



Kihunyu (Suing as Administrator of the Estate of Leah Wanjiku Kanyi, Deceased) v Nakuru Teachers Housing Cooperative Society Ltd & another; Wachira (Third party) (Environment & Land Case 331 of 2012) [2023] KEELC 19914 (KLR) (22 September 2023) (Judgment)

Neutral citation: [2023] KEELC 19914 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 331 OF 2012
FM NJOROGE, J
SEPTEMBER 22, 2023**

BETWEEN

JOSEPH KANYI KIHUNYU (SUING AS ADMINISTRATOR OF THE ESTATE OF LEAH WANJIKU KANYI, DECEASED) PLAINTIFF

AND

NAKURU TEACHERS HOUSING COOPERATIVE SOCIETY LTD 1ST DEFENDANT

ALICE WANJIRA KAMAU (SUED AS ADMINISTRATOR OF THE ESTATE OF NEPHAT KAMAU MWANGI) 2ND DEFENDANT

AND

PETER KARIUKI WACHIRA THIRD PARTY

JUDGMENT

1. The orders sought in the present case by the plaintiff are as follows:
 - a. A declaration that the plaintiff is the lawful and legal absolute proprietors of Title Number Nakuru Municipality Block 22/861 (Muguga) and that the subsequent sale of the same to any third party for the matter was/is illegal, unlawful and fraudulent and hence null and void.
 - b. Damages for negligence against the 1st defendant.
 - c. An order for specific performance compelling the 2nd defendant as the legal representative of the deceased Nephath Mwangi Kamau to transfer to suit property to-wit Nakuru Municipality Block 22/861 (Muguga) to the plaintiff and/or in the alternative issue an order directing to Registrar of the High Court to execute the necessary transfer documents on behalf of the 2nd defendant in favor of the plaintiff.



- d. An order of interim injunction restraining the 2nd defendant either by himself, agents, assigns, heirs or beneficiaries and/or servants howsoever from entering, disposing off, alienating, transferring, constructing, carrying out any development and/or in any way dealing with the property title number Nakuru Municipality Block 22/861 (Muguga) pending the hearing and determination of this suit.
 - e. An order of permanent injunction restraining the 2nd defendant by himself, agents, assigns, heirs or beneficiaries and/or servants howsoever from entering, disposing off, alienating, transferring, constructing, carrying out any development and/or in any way dealing with the property title number Nakuru Municipality Block 22/861 (Muguga) pending the hearing and determination of this suit.
 - f. General damages.
 - g. costs
2. In the body of the plaint the plaintiff sets out his claim as follows: that the deceased was a member of the 1st defendant; that the deceased was allocated plot number 109 in Phase B of the Lanet project of the 1st defendant which was later allocated the number Nakuru Municipality Block 22/861 (Muguga) and she became the registered owner thereof and a title deed was issued in her name. However due to alleged negligence on the 1st defendant's part, the original title to the suit property was issued to a stranger without the plaintiff's consent. The 2nd defendant fraudulently transferred the property to himself despite the existence of a caution over the title and then trespassed onto the suit land and remained thereon. The plaintiff was thus denied of his rights as a proprietor including the right to possession and quiet enjoyment of the property hence the claim.

Defence of the 1st defendant

3. The 1st defendant filed a defence and later amended it, denying the plaintiff's claim against it. It denied knowledge that Leah Wanjiku Kanyi was deceased or that it acted against the plaintiff's interest as alleged by issuing the original title document to a total stranger. It denied any negligence and liability to the plaintiff and alleged that a criminal bearing the deceased's identity card and a letter purportedly written by the deceased, misrepresented herself as having authority of the deceased to collect her title. It admitted releasing title to a third party and asserts that it did so in good faith, and added that the matter was under investigation by the police.

Defence of the 2nd defendant

4. The 2nd defendant filed a defence and denied allegations of fraud, claiming that he was a bona fide purchaser for value without notice of the suit land, having purchased the same from one Peter Wachira Kariuki after conducting due diligence. The plaintiff claims that the seller claimed to have purchased the same from the deceased, and through a special arrangement, title was subsequently transferred from the deceased's name and issued in his favour, and he commenced and effected developments worth Kshs 2,000,000/= on the suit property.
5. The 2nd defendant took out a third party notice against Peter Kariuki Wachira, claiming indemnity or compensation in respect of the purchase price and the land development expenses incurred in respect of the suit land.



6. The plaintiff filed separate replies to the 1st and 2nd defendants' respective defences. He denied there was any exercise of due diligence on the 1st defendant's part and that the 2nd defendant proceeded to process the title deed in his name despite knowing that there was a pending dispute regarding it.

Evidence of the parties

7. The evidence of the plaintiff closely followed the statements in the plaint. He stated that he is father to the Leah Wanjiku Kanyi, the deceased who passed away on 28/12/2002; that he took out a grant of letters of administration to her estate in his name; that he surrendered Leah's original Identity card to the district commissioner who gave him a letter dated 20/1/2003; that Leah acquired the suit land from the 1st defendant but she had not been issued with a title deed at the time of her demise; that in the year 2003 when titles were not yet ready, he informed the 1st defendant of Leah's demise; that he never collected Leah's title as the 1st defendant repeatedly informed him that it was not ready but at last upon visiting the 1st defendant, he found that the title had been issued to another person by the name of Leah Wanjiku and he was then shown the letter purportedly authorizing one Nancy Wanjiku Chege to collect the original title; that he lodged a restriction at the lands office and made a report to the police whereupon the 2nd defendant was summoned and he asserted that he had purchased the plot from Leah, yet Leah had never informed the plaintiff that she had sold it to anyone. Leah had commenced some developments on the land which she had not completed as at her demise. Later the 2nd defendant commenced developments on the same plot and he stopped him and commenced the present suit. According to him, his efforts revealed that the municipal records bore the name of the deceased; the date of birth (1955) on the copy of the identity card produced by Nancy while collecting the original title differed from the date of birth (1965) on the genuine identity card. PW1 was surprised at the release of the title deed to a stranger because he had already informed the 1st defendant that Leah was deceased. However, upon cross examination he conceded to having not informed the 1st defendant of Leah's demise in writing. He further stated that he had seen a "plot for sale" sign on the plot but had not taken it down. The photograph claimed to be Leah's which he was shown at the police offices was not Leah's; On re-examination he stated that Nancy Wanjiku Chege is not Leah's cousin as claimed, and by the date of the letter allegedly written by Leah, she was already deceased.

Evidence of the 1st defendant

8. DW1 testified for the 1st defendant. Her evidence is that in 2011 while she was secretary to the 1st defendant with duties to issue receipts and titles to members of the 1st defendant, one Nancy Wanjiku Chege came to her in July 2011 intending to pick a title for and on behalf of the deceased. DW1 told her to obtain the deceased's letter of authority and identity card and also present her own identity card with which instructions the said Nancy later on complied with. The copy of identity card for Leah which Nancy brought corresponded with the 1st defendant's record, thus prompting DW1 to release the original title to Nancy. However, almost one year later in June 2012 the plaintiff together with Leah's son appeared in the 1st defendant's office, having come to collect the same title. Before the plaintiff came, Leah's son had already unsuccessfully attempted to collect the title. DW1 had recorded a statement with the police over the matter. On cross-examination by Mr Kamonjo, she stated that the 1st defendant only learnt that Leah had died when the plaintiff visited their office. She expressly admitted that Leah had been a member of the 1st defendant and that she released the title to Nancy. Upon cross-examination by Mr. Ayisi she also admitted that they had not sought proof of Leah's illness from Nancy, and that she never checked from the 1st defendant's records to verify the identities of Leah's next of kin after Nancy requested for the title. She denied having known Nancy before she came to seek release of the title.



