Chombo v Msagha & another (Civil Appeal E023 of 2020)
[2023] KECA 88 (KLR) (3 February 2023) (Judgment)

Neutral citation: [2023] KECA 88 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CIVIL APPEAL E023 OF 2020

SG KAIRU, P NYAMWEYA & JW LESSIT, JJA

FEBRUARY 3, 2023

BETWEEN

BENEDICT MWAKIO CHOMBO ..... APPELLANT

AND

ELIJAH SADALA MSAGHA ..... 1ST RESPONDENT

SAFARICOM (K) LIMITED ..... 2ND RESPONDENT

(Being an appeal from the judgment of the Environment & Land Court at Mombasa (Sila Munyao, J.) delivered on 7th May 2020 in ELC Civil Case No. 104 of 2017)

JUDGMENT

1. In a judgment, the subject of this appeal, delivered on May 7, 2020, the Environment and Land Court (ELC) (Sila Munyao, J.) decreed that: the appellant, Benedict Mwakio Chombo, holds a portion of land measuring 0.0293 Ha out of the land parcel MN/V/729 which is delineated and identified in the survey plan dated November 21, 2013 in trust for the 1st respondent, Elijah Sadala Msagha; that the appellant granted the 2nd respondent, Safaricom Limited, a lease of the said property as trustee for the 1st respondent and all payments made by the 2nd respondent to the appellant under the lease are held in trust for the 1st respondent; that the appellant should pay to the 1st respondent all monies received from the 2nd respondent under the lease and the 2nd respondent should henceforth make payments under the lease to the 1st respondent; that an order of specific performance is issued directing the appellant to register the proposed sub- division contained in the survey plan dated 21st November 2013 and proceed to formally subdivide parcel MN/V/729 in order to curve out a portion of 0.0293 Ha and convey the same to the 1st respondent at his own cost and in default the Deputy Registrar of the ELC to proceed to effect the order. The appellant's cross claim against the 2nd respondent was dismissed.

2. The 1st respondent's case before the trial court was that the appellant is the registered proprietor of the property known as Subdivision Number 729(Original Number 381/1) Section V Mainland North

containing by measurement 0.6661 hectares or thereabouts; that by an agreement of sale dated April 11, 1998, the appellant agreed to sell to him, and he agreed to purchase a portion of property that was to be excised measuring 30 by 15 meters (the plot) for a price of kshs 225,000 which he paid; that the appellant assured him that a title in respect of the plot would be processed; that subsequently, the 2nd respondent approached the 1st Respondent with a request to erect a Base Transceiver Station (BTS) for consideration which was to be paid annually and an agreement in that regard was entered into; that pursuant to the agreement, the 2nd respondent paid to the 1st respondent three annual rental instalments for the years 2014, 2015 and 2016 but in November 2016, the 2nd respondent breached the agreement and failed to make payment.

3. The 1st respondent sought judgment against the appellant for an order of specific performance to compel him to comply with the terms of the agreement for sale dated April 11, 1998 and procure the subdivision of the property to carve out the plot purchased by the 1st respondent and to execute a transfer and all necessary documentation in favour of the 1st respondent for the plot purchased. As against the 2nd respondent, the 1st respondent sought judgment for an order to compel it to pay rent arrears for the year 2017 and in default an order of eviction and delivery of vacant possession. There was also a prayer for mesne profits from November 2016 until vacant possession is obtained.

4. In its statement of defence, the appellant acknowledged that he is the registered owner of the property. He denied that he sold a portion thereof to the 1st respondent or that he agreed to subdivide and register such portion in favour of the 1st respondent. The appellant also denied that the 1st respondent entered into any agreement with the 2nd respondent for the erection of the BTS. The appellant averred that the agreement for the erection of the BTS on a portion of the property was between him and the 2nd respondent, being a lease dated August 8, 2014 and registered on October 15, 2014, and that the 1st respondent was not privy to it; that any rental payments received by the 1st respondent from the 2nd respondent "were paid to him by reason of perpetration of a fraud and or false and illegal misrepresentation." The appellant cross claimed against the 2nd respondent for judgment for kshs 765,600 being the amount the 2nd respondent had paid to the 1st respondent under the lease.

