**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OUKO, GATEMBU & M'INOTI, JJ.A.)**

**CIVIL APPEAL NO. 218 OF 2017**

**CHRISTOPHER KIOI ]**

**NANCY WAMBUI WAWERU ]**

**(Administrators of the Estate of]**

**MWANGI KIOI (Deceased)) ].....APPELLANTS**

**AND**

**WINNIE MUKOLWE ]**

**JULIA KIRIRA ]**

**HOPE MUTUA ]**

**(Administrators of the Estate of]**

**DAVID NYAMBU JONATHAN**

**KITURI (Deceased) ].....1ST RESPONDENTS**

**LUCY WANJIRU MUCHAI t/a ]**

**BELLAVINN INVESTMENTS ].....2ND RESPONDENT**

***(Appeal from the judgment and decree of the Environment & Land Court at Nairobi (Gacheru, J.) dated 27th January 2017***

**in**

**ELCC No. 544 of 2009)**

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**JUDGMENT OF THE COURT**

This appeal arises from the judgment of the ***Environment & Land Court*** at Nairobi ***(Gacheru, J.),*** dated 27th January 2017 by which the learned judge dismissed with costs an originating summons taken out by the appellants, ***Christopher Kioi*** and ***Lucy Wambui Waweru***, the administrators of the estate of ***Mwangi Kioi (Deceased) (Kioi),*** seeking to be registered as owners of the parcel of land known as ***LR. No. 10090/24 (the suit property),*** by adverse possession. At all material times, the suit property, which is situated in Juja and measures in area approximately ***24.54 hectares***, was registered in the name of ***David Nyambu Jonathan Kituri (Kituri)***, who is also deceased, but is represented in this appeal by ***Winnie Mukolwe, Julia Kirira*** and ***Hope Mutua,*** the administrators of his estate ***(the 1st respondents)***. The ***2nd respondent, Lucy Nyambura Muchai t/a Bellavinn Investments*** joined the proceedings in the court below as an interested party because prior to the institution of the originating summons, she had entered into an agreement with the 1st respondents to purchase the suit property.

The appellants' case is that sometime in 1969, Kioi entered into an agreement for sale with Kituri, by which he agreed to purchase and Kituri

agreed to sell, the suit property for ***Kshs 25,000.00***. Kioi duly paid the full purchase price and obtained consent from the ***Kiambu Land Control Board*** on 13th December 1969. Because by then the grant for the suit property had not been issued to Kituri, the suit property was not transferred to Kioi. Nevertheless it was averred that in 1970, Kioi took possession of the suit property, dispossessed Kituri, and the latter completely discontinued possession thereof. Henceforth Kioi was in possession of the suit property publicly, exclusively, as of right, and exercised thereon all acts of an owner without let or hindrance or any form of objection from Kituri.

Among the acts of ownership that Kioi exercised on the suit property included farming, namely grazing and growing food crops, and mining in the form of quarrying stones on the suit property. In or about 2005, Kioi discovered, to his surprise, that he did not have title to the suit property. Upon taking advise from the Commissioner of Lands, he approach the 1st respondents, who were appointed administrators of the Estate of Kituri after his death on 9th December 1982, and requested them to apply for a provisional certificate of title to enable them in turn transfer the suit property to him. However, instead of transferring the suit property to him, the 1st respondents offered the same for sale to the 2nd respondent and thereafter filed ***HCCC No. 190 of 2008*** seeking, among other remedies, eviction of Kioi from the suit property. On his part, Kioi filed ***HCCC No. 199 of 2008*** against the 1st respondents praying for a permanent injunction to stop them from alienating the suit property or interfering with his possession, and an order compelling them to transfer the same to him. The two suits were consolidated but Kioi later withdrew his suit and instead filed the summons, the subject of this appeal. It was the appellants' case therefore that Kituri's title to the suit property was extinguished after the expiry of 12 years from 1970 when Kioi took possession of the suit property and that they were entitled, as the administrators of his estate, to be registered as owners by adverse possession.

The 1st respondents opposed the summons and denied any agreement between Kioi and Kituri for the sale of the suit property, contending that the appellants had failed to produce the alleged agreement. They also denied that Kioi was in occupation of the suit property contending that the appellants had only invaded the property in 2005 where they were intermittently cultivating approximately 3.4 acres only.