Evidence of the 2nd defendant

9. DW2 testified in the 2nd defendant's case and gave evidence on 21/3/2023. Her evidence is that the original 2nd defendant was her husband. Due to inclement weather and upon medical recommendations they sought a warmer place and stumbled on the suit property which bore a sign "plot for sale". The person who later sold them the plot alleged to have purchased the same from Leah. They obtained title and constructed on the suit land and began fencing but council askaris informed them that the plot belonged to someone else and that is when they came to know that there is a dispute regarding it. They had sold much of their property in order to acquire the suit land. Upon cross examination by Ms Njoroge she admitted that the official search they conducted showed that the suit land belonged to Leah but the person who sold them the land was called Peter Kariuki. She alleged that Peter had shown them the documents vide which he had purchased the land from Leah. To her, the criminal case regarding the fraud is still pending but she does not know who the accused is. Upon cross examination by Mr. Ayisi she confirmed that she and her late husband never dealt with Leah regarding the sale. She had also never seen any title in the seller's name. The seller preferred that rather than it being first transferred into his name, the title be transferred directly from Leah's name to DW2's husband.

Submissions

10. The plaintiff, the 1st and 2nd defendants all filed submissions. The third party who never entered appearance and never gave evidence in the matter did not file any submissions.

Determination

11. The issues for determination in the present suit are as follows:
- a. Have the proceedings against the third party been properly pursued by the 2nd defendant and can they be maintained?
 - b. Was the 1st defendant negligent in its dealings with the suit title and if so is the plaintiff entitled to damages against the 1st defendant?
 - c. Was the transfer of the suit land to the 2nd defendant fraudulent and should the suit land be transferred back to the plaintiff?
 - d. Who ought to bear costs of these proceedings?

a. Have the proceedings against the third party been properly pursued by the 2nd defendant and should they be maintained?

12. The third party was joined to the present proceedings vide an order made on 14/3/2013 in an application dated 1/2/2013 filed by the 2nd defendant.

13. Order 1 rule 15 provides as follows:

“ 15. Notice to third and subsequent parties [Order 1, rule 15.]

(1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—

(a) that he is entitled to contribution or indemnity; or



- (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
 - (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.
- (2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.
 - (3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed and served within fourteen days of leave, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaint shall be served therewith.
 - (4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in subrule (1), the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply mutatis mutandis as between the third party and such person, and the court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply mutatis mutandis, and the expressions “third party notice” and “third party” shall respectively apply to and include every notice so issued and every person served with such notice.
 - (5) Where a person served with a notice by a third party under subrule (4) makes such a claim as is mentioned in subrule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply mutatis mutandis with the provisions of this rule. [L.N. 22/2020, r. 2.]”

14. There is no affidavit of service on the record that shows that the third party notice was ever served either with the application for his joinder or the application for third party directions. The third party never entered appearance and filed no defence. The only evidence of service of the Third Party Notice is an oral statement by counsel for the 2nd defendant during the proceedings of 11/7/2013. The court



repeatedly ordered that the third party be served but no proof was ever provided by the 2nd defendant that the orders were complied with. It is also noteworthy that neither the plaintiff nor the defendants ever amended their pleadings to include the third party in the title. While that state of affairs was still persisting the hearing commenced on 26/9/2018. Though the third party was repeatedly mentioned throughout the hearing, counsel for the 2nd defendant never made any efforts to ensure participation of the third party.

15. The issue of the liability of the third party resurfaced only at the submissions stage when the 2nd defendant addressed it, submitting that since the third party had failed to respond to the third party notice judgment “can” be entered against it in default. With respect that is not the point at which judgment ought to have been requested by the 2nd defendant against the third party. The normal procedure against a party who failed to respond to a suit against it is the lodging of an application for judgment in default of appearance and defence whereupon the court, through the Deputy Registrar who is the custodian of the court records in a station confirms that no response has been filed and proceeds to take the appropriate action, such as entering judgment for a liquidated claim or having the matter set down for formal proof, none of which occurred in the present case. Order 1 Rule 17 provides as follows:

“Default of appearance by third party [Order 1, rule 17.]

If a person not a party to the suit who is served as mentioned in rule 15 (hereinafter called the “third party”) desires to dispute the plaintiff’s claim in the suit as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the suit on or before the day specified in the notice; and in default of his so doing he shall be deemed to admit the validity of the decree obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice:

Provided that a person so served and failing to enter an appearance within the period fixed in the notice may apply to the Court for leave to enter an appearance, and for good cause such leave may be given upon such terms, if any, as the court shall think fit.”

16. The third party can only be deemed to be in default once service is proved and not before.
17. Order 1, rule 21 provides as follows:

“Judgment after trial against third party in default [Order 1, rule 21.]

- (1) Where a third party makes default in entering an appearance in the suit, and the suit is tried and results in favour of the plaintiff, the court may either at or after the trial enter such judgment as the nature of the suit may require for the defendant giving notice against the third party:

Provided that execution thereof shall not be issued without leave of the court, until after satisfaction by such defendant of the decree against him.

- (2) If the suit is finally decided in the plaintiff’s favour, otherwise than by trial, the court may, upon application ex parte supported by affidavit, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the decree obtained by the plaintiff against him.”



18. The court was not moved by any of the parties to enter judgment against the third party under Order 1 rule 21 save in the submissions of the 2nd defendant. The 2nd defendant rightly asserts that the case against the third party is a case only between him and the third party and the plaintiff has no claim against the third party. That may be correct, and the two claims ought to have been tried contemporaneously. However, the 2nd defendant is solely to blame for the absence of proof of service upon and also the consequential total lack of involvement of the third party herein in the proceedings. The third party having not appeared, this court can not presume at the mere verbal assertions from the bar by the 2nd defendant's counsel that the third party was served at all or sufficiently so as to enable him participate in the proceedings. I can not therefore accept the submission of the 2nd defendant that the 3rd party is liable to satisfy any judgment that may be entered against the 2nd defendant simply because he never responded to the suit whereas there is no evidence that he was by means of service under Order 1 Rule 15(2) called upon to so respond. In addition, the 2nd defendant having failed to pursue his claim against the third party as required by law, I find that it would be not only onerous but also erroneous to subject every party who participated in the proceedings in this matter again to the arena of hearing simply for the sake of including the participation of the third party whereas they were not at fault and that claim is foreign to their case. No doubt the court on some occasions noted that the third party ought to be served, but where the 2nd defendant who joined the third party had legal representation, then the court was under no obligation to advise the parties on what to do before the hearing.
19. Under Article 50 of the *Constitution* every person has the right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or other independent and impartial body or tribunal. Black as he may have been painted in the application and notice, this court would not be acting fairly in respect of the third party if it proceeded to make orders of indemnity and compensation against him where no proof has been provided that he was served. Consequently, his case must be treated as one that has not been prosecuted, and I hereby dismiss the 2nd defendant's claim against him with no order as to costs for non-compliance twofold: with court orders and with the *Civil procedure rules* relating to service of the Third Party Notice.

b. Was the 1st defendant negligent in its dealings with the suit title?

20. There is no dispute regarding the issue and indeed an admission was made by the defendant in the pleadings and in its evidence that the deceased was a member of the 1st defendant and that she was entitled to the suit land. It was also admitted that the 1st defendant had in its records the details of the next of kin of the deceased yet DW1 who dealt the matter on its behalf never relied on those records to ascertain whether Nancy, who requested to be issued with the title on behalf of the deceased was indeed the next of kin. The 1st defendant's agent, DW1 merely believed what Nancy stated and proffered her advice as to the documentation she was to bring to achieve her ends and in that regard the 1st defendant aided Nancy in the illegal obtainance of the title.
21. The plaintiff proved that he had surrendered the original identity card of the deceased to the relevant Government office upon her demise and evidence of that action was the uncontroverted letter of 20/1/2003 from the District Civil Registrar Trans Nzoia. Evidence showed that the details on the deceased's genuine identity card, for example, the date of birth and the card number, differed from those on the identity card presented by the person who collected the title deed.
22. A title document is a vital document and should not be released to anyone other than the proprietor of the land it refers to. This is more so when the number of cases of fraud in the public domain has drastically increased. The 1st defendant can not be deemed not to have known these facts and adjusted



