



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GITHINJI, SICHALE & ODEK, JJ. A)

CIVIL APPEAL NO. 244 OF 2018

BETWEEN

COMMERCIAL BANK OF AFRICA.....APPELLANT

AND

WARDPA HOLDINGS LIMITED.....1ST RESPONDENT

CO-OPERATIVE BANK OF KENYA LIMITED.....2ND RESPONDENT

LEAKEY'S AUCTIONEERS.....3RD RESPONDENT

CHIEF LAND REGISTRAR.....4TH RESPONDENT

PATRICK KANGETHE NJUGUNA.....5TH RESPONDENT

EQUITY BANK LIMITED.....6TH RESPONDENT

KINJUNJE GARDENS LIMITED.....7TH RESPONDENT

MARGARET WAMBUI KANG'ETHE.....8TH RESPONDENT

(Being an appeal against the Ruling and Order of the High Court of Kenya (Environment and Land Court) (Okong'o, J.) dated the 19th day of December 2017)

in

ELC Cause No. 941 of 2016)

Consolidated with ELC Cause o. 947 of 2016)

JUDGMENT OF THE COURT

[1] This is an appeal from the Ruling of the Environment and Land Court (ELC) at Nairobi (**S. Okong'o, J**) which dismissed the appellant's and 6th respondent's respective applications for interlocutory injunction against the 2nd respondent and others. The impugned ruling dated 19th December, 2017 was in respect of two applications. The first application was dated 3rd August, 2016. It was filed by Equity Bank Limited (Equity Bank) in **Nairobi Civil Suit No. ELC Case No. 941 of 2016**. The second application dated 4th August, 2016 was filed by Commercial Bank of Africa Limited (CBA) in **Nairobi Civil Case No ELC No. 947 of 2016**. By an order dated 11th October, 2016, the two suits were consolidated by consent of the parties. On 28th November, 2016, the ELC ordered that the two applications be heard together by way of written submissions.

[2] The chronology of events which preceded the suits and the applications is briefly stated below:

(i) By a letter dated 10th May, 2010, the co-operative Bank of Kenya (Co-op Bank) agreed to lend Shs. 161,000,000 as mortgage facility and Shs. 5,000,000 as overdraft facility of Patrick Kangethe, Edward Kangethe and George Kangethe trading as Patrick Kangethe & Sons. The two facilities were secured by a charge on four properties one of them being land title No. Dagoretti/Riruta/2289 (the suit property) registered under the Registered Land Act in the name of Patrick Kangethe Njuguna (5th respondent). The charges in respect of the four properties were duly executed. The charge over the suit property which was executed on 18th August 2010 specifically secured the principal sum of Shs. 94,500,000/-. The chargor, Patrick Kangethe Njuguna surrendered to Co-op Bank the original title deed of the suit property which was issued on 29th August 1997. After the transactions, Co-op Bank obtained a certificate of official search dated 10th September 2010 from the Land Registrar showing that the charge over the suit property was registered on 10th September 2010 as an encumbrance against the title. The borrowers started serving the loan by paying monthly instalments of Shs.2,503,630/-.

(ii) By a letter dated 24th July, 2013, CBA at the request of Wardpa Holdings Limited (Wardpa) agreed to grant Wardpa a term loan of Shs. 100,000,000/- to finance the construction of a three-star hotel in Ngara on LR. No. 209/163/1/6/Ngara and asset finance of Shs. 8,100,000/-. Wardpa which was incorporated on 16th March 2006 passed a resolution to borrow a total of Shs. 108,100,000/- on the terms and conditions in the letter of offer. The loan of Shs. 100,000,000/- was secured by a first legal charge over Land Title No. Dagoretti/Riruta/2289 dated 22nd January 2014 and executed by Edward Kangethe and George Kangethe as directors of Wardpa. The total loan of Shs. 108,100,000/- was also secured by personal guarantees and indemnities executed by Edward Njuguna Kangethe, George James Kireru Kangethe and Gladys Njeri Kangethe who are shown to be subscribers of Wardpa. In addition, the borrower was to assign the rental income from the suit property and another property to CBA. The borrower surrendered the original title deed dated 23rd October 2012 certifying that Wardpa was the absolute proprietor. The charge was registered against the title on 23rd January 2014 and CBA obtained a certificate of official search dated the same day showing that the charge was so registered.