As for the 2nd respondent, she opposed the summons on the basis of her purchaser's interest in the suit property. She averred that before purchasing the suit property she had undertaken due diligence and established that the persons who were cultivating the suit property along the riverbank were seasonal trespassers involved only in subsistence farming, who did not even know the actual owner. Eventually she was able to trace the 1st respondents as administrators of the estate of Kituri and duly entered into an agreement to purchase the same. For all the period she visited the suit property, including for purposes of identifying the beacons, she never encountered anyone farming the suit property and it was only when she started to subdivide the same that the appellants appeared and alleged that they were the owners.

The learned judge directed a site visit, which was undertaken by the Deputy Registrar and the parties on 22nd May 2015. The main findings of the visit as detailed in the Deputy Registrar's report dated 2nd June 2015 were that the suit property was neither demarcated nor fenced and was in a state of abandonment due to several public footpaths across it and use of parts thereof as dumping sites. The quarry was not easily accessible and the only cultivation noted was on the edge of the property near the riverbank. The registrar also noted only one iron sheet structure on the suit property, which she concluded was newly constructed.

After considering the above evidence and the law, the learned judge found that if Kioi occupied the suit property pursuant to the sale agreement between him and Kituri, then the occupation was not adverse; that no evidence was produced by the appellants to prove the alleged sale of the suit property by Kituri to Kioi; that any use of the suit property by Kioi was in secrecy rather than open; that the 1st respondents were not aware of Kioi's possession, if any, of the suit property; that Kioi brought the 1st respondents' attention to his possession of the suit property in 2003; and that the statutory period of 12 years had not elapsed when he filed the originating summons in 2009. Those are the findings that aggrieved the appellants, leading to this appeal.

Represented by ***Mr. Muthui***, learned counsel, the appellants compressed their 12 grounds of appeal into four grounds, contending that the learned judge erred by failing to find that Kioi and the appellants were in adverse possession of the suit property for a period of or more than 12 years; by failing to hold that Kituri's title to the suit property was extinguished in 1981 and that the 1st respondents held the suit property in trust for the appellants; by ignoring the evidence that was adduced and relying on irrelevant considerations; and lastly by failing to hold that the 2nd respondent had no proprietary interest in the suit property.

On the first ground of appeal, the appellants submitted that they had adduced overwhelming evidence to show their actual, open, and continuous possession of the suit property and that the 1st respondents had admitted that there were people cultivating the suit property in the 1980s. They added that the evidence on record proved that before he died in 2008, Kioi was in open and uninterrupted possession of the suit property for a period of 39 years, undertaking such activities as harvesting and selling sisal from the suit property, rearing dairy cattle, planting napier grass, building a cattle dip, renting out the land, and quarrying, all of which were inconsistent with Kituri's possession. Relying on the judgments of this Court in ***Wambugu v. Njuguna [1983] KLR 172*** and ***Peter Mbiri Michuki v. Samuel Mugo Michuki [2014] eKLR***, the appellants submitted that where a party relies on an agreement and subsequent adverse possession, the possession becomes adverse from the date of payment of the last instalment. In this case, it was urged that Kioi's possession became adverse in 1969 when he paid the full purchase price, and that the learned judge erred by holding that his possession was with permission of Kituri. It was the appellant's further contention that they adduced sufficient evidence to show that Kioi dispossessed Kituri, who thereafter retreated to Taita Taveta. The judgment of this Court in ***Public Trustee v. Wanduru [1984] KLR 314*** was cited in support of the submission that discontinuation of possession takes place when the owner goes out and another person takes possession.

The appellants further submitted that lack of a permanent building or fencing of the suit property did not disprove possession. They cited ***Githu v. Ndeete [1984] KLR 776*** and the judgment of the High Court in ***Virginia Wanjiku Mwangi v. David Mwangi Jotham Kamau [2013] eKLR*** and submitted that cultivation and similar activities, without fencing is sufficient to prove possession. They also submitted, on the authority of ***Peter Mbiri Michuki v. Samuel Mugo Michuki*** (supra) that possession need not be only actual, but can also be constructive. In the appellants' view the failure by the 1st respondents to include the suit property among Kituri's assets when they applied for grant of representation was evidence that Kituri had been dispossessed by Kioi and his estate had no interest in the suit property.

