



REPUBLIC OF KENYA



**Gakuu & another (Both Suing as the Registered Trustees of Mbari Ya Kungu) v Macharia & 5 others (Environment and Land Appeal E027 of 2022) [2023] KEELC 21628 (KLR) (15 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21628 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E027 OF 2022**

**JG KEMEI, J  
NOVEMBER 15, 2023**

**BETWEEN**

**PATRICK KARANJA GAKUU ..... 1<sup>ST</sup> APPELLANT  
SAMSON MWANGI NJOROGE ..... 2<sup>ND</sup> APPELLANT  
BOTH SUING AS THE REGISTERED TRUSTEES OF MBARI YA KUNGU**

**AND**

**JOYCE WANJIRU MACHARIA ..... 1<sup>ST</sup> RESPONDENT  
PETER MATHU ..... 2<sup>ND</sup> RESPONDENT  
LAND REGISTRAR, RUIRU ..... 3<sup>RD</sup> RESPONDENT  
HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT  
ANNEFA LIMITED ..... 5<sup>TH</sup> RESPONDENT  
JOSTEPA INVESTMENTS CO. LIMITED ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**The Case Of The Parties In The Trial Court**

1. The appeal arises from the decree and Judgement of the Learned Hon J A Agonda, PM in CMELC NO 27 OF 2020 – Ruiru delivered on the 3/3/2022.
2. The Appellants in the appeal were the Plaintiffs and the Respondents were the Defendants in the trial Court.
3. The background of the dispute is that vide an amended plaint dated the 19/7/2021 the Plaintiffs filed suit against the Defendants and sought the following orders;



- a. A declaration be and is hereby issued that the Plaintiffs are the bonafide owners of land parcel No. Ruiru/Kiu Block 2 (Githunguri) 1206 to the exclusion of anybody else.
  - b. A permanent injunction be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents, servants and or employees from entering, trespassing, constructing, subdividing, selling, charging, fencing and or interfering in whatever manner with land parcel No. Ruiru/Kiu Block 2 (Githunguri)/1206.
  - c. A mandatory injunction be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants directing them to remove the fence they put up on land parcel No. Ruiru/Kiu Block 2/Githunguri/1206 within 30 days of this Judgment and in default the Plaintiffs be at liberty to remove the same but the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to bear the cost thereof.
  - d. The 3<sup>rd</sup> and 4<sup>th</sup> Defendant be and are hereby ordered to cancel any land register and or title deed purporting that the 1<sup>st</sup> and or the 2<sup>nd</sup> Defendant (s) are registered proprietor of land parcel No. Ruiru/Kiu Block 2 Githunguri/1206 and maintain land register for land parcel No. Ruiru/Kiu Block 2 Githunguri/1206 in the name of the Plaintiffs as registered trustees of Mbari Ya Kungu.
  - e. A declaration that the subdivision of the land parcel No. Ruiru Kiu Block 2(Githunguri) 1206 into resultant subplots No. 12415, 22416, 22417, 22418, 22419, 22420, 22421, 22422, 22423, 22424, 22425, 22426, 22427, 22428 and 22429 and transfers to Annefa Limited and Jostepa Investment Company Limited is null and void.
  - f. The 3<sup>rd</sup> Defendant, Land Registrar, Ruiru be and is hereby ordered to cancel title deeds and land registers of resultant subplots of land parcel No. Ruiru Kiu Block 2(Githunguri) 1206 being Ruiru Kiu Block 2 (Githunguri) 22415, 22416, 22417, 22418, 22419, 22420, 22421, 22422, 22423, 22424, 22425, 22426, 22427, 22428 and 22429 forthwith.
  - g. Costs and interest of the suit.
4. The Plaintiffs averred that they purchased the suit land on 8/3/1997 from Ruth Wachuka and became registered as owners on the 29/7/97 and immediately took possession and retained the services of a neighbour namely Francis Njenga Kamau to care for the plot.
  5. Vide two routine title searches carried out on the 8/7/12 and 1/9/17, the Plaintiffs ownership of the suit land was confirmed by the 3<sup>rd</sup> Defendant, the Land Registrar. However, at the end of September 2017 their caretaker informed them that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had trespassed onto the land and erected a barbed wired fence, a situation that was confirmed by the Plaintiffs through a physical visit to the plot. They immediately reported the trespass to the local Chief who summoned all the parties to present their documents of ownership. The Plaintiffs did avail the title and official searches while the 1<sup>st</sup> and 2<sup>nd</sup> Defendants produced a Share Certificate with no title whatsoever.
  6. That the Chief requested for current searches but the 3<sup>rd</sup> Defendant informed them that there was double registration of the suit land in the names of the Plaintiffs and the 1<sup>st</sup> Defendant.
  7. That later the Land Registrar summoned the parties to various meetings but the same failed to materialize on account of the absence of the Land Registrar on a number of occasions.
  8. Particulars of fraud against the Defendants was pleaded under para 18 of the Plaint.
  9. The 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants filed their amended Statement of Defence dated the 17/3/2021 in which they denied the claim of the Plaintiffs. The 1<sup>st</sup> Defendant stated that she purchased the suit land



from one John Maina Mburu, a shareholder of Githunguri Constituency Ranching Company Limited (GCRCL). She denied that the Plaintiffs occupied the suit land and stated that she purchased vacant land in 2011. She admitted fencing the suit land as an absolute owner of the property and further that she has subdivided the suit land into several plots.

