Maangi v Kithongo & 3 others (Environment and Land Appeal 14 of 2021) [2024] KEELC 3633 (KLR) (30 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3633 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITUI

ENVIRONMENT AND LAND APPEAL 14 OF 2021

LG KIMANI, J

APRIL 30, 2024

BETWEEN

ITAVWA MULI MAANGI ..... APPELLANT

AND

NDUU KITHONGO ..... 1ST RESPONDENT

MUTHUI NDUU ..... 2ND RESPONDENT

MAITHYA NDEMWA ..... 3RD RESPONDENT

JOHN NDEMWA ..... 4TH RESPONDENT

(Being an Appeal against the Judgment of Senior Principal Magistrate Hon.J. Aringo, in Kyuso MCCC No.2 of 2019 delivered on 24th October 2020)

JUDGMENT

1. This appeal arises from the judgment of Senior Principal Magistrate Hon. J. Aringo, in Kyuso MCCC No.2 of 2019 delivered on 24th October 2020. The Memorandum of Appeal dated 24th October 2020 sets forth the following grounds:

    1. The trial Senior Resident Magistrate erred in law and fact by holding that the Appellant had not discharged his burden of proof while their case was sufficient to discharge the burden.

    2. The trial Senior Resident Magistrate erred in law and fact by deciding the case against the weight of the evidence.

    3. The trial Senior Resident Magistrate erred in law and fact by clearly showing bias against the Appellant

2. The Appellant prays that the judgment of the trial court be set aside and that judgment be entered in his favour with costs.

3. The suit before the trial court was instituted by the Appellant vide Plaint dated 10th January 2019. He claimed to be the registered owner of land parcel number Kyuso/Ngomeni'A'1097 on which the defendants encroached in the year 2013, excavated soil made bricks and cut down big trees. He reported the matter to the chief and the lands office at Kyuso and finally sued the Defendants at Kyuso Law Courts in civil case number 3 of 2013. It was averred that the defendants were served with a court order stopping encroachment but they failed to stop and were found in contempt of court and each fined Kshs.10,000/=.

4. The plaintiff contends that thereafter the defendants stopped their illegal actions and moved out of the suit property until the year 2018 when they resumed the illegal activities. The Plaintiff undertook a valuation of the destruction and it was valued at Kshs.530,000/=. The plaintiff demanded compensation for the assessed amount.

5. The defendants on their part filed a defence dated 27th March 2019 where they denied encroaching onto the plaintiff's land stating that their bricks were moulded on Land Parcel Kyuso/Ngomeni 'A' 1096 registered in the name of the name of Nduu Kithongo, the 1st defendant. Regarding the suit at Kyuso law courts, they stated that the suit was not finalized and is still pending. The defendants further contended that there is a case pending before the High Court at Machakos Civil Case No. 14 of 203 with the 1st defendant being one of the defendants in the said case.

Summary of the proceedings before the trial court

6. PW 1, Itavwa Muli Maangi, the Plaintiff, testified and adopted his witness statement. He reiterated the contents of the plaint stating that the defendants had encroached onto his land and caused destruction and making bricks thereon. Upon cross-examination, the plaintiff confirmed that the 1st Defendant is his sister's son and that the 3rd and 4th Defendants are brothers. He also accused the defendants of making bricks on the suit land after adjudication. He stated that the defendant started brick making in 1997 and that he had started making bricks before the defendants. He stated that on diverse dates in 2018, the defendants encroached on the land again. Upon carrying out a valuation of the destruction caused it was assessed at Kshs. 530,400/=.

7. PW 2 David Chege Kariuki a valuer confirmed having visited the suit property on 6.11.2018 and measured the excavated area and took photos of some of the bricks. He then calculated the volume of soil and established that each of the bricks could sell at between Kshs.10 -12 and worked with Kshs.10, finding that the bricks could have raised Kshs.530,400/= in total. He produced his report as evidence.

