



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO.63 OF 2017

(Formerly Machakos ELC Case No. 259 of 2010)

STEPHEN MWANGI KIMANI.....PLAINTIFF

VERSUS

HANNAH WAMBUI NJIHIA.....1ST DEFENDANT

JOSEPH MUTURI MUCHIRI.....2ND DEFENDANT

JUDGMENT

By a Plaint dated 6th December, 2010, the Plaintiff prays for judgment against the Defendants for:

- a) Special damages in terms of prayers at paragraph 14 above at Shs. 6, 510,000/=
- b) General damages as pleaded herein above
- c) Declarations in terms of paragraph 16 above and an order to give effect to the said declarations by cancelling Kajiado Land Control Board's Consent to transfer the suit property, the Transfer lodged with or registered by the Kajiado District Land Registrar on 29th March, 2001 transferring title to Ngong/ Ngong/ 24712 to the 1st Defendant as absolute owner and minutes in Kajiado Land Titles Register and any entry therein effecting the said transfer and the Title issued to 1st Defendant on 11th July, 2008 in respect of the property Title No. Ngong/ Ngong/ 24712 and in lieu of the cancellation aforementioned entries be made therein reinstating the Plaintiff as the absolute owner of the property title Ngong/ Ngong/ 24712;
- d) An order that the 1st Defendant do pay up forthwith to Equity Bank Ltd sums requisite for redemption and discharge of charge to Equity Bank Ltd.
- e) An injunction permanently restraining the 1st Defendant whether herself or her servants or agents from howsoever selling, transferring, charging, leasing or developing property Title No. Ngong/ Ngong/ 24712 and or remaining on, entering or occupying premises thereon or collecting rent due from tenants at the suit premises or conducting any business or trade thereat.
- f) Interest prayers on (a) and (b) at court rates.
- g) The Honourable Court be pleased to make such further or other orders within its inherent jurisdiction.
- h) Costs hereof provided for.

The 1st Defendant filed her statement of Defence dated the 12th January, 2011 where she denied various averments in the Plaint except for the descriptive. She admitted that she was the wife to the Plaintiff and they had purchased land parcel number Ngong/Ngong/ 24712 hereinafter referred to as the 'suit land'. She averred that she identified the suit land and introduced her husband to the 2nd Defendant who was the seller but left everything else including signing of the Sale Agreement to them. Further, that she did not know what was expressed nor implied between the Plaintiff and 2nd Defendant. She confirmed that the suit land was being sold to them as joint owners and even the Land Control Board Consent was obtained for the transfer of the same to both of them. She claimed the Plaintiff out of his own volition and before the transfer was effected decided to have the suit land registered in her sole name by writing to the District Land Registrar Kajiado that he had opted out. She denied wrongfully and maliciously conspiring with the 2nd Defendant and/ or inducing the District Land Registrar Kajiado to have the suit land registered in her sole name. She confirmed having been issued with the title deed in respect of the suit land in March, 2001 with the full knowledge and consent of the Plaintiff whom they were staying with in the same house as husband and wife. She insists that she singlehandedly constructed a two storey building on the suit land which construction commenced in the year 2002 and

completed in 2007, with the full knowledge of the Plaintiff and without any contribution from him except for Kshs. 210,000/= which he had assisted in the repayment of a loan taken by her for construction. She further confirmed that after undertaking construction of the ground floor in 2002, she rented it out and solely collected rent therefrom with the full knowledge of the Plaintiff who never made a claim over it. She explained that she has been a successful business woman even before she met the Plaintiff in 1997, and has used her own resources to construct the building without participation from him. She averred that she commenced cohabiting with the Plaintiff in 1997 and in the year 2001, they solemnized their union under the Marriage Act. Further, that they lived together in the same house until 2008 when she moved out due to persistent acts of violence from the Plaintiff. She denies deserting the matrimonial home after charging it to Equity Bank Ltd. She reiterated that the whole exercise of transferring as well as registering suit land in her sole name was clean and lawful after being sanctioned by the Plaintiff, hence therefore the resultant title cannot be cancelled. She reaffirmed being the lawful owner of the suit land and hence cannot be restricted from dealing with it.

