



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO. 37 OF 1999

JOHN ALEXANDER KAMAU.....1ST PLAINTIFF

MAJOR BERNARD KINGATI KIMANI.....2ND PLAINTIFF

ELIUD MBURU KARUMA.....3RD PLAINTIFF

LUCY WANGARI GITONGA.....4TH PLAINTIFF

CAROLINE GRACE NJERI MBACIO.....5TH PLAINTIFF

CHRISTINE NJERI RAYMOND.....6TH PLAINTIFF

-VERSUS-

JOSEPH GAITHO MWAGO.....1ST DEFENDANT

FRANCIS NJUGUNA MWAURA.....2ND DEFENDANT

LUCY WAITHERA GAITHO.....3RD DEFENDANT

DOMINIC MATHIA MWAGO.....4TH DEFENDANT

JUDGEMENT

1. Background and pleadings

This is one of many cases filed by shareholders and/or purchasers of land allocated to and/or purchased from a Land Buying Company situated within Nakuru County, in the name of **Nakuru Kiamunyi Company Limited**. Relevant in this case are seven plots situated in one of its farms known as “**Kiamunyi A**” being **Title No.Dundori/Lanet/Block 5/290,391,392,389,414,415 and 147 (Kiamunyi “A”**.

2. The plaintiffs claim to have acquired the above land parcels by outright purchase for valuable consideration from either the company itself, or from the company’s Directors.

3. The **5th** and **6th** plaintiffs are among the original shareholders and had been allocated some plots by the Company, which are not among the suit plots. Together with the **1st, 2nd, 3rd and 7th plaintiffs**, it is their claim that, upon recommendations of a Task Force established by the then Nakuru Provincial administration to investigate alleged misappropriation of funds and illegal allocations of land parcels by the then directors by its report dated 7/3/1984, it was resolved that the company do repossess 53 illegally allocated plots, mainly to the Directors and their families and to sell them to raise funds to pay debts and loans owed by the company.

It is the plaintiffs claim that it is during this period that they took advantage and bought the stated land parcels from the company and/or its alleged directors.

4. By virtue of purchase of the various plots from the Nakuru Kiamunyi Co. Ltd, the plaintiffs allege to have been issued with share certificates. The purchases by the plaintiffs were made in the offices of the Company’s Advocate Mr. Githua of Cresswell, Mann and Dod Advocates from where they were issued the purchase price receipts to the purchasers as well as the share certificates, and that as shareholders they allege, required no Sale Agreements in respect of the plots.

5. To put the claim to perspective, I shall state the land parcels claimed by each the plaintiffs herebelow.

- The 1st plaintiff lays claim to Title NO. Dundori/Lanet Block 5/391, title issued on the 1/12/1984
- 2nd Plaintiff, plot NO. Block 5/414 and 415, Title issued on the 14/8/1997.
- 3rd plaintiff plot Block 5/390 – Title issued on the 14/8/1997.
- 4th plaintiff – Plot No. Block 5/389, Title issued on 14/8/1997
- 5th plaintiff – Plot NO. Block 5/392, Title issued on 1/12/1984
- 6th Plaintiff – Plot NO. Bloc 5/147, Title issued on 1/9/1987

6. It is the plaintiffs claim that they are the lawful owners of the said land parcels and that the defendants during various times trespassed thereon, and claim ownership rights over the said land parcels, and have disrupted their peaceful enjoyment, and use of the same, prompting them to file this suit.

7. The Pleadings.

The original plaint is dated 29/10/1999. By leave of court, several amendments were made, resting with the **Further Further Amended plaint filed on the 20/6/2017.**

By the said plaint, the plaintiffs have sued the defendants for

ORDERS THAT

(1) A perpetual injunction do issue to restrain the defendants their heirs, servants and agents from trespassing or in anyway interfering with the plaintiffs quiet enjoyment of their respective Land Parcel Title numbers Dundori/Lanet Block 5/391, 441,415,390,389, 392 and 147 (Kiamunyi "A").

(2) An Eviction order against the defendants.

(3) Costs of the suit.

8. The defendants filed separate statements of defence and raised counterclaims, denying trespass claims on the cited land parcels, and asserting their claims of ownership over the said plots, stating that the Titles in dispute were obtained by the plaintiffs fraudently illegally and unprocedurally, and urged for cancellation and or nullification of the said titles in their favour.

