



REPUBLIC OF KENYA



**Waweru v Muhinja (Environment & Land Case 40 of 2021)  
[2024] KEELC 4738 (KLR) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4738 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 40 OF 2021**

**JG KEMEI, J  
JUNE 13, 2024**

**BETWEEN**

**GEOFFREY NJUNGE WAWERU ..... PLAINTIFF**

**AND**

**PETER KAMAU MUHINJA ..... DEFENDANT**

**JUDGMENT**

1. Vide an Originating Summons dated the 16/12/2021 brought by the Plaintiff under Order 37 Rule 7 of the Civil Procedure Rules and all the provisions of the law, this Court was called upon to determine the following questions;
  - a. Whether the Applicant has occupied land parcel No. Nguruibi/Thigio/604 measuring 2.05Ha. for uninterrupted period of over 12 years.
  - b. Whether the Applicant is entitled to acquire land parcel No. Nguruibi/Thigio/604 measuring 2.05Ha by way of adverse possession.
  - c. Whether the Land Registrar should be directed to transfer land parcel No. Nguruibi/Thigio/604 measuring 2.05Ha. to the Applicant's names should the Respondent decline to do so.
2. Consequently, the Plaintiff sought the following orders;
  - a. That this Honourable Court be pleased to order that the Applicant has acquired land known as Nguruibi/thigio/604 measuring 2.05Ha by way of adverse possession as against the Respondent.
  - b. That subsequent to prayer One (1) above, the Respondent be ordered to execute all relevant transfer documents to cause the transfer of land parcel No. Nguruibi/thigio/604 measuring 2.05Ha to the Applicant's names within Sixty (60) days from the date of Judgment.



- c. That in default to prayer Two (2) above by the Respondent, the Land Registrar be directed to execute all relevant transfer documents in favour of the Applicant so as to cause file transfer of land parcel No. Nguruibi/thigio/604 measuring 2.05Ha to the Applicant.
  - d. That the cost of this suit be paid by the Respondent.
3. The Summons are based on the Supporting Affidavit deponed on 16/12/24 by the Plaintiff as follows; has resided with his family on the suit land since 1989, peacefully uninterrupted and has developed the suit land by constructing a house, cattle shed and planted trees for a period of over 12 years; that he came to know that the Defendant was the registered owner of the suit land in 2003 when he sued him for eviction in SPMCC No. 37 of 2003; that the Defendant has not occupied the suit land. That in 2021 the Defendant through his sons started encroaching on the suit land with the intention of surveying the land for purposes of erecting beacons.
4. While opposing the Summons the Defendant through the Replying Affidavit sworn on the 4/10/22 deponed that he became registered as owner of the suit land in 1993 and started planting crops on the suit land between the period of 1993 – 2001. He avowed that the Plaintiff settled on the land in 2002 and that he learnt of the occupation of the Plaintiff in the month of July 2002 whereupon he sought the intervention of the local area chief who wrote a letter to the Plaintiff summoning him to his office vide a letter dated the 8/8/2002. That thereafter he filed a suit in SPMCC No. 37 of 2003 in Limuru which was concluded on the 13/10/2011.
5. That the property was vacant between the years 2001 – 2002 when the Plaintiff entered the suit land and constructed semi-permanent structures. In addition, he stated that the current Originating Summons are resjudicata and for that reason interalia urged the Court to dismiss the Summons with costs.
6. At the hearing PW1 – Geoffly Njunge Waweru testified and relied on his witness statement dated the 10/8/2022 and produced documents in support of his case marked as PEX No 1-3.
7. The witness stated that the suit land belongs to the Defendant. That he entered the land in 1989 and has been in occupation since, developing the same by constructing several structures. He added that the Defendant has never evicted him from the land despite having knowledge as early as February 1989 that he was in occupation. Further he stated that at the time he entered the land the same was vacant.
8. PW1 also informed the Court that he was sued by the Defendant in 2004 in SPMCC No. 37 of 2003, Limuru for eviction. It was his evidence that although he testified in that case he did not know the outcome of the suit. That first forward in 2021 he was summoned by the area Chief to his office where he remained outside the office as the Defendant and other people entered the Chief's office for a meeting. That he does not know what was discussed in that meeting.
9. In conclusion he informed the Court that he has been in peaceful and uninterrupted occupation in the suit land with full knowledge of the Defendant for a period of 12 years within which he has carried out developments on the land such as construction of a family home, construction of a permanent house, a cattle shed, connection of piped water and planting of crops and trees. The Court was urged to allow his prayers.
10. PW2 – Moses Mwaura Ngomi stated that he is a neighbour to the Plaintiff of 33 years. He added that in February 1989 he was present when the Defendant visited the disputed land. That he is aware the Plaintiff constructed his house in 1990 and fully settled on the land. He stated that the Plaintiff has constructed numerous structures, cow sheds, connected piped water and planted crops and trees on