itself accordingly by training its employees to act in the proper manner when faced with the situation that DW1 encountered when Nancy sought release of title to her.

23. In its defence the 1st defendant has admitted that it fell prey to misrepresentation by, and thus released the deceased's title deed to, a criminal but it never sought to join the said impostor in these proceedings, leaving the observer wondering if the impostor or the 1st defendant's agents carried out a scheme to defraud the deceased of her land. The plaintiff also brought up evidence to the effect that some of the details on the identity card that was produced by the impostor differed from those in the copy of the genuine identity card of the deceased held by the 1st defendant in its records. Further, DW1 never required the impostor to provide proof that the deceased was sick as she had alleged.
24. In this court's view, the 1st defendant's agents could have by extra diligence have averted the release of the deceased's title into the wrong hands and the illegal transfer of the title to the 2nd defendant may not have occurred. On those grounds I find that the 1st defendant's agents were negligent in releasing the title to an impostor and that the 1st defendant must bear vicarious liability on their behalf.
25. The plaintiff has claimed damages against the 1st defendant. It is the correct position that the acts and omissions of the 1st defendant landed the title deed for the suit land in the hands of a fraudster whose further actions led to the denial of the plaintiff of the right to peaceful possession and quiet enjoyment of his property. The plaintiff has been kept out of his property for a period of more than 10 years as this suit was pending. I find that the 1st defendant ought to be penalized for the acts of its agents. It has been made clear that some of its agents are already facing criminal charges in court in Nakuru Chief Magistrate's Court Criminal Case No 445 of 2015 in connection with the release of the title document. However, no evidence was led as to damages by the plaintiff and this court, having noted that there was some loss, can only award the plaintiff a token in form of damages. Consequently, I award the plaintiff the sum of Kshs. 200,000/= (Kenya Shillings Two Hundred Thousands only) against the 1st defendant as damages for negligence that led to the release of the title to the wrong person with the consequential inconvenience.

c. Was the transfer of the suit land to the 2nd defendant fraudulent and should the suit land be transferred back to the plaintiff?

26. Fraud has been specifically pleaded by the plaintiff against the 2nd defendant but has it been proved?

27. Fraud is defined as follows in *The Black's Law dictionary*:

“A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.”

28. At this juncture, it is evident that the conduct of Peter Kariuki was fraudulent. He never showed the 2nd defendant any transfer form executed in his favour by Leah. He also somehow caused transfer of the suit land while it was not registered to his name to the 2nd defendant only for the administrator of the estate of the real owner to surface later and demand the land back from the transferee.
29. It has been pleaded by the plaintiff that the 2nd defendant knew that the suit land belonged to the deceased and that the same was transferred to the 2nd defendant without her authority and without regard for the caution or restriction that had been registered against the title. Further it was stated that the clearance from the Municipal Council of Nakuru was not sought or obtained.
30. The evidence of DW2 was that they conducted a search dated 3/7/2012 at the land registry and found that the suit land belonged to the deceased though it was being sold to them by a different person. The