5. In his testimony before the trial court, the 1st respondent stated that he was known to the appellant since 1968 as they lived together in Magongo in Mombasa; that in 1998, he approached the appellant to sell to him a portion of land in Jomvu; that the appellant agreed to do so and they entered into an agreement dated April 11, 1998 which he produced as an exhibit; that the appellant refused to give him title claiming to have taken a loan with the original title; that in 2013, the appellant brought a surveyor who carved out his portion and generated a subdivision plan which he produced as an exhibit; that after the surveyor had completed his work, the appellant informed him that he wanted to put up a mast on the plot and together, they met a representative of the 2nd respondent on the plot; that he signed the agreement made between the appellant and the 2nd respondent; that the BTS was put up and he received payments from the 2nd respondent in 2014, 2015 and 2016, and in that regard produced, as an exhibit, his bank statements showing the rental payments he received from the 2nd respondent; that in 2016 the rental payments were stopped without reason whereupon he instructed an advocate to prepare a demand letter and thereafter filed suit.

6. Under cross examination, the 1st respondent stated that there was no witness to the sale agreement; that by the time he filed suit in 2017, thirteen years had lapsed from the time they entered into the agreement; that although he paid the purchase price to the appellant, he had no evidence of the payment; that he had refrained from suing the appellant on account of their brotherly relationship; that as the beneficial owner of the plot, he consented to the 2nd respondent erecting the BTS; and that

he was not aware that it was the appellant who asked the 2nd respondent to stop making rental payments to him.

7. Gilbert Nderitu (PW2) a resident of Mtopanga in Mombasa and a surveyor testified on behalf of the 1st respondent. He produced the proposed subdivision plan in respect of the plot. He stated that he was approached by the appellant to demarcate on the property a plot of 40 by 80 feet; that he went to the property on November 21, 2013 and did the beaconing; that the appellant and the buyer of the plot, to whom he referred by the name Elijah, were present when he did the demarcation. He produced the proposed subdivision plan as an exhibit.

8. Under cross examination, PW2 stated that he is a public servant and did the assignment in his private capacity and was paid for the task; that the subdivision of the property was not completed and no title for the subdivision was issued, and no deed plan was done; that what he prepared was a plan for the proposed subdivision; and that the 2nd respondent was not involved in the demarcation process.

9. The appellant did not testify. Instead, his daughter Elphina Mwakio (DW1) gave testimony on his behalf based on a power of attorney which was produced. DW1 adopted the appellant's witness statement dated December 5, 2017. In that statement, the appellant stated that he is the registered owner of the property; that by a Lease dated August 8, 2014, he let, at an agreed escalating yearly rental, a portion of the property measuring approximately 82.56 meters square to the 2nd respondent for a term of 15 years commencing on December 1, 2013. He denied selling a portion of the property to the 1st respondent and asserted that he "let a small portion thereof at a monthly ground rent of kshs 500.00". He stated that the 1st respondent "occupies a portion" a portion of his land "as a month to month tenant" as he was clearly not privy to the lease between himself and the 2nd respondent.

10. The appellant further stated in the witness statement that the lease was between himself and the 2nd respondent and that he was "at loss to understand how and under what circumstances the second [respondent] was paying or paid yearly rentals for the first three years of the lease" to the 1st respondent and not to him. He asserted that the rentals for the first three years of the lease in the amount of kshs 756,600.00 was wrongly and illegally paid by the 2nd respondent to the 1st respondent and sought judgment for that amount by way of cross claim against the 2nd respondent.

11. DW1 added in her testimony that the land in dispute, situated in Jomvu in Mikanjuni measures two and a half acres and that her father got the title in 1990; and that there are 11 rent paying tenants who were allowed to build houses on the property. She maintained that her father did not sell the plot to the 1st respondent but "had only leased" it to him to "erect his business in 1998" at a monthly rent of kshs 500.00; that the 1st respondent paid kshs 200,000 to be given that space as it was next to the road but never paid the rent of kshs 500.00 per month.

12. She stated that upon enquiring why there was no development on the space, her father informed her that the 1st respondent "was to lease it...but wanted title to it." She stated that she was in Nairobi when the survey for the 2nd respondent was done. She reiterated that the 1st respondent "only leased the land but did not purchase it" and that his suit should be dismissed. She produced the certificate of title in respect of the property as an exhibit.

