



**Garissa Mattresses Limited v Wamwandu & 6 others (Environment & Land Case 316 of 2014) [2024] KEELC 7379 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7379 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 316 OF 2014  
SM KIBUNJA, J  
NOVEMBER 7, 2024**

**BETWEEN**

**GARISSA MATTRESSES LIMITED ..... PLAINTIFF**

**AND**

**MARGARET WALEGWA WAMWANDU ..... 1<sup>ST</sup> DEFENDANT**

**BENSON LUSWETI WANYONYI LUSWETY ..... 2<sup>ND</sup> DEFENDANT**

**PAUL KIZUMBI MAGHANGA ..... 3<sup>RD</sup> DEFENDANT**

**FRANCIS ABUNGU DIENYA ..... 4<sup>TH</sup> DEFENDANT**

**CHITI MELE NYAWA ..... 5<sup>TH</sup> DEFENDANT**

**ABUBAKAR FAKII YUNUS ..... 6<sup>TH</sup> DEFENDANT**

**LUCY KINA ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff commenced this suit against the 1<sup>st</sup> to 6<sup>th</sup> defendants, who are the registered officials of Kwa Punda Self Help Group, through the plaint dated 11<sup>th</sup> December 2014, seeking for:
  - a. A Declaration that the Plaintiff is the legal and or registered owner of Plot Number L.R No. MN/V/15 Chamgamwe.
  - b. A declaration that all necessary payments for compensation as per agreement dated 12<sup>th</sup> March, 2013 in respect of the suit property were made by the Plaintiff to the Defendants.
  - c. A permanent injunction restraining the Defendants, their members, tenants, employees, servants and any other person from entering, staying and or



interfering in any manner whatsoever on Plot Number L.R No. MN/V/15 Changamwe.

- d. Vacant possession of the suit property.
- e. General damages for continued trespass into the suit property.
- f. Costs of this suit.”

2. The said defendants through Kwa Punda Self Help Group filed their defence dated 5<sup>th</sup> August 2016, citing itself as the 7<sup>th</sup> Defendant. It among others averred that it did not authorize the 1<sup>st</sup> to 6<sup>th</sup> defendants to represent it in the suit. That its members have lived on the suit property for more than 30 years and the title of the registered proprietor, Changamwe Housing Scheme Ltd was extinguished. That some of its members filed a suit in Mombasa High Court Civil Case 57 of 2010 (O.S), in their individual capacities, and Kwa Punda Self Help Group later sought to be joined through an application. That later, the 1<sup>st</sup> to 6<sup>th</sup> defendants consented to the plaintiff withdrawing the said suit. That this suit is time barred, and it did not enter into a consent agreement or understanding with the plaintiff to compromise it.
3. The plaintiff filed a reply dated 8<sup>th</sup> August 2016 to the statement of defence by Kwa Punda Self Help Group, inter alia terming Kwa Punda Self Help group as a stranger in this suit, which was never a party to the said Mombasa HCCC 57 of 2010 (O.S). That Kwa Punda Self Help Group does not live on the suit property and hence has no known interest in respect of the suit property.
4. The 1<sup>st</sup> to 6<sup>th</sup> Defendants filed their statement of defence and counterclaim dated 30<sup>th</sup> January 2020, inter alia denying the plaintiff's claim. They averred that the suit property was advertised for sale by public auction on 19<sup>th</sup> August 2009 which prompted them to file a suit being HCCC No. 57 of 2010 through originating summons against Changamwe Housing Scheme Limited and Trust Bank Limited (in liquidation), seeking for a declaration that the suit property be transferred to their names. That the auction was stayed by the court, and the case heard and determined on 18<sup>th</sup> November 2011 in favour of the defendants. It is their case that while they were waiting for the title to be issued, the plaintiff requested the defendants to change their advocates and hire their own advocates, M/s F.W Njoroge & Co. Advocates. The plaintiff also requested the defendants to consider selling them the suit property, and negotiations began. That it was agreed that the plaintiff pay a deposit for compensation of the residential structures and that it would engage a valuer at its own costs to value the said structures. The plaintiff failed to comply and the defendants decided to file a notice of appeal in Mombasa HCCC 57 of 2010 and obtained stay of proceedings pending appeal. They claimed that the plaintiff fraudulently and without consent discontinued the above-mentioned suit and also, obtained title to the suit property. Thereafter, the plaintiff forcefully attempted to evict the members of Kwa Punda Self Help Group but the police were able to stop the attempt after suspecting that the orders were fake. The defendants conducted a search and realized that the plaintiff had interfered with records at the land registry and caused registration of the suit property in its name. The defendants then filed a caveat and reported the matter to Kilindini Police Station, upon discovering that the plaintiff had filed this suit and obtained ex parte judgment. In their counterclaim, the defendants sought for;
  - a. A declaration that the Defendants have acquired proprietary rights to the suit property for having been in possession and occupation for over 50 years.
  - b. A declaration that plaintiff's title is not valid and it should be revoked, cancelled and surrendered forthwith to the Registrar of lands Mombasa.



