



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

E.L.C CASE NO. 706 OF 2013

ANN WANGECI KAMAU.....PLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION.....1ST DEFENDANT

KEYSIAN AUCTIONEERS.....2ND DEFENDANT

ELIAS MWANGI & SAMSON KIARIE (Sued as the Chairman and Treasurer of

MATITHI WAMUMU SELF HELP GROUP).....3RD DEFENDANT

WATSON MUTHIGA GATHUKU.....4TH DEFENDANT

JUDGMENT

The Plaintiff vide a Plaint dated 9th September, 2013 filed contemporaneously with a Notice of Motion dated the same date sought judgment for the following orders;

(a) A permanent injunction restraining the Defendants by themselves, their servants and/or agents from selling, disposing or in any way dealing with L.R NO. KIINE/RUKANGA/602.

(b) An order directed against the Registrar of Lands, Kerugoya to amend the Register and reinstate the name of Kabinga Gitau as proprietor of KIINE/RUKANGA/602.

(c) Amendment of the Register.

(d) A permanent injunction restraining of the Defendants by themselves, their servants and/or agents from interfering with the

Plaintiffs possession and user of the land KIINE/RUKANGA/602.

(e) Costs.

The 1st and 2nd Defendants filed a joint statement of Defence denying the Plaintiffs claim and sought to have the suit dismissed with costs. The 4th Defendant on his part filed a statement of Defence counter-claim dated 14th March, 2017. The 3rd Defendant did not put any defence to the plaintiffs claim. The parties filed their compliance documents pursuant to *Order 3, 7 and 11 of the Civil Procedure Rules* before the court Certified the same as ready for hearing.

PLAINTIFF'S CASE

The hearing of this case kicked off on 9th March, 2021 when the Plaintiff took the witness stand and stated on oath (PW1) that her husband was known as Gitau Kabinga (deceased). She was referred her witness statement dated 9th September, 2013 which she adopted in her evidence. She filed a limited Grant for the estate of her late husband vide P & A No. 25 of 2011 and was issued on 24/01/2011. She said that she lives in the suit land together with her 4 children. Regarding the suit property L.R NO KIINE/RUKANGA/602, she stated that they have

never taken loan from A.F.C. She referred to an application for a loan offer from Agricultural Finance Corporation (A.F.C) dated 27th June, 2007 which she said was not aware of. She was referred page 8 of the said loan application which she denied that her late husband Gitau Kabinga signed on 4th July, 2007 alleging that by then, her husband had died and even buried. She referred to her list of documents item no. 2 which is a death certificate showing date of death as 02/06/2007. The plaintiff also referred to item no.3 in her list of documents which is a limited Grant of letters of Administration dated 24/01/2011 at Embu High Court. She referred to a letter of guarantee and indemnity dated 3rd July, 2007. According to her, the letter indicates that her late husband guaranteed the purported loan on 03/07/2007 which is not true as her husband died on 02/06/2007 and therefore could not have guaranteed a loan after he had died. The plaintiff further stated that she filed a case in the Magistrates Court being SPMCC NO. 15/2011. She wondered who could have presented himself as her husband and obtained loan from A.F.C on 03/07/2007 since her husband had died and even buried. She said that she does not know the representatives of Matithi Wamumu Self Help Group who is the 3rd Defendant herein. She stated that the bank allegedly sold her land fraudulently. Lastly, the plaintiff stated that she does not know where the title to the suit land is and that she had checked in the house but did not find it.

1ST & 2ND DEFENDANTS CASE

The 1st & 2nd Defendants called Kipkurui Cheburet as their only witness who works with Agricultural Finance Corporation, Kerugoya Branch as the In Charge. He was referred his witness statement recorded on 15/06/2017 and filed in court on 19/06/2017 which he adopted in his evidence. In his testimony, the witness stated that sometime on or about 27/06/2007, Matithi Wamumu Self Help Group applied for an agricultural development loan from the 1st defendant in the sum of Kenya shillings three million (Ksh. 3,000,000) which sum was to be repaid with interest within a period of one (1) year. He stated that the said loan by Matithi Wamumu Self Help Group was guaranteed by Elias Mwangi Ndungu, being the registered proprietor of land parcel No. MWERUA/KAGIO/1347, Gitau Kabinga, being the registered proprietor of land parcel no. KIINE/RUKANGA/602 and Magondu Mwaniki, being the registered proprietor of land parcel No. MWEA/MUTITHI/STRIP/337. He further stated that the plaintiff was one of the members of Matithi Wamumu Self Help Group and duly appended his signature on the said letter of guarantee by one Gitau Kabinga (the plaintiff's husband) being the registered proprietor of land parcel No. KIINE/RUKANGA/602. That Matithi Wamumu Self Help Group offered all those parcels of land known as L.R NO. MWERUA/KAGIO/1347, KIINE/RUKANGA/602, and MWEA/MUTITHI/STRIP/337 as security for the loan advanced whereupon a lawful notification of charge was lodged and registered against it by the 1st defendant to secure its interest. He also said that the 1st defendant conducted searches over the said parcels and ascertained that the same were not encumbered. Matithi Wamumu Self Help Group subsequently failed, neglected and/or refused to honour its contractual obligations to repay the outstanding loan amounts thereby compelling the 1st Defendant to remind them of their indebtedness and the arrears balance over their loan account but they adamantly, and/or deliberately failed, refused and/or neglected to meet their contractual obligations. The witness further stated that due to the continued defaulting the part of Matithi Wamumu Self Help Group, the 1st defendant served them a statutory notice dated 4th February, 2009 recalling the outstanding sums in full together with interest. He said that Matithi Wamumu Self Help Group still failed and neglected and/or refused to honour their debt repayment obligation constraining the 1st defendant to instruct the 2nd defendant to execute against Matithi Wamumu Self Help Group by disposing of all that parcel of land known as KIINE/RUKANGA/602 with a view to realizing the outstanding sums. Pursuant to those instructions, the 2nd defendant issued a 45 days redemption notice and a notification of sale over all that parcel of land known as KIINE/RUKANGA/602 where one Harrison Mwangi Gitau the guarantors son received the said notices giving them ample time to salvage and/or redeem their account but the same was still not complied with and on the 29th August, 2012 the said parcel of land No. KIINE/RUKANGA/602 was sold by way of public auction and a transfer was executed immediately. He said that the loan remains owing and outstanding and continues to accrue interest until payment in full. He denied knowledge of existence of any dispute over the charge of the parcel of land in question being L.R KIINE/RUKANGA/602.