the suit land. That he met the Defendant for the second time in 2004 at Limuru Law Courts where he had gone to testify on behalf of the Plaintiff in SPMCC No. 37 of 2003.

11. In cross examination the witness stated that he does not know how much land the Plaintiff's homestead is occupying. He however informed the Court that the whole parcel is about 5 acres out of which 3 acres is being farmed and the rest is occupied by the homestead.
12. DW1 – Peter Kamau Muhinja led evidence on behalf of the Defendant and relied on the Replying Affidavit sworn on 4/10/2022. In support of his defence alongside the annexures marked DEX 1-3.
13. The witness stated that he is the registered owner of the suit land as at 19/7/1993. That between 1993 and 2001 he carried out crop farming on the suit land. He informed the Court that the Plaintiff entered the land around July 2002 prompting him to report the encroachment to the area Assistant Chief who immediately summoned the Plaintiff to his office vide a letter dated 8/8/2002. That the Plaintiff did not yield which prompted him to file a suit SPMCC No. 37 of 2003 seeking eviction orders which suit was concluded on 13/10/2011.
14. DW1 further refuted the assertion by the Plaintiff that he has had peaceful, uninterrupted occupation for a period of 12 years. He led evidence that for years between 2001 to May 2002 the property was vacant with no structures and that the Plaintiff commenced construction of semi-permanent structures around the month of July 2002.
15. In cross examination the witness informed the Court that he had allowed the Plaintiff to cultivate a portion of 110x100ft (1/4 of a plot). The term of the said cultivation was not agreed. In further cross examination he admitted that the question of license to occupy the land by the Plaintiff is not contained in his Affidavit dated 4/10/2022 before the Court.
16. The witness informed the Court that the suit in SPMCC No. 37 of 2003 was not concluded. In addition he added that he has not taken any steps to evict the Plaintiff from the land save for reporting the encroachment to the area Assistant Chief.
17. The Plaintiff filed submissions through the firm of Musungu Pekke & Co. Advocates dated 8/8/2023. Counsel for the Plaintiff raised the following issues for determination:-
  - a. Whether the Plaintiff/Applicant is in possession of the suit land and if so, how did he take possession of the suit land?
  - b. When did the Plaintiff/Applicant take possession of the suit land?
  - c. What was the nature of possession and occupation of the suit land by the Plaintiff/Applicant?
  - d. How long has the Plaintiff/Applicant been in occupation of the suit land?
  - e. Whether the Plaintiff/Applicant is entitled to the orders for adverse possession?
  - f. Who bears the costs of this case?
18. Counsel for the Plaintiff submitted that the Plaintiff took possession of the suit land in 1989 and that the Defendant became aware of the Plaintiff's occupation of the suit land in months of February and June 1989 when the Defendant visited the land and found the Plaintiff in cultivation of the same. That this position was corroborated by PW2 who stated that he was present when the Defendant visited the land in 1989 and found the Plaintiff farming on the suit land. Similarly, Counsel for the Plaintiff submitted that in 1983 when the Defendant became registered as owner of the land, he was aware that the Plaintiff was in occupation.