8. Upon cross-examination, the witness stated that he could not determine how long the land had been excavated. He also stated that he used the surveyor's report to determine the land boundaries and sizes.

9. The Defence hearing proceeded on 3.8.2020 when the 4th Defendant, John Ndemwa testified that the plaintiff was his uncle and that the 3rd Defendant was his brother. He stated that a surveyor named Tony Nthangao conducted a survey of the adjudication section and each owner was given a parcel number. He testified of the existence of Machakos Case No. 44 of 2013 where the plaintiff has sued them claiming that the land belonged to him and that the case is still ongoing. He also stated that he was charged in a criminal case over the same suit land but the case was dismissed.

10. Upon cross-examination, the 4th defendant denied that he was a party in the Machakos case and denied knowledge of whether the plaintiff gave the 3rd defendant a portion of his land to make bricks. He stated that they used their grandfather, 1st Defendant's land parcel number 1096 to make bricks.

11. DW 2 Nduu Kithongo, the 1st Defendant denied the plaintiff's claim and stated that the land belonged to him. On cross-examination, he stated that he was within the known boundaries of his land and that the plaintiff wanted to have the water on his parcel of land.

12. A site visit was conducted on 9.9.2020 where the parties disagreed on where the boundaries between the two parcels of land are located on the east side but agreed on those on the west side. The parties also disagreed on who planted the euphorbia plants on the boundary. The plaintiff when asked which portion the defendants had trespassed on stated that the defendants had no land but had encroached on his land. The plaintiff and the 4th defendant agreed that the 4th defendant had abstracted soil on a portion of land parcel 1097. When asked about the time when the valuation was done the plaintiff showed a portion of his land and the 4th defendant showed a portion on both the parcels of land. When asked when the brick-making started the plaintiff stated from about 1990 while the 4th defendant stated that it was about ten years before. The parties confirmed that no brick-making was going on at the time. The trial Court identified the 2 parcels of land and noted that it is fairly consistent with the report of the District Surveyor.

13. The judgment of the court was delivered on 24th September 2020 where the court found that the 4th defendant had used a portion of the suit land 1097 to make bricks but stopped after being shown the common boundary. The court further found that the excavation for brick making by the 4th defendant was substantially in 1096 owned by the 1st defendant. However, the 4th defendant encroached on a small portion owned by the plaintiff at some point.

14. The court also found that the valuation report of PW 2 did not accurately capture the extent of the encroachment and that the plaintiff's claim was not well established and dismissed the suit with costs to the defendants.

Appellant's written submissions

15. Counsel for the Appellant submitted that according to the judgment of the court, the surveyor had confirmed that the 4th defendant's kiln for making bricks was within the plaintiff's parcel of land and submitted that there was enough evidence that the respondents did trespass and make bricks on the appellant's property which was sufficient to grant the prayer of special damages. They relied on the authority in the case of *Rhoda Kiilu v. Jiangai Water and Hydropower Construction Kenya Limited*(2019)eKLR that defined trespass.

16. The Appellant also submits that he is entitled to damages and relied on the authority in the case of *Nakuru Industries Ltd v. S S Mehta & Sons* (2016) eKLR where the court was faced with a similar situation where the exact value of the land before and after the trespass was not proven but the court still went ahead to award damages.

17. Counsel submitted that there was no contradicting evidence as to the value of the destruction and that when the court concluded that the 4th defendant did trespass onto the plaintiff's land, then the prayer for general damages ought to have been awarded. The court was urged to find that the trial court's judgment was erroneous and the same be set aside and judgment be entered in favour of the Appellant with costs of the trial suit and this appeal.

18. Counsel for the Appellant highlighted her submissions on 22nd February 2024 addressing the above issues on the dismissal of their claim for special damages being erroneous, referring to page 7 of the trial court's judgment where the court confirmed that there was evidence of trespass. She referred to their valuation report produced by PW 2 which found the value of the bricks to be Kshs.530,400/= stated that this figure was proven. Counsel submitted that the trial magistrate erred in only considering the surveyor's report without considering the valuation report, stating that the evidence was sufficient on a balance of probabilities.

