



**Kenya Post Office Savings Bank v Wasike (Civil Appeal 264 of 2019)
[2024] KECA 1461 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KECA 1461 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 264 OF 2019
MSA MAKHANDIA, S OLE KANTAI & A ALI-ARONI, JJA
OCTOBER 25, 2024**

BETWEEN

KENYA POST OFFICE SAVINGS BANK APPELLANT

AND

SIMIYU ABIUD WASIKE RESPONDENT

(Being an appeal from the Judgment of the Environment and Land Court of Kenya at Nairobi, (L. Gacheru, J.) delivered on 7th September, 2017 in E.L.C Suit No. 2834 of 1995.)

JUDGMENT

1. This is a first appeal from the judgment of the Environment and Land Court ('ELC') delivered by Gacheru, J. on 7th September, 2017. The suit by the appellant (Kenya Post Office Savings Bank) against the respondent (Simiyu Abiud Wasike) was found without merit and dismissed. Being a first appeal our mandate is to reconsider the evidence, evaluate it ourselves, and make our findings with the caveat that we lack the advantage the trial Judge had of seeing and hearing the witnesses- see, for that mandate, the oft-cited case of *Selle vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123 where this Court stated:

"...this Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. 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 this respect ..."

2. It was averred in the plaint filed originally at the High Court of Kenya at Nairobi (the suit was later transferred to ELC) that the appellant was at all material times the registered owner and entitled to possession of the land and premises situate at and known as LR.No.209/11908, Nairobi House No.



HG 34 Mara Road, ('the suit property') by virtue of a Vesting Order issued by the Court on 4th July, 1994 which was registered at the Central Land Registry, Nairobi, on 27th July, 1994; that the respondent who was then in occupation had been notified of that Vesting Order and had been required to vacate the suit premises; that he had refused to vacate depriving the appellant the use and enjoyment of the same. It was therefore prayed that judgment be entered for the appellant for an order of vacant possession and delivery up of the suit premises, damages or mesne profits at the rate of Kshs.50,000 per month from September, 1995 until possession was delivered.

3. The respondent delivered a defence where the appellant's claim was denied. It was averred at paragraphs 2 and 3 of that defence:

"2. The Defendant denies paragraph 3 of the plaint and states that any vesting order issued by this Honourable Court on the 4th July 1994 was a fraud on the Defendant as occupant of the suit premises L.R No. 209/11908-Nairobi Area also known as House No. HG34 Mara Road in that there was material breach of the law prior to the issue of the vesting order because:-

i. Section 52 of the Transfer of Property Act barred Thabiti Finance Company Limited from transferring the suit premises while High Court Civil Suit No. 2290 of 1994 between Thabiti Finance Company Limited (Plaintiff) and S.A. Wasike (Defendant) was pending in court concerning those premises; and

ii. Thabiti Finance Company Ltd through its principal Shareholders and Directors namely:- Dalmas Maurice Otieno Onyango holder of 82,495 shares and Hezekiah Nelson Oyugi 54,737 shares knew and ought to have advised their company to inform the Plaintiff that the Defendant had an equitable interest in the suit premises which could not be disposed of without notice to the Defendant and Thabiti Finance Company Ltd connived with the Kenya Post Office Savings Bank to defraud the Defendant of his interest through this Honourable Court.

3. The alleged vesting order issued on 4th July 1994, if valid, which is denied, is limited in scope and does not entitle the holder thereof to full rights of proprietorship including the right to seek and enforce eviction of the Defendant as an equitable proprietor."

4. The respondent further stated in the defence that he remained lawfully in the suit premises and he could not voluntarily or forcibly vacate; that the appellant must await the outcome of H.C.C. No. 2290 of 1994 (Thabiti Finance Company Limited vs. Simiyu Abiud Wasike) where the title to the suit premises was in question.

There was no counterclaim.