19. As to when the Plaintiff took possession of the suit land, Counsel for the Plaintiff made three (3) observations in answer to this question. Firstly, that cogent evidence was led by the Plaintiff and his witness confirming occupation from 1989 to 1993. That the Defendant's assertion that the Plaintiff did not occupy the land in 1993 and not 1989 was not supported in evidence. Secondly, the occupation between the period 1989 to 1993 was duly admitted by the Defendant. Counsel for the Plaintiff admitted that although the Defendant informed the Court of the existence of the suit case in Limuru Court, the Defendant admitted that the said case was not concluded and that the Defendant demonstrated no effort to ensure that the case was concluded. That by his own admission the Defendant informed the Court that he did know the outcome of the case. Thirdly, the third phase of occupation is the period 2003 to 2021, a period of 18 years. Counsel for the Plaintiff submitted that the Defendant having failed to produce evidence of Judgment in the Limuru case the assumption is that the Plaintiff's occupation ran the full course without interruption. In conclusion Counsel for the Plaintiff urged the Court to find that the Plaintiff has been in peaceful and exclusive occupation of the suit land for a period of over 12 years with the knowledge of the Defendant.
20. On the third issue which is the nature of possession and occupation of the suit land by the Plaintiff, Counsel for the Plaintiff submitted that evidence was led by the Plaintiff that he has constructed his homestead on 1.5 acres of the land while the rest is used for farming crops and trees. That the Plaintiff has built a permanent house on the land connected electricity and tapped water without the permission of the Defendant. Counsel for the Plaintiff submitted that the nature of the Plaintiff's occupation is permanent, progressive and without the permission of the Defendant.
21. How long has the Plaintiff been in occupation of the suit land? Counsel for the Plaintiff submitted that the Plaintiff's occupation has been over a period of over 12 years without any interruption. The case of *Peter Kamau Njau v. Emmanuel Charo Tinga* (2016)eKLR was cited where the Court stated as follows:-

“... in order to stop time which has started running, it must be demonstrated that the owner of land took positive steps to assert his right by, for instance taking out legal proceedings against the person on the land or by making effective entry into the land ...”
22. Counsel for the Plaintiff submitted that in this case the Defendant did not take any reasonable efforts to assert his right over the land. That the suit filed in Limuru in 2003 was never concluded and its outcome is unknown.
23. It was submitted by the Counsel for the Plaintiff that the Plaintiff has been in peaceful and uninterrupted occupation of the suit land for a period that is over 12 years with the knowledge of the Defendant. The Court was urged to allow the Originating Summons dated 16/12/2021 as prayed.
24. The submissions for the Respondent were filed by Ngari & Kaburu Co. Advocates on 21/8/2023. Counsel for the Defendant filed one issue for determination by the Court which is whether the Plaintiff has proven a claim in adverse possession.
25. It was submitted by the Counsel for the Defendant that the Defendant allowed the Plaintiff to farm a portion of the suit land measuring roughly an eighth of an acre in 1993 and not 1989 as alleged by the Plaintiff. It was further submitted that in July 2002 the Defendant learnt that the Plaintiff had constructed a semi-permanent house prompting him to report the activity to the local Assistant Chief who summoned the Plaintiff to his office in August 2002. Thereafter, the Defendant filed suit in 2003 urging for orders of eviction of the Plaintiff from the suit land. Counsel for the Defendant argued that the Plaintiff's occupation of the suit land between July 1993 and June 2002 was a permissive occupation and therefore time did not start running for purposes of adverse possession. That the



permission was withdrawn in July 2002 when the Plaintiff without his consent started constructing houses on the suit land. It was further submitted that time ran from July 2002 to February 2003 for a period of 8 months, which time was stopped in March 2003 with filing of suit case SPMCC 37 of 2003. Counsel for the Defendant submitted that time stopped running again between the months of March 2003 and October 2011 during the pendency of the suit case in Limuru. Counsel for the Defendant further submitted that between October 2011 and 6/12/2021 when this suit was filed the period is ten years and two months falling short of the twelve years statutory time requirement that is allowed in Kenya.

26. The Court was urged to dismiss the Originating Summons with costs.

### **Analysis and determination**

27. Having considered the Originating Summons, the Replying Affidavit filed by the Defendant, the evidence led by both parties at the trial, the rival written submissions placed on record and all the material before Court the key issues for determination are as follows:-

- a. Whether the Plaintiff has met the threshold of orders of adverse possession?
- b. If yes, whether the Plaintiff is entitled to title by way of adverse possession.
- c. Who meets the cost of the suit?

28. The Plaintiff's case is that he has occupied the suit land from 1989 to date with the knowledge of the Defendant. That he has carried out developments on the land comprising of a permanent house, cattle shed, connected water and electricity and planted crops and trees. That he resides on the suit land to date. It is also his case that the Defendant has neither interrupted his occupation nor evicted him from the suit land for a period of over 12 years and for those reasons he urges this Court to grant him title by way of adverse possession.

29. The Defendant on the other hand contends that he is the registered owner of the suit land as at 19/7/1993. That he allowed the Plaintiff to farm on an 1/8 of an acre for a period of 1993 to 2002, which occupation he terms as permissive. That on realisation that the Plaintiff had encroached on the whole suit land around July 2002 he sought the intervention of the local Assistant Chief who summoned the Plaintiff to his office to secure his interest further on the suit land. The Defendant contended that he filed a suit in 2003 seeking for eviction of the Plaintiff. That the suit was concluded on 13/10/2011 and therefore the time between July 2002 and October 2011 time for calculating adverse possession stopped. It is the case of the Plaintiff that between 2011 and 2021 when this suit was filed the period of occupation being ten years and two months fall short of the statutory period of 12 years to found title by adverse possession.

30. Claims under adverse possession are governed by the provisions of the law in the *Limitation of Actions Act*. Under Section 7 of the *Limitation of Actions Act* the law places a time bar on an action to recover land of 12 years from the date the right accrued. For purposes of emphasis the Court will highlight some of the key provisions in the said Act as follows:

Section 7 provides:-

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”



Section 13 states:-

- “(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.
- (2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.
- (3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3), the land in reversion is taken to be adverse possession of the land.”

Section 38 states:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

31. The concept of adverse possession is one of the methods of acquiring land in Kenya. The [Land Act](#) Section 7 provides that title to land may be acquired through:-
  - a. allocation;
  - b. land adjudication process;
  - c. compulsory acquisition;
  - d. prescription;
  - e. settlement programs;
  - f. transmissions;
  - g. transfers;
  - h. long term leases exceeding twenty-one years created out of private land; or
  - i. any other manner prescribed in an Act of Parliament.
32. Acquisition of land by adverse possession or prescription is one of the oldest methods of land acquisition that was applicable in England even in the medieval ages. In the case of [Little Dale versus Liver Pool College](#) (1900) 19, 21 the Court stated as follows:-

“In order to acquire by the statute of limitations a Title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it... Two things appear to be contemplated by that enactment;



disposition and discontinuance of possession...if this is the correct way to approach the problem, the question becomes, has the claimant proved that the Title holder has been dispossessed or has discontinued his possession of the land in question for the statutory period" Rather than has the claimant proved that he (through himself or others on whose possession he can rely) been in possession for the requisite number of years"

The next question therefore is what constituted dispossession of the proprietor. It simply means that in order to defeat a title by dispossession the former owner there must be demonstration of existence of acts done which are in consistent with his enjoyment of the soil for the purpose for which he intended to use it."

33. Courts in this country have distilled relevant principles that guide the Court in determining claims of adverse possession for example in the case of *Gitbu v. Ndeete* (1984)KLR 776 where the Court of Appeal held interalia as follows:-

- "(1) The mere change of ownership of land which is occupied by another person under adverse possession does not interrupt such persons adverse possession.
- (2) Where the person in possession has already began and is in the course of acquiring rights under section 7 of the *limitation of Actions Act* (cap 22) and by virtue of section 30(f) of the Registered *land Act* (cap 300) those rights are overriding interests to which the new registered purchasers' title will be subject.
- (3) Time ceases to run under the *limitation of Actions Act* either when the owner takes or asserts his rights or when his right is admitted by adverse possession assertion occurs when the owner takes legal proceedings or makes an effective entry into the land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the limitations of Action Act.
- (4) A Title by adverse possession can be acquired under the *limitation of Actions Act* to a portion of the piece of land which the owner holds"

34. Further in the case of *Wambugu v. Njuguna* (1983)KLR 172 additional guiding principles were stated as follows:-

- "(1) The general principle is that until the contrary is proved possession in law follows the right to possess.
- (2) In order to acquire by the statute of limitation title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it....
- (3) The *limitation of Actions Act*, in adverse possession contemplates two concepts, disposition and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.



- (4) Where the claimant is in exclusive possession of the land with leave and licence of the appellant in pursuance to a valid sale or agreement, the possession becomes adverse and time begin to run at the time the licence is determined. Prior to the determination of the licence, the occupation is not adverse but with permission. The occupation can only be either with permission or adverse; the two concepts cannot co-exist...
- (5) The rule on permissive possession is that possession does not become adverse before the end of the period during which the possessor is permitted to occupy the land...
- (6) Adverse possession means that a person is in possession in whose favour time can run...
- (7) Where the claimant is a purchaser under a contract of sale of land, it would be unfair to allow time to run in favour of the purchaser pending completion when it is clear that he was only allowed to continue to stay because of the pending purchase because had it not been for the pending purchase the vendors would have evicted him. The possession can only become adverse once the contract is repudiated...
- (8) Where a claimant pleads the right to land under an agreement and in the alternative seeks an order based on subsequent adverse possession, the rule is the claimant's possession as deemed to have become adverse to that of the owner after the payment of the last installment of the purchase price. The claimant will succeed under adverse possession upon occupation of at least 12 years after such payment."

35. In this case, in order for the Court to answer the issue in controversy the Court will inquire on how and when the Plaintiff entered the suit land, whether there was consent by the Defendant, whether possession was adverse to the Defendant, whether the suit filed by the Defendant stopped time from running and whether in the overall the Plaintiff has proven title by way of adverse possession.
36. The Court has received evidence of contrasting nature from the Plaintiff as well as the Defendant as to when the Plaintiff entered the suit land. According to the Plaintiff between 1996 and 1989, while operating a hotel business at Kamangu town in Kiambu County he discovered several idle plots in the Kamangu area and with a family to feed he decided to take possession of one such vacant plot for purposes of farming to provide food for his family. This heralded occupation and developments on the suit land. The Plaintiff informed the Court that as at 1989 his activities on the suit land had stepped up from farming to construction of a house, cattle shed and connection of utilities to his homestead which spread to over 1.5 acres leaving the rest for farming. So enterprising was the Plaintiff that he was elected as Chairman of Mithurini Water Project initiated to supply piped water around Kamangu area. His new found peaceful occupation of the suit land was interrupted in February and June 1989 with the unexpected visit by the Defendant who claimed the suit land. That upon being taken to task as to the ownership documents of the suit land the Defendant disappeared until 2003 when the Plaintiff was served with the Summons in Limuru SPMCC 37 of 2003 seeking eviction of the Plaintiff from the suit land.
37. The Defendant's version of the events is slightly different. Having been registered as owner in 1993 he avers that he started planting crops on the suit land between 1993 and 2001. In sharp variance with his pleadings the Defendant led evidence that he allowed the Plaintiff to cultivate a portion of 110x100ft of



the suit land which period was not agreed and no written agreement was entered. I say that this evidence is at variance because it is not contained in the Replying Affidavit sworn on 4/10/2022, for which the Defendant admitted as much in cross examination. The account of the Defendant is that the Plaintiff trespassed on to the suit land in or around July 2002 causing him to report the trespass to the area Assistant Chief who summoned the Plaintiff to his office. The Plaintiff has refuted being summoned by the Chief in 2002. The Plaintiff led evidence that he was summoned by the Chief in 2021 but the Chief did not give him any audience as he was left outside the office. The Plaintiff reacted to the trespass by filing the suit PMCC 37 of 2003 seeking orders of eviction. According to the Defendant's Replying Affidavit sworn on 4/10/2022 the Defendant pleaded that the suit was concluded on 13/10/2011. Under cross examination by the Plaintiff's Counsel on 11/7/2022 the Defendant whilst admitting the filing of the suit in Limuru in 2003 informed the Court that the suit is yet to be concluded.

38. Evidence was led by PW2 who informed the Court that he has been a neighbour of the Plaintiff for 33 years that his land borders the suit land on which the Plaintiff has occupied from 1989. He stated that he was present in March 1989 when the Defendant visited the suit land and laid claim to the same. Further he informed the Court that the Plaintiff constructed a house in 1990 and relocated fully to the suit land.
39. The Court finds that the evidence of the Plaintiff that he entered the suit land in 1989 has been supported by the evidence of PW2. It is not in dispute that the Defendant became the registered owner in 1993. Going by the provisions of Section 38 of *Limitation of Actions Act* it follows that adverse possession cannot be founded for the period 1989 to 1993 for the reason that the land had not been titled in the name of the Defendant.
40. The evidence of the Defendant that he allowed the Plaintiff to occupy a portion of 110x100ft of the suit land has not been supported by any evidence least of all his Replying Affidavit sworn on 4/10/2002 and the witness statement dated 10/8/2022. In that ground the Court discounts the allegation of permissive occupation by the Plaintiff as unsupported.
41. It is commonly accepted by the Plaintiff and the Defendant that the Defendant filed a suit in SPMCC 37 of 2003. It was the Defendant's case that in order to protect his interests he sued the Plaintiff for eviction. Between the year 1993 and 2003 the period is ten (10) years which fall short of the threshold permitted in a claim of adverse possession.
42. It is trite that time for purposes of calculation of limitation of action under the Act stops running when the owner takes or asserts his right, or when his rights are admitted by the adverse possessor or when the owner makes an effective entry into the land or files a suit to assert his right. See the case of Githu (supra).
43. The Defendant and the Plaintiff commonly accept that the suit in SPMCC No. 37 of 2003 filed by the Defendant was not concluded. Both parties have sought to use the suit to advance their positions in their case. On the part of the Plaintiff time stopped running while the suit was pending while on the part of the Defendant time did not stop running because there is no evidence that the suit was concluded any way. None of the parties despite their desire to advance their cases, provided evidence in form of a Judgment or other conclusion or other decision on how the suit was concluded. Be that as it may be, the Court finds that the onus to prove that the case was concluded or not laid with the Plaintiff who had a duty to prove his case. Even if for argument sake time was to run from 2011 then still adverse possession would not have matured in 2021 when the suit was filed. The period would still fall short of 12 years. The burden did not shift to the Defendant at all.



44. The Court finds that time stopped running from 2003 to date because of the pendency of the suit. The suit having not been concluded time has not begun running in favour of the Plaintiff as long as the suit of the Defendant filed in 2003 remains pending in Court.
45. Having considered the pleadings, the evidence of the parties, the rival written submissions together with the relevant provisions of the law the Court finds that the Plaintiff has failed to discharge his burden of proof on the required standards of balance of probabilities. Consequently, the Court finds that the Plaintiff has not established title by way of adverse possession.
46. Final orders for disposal:-
  - a. The Plaintiff's suit is unmerited. It is dismissed.
  - b. The cost of the suit is in favour of the Defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13<sup>TH</sup> DAY OF JUNE, 2024  
VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Were HB Msungu for Applicant

Ngari for Respondent

Court Assistant – Phyllis / Oliver