(iii) By a letter of offer dated 9th December, 2014, Equity Bank offered to the grant a development loan of Shs. 200,000,000/- to Kinjunje Gardens Limited (Kinjunje) at its request for a construction of a commercial building in the Central Business District, Nairobi. The loan was to be secured by a first charge on three properties including the suit property the charge on the suit property being limited to Shs. 80,000,000/-. The other terms included execution of a deed of assignment of the rental income to the Equity Bank, an all assets debenture and directors' personal guarantees and indemnity for Shs. 363,500,000/-. The offer was accepted and Patrick Kangethe Njuguna and Margaret Wambui Kangethe, the directors of Kinjunje, executed all the required documents. They in particular executed a charge dated 22nd January, 2015 over the suit property to secure Shs. 80,000,000/-. The original title deed dated 23rd May, 2014 certifying that Kinjunje was the proprietor of the property was deposited with Equity Bank. The charge was registered against the title on 23rd January, 2015 and Equity Bank procured a certificate of official search dated the same day verifying that the charge indeed was registered. The charge was also registered at the Companies Registry and a certificate of registration of a mortgage dated 28th January 2015 was issued.

(iv) On or about 26th May, 2016 the Co-op Bank served the borrowers with a redemption notice and notification of sale to recover the outstanding debt of Shs. 198,501,121/69 as at 20th May, 2016. On 27th May, 2016, the three borrowers Patrick Kangethe Njuguna, Edward Njuguna Kangethe and George James Kangethe filed, Mombasa High Civil Court Case No. 50 of 2016 together with an application seeking to restrain Co-op Bank from exercising the statutory power of sale on the charged properties for the reason that they had not been served with statutory notices. On 26th July, 2016, the High Court allowed the application on some terms.

(v) On 14th July, 2016 Patrick Kangethe Njuguna; Edward Njuguna Kangethe, George James Kangethe, Margaret Wambui Kangethe and Gladys Njeri Kangethe filed Judicial Review Application No. 54 of 2016 at the High Court Mombasa against the Director of Public Prosecutions (DPP) joining CBA as an interested Party. They claimed that upon their default to service the loans granted by CBA, the latter had instructed auctioneers to realize the charged securities and that Bank Fraud Department of DPP's office had commenced secretive investigations on the legality of the securities. Leave to apply for an order of prohibition and a stay of arrest and detention of the applicants was granted ex parte on 14th July, 2016. However, the court allowed the DPP to proceed with the investigations. The substantive motion for judicial review was filed on or about 21st July, 2016.

(vi) On 16th July, 2016, Co-op Bank advertised the suit property for sale through M/s Leakey's Auctioneers for 5th August, 2016. This is the advertisement which directly precipitated the suits and the applications.

[3] Equity Bank averred in the plaint, among other things, that: the purported charge in favour of Co-op Bank was created without its knowledge and consent; the purported charge in favour of Co-op Bank was registered on a parallel and fraudulent title and therefore the intended sale was a nullity; the purported registration of charge in favour of Co-op Bank was a product of fraud perpetuated by Kinjunje, Patrick Kangethe Njuguna and Margaret Wambui Kangethe; the Chief Land Registrar fraudulently aided the procurement of parallel title through duplication of land registry records and that Co-op Bank failed or neglected to carry out proper due diligence. The reliefs sought include a permanent injunction to restrain Co-op Bank from selling the suit property; a declaration that the charge in favour of the Co-op Bank is null and void; a declaration that the title and charge held by Equity Bank over the suit property are the only genuine ones and compelling the Chief Land Registrar to cancel the parallel title issued to Co-op Bank. By the notice of motion dated 3rd August, 2016, Equity Bank sought temporary injunction including an injunction to restrain Co-op Bank from selling the suit property pending the hearing of the suit. The application was supported by the affidavit of **John Njenga**, General Manager, Legal Services at Equity Bank which reiterated the contents of the plaint.

[4] The plaint dated 4th August, 2016 filed by CBA is similar in substance to the plaint filed by Equity Bank particularly in relation to the cause of action, the wrongful actions of the parties thereto and the reliefs sought. Similarly, the orders of injunctions which were sought in the notice of motion dated 4th August, 2016 which application was supported by the affidavit and supplementary affidavit of **Ronald Mworira**, head of Remedial Management Unit of CBA, were similar. Similarly, the two affidavits repeated the averments in the plaint. CBA's

application was opposed on the grounds in the replying affidavit of **Debra Ajwang' Ogada** the Co-op Bank's Legal Manager sworn on 10th August, 2016.