As regards the finding that Kioi's possession of the suit property was secretive rather than open, the appellant submitted that it was contradictory for the trial court to find on one hand that Kioi's possession was with the permission of Kituri and on the other that the possession was secretive. It was contended that by holding that Kioi's possession was secretive, the court ignored clear evidence and

admission by the 1st respondents that they were aware someone was cultivating the suit property from the 1980s.

On the second ground of appeal, the appellants submitted that the learned judge identified whether Kituri's title had been extinguished as one of the issues for determination, but ultimately failed to determine that issue. Had the court determined the issue, it was submitted, it could only have found in favour of the appellants because by dint of ***section 7*** of the ***Limitations of Actions Act***, Kituri's title to the suit property stood extinguished after 12 years of possession by Kioi and thereafter he held the same in trust for the appellants. The judgment of this Court in ***Hosea v. Njiru [1974] EA 526*** was cited in support of the proposition. The appellants maintained that Kioi's possession of the suit property was never disturbed by Kituri in 1972 when he paid land rent for the suit property or in March 2008 when the 1st respondents gave the appellants notice to vacate the suit premises, because such actions did not amount to assertion of Kituri's title. Relying on the judgment of this Court in ***Githu v. Ndeete*** (supra) the appellants submitted that giving of notice to vacate was not sufficient assertion of title and the non-use of the suit property by the appellants after the dispute erupted in 2008 did not affect the fact that Kituri's title had been extinguished by 1981.

Next the appellants impugned the judgment of the trial court for considering irrelevant matters such as, that Kioi was not buried on the suit property; lived in Kasarani rather than on the suit property; was a wealthy person with parcels of land in the Rift Valley; and that the suit property was not included among his assets in the appellants' application for grant of representation to his estate. The appellants also faulted the trial court for relying on the report of the Deputy Registrar made after the site visit because the latter had no jurisdiction to make any conclusions or findings in the matter or to determine whether adverse possession was proved. In the same breath, the appellants submitted that the learned judge had failed to consider the evidence of the existence of a cattle dip, Napier grass and a quarry, which incidentally was also contained in the Deputy Registrar's Report.

On the last ground of appeal, it was submitted that the trial court erred by failing to hold that the 2nd respondent had no proprietary interest in the suit property because after expiry of a period of 12 years in 1981, Kituri's title was extinguished and the 1st respondents had no interest in the suit property capable of being transferred to the 2nd respondent. The sale of the suit property to the 2nd respondent was also challenged as illegal, null and void for lack of consent of the relevant Land Control Board as required by ***section 6*** of the ***Land Control Act.*** The appellants invoked the decision of this Court in ***David Sironga ole Takai v. Francis Arap Muge & Others [2014] eKLR*** in support of that submission.

The 1st respondents opposed the appeal contending that the appellant had failed to prove a case for adverse possession. Through their learned counsel, ***Mr. Mwangi***, they submitted that no evidence, in the form of an agreement for sale between Kioi and Kituri or an acknowledgement of payment by Kituri was adduced. They also argued that the appellants had failed to call a witness from the firm of **Daly & Figgis Advocates**, who were alleged to have acted for Kioi and Kituri to shed light on the alleged sale or the consent from the Land Control Board. We were accordingly urged to find that there was no evidence that Kioi occupied the suit property pursuant to an agreement for sale.

As regards occupation and use of the suit property by Kioi, the 1st respondents submitted that the evidence relied upon by the appellants was too weak to sustain a claim for adverse possession. They contended that other than failing to prove physical possession of the suit property, the appellants had not fenced it or constructed thereon any residence or structure. They further added that the appellants failed to produce any records to prove that they had leased out the suit property to various tenants as they claimed and surmised that the furrow condition of the suit property, confirmed during the site visit, was not consistent with the appellants' alleged possession. The 1st respondents relied on the decision of this Court in ***Peter Mbiri Michuki v. Samuel Mugo Michuki [2014] eKLR*** and submitted that to succeed in a claim for adverse possession, the appellants were obliged to prove actual or constructive possession of the suit property that was open and continuous.

Lastly it was submitted that neither the appellants nor the 1st respondents knew each other and therefore the appellants' alleged adverse possession was not with the knowledge of Kituri or the 1st respondents. On authority of the judgment of this Court in ***Titus Kigoro Munyi v. Peter Mburu Kimani [2015] eKLR***, the 1st respondents submitted that a person claiming adverse possession must prove actual or constructive knowledge of adverse possession by the registered owner.