The 2nd Defendant filed his statement of Defence dated the 4th March, 2011 where he denied the averments in the Plaintiff except for the descriptive. He admitted entering into a Sale Agreement dated the 19th July, 2000 with the Plaintiff for the purchase of the suit land at a cost of Kshs. 670,000/=. He further admitted that the sale of the suit land to the Plaintiff and 1st Defendant was subject to approval of the Land Control Consent. He also admitted the terms of the Sale Agreement as outlined in the Plaintiff. He admitted receiving the deposit and giving possession of the suit land to the Plaintiff but denies any knowledge or involvement in any development thereafter as he ceased having an interest in the said land. He denied conspiring with the 1st Defendant to defraud the Plaintiff or being involved in whatever way in the registration of the transfer and issuing of the title by the Land Registrar, Kajiado. He further denied the allegation of fraud contained in the Plaintiff including particulars of fraud and conspiracy. He contended that he is a stranger to the particulars of losses outlined in the Plaintiff. Further, he refuted the claim for loss of business, rent and fair return of investment. He insisted the Plaintiff is not entitled to the declarations sought. He rejected the claim for cancellation of the title deed to the suit land. He reiterated that the suit herein does not raise any cause of action against him.

The matter proceeded to full hearing where the Plaintiff and 2nd Defendant had one witness each while the 1st Defendant called two witnesses.

Evidence of the Plaintiff

The Plaintiff claimed to have entered into a Sale Agreement dated the 19th July, 2000 with the 2nd Defendant for the purchase of the suit land at a cost of Kshs. 670,000. The Plaintiff as PW1 confirmed having paid Kshs. 500,000 at the time of execution of the Sale Agreement and Kshs. 170,000 later on. PW1 admitted that the 1st Defendant who was his wife introduced him to the 2nd Defendant. It was PW1's testimony that although the Sale Agreement was entered jointly with the 1st Defendant, after he paid the full purchase price, the 1st Defendant colluded with the 2nd Defendant to defraud him of the suit land by having the 1st Defendant solely registered as its owner. He denied participating in obtaining Consent of the Land Control Board nor signing the Transfer of Land form. PW1 claimed that he never authorized the suit land to be registered solely in the name of the 1st Defendant and neither did he see the title deed nor documents of transfer until his advocate obtained the same from the Kajiado Land Registry. It was PW1's testimony that he built the premises on the suit land and used to take loans from his SACCO and give the 1st Defendant to pay for construction thereon. He contended that he repaid the loans taken by the 1st Defendant to develop suit land. Further, that the 1st Defendant was not engaged in any business. The Plaintiff produced various documents including the Sale Agreement dated 19th July, 2000; Application for Consent of Land Control Board; Title Deed for Ngong/ Ngong/ 24712; Title Deed for Ngong/ Ngong/ 24711; Mutation Form for Ngong/ Ngong/ 24211; Application for Registration of Caution against Ngong/ Ngong/ 24712; Caution for Ngong/ Ngong/ 24712; Transfer of Land for Ngong/ Ngong/ 24712; Portion of Title for Ngong/ Ngong/ 24712; Loan Application Forms from Ndovu Workers Cooperative Savings & Credit Society Ltd; Payment Vouchers; Cheques; and Banking Slips as his exhibits.

Evidence of the Defendants

The 1st Defendant as DW2 confirmed that she was married to the Plaintiff although they were estranged. It was her testimony that they entered into a Sale Agreement with the 2nd Defendant to jointly purchase suit land with the Plaintiff. She admitted that it is the Plaintiff that paid the full purchase price and authorized her name to be solely registered as the owner of the said land. She contended that she solely undertook development on the suit land by constructing a storeyed building and only received a contribution of Kshs. 210,000 from the Plaintiff when he repaid part of a construction loan on her behalf as she was unwell. She confirmed that she has received rental proceeds from the suit land to date and that the said land is charged to Equity Bank Ltd. She denied defrauding the Plaintiff.

