Meya Agri Traders Ltd v Elgon House (2010) Ltd (Civil Appeal 15 of 2020) [2023] KECA 574 (KLR) (26 May 2023) (Judgment)

Neutral citation: [2023] KECA 574 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPEAL 15 OF 2020

F SICHALE, FA OCHIENG & LA ACHODE, JJA

MAY 26, 2023

BETWEEN

MEYA AGRI TRADERS LTD ..... APPELLANT

AND

ELGON HOUSE (2010) LTD ..... RESPONDENT

(An Appeal from the Ruling of the Environment and Land Court at Nakuru (D.O. Ohungo, J.) dated 18th December, 2019 in ELC No. 121 of 2018)

JUDGMENT

1. The appellant, Meya Agri Traders Ltd is dissatisfied with the ruling of the Environment and Land Court issued on 18th December, 2019 in Nakuru ELC No.121 of 2018. In a nutshell, the impugned ruling essentially struck out the appellant's defence and a summary judgment was entered against the appellant pursuant to an application made by the respondent on grounds that the statement of defence filed by the appellant did not raise any triable issues. The appellant herein is dissatisfied with the said ruling on the following 8 grounds;

    A. That the Honourable trial judge erred in law and in fact in adjudging that the fatal mistake of the Respondent failure to comply with Order 4 Rule 1 of the *Civil Procedure Rules* and specifically with regards to verification of the contents of the Plaint vide a Verifying Affidavit was excusable and unconcerning in the circumstances;

    B. That the Honourable trial judge erred in law and in fact in failing to appreciate that the Appellant has been paying rent due to the Respondent and that in effect there was creation of a periodic lease and that for that reason there was a landlord - tenancy relationship still in existence;

    C. That the Honourable trial judge erred in law and in fact in finding that the Appellant's statement of defence did not raise triable issues when in fact issues of negotiations for renewal

of lease, payment of rent by the Appellant and creation of the tenancy relationship were prevalent and straight up in the Defence;

D. That the Honourable trial judge erred in law and in fact by failing to appreciate that there existed a tenancy relationship between the Appellant and Respondent by virtue of payment of the rent and continued occupation and thereby failing to demarcate that as a triable issue capable of adjudication and determination;

E. That the Honourable trial judge erred in law and in fact in failing to appreciate that substantive justice entails that both cases of the parties are to be heard and determined on merit as mandated by Article 50 of the *constitution* of Kenya;

F. That the Honourable trial judge erred in law and in fact in adjudging that the Appellant was unlawfully occupying the premises and suit property and subsequently condemning it to pay mesne profits when there existed a tenancy relationship between the Appellant and Respondent created from the continued occupation and payment of rent;

G. That the Honourable trial judge erred in law and in fact in condemning the Appellant unheard and failing to appreciate the trite law that it is not necessary to have a defence that must succeed to denote whether there are triable issues on the defence but the mere existence of a defence with a triable issue is enough to amount as sufficient defence;

H. That the Honourable trial judge erred in law and in fact in condemning the Appellant to pay costs of the Application and suit."

2. The suit before the trial Court was initiated vide a plaint dated 21st March, 2018 where the respondent moved the Court for eviction orders against the appellant with respect to Nakuru Municipality Block 5/43 (Elgon House), an order for monthly mesne profits at the rate of Kshs. 500,000 plus VAT running from March 2013 as well as the costs of the suit. The respondent's case was that it entered into a lease agreement with the appellants during the period starting 7th February, 2008 and ending 28th February, 2013. That at the end of the lease period, the appellant was to yield back the suit property to the respondents in the same state as it was at the beginning of the lease.

3. The respondent averred that it did not renew its lease agreement with the appellants when the previous lease ended in February 2013 but the appellant has continued to occupy the said premises thereby denying the respondent other opportunities including an offer of Kshs. 500,000 per month which is the basis for the claim of mesne profits. The respondent stated that vide a letter dated 26th February, 2013, it informed the appellant of the impending termination of the previous lease agreement and asked the appellants to surrender back the property as was required under the lease agreement.

4. For the appellant, its case in a nutshell is that towards the end of the lease period ending February 2013, the respondent made an offer for the renewal of the lease vide a letter dated 20th March, 2012. That it acceded to the terms of that letter which it proceeded to act upon and make a deposit of Kshs. 868,608 for the first quarter after the expiry of the term. According to the appellant, even though the new lease was not put into writing, theirs was a controlled tenancy at Elgon House and it was not proper for the respondents to seek to alter the terms agreed upon and contained in the letter dated 20th March, 2012.