The 2nd respondent, who was represented by ***Mr. Theuri*** and ***Mr. Lesaigor***, learned counsel, joined the 1st respondents in opposing the appeal. It was submitted that the appellants had failed to prove by cogent evidence their possession of the suit property and dispossession of Kituri and the 1st respondents. Even the report of the Deputy Registrar, they submitted, did not support the view that the appellants were in possession of the suit property, let alone exclusive possession. In their view, the failure to include the suit property among Kituri's assets was a genuine mistake and not evidence of dispossession by the appellants.

Like the 1st respondents they contended that the appellants had not adduced any evidence to prove the alleged sale between Kioi and Kituri or payment of the purchase price to Kituri. They also cited the judgment in ***Benson Mukuwa Wachira v. Assumption Sisters of Nairobi Registered Trustees [2016] eKLR*** and contended that without Kituri's knowledge of the appellant's presence in the suit property, there could be no adverse possession.

As regards the question whether Kituri's title was extinguished, it was submitted that once the learned judge found that the appellants were not in adverse possession of the suit property, it followed naturally that Kituri's title was not extinguished. They contended that non-use of the suit property by Kituri alone, even for a long time, could not amount to loss of his title. On whether it was the Deputy Registrar who made the determination that the appellants had not proved adverse possession, it was contended that the site visit was at the behest of the appellants and that all the parties participated in the visit. The 2nd respondent denied that it was the Deputy Registrar who made the determination whether adverse possession was proved, submitting that she had only recorded her observations of the suit property.

Lastly regarding her own proprietary interest in the suit property, the 2nd respondent submitted that once the trial court found that adverse possession was not proved and that Kituri's title was not extinguished, the 1st respondents as the administrators of his estate were free to enter into an agreement for sale with her. She argued that she had conducted all due diligence and was a *bona fide* purchaser for value. As regards the question of consent from the Land Control Board, the 2nd respondent claimed that the suits filed by the parties regarding the suit property had prevented her from obtaining the consent. She added that in any event, under the Land Control Act, she was at liberty to apply to the High Court for extension of time.

As the first appellate court in this matter, we are obliged to consider the evidence adduced before the trial court, evaluate it and draw our own conclusions. In so doing we must bear in mind and make allowance for the fact that, unlike the trial court, we did not have the benefit of seeing or hearing the witnesses who testified at the trial. (***See Hahn v. Singh [1985] KLR 716***). Similarly, it bears repeating that this Court will not interfere with a finding of fact by the trial judge unless such finding is based on no evidence or is based on a misapprehension of the evidence or the judge is shown demonstrably to have acted on wrong principle in reaching the findings that he did. (See ***Susan Munyi v. Keshar Shiani CA. No. 38 of 2002***). Nevertheless we are entitled to and will interfere if it appears that the trial judge failed to take account of particular circumstance or probabilities material to an estimate of the evidence or where his impression, based on the demeanour of material witness, is inconsistent with evidence in the case generally. (See ***Ephantus Mwangi & Another v. Duncan Mwangi Wambugu [1982-88] 1 KAR 278).***

The appellant's claim to be entitled to be registered as owners of the suit property, which was initially registered in the name of Kituri and subsequently in the names of the 1st respondents, finds statutory expression in ***sections 7, 13, 17*** and ***38*** of the Limitation of Actions Act. Section 7 prohibits the registered owner of land from instituting action for recovery of land after the expiry of 12 years from the date when the cause of action accrued. By dint of section 13, a right of action to recover land does not accrue unless a person in whose favour the period of limitation can run is in possession of the land (adverse possession). In section 17, it is further provided that once the period of 12 years of adverse possession prescribed by the Act has expired without an action to recover the land, the title of the registered owner of the land stands extinguished by the operation of the law. Lastly section 38 allows a person who claims to be entitled to land by adverse possession to apply to the High Court to be declared as registered as proprietor of the land.