- c. That after revocation and cancellation of the plaintiff's title to the suit property, the Land Registrar, Mombasa be directed to issue the Defendants with the title thereof.
  - d. The Defendants want vacant possession and/or eviction of the plaintiff.
  - e. The officer in charge Changamwe Police Station be directed to assist in the exercise to maintain law and order.
  - f. Costs in the counterclaim.
5. The plaintiff filed its reply and defence to the 1<sup>st</sup> to 6<sup>th</sup> defendants' defence, and counterclaim dated 25<sup>th</sup> February 2020, inter alia denying that there was stay of auction as alleged. It averred that the auction took place and the plaintiff was able to purchase the suit property. That the consent to withdraw HCCC 57 of 2010 was by the parties and it set aside the judgment therein. That it engaged in talks with the Defendants, which resulted in an agreement dated 12<sup>th</sup> March 2013 where it was agreed it would pay the defendants and the rest of the members of Kwa Punda Self Help Group, totalling 308 the assessed value of their respective portions of the suit property, and in return they would vacate. That the structures and portions of land were valued and the Defendants were fully compensated. That the plaintiff fully met its bargain but the defendants refused to vacate. The plaintiff stated that issue of consent being obtained by fraud does not arise as it was addressed in a ruling by Hon. Munyao on 5<sup>th</sup> February 2020 after the defendants filed an application seeking to set aside the consent and continue with execution. It alluded that on top of the compensation it paid the defendants Kshs. 1,500,000 each in their personal capacity as officials upon which they signed disclaimer agreements.
6. Lucy Kina applied and was joined as the 7<sup>th</sup> defendant through the ruling of 21<sup>st</sup> July 2016, but to date, she has not filed any pleadings in the suit.
7. During the hearing, the plaintiff called Ibrahim Mohamed Salat, a director, who testified as PW1. He adopted the contents of his written statement dated the 11<sup>th</sup> December 2014, and produced the nine documents in the list of documents of even date as exhibits. He inter alia testified that sometime in 2009/2010 in the months of March/April the Deposit Protection Fund Board of the CBK advertised the suit property for sale on behalf of Trust Bank, which was in liquidation. The plaintiff participated and was successful. It was issued with a letter of offer and paid a deposit of Kshs. 4.2M, being 10% of the purchase amount. Thereafter, the Kwa Punda Self Help group obtained stay orders stopping the sale in HCC 57 of 2010, which later became ELC 57 of 2010, claiming adverse possession. This prompted the plaintiff to pursue an out of court settlement with the defendants, resulting to an agreement that was signed by the parties. That valuation was done in conjunction with the 1<sup>st</sup> to 6<sup>th</sup> defendants and a report dated 20<sup>th</sup> March 2013 was prepared. The plaintiff paid compensation after the judgement of 18<sup>th</sup> November 2011 was set aside through the consent dated 22<sup>nd</sup> October 2013. The valuation was for Kshs.26.5 Million which the plaintiff paid. He stated that the 1<sup>st</sup> to 4<sup>th</sup> & 6<sup>th</sup> defendants demolished their structures and moved out but half of the 308 squatters declined to move out. That thereafter, the title to the suit property was transferred by the Governor of Central Bank to the plaintiff procedurally. He further stated that they had bid Kshs.110 million which they paid and were issued with a letter of award, but was not aware that an interim stay order had been registered against the title. PW1 stated that the balance of the bid was paid through RTGS to CBK after settling all the squatters, but admitted that he did not have evidence of proof of payment of the balance. He admitted that entry No. 33 in the title copy he availed to the court was different from entry No. 33 in the title copy filed by defendants. He also admitted that the agreement with the defendants was only in respect of structures and that compensation was paid for the structures only. He denied the said agreement was forged and insisted that the schedule in the list of plaintiff's documents is proof of payment. That the entries Nos. 33, 34