13. Under cross examination, DW1 stated that her testimony was based on what her father told her; that she was not present when the 1st respondent agreed to lease the plot from her father; that she was aware that a surveyor visited the property in connection with the lease in favour of the 2nd respondent, but she was not present when the survey was done; that the lease between the appellant and the 2nd respondent, was signed by the 1st respondent who gave consent as beneficial owner; that she went to the 2nd respondent

in 2016 and complained about payments, and that "after we complained, money has been paid to my father by Safaricom."

14. An application for adjournment of the hearing before the trial court by the advocate for the 2nd respondent after the close of the appellant's case to enable him to call a witness was declined. Consequently, no witness testified for the 2nd respondent.

15. After reviewing the evidence and considering the submissions tendered, the trial court, in the impugned judgment found as a fact that the appellant and the 1st respondent did enter into the agreement for sale dated April 11, 1998; that the agreement was enforceable despite lack of attestation; that the 1st respondent's suit was time barred having been filed outside the 12 year limitation period under section 7 of the *Limitation of Actions Act*; that the 1st respondent could not "obtain the order of specific performance based on the contract"; that, however, "there are special circumstances that exist in this case" enabling the court to "rely on the doctrine of a constructive trust" on the basis of which the prayer for specific performance could be granted. In that regard, the Judge expressed that it would be "grossly unjust" to the 1st respondent for the appellant to allow him to be acknowledged by the 2nd respondent as the beneficial owner, and then later renege on that promise; and that "it is an act of malice, greed and bad faith" on the part of the appellant "which calls for the intervention of equitable principles including the construction of a trust." And on that basis the learned Judge entered judgment for the 1st respondent in the terms already stated.

16. Aggrieved, the appellant lodged this appeal. The complaints set out in his memorandum of appeal are that: there is no tangible evidence to support the judgment; the finding that there existed a valid sale agreement between the appellant and the 1st respondent is erroneous as the alleged agreement was not attested in accordance with the requirements of the *Law of Contract Act* and neither was there part performance of the alleged agreement as the plot remained vacant until the 2nd respondent erected a BTS; that no evidence was tendered to prove either payment of the purchase price or of taking of possession; the judge wrongfully imposed and declared a constructive trust in favour of the 1st respondent when the same was neither pleaded nor proved; that despite finding that the claim was statute barred, the judge wrongfully granted an order for specific performance.

17. During the virtual hearing of the appeal on October 3, 2022, learned counsel Miss Ambetsa, holding brief for Mr Lumatete for the appellant relied entirely on written submissions dated September 13, 2021. Mr Ngari learned counsel for the 1st respondent also relied wholly on written submissions dated 1st November 2021. Mr Kongere learned counsel for the 2nd respondent stated that the trial court absolved the 2nd respondent from liability and has not challenged the judgment and had therefore not filed any submissions.

18. Counsel for the appellant condensed the grounds of appeal as set out in the memorandum of appeal into three grounds, namely that the sale agreement contravened section 3(3) of the *Law of Contract Act* and was wrongly upheld despite lack of attestation; that the 1st respondent admitted that he did not pay the purchase price and never took possession in part performance of the agreement; that the cause of action for specific performance was not available as the suit was time barred; and that the 1st respondent did not produce any tangible evidence to support his claim for beneficial interest as a purchaser.

19. It was submitted that section 3(3) of the *Law of Contract Act* requires a contract for disposition of an interest in land to be attested to be valid; that the impugned sale agreement was not attested, therefore it was not enforceable and could not confer any interest to the 1st respondent over the suit property. Cited were the cases of *Solomon Amiani v Salome Mutenyo Otunga* (2016) eKLR and *Charles Keisa Mutichi v Albert Yugi* (2011) eKLR. It was submitted that there was no evidence of payment of

consideration for the sale; and that the Judge misapprehended the facts in stating that the 1st respondent took possession of the property in part performance.

20. As regards to who, between the appellant and the 1st respondent is entitled to the payment of rent by the 2nd respondent, it was submitted that it is not disputed that the appellant is the registered owner of the property; that the registered lease agreement dated 8th August 2014 is between the appellant and the 2nd respondent, and the 1st respondent is not privy to it; and therefore the appellant is entitled to the rent payments.