In the aforesaid affidavit **Debra Ajwang' Ogada** deponed, among other things, that Co-op Bank had a better title; CBA did not exercise due diligence and reasonable care; that had it done so, it would have realized that it was dealing with fraudsters or fake documents; that save for allegations of negligence, CBA had not made any allegations of fraud against Co-op Bank in processing the registration of the charge or in procuring the title dated 29th August, 1997; since Co-op bank has never released the original 1997 title to anyone; the registration of Wardpa as proprietor was fraudulent, illegal and void *ab initio*; that CBA having realized that it was a victim of fraud complained to the police; that CBA's interest was in the recovery of the money owed and can be compensated by damages or seek indemnity; and that it is in the interest of justice, fairness and in upholding the priority of charges ordained by statute, that the application be dismissed.

[5] The learned Judge considered the two applications and reckoned that the dispute was principally between the three banks and that the dispute revolved around the validity of the charges created at different times over the suit land. The learned Judge traced the root of the title to the suit property and noted from the material before him, that the suit property was registered in the name of **Patrick Njuguna** on 29th August 1997; "transferred" and registered in the name of Wardpa on 23rd October 2012, and eventually "transferred" and registered in the name of Kinjunje on 23rd May, 2014.

[6] The learned Judge summarised the claim of Equity Bank and CBA thus:

"...the contention by Equity and Commercial Bank is that the intended sale of the suit property by Co-op Bank in exercise of its statutory power of sale is illegal, null and void on the grounds that the charge in favour of Co-op Bank over the suit property was created without their consent and that the same was not registered against the original title for the suit property but against a parallel fraudulent fake title which was created by Patrick Njuguna in collusion with the Land Registrar"

The learned Judge considered the claim partly as follows:

"It is not disputed that in order of priority, Co-op Bank's charge was the first security registered against the title of the suit property. The titles for the suit property against which the charges in favour of Commercial Bank and Equity were registered were not in existence when the charge in favour of Co-op Bank was created and registered. It is therefore far-fetched to claim that the title of the suit property against which Co-op Bank's charge was registered was parallel to the titles for the suit property in the names of Wardpa and Kinjunje against which the charges in favour of the two were registered. It is also absurd to suggest that Co-op Bank should have sought permission or consent from Commercial Bank and Equity before registering a charge against the title.

In my view, Commercial Bank and Equity have not demonstrated that they have a right over the suit property which has been threatened with violation by Co-op bank. Their rights, if any, which they have over the suit property are secondary to that of Co-op Bank."

[7] Further, the learned Judge considered the contention by Equity Bank and CBA that since there is apparent evidence that Patrick Njuguna, Margaret Wambui Kangethe, Wardpa and Kinjunje were involved in the fraudulent creation of parallel title deeds for the suit property, it was necessary that the sale of the suit property should be stopped pending the hearing of the suit at which the court would determine the validity of the various titles held by the parties. On that contention, the learned Judge stated.:

"whereas I am in agreement with the contention by Commercial Bank and Equity that there is a high likelihood that the persons mentioned above fraudulently with collusion of the Land Registrar created parallel title deeds for the suit property which they used to defraud Commercial Bank and Equity of hundreds of millions of shillings, there is no evidence that the transaction between Co-op Bank and Patrick Njuguna was affected by the alleged fraud or that Co-op Bank was involved. I am not persuaded that the charge in favour of Co-op Bank may be nullified at the trial of the suit at the instance of Commercial Bank and Equity. This is because, there is no dispute that Patrick Njuguna was the registered owner of the suit property as at 18th August, 2010 when he charged the property in favour of Co-op bank and when the charge was registered on 10th September 2010. There is also no dispute that Co-op Bank has not discharged that charge and that its statutory power of sale has arisen."