19. The respondents did not file written submissions and did not attend court for the hearing of the appeal though served.

Analysis and Determination

20. As a first appellate court, this court must approach the whole of the evidence on record from a fresh perspective and with an open mind and to evaluate and re-examine the evidence adduced in the trial court, taking into account the fact that this court had no opportunity of hearing or seeing the parties as they testified. This was espoused in the Court of Appeal Case being a first Appeal, the court relies on several principles as set out in *Selle and Another v Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

> "…..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. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence."

21. It is also trite law that an appellate court will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or a misapprehension of the evidence; or where the court has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence.

22. The Court of Appeal in *Kiruga v Kiruga & Another* [1988] KLR 348, observed that:-

> "An appeal court cannot properly substitute its own actual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand."

23. This Court is thus under a duty to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same, evaluate it and arrive at its independent conclusion, but always remembering and giving allowance that the trial court had the advantage of hearing the parties.

21. The appellant's claim before the trial court was based on trespass to land parcel Number Kyuso/ Ngomeni'A' 1097 by way of cutting big trees and excavating land for making bricks. The appellant sought compensation in the sum of Kshs.530,400/= for damage caused to the land. The trial court dismissed this claim for not being well established.

22. As stated earlier, the appeal against the 1st Respondent was withdrawn as he is said to be deceased. The court has considered the evidence tendered before the trial court as relates to the 2nd and 3rd Respondents and found there was no case established against them as they were not mentioned by the

plaintiff in his evidence. The appeal against the said Respondents is thus dismissed with no order as to costs since they did not appear in this appeal.

23. Concerning the 4th Respondent the court record shows that he filed a Memorandum of Appearance dated 17th August 2022 and appeared in court only on 16th November 2022. By the affidavit of service of Walter Jatiaga Aderi sworn on 14th February 2024, the court is satisfied that the 4th Respondent herein was served with the hearing notice of the appeal herein but failed to attend court for the hearing of the appeal or file written submissions.

24. The court has considered the grounds of appeal set forth and submissions made by Counsel for the Appellant and authorities cited. The grounds of appeal can be summarized into two issues for determination:

    i. Whether the trial court erred in law and fact by holding that the Appellant had not discharged his burden of proof and whether the case was decided against the weight of the evidence.

    ii. Whether the trial court was biased against the Appellant

1. Did the Appellant discharge his burden of proof in the trial court?

25. Section 107 of the *Evidence Act* CAP 80 Laws of Kenya provides for the burden of proof and states as follows:

    1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

    2. When a person is bound to prove the existence of any facts, it is said that the burden of proof lies on that person.

26. Section 109 of the same Act further provides that:

> " The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact lies on any particular person."

27. In civil cases such as this land matter, the standard of proof is one of a balance of probabilities. The Court of Appeal in the case of *Palace Investments Limited v Geoffrey Kariuki Mwenda & another* [2015] eKLR quoted with approval as follows:

> " The burden of proof is placed upon the appellant and is to be discharged on a balance of probabilities. Denning J. in *Miller – v- Minister of Pensions* [1947] 2 ALL ER 372 discussing the burden of proof had this to say:-
>
> > "That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'We think it more probable than not', the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case, in which the tribunal cannot decide one way or the other which evidence to accept, where both parties' explanations are equally (un)convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained."

28. The appellant relied on the valuation report produced by his witness PW 2 in which he confirmed that the inspection of the suit land parcel for valuation was carried out on 6th December 2018. The report showed that excavation took place and the soil was used for making bricks. The valuer found that the part excavated stretched to approximately 2,652 Sqft and dug for about 5 feet deep. The excavated soil measured 13,260 cubic feet and had been used to make 53,040 bricks whose estimated cost was Kshs.10/= per brick, bringing the total value of the bricks to Kshs.530,000/=.