9. For ease of reference, I shall state each of the four defendants specific claims of ownership of plots in relation to the six plaintiffs claims:

- The **1st Defendant** Joseph Gaitho Mwago claims ownership over **plot NO. Dundori/Lanet Block 5/389, 390,391,392,414 and 415** which he claimed to have purchased by shares for his wife and children in the year 1977. He was then the Secretary of the Company.
- **3rd Defendant**, Lucy Waithera Gaitho claims ownership over **Plot NO. 389**. She is wife to the 1st Defendant.
- **2nd Defendant** Francis Njuguna Mwaura claims **Plot No. 147** which the 6th plaintiff claims ownership.
- **4th Defendant** – Dominic Mathia Mwago (deceased), substituted with Lucy Waithera Mwago as Administrator and wife of the deceased – claims **Plot No. 415**, which is also claimed by the 1st Defendant.

10. A close examination of the above shows that the 1st defendant Joseph Gaitho Mwago lays ownership claims, for himself and his family, over all the suit plots herein, save for Plot No. 147.

In their **Counter – Claims**, the defendants sought judgements against the plaintiffs for:

(a) Declaration that Dundori/Lanet Block 389, 390,391,392,414,415 and 417 are their properties and the Title deeds issued to the plaintiffs be nullified and/or be cancelled.

(b) Costs of the Suit.

Plaintiffs Case.

Each of the six plaintiffs testified as to when and how they purchased their suit plots from the Nakuru Kiamunyi Company Ltd at which time they were given share certificates, upon which they settled on their respective plots. Each produced their share certificates and receipts issued by the company, to confirm that they purchased the plots. At the time it was the plaintiffs evidence that **Mathew Gitahi** and **Stephen Mbote** were the directors of the Company, but the purchase was done at the Company's Advocates offices where the receipts and share certificates were given to them. Thereafter, the plaintiffs the obtained Title deeds to their respective land parcels.

12. It was the plaintiffs evidence that they have, occupied and used the land parcels to date, but at time of filing the suit in 1999, the defendants had started trespassing thereon thus interfering with their quiet enjoyment and use of the suit properties hence their prayers for orders of perpetual injunction to restrain the defendants from disrupting their use and possession, including orders of eviction of those who had entered and settled on the land parcels, being the 1st and 3rd defendants.

13. **The Defendants Case.**

The defendants lay claims on the suit properties as bonafide shareholders of the Nakuru Kiamunyi Company Ltd with share certificates issued by the Company since 1975. **For the 1st and 3rd** Defendants they remained in possession despite the plaintiffs having bought them, following recommendations and resolutions from a 1981 Probe Committee report formed by the Provincial Administration over irregular and fraudulent allocations of the plots by the Company directors.

I will come to the matter of the probe committee later in this judgment.

Upon closure of the case, parties filed written submissions which I have considered against the pleadings and evidence adduced.

14. **ISSUES FOR DETERMINATION.**

(1). Whether the plaintiffs are the lawful and bonafide purchasers for value without notice of the plots suit plots within the Nakuru Kiamunyi Company Ltd – (Kiamunyi "A").

(2). Whether the defendants are tresspassers on the suit plots, and if so, whether an order for eviction may be availed to the plaintiffs against the defendants.

(3). Whether the parties are entitled to their respective reliefs sought in their respective pleadings.

(4). Costs.

15. **The 1981 and 1987 Probe Committees and Sale of Plots within the Nakuru Kiamunyi Company Ltd.**

I dealt extensively with the matter of the Resolutions of the two Probe Committees **in my judgement in Nakuru HCCC No. 101 of 2002 delivered on the 15/5/2018.** As far as is applicable, I shall adopt my sentiments and holding therein.

16. The 1981 and 1987 Probe Committees were set up by the then Nakuru Provisional Administration to investigate misappropriation of funds, illegal and irregular allocation of plots by the directors. It recommended that 53 plots allocated to the directors of the company be repossessed and sold to members and non members to raise money to pay company debts.