5. At the close of pleadings, the respondent made an application dated 19th September, 2018 where it sought to have the appellant's statement of defence struck out and a summary judgment entered in the respondent's favour. This application was opposed by the appellant vide a replying affidavit dated 5th October, 2018. In its replying affidavit, the appellant contended that its statement of defence raised

triable issues and was not a concession to the grievances raised by the respondents. It urged the Court to dismiss the application and have the matter proceed to full hearing and determined on merits.

6. This matter was canvassed by way of written submissions. Mr Karanja appeared for the appellant while Mr Kisilah appeared for the respondent. Mr Karanja submitted that the trial court erred in finding that the non-compliance with Order 4 Rule 1 by the respondent was not fatal. According to Mr Karanja, after the previous lease determined, there was a periodic tenancy or lease created by dint of section 57 of the *Land* Act since the appellant retained possession of the suit property with the consent of the respondent. Counsel submitted that the respondent cannot be allowed to vary the terms of the periodic lease on grounds of having received a better offer and that the same qualified as a controlled tenancy under section 2(1)(a) of the *Landlord and Tenancy Act*, Cap 301.

   Counsel therefore faulted the trial court for failure to appreciate the existence of that protected and controlled tenancy. On grounds 3 and 4 of the memorandum of appeal, Mr Karanja submits that the appellant's statement of defence revealed legal triable issues in the context of intention to renew the lease agreement and whether there was a tenancy agreement. Counsel urged that the issues raised in the appellant's statement of defence called for full interrogation by the court as opposed to summary dismissal.

7. Counsel relied on the cases of *Patel v E.A Cargo Handling Services Ltd* (1974) E.A 75 to elucidate what amounts to a triable issue and the case of *Job Kiloch v Nation Media Group Ltd & 3 Others* (2015) eKLR to reiterate that summary judgments can only be issued where there are no triable issues. Counsel reiterated that the issues raised in their statement of defence were important, substantial and warranted the court's interrogation and the failure to that subjected the appellant to punitive measures which were avoidable had the case been heard on merit. Counsel relied on Kenya Trade Combine Ltd v M Shah, Civil Appeal No. 193 of 1999 (Unreported) to submit that triable issues need not be those that must succeed, and they were sufficient if if they warranted an interrogation through a trial.

8. Mr Karanja also submitted that the trial court erred in making an award for mesne profit against the appellant. Counsel contended that the award was informed by the false impression that the appellant illegally occupied the premises yet from the appellant's statement of defence, such claims had been denied. Counsel urged that since there was existing tenancy agreement, no orders for mesne profits ought to have been issued by the trial court. with regards to ground 5 and 7 of the memorandum of appeal, counsel submitted that the actions of striking out the statement of defence was draconian in nature and denied the appellant an opportunity to vindicate itself from allegations which were to be proved.

9. Mr Karanja faulted the Court for resorting to summary judgment in an undeserving situation thereby subjecting the appellant to paying millions of shillings in damages. Counsel referred the Court to the case on *DT Dobie & Co. (Kenya) Ltd v Muchina & another* (1982) eKLR and *Ramji Megji Gudka Ltd v Alfred Morfat Omundi Michira & 2 others* (2005) eKLR on the principles guiding the exercise of discretionary powers such as striking out of pleadings. Mr Karanja also contended that the actions of striking out the statement of defence denied the appellant an opportunity to be heard which was in breach of Article 50(1) of the *Constitution* and a breach of the rules of natural justice to the detriment of the appellant. In conclusion, counsel urged the Court to set aside the judgment of the trial court. Mr Karanja further urged us to invoke our powers as the first appellate court and render a decision based on pleadings and evidence on record.

10. Mr Kisilah on his part for the respondent submitted that the failure to comply with Order 4 Rule 1 was not fatal. Counsel referred to the High Court decision in *Damani Drums Ltd & Another v George Kimani Mbugua & 3 others* (2015) eKLR to buttress this line of submissions. Counsel conceded that

since the respondent is a corporate body, the supporting affidavit ought to have been sworn by an officer of the corporation properly or appropriately instructed but that even in instances where the deponent is not properly instructed, where there is no dispute as to the intent of the corporation, courts should not strike out pleadings. Counsel relied on the cases of *Siokwei Tarita Ltd v Dr Charles Walekwa* (2012) eKLR and *Spire Bank Ltd v Land Registrar & 2 others*.