and 35 on the title at pages 108 of the defendants' list of documents seem irregular since the last entry on page 107 is entry No. 39. That there are two entries bearing No 33 on pages 106 and 108. He denied ever being summoned by the police over the plaintiff's acquisition of the suit property.

8. The defendants called Mercy Chepkemoi, Land Registrar, Benson Lusweti Wanyonyi, Secretary Kwa Punda Self Help Group, No. 231371 John Muinde, Senior Superintendent of Police, No. 61628 Cpl. Thomas Munai, and Margaret Walegwa who testified as DW1 to DW5 respectively. DW1 testified that the plaintiff is the registered owner of the suit property under entry number 33 and she had the original title which is what was reflected on pages 103 to 108 of the Defendant's list of documents. That the last entry is No. 36 which was a caution by the 2nd defendant and others, registered on 7th February 2020 while entry No.35 is a caveat dated 11<sup>th</sup> July 2018 by J.J. Chesaro Advocates on behalf of the defendants, who are claiming adverse possession. She stated that the real entry No. 33 is the one transferring proprietary interest from a chargor to the plaintiff. She stated that 4% stamp duty was paid on a value of Kshs. 116,834.760 and had a receipt issued as proof of the same. However, she added that the entry No. 33 transferring interest to the plaintiff should have read as entry No. 41 and that the Land Registrar has since made corrections, even though she had no documentary evidence to prove it. She did not have the certificate of auction but the transfer by the chargor in entry No.33 was enough to release the charge at entry No.32. She further stated that the entry Nos.34 and 36 on page 107 were lifted under entry No. 39 by court order or Land Registrar's own motion. She stated that the Land Registrar issued notices to the applicants and when there was no objection, the Registrar lifted the caveats In cross-examination, she accepted that the defendants copy of title at page 103 to 108 is correct, save that the last entry No. 36 should have been entry No. 44. However, the second page of the original title (entry 4 to 12) she had in court was different from the second page in the defendants' title at page 104 (entry 7 to 18). She further stated that entry No. 34 at page 108 did not show who applied for the restriction, and that she had no documents to confirm who applied for it. She also stated that entry No.35 at page 108 is a caveat entered by J.J. Chesaro & Co. Advocates and it was supported by the Decree dated 19th November 2011 in HCCC No. 57 of 2010, which she admitted had already been set aside at the time. That entry No.35 at page 107 was set aside by entry No.37 after consent was recorded. She stated that the plaintiff was notified through notice before making of caveat at entry No.35 at page 108 but she could not tell on which date since it was undated and there was no evidence that it was received by the plaintiff. She stated that documents are registered on the date they are presented and that withdrawal of restrictions are done after issuing notices to the applicants.
9. DW2 testified that he is the secretary of Kwa Punda Self Help group, and has lived on the land since 1972. That when they heard the suit property is being auctioned, they filed HCC No. 57 of 2010 and obtained stay orders dated 4th March 2010. He stated that on 18th December 2011 the said case was determined in their favour and on 19th December 2011 a Decree was issued and they took it to the Land Registrar and it was registered. Later, PW1 approached them and they agreed that he would pay the members' structures after valuation and thereafter they would deal with the valuation of the land itself. That after signing the said agreement at the plaintiff's advocates, Messrs F.W Njoroge, there were no further communications and that they became aware of this suit after being issued with eviction notices. That upon realizing that this suit was lodged on 11th December 2014 and decided on 18th December 2014, and decree issued on the following day of 19th December 2014, they reported to the police and then applied to this court to set aside the order. They then did a search and found that the suit property had been transferred to the plaintiff's name. That in their own internal investigation, they discovered that the 1st defendant had written an affidavit which assisted the plaintiff in doing the transfer. However the said 1<sup>st</sup> defendant denied the claim, and a forensic report at page 118 of the defendants' list of documents was done by the DCI. The said report concluded that the affidavit was forged. DW2 vehemently denied that they were paid by the plaintiff. On cross-