It is instructive to state that several court cases were filed in respect of plots that were taken away pursuant to the resolutions and re-allocated, among them is **Nakuru HCCC NO. 33 of 1998** and **Nakuru HCCC 101 of 2002.** **In Nakuru HCCC NO. 33 of 1998,** the court held that titles issued before 16/2/2018 were irregularly and unprocedurally issued.

17. In the **Nakuru HCCC 101/2002,** the court held that the Probe Committees mandate as stated in the Probe Committee reports was **to investigate irregular allocation and grabbing of plots and misuse of Company finances by the directors and debts that affected the operations of the company, and therefore the 1981 committee actions in repossession of plots and re-allocation to other parties by sale was ultravires its mandate – See paragraph 30 of the judgement.**

This court has not been told that the above findings and holdings in the two decisions above having been overturned on appeal by a higher court.

18. **Analysis and Findings and Determination**

ISSUE NO. 1

Whether the plaintiffs are the lawful and bonafide purchases for value without notice of the suit plots.

The plaintiffs testified to have purchased the plots in dispute from the Directors of the Nakuru Kiamunyi Co. Ltd following recommendations of the 1981 and 1987 Probe Committees. They named the directors as Mathew Gitahi and Stephen Mbote. There is no dispute that each of the plaintiffs purchased the plots, upon which they were given share certificates. Each produced the purchase price receipts and share certificates as exhibits. They then moved and settled in their respective plots and later obtained Title deeds to their plots.

19. On the other hand, the defendants were among the original shareholders who upon allocation of the plots by the company took

possession and occupied their respective plots.

The **1st defendant** Joseph Gaito Mwangi, by shareholding, and being the founder secretary of the Company in 1971 was allocated Plot Nos. 389, 391, 401, 414 and 415. He adduced evidence of shareholding by his children and wife, who later transferred them back to him. He testified to have settled and developed, by building permanent home on Plot No. 389, and use of the other four.

The **4th Defendant** is the 1st defendant's wife, Plot No. 390 and 392 were allocated to the **3rd Defendant** while Plot 389 and 391 were allocated to the son, all in 1977.

It was his evidence that at inception of the company there was no bar as to how many shares and thereof plots, one could purchase hence he purchased by share certificates the four for himself and his family.

20. The **2nd defendant**, bought **Plot No. 147** from the original allottee one Anthony Njenga. Evidence of purchase was demonstrated by the sale agreement entered into in 1982, and subsequent payment of the purchase price. He has been using the plot. However, the **6th plaintiff** lays a claim on this plot. The 2nd defendant obtained a title to the plot on 29/2/2016 while the 6th defendant has a title issued on the 18th September, 1987, over the same plot.

21. As earlier stated, the 1st plaintiff, upon purchase of Plot NO. 391 obtained title on the 1/12/1984. The 2nd plaintiff's title over plot No. 414 was obtained on the 14/8/1997 while the 3rd plaintiff's title over Plot No. 390 was issued on the 14/8/1997.

The 4th plaintiff obtained title to his Plot NO. 389 on the 14/8/1997 and the 5th plaintiff's title over Plot No. 392 issued on the 1/12/1984.

It is these titles issued to the plaintiff that the defendants seek cancellation and/or nullification on grounds that they were irregularly and fraudulently obtained.

22. I have carefully considered the Probe Committees mandate as stated in the Report produced as DExhibit 9. Their core mandate was to investigate irregular allocations and grabbing of plots and misuse of Company finances by the directors. The mandate did not include repossession and re-allocation or sale of the plots. To that extent, and as I found and held in **Nakuru HCCC NO. 101 of 2002**, the committees actions in re-possessing, re-allocation and sale of the plots from the original allottees was ultra vires their authority and mandates.

23. The plaintiffs and the defendants have laid claims to the disputed plots. However, can it be said with legal authority that the plaintiffs, whose acquisition of the disputed plots was based on the Probe Committee recommendations was regular and in accordance with the Law? Fraud, illegality and irregularities have been pleaded by the Defendants against the plaintiffs acquisition of the plots.

24. **Article 40 of the constitution** emphasizes the rights to property to any individual, and protection from arbitrary deprivation to the use peaceful and quiet enjoyment, for legally acquired land parcels.