10. In their counterclaim the 1<sup>st</sup> Defendant reiterated the contents in the Statement of Defence and pleaded fraud against the Plaintiffs under para 22 and further sought the following orders against the Plaintiffs;
  - a. That the Plaintiffs title or entries or Green Card over land parcel Ruiru Kiu Block 2 (Githunguri) 1206 be annulled or cancelled forthwith.
  - b. A declaration be issued by this Honourable Court decreeing that the 1<sup>st</sup> Defendant registration over the Ruiru Kiu Block 2 (Githunguri) 1206 now subdivided to Ruiru Kiu Block 2 (Githunguri) 22416 TO 22429 be declared as legit, lawful and authentic.
  - c. That a permanent injunction be issued as against the Plaintiffs by themselves, agents, assigns, representatives, family, friends or anybody else seeking / claiming through them from trespass of any nature, selling, disposing, stepping foot on land parcel Ruiru Kiu Block 2 (Githunguri)1206 now subdivided to Ruiru Kiu Block 2 (Githunguri)22416 to 22429.
  - d. That the Plaintiffs be compelled to pay the costs of this counter-claim and the Plaintiffs suit be dismissed with costs.
11. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants pleaded lack of privity of contract between the Plaintiffs and third parties they purported to have acquired the suit land from. That according to the land records in its custody, the only Green Card available shows the 1<sup>st</sup> Defendant as the proprietor of the suit land. They denied fraud and urged the Court to dismiss the case of the Plaintiffs for lacing in merits.
12. After considering the pleadings, the evidence and the parties' submissions the trial Court determined that the 1<sup>st</sup> Defendant had proved her case on a balance of probabilities and entered Judgement as follows; -
  - a. A declaration that the 1<sup>st</sup> Defendant is the lawful proprietor of all that parcel of land known as L.R. No. Ruiru/Kiu Block 2(Githunguri)1206.
  - b. A permanent injunction restraining the Plaintiffs by themselves, their servants, agents or otherwise howsoever from trespassing, disposing, selling, constructing of in any other manner whatsoever interfering with the 1<sup>st</sup> Defendant's quiet possession of all that parcel of land known as L.R. No. Ruiru/Kiu Block 2 (Githunguri)/1206.
  - c. An order for the Land Registrar to reconstruct and or restore the original register for L.R. No. Ruiru/Kiu Block 2 (Githunguri)/1206 and the 1<sup>st</sup> Defendant be registered as bona fide and legitimate owner.
  - d. An order for cancellation of suit land L.R. No. Ruiru/Kiu Block 2 (Githunguri)/1206 registered in the name of the 1<sup>st</sup> Plaintiff is declared null and void.
  - e. The 1<sup>st</sup> Defendant's counterclaim succeeds and the costs of the counterclaim be paid by 1<sup>st</sup> Plaintiff.
13. The Appellants were aggrieved by the aforestated Judgement and filed the present appeal on the grounds set out as follows;
  - a. That the Learned Magistrate erred in Law and in fact by dismissing the Plaintiff/Appellants claim to the parcel of land known as L.R. No. Ruiru/Kiu Block 2 (Githunguri) 1206 with



costs to the 1<sup>st</sup> Defendant as against the weight of the evidence on record, and in particular, that the Appellants became the registered owners of the suit land on the 29<sup>th</sup> day of July, 1997 whilst the 1<sup>st</sup> Defendant/Respondent purportedly became the registered owner on the 18<sup>th</sup> day of September, 2018 upon replacement of the original Green Card, which had allegedly been misplaced and or lost.

- b. That the Learned Magistrate erred in law and in fact by making an erroneous finding, and contrary to the evidence on record, that the 1<sup>st</sup> Plaintiff purchased the parcel of land known as L.R. No. Ruiru/Kiu Block 2 (Githunguri) 1206 from Githunguri Constituency Ranching Co. Ltd, and he hence required to have a Clearance Certificate and a letter from Githunguri Constituency Ranching Co. Ltd so as to effect the transfer and obtain a Title Deed in his favour, ignoring the evidence that the Plaintiff/Appellants purchased the parcel of land already with a Title Deed from Ruth Wachuka Kang'ethe, the registered owner at the time.
- c. That the Learned Magistrate erred in Law and in fact by making a finding that the Title documents issued to Ruth Wachuka Kang'ethe on the 2<sup>nd</sup> day of December, 1996 and subsequently transferred to the Plaintiff/Appellants on the 29<sup>th</sup> day of July, 1997 was suspicious, and that the title acquired by the Plaintiff/Appellants was fraudulent, null and void, completely ignoring the evidence on record, to the effect that the Title Deed issued to Ruth Wachuka Kang'ethe on the 2<sup>nd</sup> day of December, 1996 was processed and released to her by Githunguri Constituency Ranching Co. Ltd, and which evidence was unchallenged at the hearing.
- d. That the Learned Magistrate erred in Law and in fact by failing to consider the evidence adduced by Ruth Wachuka Kang'ethe to the effect that upon receipt of her Title Deed in respect to L.R. No. Ruiru/Kiu Block 2 (Githunguri)1206 from Githunguri Constituency Ranching Co. Ltd, she in return surrendered the Original Ballot No. 3376 and Share Certificate to its Directors, though she never made copies of the same.
- e. That the Learned Magistrate erred in Law and in fact by failing to find that the 1<sup>st</sup> Defendant/Respondent, in connivance with John Maina Mburu, the Chairman of Githunguri Constituency Ranching Co. Ltd, and the person who purportedly sold the suit land to her, manufactured, tempered with and generated fraudulent documents, with a view to depriving the Plaintiff/Appellants of their legitimate ownership to the suit land herein.
- f. That the Learned Magistrate erred in Law and in fact by making a finding that John Maina Mburu, the Chairman of Githunguri Constituency Ranching Co. Ltd, and the person who purportedly sold the suit land to the 1<sup>st</sup> Defendant/Respondent allegedly purchased the same from the family of Wahu Kariuki, contrary to the testimony and witness stamen of the said John Main Mburu, who claimed to have acquired it from the son of Wahu Ngige, and hence arrived at a decision that was contrary and unsupported by the said testimony and witness statement.
- g. That the Learned Magistrate erred in Law and in fact by failing to find that the Land Registrar usurped the powers of the Court, by purporting to cancel and or alter the records in the Green Card in respect to the parcel of land known as L.R No. Ruiru/Kiu Block 2 (Githunguri)1206, and in particular, the register opened on the 2<sup>nd</sup> day of December, 1996 in favour of Ruth Wachuka Kang'ethe, the transfer to the Plaintiff/Appellants on the 29<sup>th</sup> day of July, 1997 the search documents and the correspondence from the Land Registrar, Thika produced in evidence during the hearing of the suit.