21. With regard to the order for specific performance, it was submitted that a prayer for specific performance is based on contract; that the limitation period for enforcing a contract is 6 years; that under Section 7 of the *Limitation of Actions Act*, an action to recover land cannot be brought after the end of twelve years; that in this case, the suit was instituted after a lapse of 12 years and the claim for specific performance could not therefore be sustained. Cited was the ELC case of *Jennifer Kobilo Kandie v James Ondiek* (2019) eKLR .

22. Moreover, it was urged, on the strength of the case of *Reliable Electrical Engineers Ltd v Mantrac Kenya Limited* (2006) eKLR, that specific performance is a discretionary equitable remedy and the jurisdiction to grant it is based on existence of a valid enforceable contract and will not be ordered where there is an adequate alternative remedy; and that the remedy can still be denied where it will cause hardship. It was urged that in this case, there is a basis, within the principles in the case of *United India Insurance Co Ltd v East Africa Underwriters (Kenya) Ltd* (1985) EA 898, for this Court to interfere with the decision of the learned Judge by setting aside the judgment.

23. For the 1st respondent, counsel submitted that section 3(3) of the *Law of Contract Act* came into effect on 1st June 2003 as pronounced in *Peter Mbiri Michuki v Samuel Mugo Michuki*, Nyeri Court of Appeal Civil Appeal 22 of 2013; that by reason of section 3(7), section 3(3) is not applicable to any contract entered into before the commencement, namely 1st June 2003; that the requirement of attestation was not in place when the appellant and the 1st respondent entered into the agreement for sale on 11th April 1998. It was submitted that the learned Judge did not err in holding that the agreement was valid; and that the appellant is indeed bound by the agreement. The case of *Josephine Mwikali Kikenye v Omar Abdalla Kombo and 2 others*, Mombasa Civil Appeal 27 of 2017 was cited.

24. It was submitted that the remedy of specific performance was rightly awarded in order to actualize the intention of the parties in terms of the proposed sub-division as explained by PW2; that the 1st respondent's suit in the High Court was not a suit "to recover land" but a suit to restore the benefits of rental income that accrue with ownership; that the 1st respondent had received rental payments for the years 2014, 2015 and 2016 and was seeking to recover what he lost in 2016 being the benefits he was entitled as the owner of the plot; that the Judge after interrogating the totality of circumstances rightly found that there was a resultant implied trust, and that the appellant's appeal should be dismissed with costs.

25. We have considered the appeal and the submissions and have, in accordance with our mandate under rule 29 of the *Court of Appeal Rules*, reviewed and re-evaluated the evidence with a view to drawing our own independent conclusions. As this Court re-affirmed in *Abok James Odera t/a Odera & Associates*

v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR our primary role as a first appellate court is to:

> " re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

26. With that in mind, the main issues for determination are: first, whether the Judge erred in holding that sale agreement is enforceable. Secondly, whether the 1st respondent's claim was barred by limitation. Third, whether the Judge erred in granting the order of specific performance. In that regard there is the question whether the Judge erred in implying a constructive trust. Lastly, who between the appellant and the 1st respondent should receive the rent in respect of the BTS payable by the 2nd respondent.

27. We begin with the question whether the learned trial Judge erred in concluding that the agreement for sale between the appellant and the 1st respondent dated April 11, 1998 is valid even though it was not attested. The sale agreement, as already stated, was produced by the 1st respondent. He was clear that it was signed by the appellant. During the cross examination of the 1st respondent by counsel for the appellant, there was no suggestion that the appellant did not sign the agreement.

28. As already noted, the appellant did not testify. Although it was indicated during the trial that the appellant was unwell, there is no mention that he was incapable of giving testimony. Instead, he gave a power of attorney to his daughter (DW1) who testified on his behalf. DW1 stated that her father refused to sign the sale agreement. She did not say she was privy to the transaction between her father and the 1st respondent or that she was present when, according to her, her father declined to sign the agreement. Her testimony based on what her father allegedly informed her is hearsay. In the appellant's witness statement, which DW1 adopted, all the appellant stated was that "at no time did I sell a portion of the said land" to the 1st respondent "to whom I had let a small portion thereof".