Thus if a party wrongfully occupies and uses another's property, the Court will not shy away from declaring such person as a trespasser – **Macharia Mwangi Maina & 87 Others Vs. Davidson Mwangi Karigi (Supra)**.

25. Under **Section 80 of the Land Registration Act 2012**, the Court is empowered to order cancellation or rectification of register of titles if it is satisfied that the registration was obtained fraudulently, irregularly or through a corrupt scheme – **Funzi Island Dev. Co. (Supra)**, and **Moses Nyaraa Kanidu Vs. Mary Muthoni Njaraba & 3 Others (2017) e KLR**, among others.

In the case **Daudi Kiptugen Vs. Commissioner of Lands & 4 Others 92015) e KLR**, the suit plot was double allocated to two parties through forged documents and fraud. The Court held that the first allottee was protected under **Article 40 of the Constitution** and that any irregular allocation and subsequent registration was liable to cancellation as stated under **Section 26 of the Land Registration Act, 2012**.

26. The circumstances to this suit are that, the defendants having been allocated the suit plots by the Nakuru Kiamunyi Co. Ltd regularly, being the original shareholders, and having not given their consent for the re-allocation to the plaintiffs, they were arbitrarily deprived of their plots. The Probe Committees did not have the mandate and authority to repossess and sale the defendants plots. The subsequent re-allocations and sale and eventual registration of the same to the plaintiffs in my view can only be deemed to have been irregular and without any lawful basis. See also **ELC NO. 51 of 2014 (O.S) Alice Chemutai Vs. Nickson Kiptui & 2 Others (Supra)**.

27. In **ELC NO. 398/2017 Kimanthi Kilonzo Vs. Susan Wangari Kiiru & another (2019) e KLR**, a land buying company allocated two people the same plot, the first allottee did not know nor was his consent bought before allocating the same plot to another party.

The court held that the second allotment, having been without the consent of the first allottee was fraudulently obtained, and proceeded to cancel and nullify the second allotment, pursuant to **Sections 26 (a) (b) Land Registration Act 2012**.

28. The defendants have been in possession and use of the suit plots which were allocated to them at inception, by the company. They testified to have developed the plots and settled therein. They however have not obtained Title deeds. On the other hand, once the plaintiffs bought the suit plots, they quickly moved and obtained claiming to have been innocent purchasers for value, without notice.

29. **By the above circumstances, can the plaintiffs be deemed to have been innocent purchasers for value without notice?**

There is no doubt that the plaintiffs knew and had knowledge that the plots they were purchasing had been earlier on allocated to other parties by the company but nevertheless decided to purchase them. It is instructive that the plaintiffs did not produce any documents to authenticate that the two alleged directors who purported to sell the plots to them were directors, nor that the company had authorized the sale. No resolutions by the company were presented to the court.

30. It is submitted by their Advocate, Ms. Nancy Njoroge that no fraud should be imputed on any of them as innocent purchasers for value. Citing **Section 25 (1) of the Land Registration Act 2012, provides that**

“The rights of a proprietor, whether acquired on first registration of subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in the Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-----”

(a) To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register, and

(b) To such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the Contrary is expressed in the register”.

31. It is trite that Under **Section 26** a certificate of title issued by the Registrar upon registration or to a purchaser upon transfer shall be taken by all courts as *prima facie* evidence of absolute ownership and shall be indefeasible except on grounds of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title was acquired illegally, unprocedurally or through a corrupt scheme.

32. It is submitted, and evidence adduced that the plaintiffs got information from some people that there were plots for sale by the Kiamunyeki Company where they proceeded to purchase the plots at the offices of Stephen Mbote from where they were directed to the Advocates offices where they were issued with Kiamunyeki Co. Ltd receipts and share certificates – Evidence of PW1, PW2, PW3 and PW4. What the court is faced with in this case is a matter of double allocations of the plots by the company and/or its agents, without consents or authority from the original allottees, the defendants, who at all material times had legitimate expectation that once allocated, they would obtain titles. **Under Section 23 and 26 of the Land Registration Act**, a certificate of Title issued by the Registrar is *prima facie* evidence of ownership, is absolute and confers upon the owner indefeasible ownership – **Court of Appeal in Nelson Kazungu Chai & 9 Others Vs. Pwani University (2017) e KLR.**

It is also trite that occupation of land does not sanitize or legitimize an otherwise unlawful acquisition of the land.

33. In the case **Kimanthi Kilonzo Vs. Susan Wangari (Supra)**, the respondent was allocated Land by a Land buying company, which had earlier on been allocated to the appellant. No consent was sought from the original allottee. The court held that such allocation was obtained fraudulently and unprocedurally.

Section 2 Registration of Titles Act (repealed) defines the word Fraud as

“Fraud on the part of a person obtaining registration include a proved knowledge of the existence of an unregistered interest on the part of some other person, whose interest he knowingly and wrongfully defeats by that registration-----”

34. Fraud is a serious accusation and ought to be pleaded. However, it is not necessary that the word fraud be used, but the facts must be so stated as to show distinctly that fraud is charged. The claim must contain, precise and full allegations of facts and circumstances leading to the inference that fraud was the cause of the loss of damage – **Eldoret Express Ltd Vs. Tawai Ltd & NLC and others (2019) e KLR** and **Highway Development Co. Ltd Vs. WestEnd Butchery Ltd & 6 others (2015) e KLR.**

35. In **Elijah Makeri Nyangwira Vs. Stephen Mungai Njuguna and another (2013) e KLR**, the Court held, and reiterated the Provisions of **Sections 26 (1) (a) (b) of the Land Registration Act** when it observed that

“As may be observed the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person is proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme” having been obtained through misrepresentation and irregularly.

36. From the plaintiffs evidence, it is evident that the plaintiffs knew that the defendants were the original allottees of their plots, and indeed they continued to use and occupy the suit plots, but they went ahead to obtain titles knowing very well that there were disputes as to ownership over the suit plots.

Section 26(1) (b) Land Registration Act does not protect an innocent purchaser if original title was obtained illegally unprocedurally or through a corrupt scheme. The innocent purchaser need not have participated in the corrupt scheme.

37. Proof of legality leading to obtaining a title to land is paramount. For a claim of bonafide purchase for value to succeed, the purchaser must prove that

(a) He holds the certificate of title

(b) That he purchased the property in good faith

(c) That he had no knowledge of any fraud

(d) That he paid valuable consideration, and

(e) The vendor had apparent valid title and

(f) He was not a party to the fraud, illegality or irregularities

See the case **Katende Vs. Harindah & Co. Ltd (2008) e KLR.**

38. **Maraga J** (as he then was) in the case **Republic Vs. Minister of Transport & Communication and 5 others Exparte WAA Ship Garbage Collector & 15 others (2016) e KLR** reiterated that

“-----courts should nullify titles obtained by Land grabbers who stare at your face and wave to you a title of the land grabbed and loudly plead principle of the indefeasibly of the deed---”

Further in the case **Funzi Island Development Company Ltd & 2 others Vs. County Council of Kwale (Supra)**, the court held that the principles of equity dictate that first time prevails so that the first time allotment carries the day. In the premises, I find and hold that the defendants were the lawful and factual owners of the suit plots which the plaintiffs, by their subsequent actions, deprived them of ownership by way of the title deeds. They did not however oust the defendants from the use and occupation of the plots which action prompted the plaintiffs to approach the Court for protection by an order that the defendants were trespassers and therefore candidates for eviction, and a perpetual injunction against their further interference of the plaintiffs quiet possession and use of the suit plots.

39. The evidence on record is that by 1977 the Nakuru Kiamunyi Company had sold all its plots to its shareholders. On or about 1982 or thereabouts when the plaintiffs purported to purchase the plots, there were no plots available for the company to offer for sale. It therefore follows that the process upon which the plaintiffs used to purchase and obtain the titles they hold in respect of the suit plots was not transparent, was tainted with irregularities and therefore unprocedural.

40. Any party desirous of purchasing a property in good faith would have done due diligence, to find out whether there were other parties previously allocated the said plots and whether they had consented to re-allocation. Any other action short of that, in my view, would be mischievous and geared towards depriving the lawful party of their property, through a corrupt scheme.

I therefore find and hold that the plaintiffs are not lawful and bonafide purchasers for value, without notice, of the suit plots and that the said plots are property of the Defendants.

The plaintiffs are at liberty to seek appropriate reliefs from the allocating party's or authority for compensation.

41. **ISSUE NO. 2**

Whether the Defendants are trespassers on the suit plots.

The tort of Trespass has been defined in Black's Law Dictionary 8th Edition as

“An entry on anothers ground, without a lawful authority and doing some damage, however inconsiderable, to his real property”.

A continuing trespass is defined as

“A trespass in the nature of a permanent invasion on anothers rights, such as a sign that overhangs another's property”.

Considering the above definitions it is the plaintiffs who are the trespassers on the defendants plots.

42. **Section 107 and 112 Evidence Act Cap 80**, Provides that **(107) (1)** whoever desires any court to give judgement as to any legal right or liability depend on the existence of facts which he asserts must prove that those facts exist.

Similarly, **Section 109 and 112** provides

“the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the burden of that fact shall lie on any particular person”.

Section 112 thereof states that in civil proceedings, when any fact is essentially within the knowledge of any party to those proceedings, the burden of proving or disapproving that fact is upon him.

43. Having come to a finding that the Defendants were the lawful allottees and occupiers of the suit plots, and that the plaintiffs are the intruders, who unlawfully and without lawful justification invaded the defendants plots, the plaintiffs reliefs as set out in their plaint cannot

be availed to them. The defendants cannot be held to be trespassers on their own procedurally acquired plots.

The plaintiffs have failed to prove their claims against the defendants as mandated Under **Section 107, 109 Cap 80** to the required standard of proof and thus they fell short in discharging the said burden of proof.

44. A **permanent injunction** is therefore not a remedy that the court can issue against the defendants, in respect of their plots. That applies to the **Order of Eviction** sought against the defendants from the suit properties.

To that extent, the plaintiffs claim against the defendants must fail. It is dismissed.

45. Defendants Counter Claims

Coming to the defendants counter claims, seeking cancellation and or nullification of the plaintiffs titles to the suit plots, I have rendered that the said titles were obtained through irregularities and un procedurally, and through a fraudulent scheme, by the plaintiffs.

Black's Law Dictionary 8th Edition defines the term **Fraud** as follows:

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right or in some manner to do him injury--- with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other”.

46. I am satisfied that the defendants have adduced sufficient evidence to prove that the plaintiffs were involved in unlawful and unjustified actions with a view of deprive the defendants of their plots.

The Court of Appeal in the **Dr. Joseph Arap Ngok Vs. Justice Moiyo Ole Keiwua & 5 Others, Civil Appeal NO. NAI 60 of 1997** reiterated the sanctity of title bestowed upon the title holder under **Section 25 and 26 of the Land Registration Act**, but went ahead to state factors that may invalidate, leading to cancellation and or annulment of the title. These have been ably stated above, with the result that this court finds that the plaintiffs titles to the suit plots were obtained through misrepresentation, irregularities and unprocedurally.

In the circumstances, **Section 26** cannot offer protection to the plaintiffs.

47. To the contrary, **Section 80 (1) (2)** offers relief to a party who has been deprived of his property illegally and unprocedurally. It states:

80(1)

“Subject to Section (2) that court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained made or omitted by fraud or mistake”.

I find and hold that the defendants have proved their claims as stated in their counter-claims to the required proof, upon a balance of probability.

48. **Consequently, I proceed to dismiss the plaintiffs claims against the defendants, and enter judgment for the defendants in their Counter-Claims as prayed thereto as follows:**

(a) Declaration is issued that Dundori/Lanet Block 389, 390, 391, 392, 414, 415, and 147 are the defendants properties and the Title Deeds issued to the plaintiffs in respect of the said plots be and are hereby nullified and cancelled.

(b) That the Nakuru Land Registrar is directed to forthwith execute prayer No. (a) above within a period of 90 days the date of this judgment and

(c) Thereafter, upon the defendants complying with the registration of titles process, issue title deeds to the defendants in respect of their respective plots, being the suit plots hereof.

(d) As to costs, I think and hold that the most rational and reasonable decision in the circumstances is that each party shall bear their own costs on the suit as well as on the counter claims.

Orders accordingly

Dated, Signed and dated at Nakuru this 20th day of February, 2020.

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J.N.MULWA

JUDGE