11. On the 2nd, 3rd, 4th and 6th grounds of appeal, Mr Kisilah submitted that the tenancy relationship between parties was guided by the lease agreement dated 07/02/2008 and which determined on 28/02/2013. Counsel submitted that the respondent informed the appellant of the intention not to renew the lease agreement and even asked the appellant to vacate the premises as per the terms of the determining lease. According to Mr Kisilah, no lease existed and he maintained that the trial court properly appreciated the facts of the case when it found that no lease existed as between the parties. To buttress these submissions, counsel relied on the cases of *Pampa Grill Ltd & another v North Lake Ltd & another* (2021) eKLR and *Nandal Jivraj Shah & 2 others v Kingfisher Properties Ltd* (2015) eKLR.

12. With regards to the grounds of appeal raised as number 5 and 7, Mr Kisilah submitted that the rules of natural justice were dependent on each case and no blanket application of the principles therein would suffice. Counsel submitted that the trial court in allowing its application for summary judgment adhered to the principles guiding summary judgments as pronounced in *Irene Wangui Gitonga v Samuel Ndungu Gitau* (2018) eKLR which includes where there is no defence. Counsel maintained that the trial court considered the application and the replying affidavit by the respondent as well as submissions and therefore the appellant cannot claim that he was not accorded an opportunity to be heard. Counsel also relied on the case of *Apollo Mboya v Judicial Service Commission*, Petition No. 204 of 2016 to highlight the conditions precedent to achieving the right to fair hearing which he submitted were also present and therefore the appellant was fairly heard. Counsel further submitted that the trial court should not be faulted for having ordered the appellant to pay costs as such an order was in line with the principle that costs follow the events. Counsel urged us to dismiss the appeal with costs.

13. We have considered the record of appeal, the submissions by both parties and the authorities cited. This is a first appeal and the realm of our mandate under Rule 31(1) of the *Court of Appeal Rules*, 2022 is to independently reappraise the evidence and draw our own conclusions. Perhaps to buttress the exercise of this mandate, we are guided by the threshold set by this Court in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, stating that:

> "This being a first appeal, we are reminded of our primary role as a first appellate court namely, 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."

14. In our view, this appeal raises the following issues for determination; whether the failure to comply with Order 4 Rule 1 of the *Civil Procedure Rules* was fatal; whether the striking out of the statement of defence was merited; whether there was a periodic tenancy relationship; and what orders should issue.

15. The appellant has taken issue with the finding of the trial court that the failure by the respondent to comply with Order 4 Rule 1 of the *Civil Procedure Rules* was fatal to the plaint. The respondent is a corporate entity and it is the appellant's contention that the deponent of the verifying affidavit to the plaint was not properly instructed to aver to the contents of the plaint. The trial court in its judgment noted that there was indeed a failure of the part of the respondent to comply with Order 4 Rule 1 of the *Civil Procedure Rules*. However, the court found such a failure to be one which is curable and rendered it a mere technicality.

16. Order 4 Rule (1) sub-rule (4) and (6) of the *Civil Procedure Rules* provides as follows:

(4) Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.

(6) The court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2),(3),(4) and (5) of this rule."

17. Under Order 9 rule 2(c) of the *Civil Procedure Rules* (2010) the recognized agent of parties by whom such appearances, applications and acts may be made or done are, in respect of a corporation is an officer of the corporation duly authorized under the corporate seal. The question then is whether one Kiritih Govindilah Shah qualifies as an authorized officer under Order 4 Rule (1)(4). In our view, once the deponent swore that he is a director of the respondent, and that he was duly authorized, the judge could not rule otherwise in the absence of evidence to counter or contradict him. Our views herein resonate with the pronouncements of this Court in its earlier decision in *Makupa Transit Shade Limited & another v Kenya Ports Authority & another* [2015] eKLR where it stated thus:

> " In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorised by it. It was therefore sufficient for the deponents to state that "they were duly authorised." It was then upto the appellants to demonstrate by evidence that they were not so authorised."

18. Suffice to add that from the pleadings, it is trite that the appellants did not move to challenge the legality or otherwise of deponent's authority to swear the verifying affidavit. Instead, the appellant challenge to the verifying affidavit leaned more towards its "form". We therefore agree with the findings of the trial court that such an omission was of a technical nature and thereby curable. We also find appropriate and we associate with the views expressed in the case of *Spire Bank Limited v Land Registrar & 2 others* [2019] eKLR regarding the import of Order 4 Rule 1(4) thus:

> " It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized."

19. The next issue is whether the striking out of the statement of defence was merited. The respondent made an application to have the statement of defence filed by the appellants struck out for failure to raise any triable issues and subsequently made a prayer for summary judgment. The appellants in opposing this application argued that the statement of defence raised triable issues and that the matter ought to have been allowed to proceed to full hearing. The appellant in their replying affidavit to the application reiterated the grounds in their statement of defence and argued that a summary judgment would not issue in the circumstances. Before us, the appellants have further argued that the two main triable issues in their statement of defence were whether there was a protected periodical tenancy or

lease agreement between them and the respondents and whether the appellants had been paying rent to the respondents during the period of their occupancy of the premises post determination of the lease agreement.

20. The power of the trial court to strike out pleadings is enshrined under Order 2 Rule 15(1) of the *Civil Procedure Rules* which provides as follows:

> "At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
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> B. it discloses no reasonable cause of action or defence in law; or
>
> C. it is scandalous, frivolous or vexatious; or
>
> D. it may prejudice, embarrass or delay the fair trial of the action; or
>
> E. it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be."

21. This power is a discretionary power of the trial court. However, as rightly submitted by the appellants, striking out of pleadings is a draconian tool which must only be deployed by courts in the clearest of incidences. In our view, if a pleading raises a triable issue irrespective of whether it will succeed or not, the suit ought to be allowed to proceed to trial. On the contrary, where a pleading is of no substance or ground, mere denial, fanciful and or is of some ulterior motive the court should not shy away from invoking its powers to strike out such a suit. Invoking the power to strike out pleadings must be in adherence to the well laid down principles requiring that it be exercised sparingly and in clear and obvious cases. A pleading may only be struck out if the elements contained in Order 2 Rule 15(1)(a), (b), (c) and (d) of the Civil Procedure Rules are in existence. To buttress our views on this issue, we refer extensively to the case of *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another*[1980] eKLR thus:

> "The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage the court ought not to deal with any merits of the case for that 'is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits "without discovery, without oral evidence tested by cross-examination in the ordinary way". (Sellers, L.J. (supra)). As far as possible, indeed not at all, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right.
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> If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.
>
> No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.

On the other hand, if there is a point of law which merits a serious discussion the court should be asked to proceed under order XTV" rule 2."

22. The power to strike out pleadings being a discretionary power, this Court is alive to the principle that as an appellate court, our interference with the exercise of judicial discretion is limited. For our intervention to be granted, we must be satisfied either that the lower court misdirected itself in some matter hence arrived at a wrong decision or that it is manifest from the case as a whole that the lower court was clearly wrong in the exercise of its discretion and that as a result there has been miscarriage of justice. This Court reiterated these principles in *Pithon Waweru Maina v Thuka Mugiria* [1983] eKLR where it was stated:

> " Thirdly the Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice. Mbogo v Shah [1968] EA 93."

23. It is on this front and guided by the principles above that we will interrogate the exercise of discretion by the trial court. The manner in which a court ought to apply itself when invoking its discretionary power to strike out pleadings was highlighted by this Court in *Crescent Construction Co Ltd v Delphis Bank Ltd* [2007] eKLR as follows:

> "Be that as it may, in all cases brought under Order VI rule 13(1) (a), the court is obliged in law to look at no evidence i.e. no affidavit or any evidence from the bar in considering whether or not a plaint or a pleading raises a cause of action. The court must look at the pleadings only and not go beyond the pleadings. The predecessor to this Court stated in the case of Jevaj Shariff & Co. v Chotail Pharmacy Stores (1960) EA 374 as follows:
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> "The question whether a plaint discloses a cause of action must be determined upon a perusal of the plaint alone, together with anything attached so as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true."
>
> This is proper because once the court incorporates evidence in its consideration of the pleading at this stage, then the aim of the rule which is to dispose of unnecessary and baseless litigation speedily will be defeated." (Emphasis ours)

24. It is therefore trite that in considering whether a pleading raises triable issues, the court is mandated to stick to the pleadings and its accompaniments. In essence, pleadings should in themselves be capable of raising triable issues. This procedure is as well compatible with the rule that parties are bound by their pleadings. That which is not in the pleadings is not triable in the course of a case. Similarly, the pronouncements of this Court in *Raghbir Singh Chatte v National Bank of Kenya Limited* [1996] eKLR also offer a useful guide on where the slippery line between mere denials and substantial denial. The Court stated as follows:

> " As regards the statement of the law as set out in Halsbury's Laws of England, the particular passage referred to is as follows:
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> "General denial insufficient. It is not sufficient for a defendant in his defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim: each party must deal specifically with each allegation of fact of which he does not admit the truth, except

damages. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party he must not do so evasively, but must answer the point of substance. However, it has become common practice to use in a defence a traverse in a general form, this merely puts the opponent to proof."

... This rule enforces a cardinal principle of the system of pleadings, that every allegation of fact in a statement of claim or in a counterclaim must be traversed specifically, otherwise it is deemed to be admitted. It thus prescribes how the pleader should answer his opponent's pleading, by providing that the penalty for not specifically traversing an allegation of fact is that it will be taken to be admitted, whether this was intended or not. The effect of a traverse, if properly pleaded, is that the party who makes the allegation has to prove it; the effect of an allegation which is treated as admitted is that the party who makes it need not prove it."

25. Further, when dealing with a statement of defence, this Court in Provincial Insurance Company of East Africa Limited now known as *UAP Provincial Insurance Company Limited v Lenny M Kivuti* [1997] eKLR stated as follows:

> " In an application for summary judgment even one triable issue, if bona fide, would entitle the defendant to have unconditional leave to defend. See Kundanlal Restaurant v Devshi & Company [1952] 19 E.A.C.A. 77. Also see Hasmani v Banque du Congo Belge [1938] 5 E.A.C.A. 89."

26. Similarly, in *Kenya Trade Combine Ltd v N M Shah* [2001] eKLR, this Court stated thus:

> " In a matter of this nature, all that a defendant is supposed to show is that a defence on record raises triable issues which ought to go for trial. We should hasten to add that in this respect a defence which raises triable issues does not mean a defence that must succeed."

27. In this case, the respondent's application for striking out the appellant's statement of defence was pegged on grounds that the claims were admitted and there were no triable issues for consideration by the Court. Pursuant to the discussion above on striking out of pleadings, more so a defence, upon our own perusal of the statement of defence vis-à-vis the plaint, we do not agree with the findings of the trial court that the statement of defence filed by the appellant raised no triable issues. The appellant in his statement of defence admitted to some allegations raised by the respondent. However, it is clear from the defence that the appellant raised other issues in contradiction of the allegations made by the respondent. The appellant also made substantive denials accompanied by his own version of events, a case in point, in relation to the negotiations on a new lease. The appellant also challenged certain prayers advanced by the respondent such as the issue of mesne profits. In our view, we do not think that the whole suit was to be determined on the single issue of whether there existed a written lease in place or not; other issues like protected lease were also raised in the defence and which ought to have been considered by the Court in a full trial.

28. In view of the foregoing reasons, we find the appeal meritorious. The ruling and order of the Environment and Land Court striking out the appellant's statement of defence and entering a summary judgment is set aside and we hereby reinstate the said defence.

29. The final question is what orders ought to issue in the circumstances. The appellant urged us to invoke our power as the first appellate court and consider this case independently on merit. The appellant placed reliance in the case of *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* (supra). However, in the circumstances of this case, it is our view that the Court of first instances is properly placed to hear this matter on merit. This option offers the appellants

another bite at the appellate cherry on the merits of the case other than on the two preliminary issues that we have rendered ourselves on. This practice has been adopted by this Court in the numerous cases that we have referred to herein and we wish not to depart from that practice.

30. The final question is who should bear the costs of this appeal. The trial court made an award for costs in favour of the respondent. The issue of costs have not been argued before us and without any reasons challenging the exercise of that discretion by the trial court, we find no reason to interfere with it. With regards to this appeal, we are seized of the jurisdiction to exercise our discretion on costs.

    The ordinary rule in civil litigation and appeals is that costs are at the discretion of the court but most preferably, they should follow the event. To deviate from this rule, there must exist special circumstances to warrant deviation. In this appeal, we do not see any special circumstances to warrant our deviation from the general rule as regards to costs. Therefore, costs in this appeal shall follow the event.

31. Our final orders therefore are that the main suit, being ELC No. 121 of 2018, shall be remitted back to the Environment and Land Court for a re-hearing and determination on merits by a Judge of the ELC other than D.O. Ohungo, J. As for the costs of this appeal, the respondent shall bear.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF MAY, 2023.

F. SICHALE

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR