



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 208 OF 2017**

**THE AIR TRAVEL & RELATED STUDIES LIMITED.....PLAINTIFF**

**VERSUS**

**EQUITY BANK (KENYA) LIMITED.....DEFENDANT**

**RULING**

What is before me is the Plaintiffs' Notice of Motion application dated 27<sup>th</sup> March, 2017 in which the plaintiff has sought the following prayers;

- i. That this application be certified urgent and service of the same be dispensed with in the first instance.
- ii. That pending the inter-partes hearing and determination of this application; the defendant through themselves, their servants, employees, nominees, assigns, agents or any other person or authority connected therewith be restrained by a temporary injunction from advertising for sale or in any way offering for sale, selling, disposing, Leasing, occupying or in any way dealing with or alienating the proprietary right in the plaintiff's charged properties being Land Reference Number 11916/18 (Original Number 11916/15/1) and Land Reference Number 11916/19 (Original Number 11916/15/2).
- iii. That pending the inter-partes hearing and determination of this suit; the defendant through themselves, their servants, employees, nominees, assigns, agents or any other person or authority connected therewith be restrained by temporary injunction from advertising for sale or in any way offering for sale, selling, disposing, leasing, occupying or in any way dealing with or alienating the proprietary right in the plaintiff's charged properties being Land Reference Number 11916/18 (Original Number 11916/15/1) and Land Reference Number 11916/19 (Original Number 11916/15/2).
- iv. That pending the inter-parties hearing and determination of this application, the court be pleased to issue an order of prohibition, prohibiting the defendant from continuing to refer for adverse listing or adversely listing the plaintiff with the Kenya Credit Reference Bureau or in any way clogging the plaintiff's access to credit facilities.
- v. That pending the inter-parties hearing and determination of this suit, the court be pleased to issue an order of prohibition, prohibiting the defendant from continuing to refer for adverse listing or adversely listing the plaintiff with the Kenya Credit Reference Bureau or in any way clogging the plaintiff's access to credit facilities.
- vi. That the time within which the Plaintiff/Applicant ought to have repaid the current loan arrears

to the defendant/respondent and/or discharged the herein charge be extended and/or the plaintiff/applicant be allowed by this Honourable Court to redeem the charge property known as Land Reference Number 11916/18 (Original Number 11916/16/1) and Land Reference Number 11916/19 (Original Number 11916/15/2) by repaying the current loan arrears to the defendant/respondent and subsequently to continue repaying the monthly loan installments as per the charge registered on 24<sup>th</sup> August, 2015.

vii. That all action by the defendant/respondent with regards to the sale of the subject parcels of land be stayed pending the determination of Judicial Review Number 67 of 2007 before Lady Justice Aburili.

viii. That this court be pleased to order that the Defendant immediately avails the plaintiff a copy of the Letter of Offer, a comprehensive account statement of the Loan Account and the accounts that service the Loan Account and copy of the Charge document herein, which documents the plaintiff is entitled to.

xi. That the cost of the application be borne by the defendant.

The application is supported by the affidavit and further affidavit of Charles Gakuu sworn on 27<sup>th</sup> March, 2007 and 18<sup>th</sup> April, 2017 respectively and the grounds set out on the face of the application. The application was brought on the following grounds. The plaintiff is the registered proprietor of Land Reference Number 11916/18 (Original Number 11916/16/1) and Land Reference Number 11916/19 (Original Number 11916/15/2) (hereinafter referred to as “the suit properties”). The plaintiff is also the proprietor of a business known as Air Travels & Related Studies Centre which runs its operations from the buildings situated on the suit properties. The suit properties are the subject of a Judicial Review Application No. 67 of 2007, Republic vs. The Chief Land Registrar & Others.

The plaintiff charged the suit property on 24<sup>th</sup> August, 2015 to the defendant to secure a loan facility in the sum of Kshs. 194,546,000/- which was advanced by the defendant to the plaintiff. The defendant did not give the plaintiff a copy of the letter of offer of the said loan facility or copies of the charge document. The plaintiff took the said loan for the purposes of expanding its business on the suit properties. The plaintiff’s business on the suit properties, Air Travels & Related Studies Centre offers diploma courses in travel, hotel, tourism, languages and management services. The plaintiff has been repaying the loan with a lot of difficulty which it has communicated to the defendant from time to time and sought the defendant’s indulgence.