[8] The learned Judge also considered the contents of the certification of official search in respect of the suit property dated 3rd February, 2016 indicating that yet another title of the suit property was issued on 20th November, 2007 to Patrick Kangethe Njuguna t/a Patrick Kangethe and Sons; Edward Njuguna Kangethe and George James Kangethe. The learned Judge noted that the said title was issued about 10 years after the title to Patrick Njuguna Kangethe was issued in 1997 and that the three, to who the title was allegedly issued in 2007, had admitted in **Mombasa High Court Civil Case No. 50 of 2016** that the suit property was charged to Co-op bank and that they owed Co-op bank Kshs. 198,501,120/69 and made a finding that the existence of such fourth title added no weight to the case pleaded by CBA and Equity Bank against Co-op bank.

[9] Lastly, the court considered whether or not Equity Bank and CBA would suffer irreparable loss which could not be compensated by an award of damages and made a finding that the loss could be compensated by damages should it turn out at the trial that Co-op Bank had no right to sell the property.

[10] Ultimately, the court concluded that Equity and CBA had not established a *prima facie* case with a probability of success and the conditions to granting injunctive reliefs sought, and dismissed the applications.

[11] This appeal is by CBA who is represented by **Mr. Kabaiku**. Apparently, Equity Bank did not file an appeal but has been joined in the appeal as a 6th respondent and is represented by **Mr. Benson Nguji**. **Mr. Kenneth Wilson** appears for Co-op Bank and Leakey's Auctioneers, 2nd and 3rd respondents respectively. **Mr. Eredi** appeared for the Chief Land Registrar (4th respondent). **Mr. Gachie Mwanza** for 1st, 5th, 7th and 8th respondents did not attend the hearing although he was served with hearing notice.

[12] The appeal is based on five main grounds namely; that the learned Judge erred in holding that merely because Co-op Bank's charge was registered first, then the principle that "*first in time prevailed*" was applicable; the learned Judge failed to appreciate that the official search record issued by the Chief Registrar showed that the title held by Co-op bank was not also genuine; the Judge erred in law and in fact in determining the question of fraud at an interlocutory stage; the learned Judge totally failed to appreciate that the appellant had an equal proprietary interest as chargee and the principle of "*first in time*" was inapplicable where fraud was evident; and that the learned Judge failed to appreciate that the appellant's injunction application met the minimum threshold for granting an interlocutory injunction. The respective counsel for the appellant, 2nd and 3rd respondents and 6th respondent filed written submissions which they orally highlighted. The Chief Land Registrar and Equity Bank supports the appeal.

[13] The appeal relates to the exercise of discretionary and equitable jurisdiction by a Judge. The principles on which an appellate court may interfere with exercise of such discretion are stated in the authorities cited by respective counsel. The appellant's counsel cited **Lucy Wangari Gachara v Muindi Minudi Okemba Lore [2015] eKLR** which restates the principle in **United India Insurance Co. Ltd. V East African Underwriters (Kenya) Ltd. [1985] EA 898 (United India Insurance Co. Ltd.)**. Counsel for the 2nd and 3rd respondents relied on **Anita Chelangat O'donovan & 2 others v Fredrick Kwame Kumah & 2 others [2017] eKLR** where again the principle in **United India Insurance Co. Ltd.** was reinstated. Counsel for the 6th respondent relied on **Patrick Okuku & 7 Others v James Kutshushi Atindo & 8 Others, Court of Appeal at Kisumu, Civil Appeal No. 242 of 2011** (consolidated with others) where the principle in United India Insurance Co. Limited was again restated and applied.

In essence, an appellate court will act with restraint and give judicial deference to the exercise of judicial discretion and will only interfere where there is misdirection or non-direction on facts or on points of law, or where no other court properly directing itself could have reached at such a decision.

The authorities further show that in an interlocutory application or appeal, neither the trial court nor the appellate court should usurp the function of a trial court and should not normally decide any contested factual issue with finality.

[14] It is convenient to consider first, whether or not the learned Judge determined the question of fraud in an interlocutory application. The learned counsel for the appellant, counsel for the 4th respondent and 6th respondent submitted that the learned Judge determined the issue of fraud. On his part, counsel for the 2nd respondent submitted that the learned Judge only made a finding that there was no *prima facie* case and did not make a final determination. Counsel for the 6th respondent particularly relied on **Patrick Okuku's** case (supra) where this Court relying on previous authorities, stated that serious allegations of fraud and other wrong doings can only be decided during a proper trial and not on the basis of conflicting affidavit evidence. On the other hand, counsel for the appellant relied on **Hygiene Bins Limited v Sanitary Services (EA) Limited** for the submission that the use of a definitive language does not distract from the fact that the findings in an interlocutory application are *prima facie* which do not bind a trial judge or even the same judge.