At the heart of the concept of adverse possession is hostile occupation and use of land in a manner inconsistent with the rights of the registered owner and amounting to dispossession of the owner, for a period of 12 years. In ***Alfred Welimo v. Mulaa Sumba Barasa, CA No 186 of 2011***, this Court expressed itself thus:

> ***"It is trite that adverse possession is not established merely because the owner has abandoned possession of his land and ceased to use it; for as Robert Megarry aptly observed in his Megarry's manual of the Law of Property, 5th ed. page 490, the owner may have little present use for the land and that land may be used by others, without the users demonstrating a possession inconsistent with the title of the owner. So the mere fact that the appellant abandoned possession of the suit property and went to live at Ndalu scheme by and of itself does not establish adverse possession. The abandonment of possession must be coupled with the respondent taking possession of the land with animus possidendi (the intention to possess) and asserting thereon rights that are inconsistent with those of the appellant as the owner of the land. In such circumstances, the appellant would be said to have been dispossessed of the suit property by the respondent."***

The burden was on the appellants to prove on a balance of probabilities that they had been in adverse possession of the suit property (See ***John Kinyua v. Simon Gitura CA. No. 265 of 2005***). Possession is a question of fact depending on the circumstances of each case. (See ***Wali's Cyaton Bay Holiday Camp Ltd v Shell-Mex & BP Ltd [1975] QB 94***). The appellants were also obliged to prove not mere possession of the suit property, but possession that was *nec vi, nec clam, nec precario*, that is to say, peaceful, open, and continuous. (See ***Kimani Ruchine v. Swift, Rutherfords Co. Ltd. [1980] KLR 1500*** and ***Karnataka Board of Wakf v. Governemnt of India & Others [2004] 10 SCC 779).***

The appellants' contention is that Kioi entered into a sale agreement with Kituri in 1969, obtained the consent of the Land Control Board, paid the entire purchase price, took possession of the suit property and dispossessed Kituri. There are two challenges that we see with the appellants' premise. The first is that other than pleadings, there was no cogent evidence adduced to prove the alleged agreement for sale between the two parties, who unfortunately, were dead at the time of the hearing of the suit. As the respondents contend, there was no agreement for sale or any form of acknowledgement by Kituri of any payment by Kioi pertaining to the sale of the suit property. It is not possible to tell the terms of the alleged sale agreement or the date of completion of the transaction. The appellants relied on the consent from the land control board, a letter from the commissioner of lands demanding from Kioi land rent for the suit property and correspondence from the firm of Daly and Figgis Advocates to vouch for the agreement.

In our view, that evidence alone is not capable of proving the alleged sale agreement. The correspondence from Daly and Figgis Advocates does not advert to any agreement between Kioi and Kituri. It is emphatic though that the firm was acting for a Mr. Criticos who presumably was selling the property to Kituri. It would have required a witness from that firm of advocates to testify on the alleged sale between Kituri and Kioi, if indeed there was such a sale. As regards the letter of demand for land rent dated 2nd August 1972 the Commissioner of Lands merely states *"I have been informed"* that Kioi bought the land. We do not think much turns on that letter because subsequently, on 18th September 1972, Kituri himself received, from the Lands Department, a letter demanding from him Kshs. 102.00 as land rent and penalty for the suit property, which he promptly paid on 13th October 1972 vide Cheque No. 241947. In view of the lack of cogent evidence pertaining to the alleged sale, we do not think the letter from the Land Control Board alone would suffice to prove the sale.

It is also apt to advert to the earlier suit filed by the appellants, namely ELC 199 of 2008 in which they were seeking, *inter alia* an order to compel the 1st respondents to transfer the suit property to them on the basis of the alleged sale agreement. It is patently clear that the reason why they withdrew that suit is because it dawned on them that they could not prove the agreement for sale between Kioi and Kituri. Subsequently they initiated the present claim based on adverse possession.

But even if it were accepted that Kioi took possession of the suit property pursuant to the alleged agreement for sale, that in itself would negate a claim based on adverse possession because the possession would have been with the consent of Kituri. As this Court stated in Samuel Miki v. Jane Njeri Richu CA No. 122 of 2001:

> ***"It is trite law that a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner of or in pursuance of an agreement of sale or lease or otherwise."***

The appellants however submitted, on the authority of the judgment of this Court in ***Wambugu v. Njuguna*** (supra) that Kioi's possession of

the suit property became adverse after payment of the last installment. We have however found that the appellants did not adduce any cogent evidence of payment of such last installment, or any other for that matter. In ***Wambugu v. Njuguna*** (supra), this Court held that a purchaser of land under a contract of sale who is in possession of land with the permission of the vendor can only lay claim to the land after the period of validity of the contract, unless and until the contract has been repudiated, in which case adverse possession starts from the date of termination of the contract. (See also ***Samuel Miki Waweru v. Jane Njeri Richu,*** supra**).** In the absence of any evidence regarding the period of validity of the alleged sale between Kioi and Kituri, and assuming that Kioi had taken possession of the suit property on the basis of the agreement for sale, the time for adverse possession would have started to run only in 2005 when the 1st respondents, as the administrators of Kituri, repudiated the contract by entering into another agreement for sale with the 2nd respondent. That would not satisfy the statutory period for adverse possession.