29. The first issue for consideration is whether there was evidence of encroachment by the 4th defendant onto the plaintiff's land. As earlier noted, and from the proceedings of the trial court, on 16th September 2019 the trial court directed that the District Land Surveyor visit the suit parcels of land and prepare a report. A report dated 23rd October 2019 was filed in court on 31st October 2019. The court has looked at the report made by Mr Christopher Mbuvi Nzengu for the District Surveyor Mwingi. He confirmed that on 13th September 2018, he visited the two parcels of land No. Kyuso/Ngomeni A/1097 and Kyuso/Ngomeni A/1096 to determine the boundary and set the said boundary. When they visited the two parcels of land on 23rd October 2019 upon the directions from the court, he confirmed that both parties were present and they heard their statements. The Surveyor then set about determining the boundaries and it was found that there was no encroachment between the two parcels of land the boundary set on 13th September 2018 was intact and the beacons marking the boundaries to the two parcels of land were still present.

30. The Surveyor further stated that before the boundary was put, John Ndemwa the 4th Respondent herein had used a portion of Kyuso/Ngomeni A/1097 to make bricks but he stopped when the common boundary was shown on 13th September 2018.

31. Further, during a site visit, the court pointed to a spot on land parcel 1097 and inquired as to who abstracted soil from the said portion and both parties, the plaintiff and the 4th Respondent confirmed that it was the 4th Respondent who did. It is noted that the other Respondents were not mentioned when it came to evidence of encroachment.

32. The Surveyor further found that when they visited the two parcels of land on 23rd October 2019, upon the directions from the court, there was no encroachment between the two parcels of land the boundary set on 13th September 2018 was intact and the beacons marking the boundaries to the two parcels of land were still present.

33. Looking at the report of the surveyor, the valuation report and the proceedings during the court's visit to the suit parcels of land, the question of which parcel of land the valuation was carried out arises.

34. During the site visit, the trial court made several observations that were instrumental to the final finding of the court. The trial court observed that the valuer's report does not indicate whether when he went to the site to conduct the valuation he was in the presence of anybody else. This court observes that the report clearly indicated that the land was identified to the valuer by the contractor meaning the Appellant. It does not mention the presence of the defendants.

35. Even though the valuer states that he examined the relevant layout survey plans and confirmed that the property inspected concurred with the same, the said survey plans were not attached to the report to show the exact location of the portions of land he inspected vis-a-vis the defendant's parcel of land number 1096. This is especially important considering that the evidence adduced in court shows that the Appellant conceded that he at some point was making bricks on the land and that he started making bricks on his land in 1991 and the 4th Respondent also started making bricks on the same land the

same year. The 4th Respondent confirmed that brick-making started in 1990 and that his family started brick-making in 2007.

36. During the site visit the court asked the plaintiff when the valuation of the land was done the appellant could not tell and when asked which part of the land the valuation was done the appellant pointed to a portion of his own parcel of land 1097 while the 4th Respondent pointed to a bigger portion on his land and the plaintiffs land.

37. So the question remains whether the valuer valued certain portions that were on the appellant's land and some on the Respondent's land. As pointed out by the trial court the valuation report did not mention the position of the beacons separating the two parcels of land, he did not accompany his reports with sketch maps of the area.

38. I have carefully considered the findings of the trial court and in particular, that the trial court visited the site and made the following remarks;

> " Having visited the ground and having had a first-hand impression after hearing the evidence of the parties and looking at the reports on record, this court is satisfied that the land parcels 1097 of the plaintiff and 1096 of the 1st defendant are adjacent to one another. The court also formed a fairly good impression of the boundary which is consistent with the sketch in the surveyor's report dated 23/10/2019. It appears that the excavation for the brick making by the 4th defendant was substantially in 1096 owned by the 1st defendant. But the 4th defendant encroached into a small portion of 1097 owned by the plaintiff at some point. The valuation report of PW2 does not accurately capture the extent of the encroachment, and thus may not have put an accurate value on the waste and destruction to found a liquidated claim."