- h. That the Learned Magistrate erred in Law and in fact by failing to find that the purported Green Card opened by the Land Registrar on the 18<sup>th</sup> day of September, 2018 was illegally, irregularly and unlawfully generated, having failed to capture and consider the existing entries in the title documents and searches in possession of the Plaintiff/Appellants, taking into consideration that the said Green Card was replacing a missing and misplaced Green Card.
  - i. That the Learned Magistrate erred in Law and in fact by ordering the Land Registrar to reconstruct and or restore the original register for L.R. No. Ruiru/Kiu Block 2 (Githunguri) 1206 and register the 1<sup>st</sup> Defendant/Respondent as the bona fide and legitimate owner of the suit land as against the weight of the evidence on record.
  - j. That the Learned Magistrate erred in Law and in fact by failing to take into consideration the entire evidence adduced in Court together with the Appellant's submissions thereof, and she hence arrived at an erroneous decision.
  - k. That the Learned Magistrate erred in Law and in fact by failing to find that the Respondent's evidence was contradicting and inconsistent, and hence incapable of giving rise to the Judgment entered by the Court thereof.
  - l. That the Learned Magistrate erred in Law and in fact by dismissing the Plaintiff/Appellants claim with costs and entering Judgment in favour of the 1<sup>st</sup> Defendant/Respondent as against the weight of the evidence on record.
14. Consequently, the Appellants sought the following orders on appeal;
- a. That the Appeal herein be allowed, the Judgment and Decree of the Court made on the 3<sup>rd</sup> day of March, 2022 be set aside and replaced and or substituted with Judgment in favour of the Plaintiff/Appellants as prayed in the Amended Plaint and a dismissal of the Counter Claim with costs thereof.
  - b. That cost of the proceedings both in the lower Court and in this appeal be awarded to the Appellants.

### **Directions On Written Submissions And Highlighting**

15. On the 31/10/22 the parties elected to prosecute the appeal by way of written submissions. On the 24/5/2023 directions with respect to the highlighting the said submissions were taken. However, on the 25/9/23 it is only the Learned Counsel for the Appellants who highlighted the submissions, in the absence of the Respondents' Counsels. The Court has considered the said highlights.

### **The Written Submissions**

16. Mr Mwangi, the Learned Counsel for the Appellants gave a detailed history of the dispute. With respect to grounds 1, 2, 3 & 4 the Appellants submitted that in 1997 they purchased the suit land from Ruth Wachuka Kangethe (Ruth) who acquired it from her late husband in 1996. That ballot No 3376 was allotted to her father in law namely Gichuki Kiriiri from Githunguri Constituency Ranching Co. Ltd (hereinafter GCRL). That her title was processed by GCRL where she collected it from. That the Chairman of GCRL confirmed that he processed the titles for the members. That the Land Registrar confirmed in evidence that the title is prepared based on the documents submitted by the GRCL on behalf of its members.
17. That they took possession of the land and subsequently the searches carried out showed them as owners of the land.



18. It was submitted that the Land Registrar unlawfully, illegally and fraudulently opened a new register in the name of the 1<sup>st</sup> Defendant effectively cancelling the title of the Appellants without following the law. That the purported reconstruction of the register was done in exclusion of the Appellants, the then registered owners of the suit land.
19. The Appellants submitted that the Land Registrar does not have power to cancel a title in the name of reconstruction of the register. That the reconstruction of a register is to replace lost or missing entries in the register and not substitute the said entries. That it is through the alleged substitution that the 1<sup>st</sup> Defendant became registered owner of the land.
20. With respect to grounds 5 and 6, the Appellants submitted that it is not clear who John Maina Mburu purchased the suit land from; is it Wahu Ngigi, Wahu Kariuki or Peter Kamau Kurera. That the question whether Wahu Ngigi and Wahu Kariuki are one and the same person was not answered. That no evidence was led to show that the said Peter Kurera is indeed the son of Wahu Ngigi and whether he was ever a member of the GCRL. In their submissions they wondered whether Peter Kurera had any rights capable of being conveyed to John Mburu Maina? It was further submitted that the said John Maina Mburu being an interested party generated the documents by way of fraud and therefore the Court erred in holding them as genuine.
21. On grounds 8, 9 & 10, the Appellants stated that the Land Registrar is not clothed with any powers under Sections 14, 33 79 and 80 [Land Registration Act](#) to cancel a title. That the powers are the preserve of the Court and not the Land Registrar.
22. With respect to grounds 11, 12, & 13, the Appellants submitted that they are bonafide purchasers for value without notice. That no evidence has been laid to link them to any fraud. See the case of *Katende v Harindar & Co Limited* (2008) 2 E.A 173. That the Court ordered the cancellation of the Appellants title without any evidence of fraud having been proven by the Respondents.
23. It was further submitted that the Appellants have occupied the land for over a period of 12 years and therefore the Respondents are barred by the Section 7 of the [Law of Actions Act](#) Cap 22 Laws of Kenya from recovering the suit land.
24. As to who between Ruth and Wahu Ngigi held a ballot, Share Certificate and receipts with respect to ballot No 3376, the 1<sup>st</sup> 2<sup>nd</sup> 5<sup>th</sup> and 6<sup>th</sup> Respondents submitted that the latter held the documents to proof the root of title while on the other hand Ruth did not. That it was incumbent for the Appellants to proof the root of their title by tendering evidence in support. The cases of *James Njoroge Gitau v Lucy Chepkurui Kimutai* (2028) ECLR and *Esther Ndegi Njiru v. Leonard Gatei* (2014) eCLR were relied on in support of the submissions.
25. Relying on the case of *Hubert L Martin & 2 Others v. Margaret J Kamar & 5 Others* (2016) eCLR, the Respondents submitted that there are two titles one held by the Appellant and the other by the 1<sup>st</sup> Respondent. That it is for the Appellants to place evidence before the Court in support of the root of the title held by Ruth and how she acquired the same. That Ruth was not a member of the allotting Company and therefore cannot be said to have acquired a valid title.
26. The Respondents submitted that the appeal is incompetent on account that Order 9 rule 9 of the [Civil Procedure Rules](#) allows a party to seek leave or file consent to change advocates was not complied with.
27. On the question of innocent purchaser for value, the Respondents stated that the Appellants are not innocent because of the gaps in the manner in which they acquired title from a person who had no interest in the land and further that they used manufactured documents in their acquisition of the said title.



28. It was further submitted that the Land Registrar has power under Section 79 of the [Land Registration Act](#) to cancel the title of the Appellants as it was acquired fraudulently.
29. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents failed to file written submissions.

### **Analysis And Determination**

30. This being a first Appeal, it is the duty of this Court to review the evidence adduced before the lower Court and satisfy itself that the decision was well-founded. In *Selle & Another v. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated as thus:

“...this Court is not bound necessarily to accept the findings of fact by the Court below. An Appeal to this Court .... is by way of retrial and the principles upon which this Court acts in such an Appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect....”

31. Having considered the grounds of appeal, the written submissions and the totality of the trial file together with all the material placed before the Court, it is the view of this Court that the following issues fall for determination;
  - a. Whether the title of the 1<sup>st</sup> Defendant was issued lawfully
  - b. Who between the Appellants and the 1<sup>st</sup> 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents hold a better title to the suit land?
  - c. Who shall meet the costs of the appeal
32. It is not in dispute that the Appellants became registered as owners of the suit land on the 29/7/97. Their claim is that they purchased the suit land from Ruth Wachuka Kangethe (Ruth) who held a title issued on the 2/12/96.
33. It is also not in dispute that the 1<sup>st</sup> Respondent holds a title registered on the 18/9/17. It is also commonly acknowledged and claimed by the parties that the two sets of titles trace their origins to GCRL, a land buying Company that purchased a huge parcel of land in Ruiru area for purposes of selling to its members.
34. The suit land is Ruiru Kiu Block2 (Githunguri) 1206 measuring 0.500 Ha on Registry Index Map (RIM) 3. It is also not in dispute that in 2019 the 1<sup>st</sup> Respondent subdivided the suit land into 12 parcels being Nos. 22416 - 22429 (suit parcels), some of which are registered in the name of the 1<sup>st</sup> Respondent and others in the name of the 5<sup>th</sup> and 6<sup>th</sup> Respondents.
35. This is a case of double registration of one parcel of land in the names of multiple holders. The Court is being called upon to determine who of the parties have a good title that can pass muster of the law and should be upheld. The Court in [Hubert L Martin & 2 Others v. Margaret J Kamar & 5 Others](#) (2016) eKLR when faced with almost similar facts had this to say;

“A Court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The



parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. .... Every party must show that their title has a good foundation and passed properly to the current title holder.”

36. The Appellants led evidence that they purchased the suit land in 1997 from Ruth Wachuka Kangethe. I have seen an agreement of sale dated the 8/3/99 and an acknowledgement of the purchase price by the said Ruth Wachuka dated the 11/3/97 and 27/3/97. A copy of title issued to Ruth Wachuka on the 2/12/96 was adduced.
37. PW1 - Patrick Karanja Gakuu led evidence that he and his co-Appellant conducted a search which revealed that Ruth Wachuka was the registered owner of the suit land. That they executed the transfer and obtained land control board consent although they did not present them in Court. A copy of the payment receipt was however adduced in evidence. The witness was categorical that since the seller held a title there was no necessity to carry out a search at the GCRL. That upon purchase they took possession and placed it under the care of Njenga, a neighbour to keep watch. That in 2017 the said caretaker informed them that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had encroached onto the land and erected a fence. A report to the Chief did not bear fruit leading to the filing of the suit in 2018. The Chief inquired of the title documents from the parties whereupon it was found that the 1<sup>st</sup> Defendant had not title but only documents from the GCRL while the Plaintiff held a title. That they have been in possession of the land for over 20 years.
38. PW2 – Ruth Wachuka Kangethe led evidence that the suit land was balloted by her father in law Gachuki Kirriri, deceased, in GCRL and before he passed away he transferred the shares (ballot 3376) to his son Benson Njoroge Gachuki who died in 1992. That the shares of her late husband were transferred to her whereupon she paid the transfer fees to GCRL who processed the title and thereafter she collected it from the Company (Waira Kamau, the then Chairman) and surrendered the original Share Certificate and the ballot to the company. That she sold the land to the Plaintiffs in 1997 and handed over possession.
39. DW1 – Joyce Wanjiru Macharia led evidence and stated that she purchased the land from John Maina Mburu in 2011 and took possession thereof. That prior to the purchase she carried out due diligence at the GCRL and confirmed that he was the owner of the ballot/shares having been registered in the members register at GCRL. That the property was transferred to her on the 16/5/2014 by the Company and later obtained clearance on the 31/10/2014 and became registered as owner on the 18/9/18 and issued with a title deed. That the land was vacant when she purchased it. That upon fencing the land in 2017 the Plaintiffs raised an ownership claim on the land and on being summoned by the area Chief, she realised that the Plaintiffs held a title while she had all the documents from GCRL to proof the ownership of her title.
40. In further evidence she informed the Court that she was handed over the title documents from the GCRL by Mr Mburu namely receipts from the original owner, Share Certificates clearance certificate among other documents. That later she subdivided the land into 14 plots in 2019 while the suit was subsisting. That in 2017 the loss of the register was gazetted and that in the Gazette Notice she was stated as the owner of the land. That the Plaintiffs did not raise any objection to the said gazette notice and cannot be heard to challenge her title too late in the day.
41. DW2 - Robert Mugendi the Land Registrar – Ruiru Land Registry, stated that according to the records in his office the register was opened 18/9/2017 in the name of GCRL and thereafter registered in the name of the 1<sup>st</sup> Defendant. That the registration is based on the documents from the allocating Company, GRCL and further that the land has been subdivided into 14 plots.



42. With respect to the lost Green Card, he stated that the 1<sup>st</sup> Defendant wrote a letter as the registered owner seeking for the reconstruction of the register. He stated that prior to the gazette of the notice, the 1<sup>st</sup> Defendant did not hold a title. That she was registered for the first time in 2017 vide the gazette notice. That before the land register gazettes loss of a register, the owner of the land must swear an affidavit, obtain a letter from the local area Chief on the ground status of the land and the RIM must be presented before the land registrar.
43. DW3 – John Maina Mburu testified and stated that he is the current Chairman of GRCL since 2009. That he purchased the suit land (parcel 1206) then identified as ballot No 3376 / Share Certificate No 5460 from Peter Kamau Karera, the son of Wahu Ngigi. That Wahu Ngigi was the original allottee / holder of the Share Certificate. That Peter Kamau Karera and his family sold the land to him in 2010 and an agreement of sale was entered with the said Peter. Thereafter the transfer of the shares was effected in the records of the GCRL. Later he sold the land to the 1<sup>st</sup> Defendant who was issued with a Share Certificate in 2014. That he is aware that the suit land has been subdivided by the 1<sup>st</sup> Defendant. He stated that there is no evidence in the Company that the land was ever allotted to the Plaintiffs and or Ruth Wachuka Kangethe. On the history of the land, he stated that the subdivision of 1.25 acres was done in 1983 and balloting commenced in 1985 and therefore the plaintiff could not have balloted for the land in 1997.
44. The witness further stated that a Share Certificate of 100 shares was taken as a full share comprising of  $\frac{1}{8}$  acre residential plot,  $\frac{1}{4}$  acre suit land and 1.25 acre shamba. That balloting of the land in the Company took place in 1985. That he had the original ballot of Wahu which was issued on the 26/2/1985. He denied the Plaintiffs’ assertion that there was double allocation of the ballot. He also stated that neither the Plaintiffs or Ruth Wachuka are members of the company. He denied that Ruth left her father’s documents at the Company. He stated that he is the one who took the Joyce’s documents to the land registry for processing of the title as is the custom and the practice at the GRCL. He denied any collusion with the Land Registrar in the processing of the title in the name of the 1<sup>st</sup> Respondent.
45. I shall now deal with the 1<sup>st</sup> issue which is whether the 1<sup>st</sup> 2<sup>nd</sup> 5<sup>th</sup> and 6<sup>th</sup> Respondents hold a good title. Evidence was led by the Land Registrar that the 1<sup>st</sup> Respondent became registered as owner of the suit land pursuant to the Gazette Notice of 19/5/2017. The said Gazette notice stated as follows;

“Gazette Notice No. 4810

The *Land Registration Act*

(No. 3 of 2012)

Loss Of Land Register

Whereas Joyce Wanjiru Macharia (ID/13797076) of P.O. Box 9465-00300, Nairobi in Kenya, is registered as proprietor in absolute ownership interest of all that piece of land situate in the District of Thika, registered under title No. Ruiru/Kiu Block 2/1206, and whereas sufficient evidence has been adduced to show that the land register (Green Card) of the said piece of land is missing, and whereas all efforts made to locate the said land register (Green Card) have failed, notice is given that after the expiration of sixty (60) days from the date hereof, provided no valid objection has been received within that period, I intend to open another land register and upon such opening the said missing land register shall be deemed obsolete and of no effect.

Dated the 19<sup>th</sup> May, 2017.



B. K. Leitich

MR/3429144 Land Registrar, Thika District.”

46. Section 33 of the *Land Registration Act* which deals with reconstruction of a register provides as follows;

“Lost or destroyed certificates and registers

- (1) Where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a replacement certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease.
- (2) The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the charges that the certificate of lease has been lost or destroyed.
- (3) If the Registrar is satisfied with the evidence proving destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a replacement certificate of lease upon the expiry of sixty days from the date of publication in the gazette or circulation of such newspapers, whichever is first.
- (4) If lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation.
- (5) The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquires as may be necessary and after given notice of Sixty days in the gazette.
- (6) Upon the issue of replacement of certificate, no further dealings shall be carried out using the replaced certificate.”

47. Regulation 28 of the *Land Registration (General) Regulations, 2017* provides the procedure to be adopted by an applicant wishing to approach the Land Registrar for reconstruction of the register;

- “(1) On loss or destruction of the land register, a person claiming to be a registered proprietor may apply to the registrar for reconstruction of the register in Form LRA 14 set out in the Sixth Schedule.
- (3) Where the applicant under paragraph (1) is a natural person, the application shall be accompanied by a statutory declaration in Form LRA 16 set out in the Sixth Schedule.
  - (4) An applicant under paragraph (1) shall provide an indemnity in Form LRA 17 set out in the Sixth Schedule to the Registrar.
  - (5) Upon receipt of an application made under paragraph (1), the Registrar shall notify the loss by notice in the Gazette in Form LRA 18 set out in the Sixth Schedule.



- (6) After the expiry of the notice in paragraph (3), the Registrar shall obtain clarification on the parcel status from
  - (a) the office or authority responsible for survey;
  - (b) the office or authority responsible for land administration; and
  - (c) any other office the Registrar may deem necessary.
- (7) Upon clarification under paragraph (4) and no objection has been raised against the application made under paragraph (1), the Registrar may reconstruct the land register.”

48. According to the Land Registrar, the 1<sup>st</sup> Respondent applied for the reconstruction of the Green Card because it was lost. No evidence of such application was adduced. He further stated that the reconstruction of the Green Card was initiated by the 1<sup>st</sup> Respondent. That the 1<sup>st</sup> Respondent had not been registered as owner of the suit land.
49. Going by the above legal framework, it is the registered owner of the suit land that applies for the reconstruction of the register. In this case as at the month of May 2017 the 1<sup>st</sup> Respondent was not the owner of the suit land. Neither the 1<sup>st</sup> Respondent nor the 3<sup>rd</sup> Respondent exhibited the dully executed Form 14, 16 & 17 of the 6th Schedule. In other words, there was no application for reconstruction, statutory declaration as to the circumstances of loss of the register and indemnity by the applicant. There is no evidence that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents complied with the law with respect to the reconstruction of the register or Green Card.
50. Further the Court finds that after the expiry of the 60-day notice, the 3<sup>rd</sup> Respondent failed to obtain clarification on the parcel status from; (a) the office or authority responsible for survey; (b) the office or authority responsible for land administration; and(c) any other office the Registrar may deem necessary.
51. Had the 3<sup>rd</sup> Respondent complied with the law, it would have found out that the 1<sup>st</sup> Respondent was not the registered owner of the suit land and that the Appellants were in possession of the suit land.
52. It is the law that it is the Registrar and not the Applicant who is the custodian of the land register sought to be reconstructed. And as such the issue of indemnity is key to the 3<sup>rd</sup> Respondent. The law requires the 3<sup>rd</sup> Respondent to call for an executed indemnity from the 1<sup>st</sup> Respondent before the register is reconstructed. The purpose of the indemnity was to protect the 3<sup>rd</sup> and 4<sup>th</sup> Respondent from risks that may occur or claims from the registered land owner in the event of commissions and or omissions on the part of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents. For example, in a case where there has been any transaction altering the status of the original title. It is important that the government is indemnified against actions, proceedings, claims, demands and expenses which may be brought, levied or made against the government and/ or Lands Registry in relation to the registration of Deed of Indemnity and the Reconstruction of the Deed File, as the records relied on for purposes of the reconstruction are usually availed by the registered owner and thus the government needs to be indemnified in case of any actions that may arise due to the usage of the records furnished.
53. Another reason why the 1<sup>st</sup> Respondent was obligated in law to provide indemnity is stated in Section 81 (1) of the *Land Registration Act* which provides that subject to the provisions of this Act and of any written law relating to the limitation of actions, any person suffering damage by reason of-
  - (a) any rectification of the register under this Act; or



- (b) any error in a copy of or extract from the register or in a copy of or extract from any document or plan certified under this Act, shall be entitled to indemnity.
54. Having set out the law on indemnity and noting that the Government is obligated to indemnify any person that may suffer damage as a result of any rectification or error on the register, the 1<sup>st</sup> Respondent had a legal duty to indemnify the Government and the Lands registry through the 3<sup>rd</sup> and 4<sup>th</sup> Respondents in a case like this where the registry relied on records provided by the registered owner for reconstruction of records. In this case the 1<sup>st</sup> Respondent had no records having not been registered as an owner of the suit land to warrant the reconstruction of the title of the Appellants. If reconstruction of title was to be duly undertaken, the Appellants having been the registered owners were the lawful applicants to approach the 3<sup>rd</sup> Respondent subject to full compliance of the law on reconstruction.
55. The Court further found that the Land Registrar failed to explain to the Court the outcome of the notice in the Kenya Gazette; whether there were objections; from whom; and how they were dealt with.

### **Lost /Unavailable Green Card**

56. The Land Registrar led evidence that the Appellants title was not supported by a register or Green Card.
57. The Appellants explained that they have been carrying out searches as part of keeping vigilance with respect to their title. The last of such searches was carried out on the 1/9/2017. The search is signed by a Land Register namely J M Mbobu. The search showed that the Appellants are the registered owners of the suit land. This means that as at the 1/9/2017 the register bearing the names of the Appellants was in existence. The claim by the Land Register that the Green Card for the suit land was lost was inaccurate, incorrect and intended to mislead and misrepresent the facts of the Appellants ownership of the land. If indeed it was lost how did Register Registrar Mbobu get the details he disclosed in the search?
58. Further evidence was led that the Land Registrar summoned the Appellants and the 1<sup>st</sup> Respondent on the 12/10/2017 to appear before him on 20/12/17 and bring title documents in respect of the suit land for purposes of rectification of the respective registers. Evidence was led that the Land Registrar did not avail himself for the meeting despite calling for it. The import of the letter is that there are now two registers existing over the suit land; one in the names of the Appellants and the 1<sup>st</sup> Respondent. It is therefore incorrect for the Land Registrar to state in Court that there was no register for the Appellants title.
59. In addition, the letter dated the 24/2/17 addressed to the Chief by the Land Registrar is curiously copied to the 1<sup>st</sup> Respondent. One wonders how the Land Registrar knew that the 1<sup>st</sup> Respondent had an interest in the suit land. The letter informs the Chief that he (Land Registrar) shall be visiting the land on the 30/3/2017 for purposes of reconstructing the edition of the register. Nothing is said whether this visit took place or not. The letter is not copied to the Appellants yet the Land Registrar had records with respect to their ownership of the title hence the search dated the 1/9/2017. For argument sake, even if it is taken that the 1<sup>st</sup> Respondent had in her possession the documents from GCRL, she was yet to be registered as the owner of the land.
60. It is common ground that both parties heeded the summons of the area Chief in 2017 to produce their ownership documents. The 1<sup>st</sup> Respondent then did not have any title save for the documents from the GRCL. This evidence corroborates the Land Registrar's position that there was no prior creation or opening of a register in favour of the 1<sup>st</sup> Respondent.



## Meaning Of Reconstruction Of A Register/green Card

61. Reconstruction of the register means to replace the entries as they were with the names of the owners as at the time the register was lost or damaged. In this case the Land Registrar substituted the Appellants with the name of 1st Respondent thus cancelling the title of the Appellants.
62. The Respondents have argued that the Land Registrar had power to open the register in favour of the 1<sup>st</sup> Respondent in line with Sections 79 of the [Land Registration Act](#) which states as follows;

“79 Rectification by Registrar

- (1) The Registrar may rectify the register or any instrument presented for registration in the following cases—
- a) in formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;
  - b) in any case and at any time with the consent of all affected parties; or
  - c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;
  - d) for purposes of updating the register;
  - e) for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.
- (2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor’s consent unless—
- a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or
  - b) it would for any other reason be unjust for the alteration not to be made,

Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.”

63. The actions of the 3<sup>rd</sup> Respondent when matched with the law as set out above are not legal so much so that there was no error on the face of the record, no consent of the parties but bordered on illegalities that must be sanctioned by the law.
64. The duties of the Land Registrar as set out above continue to be a topic of discussion by our Courts. In the case of [Lucy Wanjiku Mwangi \(Suing as the legal representative of the estate of Benson Mwangi Macharia\) v. Chief Land Registrar & 2 Others](#) [2022] eKLR the Court stated;

“... I must state that it is the duty of the Registrar to retain each and every document used in registration of transactions to land as scrupulously as possible in the event questions arise later regarding that transaction, in which case the same can be scrutinised for their



genuineness or otherwise. A Registrar who provides no supporting documents to a transfer transaction is exposing himself to sanctions including indemnity at the instance of an aggrieved claimant. The reason for this position is that if the names of the fraudsters were entered into the register without any supporting documents the Land Registrar would be utterly at fault, whereas his culpability would be open to debate if he presented supporting documents and demonstrated that he believed them to be genuine at the time of registration.”

65. In the case of *Elias Joseph Waburi Wamunyu v. Joseph Mwangi Njoroge* [2017] eKLR – the Court while discussing the conduct of the land registrars stated as follows;

“... However, it will be observed that I have unearthed a lot of things touching on the titles issued in this case. I rebuke in the strongest terms possible, the conduct of the land surveyors and land registrars who held fort in Nyandarua District when the plaintiff’s title was prepared and the RIM was amended to accommodate the plaintiff. I need to emphasize that land officers hold a position of trust. Title abstracts and RIMs are sacred land documents. They are the pillars upon which our land administration system is founded. They are documents that should never, ever, be interfered with unless in accordance with the law. Supportive documents regarding dispositions also need to be well kept, maintained, and Protected. It is a shame that Registers and Presentation Books can be torn and become illegible and it is necessary that good storage systems need to be established for these vital documents. Records of dispositions, including transfers, mutations, charges, etc, must be properly kept in land parcel files, and they need to stay there. It is time we stopped hearing that these records are missing and indeed they cannot walk out of files on their own, if it is not for gullible land officers for hire. Land officers need to properly undertake their work. It is a duty that they owe Kenyans. Where there is doubt, or dispute, the same should be resolved in a Court of law, not by Land Registrars unilaterally making insertions in the Land Registrars in favour of one party. In this instance the land officers abdicated their duty with impunity and they have now led to utmost confusion with regard to the titles held in Mwingo Scheme that have their origin in the impugned titles No.761 and 764. I need to make corrective measures. The integrity of the register and the Registry Index Map needs to be restored ....”

66. In the case of *Supa Nova Properties Limited & Another v. District Land Registrar Mombasa & 2 Others; Kenya Anti-Corruption Commission & 2 Others* (Interested Parties) [2018] eKLR the Court of Appeal stated that Land Registrars do not have power to revoke titles and that the revocation of titles is a preserve of Courts.

### **Acquisition Of Land In Kenya**

67. Section 7 of the *Land Act* provides ways in which one may acquire title in land *inter alia* including allocation, land adjudication process, compulsory acquisition, transmissions, transfers and long-term leases. It therefore follows that reconstruction of a register is not a method of land acquisition in Kenya
68. The net effect of the purported gazettelement was to dispossess the Appellants of their land and illegally create a title for the 1<sup>st</sup> Respondent.
69. The Court finds that the actions of the Land Registrar in conjunction with the 1<sup>st</sup> Respondent of creating a register for the suit land in favour of the 1<sup>st</sup> Respondent in light of the existing Green Card in



the names of the Appellants amounted to illegal and unlawful acts. Consequently, the register in favour of the 1<sup>st</sup> Respondent is illegal, fraudulent, null and void and the 1<sup>st</sup> Respondent received no good title.

### **Measurement Of Land In The Share Certificate**

70. According to the evidence of John Maina Mburu he stated that he bought shares from the son of Wahu Ngigi who held 100 shares vide Share Certificate No. 5460 dated 17/1/1983. The Court has examined the Share Certificate which contains the ballot No. 3376 on the right-hand corner. The said Certificate indicates that the land measures a quarter acre. The said John Maina Mburu led evidence that every shareholder of Githunguri Ranching Co. Ltd who purchased 100 shares would be entitled to 3 properties: residential measuring  $\frac{1}{8}$  of an acre; suit land measuring  $\frac{1}{4}$  of an acre and a shamba (farm) measuring  $1\frac{1}{4}$  acres. Other than the Share Certificate aforesaid none of the other documents indicate the size of the land allegedly held by Wahu Ngigi which allegedly were thereafter sold to John Maina Mburu.
71. John Maina Mburu also led evidence that he purchased  $1\frac{1}{4}$  acres vide an agreement dated 16/10/2010. That on 9/4/2011 he sold the said parcel of land to the 1<sup>st</sup> Respondent, admittedly, the 1<sup>st</sup> Respondent's position in this matter is that she holds a title parcel No. 1206 measuring 1.25 acres. The Court finds that there is no evidence to support the title of the 1<sup>st</sup> Respondent measuring 1.25 acres. The land purchased by John Maina Mburu from Peter Kamau Karera cannot be the same parcel of land being claimed by the 1<sup>st</sup> Respondent. It is doubtful that the two parcels of land refer to the suit land.
72. The Court has considered the receipts produced by John Maina Mburu which indicate the name of Wahu Ngigi and Wahu Kariuki as well as Wahu Kariuki Kiambaa. It has not been explained to the Court the relationship between the 3 persons or whether the documents have any reference to the Share Certificate No. 5460 of ballot number 3376. Evidence was also led by John Maina Mburu that Peter Kamau Karera the son of Wahu Ngigi together with the family of Wahu sold the land to him. The Court received no evidence linking the said Peter Kamau Karera to Wahu Ngigi. There was no Share Certificate, no Grant of Letters of Administration to show any relationship between the two.
73. The sum total of the analysis above shows that the 1<sup>st</sup> Respondent did not receive a good title in particular the Court finds that the process of reconstruction of a register cannot in law convey an interest in land. Consequently, the subdivision of parcel No. 1206 and the resultant titles thereof are illegal, unlawful, fraudulent, null and void. The Court will make appropriate orders at the end.

### **Appellants' Title / Register**

74. Evidence was led by PW1 and PW2 in support of the Appellant's case. Title for parcel 1206 in the name of Ruth Wachuka Kangethe issued on 2/12/1996 and a title for parcel 1206 in the names of the Appellants issued on 19/7/1997, certificate of official searches dated 8/7/2012 and 1/9/2017 and receipt number D719874 issued on 11/3/1997 with respect to the application of Land Control Board Consent were adduced in evidence.
75. The Respondents have challenged the title held by the Appellants on grounds that certain documents from allotting Company were not produced. It is their case that the absence of those documents goes to the root of the proprietorship of the Appellants over the suit land. By and large, this is the core ground in which the title of the Appellant has been impugned by the Respondents.
76. The Land Registrar in his testimony before the Court he informed the Court that according to the records held in the registry the only Green Card for the suit property is the one that reflects the 1<sup>st</sup> Respondent as the proprietor of the suit property. The said Land Registrar produced documents with



respect to the 1<sup>st</sup> Respondent's title similar to the documents adduced by John Maina Mburu. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents therefore supported the case of the 1<sup>st</sup> Respondent with respect to the validity of her title.

77. The Court has analysed two letters authored by the Land Registrar to the 1<sup>st</sup> Respondent and the Appellants dated 12/10/2017; 30/1/2018 and 12/2/2018 state as follows: -

“Summons under Section 14(B) of the *Land Registration Act* No 3 2012 and under Section 8 (B) of the Registered *Land Act* Cap 300 (repealed); Ruiru Kiu Block 2/1206.

IN exercise of powers conferred upon me under Section 14(b) of the *Land Registration Act* No 3 of 2012 and Section 8 (b) Cap 300 repealed. I hereby summon you appear before me on 20/12/2017 and bring with you title documents in respect of the Ruiru Kiu Block 2/1206 for purposes of rectification of the respective registers.

Now take notice failure to do so decision concerning the above-mentioned land will be taken without further reference to you.”

78. The import of these letters show that what was to be rectified were two (2) respective registers in the names of the 1<sup>st</sup> Respondent and the Appellants. It therefore means that the register with respect to the title of the Appellants existed in the land registry way upto and including 12/2/2018.

79. Another important matter that points to the existence of the Appellants register in the land's registry are the certificates of official searches dated 18/7/2012 and 1/9/2017. Evidence was led by the Appellants that they carried out a search on 1/9/2017. This search is certified by J. M. Mbochu Land Registrar No. 322. It is to be noted that while J. M. Mbochu was issuing the Certificate of Search on 21/9/2017 showing the Appellants as the proprietors of the suit land about sixty (60) days before the very land registry (Land Registrar B. K. Leitch) had pronounced to the whole world vide a Gazette Notice No. 4810 of 19/5/2017 that the 1<sup>st</sup> Respondent is registered as proprietor in absolute ownership of the suit land under the Green Card was missing and all efforts had been made to locate the same had failed. Surely, the contents of this Gazette Notice are not only misleading but a knowing misrepresentation of the contents of the register as confirmed by Land Registrar J. M. Mbochu on 1/9/2017.

80. On a balance of probability, the Court finds that the register of the Appellants existed in the land's registry and in the absence of any explanation by the Land Registrar who is the custodian of title documents the only conclusion is that the actions of the Land Registrar in purporting to create a new register for the 1<sup>st</sup> Respondent are not supported by the law and amount to fraudulent and illegal acts. The Court finds that the Appellants were owed a legal duty by the Land Registrar to provide an accurate record / register of their land.

81. The Appellants led evidence that they took possession of the suit land in 1997 and put it under the care of a Mr. Njenga their neighbour. That their quiet possession was interrupted in 2017 when the 1<sup>st</sup> and 2<sup>nd</sup> Respondents invaded the land and fenced it. The act of fencing has been admitted by the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent led evidence that she took possession of the land in 2011 and on a balance of probabilities the evidence of the 1<sup>st</sup> Respondent cannot be believed. It is not plausible to acquire land in 2011 and only appear in 2017. The evidence of the Appellants that they have been in possession of the land over 20 years is more probable.

82. The Court has carefully weighed the evidence of the Appellants against that of the Respondents and on a balance of probability finds that the balance tilts in favour of the Appellants.



83. The Respondents have challenged the competency of the appeal on grounds that the Appellants did not comply with the provisions of Order 9 Rule 9 of the Civil Procedure Rules. The Court takes the view that the appeal constitute fresh proceedings in this Court and the Appellants therefore need not comply with the said provisions.
84. Arising from the foregoing reasons the Court finds that the Appellants have a better title than the Respondents. Consequently, the Court finds that the Appellants' appeal has merit and enters Judgment as follows: -
- a. That the Appeal herein be allowed, the Judgment and Decree of the Court made on the 3<sup>rd</sup> day of March, 2022 be set aside and replaced and or substituted with Judgment in favour of the Plaintiff/Appellants as prayed in the Amended Plaint and a dismissal of the Counter Claim with costs thereof.
  - b. That costs of the proceedings both in the lower Court and in this appeal be awarded to the Appellants.
85. Orders accordingly

**DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 15<sup>TH</sup> DAY OF NOVEMBER 2023.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Mr. Mwangi for the Appellants

Mr. Wachira HB for Mr. Kanyi for the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup> & 6<sup>th</sup> Respondents

Court Assistants – Phyllis/Lilian