2nd defendant never produced any copy of transfer executed by the deceased in favour of Peter Kariuki to show that there was a transfer of interest, though unregistered, to the said Peter. In this regard the 2nd defendant is to be apportioned a great proportion of blame for failing to obtain such a document and also for failing to endeavour to contact the deceased to ascertain if she had indeed sold the suit land to one Peter Kariuki Wachira who was purporting to have purchased it as per the agreement dated 13/3/2012. By keeping silent after knowing that the land was registered in the name of the deceased, and allowing the same to be transferred to his name, the 2nd defendant passively participated in the fraud. The 2nd defendant also with knowledge that the land was registered in Leah's name, also allowed the alleged seller, Peter to handle the transfer of title on his behalf and this gave him an opportunity to conceal the criminal manner in which he was dealing with the title. The 2nd defendant never witnessed Leah executing the transfer, nor verified that she was the person who did so. This can not be said to be exercise of sufficient due diligence. The 2nd defendant should have insisted on dealing directly with, or being introduced to, the registered owner whom he had found upon a search to be the deceased which he never did as a consequence of which he was deceived by someone who had nil right and interest in the land. He can not thus be taken to be a bona fide purchaser for value without notice. In the circumstances outlined in the foregoing analysis, and in the absence of any clear evidence that Peter Kariuki existed, there is no evidence that he transferred the suit land to the 2nd defendant. The onus of bringing Peter Kariuki to court lay squarely upon the 2nd defendant and he miserably failed to do so and he can not state simply that he was deceived. The plaintiff has proved his claim of fraud against the 2nd defendant. In this court's view the 2nd defendant was party to the scheme to defraud the deceased of her land.

31. The question now arises as to whether the title in the 2nd defendant's name ought to be cancelled and reverted back to the deceased's name. Section 26 of the [land registration act](#) provides that the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. In the present case I have found that the title was obtained by way of fraud to which the 2nd defendant was a party and the title is therefore not capable of being defended but it must be cancelled and the estate of the deceased be declared the rightful owner of the suit land.

d. Who ought to bear costs of these proceedings?

32. The acts and omissions of the 1st and 2nd defendants cumulatively occasioned the eventual fraudulent transfer of the suit land to the 2nd defendant. The plaintiff is innocent of any wrongdoing in the matter. The proceedings against the third party have been dismissed. However, it is noteworthy that the chain of events leading to this claim commenced with the irregular release of title to an impostor by the 1st defendant's agents and that the 1st defendant never joined the impostor to these proceedings. Besides, the employees of the 1st defendant have been arraigned in court as suspects though the criminal case against them has not been concluded yet. Had the release of title not happened it is possible that the administrators of the deceased's estate may have collected the title and this claim would not have arisen. Much as the 2nd defendant may be blamed for his omissions, lack of due diligence and passive involvement in the fraud, this court is of the view that evidence on record shows that they were faced with a dire need arising out of a medical condition and they were, while in the throes of that need, tempted by a conman with a sweet deal which they could not resist hence their passivity to an otherwise



dissatisfactory sale proposition by a non-owner. Consequently, they must be spared further agony and the costs of the present proceedings must be borne by the 1st only.

33. The upshot of the foregoing is that the plaintiff has proved his claims against the 1st and the 2nd defendant and I hereby enter judgment in his favour and I issue the following final orders:
- a. A declaration is hereby issued declaring that the plaintiff (as administrator of the estate of Leah Wanjiku Kanyi) is the lawful proprietor of LR No Nakuru Municipality Block 22/861 (Muguga).
 - b. The registration of and title to LR No Nakuru Municipality Block 22/861 (Muguga) in the name of Nephath Kamau Mwangi is hereby cancelled.
 - c. The Land Registrar Nakuru shall upon effecting the cancellation of the title and entries in the register in favour of Nephath Kamau Mwangi register the plaintiff Joseph Kanyi Kihunyu (as administrator of the estate of Leah Wanjiku Kanyi) as the proprietor of the suit land and issue him with a title deed.
 - d. The 1st defendant shall pay to the plaintiff the sum of Kshs 200,000/= (Kenya Shillings Two Hundred Thousands only) as damages for negligence that led to the release of the suit title to the wrong person with the consequential inconvenience to the plaintiff.
 - e. The costs of the present suit shall be borne by the 1st defendant alone.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 22ND DAY OF SEPTEMBER, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

