleged particulars of fraud. The transfer which was used was signed by the Plaintiff herself and she admitted so during the hearing. The photograph was hers. There was therefore no forgery as alleged. The advocate before whom the transfer was signed testified before the court. The original title was surrendered by the Plaintiff. This is the title which was cancelled to pave way for transfer to the 1st Defendant.

44. The Plaintiff picked titles for her other parcels within Elgon View Estate in 2009. During cross examination, she stated that she went to the lands office to pick title for the suit property in the year 2020. It emerged during cross examination that the suit property is a walking distance from where she lives. It cannot be true that she picked three titles in 2009 and left the one to the suit property which she went to pick after a period of 11 (eleven) years. The truth of the matter is that she had sold the suit property in 2010 and only wanted to denounce the sale several years later.

iii. Whether the registration of the suit property by the 2nd Defendant was fraudulent

45. The Land Registrar from Uasin Gishu Land Registry was called as DW5. The witness was Naomi Rop who testified that the suit property was transferred to the 1st Defendant after all documents necessary for registration were presented to the Lands Registry. The transfer to the 1st Defendant was made on 31st August, 2010. Consent to transfer had been granted on 18th

August, 2010. Stamp duty had been paid. The transfer was booked in the presentation book. The original certificate of lease in the name of the Plaintiff was surrendered and was cancelled and a new one issued in the 1st Defendant's name.

46. The witness from lands office stated that no officer has ever been charged for doing anything contrary to the law in respect of the suit property. The suit property was duly valued for purposes of payment of stamp duty which was paid as evidenced through franking of the transfer. When the Plaintiff was cross examined by the counsel for 2nd and 3rd Defendants, she stated that she did not have anything implicating the Land Registrar in any wrong doing.

47. The 2nd Defendant registered the transfer after confirming that all documents needed for registration of transfer were available. I therefore find that registration of transfer by the 2nd Defendant was not fraudulent.

Disposition

iv. Whether the Plaintiff is entitled to the reliefs sought

48. It is clear from the above analysis that the Plaintiff has failed to prove the particulars of fraud attributed to the 1st and 2nd Defendants. She is therefore not entitled to any of the reliefs sought. I find that the Plaintiff has failed to prove her case on a balance of probabilities. I proceed to dismiss the Plaintiff's suit with costs to the Defendants.

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HON. E. O. OBAGA

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 23RD DAY OF APRIL, 2026.

IN THE PRESENCE OF: _____

Mr. Murgor for Plaintiff

Ms. Masara for Mr. Wakwaya for 1st Defendant

ORIGINAL