4TH DEFENDANTS CASE

The 4th defendant testified on 3rd June, 2021 and adopted his witness statement recorded on 14/03/2017. He stated that he is the registered proprietor of land parcel number KIINE/RUKANGA/602. He said that in August 2012, he saw an advertisement in the Daily Nation Newspapers in which a firm of Auctioneers by the name of Restorers Consult were going to sell by public auction a parcel of land being L.R NO. KIINE/RUKANGA/602 on 29/08/2012 starting at 11.00 a.m. outside Kerugoya Post Office. He said that he attended the auction and bid for the purchase of the said land at a price of Kshs. 1.26 million. He further stated that he was declared the highest bidder. He also established from the Auctioneer that the 1st defendant was the chargee of the said property. On the date of the Auction, he paid a deposit of Kshs. 350,000 to A.F.C, the 1st defendant herein and on 24/09/2012, he paid the balance of Kshs. 910,000 which was the last payment of the bid price. He stated that he made the two payments vide banker's cheque and was issued with acknowledgment receipts. He was also issued with a certificate of sale and a Memorandum of Sale by the Auctioneer dated 29/08/2012. On 25/09/2012, he received a letter from the 1st defendant (A.F.C) through the Auctioneer that he was required to pay Kshs. 19,700 towards the legal fees for the transfer of the land to his name. On 26/09/2012, he paid the said sum of Kshs. 19,700 with a forwarding letter to the Auctioneers attaching the banker's cheque in favour of the 1st defendant. Subsequently, he applied for consent from Kirinyaga Land Board to transfer the land into his name. He attended the land Board where consent was duly granted. There was no objection made by the plaintiff or any other person. He later paid the stamp duty and the transfer fees and was issued with a title deed. He produced all the documents contained in his list of document as 4th Defendant's Exhibits No. 1 - 14 respectively.

The second witness called by the 4th defendant was Joseph Munene who trades as an Auctioneer in the name and style of RESTORER CONSULT. He referred to his witness statement recorded on 14/03/2017 which he adopted in his evidence.

PLAINTIFF'S SUBMISSIONS

The plaintiff through the firm of Z.N. Gathaara & Co Advocates raised seven (7) issues for determination as follows:-

(1) Whether the loan and subsequent sale of the land was fraudulent

The plaintiff submitted that on 2nd October, 2012 the Hon. K.K. Cheruiyot issued a permanent injunction orders which forbade any dealings with the land subject matter of the suit herein. He argued that the 1st defendant bank knew as demonstrated by documents and arguments before the lower court that the LOAN OFFER and the LETTER OF GUARANTEE AND INDEMNITY were never signed by the deceased proprietor. He contends that despite knowledge of the existence of these material facts, the 1st defendant, on 29/01/2013 purported to transfer the land to the 4th defendant, within the meaning of the express provisions of *Section 318 of the Penal Code*. He also submitted that an offence of intermeddling with property of a deceased person contrary to *Section 45 of the Law of Succession Act* has also been established. The plaintiff further submitted that the 1st defendant deliberately, wantonly and with fraudulent intent charged and sold the deceased's proprietor's land contrary to the explicit provisions of the *Registered Land Act (repealed)*. That the whole transaction of charging or declaring as collateral the deceased's land KIINE/RUKANGA/602 grossly offended the express provisions of *Section 6 of the Land Control Act (Cap 302) Laws of Kenya*. In conclusion, the plaintiff argued that the 1st defendant's actions were also in direct violation of the provisions of *Section 50 of the Land Act* which forbids any dealings with property of deceased persons except by transmission through a Grant. The following citations were referred;

- 1) *The penal Code, CAP 63 Laws of Kenya*
- 2) *Law of Succession Act, CAP. 160, Laws of Kenya*
- 3) *Registered Land Act(repealed)*
- 4) *Land Control Act, CAP. 302*
- 5) *Land Registration Act No. 3 of 2012,*
- 6) *Land Act, No. 6 of 2012.*

(2) Whether the 4th Defendant's claim as innocent purchaser is tenable in all circumstances

The plaintiff submitted that the claim of the land by the 4th defendant is untenable when at the time of the proprietor's death, he had never executed either the loan or guarantee, binding his land as collateral to the 1st defendant. He argued that this was a scheme hatched and perpetrated after his death and cannot give rise to the recognition to the civil claim of an "innocent purchaser" of a dead man's land. The following cases and citations were referred;

- 1) *Katende Vs Haridar & Company Ltd (2008) 2 E.A 173*
- 2) *Land Registration Act, No. 3 of 2011*
- 3) *Land Act, No, 6 of 2012*
- 4) *Land Control Act, Cap. 302, Laws of Kenya.*

(3) Whether the law supports acquisition of the land by the 4th Defendant

On this issue, the plaintiff submitted that there is no provision in the Constitution, the *Land Act and the Land Registration Act* that would be of any help whatsoever to the 4th defendant in acquiring the dead man's land. The following Authorities were relied;

- 1) *Nancy Kahoya Amadira Vs Expert Credit & Anor - Civil Appeal No. 133 of 2006*
- 2) *Julius Kiunga Vs K.C.B Ltd & 20 Others, Civil Appeal No. 3 of 2013*
- 3) *The Constitution of Kenya, 2010.*

(4) Whether the Plaintiff would suffer irreparable loss which cannot be compensated with damages

Should she lose the land?

The plaintiff submitted that should the 4th defendant succeed in his endeavour to evict the plaintiff and her children, he will have created a phenomena called internally displaced persons (IDPs) overnight as the plaintiff and her family will henceforth be reduced to vagabonds and wonderers without abode.

(5) Whether the 4th Defendant would suffer irreparable loss which cannot be compensated by damages if the plaintiff retains the land

It has been submitted that the 4th defendant admitted in court that he has never taken possession of the land to date while the plaintiff and her family continue in possession. He submitted that the 4th defendant's claim is clearly monetary and easily compensatable.

(6) When did the 1st defendant become aware that the registered proprietor died before commencement of the loan process

The plaintiff averred that the suit papers before the S.R.M Court were filed in the year 2011 and that the 1st defendant was a party from inception. He submitted that the most prominent document in the suit was the registered proprietor's death certificate. Notwithstanding this obvious fact, the 1st defendant proceeded to publish notification of sale, held the auction and effected transfer. He submitted that at the time of effecting transfer, the plaintiff managed to obtain an order at the inter-partes hearing against any dealings with the land. Despite this order for stay, the 1st defendant proceeded to transfer the land to the 4th defendant.

(7) Whether awarding the land to the 4th defendant would be a stamp of approval of the 1st defendant's gross acts of criminal impunity

On this last issue, the plaintiff argued that the 1st defendant offered no apologies or explanation of their gross violation of the rights of the deceased as to why, even as at the date of hearing in court, they sold his land well aware that he never dealt with them concerning his land. The following Cases were relied;

- 1) *Zachariah Wambugu Gathimu & Anor v John Ndungu Maina (2019) e KLR*
- 2) *Lawrence P. Mukiri Mungai v Attorney General & 4 Others (2017) e KLR*
- 3) *Land Registration Act, No. 3 of 2012.*

1ST & 2ND DEFENDANTS' WRITTEN SUBMISSIONS

The 1st and 2nd defendants through the firm of RASHID NGAIRA ADVOCATE framed and submitted on the following issues;

(1) Whether there was a valid loan Agreement

It was submitted that the Matithi Wamumu Self Help Group applied for and were given an agricultural development loan of Kshs. 3,000,000 for Rice farming. That the said Self Help Group and the 1st defendant executed a loan agreement dated 27th June, 2007. That the agreement was executed by Elias Ndungu, Njagi Mwaniki and Gitau Kabinga and the same was witnessed by Gaturu Peter Maina and produced and marked as 1st & 2nd defendants' exhibit No.1. That the said signatories to the loan agreement signed the same in their capacity as officials of the self help group and members of the group. That the said agreement contained not only the terms of the loan but the obligations of the parties as well. That clause 3 of the said loan offer provides for the security and the client provides all those parcels known as MWEA/MUTITHI/STRIP/337, MWERUA/KAGIO/1347 & KIINE/RUKANGA/602 as collateral for the loan. That it was on the basis of a duly executed agreement, duly registered notification and a search confirming registration of its interest over the security parcels and after carrying out due diligence that the 1st defendant proceeded to release the loan funds to the self-help group who is the 3rd defendant herein.

(2) Whether there was security issued for the loan sums advanced

The 1st & 2nd defendants submitted that from the explanations given above, it is clear that the 1st defendant only disburses funds upon being issued with security for the loans sums to be advanced. That the officials of the 3rd defendant who is the loan applicant executed a loan offer and the group through its members issued all those parcels of land known as MWEA/MUTITHI/STRIP/337, MWERUA/KAGIO1347, and KIINE/RUKANGA/602 as collateral for the loan. That the 1st defendant further as a requirement advised the applicants, being a self-help group to have all members of the group execute a deed of guarantee for the loan. That the signatures of all the members appended on the deed of guarantee and indemnity were witnessed by an Advocate of the High Court of Kenya. That the plaintiff executed the deed of guarantee twice and that her signatures are similar. That the said deed of guarantee and indemnity contained among other things, the description of the borrowers, purpose of the loan, the collateral for the loan sums to be advanced, the names of the members and their respective signature execution and advancing of the loans appended and witnessed by an advocate of the High Court as being authentic signatures of the guarantors. That the allegations by the plaintiff that one of the donors of the security, Gitau Kabinga had passed on at the time of the loan cannot be true because the plaintiff who is his wife and also a guarantor ought to have informed the 1st defendant.

(3) Whether the loan amounts advanced were repaid in full

The 1st & 2nd defendants submitted that the loan amount being advanced to Matithi Wamumu Self Help Group in the sum of Kshs. 3,000,000 for agricultural purposes where the plaintiff is a member was never repaid as envisaged in the loan agreement. That the 1st defendant issued several reminders to the borrowers and guarantors to regularize their accounts but they failed to repay the loan. That the 1st defendant, in exercise of its statutory power of sale, issued and served a statutory notice as required by law. As at 31st December, 2010 the outstanding loan amount was Kshs. 4, 469, 638/-. In its efforts to recover the loan amount, the 1st defendant instructed the 2nd defendant together with Restorers Consult Auctioneers to issue the notices for sale of the security parcels. Upon lapse of the notice period, Restorers Consult Auctioneers advertised in the daily nation of 08/08/2012 all those security parcels known as MWEA/MUTITHI/STRIP/337, MWERUA/KAGIO/1347 & KIINE/RUKANGA/602 slating them for sale on Wednesday 29/08/2012. The borrowers still failed to repay the loan sums and have not been repaid to-date. The auction was successful where the 4th defendant's bid for purchase of all that parcel of land known as KIINE/RUKANGA/602 was the highest bid and he was declared the purchaser. The 4th defendant paid the purchase price and transfer documents were executed in his favour

(4) Whether there was fraud on the part of the defendants

The 1st & 2nd defendants submitted that the 1st defendant is a statutory body that offers agricultural loans to farmers and works closely with other government institutions such as the lands registry among others. That the 1st defendant only advances secured agricultural development loans to farmers. That Matithi Wamumu Self- Help Group applied for a loan and the officials of the group voluntarily donated securities for the loan sums and further the members of the group including the plaintiff herein agreed and indeed guaranteed the repayment of the said loan. That having laid bare its processes, the 1st defendant acted within the confines of the law. Finally, the 1st & 2nd defendants submitted that the allegations of fraud on the part of the defendants have not been proved but only remain as mere allegations. They submitted that the plaintiff has not discharged her obligation in proving fraud on the part of the defendants. The following Authorities were relied;

- 1) *Vijay Morjaria v Nansingh Madhusingh Darbar & Anor (2000) e KLR*
- 2) *Evidence Act, (Cap.80), Laws of Kenya.*

(5) Whether the Plaintiff was aware of the loan

The 1st & 2nd defendant argued that the plaintiff in this suit was a member of Matithi Wamumu Self-Help Group who applied and were advanced an agricultural development loan of Kshs. 3,000,000/= for Rice farming. That the said self-help group and the 1st defendant executed a loan agreement dated 27th June, 2007. That the agreement was executed by Elias Ndungu, Njagi Mwaniki, and Gitau Kabinga witnessed by one Gaturu Peter. That the plaintiff being a member of the self- help group executed the deed of guarantee and indemnity and that her signature was witnessed by an advocate of the High Court of Kenya. That the said deed and indemnity clearly indicated the applicants, loan amount applied for and the guarantors of the said loan. That the plaintiff as a matter of fact signed the deed of guarantee twice.

(6) Whether the Auction process was within the confines of the law in exercise of its statutory power of sale

It is submitted that upon expiry of the notice period issued for the sale of securities, the 1st defendant advertised for sale all the security parcels being MWEA/MUTITHI/STRIP/337, MWERUA/KAGIO/1347, & KIINE/RUKANGA/602 slating them for sale on Wednesday 29th August, 2012. The 4th defendant attended the Auction and emerged the highest bidder for the suit land whereupon within the required period paid the full purchase price and subsequently the transfer documents were prepared in his favour. At the time of registration, there was no order or any other encumbrance registered on the title that would stop any transfer. That the sale was done within the confines of the law and the 4th defendant having duly purchased the suit land and holding a title should be allowed to enjoy his property.

THE 4TH DEFENDANT'S WRITTEN SUBMISSIONS

The 4th defendant through the firm of Macharia Nderitu & Co. Advocates framed five issues which he submitted as follows;

(a) Whether the 4th defendant entered into a valid agreement for sale with the 1st defendant?

The 4th defendant submitted that there was a valid agreement for sale between the 4th defendant and the 1st defendant made on the premises of a willing buyer willing seller basis and for which consideration was paid by the 4th defendant. That on 08/08/2012, an advertisement on the sale of the suit land was published on the Daily Nation Newspapers by Restorers Consult Auctioneers on behalf of the 1st defendant and that the said advertisement met the requirements of *Rule 16 of the Auctioneers Rules, 1997*. That on 29/08/2012, the 4th defendant attended the public Auction outside Kerugoya Post Office following the advertisement he saw, for the first time, on the Daily Nation Newspaper on 08/08/2012. That on participating in the Auction, the 4th defendant was declared the highest bidder for the suit land, having placed a bid for Kshs. 1, 260,000. That the 4th defendant was issued with a certificate of sale and a Memorandum of Sale by the Auctioneer on the same day and on the fall of the hammer, the 4th defendant paid a deposit of Kshs. 350,000/ to the 1st defendant through its Kerugoya office. That there is no evidence adduced by the plaintiff at all of collusion or conspiracy between the 1st defendant and the 4th defendant to vitiate the lawfully concluded sale of the suit land at the Auction. That the particulars of fraud by the plaintiff are hence unproven.

The 4th defendant further submitted that on 24/09/2012, He proceeded and paid the balance of the purchase price in the amount of Kshs. 910,000/ in full and was issued with receipts upon payment. That on paying the full purchase price, the 4th defendant satisfied the conditions of sale in the Memorandum of sale between him and the 1st defendant, completing the sale and purchase of the suit land. That the 4th defendant therefore satisfied the requirements provided for under *Rule 17(4) of the Auctioneers Rules 1997* by having the highest bid and satisfying the conditions of sale which was concluded on the fall of the hammer and the subsequent payment of the purchase price by the 4th defendant. That the 4th defendant was not privy to the loan Agreement and the charge between the registered owner of the suit land and the 1st defendant. He relied in the case of *Mbuthia v Jimba Credit Finance Corporation & Another (1988) e KLR*. That on 2nd October 2012 the Hon. K.K. Cheruiyot gave an order of permanent injunction on the application dated 27th January, 2011 preventing any dealings with the suit land until the determination of the suit. That the 4th defendant, as earlier stated, purchased the suit land on 29th August, 2012 in the public Auction and received Title to the land upon completing payment of the purchase price on 24th September, 2012. That considering the chronological order of events, the sale and purchase of the suit land was conducted and finalized before the court order was given. That therefore, there was no court order prohibiting the sale and transfer or dealing with the suit land at the time of the sale. Further, the 4th defendant submitted that was not a party to the said suit and was only joined as a party to the suit on 11th April, 2013. That he could not comply with a court order that he was not aware of and made in a suit in which he was not a party. That the 4th defendant was only joined in the suit after the sale had been finalized. The following cases were relied;

- 1) *Mbuthia v Jimba Credit Finance Corporation & Anor (1988) e KLR*

2) *Stanley Ng'ethe Kinyanjui v Tony Ketter & 5 Others (2015)*

3) *Auctioneers Rules, 1997.*

(b) Whether the 4th defendant paid the full consideration to the 1st defendant

On this issue, the 4th defendant submitted that pursuant to the terms and conditions of the Memorandum of Sale between him and the 1st defendant, he was declared the highest bidder for the suit land on 29/08/2012 after placing a bid for Kshs. 1,260,000/. That, on the fall of the hammer, he paid a deposit of Kshs. 350,000/ to the 1st defendant through it Kerugoya office. That on 24/09/2012, he paid the balance of the purchase price in the sum of Kshs. 910,000/ through two banker's cheques in the sum of Kshs. 1,260,000/ issued in favour of the 1st defendant in full consideration and was issued with receipts as proof.

(c) Whether the 1st and 4th defendants sought and obtained the land control Board consent to transfer the suit land?

The 4th defendant averred that indeed he made an application in the name of the 4th defendant for consent to transfer the suit land and obtained the same from the Land Control Board in Kirinyaga pursuant to *Section 6 of the Land Control Act (CAP 302)*. He relied in the following cases and citation;

1) *Consolata Pande & Another v Ashish Bhupendra Patel & 4 Others (2019) e KLR*

2) *Land Control Act, CAP 302.*

(d) Whether the 1st defendant transferred the suit land to the 4th defendant and whether the Title Deed subsequently issued to the 4th defendant was valid?

The 4th defendant on this issue submitted that the suit land was indeed transferred from the 1st defendant to him through a valid Title deed. He submitted that upon paying the requisite purchase price to the 1st defendant and obtaining the transfer, acquiring the consent of the Kirinyaga Land Control Board and paying the stamp duty and registration fees, he was registered as the absolute proprietor of the land and was issued with a Title Deed for the suit land, duly signed by the Registrar. That the registration and issuance of the Title Deed for the suit land in accordance with *Sections 26, 30, and 37 of the Land Registration Act, No. 3 of 2012*, serves as evidence that the 4th defendant is the sole and absolute proprietor of the suit land and that a valid transfer of the suit land from the 1st to the 4th defendants indeed occurred. That the 4th defendant received a valid Title to the suit land being an innocent purchaser for value without notice. That the 4th defendant acquired the land in good faith and as an innocent purchaser for value without notice of any fraud on the part of any party. That the 4th defendant was served with a court order issued on 11th April, 2013, enjoining him to the suit as the 4th defendant. That it was after receiving the said order that the 4th defendant first learnt of the dispute between the 1st defendant and the plaintiff. That the 4th defendant therefore had no knowledge of any dispute regarding the suit land when he purchased it on 29th August, 2012. That the 4th defendant had taken due diligence and reasonable steps before purchasing the suit property by conducting an official search at the land's registry that did not expose any encumbrances registered against the suit land in favour of the plaintiff. That the 4th defendant was not involved in any fraudulent dealings with the 1st defendant to acquire the suit land but only came to know of the sale of the suit from the advertisement in the Daily Nation newspapers dated 8th August, 2012. That the 4th defendant established the identity of the 1st defendant as the Chargee of the suit land who was exercising its statutory power of sale. That the 4th defendant purchased the suit land and complied with the procedural legal requirements in the sale, transfer and registering of the suit land in his name. That there is no proof of the alleged fraud committed by the 4th defendant adduced by the plaintiff and that the 4th defendant stands innocent of any fraudulent dealings regarding the acquisition of the suit land and holds an indefeasible Title to the suit land afforded protection under the land laws of Kenya. The following cases and citations were referred;

1) *Eunice Grace Njambi Kamau & Anor v Attorney General & 5 Others (2013) e KLR*

2) *Elizabeth Wambui Githinji & amp; 29 Others v Kenya Urban Roads Authority & 4 Others (2019) e KLR*

3) *Fletcher v Peck 10 U.S 87 (1810)*

4) *Katende v Haridar & Company Ltd (2008) 2 E.A 173*

5) *Captain Patrick Kanyagia & Anor v Damaris Wangechi & 2 Others (1995) e KLR*

6) *J. A. Vijav Morjaria v Nansingh Madhusingh Darbar & Anor (2000) e KLR*

7) *Nancy Kahoya Amadiva v Expert Credit Limited & Anor NO. 133of 2006*

8) *Elijah Kipng'eno Arap Bii v Kenya Commercial Bank & 3 Others (2021) e KLR.*

9) *Section 26,35, 53 of the Land Registration Act, No. 3 OF 2012*

10) *Section 43, 99, 99(3) of the Land Act, 2012.*

(e) Whether the plaintiff has trespassed onto the suit land?

The 4th defendant submitted that the plaintiff has indeed trespassed into the suit land after he visited the land and established that the plaintiff and/or her servants, agents, nominees and/or persons claiming under her have indeed trespassed onto the suit land and erected thereon unlawful structures without any colour of right and that he has not been able to take possession and his right to use and enjoy the suit land has been defeated by the plaintiff's actions of trespass. He submitted that he sought the intervention of the Kenya Police and the National Administration who informed him that an eviction order was necessary to assist in the eviction process. That despite demand and notice to sue for the continued trespass, the plaintiff refused to cease the trespass and defeat the proprietary rights of the 4th defendant unless the court comes to his aid and gives an eviction order and an injunction preventing further trespass of the suit land. He relied on the following cases and citations.

- 1) *Bomet Beer Distributors Ltd & Anor Vs Kenya Commercial Bank Ltd & 4 Others (2005)e KLR*
- 2) *Kuria Greens Limited v Registrar of Titles & Anor(2011) e KLR*
- 3) *Section 25 of the Land Registration Act no. 3 of 2012*
- 4) *Article 47 of the Constitution of Kenya, 2010*
- 5) *Article 50(1) of the Constitution of Kenya, 2010.*

(f) Whether the plaintiff has any valid claim to the suit land?

It was submitted that the plaintiff has no valid claim to the suit land which the 4th defendant who is an innocent purchaser for value without notice after he bought it from a public Auction and complied with all the legal and statutory requirements and subsequently issued with a valid Title deed by the Land Registrar. He submitted that the plaintiff has failed to adduce any evidence showing that the 4th defendant was aware of or linked to any fraudulent dealings regarding the suit land. That from the moment the 4th defendant was declared the highest bidder of the suit property and paid the deposit for the purchase price at the fall of the hammer, the suit land was transferred to the 4th defendant after the process of transfer and Registration was followed as required in law. That the Title deed issued to the 4th defendant is indefeasible and immune to all claims by the plaintiff and all others. That the plaintiff's right of redemption was extinguished upon the sale by public Auction of the suit land and that she has no legal Title to the suit land. In conclusion, the 4th defendant submitted that the Honourable Court should assess and compensate the 4th defendant with mesne profits for loss of use of the suit land from the time of purchase on 29/08/2012 to date in addition to all the prayers sought in the counter-claim and have the suit dismissed with costs. He referred to the following cases and citations;

- 1) *Eunice Grace Njambi Kamall & Anor v The Hon. Attorney General & 5 Others Civil suit No. 976 of 2012*
- 2) *Elijah Kipng'eno Arap Bii V Kenya Commercial Bank & 3 Others (2021) e KLR*
- 3) *Kamulu Academy Limited & Anor v British American Insurance (K) Ltd & 2 Others (2018) e KLR*
- 4) *Joyce Wairimu Karanja v James Mburu Ngure & 3 Others (2018) e KLR*
- 4) *Ze Yu v Yang Nova Industrial Produce Ltd (2003) 1 E.A 362 (CCK)*
- 5) *Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwa&4 Others (1997) e KLR*
- 6) *Shakira Yusuf Sarova v National Bank of Kenya & Anor; Keysian Auctioneers (Interested party) (2021) e KLR.*

LEGAL ANALYSIS AND DETERMINATION

I have considered the pleadings, the proceedings the viva voce evidence given by the parties, the documents produced, the submissions by counsels and the applicable law. Issues for determination which flow from the pleadings are as follows:-

- 1) **Whether there was a valid loan agreement?**
- 2) **Whether there was security issued for the loan advanced?**
- 3) **Whether the loan amount advanced was repaid by the borrowers as agreed?**
- 4) **If the answer to paragraph (3) above is in the negative, whether the 1st defendant/Chargee exercised her statutory power of sale in accordance with the law?**
- 5) **Whether the 4th defendant entered into a valid agreement for sale with the 1st defendant?**

6) Whether the loan and subsequent sale of the land was fraudulent?

7) Whether the 4th defendant's claim as innocent purchaser is tenable?

1. WHETHER THERE WAS A VALID LOAN AGREEMENT?

It is not in dispute that the plaintiff herein is a Financial Institution established under the Agricultural Finance Corporation Act, Cap. 323 of the Laws of Kenya. The 1st defendant through her Officer-in-charge, Kerugoya branch stated on oath that sometime on or 27th June, 2007, Matithi Wamumu Self-Help Group, the 3rd Defendant herein applied for an agricultural development loan from the 1st defendant in the sum of Kenya Shillings three million (3,000,000) which sum was to be repaid together with interest within one (1) year. He further stated that the said loan was guaranteed by one Elias Mwangi Ndungu, being the registered proprietor of L.R. NO. MWERUA/KAGIO/1347, Gitau Kabinga, being the registered proprietor of L. R. NO. KIINE/RUKANGA/602 and Magondu Mwaniki, being the registered proprietor of L.R. NO. MWEA/MUTITHI/337. The witness further said that the plaintiff herein who was one of the members of Matithi Wamumu Self-Help Group duly appended her signature on the letter of offer by her Husband Gitau Kabinga who is and also the registered proprietor of L.R.NO. KIINE/RUKANGA/602. Pursuant to the said agreement and with a view of securing its interests on the loan advanced, the 1st defendant lodged and registered a lawful notification of charge against all the parcels offered as security known as L.R. NO. MWERUA/KAGIO/1347, KIINE/RUKANGA/602, and MWEA/MUTITHI/337. Before that, the witness confirmed that he did due diligence by conducting searches over the said parcels and ascertained that the same were free from any encumbrances. He further stated that the borrower, Matithi Wamumu Self-Help Group subsequently failed, neglected and/or refused to honour her contractual obligation to repay the outstanding loan plus interest as agreed thereby compelling the 1st defendant to issue a demand reminding them of their indebtedness over the loan account and the arrears but failed to meet their contractual obligation. The witness produced 11 documents in support of the claim as contained in their list of documents dated 15/06/2017. The exhibits are as follows :-

- 1) Copy of loan agreement dated 27th June, 2007
- 2) Copy of letter of guarantee dated 3rd July, 2007
- 3) Copy of notification of charge dated 4th July, 2007
- 4) Copies of official searches dated 24th August, 2006, 23rd May, 2006 and 16th May, 2006.
- 5) Copy of demand letter dated 11th November, 2010
- 6) Copy of the statutory notice dated 4th February, 2009.
- 7) Copy of 45 days redemption notice dated 16th November, 2010.
- 8) Copy of affidavit of service
- 9) Copy of the Daily Nation Newspaper advertisement of 8th August, 2012
- 10) Copy of Memorandum of Sale dated 29th August, 2012
- 11) Certificate of sale.

From the evidence adduced and the documents produced by the 1st defendant, it is

clear that there was a valid and binding loan agreement duly executed by all the parties in the loan agreement. In particular, the sale agreement dated 27th June, 2007 was executed by three guarantors namely Elias Ndungu, Njagi Mwaniki, and Gitau Kabinga. The loan agreement was also witnessed by one Gaturu Peter Maina of I/D No.21279199 and duly registered. The three named persons executed the loan agreement in their capacity as officials of the Matithi Wamumu Self-Help Group, the borrower herein and also as members of the group. Apparently the testimony by the witness was not challenged and/or controverted on cross-examination. I am therefore satisfied that there was a valid loan agreement.

2. WHETHER THERE WAS SECURITY ISSUED FOR THE LOAN ADVANCED?

The witness called by the 1st defendant stated that after Matithi Wamumu Self-Help Group, the 3rd defendant herein applied for the agricultural development loan on 27th June, 2007 in the sum of Kshs. 3,000,000/= which was Guaranteed by three guarantors who gave title deeds for their parcels of land as collateral namely Elias Mwangi Ndungu (L.R. NO. MWERUA/KAGIO/1347), Gitau Kabinga (L.R. NO. KIINE/RUKANGA/602) and Magondu Mwaniki (L.R. NO. MWEA/MUTITHI/STRIP/337). The witness also stated that Ann Wangechi Kamau, the plaintiff herein who was a member of Matiti Wamumu Self- Help Group and wife to the said Gitau Kabinga also duly appended her signature on the letter of Guarantee by her husband being the registered proprietor of L.R. NO. KIINE/RUKANGA/602. He stated that it was after accepting the application for the loan advance, executing the certificate of acceptance containing the terms and conditions thereof and providing the collateral security that a lawful notification of charge was duly lodged and registered after which the loan was disbursed to the borrower. The letter of guarantee by the guarantors dated 3rd July 2007 was produced by the 1st defendant as D-Exhibit 2. I am also satisfied that there was collateral security given for the loan advanced.

3. WHETHER THE LOAN AMOUNT ADVANCED WAS REPAYED BY THE BORROWERS AS AGREED?

On this issue, the 1st defendant's witness Kipkurui Cheburet told the court that despite the borrower accepting the terms of the loan agreement and Gitau Kabinga, one of the members of Matiti Wamumu Self- Help Group offering his land parcel NO. KIINE/RUKANGA/602 as security, the said borrower subsequently failed, neglected and/or refused to honour her contractual obligations to repay the outstanding loan amounts. Those averments given under oath were not denied and/or controverted by the plaintiff. The answer to that question in my view is in the negative.

4. IF THE ANSWER TO PARAGRAPH (3) ABOVE IS IN THE NEGATIVE, WHETHER THE 1ST DEFENDANT/CHARGE POWER OF SALE HAD CRYSTALLIZED?

The witness further stated on oath that after the borrower failed and/or refused to repay the outstanding loan amounts in accordance with the terms and conditions, the 1st defendant reminded them of their indebtedness and the arrears balance but they still refused to meet their contractual obligations. On 4th February, 2009 the witness told the court that the 1st defendant served the borrower/Chargor with a notice recalling the outstanding sums in full plus interest. The said letter was produced as D-exhibit 6. He stated that the borrower failed to honour their debt repayment obligation the result of which the 1st defendant instructed Keysian Auctioneers, the 2nd defendant herein to execute against Matiti Wamumu Self-Help Group, the 3rd defendant herein by disposing of all that parcel of land known as L.R. NO. KIINE/RUKANGA/602 with a view to realizing the outstanding sums. The witness further stated that the 2nd defendant issued a 45 days redemption notice and a notification of sale over all that parcel of land known **L.R. NO. KIINE/RUKANGA/602** where one Harrison Mwangi Gitau, the guarantor's son received the notices giving them ample time to redeem their account but the same was still not complied with. After the 3rd defendant/borrower failed to redeem their account, the second defendant on 8th August, 2012 advertised in the Daily Nation Newspapers the sale of the collateral security being land parcel No. KIINE/RUKANGA/602. A copy of the said newspaper cutting was produced as D-Exhibit 9. The testimony by the witness was not controverted or challenged on cross-examination. I find that the 1st defendant's power of sale had indeed crystallized.

5 WHETHER THE 4TH DEFENDANT ENTERED INTO A VALID AGREEMENT FOR SALE WITH THE 1ST DEFENDANT?

The 4th defendant, Watson Muthiga Gathuku in his sworn testimony told this court that on 8th August 2012, he saw an advertisement in the Daily Nation Newspaper in which Restorers Consult Auctioneers had advertised for sale of a parcel of land known as KIINE/RUKANGA/602. The sale was scheduled for 29/08/2012 from 11.00 a.m. outside Kerugoya Post Office. He said that he attended the said auction and bid to purchase the suit property at Kshs. 1,260,000/ and was declared the highest bidder by the Auctioneer. At the auction, he established from the Auctioneer that the 1st defendant was the Chargee of the suit property and was selling the suit land in exercise of its statutory power of sale. He said that upon emerging the highest bidder, he paid the deposit of Ksh. 350,000/ to the 1st defendant through its Kerugoya office and on 24/09/2012, he paid the balance of Kshs. 910,000/= in full and final settlement vide bankers cheques which was duly acknowledged. The witness said that after he emerged as the highest bidder at the Auction and payment of the deposit, he was issued with a Certificate of Sale and Memorandum of Sale by the Auctioneer on 29/08/2012. That on 25/09/2012, he was informed that he was required to pay a sum of Kshs. 19,700/= towards the legal fees for the transfer of the suit land to his name and on 26/09/2012, he paid the said amount to the 1st defendant vide a bankers cheque. He also applied for consent to transfer from Kirinyaga Land Control Board which was duly granted. Finally, he paid the requisite stamp duty and the registration fees and thereafter the suit property was transferred to his name and a title deed issued to him. The testimony by the 4th defendant was not challenged or controverted on cross-examination.

6. WHETHER THE LOAN AND SUBSEQUENT SALE OF THE LAND WAS FRAUDULENT?

The defendant in this suit is challenging the letter for loan offer dated 4th July, 2012 which her late husband Gitau Kabinga (deceased) is said to have signed saying that as of that date, her husband was resting in his grave having died on 02/06, 2007. The plaintiff at paragraph 7 of her plaint dated 09/09/2013 accused the 1st, 2nd and 3rd defendants for numerous acts of fraud. The 1st defendant was accused for committing the following acts of fraud;-

- a) Executing charge documents of a deceased proprietor
- b) Colluding with the 2nd and 3rd defendants to defraud a deceased person of his land
- c) Releasing funds to the 2nd and 3rd defendants on the strength of a charge of the title in a criminal act as the proprietor had died long before such purported charge
- d) Purporting to exercise chargee's right of sale in a charge obtained criminally.
- e) Purporting to exercise chargee's right of sale where no such rights ever existed.

On the other hand, the 2nd and 3rd defendants are accused for committing the following acts of fraud;-

- a) Obtaining credit fraudulently
- b) Securing a loan using a title of a deceased person
- c) Registering a charge on a property of a deceased person

- d) Falsely pretending to be the proprietor of the said land.
- e) Registering a charge without obtaining the requisite land control board consent
- f) Colluding to deprive the beneficiary of the estate herein.

The fraudulent claims made by the plaintiff are serious crimes punishable by imprisonment. The plaintiff in fact through her Advocate on record has confirmed the same citing Section 318(c) of the Criminal Procedure Code and Section 45 of the Law of Succession Act. The complaints by the plaintiff in my understandings is that the hand writings and signatures appearing in the loan agreement letter and the certificate of acceptance of the terms thereon dated 27/06/2007, the letter of guarantee and indemnity dated 03/07/2007 do not belong Gitau Kabinga (deceased), the then registered proprietor of land parcel KIINE/RUKANG/602. If the plaintiff is disputing that Gitau Kabinga, her late husband did not sign and execute the impugned documents of the loan agreement which were produced as exhibits in this case, then the burden of proving that fact was on her. **Section 107 of the Evidence Act, Cap. 80** provides as follows:-

“107 (1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

That issue has been discussed by the superior Courts in a number of decisions. In the case of **Concepta Nyaboke Vs Peter Muasya & Others, ELC No. 32 of 2017 (Machakos) U.R, Justice Angote** held as follows;

“Although the 1st defendant denied having signed the sale agreement of 23rd February 2010, she did not tender any evidence from a document examiner to show that the signature on the agreement of 23rd February, 2010 was not his. I say so because it is only the 1st defendant who can provide the document examiner with samples of his known signature or specimen signature to enable him (the document examine compare it with the questioned signatures, and not the plaintiff). Indeed, Section 122 of the evidence Act provides that

when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him. Being the only person who is knowledgeable of his signature, the burden of proving that the signature on the sale agreement of 23rd February,2010 was not his was on the 1st defendant and not the plaintiff. Having not done so, I find that the 1st defendant signed the agreement of 23rd February, 2010.”

The plaintiff in this case is alleging that her husband Gitau Kabinga (deceased) would not have signed the loan Agreement, the guarantee of indemnity and all the Impugned documents produced as exhibits in this case. I have looked at those documents particularly the loan Agreement dated 27th June 2007, a certificate of acceptance dated 04th July 2007 and a letter of guarantee and indemnity dated 3rd July, 2007. The said documents were also produced as exhibits in this case giving names and signatures of three guarantors. The three alleged guarantors are named as ELIAS M. NDUNGU, NGAGI M. MWANIK and GITAU KABINGA. Since the plaintiff denies that the impugned signatures appearing in the disputed documents does not belong to her husband, then it was incumbent upon her to call a document examiner to prove that the signatures appearing in the disputed documents does not belong to Gitau Kabinga (deceased). The burden of proving that the disputed signatures on the impugned documents was not signed by Gitau Kabinga lay on the plaintiff who alleged he never signed. Since the plaintiff failed to call a document examiner to prove that the signatures appearing in the impugned documents was not appended by the person named therein as Gitau Kabinga, the Court’s view, therefore, is that he signed the same. I also note that the disputed signatures are shown to have been witnessed by one Gaturu Peter Maina on 4th and 3rd July 2007 respectively. The plaintiff did not call him as a witness. The letter of guarantee and indemnity dated 3rd July, 2007, was also shown to have been witnessed and signed by 60 members of Matiti Wamumu Self-Help Group, the 3rd defendant who is also the borrower herein. The plaintiff did not call any one of them to confirm whether the said Gitau Kabinga guaranteed them the loan or not.

7. WHETHER THE 4TH DEFENDANT’S CLAIM AS AN INNOCENT PURCHASER IS TENABLE?

The 4th defendant testified how he saw an advertisement on the Nation Daily Newspaper of 08/08/2012 in which Restorer Consult Auctioneers had placed for Sale a parcel of land known as KIINE/RUKANGA/602 scheduled for 29/08/2007 at 11.00 a.m. He said that he attended the Auction and placed his bid for Kshs. 1,260,000/= and was declared the highest bidder. He further said that at the fall of the Hammer and after being declared the Highest bidder, he paid a deposit of Kshs. 330,000/= and on 24/09/2007, he paid the balance of Kshs. 910,000/= in full and final settlement and was issued with payment receipts. The 4th defendant was also issued with a certificate of Sale and a Memorandum of Sale by the Auctioneer on 29/08/2012. He also explained that the 1st defendant asked him to pay for transfer and stamp duty fees which he did. He also attended the Land Control Board at Kirinyaga where he was issued with consent. He was subsequently issued with a title deed for the suit land No. KIINE/RUKANGA/602. He said that he was never served with an order prohibiting the sale of the suit land during the Public Auction on 29/08/2012 or any other time prior thereto. The ingredients for a bona fide purchaser of a property were set out in the **Ugandan case of Katende Vs Haridar & Company Limited (2008) 2 E.A. 173** where the court held:-

“-----It suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine,(he) must prove that;

- a) He holds a certificate of title
- b) He purchased the property in good faith

- c) *He had no knowledge of the fraud*
- d) *He purchased for valuable consideration*
- e) *The vendors had apparent valid title*
- f) *He purchased without notice of any fraud*
- g) *He was not party to any fraud.*

A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner."

The plaintiff in her plaint dated 09/09/2013 has not made any averment of any wrong doing by the 4th defendant in the acquisition of title to the suit property. She only blames the 1st, 2nd and 3rd defendants for acts of fraud particulars of which are set out thereunder. It is my finding that the 4th defendant is indeed a Bona Fide purchaser for value of the suit land parcel **KIINE/RUKANGA/602**.

Again in the case of ***Captain Patrick Kanyagia & Another Vs Damaris Wangechi & 2 Others (1995) e KLR***, the Court of Appeal held:-

"That there is no duty cast, in law, on an intending purchaser at an Auction sale, properly advertised, to inquire into the rights of the mortgagee to sell."

In yet another case of ***Joyce Wairimu Karanja Vs James Mburu Ngure & 3 Others (2018) e KLR***, the Court also pronounced itself as follows:-

"In my view, there is little reason to belabour the point. Once a statutory power of sale is legally activated, any irregularity in the sale is only remediable with damages to the mortgagor if it injures him. Secondly, a purchaser at an auction conducted in the exercise of the statutory power of sale is immunized from suit under Section 99 of the Land Act. Thirdly, a mortgagor's Equity of redemption is extinguished upon the fall of the hammer in a public auction."

From my evaluation and analysis of the evidence adduced, there is no specific accusation levelled against the 4th defendant in the acquisition of his title during the public auction. I find that the plaintiff has not established any acts of improper or bad faith or any acts of wrong doing to cause a determination by this court to impeach his title deed which he acquired as an innocent purchaser.

Before I conclude my analysis, I have noted from the plaintiff's list of documents that he has referred to a Ruling and a court order given by Honourable K.K. Cheruiyot on 2nd October, 2013. I have looked at the ruling and note that the 4th defendant was not a party but in the subsequent order issued on 23rd April 2013, the 4th defendant is only indicated in the Heading as an Intended/proposed defendant. The plaintiff did not produce an affidavit of service to show that the alleged court order was served upon the 1st, 2nd or 3rd defendants who were parties to the suit. Even assuming the said order was served upon them, the 4th defendants, the title currently held by the 4th defendant is not impeachable in my view as an innocent purchaser for value without notice and that the plaintiff's right of redemption was extinguished upon the sale by public Auction of the suit property.

In view of all the matters aforesaid, I come to the conclusion that the plaintiff's case has not been proved to the required standard and the same must collapse. I also find that the 4th defendant's counter-claim has been proved to the required standard. Consequently, I enter judgment as follows:-

- 1) The plaintiff's suit commenced by a plaint dated 09/09/2013 is hereby dismissed with costs.**
- 2) An order of Mandatory injunction is hereby issued for the eviction of the plaintiff and the removal of any structures from the suit land parcel KIINE/RUKANGA/602 forthwith.**
- 3) In default of paragraph 2 above, the 4th defendant is at liberty to proceed and remove such structures at the plaintiff's cost.**
- 4) An order of injunction be and is hereby issued restraining the plaintiff whether by herself, employees, servants, nominee or agent or through any other person claiming under her or otherwise howsoever from trespassing into, occupying, constructing upon, or in any other manner interfering with the 4th defendant's right of occupation, use and ownership of parcel of land known as Title Number KIINE/RUKANGA/602.**
- 5) The Officer Commanding Station (O.C.S) Kerugoya is hereby directed to provide security during the said eviction.**
- 6) The plaintiff is ordered to pay the 4th defendant general damages for trespass/mesne profits of Kshs. 100,000/ per year from 29th August, 2012 until she vacate/eviction is done.**
- 7) The costs of the suit and the counterclaim shall be borne by the plaintiff.**

JUDGMENT READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 18TH DAY OF FEBRUARY, 2022.

.....

HON. E.C. CHERONO

ELC JUDGE

In the presence of:-

1. *Mr. Gachaara for the Plaintiff*
2. *Mr. Mainga for the 1st and 2nd Defendant*
3. *3rd Defendant/Advocate – absent*
4. *Mr. Nderitu for the 4th Defendant*
5. *Kabuta – Court clerk.*