examination, DW2 denied that they had agreed to withdraw HCC No. 57 of 2010. He admitted that the consent dated 28<sup>th</sup> February 2013 at page 66 of the defendant's list of documents was filed with instructions from them pursuant to the said agreement. He could not recall whether they challenged the said consent. Although the said agreement at page 69 stated that they were to leave in three months after compensation, he stated that what they had agreed with PW1 was that they pay the value of the houses and when the suit property became vacant it would be valued. He denied that they were required to vacate the land, but admitted that they were paid as officials, and that a cheque issued was for value of the houses paid to all members who all signed acknowledgement of payment. He also stated that he placed a caveat and not a court order after suit property was transferred. He also agreed that he could not tell whether the DCI was making reference to the afore mentioned affidavit. That their counterclaim is based on entry No.35 on page 107 which had already been lifted by entry No.37.

10. DW3 testified that they received documents from DW4 who was the investigating officer and conducted a comparison between a specimen signature of the 1<sup>st</sup> defendant and a document marked "A". He found that they are not similar and prepared a report dated 4<sup>th</sup> March 2020 which he produced. He stated that the said document marked 'A' was used to transfer the suit property to the plaintiff but did not have it as it had been collected by the said DW4.
11. DW4 testified that he gave an affidavit that was filed in this suit, together with other documents to DW3 to carry out forensic investigations. He admitted that there was no other document reported except the affidavit. He stated that in the said affidavit the 1<sup>st</sup> defendant had agreed to the transfer.
12. DW5 Margaret Walegwa, the 1<sup>st</sup> defendant, testified that she is the chairperson of Kwa Punda Self Help Group. She testified that the agreement with the plaintiff was not about selling land but compensation for structures. That after compensation they would cede 10 acres of the suit property. She stated that not all members were paid and that they later discovered that the suit property had been transferred after seeing an affidavit purportedly sworn by herself, which she denied signing. She stated that on 22<sup>nd</sup> December 2014, they were served with an eviction order but the police intervened, and determined it was fake. She testified that she has a mud house roofed with mangrove timber which she had erected about 25 years ago. Further that she last repaired it in 2023 and that the defendants are her neighbours. That she also has a residence in Voi where she currently resides after retiring, but insisted she normally visits and stays in her residence on the suit property for around three days before returning back. She denied that the agreement they signed in Nairobi in the office of Messrs F.W Njoroge advocate is the same one presented in court and stated her signature was forged. She stated that they had signed on all the pages of the agreement. That the agreement at pages 1 to 7 of the plaintiff's list of documents is the correct agreement but the signatures attributed to her are not hers. DW5 admitted to being paid by the plaintiff but stated she could not vacate because she is the Chairman, and had to continue representing the other members that are yet to be paid. She stated that she was willing to vacate after all the members had been compensated for their structures. She agreed that F.W Njoroge advocate was their advocate for a time in HCCNo. 57 OF 2010. She added that some of the members vacated after receiving payment but others returned to the land, but she could not tell how many members are still on the suit property.
13. The learned counsel for the Plaintiff and the 1<sup>st</sup> to 6<sup>th</sup> defendants filed their submissions dated the 16<sup>th</sup> May 2024 and 23<sup>rd</sup> July 2024, respectively, which the court has considered.
14. The issues for determination by the court are as follows:
  - a. Whether the plaintiff obtained proprietorship of the suit property lawfully and procedurally.
  - b. Whether the defendants have been in adverse possession of the suit property.
  - c. What was the nature and effect of the agreement dated 12<sup>th</sup> March 2013.