5. The hearing started before Osiemo, J. who took the evidence of the 4 witnesses called by the appellant. Isaiah Kiplagat, a retired civil servant who served as the appellant's Managing Director from August 1999 - August 2001 testified that the appellant had deposits with Thabiti Finance Company Limited (the company) in the sum of Kshs.15,435,411/35 but when the deposit matured the company was unable to pay leading to the appellant filing a suit against the company. Judgment was entered for the appellant and the company offered the suit premises in settlement. The suit premises were



valued at Kshs.26,000,000 and the appellant paid the surplus to the company. A Vesting Order was registered against the title and the appellant obtained title to the suit premises thereafter the company transferred it to the plaintiff on 27th July, 1994. Further, that after obtaining title to the suit premises the respondent was served with a notice to vacate on 6th July, 1995 but he refused to do so leading to the suit. He denied that the suit premises had been allocated to the respondent and claimed that the appellant had no knowledge that the respondent was in occupation when it was dealing with the company. Further, that by its numbering (HG 34) he knew that the suit premises were government property which had converted to private property. A Prohibitory Order had been granted against the company prohibiting it from dealing with the suit premises. He concluded by stating that by the time Prohibitory Order and Vesting Order were registered the title was in the name of the company.

6. Lily L. K. Kithinji, a registered valuer, received instructions from the appellant to advise on market rental rates for the suit premises. She gave a sum of Kshs.60,000 per month.
7. Henry Wanyaria Khaemba, also a registered valuer, received instructions from the appellant and valued the suit premises at Kshs.33,130,000 with a monthly rental rate of between Kshs.55,000 and Kshs.85,000.
8. The last witness for the appellant was Mercy Njeri Kagiri Mbijiwe, its Company Secretary, who was aware of the suit between the appellant and the company (HCC No. 2567 of 1993) which the appellant had filed after the company had been unable to pay a deposit that had matured. Judgment was obtained and after investigations it was found that the suit premises were owned by the company without any encumbrances. A Prohibitory Order was placed against the title; the parties entered into a consent in court where the company offered the suit premises in settlement of the judgment and the suit premises were transferred by the company to the appellant which held a title to the same.
9. Then the appellant's case was closed and there was thereafter considerable delay during which Osiemo, J. retired and the file was transferred to ELC where Gacheru, J. took evidence of the 2 witnesses for the respondent and concluded the case.
10. The respondent, a retired civil servant and a farmer in Kitale relied on a witness statement he had filed together with documents in the case. He started living in the suit premises on 5th March, He testified that he had been issued with a letter of allotment for the suit premises in 1983 after making an application for its allocation. According to him the government made a policy in 1990 to sell government houses and he had applied for the suit premises to be allocated to him; that the President approved his application in 1994 where the Chief Secretary wrote to him indicating that the President had approved his application. In his own words:

“The Chief Secretary, Philip Mbithi wrote a letter to me that the President had approved my allocation. He directed that I be given a letter of allocation by the Commissioner of Lands. The letter of allotment was not forthcoming. I went to see Prof. Mbithi. I also met the President on the said house. The President instructed Mr. Ibrahim Kiptanui (state house controller (sic) to follow up the matter. Mr. Kiptanui did not act. I wrote a letter to him reminding him about the Presidents intervention. I requested Ibrahim Kiptanui to follow up the matter as directed by the President. Mr. Kiptanui did not respond. I followed up the matter. It was like a closed door. Nothing happened to allocate the house to me. ...”

11. He further testified that he later received a letter from Mr. Dalmis Otieno, Minister of Public Works asking him to vacate the suit premises; that he (the respondent) was sued by Thabiti Finance Company Limited (the company) to vacate the house; there was another suit at the magistrate's court which was not concluded. Before he resolved the issue with the company he was sued by the appellant who



claimed to be the new owner of the suit premises. He was not aware of the Vesting Order as he was not a party to that suit; according to him he owned the suit premises. In cross-examination he said:

“I applied for the house in 1991. I wrote a letter to the President. I applied again in 1992 and late in 1993. I applied for the house but I did not get allotment letter. ...”

12. Further, that the said Minister of Public Works had been informed by the Chief Secretary not to interfere with his (the respondent’s) occupation of the suit premises. He admitted that:

And

“I did not pay the government as I did not get letter of allotment-stand premium. ...”

“I do not know when title was issued to Thabiti. My approval was done in 1991. There are entries entered on the title deeds. I did not apply for any order to challenge the title deed. I did not apply to have the title deed declared null and void. No complaint to the Ministry of Lands. ...”