In the year 2016, the plaintiff requested the defendant to restructure the said loan facility. The defendant did not respond to the request. The plaintiff’s difficulties in servicing the loan were occasioned by the decrease in the number of students registering in the plaintiff’s college and the illegal and irregular maintenance by the defendant of interest rate at 24% per annum while the Central Bank of Kenya had set the base lending rate at not more than 4% above the Central Bank of Kenya base lending rate. The defendant has refused to furnish the plaintiff with the information on the actual loan arrears due from the plaintiff. The amount of Kshs. 197,912,278.45 which the defendant claims to be due from the plaintiff is grossly overstated and inaccurate.

On 10<sup>th</sup> March, 2016, the defendant wrote to the plaintiff demanding the payment of a sum of Kshs. 112,313/- which was overdue for payment. While the plaintiff was looking for funds to settle the said amount, the defendant served it with a three(3) months notice dated 5<sup>th</sup> September, 2016 under section 96 of the Land Act, 2012. That notice was followed by a forty (40) days notice dated 15<sup>th</sup> December, 2016 also under section 96 of the Land Act, 2012. On receipt of the said notices the plaintiff wrote to the defendant on 19<sup>th</sup> January, 2017 expressing its commitment to settle the outstanding loan arrears. The said notices were premature in that the defendant had overstated the loan amount in arrears. A request by the plaintiff through its advocates on record to have a meeting with the defendant to discuss the restructuring of the loan facility did not elicit any response. The defendant also failed to respond to the plaintiff’s advocates’ letter demanding a number of documents including the loan statement, the letter of

offer, the charge document, the statements of all accounts servicing the loan facility and a copy of the plaintiff's loan file.

The defendant has completely failed to respond to the letters from the plaintiff requesting for a meeting to discuss how best the loan default by the plaintiff can be remedied. The defendant has also failed to respond to the plaintiff's request for the restructuring of the loan facility. The defendant has thwarted all effort by the plaintiff to redeem the suit properties. The defendant has threatened to have the plaintiff listed adversely with a Credit Reference Bureau. The defendant has also threatened to dispose of the suit property below the market value. The said actions by the defendant amount to a clog on the plaintiff's right to redeem the suit properties.

The plaintiff has contended that it contracted the services of the Interest Rates Advisory Centre (IRAC) to advise it whether the amount claimed by the plaintiff from it is accurate. IRAC in its report concluded that the defendant had overcharged interest to the tune of Kshs. 1,208,229.78 as at 5<sup>th</sup> March, 2017. The defendant has also failed to serve the plaintiff with the notices required under the law before purporting to put up the suit property for sale.

The application was opposed by the Defendant through a replying affidavit sworn by Kariuki Kingori and grounds of opposition both filed on 12<sup>th</sup> April, 2017. The defendant has termed the plaintiff's application as misconceived, scandalous, vexatious and an abuse of the process of the court. The defendant has contended that it has a valid legal charge over the suit properties and that the plaintiff has admitted the debt. The defendant has contended that the plaintiff has not established a prima facie case and that an award of general damages would be an adequate remedy for any loss that the plaintiff may suffer. The defendant has contended that the plaintiff was served with all requisite notices and as such the intended sale of the suit property is regular and lawful. The defendant has contended that the existence of Misc. Civil Application No. 67 of 2007 has no effect on the intended exercise of its statutory power of sale over the suit properties.

The defendant has contended that in relying on Misc. Civil Application No. 67 of 2007 in support of the orders sought, the plaintiff is admitting that it had engaged in fraudulent misrepresentation which is a wrong. The defendant has contended that the plaintiff cannot be allowed to benefit from its wrong. The defendant has contended that its relationship with the plaintiff is contractual in nature and as such the plaintiff cannot call upon the court to intervene in the arrangement on its behalf. The defendant has contended that even if there was a dispute as to the amount due by the plaintiff to the defendant that is not a ground for issuing the orders sought by the plaintiff.

The application was argued orally before me on 19<sup>th</sup> April, 2017 when Mr. Onsare appeared for the plaintiff while Mr. Njuguna appeared for the defendant.

#### The Plaintiff's submissions:

The plaintiff submitted that its case against the defendant is grounded on the following two issues:

- (1) The amount claimed by the defendant is overstated.
- (2) The notices for sale were issued prematurely.

The plaintiff submitted that the IRAC report dated 20<sup>th</sup> March, 2017 on the plaintiff's loan account with the defendant which the plaintiff submitted to court shows that there is an interest overcharge of Kshs.1,208,229.78 in favour of the Plaintiff. The plaintiff submitted further that it has also been noted in the said report that the defendant was not charging the maximum lending rate of interest authorized by law which came into effect on 14<sup>th</sup> September, 2016. The plaintiff submitted that it is the illegal interest being levied by the defendant that resulted in the said interest overcharge of Kshs.1,208,229.78. The plaintiff submitted that the said sum of Kshs.1,208,229.78 was arrived at after factoring in the interest under charge amounting to Kshs.896,942.70.

On the issue of notices, the plaintiff referred the court to the notices annexed to the supporting affidavit as annexures “CG8” and “CG9” and submitted that the same were issued prematurely. The plaintiff submitted that section 90(2)(b) of the Land Act provides for the form of notice which has to be issued by the chargee. The plaintiff submitted that the notice dated 5<sup>th</sup> September, 2016 that was served upon it by the defendant should have contained the amount in arrears and not the entire amount outstanding.

The plaintiff submitted further that the said notice should have been for three (3) months and not 90 days. In support of this submission, the plaintiff cited the case of David Gitome Kuhiguka –vs- Equity Bank Ltd (2013) eKLR. The plaintiff submitted that in its notice aforesaid, the defendant did not state the amount in arrears which the plaintiff was required to pay to rectify the default. On the issue of 90 days *vis-a-vis* 3 months notice, the plaintiff cited the case of Albert Mario Cordeiro and Another vs. Vishram Shamji (2015) eKLR. The plaintiff submitted that the statute has provided for a three (3) months notice and as such it, was not open to the plaintiff to give a 90 days notice instead.

The plaintiff submitted that the notice dated 15<sup>th</sup> September, 2016 which was issued under section 96 of the Land Act did not comply with the provisions of section 96(3) of the said Act with regard to service. The plaintiff submitted that under section 96(3)(i) of the Land Act, the notice should have been affixed on the property to inform the users of the intended sale. The plaintiff submitted that there was no evidence that the defendant had affixed the said notice on the suit property. The plaintiff submitted that the said notice fell short of the mandatory requirements of the law.

The plaintiff denied having been served by the defendant with the notice dated 6<sup>th</sup> April, 2016 which is annexed to the defendant’s affidavit in reply as annexure “KK5”. The plaintiff submitted that there is no evidence that the said notice which is said to have been served by registered mail was posted. The plaintiff submitted that the defendant should have produced a certificate of posting of the said notice as proof that it was indeed posted. On the issue of valuation, the plaintiff submitted that the defendant has undervalued the suit property having regard to the valuation that was carried on the suit property before it was fully developed.

The plaintiff submitted that it has established a prima facie case with a probability of success against the defendant. The plaintiff has submitted further that it is offering educational services and as such the newspaper advertisements of the suit property have caused a lot of damage to its reputation. The Plaintiff submitted that it stands to suffer greater harm if the orders sought are not granted. The Plaintiff submitted that it has been making payments to the defendant albeit with a lot of difficulties. The plaintiff urged the court to allow its application.

#### The defendant’s submissions:

In response to the plaintiff’s submissions, the defendant submitted that an interlocutory application must be grounded on the pleadings. The defendant submitted that an interlocutory application cannot deviate from the pleadings filed in a suit. The defendant submitted that the plaintiff has not pleaded in the plaint that there is a dispute between the parties over the amount of money that was advanced by the defendant to the plaintiff. The defendant submitted that the plaintiff has admitted service of statutory notices in paragraphs 14 and 15 of the plaint. Referring to the reliefs sought in the plaint, the defendant submitted that the plaintiff’s only complaint is with regard to the auctioneers 45 days notice. The defendant submitted that there is no averment that the statutory notices that were served upon the plaintiff were improper or that the amount of money sought to be recovered by the defendant is inflated. The defendant submitted that what the plaintiff has sought in prayer (e) of the plaint is to be given time to repay the loan. The defendant submitted that the plaintiff could not have sought time to repay the loan if the amount being claimed by the defendant is inflated. The defendant submitted that the issues which the plaintiff has raised in its submissions are at variance with the plaint. The defendant submitted that the IRAC report was prepared before the filing of the suit and as such the plaintiff should have introduced it earlier in the proceedings to give the defendant an opportunity to respond to the same. The defendant submitted that the said report cannot supersede the defendant’s statements of account.

On the issue of notice, the defendant submitted that the plaintiff was given a 3 months notice. The

defendant submitted that the address through which the notice was served upon the plaintiff is the same address which the plaintiff used in the charge document. The defendant submitted that notices were lawfully issued and served upon the plaintiff. The defendant submitted that the plaintiff acknowledged receipt of the notices and wrote to the defendant asking for more time to repay the loan. The defendant submitted that the plaintiff did not contest the amount of money that were demanded in the said notices. The defendant submitted that the court cannot re-write a contract for the parties. The defendant submitted that the injunction sought if granted would be prejudicial to the defendant because the loan advanced to the plaintiff is increasing at a high rate and may surpass the value of the suit properties. The defendant submitted that a dispute over the quantum of the loan outstanding cannot be a ground for granting injunction.

In support of this submission, the defendant cited the case of Middle East Bank Kenya Limited vs. Milligan Properties Ltd, Civil Appeal No. 251 of 1998. The defendant submitted that damages would be an adequate remedy for the Plaintiff. The defendant submitted that equity cannot release a party from a bad bargain.

On the issue of interest, the defendant submitted that the interest rate which has been charged on the plaintiff's loan account was the agreed interest rate. The defendant submitted that the law capping interest rate came into effect after it had already advanced the loan in question to the plaintiff and that that law does not act retrospectively. The defendant submitted that the law capping interest rate applies only to the loan transactions which were completed after the law had come into effect. The defendant submitted that no reasonable cause of action has been established against it and that if the court is convinced that there is a case, there is no irreparable harm disclosed to warrant the granting of the orders sought. The defendant urged the court to dismiss the application.

#### Determination:

I have considered the plaintiff's application together with the affidavits filed in support and in opposition thereto. I have also considered the submissions filed by the parties and the authorities cited in support thereof. The main relief sought by the plaintiff is a temporary injunction. The remaining prayers are secondary in nature. The principles upon which this court exercises its discretion in applications for a temporary injunction are now well settled. In the case of, Giella vs. Cassman Brown & Co. Ltd (1973) E.A 358, it was held that an applicant for a temporary injunction must show a prima facie case with a probability of success and that such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages. It was held further that if the court is in doubt as to the foregoing, the application would be determined on a balance of convenience. In the case of Nguruman Limited vs. Jan Bonde Nielsen & 2 Others (2014) eKLR the Court of Appeal stated as follows:

*“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. ...All that the court is to see is that on the face of it the person applying for an injunction has a right which has been threatened with violation...The applicant need not establish title it is enough if he can show that he has a fair and bonafide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it, the applicant's case is more likely than not to ultimately succeed.”*

I am not satisfied from the material before me that the plaintiff has met the threshold for granting the orders sought. As I have stated earlier in this ruling, the plaintiff's application has been brought on two main grounds. The first ground is that the amount claimed by the defendant to be due from the plaintiff on its loan account on the basis of which the defendant has instructed an auctioneer to sell the suit property is overstated. The plaintiff has contended that the defendant has been levying illegal interest on the said account resulting in interest overcharge of over Kshs. 1,208,229.78. The other ground on the basis of

which the intended sale of the suit properties has been challenged is that the notices which have been served upon the plaintiff are unlawful and premature.

On 13th February, 2017, Antique Auctions served the plaintiff with 45 days redemption notice and notification of sale to pay a sum of Kshs. 197,912,287.45 to the defendant in default of which they would sell the suit properties by public auction on 20th April, 2017. The said sum of Kshs.197,912,287.45 was said to be due on the plaintiff's loan account as at 8th February, 2017. According to the plaintiff's statement of loan account which is annexed to the defendant's replying affidavit and the plaintiff's own affidavit in support of the application, a sum of Kshs. Kshs. 197,912,287.45 was due and payable by the plaintiff to the defendant as at 30th January, 2017. This is the amount that is contained in the auctioneers redemption notice aforesaid.

The onus was upon the plaintiff to satisfy the court that this amount which is claimed by the defendant is erroneous. The plaintiff has claimed that interest charged on its loan account which is included in the said sum claimed by the defendant is illegal in that it is contrary to the provisions of the Banking (Amendment) Act, 2016(hereinafter referred to as "the Banking Act". The Banking Act came into effect on 14th September, 2016. The loan facility agreement between the plaintiff and the defendant was entered into through a letter of offer dated 30th June, 2015. The charge over the suit properties which was executed by the defendant in favour of the plaintiff pursuant to the said agreement is dated 24th August, 2015. The said charge was registered on 26th August, 2015. The said letter of offer and charge contain the terms and conditions under which the defendant advanced to the plaintiff the said loan facility.

The defendant has contended that the Banking Act was not intended to be retrospective and as such does not apply to the banking facility that was made available to the plaintiff by the defendant before the said Act came into force. In the case of Municipality of Mombasa vs. Nyali Limited [1963] E.A 371 Newbold J.A stated as follows:

*"Whether or not legislation operates retrospectively depends on the intention of the enacting body as manifested by the legislation. In seeking to ascertain the intention behind the legislation the courts are guided by certain rules of construction. One of these rules is that if the legislation affects substantive rights it will not be construed to have retrospective operation unless a clear intention to that effect is manifested; whereas if it affects procedure only, prima facie it operates retrospectively unless there is a good reason to the contrary".*

I entirely agree with the foregoing statement of the law. Section 33B(1)(a) and (b) of the Banking Act sets out the maximum interest rate which a banking institution can charge for a credit facility and the minimum interest rate which a banking institution should pay on the deposits held in an interest earning account. Section 33B(2) of the Banking Act provides as follows:

*"A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law."*

There is no dispute that the loan agreement between the plaintiff and the defendant which provided for the interest rate payable by the plaintiff to the defendant on the loan amount that was advanced by the defendant to the plaintiff was entered into before the enactment of the Banking Act. There is no dispute that the Banking Act is not a procedural legislation. It affects substantive rights of the lenders and borrowers. The court has taken judicial notice of the fact that the Act was passed after a long period of public debate. I am of the view that if it was the intention of Parliament that the Act does apply retrospectively, it would have stated so expressly in the Act. There is no indication in the Act that that was the intention of Parliament. In view of the fact that the Banking Act affects substantive rights as I have stated above, I am unable to construe the Act as having a retrospective effect.

In view of that finding, I am in agreement with the defendant's submission that the plaintiff is bound by the agreement it entered into with the defendant on the interest that was to be paid on the loan amount that was advanced to it by the defendant. The court cannot vary the rate of interest that was agreed upon by the parties. The court cannot also vary the period within which the plaintiff was to repay the loan.

In the case of National Bank of Kenya Ltd vs. Pipeplastic Samkolit & another (2001) KLR 112 the court stated that:

*“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved”.*

That position of the law has not changed. There is no evidence before the court showing that the defendant has levied interest on the plaintiff's loan account over and above what had been agreed upon by the parties. The IRAC report that has been relied upon by the plaintiff to support his case on the issue of interest was prepared on the basis that the Banking Act is retrospective in its operation. In view of the court's finding on the issue, the report is of no assistance to the plaintiff.

I wish add that I am in agreement with the defendant that a dispute over the amount payable without more is not a ground for restraining a chargee from exercising its statutory power of sale. In the case of, Priscillah Krobought Grant vs. Kenya Commercial Finance Co. Ltd. and 2 Others, Court of Appeal at Nairobi, Civil Application No. Nai 227 of 1995 (108/95 V.R) (unreported), the court stated as follows:-

*“Finally, it will bear repetition, we think if we were to state that a court does not normally grant an injunction to restrain a mortgagee from exercising its statutory power of sale solely on the grounds that there is a dispute as to the amount due under the mortgage – see Barmal Kanji Shah & Another Vs. Shah Depar Devji (1965) E. A. 91, 32 Halsbury's Laws of England (4<sup>th</sup> Edition) paragraph 725 and Uhuru Highways Development Ltd. Vs. Central Bank Kenya and 2 Others, Civil Application No. Nai 140 of 1995 (unreported) per Kwach J. A.”*

On the issue of service of the requisite notices, again, I am satisfied that the plaintiff was duly served with all the notices required under the law. I am satisfied that the plaintiff was served with the notices required under sections 90 and 96 of the Land Act, 2012. The plaintiff has taken issue with the statutory notice dated 5th September, 2016. The plaintiff has contended that this notice gave it 90 days instead of 3 months as provided for under section 90(2)(b) of the Land Act, 2012 to pay the outstanding loan.

I have noted that the plaintiff was served with a 3 months notice under section 90(2)(b) of the Land Act, 2012 on 6th April, 2016. That notice is annexed to the defendant's replying affidavit as annexure “KK5”. Even if the notice served upon the plaintiff on 5th September, 2016 provided for 90 days repayment period instead of 3 months, the same was inconsequential as the plaintiff had been served with a proper notice under section 90(2)(b) of the Land Act, 2012 on 6th April, 2016 as aforesaid. The plaintiff has denied receipt of the notice dated 4th April, 2016. As I mentioned earlier, the plaintiff has contended that the defendant should have availed a certificate of posting to prove that indeed the said notice was posted to the plaintiff. I am satisfied from the material before the court that the notice was served upon the plaintiff.

I have noted that this notice service of which has been denied by the plaintiff was sent through the same postal address at which all the other notices that were served upon the plaintiff were sent and which is the plaintiff's address for service given in the charge instrument and the letter of offer. I have also noted that that same letter dated 6th April, 2016 is referred to in the letters dated 5th September, 2016 and 15th December, 2016 receipt of which the plaintiff has acknowledged. I am of the view that if indeed that the plaintiff did not receive the letter dated 6th April, 2016, the plaintiff would have raised the issue with the defendant in its letter dated 19th January, 2017 which it addressed to the defendant in response to the defendant's letter dated 15th December, 2016 in which the said letter was referred to.

I have also noted that in paragraphs 14 and 15 of the plaint, the plaintiff has admitted having received the requisite notices. The plaintiff has not pleaded that it was served with 90 days notice instead of 3 months notice. In fact in paragraph 14 of the plaint, the plaintiff has admitted having received “*a Notice of three months under Section 96 of the Land Act, 2012*”. Parties are bound by their pleadings. I am in agreement with the submission by the defendant that an injunction sought at interlocutory stage must bear some relationship with the cause of action pleaded in the plaint. See, Shah vs. Shah [1981] KLR 374.

Apart from the injunction which was sought to restrain the sale of the suit properties, the plaintiff had also sought an injunction to restrain the defendant from referring their accounts to a Credit Reference Bureau. The plaintiff has admitted that it is in default in the repayment of the loan. I have noted from annexure "CG7" to the plaintiff's affidavit in support of the application herein that the defendant had given the plaintiff notice of its intention to report the plaintiff's default to a Credit Reference Bureau. There is no evidence that the intended report is actuated by malice or bad faith. I find no basis for restraining the defendant from reporting the plaintiff's loan default to a Credit Reference Bureau.

The plaintiff had also sought an order that it be supplied with various documents. Again, I find no merit in this prayer. The IRAC report that is annexed to the plaintiff's further affidavit shows that most of the documents sought in prayer (viii) of the application were in the possession of the plaintiff as at the time of filing this suit.

In the final analysis and for the foregoing reasons, it is my finding that plaintiff has failed to establish the grounds for granting the orders sought in the Notice of Motion application dated 27<sup>th</sup> March, 2017. The application fails and is dismissed with costs to the defendant.

**Delivered and Signed at Nairobi this 3<sup>rd</sup> day of November, 2017**

**S. OKONG'O**

**JUDGE**

Ruling read in open court in the presence of:

Mr. Kimani for the Plaintiff

Ms. Mwachiro h/b for Njuguna for the Defendant

Kajuju Court Assistant