In support of the submissions, counsel for the appellant relied on a passage in the impugned ruling quoted at paragraph [6] above that CBA and Equity Bank had not demonstrated that they had a right which had been threatened with violation by Co-op Bank.

[15] In order to determine whether or not the learned Judge made a final determination on the question of fraud or otherwise, it is necessary to consider the ruling as a whole. The learned Judge was aware that he was dealing with an interlocutory application for injunction and cited the principles enunciated in **Giella v Cassman Brown Co. Ltd. [1973] EA 358**. He also referred to the case law on the burden of proof of *prima facie* case and what a *prima facie* case entails. After analysis of the case of CBA and Equity Bank he concluded:

"Having considered the evidence before me, I am not persuaded that Commercial bank and Equity have a prima facie case with a probability of success against Co-op Bank."

The learned judge agreed with the submissions by CBA and Equity Bank as shown in the excerpt of the ruling quoted at paragraph [7] above that there was a high likelihood that persons involved in collusion with the Land Registrar created parallel title deed but nevertheless made a finding that there was no evidence that the transaction between Co-op bank and Patrick Njuguna was affected by the alleged fraud or that Co-op Bank was involved. Further, the learned Judge stated that he was not persuaded that the charge in favour of Co-op Bank may be nullified at the trial of the suit at the instance of CBA and Equity Bank. It is noteworthy that the learned Judge referred to the fraud as "*alleged fraud*" and used the phrase "*may be nullified at the trial*" in reference to the charge in favour of Co-op Bank. The learned Judge did not categorically find that the title held by Wardpa or Kinjunje and the respective charges in favour of CBA and Equity bank were fraudulent. Indeed, the two applications for injunction were determined solely on the basis of the priority of charges and not on the finding on fraud. This is clear from the following finding by the learned Judge:

"As I have stated above, the charge in favour of Co-op Bank was the first in time. That charge must prevail against the subsequent charges registered against the title of the property."

It follows that the contention by the appellant and the respective counsel for 4th and 6th respondents that the learned Judge conclusively determined that the titles held by the appellant and by the 6th respondent were fraudulent is erroneous and this ground of appeal fails.

[16] The rest of the grounds of appeal in essence fault the learned Judge for failing to find that the appellant had established a *prima facie* case with a probability of success. These grounds of appeal will be considered together. It is clear that there are three charges created at

different times and in favour of different banks over the suit property. By a charge dated 18th August, 2010, Patrick Kangethe Njuguna (6th respondent) charged the suit property to Co-op Bank to secure a loan of Shs. 94,500,000/-. The title to the suit property was issued to him under the registered Land Act (now repealed) on 29th August 1997. By a charge dated 22nd January, 2014 Wardpa charged the suit property to CBA to secure Shs. 168,100,000/- advanced to Wardpa. The original title of the suit property was issued to Wardpa under the Registered Land Act on 23rd October, 2012. The third title for the suit property was issued to Kinjunje under the Registered Land Act on 23rd May, 2014 and charged to Equity Bank on 22nd January, 2015 to secure a loan of Shs. 80,000,000/-.

The appellant averred in the plaint, *inter alia*, that any charge created in favour of Co-op Bank was created without its knowledge and consent; that the charge in favour of Co-op Bank was registered on a parallel fraudulent title and that the appellant believes that the charge in favour of Co-op bank is rooted on fraudulent and fake title. The appellant set out the particulars of fraud against Wardpa, Chief Land Registrar and Patrick Kangethe Njuguna and particulars of negligence against Co-op Bank. The pleaded particulars of negligence against Co-op Bank are; failing to carry out due diligence on the documents presented by Patrick Kangethe Njuguna; failing to investigate title documents; and failing to conduct a search on the suit property. At the time the applications were determined, the respective defendants had not filed their defences and Wardpa, Chief Land Registrar and Patrick Kangethe Njuguna did not file responses to the applications.

[17] The purpose of the application filed by the appellant was to restrain Co-op Bank from selling the suit property as advertised on 5th August 2016. In advertising the suit property for sale Co-op Bank was exercising its statutory power of sale conferred by section 74(2)(b) of the repealed Registered Land Act. Co-op Bank demonstrated by the replying affidavit and documents that Patrick Kangethe Njuguna had charged the suit property to it and that it had complied with the conditions for exercise of a chargee's statutory power of sale. Before Co-op Bank could be restrained from exercising its statutory powers of sale, the appellant had to demonstrate, among other things, that it had a *prima facie* case with probability of success against Co-op Bank. The learned Judge considered the appellant's cause of action. It found that the claim that the charge in favour of Co-op Bank was created without its knowledge and consent to be invalid for the reason that the charge in favour of the appellant was not in existence when the charge in favour of Co-op Bank was created. The court also considered the claim that Co-op Bank's charge was created on a parallel, fraudulent and fake title and expressed the view that if some charges were so created, the charges could only be those created later in favour of the appellant and Equity Bank.

The learned Judge applied the principle of priority of interest registered in the Register as was stipulated in section 42(1) of the Registered Land Act – that such interest have priority according to the order in which they were presented to the land registry. Section 66 of the Registered Land Act also provided that a sale under a charge is subject to prior charges unless they have been discharged.

Further, the Land Registration Act, 2012 (LRA) which repealed the Registered Land Act provides in section 57(1) that a sale under a second or subsequent charge shall be expressed to be subject to all prior charges unless those charges have been discharged. Further, subsection 2 of section 57 of LRA, as amended, provides that where a second or subsequent charge is to be created the consent for the first chargee should be obtained before the second or subsequent charge is created.

[18] It is contended by CBA and Equity Bank, that the principle of “*the first in time prevailed*” did not apply for reasons that the charges in favour of the appellant and Equity Bank were registered against the same property in a clear fraud syndicate. More specifically, it is contended that the principle does not apply where there is fraud. The appellant's counsel relied on the provisions of section 80(1) of the LRA which gives court power to order rectification of register where the registration was obtained; made or omitted by fraud or mistake. Indeed, by section 16 of the Registration of Documents Act (Cap 285) Laws of Kenya a Registrar has power to cancel any document and its registration if the document has been obtained by fraud, mistake, misrepresentation or if the document is forged or execution thereof is contrary to law.

[19] The evidence of the process by which Wardpa or Kinjunje obtained title to the suit property originally registered in the name of Patrick Njuguna Kangethe was not available at the time the application was heard. We would agree with the appellant's counsel's submission that the learned Judge erred in stating that the title changed hands by transfer. However, it is clear that the learned Judge by use of the word “*transfer*” was merely referring to the undisputed fact that the title documents showed that the suit property was in different names at the time the charges in favour of the appellant and Equity Bank were created. Similarly, in the absence of relevant documents, it cannot be said that the appellant demonstrated on *prima facie* basis that the titles held by Wardpa and Kinjunje was parallel to the title held by Patrick Njuguna Kangethe. It is at the trial that the truth on the status of the three titles will hopefully be revealed. Apparently, at the time of filing the suit and the application, the appellant was not aware of the creation of a charge dated 18th August, 2010 by Patrick Njuguna Kangethe in favour of Co-op Bank or the details of that charge. Otherwise, the appellant could not have pleaded, as it did, that at the time the charge in its favour was created, no other security existed in favour of any financial institution. The plaint as it stands did not allege any fraud on the part of Co-op Bank. Further, the particulars of fraud pleaded against Wardpa, Chief Land Registrar and Patrick Njuguna Kangethe did not specifically refer to creation of the charge dated 18th August, 2010 or even refer to the creation of a fourth title. The appellant merely averred in the plaint that it “*..verily believes*” that the charge, if any, registered in favour of Co-op Bank was “*rooted on a fraudulent and fake title*”. The facts which were the basis of the brief were not specifically pleaded.

[20] In the premises, no concrete facts of fraud were pleaded in reference to the charge in favour of Co-op Bank which would affect the application of principle of priority of charges. In conclusion, we would agree with the finding of the learned Judge that the appellant did not demonstrate a *prima facie* case of fraud that may lead to the nullification of the charge in favour of the Co-op Bank at the trial or that damages would not be an adequate remedy. Accordingly, the appeal is dismissed with costs to 2nd respondent. It is so ordered.

Dated and delivered at Nairobi this 22nd day of November, 2019.

E. M. GITHINJI

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

J. OTIENO-ODEK (Prof.)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR