



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NUMBER 409 OF 2001

MOSES NJARAMBA KAMAU.....PLAINTIFF

VERSUS

MARY MUTHONI NJARAMBA.....1ST DEFENDANT

EPHURAS WANJIRU KIRAITA.....2ND DEFENDANT

MARGARET NJERI KIARIL.....3RD DEFENDANT

REGINA WAIRIMU KIRAITA.....4TH DEFENDANT

JUDGMENT

1. Background and Pleadings

The plaintiff Moses Njaramba Kamau is the estranged husband of the 1st Defendant Mary Muthoni Njaramba. The 2nd, 3rd, and 4th defendants are relatives of the 1st defendant.

The dispute between the plaintiff and the defendants concern the sale and transfer of some three land parcels, **Nyandarua/Silibwet/579, 580** and **Nyandarua/Silibwet/1408** by the 1st defendant to the 2nd, 3rd and 4th defendants.

2. The plaintiff alleges that the said land parcels were sold and transferred to the 2nd, 3rd and 4th defendants by the 1st Defendant fraudulently and through a corrupt scheme and therefore seeks an order of cancellation of the titles in the defendants favour and declaration that the said transfers were obtained fraudulently and therefore null and void, as he has beneficial interest in them.

3. From the above narrative, it is evident that the nature of the dispute, being a land dispute ought to be heard and determined by the Environment and Land Court. The suit was filed in December 2001 long before the established **of the Environment and Land Court in 2011** by an **Act of Parliament** pursuant to **Article 162(2) (b) of the 2010 Constitution**. The Environment and Land Court has the mandate and jurisdiction to hear and determine all disputes relating to the use occupation and title to land.

4. However, by Practice Directions issued by the Honourable Chief Justice in **July 2014** and **Gazetted in Notice Number 5178**, it was directed that all land matters filed at the High Court and part heard by a High Court Judge shall continue to be heard and determined by the same court.

5. This case was parheard in the High Court (Hon. Judge Musinga and Hon. D.K. Maraga(as he they were then) up to the 22nd November 2007.

On the 20th July 2015, I took over the hearing of the Defence case (DW2) upto completion.

It is upon the above basis that I have been clothed with the necessary jurisdiction to hear and determine this land case.

6. Upon the above background, the plaintiff filed this case and by his Amended plaint filed on the 25th February 2005 sought the following reliefs:

a) A declaration that a trust exists between the plaintiff and the 1st defendant whereby the 1st defendant held Land Reference No. Nyandarua/Silibwet/579, 580 and 1408 in trust for the plaintiff.

b) An order terminating the said trust.

c) An order declaring the transfer of LR Nyandarua/Silibwet/1408, 580 and 579 by the 1st defendant to the 2nd, 3rd and 4th Defendants respectively are null and void.

d) An order for rectification of the register by cancellation of the said titles issued to the 2nd, 3rd and the 4th defendants.

e) General damages.

f) Costs and interest.

7. The defendants filed a joint defence on the 27th March 2002. It is dated 18th March 2002. They denied the plaintiffs claims.

A list of documents was also filed on the 4th June 2004. The plaintiff too filed his list of documents dated 25th March 2003 and filed on the same day.

8. Plaintiff's case

The plaintiff testified as PW1. He confirmed that the 1st defendant was his wife, and the 2nd and 3rd defendants his sisters in law while the 4th defendant was his mother – in law. His testimony was that he purchased the three suit plots within Silibwet Scheme from One Danson Wachira and fully paid the purchase price. He produced the sale agreements as exhibits (Ext 1, 2 and 3) and acknowledgment notes of payment of the price (PExt 4a and b).

He then obtained the necessary land control consents to have the land parcels registered in the 1st defendant's (wife) name in trust for himself and his five children, which was done, despite her not contributing financially to the purchase price. It was his evidence however that the trust was not registered against the titles.

9. He testified that over the period, together with his wife (1st Defendant) they sold **Plot No. 580 to the 3rd defendant and plot No.579 to the 4th defendant** for Kshs.210,000/= and Kshs.280,000/= respectively, but that both failed to pay the purchase price following which he asked his wife (1st Defendant) to destroy the agreements the parties had entered into. However later, in 2001, he discovered that the 1st defendant did not destroy the agreements and instead had secretly transferred and registered the plots in the respective defendants' names without payment of the purchase price. By official search certificates on the 30th May 2001 from the Land Registrar, Nyandarua Lands registry he discovered that the land parcels were transferred without his consent and registered in favour of the 2nd, 3rd and 4th defendants on the 23rd March 1995. It was his testimony that the Land Registrar refused to avail to him the Green cards for the parcels and believes that the registrations were backdated and not issued on the 23rd March 1995 as shown in the official searches. (See below).

10. It was his further evidence that he was in occupation of the land parcels from 1989 and has developed the same by building a house on plot 579 and cultivating on the other two, and that none of the defendants have entered thereto. That he resides on the suit plots.

He stated that upon discovery of the fraud by his wife (1st defendant) in 2001, they separated and now she lives at Nyahururu. It was his evidence that none of the defendants live on the disputed land parcels. He denied knowledge of sale agreements dated 22nd June 1993 and witnessed by one Michael Kihia upon which the 1st Defendant transferred the land parcels to her co-defendants, her two sisters and mother.

11. In cross examination, the plaintiff admitted causing the plots to be registered in his wife's names as he trusted her, but the trust was not registered against the title. The plaintiff reiterated that the defendants did not pay any consideration for the purported purchase and further denied any other agreements between the 1st defendant and the 2nd, 3rd and 4th defendants. He reiterated that the titles were backdated a matter he reported to the Criminal Investigations Department but no results were given to him.

He denied knowledge of sale agreements (DMFI 1, 2 and 3) and even receiving any money from the defendants for the plots.

12. PW2 was Danson Wachira Thuita

He confirmed having sold the suit properties to the plaintiff in 1988 and having received the full purchase price from him and that the plaintiff's wife, 1st defendant was absent, but that the plaintiff applied for consents to transfer to his wife's names which were done.

In cross examination, he reiterated that the purchase price was paid by the plaintiff and not the 1st defendant and at the Land Control Board, the plaintiff obtained a consent to transfer the plots to the plaintiff's wife as the plaintiff wanted them registered in her name in trust for himself and his children.

13. PW3 was Michael Kihia Kamau

He denied having witnessed the sale agreement dated 22nd June 1993 between the plaintiff's wife and the three defendants – PExt 1, 2 and 3. He denied ever witnessing any subsequent sale agreements and further denied the signatures on MFI DI, D2 and D3 to be his.

14. **Defendants Case**

Mary Muthoni Njaramba testified as DW1

She confirmed having been the plaintiff's wife, and having bought several properties together upto 2001 when they separated. It was her testimony that they also agreed to purchase separate properties, and that she bought 12 acres and a vehicle and a plot at Nyahururu including the suit plots that were transferred in their name but in 1993 they agreed to sell the three plots to the 2nd, 3rd and 4th defendants to complete a construction of a commercial plot at Nyahururu.

She testified that the purchase price was paid to the plaintiff not to herself. It was her testimony that the sale agreements were drafted by the plaintiff and witnessed by PW3 who was a close friend to the plaintiff.

15. She testified that it was only after the separation in 2001 that the plaintiff raised a claim on the plots after the transfers were done in 1995.

She testified that the sale agreements to the 2nd, 3rd and 4th defendants were in her names and that there are no records of the payments of the purchase price by the defendants as the plaintiff ran away with the records. She also confirmed that the co-defendants never occupied the suit properties and that the plaintiff is in occupation and use of the suit plots where he also lives since 2001.

She also confirmed that the plaintiff bought **Plot No. Iwamiti No. 13 and No. 118 and Plot No. 61 site service in Nyahururu** in his names. She produced MFID 1, 2 and 3 as exhibits – DExt 1, 2 and 3.

16. **DW2 was Ephuras Wanjiru Kiraita** the 2nd defendant. She confirmed being a sister to the 1st and 3rd defendants and daughter to the 4th defendant. She also confirmed that the plaintiff and 1st Defendant are separated since 2001.

She testified that the plaintiff and 1st defendant sold the plots to them and that she paid the full purchase price and the title was given to her on the 23rd March 1995(DExt.5). She told the court that later the plaintiff claimed that she did not pay the purchase price. She testified that the sale agreement was drawn by the plaintiff and signed at his home in the presence of the witness Michael Kihia after which they went and paid for the titles at Lands Office, Nyahururu. She however did not produce any evidence of payment of the purchase price.

17. She denied hatching a plot to defraud the plaintiff and 1st defendant of the plots and agreed that the typed sale agreement dated 24th August 1993 was not signed by the plaintiff as the title was not in his name, but that the witness (PW3) signed the same. She testified that she did not have any documents to show that she paid the purchase price nor fees at Lands office but that she was given the title for the plot.

18. **DW3 Margaret Njeri** is the 3rd Defendant. She confirmed her relationship with the parties to this suit.

Her evidence was that by a hand written sale agreement dated 22nd June 1993 and later typed, she bought the suit plot. She stated that she signed a sale agreement and Michael Kihia (PW3) witnessed it, and that she paid the purchase price to both the plaintiff and 1st Defendant while together in their house in installments. It was her testimony that she went to the Land Control Board with the plaintiff and her co-defendant and later a title was issued to her to **Plot No. Nyandarua/Silibwet/580** on the 23rd March 1995(DExt 6).

19. Upon being shown the search certificates as at 30th May 2001, she confirmed the Titles being in the 1st defendants names. She could not explain how or why she denied that the Land Control Board and the consent were forged. She stated that she had no records of payments of the purchase price, nor the registration fees.

20. **DW4 Regina Wairimu** is the 4th Defendant and mother to the 1st Defendant and mother in law to the plaintiff. She stated her age as about 80 years old.

Her testimony was that she bought 4 Acres of land from the plaintiff and 1st Defendant and did not want her sons to know that she had bought the plot, that she paid the purchase price in installments to both the plaintiff and 1st defendant, and that she did not sign the sale agreement though she knew how to write. She further testified that the couple later gave her a title to the plot, though she could not remember the number. It was her testimony that she was taken to the Land Control board, and that she paid the purchase price, but did not state the amount, nor the person she paid to, and how much she paid.

21. Upon cross examination, this defendant stated that she signed some papers, by writing her name and that she had no records of payment of the purchase price, but stated that she paid twice to both the plaintiff and the 1st Defendant. She did not know the alleged witness to the agreement, one Michael Kihia Kamau.

22. Upon the above evidence the parties filed and highlighted their submissions.

I have dutifully considered the pleadings, the evidence and submissions together with the authorities cited.

23. **Analysis of Evidence, submissions and findings**

The following material facts are not in dispute.

That the suit properties were purchased by the plaintiff from one Danson Wachira, Thuita (PW2) and acknowledged in writing on the 16th July 1989. That the plaintiff caused the said land parcels to be registered in his wife's names, the 1st Defendant.

That the couple agreed in 1993 to sell the three plots to the 2nd, 3rd and 4th defendants being relatives of the 1st defendant at agreed prices in the sale agreements entered into in 1993, to facilitate construction of their other property at Nyahururu. That over the period, both the plaintiff and the 1st defendant purchased several assets together as husband and wife upto 2001 when they separated.

24. **ISSUES**

The following issues arise for determination from the evidence adduced:

1. *Whether a trust existed between the plaintiff and the 1st defendant in respect of the suit properties and whether the 1st defendant held the same on trust for the plaintiff.*
2. *Whether the 2nd, 3rd and 4th defendants paid any consideration to the 1st defendant or the plaintiff for the purchase of the said suit properties.*
3. *Whether there was fraud committed by the defendants on the transfer and registration of the suit properties by the 1st defendant to the 2nd, 3rd and 4th defendants.*
4. *Whether the plaintiff is entitled to the reliefs sought in the plaint.*

25. **ISSUE NO. 1**

1. **Existence of Trust**

It is evident from the evidence that both the plaintiff and 1st defendant as husband and wife, and in happier days prior to their separation in 2001, bought together the plots in issue with proceeds from their business and developed them for their joint benefit, and that of their children.

That is the position in this suit, and is supported by both parties. The suit properties were bought by the plaintiff, but registered in the 1st defendant's names. The intention of the couple was that the properties were to be so held by the 1st defendant in trust for the plaintiff. This intention was not challenged or at all.

26. Other plots like the shop at Iwamiti Township, Commercial Plot at Nyahururu and motor vehicle registration No. KZA 112 were so bought and held by both parties. It is clear that then there existed a trust between the parties. This special trust need not be registered against the register of the titles. The properties jointly purchased are subject to the **Matrimonial Properties Legislation** prior to and after the enactment of the **2013 Matrimonial Property Act (Kenya)** and also the **Registration of Land Act, Cap 300** (now repealed), the applicable law in respect hereof, the transactions at issue having taken place in **1993, 1995, and 2001**. See **Section 30 of the Registration of Land Act** replicated in **Section 28 of the Land Registration Act No. 3 of 2012**. It states:

Section 28: "Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may be for the time being subsist and affect the same, without being noted on the register:

(a) Spousal rights over Matrimonial Property and under CAP 300.

(g) The rights of a person in possession or actual occupation of land to which he is entitled as of right only of such possession or occupation save where inquiry is made of such person and the rights are not disclosed."

27. In **HCCC 86 of 2011 Virginia Wanjiku -vs- David Mwangi Jotham Komen (2013) e KLR** referring to **Section 28(a) of L.R.A and Section 93(1) of the Matrimonial Property Act and Section 126(1)Cap 300** held that **a trust being an overriding interest and beneficial interest over a property jointly acquired by joint effort of both spouses during their marriage need not be registered against the title.** (emphasis mine)

See also **ELC No. 256 of 2014 Wairimu Kimani -vs- Joseph Mburu Kimani (2016) e KLR** and **Edith NyamBura Mwangera -vs- Symon Mwangera Ndera & 2 Others (2014) e KLR**.

In **HCCC No. 238 of 2004 Peninah Wambui Mugo -vs- Moses Njaramba Kamau & Mary Muthoni Njaramba (2017) e KLR**, a case involving the same couple over another property, in my judgment delivered on the 2nd March 2017, I came to the finding that there existed a trust over the said property as it had been acquired by joint effort of the couple.

28. This is the same position which was explicitly expressed by both parties in this suit. The 1st defendant did not have absolute rights over the properties as any dealing with the properties, and specifically sale was subject to the plaintiff consent.

It is therefore my finding that there existed a trust, though not registered on the register, that the 1st defendant held the subject properties for herself and in trust for the plaintiff.

29. **ISSUE No. 2**

It is trite that a contract of sale must be in writing and signed by all the parties and attested to by a witness who ought to be present when the contract is signed.

Evidence adduced by the defendants does not support that fact. The alleged attesting witnesses (PW3) denied knowledge of the sale of the plots and ever having been the witness or signatory. The 4th defendant denied knowing the said witness, and signing of the sale agreement though her evidence was that she knew how to write, but failed to sign the same.

Section 3 of the **Law of Contract Act Cap 23** is explicit on these requirements, that an agreement must be signed by all the parties and attested to by a witness.

In its totality, the evidence does not point to the compliance of the requirements, the alleged typed agreements having been executed and attested to on different dates. The plaintiff denied having any knowledge or giving his consent for the transfer and having tasked the 1st defendant to terminate the agreements when she reported that the agreed purchase prices were not paid.

ISSUE NO. 3

3. Consideration

That brings me to the issue as to whether the purchase price, the consideration, was paid by the 2nd – 4th defendants. In the purported sale agreements, the 1st defendant acknowledged receiving a total of Kshs.520,000/= as part payments, and the balance was to be paid in installments. No dates for completion were shown. See DEXt 1, 2 and 3. In her evidence in chief and in cross examination, the 1st Defendant testified that the purchasers paid the purchase price to the plaintiff. She stated:

“---the purchase price was paid to the plaintiff who did not sign anywhere acknowledging receipt. The payments were made in installments.

He ran away with the record of those payments.”

30. It was upon the defendants to call evidence to prove that indeed the purchase price was paid to the plaintiff or to the 1st defendant.

This was not done. None of the defendants produced evidence to show their source of the monies they purported to have paid as purchase price. The 1st defendant as the vendor failed to convince the court how the purchase price was paid by her co-defendants. Her evidence was totally contradictory. Suffice to come to the conclusion that it is highly doubtful that any purchase price was paid to the vendor, the 1st defendant by her two sisters and mother, or to the plaintiff.

31. Further the agreements allegedly executed by the defendants were not certain on when the balances would be paid, only stating that they would be paid in instalments. There was no stated completion date. In **Alfred M.O. Michira -vs- M/S Gesima Power Mills Ltd Civil appeal No. 197 of 2001, quoted in Purple Rose Trading Co. Ltd -vs- Bhanoo Shashikant Jai (2014) e KLR, the Court of Appeal held that:**

“--- where there is no meeting of minds of the contracting parties, the contract is incapable of performance --- where the agreement is uncertain on the fundamental term on the payment of the purchase price in that it does not provide for the time within which the balance of the purchase price is payable or secure the payment, it makes the entire agreement void for uncertainty and neither party can be held in breach of the agreement and neither is entitled to any damages for the abortive agreement.” (emphasis mine).