- d. Whether the plaintiff complied with its obligations under the agreement of 12<sup>th</sup> March 2013 by compensating the defendants and other members of Kwa Punda Self Help Group.
  - e. Who bears the costs?
15. After careful consideration of the pleadings, the documentary and oral evidence tendered, written submissions by all the parties, superior courts decisions cited thereon, the court has come to the following determinations:
- a. In HCCC 57 of 2010, the ratio decidendi by the court was that Changamwe Housing Scheme proprietary rights did not “shake off” the prescriptive rights of the 158 members of Kwa Punda Self Help Group. Similarly, the court held:

“In my view the 2nd Defendant as a financial institution also failed to exercise due diligence before accepting the suit property to guarantee a loan”

It is not in dispute that decision has not been successfully appealed by Changamwe Housing Scheme Limited or the Deposit Protection Fund Board Division of Central Bank of Kenya.
  - b. PW 1 produced a gazette cutting at page 18 of the Plaintiff’s list of documents dated 15th February 2020 stating that the suit property was to be put under public auction on 18th September 2009. DW2 testified that when they heard the land was being auctioned, they filed Mombasa HCC 57 of 2010 and they obtained stay orders on 4th March 2010, which the court has noted was however not produced in this court. Be that as it may, the public auction which was slated for 18th September 2009, must have taken place because there is no evidence to the contrary. PW1 states that the plaintiff was the successful bidder at Kshs.110 Million, and paid a deposit of Kshs.4 Million and later on completed the rest of the balance through RTGS. Under section 107(2) of the *Evidence Act* Chapter 80 of Laws of Kenya a party who alleges bears the burden of proof. The legal maxim of he who alleges must prove and was discussed in *Koinange and 13 others versus Koinange* [1986] KLR 23. I notice that no documentary proof was tendered on the full payment of the balance. However, DW3 testified that she had a Transfer by a chargee to the plaintiff and a receipt showing that stamp duty was paid. The document was franked meaning stamp duty had been paid and she had a copy of the valuation report used to determine stamp duty. For the plaintiff to have been entered proprietor under entry No. 33 there is a general presumption that all procedures were followed by the Land Registrar, even though she did not have a certificate of auction. Further, in both parties’ copies of title, there is an entry No. 33 which show a transfer to the plaintiff registered on 3rd October 2014.
  - c. Counsel for the 1<sup>st</sup> to 6<sup>th</sup> defendants argued that the advertisement for public auction was for 64.9082 acres and that certificate of search states 70 acres as per the exhibits on pages 18 and 21 respectively on the defendant’s list of exhibits. However, PW1 was able to sufficiently explain that the difference in acreage is as a result of wayleaves for the Kenya Power lines and this testimony was not disputed by the defendants. DW1 testified that the land is approximately, and not strictly, 70 acres while DW2 admitted that he suspected the land being advertised, was the suit land as there was no other land in the area of that acreage, except the suit property. The court therefore finds that the plaintiff has proved on a balance of probability that the public auction was done, and that it emerged successful.
  - d. This swiftly takes us to the next issue of procedure of the Transfer and the court refers to the evidence by DW1, Land Registrar. The court has already made reference to her testimony



above, on the documents used in registering entry No. 33 which is on page 13 of the plaintiff's list of documents and page 108 of the Defendants' list of documents. However, the submissions by counsel for the defendants was that the plaintiff did not purchase the suit property from the 1<sup>st</sup> to 6<sup>th</sup> defendants, and that the agreement dated 12<sup>th</sup> March 2013 was done and executed under misrepresentation and fraud. Counsel for the plaintiff referred to three important rulings but before that the court needs to refer to the consent dated 22<sup>nd</sup> October 2013 which set aside the judgement of 18<sup>th</sup> November 2011, and which was the basis of the payment of KShs.26,499,096, pursuant to the said agreement. It was the 1<sup>st</sup> to 6<sup>th</sup> defendants' defence that they were never paid and it was still the position DW2 in his testimony. However, DW5 was categorical that some of the members were paid and vacated but some came back to the land. This serious conflict on whether payment or compensation was made is really detrimental to the Defendants' case. In the case of *Palace Investments Limited versus Geoffrey Kariuki Mwenda & Another* [2015] eKLR, the court held that :

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

The court is as it were placed between a rock and hard place since it is forced to choose the evidence that is more probable between the versions given by DW2 and DW5, as both cannot be true at the same time. The plaintiff's evidence was unequivocal and crystal clear, that they paid and the residents countersigned and PW1 produced evidence at pages 54 to 73 of the plaintiff's list of documents. The burden of proof shifted to the defendants to disapprove it, which they did not. It is therefore, more probable that the defendants and members of the Kwa Punda Self Help Group, that were on the suit property were paid/compensated as agreed.

- e. The question that arises is what was the probative value of the payments/compensation made. It brings us to the three court rulings which counsel for the plaintiffs submitted as follows:
- i. Ruling delivered on 22<sup>nd</sup> February 2019, which confirmed that HCC No.57 of 2010 was discontinued and judgment set aside. This ruling was conditional and were to be vacated upon the ruling below.
  - ii. Ruling delivered on 5<sup>th</sup> February 2020, which dismissed the 1<sup>st</sup> to 6<sup>th</sup> defendants' application seeking inter alia prayers to set aside the orders to discontinue HCC No. 57 of 2010 dated 20<sup>th</sup> March 2017, for reason that there was consent to set aside the impugned judgement of 18<sup>th</sup> November 2011 and thereafter the suit was discontinued hence the suit was dead.
  - iii. Ruling delivered on 23<sup>rd</sup> November 2022, which dismissed the 1<sup>st</sup> to 6<sup>th</sup> defendants' application to set aside the consent of 28<sup>th</sup> February 2013 and 22<sup>nd</sup> February 2013 and reinstatement of HCC No.57 of 2010.



The rulings above show that despite the defendants' and other members of the Self Help Group not having any legal interest in the suit property, the plaintiff was honourable enough to give them the agreed package of Kshs.26.4 Million being compensation for their developments/structures so that they could vacate from the suit property. Unfortunately, as confirmed by DW5, some came back effectively violating the parties' agreement, and their occupation is definitely not sufficient to accord them title under adverse possession, especially when they clearly dispute the plaintiff's title to the same land they claim.

- f. General damages were discussed in the case of Dominic Arony Amolo versus Attorney General H.C Misc. Application No. 494/2003, where the court held that monetary compensation must be reasonable and fair and taking into account all the circumstances of each case. The 1<sup>st</sup> to 6<sup>th</sup> defendants cannot be made to bear the general damages of all the members of the Kwa Punda Self Help Group, since not all were joined in the suit. The court therefore declines to allow this prayer.
  - g. Costs follow the event as provided by section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya. The exception is where the court for good cause orders otherwise. Due to the nature of this suit and the elements of the public interest in it, an order that each party shall bear its own costs appear fair and just.
16. From the foregoing, the court finds for the plaintiff and against the defendants and orders as follows:
- 1a. A Declaration is hereby issued that the Plaintiff is the legal and or registered owner of Plot Number L.R No. MN/V/15 Changamwe, suit property.
  - b. A declaration is hereby issued that all necessary payments for compensation as per agreement dated 12<sup>th</sup> March, 2013 in respect of the suit property were made by the Plaintiff to the Defendants.
  - c. The defendants to vacate the suit property within ninety [90] days and in default eviction order to issue to be execute at their costs.
  - d. A permanent injunction is hereby issued restraining the Defendants, their members, tenants, employees, servants and any other person from entering, staying and or interfering in any manner whatsoever on Plot Number L.R No. MN/V/15 Changamwe, suit property, after they vacate and or are evicted.
2. The Defendants' counter claim is dismissed.
  3. Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024.**

**S. M. Kibunja, J.**

**ELC MOMBASA.**

**IN THE PRESENCE OF:**

Plaintiff : M/s Machogu for Oluga

Defendants : M/s Chesaro for 1<sup>st</sup> to 6<sup>th</sup> Defendants.

Mr. Ochami for Wameyo for 7<sup>th</sup> Defendant



Leakey – Court Assistant.

**S. M. Kibunja, J.**

**ELC MOMBASA.**