13. Abraham Kiptanui, a retired civil servant, was called as a witness by the respondent. He had worked at State House when the respondent was a Permanent Secretary. He recalled a government policy in the 1990s where civil servants were allowed to purchase houses they lived in. According to him the President verbally authorized that the respondent be allowed to purchase the suit premises. He stated in cross-examination:

“President Moi allowed Mr. Wasike to buy the house. I do not know if Mr. Wasike got allotment letter or not. I know the procedure. The allotment letter was to be issued by the Lands Office. The applicant needed to go back to the head of civil service and the head of civil service was to liaise (sic) with the land’s office for allotment letter. The allotment specified the amount to be paid. Mr. Dalmas Otieno was a government minister then. The civil servant were the one entitled to be allocated. Some ministers got interested and applied for the letters of allotment. The permanent secretary was Prof. Mbithi. Commissioner of Lands was Mr. Gachanja. I am not aware that Dalmas Otieno was issued with letter of allotment to this house. I do not know if by the time Mr. Wasike applied for the house it had been allocated to Mr. Dalmas Otieno. Mr. Wasike was allocated the house. I am not aware that the house had already been allocated to Mr. Dalmas Otieno before Mr. Wasike applied for it.”

14. The respondent’s case was then closed and as we have seen the Judge considered the case and dismissed it provoking this appeal where there are 8 grounds of appeal in the Memorandum of Appeal drawn for the appellant by its lawyer’s M/s Wambugu Motende & Company Advocates. It is said that the Judge erred in law and fact in dismissing the appellant’s case; that the Judge erred in law and fact in not finding that the “applicant” was the registered proprietor of the suit premises by virtue of a vesting order issued on 4th July, 1994 registered on 27th July, 1994; that the Judge erred by not finding that the appellant was the registered proprietor of the suit premises when it had produced title to the suit premises; that the Judge erred by finding that the respondent was the registered proprietor of the suit premises after finding that the appellant’s title had never been challenged; that the Judge erred by not finding that the suit property had been allocated procedurally to the appellant by the President; that the Judge had not considered the appellant’s submissions; that the appellant had proved its case to the required standard; and, finally, that the Judge had:

“...erred in law and fact by failing to act judiciously in the matter.”



We are asked to allow the appeal; that judgment in favour of the respondent be set aside and substituted by our judgment; that we set aside the order of the trial court on interest and costs and that we award costs of the appeal and of the ELC to the appellant.

15. When the appeal came up before us for hearing on 25th July, 2024 the appellant was represented by learned counsel Miss Adikah who appeared with Miss Cheruiyot while the respondent was represented by learned counsel Mr. Mwenesi who appeared with Miss Wanjiku. Both sides had filed written submissions and in a highlight of the same counsel for the appellant submitted that the appellant held a title to the suit premises; that a Vesting Order had been issued by a competent court which had been registered. Counsel submitted that the registration of the title was a first registration which could only be challenged on grounds of fraud. According to counsel the Judge had failed to consider evidence where Dalmas Otieno as the first registered owner had transferred the suit premises to the company which thereafter transferred the same to the appellant. Counsel submitted that the respondent had not met any conditions for allotment of the suit premises to him.
16. In opposing the appeal counsel for the respondent cited the case of Dina Management Limited vs. County Government of Mombasa & 5 Others (Petition 8 (E010) of 2021) [2023] KESC 30 for the proposition that it was the root of the title that was in question. According to counsel the appellant should have ensured that the suit premises was vacant before entering into a consent with the company; that the company did not have a letter of allotment and its title could be challenged under section 23 of *Land Registration Act* for fraud or misrepresentation. Further, that the respondent had applied to the President for allocation of the suit premises under the Government Lands Act (repealed); that there was a pending suit between the company and the respondent, and that the title held by the appellant could not be valid.
17. Counsel for the appellant, in a brief rejoinder, submitted that the company had acquired title to the suit premises after conditions for allocation of land had been met.
18. I have considered the whole record, submissions made and the law and this is the position I take in this appeal.
19. I do not consider it necessary – it will not add any value to take every ground of appeal separately as they are related and intertwined and can be determined together.
20. The case by the appellant before the trial court was that it was the registered proprietor of the suit premises which it had acquired from the company in satisfaction of a judgment and decree in a separate suit. The respondent took as a defence that the company could not transfer the suit premises in view of a pending suit between the company and he (the respondent); that the company should have known of his equitable interest before transferring the suit premises to the appellant; that Vesting Order was limited in scope; that the appellant must await the outcome of HCCC No. 2290 of 1994 where the company's title to the suit premises was in question.
21. As we saw earlier in this judgment the respondent did not file a counter-claim to the suit by the appellant.
22. Various documents were placed before the Judge by both sides and it is necessary to visit some of them in this appeal.
23. Grant No. I.R 59328 (L.R No. 209/11908) issued by the President of the Republic of Kenya under the Registration of Titles Act granted to Thabiti Finance Company Limited a term of 99 years from 1st May, 1993 at a stated renewable annual rent. There were various entries including Vesting Order by



the appellant registered on 27th July, 1994 and a caveat by the respondent claiming equitable interest registered on 15th August, 1994.

24. There is a covering page and one unsigned page of the report of the Controller and Auditor General for Account of the Funds for the year 1994/1995. A cursory reading of the report shows that it is a critic of government policy on allocation of government houses. It says in material part:

“558. As stated in previous Reports, the rationale for the allocation of plots which have Government houses on them is not clear, given the fact that there is an acute shortage of Government staff houses and that such allocations invariably result in Government evicting its own employees and sometimes rehousing them at considerable expense. This apart, and as previously indicated, there does not appear to be clear Government Policy with regard to disposal of Government property standing on these plots and the subsequent rehousing of the public officers affected by the disposals. ...”

25. By a letter dated 16th March, 1993 the respondent reminded His Excellency the President of letters he had written on 23rd October, 1991 and 10th January, 1992 on a plea to be allocated the suit premises.

26. The Permanent Secretary, Secretary to the Cabinet and Head of Civil Service by his letter to Commissioner of Lands dated 21st May, 1993 informed that office that the suit premises had been allocated to the respondent and concluded “... please arrange to have the allocation processed accordingly, after the necessary valuation has been done.” That office, in a subsequent letter dated 19th July, 1994 informed Dalmas Otieno, Minister of Transport and Communication, that the suit premises had been allocated to the respondent who should not receive any more harassment “... on the strength of the original allocation given to you by the Government.”

27. There is a Vesting Order by the High Court in HCCC No. 2567 of 1993 vesting the suit premises to the appellant in satisfaction of judgment; there is an order by Shaikh Amin, J. issued in Chambers on 18th May, 1994 where it is ordered:

“That the order No. 2 in the order of this Honorable Court dated 23rd September, 1993 and issued on the 24th September, 1993 in respect of L.R No. 209/11908 situated along Mara Road Upper Hill Area Nairobi be and is hereby discharged and the caveat thereon be and is hereby lifted.”

28. There is the decree in HCCC No. 3567 of 1993 for Kshs.15,435,411.35 with interest in favour of the appellant against the company; there is the letter dated 6th July, 1995 from the appellant’s Advocates requiring the respondent to vacate the suit premises within 30 days.

29. The first issue that the Judge identified for determination was “who is the proper allottee of the suit property?” The finding reached on this issue was that there was evidence that the President had approved the allocation of suit premises to the respondent; that there was no evidence that the President had authorized the allocation of the suit premises to Dalmas Otieno “... therefore, the Defendant herein is the proper allottee of the suit property.”

30. As I have shown in this judgment the respondent applied to the President to be allocated the suit premises. The letters by the Permanent Secretary, Secretary to the Cabinet, and Head of Civil Service informed Commissioner of Lands that the President had approved the allocation of the suit premises to the respondent. The respondent testified before the Judge, and this was corroborated by his witness



Mr. Kiptanui that he had so applied but no allocation letter had been given to him; he had not met any conditions attaching to allocation of land at all. He did not have a title.

31. This Court had in a judgment delivered on 24th October, 1997 in *Wreck Motor Enterprises vs. The Commissioner of Lands & 3 Others* [1997] eKLR held as follows on the issue of allocation of government land:

"Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held. See Dr. *Joseph N.K. Arap Ng'ok v Justice Moijoo ole Keiwua & 4 Others, Civil Application No. NAI.60 of 1997* (unreported).

32. Section 23(1) of the Registration of Titles Act reads as follows:-

"Section 23 (1)

The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misinterpretation to which he is proved to be a party."

33. The procedure for allocation of unalienated government land was clear; the President's endorsement or approval was not enough. An applicant had to meet conditions attached to the allocation where after a title to the land would issue. It was only after that that an applicant would enjoy the protection of law on indefeasibility of title.
34. The respondent admitted in evidence that he had not received a letter of allotment and had not done anything to process or protect his occupation of the suit premises apart from placing a caveat to the title. I think it was an error for the Judge in those premises to reach that finding and it is possible that the said binding precedent of *Wreck Motor Enterprises* (supra) was not brought to the Judge's attention.
35. The reverse question is whether the appellant had proved its ownership of the suit premises. The evidence before the Judge was that after judgment and decree had been given in favour of the appellant in a separate suit it entered into an arrangement with the company where the latter transferred its title to the former. The company held a title to the suit premises and there was a rebuttable presumption that the title had been legally obtained. As we have seen in *Wreck Motor Enterprises* (supra) under section 23 of the Registration of Titles Act title issued by the Registrar shall be taken by all Courts as conclusive evidence that the person named as proprietor was the absolute and indefeasible owner thereof. Apart from averments in the defence the respondent did not prove in any way that he had acquired the land in any way at all. The trial court found that a Vesting Order issued on 6th July, 1994 was duly registered on 27th July, 1994 and:

"There is no doubt therefore that the Plaintiff herein is registered as the proprietor of the suit property by virtue of the Vesting Order entered on the Certificate of title on 27th July 1994."

36. That Vesting Order was registered on the strength of the Court order in HCCC No. 2567 of 1993. That order was not appealed or reviewed and remained a valid Court order binding on all persons.



37. The Judge travelled a long route to examine who was the owner of the suit premises and concluded:

“Though the Court has found that the process of acquisition of the title issued to Thabiti Finance Company Limited was irregular and unprocedural, the Court finds that the Defendant has not filed any Counterclaim to challenge the legality of the Plaintiff’s title. ...”

38. Indeed. The respondent not only did not file any counter-claim; he did not produce any evidence at all that he had a letter of allotment or any other document to entitle him to the suit premises. On the other hand, and here I, with respect, disagree with the Judge, there was evidence that the company had been allocated the land, followed the necessary processes attached to the allocation and was issued with title to the land which it subsequently transferred to the appellant. The company had good title to the suit premises and it was legally entitled to transfer the same to the appellant.

39. I may add that although it is true that when a title to landed property is challenged the root of that title must be properly established the situation before the Judge was different. The appellant held a title where the respondent had none and had no document at all on which he could lay a claim to the land for the appellant’s title to be questioned or challenged. The appellant’s title in those premises was protected in law not subject to challenge by anyone at all. The respondent had no footing on which he could lay any claim to the suit land.

40. Heavy weather was placed in the defence and respondent’s submissions on the doctrine of *lis pendens* where it was claimed that there was a pending suit between the Company and the respondent and that issues between the appellant and the Company must await the determination of those issues. I disagree. That doctrine was considered by this Court in *Naftali Ruthi Kinyua vs. Patrick Thuita Gachure & Another* [2015] eKLR defined as follows:

“Black’s Law Dictionary 9th edition, defines *lis pendens* as the jurisdictional, power or control acquired by a court over property while a legal action is pending.”

41. This Court in *Dhanjal Investments Limited vs. Shabaha Investments Limited (Civil Appeal 80 of 2019)* [2022] KECA 366 (KLR) (18 February 2022) (Judgment) defined the meaning and application of the doctrine at length. It stated:

“*Lis pendens* literally means ‘litigation pending’ or ‘pending suit’ and is drawn from the maxim “*Pendente lite nihil innovatur*”, which means that nothing new must be introduced while a litigation or suit is pending. Therefore, what the doctrine entails is that the property which is subject matter of a suit shall not be transferred during pendency of the suit, and it prevents transfer of the title of any disputed property without the Court’s consent. This doctrine was embodied in Section 52 of the Transfer of Property Act of 1882 which has since been repealed in Kenya, but was applicable at the time the Appellant and Respondent entered into the sale agreement.

49. The purpose of the doctrine was explained by this Court in the case of *Mawji vs US International University & another* [1976] KLR 185 by Madan, J.A. as follows:- “The doctrine of *lis pendens* under Section 52 of TPA is a substantive law of general application. Apart from being in the statute, it is a doctrine equally recognized by common law. It is based on expedience of the court. The doctrine of *lis pendens* is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice. It therefore overrides, Section 23 of the RTA and



prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other...”

50. Under Section 52 of the Transfer of Property Act of 1882, the doctrine of lis pendens applied to the parties in a contentious suit before a court, in respect of the property which was subject matter of the suit, and the dealings that were prohibited by the doctrine was any transfer or other dealing with the property which may affect or prejudice the rights of any other party to the suit under any decree or order which may be made therein. This position was emphasised by the Indian Supreme Court in a recently delivered judgment in the case of G.T Girish vs Y. Subba Raju, Civil Appeal No. 380 of 2022, in which it expounded on the doctrine of lis pendens and stated as follows with respect to Section 52 of the Transfer of Property Act. “94. The cardinal and indispensable requirement, which flows both from Section 52 and the principle, it purports to uphold, is that the transfer or dealing of the property, which is the subject matter of the proceeding, is carried out by a party to the proceeding. Section 52 uses the word ‘party’ twice. It refers to the disability of a party to transfer or otherwise deal with the property, pending adjudication. This embargo is intertwined with the beneficiary of the veto against such transfer, being any other party thereto... Thus, the sine qua non for the Doctrine of Lis Pendens to apply is that the transfer is made or the property is otherwise disposed of by a person, who is a party to the litigation. The Doctrine of Lis Pendens, only subject, however, the transfer or other disposition of property to the final decision that is rendered. The person/party, who finally succeeds in the litigation, can ask the court to ignore any transfer or other disposition of property by any party to the proceeding. This is subject to the condition that transfer or other disposition is made during the pendency of the lis.”

42. The question will therefore be whether that doctrine applied in the case before the trial court.

43. HCCC No. 2290 of 1994 was a suit filed by the company (Thabiti Finance Company Limited) against the respondent where it was prayed that he be evicted from the suit premises. The record shows at pages 109 and 110 that there was an application before V.V. Patel, J. in HCCC 2290 of 1994 which was dismissed on 25th July, 1994. It is then recorded by the Deputy Registrar on 21st August, 1996:

Notice of discontinuance of suit filed by M/s Oduk & Company Advocates for the plaintiff.”

44. So that suit between the company and the respondent was discontinued in the course of the proceedings and that defence was not available to the respondent.

45. I have found on all grounds of appeal that the appellant succeeded in proving before the ELC that it was the legally registered proprietor of the suit premises. The respondent had no right to lay any claim to the same.

46. I would allow the appeal, set aside the judgment of ELC delivered on 7th September, 2017 and substitute thereof an order entering judgment for the appellant in terms of the plaint filed in HCCC No. 2834 of 1995. I would award costs to the appellant.



Judgment Of Asike-Makhandia, J.A

1. I have had the advantage of reading in draft the judgment of my brother, Kantai, J.A. I entirely agree with it and have nothing useful to add.
2. As Ali-Aroni, J.A is also in agreement, the final orders in the appeal are as proposed by Kantai, J.A.

Judgment Of Ali-Aroni, J.A.

3. I have had the advantage of reading the draft judgment of my brother Kantai, JA, which I fully agree with and have nothing useful to add.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER, 2024.

S. OLE KANTAI

JUDGE OF APPEAL

ASIKE-MAKHANDIA

JUDGE OF APPEAL

ALI-ARONI, J.A.

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

In The Court Of Appeal At Nairobi