The end result therefore is that the alleged contract of sale became unenforceable because of uncertainty. See also **Kenya Breweries Ltd -vs- Kiambu General Transport Agency Ltd (2000) e EA 398.**

My conclusion on this issue is that there being no evidence of payment of consideration, there is no valid sale agreement capable of enforcement. The purported sale agreements are therefore *void ab initio*.

32. Where the suit properties fraudulently transferred to the 2nd, 3rd and 4th defendants? By the 1st defendant? (**Issue No. 4**).

Section 3(3) Law of Contract Act sets out the requirements for a valid contract for sale of land. Having found that there was no valid sale agreement or contract then what are the consequences when a transfer of land is effected, based on an invalid contract of sale?

Being a prerequisite anchored under the law, nothing valid would come out of an invalid contract, which is void from the beginning.

Evidence was adduced by the 2nd to the 4th defendants that they all attended the Land Control Board to obtain consent to transfer the properties on various dates. None of them produced copies of the Applications for the consents. The consents duly signed by the Board

Chairman officials were produced as exhibits. As the vendor, the 1st Defendant never went to the Land Control Board. She did not prove that she obtained the consents for the transfers. She produced none.

DW2 other than stating that after signing the agreement, she went to lands office and paid the fees, which amount she did not know and was later given a title in her name seems to know nothing else. She did not produce any receipt to confirm having paid the stamp duty or the registration fees at the lands office. She could not remember signing the transfer form, only stating that she was given the title on the 23rd March 1995.

33. **DW3** too did not produce any payment documents for the purchase price, the initial deposit or the balance. She could not remember when she went to the Land Control Board and did not produce the Land Control Board application or the consent for the transfer of the plot to her. She too did nothing more and was later given the title by the 1st Defendant. No duly signed transfer, payment of stamp duty or registration fees were exhibited. The 4th defendant, mother of the 1st Defendant and mother in law of the plaintiff too produced nothing to show her involvement in the transaction as the purchaser. She stated that she did not sign the sale agreement as she trusted her children – the plaintiff and 1st defendant all she knew was that she was given a title later for the property, but stated she was taken to the Board and thereafter given the title.

34. In its totality, the defendants did not produce any documents to prove that they paid the purchase price, that they obtained the Land Control Board consent for the transfer of the suit properties nor could they prove having executed the transfer documents and evidential payment of stamp duty and transfer fees, including the consideration, the purchase price.

Section 6 of the Land Control Act Chapter 302 Laws of Kenya requires a consent to be obtained from the relevant Land Control Board a transfer or property in respect of sale of Agricultural land. Failure to do so renders sale transactions unenforceable, and therefore null and void for want of the consent. See **Civil Appeal No. 6, 26 and 27 of 2011 Macharia Mwangi Maina – vs Davidson Mwangi Kagiri (2014) e KLR** and **ELC Civil Case No. 47 of 2017 SBI International Holdings Ag (Kenya) -vs- Reuben Kipkorir J.T. Bore (2014) e KLR**.

35. It is instructive to note here that the defendants failed to produce these very important documents to prove the validity of their Titles. The burden of proof shifted to them (the 2nd, 3rd and 4th defendants) to prove the genuinity of their Titles. They failed to discharge that burden of proof.

In **Civil Appeal No. 5 of 2014 Evenson Wambugu Gatwiri & 2 Others (2014) e KLR** the court rendered that transfer that is not preceded by a sale agreement, and payment of consideration and Land Control Board consent renders the whole transaction fraudulent through a scheme of cover-up between the transferor, the transferee and the land Registrar, who is mandated to only effect transfer when all such documents are available.

36. Failure to provide the said documents renders the transfer and subsequent registration invalid, and therefore null and void.

The plaintiff pleaded particulars of fraud in his plaint (Paragraph 13) as

- 1) *Lack of consent*
- 2) *No valuable consideration paid*
- 3) *Collusion by all the defendants to deprive him of his interest in the land parcels*
- 4) *Backdating of the date of registration of the transfers from 2001 to 23rd March 1995.*

I have dealt with the first three particulars.

37. On the 4th, it was the plaintiff's evidence that though the titles to the 2nd- 4th defendants were entered in the registers on the 23rd March 1995, by an official search conducted on the 19th July 2001 (PExt7), the subject land parcels were in the 1st Defendants names as at that date. The Titles are stated to have been registered on the 23rd March 1995. It was not alluded that the official searches were not genuinely obtained. Payment receipts were shown to the court. The Defendants could not explain that discrepancy leading to the plaintiffs conclusion that the transfers were backdated to fit into a scheme of fraud and corruption between the defendants and the Ministry of Lands official. No challenge was mounted on this issue by the defendants.

38. The law will not allow a person to benefit from his wrongdoing. In the ELC case **No. 422 of 2011(O.S) in NWK -VS- JKM & Another (2013) e KLR**, it was held that a trustee (as the 1st defendant has been found to be) will be personally liable in breach of the trust when she assists in the commission of the breach, the test being whether she acted as an honest person would act, and extends beyond straight forward deceit to potential fraud resulting to loss. The principles of equity are clear that no man shall benefit from his wrong doing and that equity detests unjust enrichment.

39. Fraud and conspiracy to defraud are serious allegations and they ought to be proved by the person so alleging. See the **Simon Wainaina Gatwiri case above (Supra)**.

The evidence in its totality cannot rule out collusion between all the defendants and the Ministry of Lands officials. There appears to have been a grant scheme of corruption and fraud in the sale and transfer of the plots. They are *prima facie* questionable as to the validity of the registration of the transfers in the defendants favour.

40. Section 26 of the Land Registration Act 2012 is clear that:

“a certificate of title issued by a Registrar or to a purchaser of land shall be taken as prima facie evidence that the person names is the absolute indefeasible owner, and the title shall not be subject to challenge except

a) On ground of fraud or misrepresentation to which the person is proved to be party or

b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

If that is fraud, the titles cannot stand. They must be revoked and canceled.

See ELC Case No. 51 of 2014 (O.S) Alice Chemutai Too -vs- Nickson Kipkurui & 2 others (2015) e KLR.

41. Upon analysis of the evidence in its totality, I find that the titles to the 2nd, 3rd and 4th defendants were obtained through a scheme of corruption and fraud and therefore subject to cancellation and rectification of the register.

Section 80(1) of Land Act 2012 states:

80(1) “Subject to subsection (2) the court may order the rectification of the register by directing that any registration be canceled or amended if it is satisfied that any registration was obtained, made or obtained by fraud or mistake.”

42. A *bona fide* purchaser of land is protected under Section 39(2) of the Registered Land Act (now repealed). Interference with the title is prohibited save when fraud or illegality are found to have been committed in obtaining such titles. If breach of trust is established against the Trustee alone, the remedy is clearly spelt out. It is personal not proprietary and lies with the complainant to share the value of the property purchase price, See **Peninah Wambui Mugo -vs- MNK(2017) e KLR.**

In my considered view and expressed above all the defendants hatched a fraudulent scheme to illegally and unprocedurally deprive the plaintiff of his interest in the suit properties, as a beneficiary.

See **Sinclair Investments (U.K.) LTD -VS- Versailles Trade Finance Ltd (C.A) 2011.** That being my findings, it is evident that the plaintiff is entitled to the relief stated in his plaint.

I have rendered above that under **Section 80(1) Land Registration Act 2012**, an order of cancellation and rectification of the Register is available once fraud, illegality and misrepresentation are established.

43. The upshot is that the plaintiff has established a *prima facie* case against the defendants and has proceeded to prove the same on a balance of probability.

44. Consequently, there shall be judgment entered for the plaintiff and against all the defendants jointly and severally as follows:

(a) It is declared that the 1st defendant holds the following land parcel numbers Nyandarua/Silibwet/579, 580 and 1408 in trust for the plaintiff.

(b) An order is issued, directed to the Land Registrar, Nyandarua County to forthwith cancel Title Deeds over properties known as Nyandarua/Silibwet 579, Nyandarua/Silibwet 580 and Nyandarua/Silibwet 1408 issued on the 23rd March 1995 in favour of the 2nd, 3rd and 4th Defendants respectively.

(c) The Land Registrar, Nyandarua County is ordered and directed that upon cancellation of the said Titles stated in (2) above, to rectify the Register and restore the names of the 1st Defendant, Mary Muthoni Njaramba as the proprietor, within 60 days of this judgment.

(d). That the said Mary Muthoni Njaramba shall therefrom hold the said three titles for herself and in trust for the plaintiff which properties shall be so held as matrimonial properties pending division of the said properties under the Kenyan Matrimonial Property Act 2013, upon application.

45. This being a family dispute, each party shall bear own costs of the suit.

Dated, Signed and Delivered this 21st Day of September 2017.

J.N. MULWA

JUDGE