Quite apart from what we have stated above, the totality of the evidence on record does not prove the kind of notorious, open, exclusive, and continuous possession of the suit property hostile to Kituri's title that would be required to satisfy a claim for adverse possession. The appellants have laid great emphasis on the fact that Kituri did not use the suit property in his lifetime, but that in itself is not conclusive evidence of dispossession because where the owner has little use of his land, others may use it without that possession amounting to dispossession or being inconsistent with the owner's title. Again as we have already noted, in October 1972, years after the alleged dispossession of Kituri, he was paying land rent and penalties for the suit property as its owner. True it cannot be discounted that along the line, there's some evidence of Kioi and the appellants having used some part of the suit property, but on the whole we are unable to find the exclusive, effective, and continuous possession that is required in adverse possession. As this Court stated in ***Peter Njau Kairu v. Stephen Ndung'u Njenga & Another C.A. 57of 1997, CA*** such evidence must be stringent and straightforward because a property owner should be deprived of his title only in the clearest of cases.

While we agree with the appellants that issues of where Kioi was buried, where he lived, and the extent of his other properties were not directly relevant to the question whether they had proved adverse possession, that advertence to irrelevant or unnecessary matters, in the circumstances of this case, is not enough to change the fact that the appellants did not adduce cogent evidence to justify an order of adverse possession in their favour. Accordingly we are not able to find any misdirection or misapprehension of the evidence on record that would justify our interference with the conclusion of the learned trial judge, who in any event had the advantage, which we do not have, of having heard and seen the nine witnesses as they testified.

Regarding the appellants' complaint that the learned judge erred by failing to determine whether Kituri's title to the suit property had been extinguished and whether the 1st respondents held the suit property in trust to the appellants, it is trite that a trial court is obliged to determine all the issues it has framed for trial. (See ***Mohammed Eltaff & 3 Others v. Dream Camp Kenya Ltd, CA No. 318 of 2000***). In this case however, the finding that the appellants did not prove adverse possession logically and necessarily disposed of the question whether Kituri's title had been extinguished. Kituri's title could not have been extinguished without evidence of adverse possession. Accordingly we find that the two issues were so closely intertwined and that determination of one automatically determined the other.

Turning to the Deputy Registrar's report, we note that it was the appellants' who applied for the site visit and that the parties agreed that the Deputy Registrar would submit a report on her observations during the visit. We do not see any basis for the submission that she is the one who determined the case. As a matter of fact all the parties relied on different aspects of the Deputy Registrar's report in their submissions. The Deputy Registrar's observation on possession of the suit property, which we find to be consistent with the other evidence on record, was that save for the cultivation that was ongoing by the riverbank, the suit property had not been occupied for a long time as demonstrated by the thick bushes, numerous dumpsites and public footpaths.

The last issue regards the proprietary interest of the 2nd respondent as regards the suit property. All that we can reiterate is that under section 6 of the Land Control Act, a controlled transaction involving agricultural land is null and void for all purposes without the consent of the Land Control Board.

(See ***David Sironga ole Takai v. Francis Arap Muge & Others*** (supra). The 2nd respondent contends that under the proviso to section 8(1) of the Land Control Act, she is entitled to apply to the High Court for extension of time to apply for consent. In those circumstances, we do not deem it necessary for us to say more on the issue.

Ultimately, we are satisfied that there is no basis upon which we can differ with the conclusion by the learned judge. Due to the peculiar nature of this dispute, we direct each party to bear its own costs. It is so ordered.

**Dated and delivered at this Nairobi this 16th day of February,2018**

**W. OUKO**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb**

**……**

**JUDGE OF APPEAL**

**K. M'INOTI**

**.....**

**JUDGE OF APPEAL**

*I certify that this is a*

*true copy of the original*

***DEPUTY REGISTRAR***