39. From the foregoing, the court finds no fault with the factual finding of the trial court that the excavation for the brick making by the 4th defendant was substantially in 1096 owned by the 1st defendant. But the 4th defendant encroached into a small portion of 1097 owned by the plaintiff at some point. The 4th Respondent was thus guilty of trespassing onto a small portion of the Appellant's land. The court further agrees with the trial court's finding that the valuation report of PW2 did not accurately capture the extent of the trespass and thus may not have put an accurate value on the waste and destruction on the portion of land trespassed upon.

Trespass has been defined by the 10th Edition of *Black's Law Dictionary* as;

> " an unlawful act committed against the person or property of another; especially wrongful entry on another's real property."

40. The Court in *John Kiragu Kimani v Rural Electrification Authority* [2018] eKLR in defining trespass relied on Clark & Lindsell on Torts, 18th Edition on page 923 which defines trespass as;

> 'any unjustifiable intrusion by one person upon the land in possession of another. The onus is on the Plaintiff to prove that the Defendant invaded his land without any justifiable reason.'

Section 3 (1) of the *Trespass Act*, defines trespass as follows;

> " Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence."

41. *Halsbury's 4th ed*, Vol 45 at para 26, 1503 provides as follows on the computation of damages in an action of trespass:-

    a. If the plaintiff proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss.

    b. If the trespass has caused the plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.

    c. Where the defendant has made use of the plaintiff's land, the plaintiff is entitled to receive by way of damages such sum as would reasonably be paid for that use.

    d. Where there is an oppressive, arbitrary or unconstitutional trespass by a government official or where the defendant cynically disregards the rights of the plaintiff in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded.

    e. If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, the general damages may be increased.

41. In *Nakuru Industries Limited - v- S S Mehta & Sons* [2016]eKLR court observed:-

> " In tort, damages are awarded as a way to compensate a plaintiff for the loss he had incurred due to a wrongful action on the part of the defendant. The damages so awarded are intended to return the plaintiff back to the position he was in before the wrongful act was committed. In cases where trespass to land results in damage then the computation of damages is on the basis of restitution of land. The value of the soil (or trees or fruits) which have been removed from that land are all factored as well as the cost of restoration of the land to the position it was in before the wrongful act was committed."

42. The court in the above-cited case of *Nakuru Industries Limited* (*supra*) cited the case of *Duncan Ndegwa v Kenya Pipeline* HCC No. 2577 of 1990 (Nairobi) where the court held:-

> " The general principle as regards the measure of damages to be awarded in cases of trespass to land where damage has been occasioned to the land is the amount of diminution in value or the cost of reinstatement of the land. The overriding principle is to put the claimant in the position he was prior to the infliction of the harm."

43. In the present case, the appellant presented the valuation report claiming the sum of Kshs 530,400 as the amount that would put him back to the position he was in before the trespass and bring restitution of his land. The value placed on the soil said to have been excavated from the land and made into bricks has been given as the amount that would have placed the appellant into the position he was in before the trespass.

44. However, as found elsewhere in this judgment the said report was not an accurate assessment of the size of the land that the 4th respondent had encroached on and thus the amount of soil excavated and the number of bricks that would have been made out of the soil excavated. It is also noted that the appellant lost soil that was excavated on his land but did not lose bricks since the 4th Respondent had to process the soil and make bricks. In the court's view, the report presented did not separate the value of the soil lost on its own and it thus cannot be used as an accurate measure of the appellant's loss.

45. Having said that, this court is of the view that even though the said report was not an accurate reflection of the loss incurred by the appellant as a result of the trespass, the appellant was entitled to an

assessment of compensation for trespass to the portion of his land the court confirmed was trespassed upon.

46. As stated in the authorities cited above if a plaintiff proves trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. Further, if the trespass has caused the plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.

47. The court has considered the authority of *Nakuru Industries Ltd v. S S Mehta & Sons* (2016) eKLR cited by the Appellant where the plaintiff was awarded Kshs 500,000 in damages for trespass to land. The court has also considered the case of *Kennedy J Wamalwa v Rural Electrification Authority* [2020] eKLR, where the plaintiff was awarded the sum of Kshs. 200,000 in a successful case of trespass to land where the acts constituted entering the Plaintiff's land without his consent and/or authority, cutting down trees, erecting an electric post and cutting down the fence without his authority.

48. The court finds that the portion of the appellant's land affected was as described by the trial court small and the damage as described was not as extensive as the one in the above cases. The court further considers that the 4th Respondent ceased his acts of trespass immediately after he was shown the boundary to the suit parcels of land.

49. The court thus makes an award to the appellant in the sum of Kshs 100,000/= for trespass and costs of this appeal and the trial court.

2. Was the trial magistrate biased against the Appellant?

50. The Appellant has raised the ground of appeal that the trial Senior Resident Magistrate erred in law and fact by clearly showing bias against the Appellant. Article 50(1) of the *Constitution* which provides that:

> " Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate another independent and impartial tribunal or body."

51. The Court of Appeal in the case of *Standard Chartered Financial Services Limited & 2 others v Manchester Outfitters (Suiting Division) Limited (Now Known As King Woollen Mills Limited & 2 others* [2016] eKLR held that;

> " We reiterate what the predecessor of this Court stated in Tumaini v Republic 1972 [EA] 441 that:
>
> "...in considering the possibility of bias, it is not the mind of the judge which is considered but the impression given to reasonable persons."

52. Similarly, in the case of the Supreme Court of Canada *R v. S.C.R.D.*) [1977]. 3SCR 484 cited by the Court of Appeal in *Kalpana H. Rawal & 2 others v Judicial Service Commission & 3 others* [2016] eKLRit was held that:

> " The apprehension of bias must be a reasonable one held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. The test is what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude. This test contains a two-fold Objective element:- the person considering the alleged bias must be reasonable and the apprehension of bias itself must also be reasonable in the circumstances of the case. Further,

the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold.

The reasonable person should also be taken to be aware of the social reality that forms the background to a particular case, such as societal awareness and acknowledgement of the prevalence of racism or gender bias in a particular community. This Jurisprudence indicates that a real likelihood or probability of bias must be demonstrated and that a mere suspicion is not enough. The existence of a reasonable apprehension of bias depends entirely on the facts. The threshold for such a finding is high and the onus of demonstrating bias lies with the person who is alleging its existence." [emphasis added]."

53. According to the above authority, the likelihood of bias must be demonstrated. In this case, nothing can be inferred from the trial court proceedings or judgment that the trial magistrate was biased in any way. Both the Plaintiff and defence case were allowed to present their cases, the court conducted a site visit and considered evidence from all ends, including the independent report of the surveyor.

54. The upshot of the above is that the court finds that the appeal herein has merit. The court orders that each party is to bear his own costs of the suit before the trial court for the reason that it was confirmed that when the 4th Respondent was shown the boundary between the two parcels of land by the surveyor, he stopped the acts of trespass. The court makes the following orders;

    1. The judgement of the trial court in Senior Principal Magistrate's Court Hon. J. Aringo, in Kyuso MCCC No.2 of 2019 delivered on 24th October 2020 is hereby set aside.

    2. Judgement is entered in favour of the appellant against the 4th Respondent herein for general damages for trespass in the sum of Kshs. 100,000/= with interest at court rates from the date of this judgment.

    3. The 4th Respondent will pay the costs of this appeal.

    4. Each party is to bear his own cost of the suit before the trial court.

DATED, SIGNED AND DELIVERED AT KITUI THIS 30TH DAY OF APRIL, 2024.

HON. L. G. KIMANI, JUDGE

ENVIRONMENT AND LAND COURT, KITUI

Judgement read in open court and virtually in the presence of:

C/A Musyoki – Court Assistant

M/S Njambili for Appellant

N/A for the Respondents