DW1 who was a neighbor to both the Plaintiff and 1st Defendant confirmed in his testimony that he is a friend to the Plaintiff. It was his testimony that the Plaintiff told the 1st Defendant in his presence that he would give her the suit land. Further that the Plaintiff thereafter wrote a letter in the presence of the 1st Defendant and the deceased and gave it to them to take to the Kajiado Land Registrar directing him to effect transfer of suit land in the sole name of the 1st Defendant. He stated that the 1st Defendant had all the requisite documents which she presented to the Land Registrar but the title deed was not issued the same day. He explained that the 1st Defendant was a business woman who undertook construction of the building on the suit land. He clarified that it is the 1st Defendant who used to be on the construction site since the Plaintiff was at work. He averred that it is the 1st Defendant who used to manage the building on suit land.

DW3 who was the 2nd Defendant confirmed entering into a Sale Agreement with the Plaintiff and 1st Defendant for the purchase of suit land. He confirmed receiving the full purchase price of Kshs. 670,000 from the Plaintiff and surrendering all duly filled in relevant documents including Transfer Form and Application for Consent of Land Control Board to him in the presence of his wife. He explained that he surrendered his original title deed for suit land with his advocate P. G Mburu. He denied colluding with the 1st Defendant to defraud Plaintiff of suit land. He further denied appearing before the Land Control Board to obtain consent to transfer land. He did not know when the suit land was transferred to the 1st Defendant. He sought to be exonerated from the suit. The 1st Defendant produced the Certificate of Title for Ngong/ Ngong/ 24712 and Recommendation for Change of User dated the 1st March, 2006 as her exhibits in Court.

The Plaintiff and 1st Defendant filed their respective submissions that I have considered.

Analysis and Determination

Upon consideration of the pleadings filed herein including the testimonies of the witnesses, parties, exhibits and submissions, the following are the issues for determination:

- Whether the suit land was fraudulently registered in the name of the 1st Defendant.
- Whether the Certificate of Title issued to the 1st Defendant in respect of Ngong/ Ngong/ 24712 should be cancelled.
- Whether the Plaintiff is entitled to Special Damages amounting to Kshs. 6, 510,000/=
- Whether the Plaintiff is entitled to General Damages;
- Whether the 1st Defendant should be permanently restrained from selling, transferring, charging, leasing or developing property Title No. Ngong/ Ngong/ 24712 and or remaining on, entering or occupying premises thereon or collecting rent due from tenants at the suit premises or conducting any business or trade thereat.
- Who should bear the costs of the suit.

As to whether the suit land was fraudulently registered in the name of the 1st Defendant and if the title issued to her should be cancelled. It was not in dispute that the Plaintiff paid the full purchase price for the suit land. It was also not in dispute that the Plaintiff including the 1st Defendant jointly entered into a Sale Agreement dated 19th July, 2000 with the 2nd Defendant to purchase the suit land. The Plaintiff has contended that the 1st Defendant in collusion with the 2nd Defendant fraudulently registered the suit land in her name. Section 109 of the Evidence Act, stipulates that :-

“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”.

In line with the said legal provisions, I will hence proceed to analyse the evidence before me in respect to the allegations of fraud on the part of the Defendants. It was PW1’s testimony that he never appeared before the Land Control Board, never received documents from the 2nd Defendant and never allowed the 1st Defendant to be registered as the sole owner of the suit land. DW3 who was the 2nd Defendant confirmed entering into a Sale Agreement with the Plaintiff and handing over all duly executed transfer forms and Application for consent of the Land Control Board to him. PW1 claimed he only saw the transaction documents when his lawyer obtained the same from the Kajiado Land Registry. In her submissions the 1st Defendant disputed the documents produced by the Plaintiff as they did not have a stamp from the Land Registry. PW1 in his testimony claimed after paying the purchase price, he failed to follow up on the registration for a long time and only realized when his advocate undertook a search that the 1st Defendant had been registered as the owner of suit land. What is curious is that as per the title deed for the suit land, the 1st Defendant was registered as the owner on 29th March, 2001 with the title deed issued on 11th July, 2002. I note DW2 had confirmed in her witness statement that they solemnized their marriage on 31st August 2001. Both PW1 and DW2 confirmed that they separated in 2008. Which brings me to the question that if the Plaintiff had entered into an Agreement in 2000, why did he wait until 2008 to commence following up on his title deed. PW1 in his oral testimony severally denied the averments he made in his witness statement. The 1st Defendant in her submissions referred to the averments made by the Plaintiff in his affidavit in support of the application for injunction, where he had admitted that he suspected the 1st Defendant could have been registered as owner of the land.

Both DW1 and DW2 confirmed that it is the Plaintiff who issued them with a letter to take to the Land Registrar directing him to solely register the 1st Defendant as owner of the land. To my mind it seems in the happier years of the marriage, the Plaintiff was willing to have the wife registered as owner of the suit land but upon the separation in 2008, he changed his mind. No wonder in his testimony, PW1 had admitted that the 1st Defendant had confused him and made him do things he did not understand.

In the case of *Kinyanjui Kamau vs George Kamau [2015] eKLR* the Court stated that;-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (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.”

In the current case, the Plaintiff has alleged fraud on the part of the Defendants that culminated in the 1st Defendant being registered as the sole owner of the land. The burden of proof was upon him to prove that the 1st Defendant actually acquired the title to the suit land fraudulently. Registration of a party to a parcel of land is a process which has to commence with a Sale Agreement, payment of purchase price, Obtaining Consent of the Land Control Board to effect transfer; executing a transfer form and finally undertaking registration.

In the current case, there was a duly executed Sale Agreement between the Plaintiff and 1st Defendant as purchaser and the 2nd Defendant as

vendor. The 2nd Defendant in his testimony was categorical that upon receipt of the full purchase price, he handed over all the relevant documents to the Plaintiff. DW1 testified in court that it is the Plaintiff who wrote a letter to the Land Registrar to effect transfer of the Land to the 1st Defendant. I note during the period of the transaction, the Plaintiff and 1st Defendant still resided as husband and wife. The 1st Defendant insisted it is the Plaintiff who sent her to the Land Control Board and later to the Land Registrar. DW1 even said they used the Plaintiff's car to travel to Kajjado. To my mind all these point to a situation where the Plaintiff was a party to and was actually supporting the process of having the 1st Defendant being registered as the sole owner of the suit land. The Plaintiff produced the Transfer Form and Consent of Land Control Board which he claimed his lawyer retrieved from the Lands office but on keen perusal of the said documents, they do not bear the stamp from the Land Registry and it is not clear as to whether the same were the right documents which were presented to the Land Registrar. The 1st Defendant also disputed the documents in her testimony. The Plaintiff in his submissions shifted the burden of proof to the 1st Defendant to prove how she acquired the title in her sole name. He submitted that there was no evidence of his appearing before PG Mburu Advocate to attest the transfer form, appearance before the Land Control Board and payment of stamp duty. At this juncture, I wish to point out that since the Plaintiff alleged fraud, he should have sought to enjoin the Land Registrar in this suit to confirm if indeed there was fraud committed during the registration of the 1st Defendant as sole owner of the suit land. Further, it was his duty to summon P G Mburu Advocate to confirm if he indeed attested to the Transfer documents or not. In contracts, time is of essence but from the Plaintiff's testimony he implied he signed the Sale Agreement in 2000 paid the full purchase price and let it be until 2008. The 2nd Defendant also stated that once he had received the purchase price and handed over the documents to the Plaintiff, he was never called to appear before the Land Control Board nor did he participate in the registration process at the Lands Office. The Plaintiff indeed admitted knowledge of DW1 who he confirmed was a neighbor while DW2 reiterated that the transaction in respect of the suit land had always been between the Plaintiff and the 2nd Defendant. Further, that it is the Plaintiff who informed her that the 2nd Defendant had delivered all the documents to him and the issue remaining was the registration. The Plaintiff in his witness statement admitted instructing the 1st Defendant, 2nd Defendant and DW1 to proceed to the Land Control Board to obtain consent to transfer as he had strict timelines at work. However, in cross examination he proceeded to deny these averments. He further admitted in re examination that the completion documents in respect to the suit land was brought to his house by the 2nd Defendant. DW2 in her evidence claimed that at one time the Plaintiff even brought to her the Transfer of Land Form from FN Wamalwa Advocate to sign and these are the documents he gave her to take to the Land Registry in Kajjado. From the evidence adduced by the Plaintiff, he severally contradicted his written statement with oral testimony and this casts a doubt as to the veracity of his evidence. To my mind, it is hard to believe that the Plaintiff never executed the completion documents as claimed in Court.

In another case of **Kinyanjui Kamau v George Kamau Njoroge [2015] eKLR**, the Court of Appeal held that: **'In this case, fraud cannot be imputed on the part of the respondent by the mere fact that the record in relation to the subject property was missing at the Lands Registry. To succeed in the claim for fraud, the appellant needed to not only plead and particularise it, but also lay a basis by way of evidence, upon which the court would make a finding. In the present appeal, there is no such evidence, and the courts below rightly came to the conclusion that the appellant had not made out a case for the grant of the orders he sought'**

While in the case of in the case of *Davy...Vs...Garrette (1878) 7 ch.473 at Pg 489*, the Court held that:-

"In the common law courts, no rule was more clearly settled than that fraud must be distinctly proved and that it was not allowable to leave fraud to be inferred from the facts..."

Based on my analysis above and in associating myself with the cited decisions, I find that the Plaintiff has failed to discharge his burden of proof to prove the allegations of fraud as against the Defendants and will proceed to exonerate them.

On the question of challenging the 1st Defendant's title, section 25 and 26 of the Land Registration Act provides that:

'25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever

26. (1) 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, unprocedurally or through a corrupt scheme.'

In the case of **WILLY KIPSONGOK MOROGO v ALBERT K. MOROGO (2017) eKLR** where the Court held as follows: **'the evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act.'**

In relying on the legal provisions cited above as well as associating myself with this decision, insofar as the Plaintiff had pleaded and particularized the acts of fraud as against the Defendants, he failed to lay the basis in his evidence on the same since from the Green Card, it is clear the 1st Defendant was registered as proprietor of the suit land for almost eight (8) years before he started complaining. Since I have already held that there was no proof of fraud as against the Defendants, I find no reason to warrant the cancellation of the 1st Defendant's title to the suit land. In the circumstance, I will proceed to uphold the Certificate of title held by the 1st Defendant in respect of land parcel number Ngong/ Ngong/ 24712.

As to whether the Plaintiff is entitled to General Damages and Special Damages amounting to Kshs. 6, 510,000/=. The Plaintiff claimed that

he was entitled to General Damages and Special Damages amounting to Kshs. 6, 510,000/= since the 1st Defendant had been registered as sole owner of the suit land and exclusively took rent from the premises thereon. The Plaintiff as PW1 was at pains to explain how he undertook development on the suit land. He claimed he took various loans from the Ndovu Workers Cooperative Savings & Credit Society Ltd and gave the 1st Defendant to undertake developments on the suit land. He explained that the 1st Defendant was not undertaking any business and he was the one supporting her. He however admitted that initially when he had met the 1st Defendant she was running a butchery and a bar in Ongata Rongai. The 1st Defendant as DW2 contended that she was a business woman and had built the double storeyed building on the suit land on her own except for a payment of Kshs. 210,000 which the Plaintiff had assisted her repay a loan when she was unwell. She insisted that she built the house on the suit land from 2002 upto 2007 which averments were confirmed by DW1. In the application forms for loans, which the Plaintiff produced as his exhibits, it is not indicated whether the said loan was for construction and as a Court am unable to infer so. On cross examination on being asked why there was no reason attached to the loan application, the Plaintiff alluded to the fact that he was a Senior Manager and no official from the said SACCO would request him to provide reasons as to why he was applying for the loans. From pages 45 upto 51 of the Plaintiff's bundle of documents, he produced various receipts to prove he used the money for building. I note there is a Receipt for payment of monies by Seserani Women Group which PW1 admitted the 1st Defendant belonged to. There were three bank pay in slips by the 1st Defendant to the account of Women Economic Empowerment while the three payments made by the Plaintiff to the said account amount to Kshs. 90,000/=. Further, the various invoice/ Cash Sale receipts from Chekaki Hardware Ltd; Kaputiei Hardware and Cactus General Hardware produced by the Plaintiff were all addressed to HAWAM, which was the 1st Defendant's business name. The Plaintiff while being cross examined on the same insisted he gave the 1st Defendant money. However, this was contrary to the evidence of 1st Defendant as well as DW1 who confirmed the 1st Defendant was the one who built the premises on the suit land. The Plaintiff further produced hand written budgets but could not explain who prepared the same and what purpose they were meant for. He failed to adduce evidence on how much rent was accruing on the suit premises and the final expenses he had expended in respect to the construction of the said storeyed building on the suit land. He further failed to produce the building plans for the said building. In his witness statement he indicated he built the storeyed building in two years but in his oral testimony he denied this. The 1st Defendant in her testimony claimed she constructed the ground floor of the building on the suit land using her own resources and put tenants thereon and had been collecting rent therefrom. I note the Plaintiff in cross examination had actually disowned his evidence in respect of how he acquired building plans without a title and requested the same to be expunged from his statement. It seems to me that the Plaintiff had instituted this suit to claim the suit land yet the facts actually point to a dispute relating to division of matrimonial property and parties contribution to its acquisition. In the case of **Kenya Tourist Development Corporation v Sundowner Lodge Limited [2018] eKLR**, the Court of Appeal in determining the issue of special damages held that: **'We think that the learned Judge was correct to approach the sums claimed as quantified special damages properly pleaded. The problem, however, lay in the fact that the evidence tendered, such as there was, either failed to touch on the specific sums pleaded or was contradictory, inconclusive or speculative. This fell way short of the requirement not only of specific pleading but, also, indeed the more, strict proof. See BANQUE INDOSUEZ vs. DJ LOWE & CO. LTD [2006] 2KLR 208. HAHN vs. SINGH [1985] KLR 716. That proof having lacked, the learned Judge was perfectly entitled to dismiss the huge claim and to grant only the satisfactorily proven amount of Kshs. 153,000 paid as appraisal fees'.**

Further in the case of *Livingstone ...Vs...Rawyards Coal Co.(1880) 5 App Cases 25, Lord Blackburn* stated as follows:-

“that sum of money which will put the injured party in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation.”

Based on the evidence that was placed before me by the Plaintiff, and in applying these two decisions to the case at hand, I hold that since the Plaintiff willingly consented to the suit land to be registered in the 1st Defendant's name, with the 1st Defendant building thereon, he has indeed failed to prove the damages claimed as he had not sustained any wrong. In the circumstances, I am unable to award him both general and special damages as sought.

As to whether the 1st Defendant should be permanently restrained from selling, transferring, charging, leasing or developing property Title No. Ngong/ Ngong/ 24712 and or remaining on, entering or occupying premises thereon or collecting rent due from tenants at the suit premises or conducting any business or trade thereat. Since the 1st Defendant has always been the registered proprietor of the suit land and this Court has already upheld her title. I do not foresee any reason why she should be restrained from enjoying quiet possession of her property and will decline to grant the said order. I will further vacate the orders of injunction granted on 22nd November, 2012.

As to who should bear the costs of the suit. Section 27 of the Civil Procedure Act gives the discretion of awarding costs to the Judge. In the current case, I find that since this is a matter that mainly involved a husband and a wife, I direct that each party do bear their own costs.

It is against the foregoing that I find that the Plaintiff has failed prove his case on a balance of probability and will proceed to dismiss it.

Dated signed and delivered in open court at Kajiado this 20th day of November, 2019

CHRISTINE OCHIENG

JUDGE