29. The learned Judge carefully reviewed the evidence and totality of circumstances, including the dealings the appellant had with the 1st respondent after the date of the agreement before finding that the appellant and the 1st respondent "did sign the sale agreement dated April 11, 1998."

30. The main grievance pertains however to the uncontested fact that the agreement was not attested and the legal effect thereof. In that regard, counsel for the appellant submitted that it is a legal requirement under section 3(3)(b) of the *Law of Contract Act* that the signature of each party signing a contract for the disposition of an interest in land shall be attested by a witness who was present when the contract was signed by such party; that since the agreement in this case was not attested, it is invalid and unenforceable. Counsel for the respondent has on the other hand urged that there was no requirement for attestation when the agreement for sale in this case was entered into in 1998.

31. In our view, the point of contention is settled by the decision of this Court in the case of *Peter Mbiri Michuki v Samuel Mugo Michuki* [2014] eKLR to which the learned trial Judge referred. In that case, this Court stated:

> " section 3(3) of the Law of Contract Act provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is writing, executed by the parties and attested. Section 3(7) of the Law of Contract Act excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection. Section 3(3) of the Law of Contract Act, came into effect on 1st June, 2003"

32. We respectfully agree. The learned Judge of the ELC was therefore correct that the requirement of attestation was introduced through the *Statute Law (Miscellaneous Amendments) Act* No 2 of 2002 and was therefore not a requirement when the agreement for sale in the present case was entered into in 1998. There is therefore no merit in the complaint that the agreement is invalid and unenforceable.

33. The next issue is whether the 1st respondent's claim was barred by limitation. This is tied to the question whether the Judge erred in implying a constructive trust and on that basis granting an order of specific performance. In his judgment, the learned trial Judge noted that under section 7 of the *Limitation of Actions Act*, an action may not be brought to recover land after the end of twelve years from the date on which the right of action accrued. The Judge noted further that suit was filed on March 29, 2017, and that "a period in excess of 18 years had lapsed" since the agreement was entered into on April 11, 1998, and that the appellant "has a point in urging that the contract cannot be enforced because it is time barred". Thereafter, the Judge expressed that, "I do not see how the [1st respondent] can be helped on the issue of limitation." The Judge then went on to say:

> "I think there are unique circumstances in this case which to me would make the prayer for specific performance available to the [1st respondent], not based on the contract, which, as I have demonstrated above cannot be enforced, because it is way out of time, but based on a constructive trust."

34. The appellant has urged that the Judge erred and contradicted himself in first holding that specific performance was not available since the claim was time barred and then turning around to award specific performance "under the guise of a constructive trust" despite the 1st respondent not having pleaded nor proved or established a cause of action against the appellant based on a constructive trust.

35. For a start, we note that the issue of limitation arose for the very first time during cross examination of the 1st respondent by counsel for the appellant when in answer to a question, the appellant stated that "from the date of agreement to 2017 is 13 years old" and later that "I do not agree my claim is time barred." The appellant did not in its statement of defence to the 1st respondent's claim plead limitation. Not surprisingly, the 1st respondent (who was the plaintiff in the lower court) did not, in the plaintiff's closing submissions address the issue of limitation. The issue of limitation had not been framed. However, in his closing submissions, the appellant framed and submitted on the issue of limitation. The record does not show that the 1st respondent filed submissions in reply were filed.

36. In the judgment, the learned Judge, as already noted, framed the issue, and pronounced, as already indicated, that the 1st respondent's claim for specific performance under contract was time barred. The question of limitation is a matter that ought to have been expressly pleaded and canvassed by the parties. However, and importantly, the holding that the claim under contract was statute barred has not been challenged in this appeal. The appellant has in his submissions before us argued in affirmation of the holding by the Judge in that regard. There is no cross appeal by the 1st respondent on the holding on limitation and we refrain, therefore, from delving on whether it was rightly or wrongly made the subject of determination by the trial court.

37. As to whether the Judge erred in invoking and applying the doctrine of constructive trust, we note that although the appellant in his grounds of appeal in his memorandum of appeal complained that the Judge erred in implying a constructive trust because the same was not pleaded and because the circumstances did not justify the same, this ground was not addressed at all in the appellant's written submissions dated September 13, 2021 nor in the 1st respondent's submissions dated November 15, 2021 and we take it that it was abandoned. For completeness, however, we are unable to fault the

conclusion reached by the learned trial Judge that in the totality of the circumstances in this case implication of a constructive trust is warranted. What then are those circumstances?

38. Based on the evidence tendered by the 1st respondent and by PW2, we concur with the finding of the trial Judge that as the registered owner of the property, the appellant entered into an agreement for sale dated April 11, 1998 with the 1st respondent by which he agreed to sell and the 1st respondent agreed to purchase a portion thereof for a price of kshs 225,000.00. The agreement provided that full payment was "paid by the buyer to his vendor in cash."

39. Approximately 16 years after entering into that agreement, the property had still not been subdivided and there was not title to the plot and when the 2nd respondent expressed interest to lease the plot for purposes of a BTS, the appellant, evidently in acknowledgment of the 1st respondent's interest in the plot, directed the 2nd respondent to make the rental payments to the 1st respondent. On that basis, the 1st respondent demonstrated, and the 2nd respondent's statement of defence confirmed, that rental payments for the years 2014, 2015 and 2016 were made to the 1st respondent. In effect, there is no evidence of a dispute as to the 1st respondent's entitlement to the plot over the duration 1998 to 2016. It seems that it was the continued payment of rent for the BTS to the 1st respondent that ignited the problem. DW1, as opposed to the appellant himself, appears to have been the driver of the ignition. In her words:

> "I went to Safaricom and was directed to call Margaret. This was in 2016. Upon our complaint, we were paid the rent for 2016. After we complained, money has been paid to my father by Safaricom."

40. Based on the foregoing, we concur fully with the learned trial Judge when he expressed in his judgment that:

> "It is apparent to me that the [appellant] acknowledged the [1st respondent] to have purchased a portion of the suit land and acknowledged that he had ceded his rights over this portion to the [1st respondent]. Thus, in as much as the [appellant] held the legal title, he was aware that he does not own this portion of land, but that this potion is owned by the [1st respondent]. This acknowledgement comes out clearly because the [1st respondent] signed in the agreement to lease as beneficial owner. It again manifests itself in the fact that the [appellant] directed the second [respondent] to make payments for rent into the [1st respondent's] account and not his [appellant's] account. It is these actions which drive me to the conclusion that the [appellant] was aware that this portion of land actually belonged to the [1st respondent], despite the [1st respondent] not been holding the legal title to it."

41. Authorities abound where constructive trusts have been imposed, for instance, to guard, against unjust enrichment. See for instance *Twalib Hatayan & another v Said Saggar Ahmed Al-Heidy & 5 others* [2015] eKLR; *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017]eKLR;

42. There is divided opinion as to whether contructive trusts should be pleaded before the court can infer the same. In *Aliaza v Saul* (Civil Appeal No 134 of 2017) [2022] KECA 583 (24 June 2022 (Judgment) the Court expressed that considering the guiding principles in Article 10 of the Constitution, the fact that a constructive trust is not pleaded does not preclude the Court from inferring such a trust. In *Sirma v Singoei* (Civil Appeal No 109 of 2018)[2022] KECA 708 (KLR) (8 July 2022) (Judgment), the Court expressed that "whether as a basis for mounting a claim or setting up a defence, trust must

be pleaded." As already indicated, counsel did not in their respective submissions address this matter and we have therefore not had the benefit of counsel's input on the matter.

43. As to the argument that the trust could not be implied because the 1st respondent was not in possession, the Supreme Court of Kenya in *Isack M'Inanga Kiebia v Isaaya Theuri M'Lintari & another* [2018] eKLR affirmed that to prove a trust in land, one need not be in actual physical possession and occupation of the land.

44. The upshot is that we have no basis for interfering with the conclusion by the learned Judge that the appellant holds the plot in trust for the 1st respondent. For the same reason the orders

directing payment of rents in respect of the plot to the 1st respondent are upheld.

45. In conclusion therefore, the appeal fails and is dismissed with costs to the 1st respondent.

46. Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 3RD DAY OF FEBRUARY 2023.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR