Njihia & another v Njoroge & another (Environment and Land Appeal 11 of 2023) [2024] KEELC 802 (KLR) (15 February 2024) (Judgment)

Neutral citation: [2024] KEELC 802 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ENVIRONMENT AND LAND APPEAL 11 OF 2023

YM ANGIMA, J

FEBRUARY 15, 2024

BETWEEN

PHILIP MUCHIRI NJIHIA ..... 1ST APPELLANT

FRANCIS NDIANGUI NDEGWA ..... 2ND APPELLANT

AND

JOHN NDIRANGU NJOROGE ..... 1ST RESPONDENT

NYANDARUA COUNTY GOVERNMENT ..... 2ND RESPONDENT

(An appeal against the judgment and decree of Hon. Stephen Mogute (PM) dated 30.05.2023 in Nyahururu CM ELC No. 77 of 2019)

JUDGMENT

A. Introduction

1. This is an appeal against the judgment and decree of Hon. Stephen Mogute (PM) dated 30.05.2023 in Nyahururu CM ELC No. 77 of 2019 – John Ndirangu Njoroge -vs- Philip Muchiri Njihia & Francis Ndiangui Ndegwa. By the said judgment, the trial court allowed the 1st Respondent's suit for recovery of the suit property and dismissed the Appellant's counterclaim for portions of the suit property. The 1st Respondent was also awarded costs of the suit and the counter-claim.

B. Background

2. The material on record shows that vide a plaint dated 05.07.2019 the 1st Respondent sued the Appellants seeking the following reliefs:

    a. An order directing the Defendants' eviction and demolition of the building structures erected by them on L.R. No. Nyandarua/Ol'Kalou Salient/117 at their own costs.

b. An order for removal of the caution registered on 21.11.2013 against Title No Nyandarua/ Ol'Kalou Salient/117 forthwith.

c. Costs of the suit plus interest thereon at court's rate.

d. Any other or better relief deemed fit by the honourable court.

3. The 1st Respondent pleaded that he was the registered proprietor of Title No. Nyandarua/Ol Kalou Salient/117 (Parcel 117) which he lawfully acquired from the Settlement Fund Trustees (SFT) on loan. He pleaded that on or about 21.11.2013 the 2nd Appellant had wrongfully caused a caution to be registered against Parcel 117 claiming a licencee's interest.

4. The 1st Respondent further pleaded that sometime in 2015 the Appellant had jointly with other claimants filed a dispute before the Nyandarua County Land Management Board (the Board) under Section 81 of the *National Land Commission Act*, 2012 claiming that he had illegally acquired a title deed for Parcel 117 which had been reserved for a trading centre by the defunct Ol Kalou Town Council (the Council).

5. The 1st Respondent pleaded that upon a hearing of the said claim the Board had unanimously determined that he had followed due process in his acquisition of Parcel 117 and that it was the council which had failed to follow due process in purporting to allocate the Appellants some plots within the said parcel. It was the 1st Respondent's case that the Appellants had not appealed the decision of the Board.

6. The 1st Respondent's further grievance was that the Appellants had erected some structures or buildings and settled on Parcel 117 and had refused to vacate and remove their structures therefrom despite issuance of a demand and notice of intention to sue.

7. The record shows that the Appellants filed a defence dated 20.08.2019 which was amended on 14.10.2019 to include a counterclaim. By their defence, the Appellants denied the 1st Respondent's claim in its entirety and put him to strict proof thereof. They denied that the 1st Respondent was the registered owner of Parcel 117 and pleaded that they were allocated portions of the land in 1991 by the council and they had caused massive developments thereon.

8. The Appellants pleaded that if the 1st Respondent was ever registered as proprietor of Parcel 117 then the same was obtained through fraud since the same had been set aside by the council as a trading centre hence it was public utility land. The Appellants further pleaded that they were allocated the land by the council and developed the same before the 1st Respondent was allocated the same land by the SFT. They also pleaded that they had since challenged the decision of the Board through an appeal which was still pending.

9. By their counterclaim, the Appellants reiterated the contents of their defence and pleaded that they were the legitimate owners of the disputed land by virtue of allocation by the council. The 1st Appellant pleaded that he was allocated Plot Nos. 3 & 32 whereas the 2nd Appellant's brother was allocated Plot No. 15 which all fell within Parcel 117. They pleaded that they had been in occupation since 1988 and had been paying rates to the relevant authorities. They further contended that their building plans had been duly approved by the county government of Nyandarua which they had joined as a 2nd Defendant to their counterclaim.

10. The Appellants reiterated that the 1st Respondent had acquired title through fraudulent means and pleaded that they had acquired an overriding interest over Parcel 117 since they had been in occupation for over 20 years prior to the 1st Respondent's acquisition of title. The Appellants faulted the county

government of Samburu for failing to recover Parcel 117 which had been set aside for public utility from the 1st Respondent who had allegedly grabbed it. They also faulted it for collecting land rates from them without taking steps to issue them with certificates of leases.

11. As a result, the Appellants sought the following reliefs in their counterclaim:

    a. Compensation of the subject Plots to the Plaintiffs namely Plots No. 3, No. 32 and No. 15 which are distinctively marked and where they have caused developments at the current and prevailing market price at the time of the judgment, refund of all the land rates paid by the Plaintiffs since 1991 todate together with interest at court rates until liquidation of the same in full.

    b. General damages for breach of contract.

    c. Costs of the counter-claim and interest.

    d. Such other or further reliefs as this honourable court may deem just and expedient to grant.

12. The 2nd Respondent filed a defence to counterclaim dated 12.07.2021 in which it denied the Appellants' counterclaim in its entirety and put them to strict proof thereof. The 2nd Respondent pleaded that it was not aware of the matters pleaded in the counterclaim and made no admission thereof. The alleged allocations to the Appellants were denied; the alleged approval of building plans was denied; the Appellants' possession was denied; and the collection of land rates was denied too.

13. The record shows that the 1st Respondent filed a reply to defence and defence to counterclaim dated 30.10.2019. By his reply to defence, the 1st Respondent joined issue upon the Appellants' defence. He denied all the allegations contained in the defence and put the Appellants to strict proof thereof. It was denied that the Appellants had filed an appeal against the decision of the Board.

14. By his defence to counterclaim, the 1st Respondent denied all the allegations contained therein and put the Appellants to strict proof thereof. It was denied that the council had allocated any plots to the Appellants. It was also denied that Parcel 117 was public utility land and the Appellants were put to strict proof thereof.

15. The 1st Respondent denied that he had acquired Parcel 117 fraudulently and he denied all the particulars of alleged fraud pleaded in the counterclaim. He denied that the Appellants had been in occupation since 1988 or that they had acquired an overriding interest over Parcel 117. It was further pleaded that the council had no legal authority to allocate private land to third parties hence the purported allocations to the Appellants were null and void ab initio.

16. The record further shows that the Appellants filed a reply to the 1st Respondent's defence to counterclaim dated 12.11.2019 in which they joined issue upon the defence and reiterated the contents of their counterclaim. They insisted that the 1st Respondent had acquired title to Parcel 117 fraudulently and reiterated that they had been in exclusive and uninterrupted possession of the land since 1990. They consequently prayed for the 1st Respondent's suit to be dismissed and for their counterclaim to be allowed.

C. Trial Court's Decision

17. The record shows that upon a full hearing of the suit and counterclaim the trial court held that the 1st Respondent had proved his claim to the required standard and entered judgment in his favour. The trial court also found that the Appellants had failed to prove their counterclaim to the required standard since there was no evidence of fraud on the part of the Respondent in his acquisition of Parcel

117. It was also the finding of the trial court that the Appellants had failed to prove their claim for damages against the 2nd Respondent.

D. Grounds of Appeal

18. Being aggrieved by the said judgment, the Appellants filed a memorandum of appeal dated 26.06.2023 raising the following ten (10) grounds of appeal:

    a. That the learned trial magistrate erred in law and fact in ordering for the Appellants' eviction and demolition of the building structures erected by then on L.R. No. Nyandarua/Ol'Kalou Salient/117 at their own costs in total disregard of clear and undisputed facts that the Appellants are in occupation of the said parcel which they have enjoyed for more than 30 years.

    b. That the learned trial magistrate erred in law and fact by not considering the caveat that had been placed over the suit land by the Registrar of titles on 21.11.2013 after complaints of questionable dealings were made and subsequently ordering its removal.

    c. That the learned trial magistrate erred in law and fact by not considering that the 2nd Appellant was wrongfully joined in the suit while he had no interest on the suit land.

    d. That the learned trial magistrate erred in law and fact by not considering that the initial dispute filed by the Appellants solely touched on ownership dispute and not trespass.

    e. That the learned trial magistrate erred in law and fact in failing to find that the 1st Respondent's title deed was subject to the Appellant's overriding interest as persons in possession at the time of its issuance.

    f. That the learned trial magistrate erred in law and fact in finding that the 1st Respondent's suit was not statutory time barred.

    g. That the learned trial magistrate erred in law and expressed total bias against the Appellants and disregarded their counter-claim and evidence on the illegal and fraudulent transfer of the land to the 1st Respondent as proved by a copy of Title Deed issued on 14.05.2010 which parcel of land had been allocated to the Appellants by the now defunct Ol'Kalou Town in the year 1990.

    h. That the learned trial magistrate erred in law by dismissing the Appellant's counterclaim and not considering that the Appellants were allocated the subject plots they are currently occupying now by defunct Ol'Kalou Town Council in the year 1990 and they have been in occupation since then todate and they have been paying the land rates to the defunct Ol'Kalou Town Council and now to the Nyandarua County Government.

    i. That the learned trial magistrate failed to appreciate that there was no evidence tendered by the Respondents to prove trespass by the Appellant and the injunction issued is subject to anarchy and abuse of the Respondent.

    j. That the learned trial magistrate failed to consider the pleadings filed by the Appellants, evidence of the Appellants and the written submissions.

19. As a result, the Appellants sought the following reliefs in the appeal:

    a. That this appeal be allowed.

    b. That the judgment of the trial court dated 30.05.2023 be set aside.

    c. That the Appellants be awarded costs of the appeal.

E. Directions on Submissions

20. When the appeal was listed for directions, it was directed that the appeal shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Appellants' submissions were filed on 18.12.2023 whereas the 1st and 2nd Respondents' were not on record by the time of preparation of the judgment.

F. Issues for Determination

21. Although the Appellants raised 10 grounds in their memorandum of appeal, the court is of the opinion that the same may be summarized into the following 3 grounds:

    a. Whether the trial court erred in law and fact by allowing the 1st Respondent's suit.

    b. Whether the trial court erred in law and in fact in dismissing the Appellants' counterclaim.

    c. Who shall bear costs of the appeal.

G. Applicable legal principles

22. As a first appellate court, this court has a duty to analyze, reconsider and re-evaluate the entire evidence on record so as to satisfy itself as to the correctness or otherwise of the decision of the trial court. The principles which guide a first appellate court were summarized in the case of Selle & Another –vs- Associated Motor Boat Co. Ltd & Others [1968] EA 123 at P.126 as follows:

> " ...Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression on the demeanor of a witness is inconsistent with the evidence in the case generally."

23. Similarly, in the case of Peters –vs- Sunday Post Ltd [1958] EA 424 Sir Kenneth O' Connor, P. rendered the applicable principles as follows:

> " ...it is strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon the evidence should stand. But this is a jurisdiction which should be exercised with caution. It is not enough that the appellate court might itself have come to a different conclusion..."

24. In the same case, Sir Kenneth O'Connor quoted Viscount Simon, L.C in Watt –vs- Thomas [1947] A.C. 424 at page 429 – 430 as follows:

> " My Lords, before entering upon an examination of the testimony at the trial, I desire to make some observations as to the circumstances in which an appellate court may be justified in taking a different view on facts from that of a trial judge. For convenience, I use English terms, but the same principles apply to appeals in Scotland. Apart from the class of cases in which the powers of the Court of Appeal are limited to deciding a question

of law (for example, on a case stated or on an appeal under the County Courts Acts) an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial and especially if that conclusion has been arrived at on conflicting testimony by a Tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other Tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."

25. In the case of Kapsiran Clan -vs- Kasagur Clan [2018] eKLR Obwayo J summarized the applicable principles as follows:

    a. First, on first appeal, the court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;

    b. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and

    c. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

H. Analysis and Determination

a. Whether the trial court erred in law and fact in allowing the 1st Respondent's suit

26. The court has considered the material and submissions on record on this issue. It is evident from the pleadings and material on record that the 1st Respondent was seeking to vindicate his proprietary rights as the registered owner of Parcel 117. His main grievance was that the Appellants were wrongfully occupying his land on which they had erected some dwelling structures without his permission or consent. He produced his title deed and the documents supporting his allocation by the SFT such as the letter of offer, charge document, discharge of charge, transfer document and payment receipts.

27. The Appellants, on the other hand, contended that they were holders of temporary occupation licences (TOLs), which were granted by the defunct council in 1991 or thereabouts. It was their case that the 1st Respondent had obtained registration of Parcel 117 through fraudulent means and they pleaded several particulars of fraud against him. The Appellants also contended that they had been in occupation of the land for over 30 years hence they had acquired an overriding interest thereon.

28. In its judgment the trial court considered the decision of the Board dated 28.09.2015 which absolved the 1st Respondent of any fraud or wrongdoing in his acquisition of Parcel 117. The Board had found that the 1st Respondent had lawfully and procedurally acquired the land from the SFT hence he was entitled to retain it while it faulted the 2nd Respondent for failing to follow due process. The trial court

found that since the defunct council was not the owner of Parcel 117, it had no business allocating portions thereof to the Appellants.

29. The court has noted from the record of proceedings that the 1st Appellant conceded at the trial that Parcel 117 belonged to SFT. During cross examination by the 1st Respondent's advocate the 1st Appellant stated thus:

> " ...the plots belonged to the Settlement Fund Trustees. I don't have any document to show that the plots were given to the Nyandarua County Government."

30. The trial court also considered the fraud alleged against the 1st Respondent and held as follows:

> " The Defendants pleaded that the Plaintiff obtained the title deed by fraudulent means. The particulars of fraud are stated at paragraph 21 of the amended defence and counter-claim. Those particulars were not proved by the Defendants by way of evidence as required by the law. The courts have held that fraud is a serious accusation which has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. See the case of Arithi Highway Developers Ltd -vs- West End Butchery Ltd & Others 2015 eKLR. CA No. 246 of 2013."

31. The court entirely agrees with the findings and holdings of the trial court on the 1st Respondent's suit. There was credible evidence on record to show that the 1st Respondent had followed due process in acquiring the suit property from the SFT. The process of acquisition was well documented and it was not discounted by any credible evidence by the Appellants. There was also no credible evidence of fraud on the part of the 1st Respondent. The Appellants' complaint on alleged fraud had previously been investigated by the Board which found no evidence of fraud or illegality. In the premises, the court finds no evidence that the trial court erred either in law or fact in holding that the 1st Respondent had proved his claim to Parcel 117 on a balance of probabilities.

b. Whether the trial court erred in law and fact in dismissing the Appellants' counterclaim

32. The court has considered the material and submissions on record on this issue. It is evident from the material on record that the Appellants' counterclaim was based on essentially the same matters which were pleaded in their defence. Their claim to portions of the suit property was based on the purported "allocation" by the defunct council vide temporary occupation licenses dated 1991. As indicated before, the council had no legal interest in the suit property capable of alienation to third parties. The 1st Appellant conceded at the trial that the suit property belonged to the SFT. In the premises, there was no legal or factual basis for the TOLs the council issued in 1991.

33. The court has further noted that the Part Development Plan (PDP) for the sub-division of Parcel 117 which was tendered at the trial was not approved by the approving authority who was the Commissioner of Lands at the time. There was no evidence to show that the Appellants' building plans were ever approved by the planning authority at the time. The 1st Appellant conceded at the trial that the PDP for the sub-division of the suit property was not approved. The court is thus of the opinion that the 1st Appellant could not base his counterclaim upon the purported allocation by the council which had no legal authority to do so.

34. The court finds the Appellants' claim for damages and compensation against the 2nd Respondent totally un-acceptable and untenable. The evidence on record shows that as far back as 2015 the Board made its decision and found that the SFT had properly allocated the suit property as the owner. Therefore, the Appellants knew that their TOLs had no legal and factual basis. The fact that Parcel

117 belonged to SFT was not a fact peculiarly and exclusively within the knowledge of the defunct council. The Appellants had the means of knowing the same by either visiting the Land's Office or the SFT offices bearing in mind that the property fell within Ol Kalou Salient Settlement Scheme. They had the means of knowing whether or not the PDP shown to them by the council was approved by the Commissioner of Lands. They could not, therefore, blame the council or the 2nd Respondent entirely for granting invalid TOLs.

35. The court is further of the opinion that there being no evidence of approval of their building plans by the approving authority at the material time there would be no legal basis for their claim for compensation for any developments they may have undertaken thereon. The court is further of the opinion that the Appellants' claim was not pleaded with particularity as required by law. The amount of rates sought to be refunded was not pleaded with particularity. The alleged value of developments carried out on the suit property was also not pleaded with particularity. It is also evident that the amounts sought were not strictly proved at the trial. In fact, the material on record shows that during cross examination the 1st Appellant conceded that he had never paid land rates since 1991. He stated that the documents he had were only invoices demanding payment of rates.

36. The court has noted that in their written submissions, the Appellants submitted that the 1st Respondent's claim was time-barred under Section 7 of the Limitation of Action Act, (Cap.22). The court has noted that this issue was never pleaded in the Appellant's defence and counterclaim before the trial court. The court has further noted that the issue was not raised as one of the grounds in the memorandum of appeal. The court finds this ground a mere afterthought and the same is accordingly rejected. The Appellant had the opportunity of pleading and canvassing the issue of limitation before the trial court but they failed to do so.

37. Finally, the Appellants submitted that they had acquired an overriding interest over the suit property stemming from possession and occupation under Section 30(g) of the Registered *Land Act* (Cap.300) (now repealed). They relied, inter alia, upon the authorities of Janet Kagendo Kamau -vs- Mary Wangari Mwangi [2007] eKLR and Wensley Barasa -vs- Immaculate Awino Abongo [2017] eKLR in support of that submission. It is evident from the material on record that the 1st Respondent acquired his title to the suit property in 1996 when the Registered *Land Act* was still in operation.

38. Section 30(g) of the said Act stipulated as follows:

> "Unless the contrary is expressed in the register all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without being noted in the register:-
>
> (g) The rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed."

39. Although the Appellants claimed to have been in possession of the suit land at the time of its allocation to the 1st Respondent there was no credible evidence to demonstrate the same. For instance, the material on record shows that whereas the 1st Appellant applied to the defunct council for transfer of the TOL for Plot 32 from the previous allotee to his name on 21.03.1995 the SFT allocated the suit property to the 1st Respondent on 15.05.1995. There was no evidence on record to show when the 1st Appellant took possession. The 1st Appellant's pleading in his defence and counter-claim that he took possession in 1988 or 1990 cannot possibly be true since the TOL for Plot 32 was first issued by the council in 1991 whereas he applied for its transfer to him on 21.03.1995.

40. Be that as it may, the court is of the opinion that the meaning and import of Section 30(g) of the repealed Registered *Land Act* was exhaustively interpreted by the Supreme Court of Kenya in the case of Isack M'inanga Kiebia v Isaaya Theuri M'lintari & Another [2018] eKLR as follows:

> We also declare that, rights of a person in possession or actual occupation under Section 30(g) of the Registered *Land Act*, are customary rights. This statement of legal principle, therefore reverses the age old pronouncements to the contrary in Obiero v. Opiyo and Esiroyo v. Esiroyo. Once it is concluded, that such rights subsist, a court need not fall back upon a customary trust to accord them legal sanctity, since they are already recognized by statute as overriding interests.

41. It is evident from the Appellants' pleadings and evidence before the trial court that their defence and counterclaim was not based upon customary law. Their claim was based upon allocation by the defunct council on the basis of a TOL. In the premises, the court is of the view that the Appellants have no conceivable claim for the suit property under Section 30(g) of the Registered *Land Act* or any equivalent provision of the law. In the premises, the court finds no basis for interfering with the trial court's decision in dismissing the Appellants' counterclaim.

42. The court has noted that even though the 2nd Appellant filed a counterclaim before the trial court he has argued in the appeal that he was wrongly sued in the first place because he was not the legal representative of his late brother, David Ndegwa, who was the allotee of Plot No. 15. He claimed that he was merely a caretaker and he came into the picture because his brother's house on the suit property was destroyed.

43. It is strange that the 2nd Appellant could wait until the Appellant stage to argue that he had been wrongly sued. He defended the 1st Respondent's suit before the trial court for over 4 years. He also prosecuted a counterclaim on behalf of his brother for 4 years and only discovered that he was wrongly joined in the proceedings after losing the case before the trial court. If the 2nd Appellant was genuine about lack of legal capacity to act then he ought not to have filed and prosecuted a counterclaim which was essentially a cross suit on behalf of his brother. The court is of the view that since the purported allocation of Plot 15 was a nullity ab initio and since the 2nd Respondent lost the counterclaim nothing really turns on this point. He should, however, pay costs for purporting to defend the suit and purporting to prosecute a counterclaim without proper authority.

d. Who shall bear costs of the appeal

44. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd [1967] EA 287. The court finds no good reason why the successful party should not be awarded costs of the appeal. Accordingly, the 1st Respondent shall be awarded costs of the appeal. The 2nd Respondent, however, is not entitled to any costs since it did not participate in the appeal.

I. Conclusion and Disposal Orders

45. The upshot of the foregoing is that the court finds no merit in the Appellants' appeal. Consequently, the court makes the following orders for disposal thereof:

    a. The appeal be and is hereby dismissed.

b. The judgment and decree of the trial court dated 30.05.2023 in Nyahururu CM ELC No. 77 of 2019 is hereby affirmed.

c. The 1st Respondent is hereby awarded costs of the appeal to be borne by the Appellants.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 15TH DAY OF FEBRUARY, 2024.

Y. M. ANGIMA

.....

JUDGE

I certify that this is a true copy of the originally

Signed

DEPUTY REGISTRAR

In the presence of:

Ms. Njoki Mureithi for the Appellants

Ms. Ndegwa for the 1st Respondent

N/A for the 2nd Respondent

C/A - Carol