



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT ELDORET

CIVIL SUIT NO. 248 OF 2000

TRUFOSA CHEREDI MUDEMBEI.....1ST PLAINTIFF

NEVIN EGESA JEDEVERA.....2ND PLAINTIFF

VERSUS

JOHN K. MALEMBI.....1ST DEFENDANT

THE SETTLEMENT FUND TRUSTEES.....2ND DEFENDANT

JUDGMENT

1. This is a claim for recovery of land known as Kakamega/Mabusi/14. The land measures 22.0 hectares. The plaintiffs are the widow and son respectively of William Jedevera Mudembei (hereafter *the deceased*). By an amended plaint dated 1st February 2005, the plaintiffs have pleaded that the land was initially allocated by the Settlement Fund Trustees (the 2nd defendant) to the deceased. The plaintiffs claim that the subsequent transfer by the 2nd defendant to the 1st defendant was fraudulent and void.
2. The plaintiffs pray for a declaration that they are the lawful owners of the land; an order to evict the 1st defendant; a permanent injunction to restrain him or his servants from entering or dealing with the land; and, for costs. The defendants deny the claim *in toto*.
3. The plaintiffs' case went as follows. The 1st plaintiff (PW1) testified that the deceased died on 25th April 1982. A copy of the death certificate was produced (plaintiffs' exhibit 1). She and her son Nevin Agesa Jedevera (the 2nd plaintiff) are the joint administrators of the estate. A copy of the grant was produced (plaintiffs' exhibit 2). The deceased was allocated land by the 2nd defendant in 1968. She referred to a loan agreement (plaintiffs' exhibit 3) dated 25th May 1968. She said the deceased started repaying the loan in 1968. She also referred to receipts for various payments: On 30th August 1966 for Kshs 1240; legal fees Kshs. 760; Co-operative fees Kshs 45; loan repayment Kshs 2,000 among others. She said that she paid Kshs 2,500 on 19th September 1997 to the 2nd defendant. On 6th November 1997 she paid Kshs 4000 (Plaintiffs' exhibit 4 (a) to (g)). She conceded there was default in the loan repayments and that the deceased received a legal demand.
4. The 1st plaintiff testified further that the 1st defendant was registered as owner of the land on 25th March 1998. She said the consideration in the Green Card (plaintiffs' exhibit 6) was KShs 5,400. Consideration in the transfer form is stated as Kshs 200,000. She was categorical that her husband did not receive that amount. She said that the deceased had sold the land to Charles Machungo for Kshs 80,000 (plaintiffs' exhibit 7). There had been an aborted sale to Kibutiti Arap Yego. He was refunded his money. Machungo took possession of the land until 1998 when he was forcefully

- evicted by the 1st defendant. She said the deceased was a teacher. She thus contested the thumb print impression on the application for consent; or, the signature on the transfer form. She said the form is dated 13th July 1982; and, that by that date her husband had died.
5. Upon further examination she conceded that she was not residing on the land. She was living in Chepkumia. She said that she moved onto the suit land in 1978. She testified that the postal address of the deceased was P. O. Box 27 Moi's Bridge. She said that was the address he used when communicating with the 2nd defendant. She denied there was a change of address to Turbo.
 6. The 1st defendant conceded that there was a legal charge on the land in favour of the 2nd defendant. She claimed that after she received a demand, she paid two installments to the 2nd defendant. She said Machungo refunded her Kshs 20,500 that she had paid to the 2nd defendant. She said there were land clashes in 1981 and 1982; and, that her documents were burnt or destroyed. She denied that the deceased had another wife called Agnes Naliaka.
 7. The narrative by the 1st plaintiff was largely rehashed by the 2nd plaintiff. PW3 was Charles Onchuru Machungo. He said the deceased sold him the land. He referred to a sale agreement dated 17th March 1979 (plaintiffs' exhibit 7). He paid Kshs 80,000. He paid legal fees to Nyairo & Company of Kshs 1000. He also paid Kshs 3000 to Settlement Fund Trustees (plaintiffs' exhibits 12 and 13). He said an earlier sale to Mr. Yego was rescinded and a sum of Kshs 50,000 refunded. Mr. Yego was present and consented. He said he took immediate possession. As he was in Nairobi, he put his employee or brother-in-law, Makori Nyachae, on the land from 1979 to around April 1998 when he was forcefully evicted. He said there was no court order. He thus filed a suit at the High Court in Eldoret number 78 of 1998 against the two defendants. That suit is still pending.
 8. He conceded that he never went to the Land Control Board. He said the transfer was left with the lawyers. He was aware of a letter from Kalya & Co. Advocates dated 28th April 1998. It was addressed to his brother-in-law who was residing on the land. PW3's lawyers replied to the letter. Upon cross-examination, he said he did not sell the land to another person. He said the 2nd defendant had no right to transfer the land to the 1st defendant.
 9. PW4 was Penina Nyanduto Makori. She is a sister of PW3. She was married to Makori Nyachae. She said PW3 bought the land in 1979. She and her husband took care of the land. It was vacant. They cultivated it from 1979 to 1998. She said the 1st Defendant then came to the land with a group of armed people and evicted them.
 10. That marked the close of the plaintiffs' case. As I stated, the claim is contested. The 1st defendant (DW1) testified that he is the registered owner of the land. He said he purchased it from the deceased William Mudembei in February 1982 for Kshs 200,000. There was no written agreement. On cross-examination, he said the witness to the transaction was Agnes Naliaka. He said he paid the entire sum of Kshs 200,000 in one installment. It was on the date they appeared before the Land Control Board. The seller did not give him a receipt.
 11. He applied for consent (defence exhibit 1). The consent was given (defence exhibit 2). He said the Settlement Fund Trustees had no objection. He produced the original letter of allotment to the deceased dated 25th May 1968. He also produced the transfer dated 13th July 1982 (defence exhibit 5). He said the transfer was advertised on the 2nd defendant's notice board for 90 days for any objections. He claimed that he paid the balance of the loan to the 2nd defendant. It was acknowledged. He produced a receipt dated 28th January 1998 and a statement (defence exhibits 6 and 7). The 2nd defendant authored a letter dated 17th March 1998 confirming settlement of the debt. He was issued with the title deed on 25th March 1998. He testified that the original title is with Barclays Bank from whom he had applied for a loan. He denied committing any fraud.
 12. Upon cross-examination, he said he attended the Kitale Land Control Board. He was accompanied by the deceased and his wife. He said the thumb print on the application for consent was that of the deceased. He said the first signature on the transfer form is that of the deceased; while the second is his. He said they signed at the same time. He said the transfer was executed undated. He conceded that on 13th July 1982, the deceased had died; and, he (the 1st defendant) was out of the country.
 13. The 1st defendant claimed the land was vacant. There had been a person who had leased the land

- earlier. At some point, he wrote to the Director of Land Adjudication and Settlement to assist him to evict some squatters. He denied that Charles Machungo or his assigns were on the land. He denied evicting them. He said he did not know the plaintiffs. He did not know the whereabouts of Agnes Naliaka (the witness to the sale). He said they left the transfer forms with the 2nd defendant who must have inserted the date of 13th July 1982. He said he insisted on the seller placing his thumb print on the consent forms due to the history of aborted sales. The 1st defendant inserted the consideration indicated in the Green Card. He said he started processing the title when he returned from Yugoslavia in 1985. He could not also get the title earlier because of the unpaid loan.
14. DW2 was Joseph Simiyu Wekesa. He testified that the 1st defendant asked him to keep watch over the land. DW2 was living on his own land in Mabusi Scheme. In 1997 the 1st defendant returned and started using the suit land. Upon cross-examination, he said he did not reside on or use the suit land. His duty was to keep a look out. His land and the suit land are only separated by a river. He said he was present when the 1st defendant paid the deceased Kshs 200,000 at the Land Control Board Offices. That marked the close of the 1st defendant's case.
15. The 2nd defendant called one witness, Evans Misati Orumi, the Chief Land Adjudication and Settlement Officer for Kakamega County (DW3). He produced the original file for Kakamega/Mabusi Settlement/Parcel/14 (defence exhibit 15). He said the settlement scheme was established in the 1960s. In 1968, William Mudembei was allocated the parcel. The letter of offer had conditions. He accepted the conditions. He was to pay 10% deposit. The total value then was Kshs 6000. He paid Kshs 600. He was to pay the balance in half-yearly installments of Kshs 206. He defaulted. He was issued with notices and invoices. He testified that the deceased decided to sell the land to the 1st defendant. The witness did not have the agreement of sale.
16. DW3 referred to the transfer and consent. He said the Settlement Officer was to hold onto the documents for two to three months awaiting any objections. Since no objection was received, the documents were forwarded to Nairobi. The purchaser was to pay the loan. It was paid in full. The 2nd defendant discharged the title. A new title was issued in 1998 in the name of the 1st defendant.
17. DW3 said the fund was unaware of the demise of the deceased. Upon cross-examination by the plaintiffs' counsel, he said he preferred thumb printing to signatures. He said it was "more authentic". He did not know whether a Land Control Board meeting was held. He said the minute file would be in the Kitale file; or, with the clerk of the Board.
18. DW3 conceded that the deceased could not have signed the transfer on the date indicated; but he denied the document was false. He said the application for consent and transfer did not make reference to identity card numbers. He conceded that the notices from the 2nd defendant to the deceased were sent to different addresses; some were to Kakamega, Mavusi, and Kitale. He said the scheme was being managed from Kitale and later from Kakamega.
19. DW3 said the balance due to the government on the initial loan was Kshs 5,400. The witness was aware of a complaint by Mr. Machungu. He denied there was any fraud. He said the land had never been registered in the name of the deceased. When Mavusi Settlement Scheme was established, the consideration was Kshs 6,000. The consideration paid by the 1st defendant was Kshs 200,000. The 2nd defendant was only to receive the balance of Kshs 5,400. That marked the close of the 2nd defendant's case.
20. The plaintiffs have filed submissions dated 13th August 2015 with authorities annexed. The 1st defendant's submissions were filed on 25th September 2015 together with a list of authorities. The 2nd defendant's submissions were filed on 14th September 2015 with a list of precedents. On 30th September 2015, learned counsel for the parties informed the court they would rely entirely on their written submissions. I have considered the rival arguments. I have also paid heed to the evidence, the records and materials before me, the pleadings, and lists of authorities.
21. On 7th June 2001, the parties filed a joint statement of *agreed issues*. They listed ten issues for determination by the court. From the statement, the pleadings and the evidence, the issues can be condensed into eight-

i. *Whether the plaintiffs are the legal representatives of the deceased;*

- ii. Whether the deceased was allocated the land by the 2nd defendant;
- iii. Whether the 2nd defendant had a charge over the land;
- iv. Whether the deceased paid the charge debt;
- v. Whether the deceased sold the suit land to Charles Machungo or whether the latter took possession of the land;
- vi. Whether the transfer by the 2nd defendant to the 1st defendant was fraudulent or void;
- vii. Whether the plaintiffs are entitled to the reliefs in the amended plaint; and,
- viii. Who should bear the costs of this suit?

22. I would add the general question of *jurisdiction*. I stated at the beginning that this is a claim for recovery of title. Under article 162 (2) of the Constitution of Kenya 2010, it is a matter squarely within the sphere of the Environment and Land Court. Jurisdiction is everything. Without it, the court must lay down its tools. Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1. But that would be to simplify the matter too much. This suit predates the Constitution: it was presented to court on 23rd October 2000 at the High Court. The first six witnesses were heard by my predecessors, Ibrahim J (as he then was) and Azangalala J (as he then was). I took the evidence of the last witness. Under the Land Court Act, all land matters partly heard by the High Court were to proceed before the High Court. I thus find the court has jurisdiction to determine the suit. None of the parties has contested the jurisdiction of the court.
23. I am satisfied from the evidence that the plaintiffs are the widow and son of the deceased respectively. The couple had nine issues. The deceased died on 25th April 1982. It is also beyond contest that the plaintiffs are the *legal representatives* of the deceased. Doubt is removed completely by the grant of letters of administration (plaintiffs' exhibit 2). Although there were allegations of a second wife, there was no cogent evidence from the defendants. Fundamentally, I have no evidence of objection proceedings in the succession cause. The answer to issue number i) above is thus in the *affirmative*.
24. That issue is also relevant because the 1st defendant claims that when he paid the consideration of Kshs 200,000 in February 1982 or thereabouts (the 1st defendant said it may have been 2nd February 1982) at the Land Control Board offices, the deceased was accompanied by his *wife*. The 1st defendant said he did not know the plaintiffs. That part of the 1st defendant's evidence is thus on shaky ground.
25. It is common ground that the land was first allotted to the deceased in the year 1968. He obtained financing from the 2nd defendant. This is evident from plaintiffs' exhibit 3, the letter of offer and loan agreement dated 25th May 1968. It was also confirmed by DW3. He testified that the Mabusi Settlement Scheme was established in the 1960s. The deceased was given a letter of offer dated 25th May 1968. It had conditions. He accepted. He paid 10% deposit. The total value then was Kshs 6000. He paid Kshs 600. The balance due to the 2nd defendant was thus Kshs 5,400.
26. Although a number of installments were paid [plaintiffs' exhibits 4(a) to (g)], they were irregular and far apart. It is not contested that *default* occurred. It is also clear that the 2nd defendant issued a legal demand for payment. The demand letter was not produced formally in evidence. The defendants rightly objected that it was a copy; and, issued in 1997 well after the death of the deceased. There was also disputed evidence whether the demand letters or statements by the 2nd defendant to the deceased were transmitted to the proper address. PW1 insisted that the correct address was P. O. Box 27 Moi's Bridge and not Turbo. But what is material is that default is acknowledged.
27. It must follow that my answers to issues numbers ii) and iii) above are in the *affirmative*. I have said that although the deceased paid a number of installments [plaintiffs' exhibits 4(a) to (g)], they were irregular and far apart. My answer to issue number iv) is thus in the *negative*; the deceased *defaulted* in repayment of the loan.
28. To pre-empt a forced sale by the 2nd defendant or exercise of its rights as chargee, the deceased opted to sell the land. The 1st defendant acknowledges that there were such attempts. That is why he says he insisted on the deceased thumb printing the application for Land Control Board's consent. The plaintiffs concede there was an aborted sale to Kibutiti Arap Yego. PW3 testified that the sale to Mr. Yego was rescinded; and the sum of Kshs 50,000 refunded. That was at the time of

- the disputed sale on 17th March 1979. He said Mr. Yego was present and endorsed the agreement for sale. There was also a strange claim in a letter by Joel M. Spira on the land. He is not a party; and, little turns upon it.
29. The state of the pleadings in this matter leaves serious gaps. Assuming that the plaintiffs are right, the suit land was sold *inter vivos* by the deceased back in 1979 to Charles Onchuru Machungo. The plaintiffs acknowledge the sale. The 1st plaintiff claimed Machungo refunded her Kshs 20,500 paid to the 2nd defendant. If that be the case, the declarations sought by the plaintiffs are self-serving; the plaintiffs should have enjoined Machungo into the suit; or, their plea should be that he be declared the true owner. Machungo is not a party to this suit. He opted instead to be a *witness* for the plaintiffs. He filed separate proceedings at the High Court in Eldoret Civil Suit number 78 of 1998 Charles Machungo v John Malembi & Settlement Fund Trustees. The suit is still pending. There thus a sense in which the plaintiffs wanted to leave this court in a blind spot. I will revisit the alleged sale to Machungo shortly.
30. The next key question is whether the impugned sale to the 1st defendant was fraudulent. The particulars of fraud pleaded in the amended plaint are that he forged signatures of the deceased; that he paid a meager Kshs 5,400 for the *twenty two* hectares of land, that the transfer of the land was done *when* the deceased was dead; and, that the transaction was conducted secretly or in an opaque manner. The 2nd defendant is accused of failing to make sufficient enquiries; and, conspiring to defeat the rights of the estate or beneficiaries.
31. The standard of proof for fraud is *higher* than a balance of probability; it approaches, but is below, proof beyond reasonable doubt. See Koinange v Koinange Nairobi, High Court case 66 of 1984 [1986] eKLR, Ratilal Patel v Lalji Makanji [1957] EAR 314 at 317, Umila Mahindra Shah v Barclays Bank International Ltd [1979] KLR 67, Joseph Alur Otieno v Alice Wanjiku Kariuki and another, Nairobi, High Court Commercial Case 241 of 2011 [2014] eKLR, Mary Mengich v David Rugut, Eldoret, High Court ELC Case 132 of 2012 [2013] eKLR.
32. The decision cited by the learned counsel for the 1st defendant in Jennifer Nyambura Kamau v Humphrey Nandi, Court of appeal, Nyeri, Civil Appeal 342 of 2010 [2013] eKLR emphasizes that fraud must be proved as a fact by *evidence*; and, more importantly, that the standard of proof is *beyond* a balance of probabilities.
33. The allegations of fraud in this case are generalized. No handwriting expert was called to show that the thumb print impressions on the application for Land Control Board consent; or, the signature on the transfer form were *not* those of the deceased. True, on the 13th July 1982 (the date *printed* on the transfer form) the deceased was long dead. But the 1st defendant was emphatic that they executed an *undated* transfer before the death of the deceased. He said the date was inserted by officials of the 2nd defendant. It is not entirely uncommon in a conveyance to execute undated instruments. However, he who alleges must prove. Sections 107 and 109 of the Evidence Act. See also Evans Nyakwana v Cleophas Ongaro, High Court, Homa Bay, Civil Appeal 7 of 2014 [2015] eKLR.
34. I have stated that the plaintiffs' position on the date of the transfer instrument is convenient. I accept that the deceased was a teacher and an educated man. He could sign instruments. But it was not *illegal* to thumb print the application for consent; and, there is no cogent evidence that that was *not* his thumb print impression. What remains odd is that he *signed* the transfer form. But the two transactions were in different offices: the first before the Land Control Board; the second before the Settlement Fund Trustees. It would be unreasonable to place the blame on the 1st defendant for the conduct or procedures adopted by the two offices. It may look *suspicious* in retrospect. But suspicions are not *proof* of fraud.
35. Regarding the paltry consideration indicated in the *Green Card*, DW3 clarified that under the letter of allotment, the balance due to the 2nd defendant was *only* Kshs 5,400. That was not the consideration for sale to the 1st defendant: the consideration was Kshs 200,000. I am alive that consideration does not have to be adequate; only *sufficient*. I would agree with the plaintiffs however that by stating the consideration to be Kshs 5,400 the 1st defendant could easily defraud the Republic of its rightful stamp duty. I say that very carefully and without making a finding. I have said that the standard of proof of fraud is *beyond* a balance of probabilities. The bottom line is that the plaintiffs have *not* proved fraud against either defendant to the required standard of

- proof.
36. The 2nd defendant was not aware of the death of the deceased at the time of registering the transfer. The 2nd defendant was acting on the basis of documentation and representations by the 1st defendant. There is no evidence of complicity or collusion with the 1st defendant to defraud the estate. There was no caveat or restriction on dealings with the land. The deceased had *defaulted* on the loan. The 2nd defendant was entitled to exercise its rights as chargee. I have already found that the allegations of fraud have not been proved to the requisite standard. My *partial* answer to issue number vi) above is that the plaintiffs *failed* to prove fraud against both defendants. The suit against the 2nd defendant is clearly devoid of merit. It is hereby *dismissed* but with no order on costs.
37. The elephant in the room remains the validity of the sale and transfer to the 1st defendant. The 1st defendant acknowledged that the sale agreement between him and the deceased was not reduced into writing. It is beyond contest that this was agricultural land. Under the applicable section 3 (3) of the Law of Contract Act *no* suit can be maintained for disposition of an interest in land unless the contract is in *writing*; and, *executed* by both parties. The *oral* agreement in this case contravenes the statute.
38. The 1st defendant claims he paid the entire purchase price on or about February 1982 at the Land Control Board offices. No receipt or other acknowledgment was made by the deceased. A critical independent witness to the transaction known as Agnes Naliaka was not called to the stand. The plaintiffs deny that she was a wife of the deceased. The 1st defendant testified he does not know her whereabouts. The thumb print impressions on the Land Control Board forms are in contest. The 1st defendant could not even recall the chairman of the board. So much so that from an evidential standpoint, the agreement for sale was in doubt. And if I be wrong on that finding, the oral agreement is *unenforceable* by dint of the applicable section 3 of the Law of Contract Act.
39. My final answer to issues numbered vi) and vii) above are as follows: the 1st defendant did not prove on a balance of probabilities that the deceased sold the land to him on the alleged date for the consideration of Kshs 200,000 or such other sum. Secondly, the alleged oral agreement runs counter to the applicable section 3 (3) of the Law of Contract Act. To that extent, the sale was *void and unenforceable*. The consent of the Land Control Board is undated casting further doubt on the date of the oral agreement. Thirdly, the transfer instrument is dated 13th July 1982. On the date, the deceased had long died. From a factual and evidential view point, the claim by the 1st defendant is on a legal quicksand. The plaintiffs are thus entitled to a declaration that the suit land should revert to the estate of the deceased.
40. I will now revisit the alleged sale to Machungo (PW3) and to issue number v). My answer to issue number v) above will be *reserved* for two reasons. First, the person called Charles Machungo only appeared as a witness in this case. He is not a party entitled to any declaration. From the evidence and materials before me, it would appear that there was a *hand-written* sale agreement between the deceased and Charles Machungo dated 17th March 1979. It is drawn by Nyairo & Company (plaintiffs' exhibit 7). PW3 claims to have paid Kshs 80,000 as consideration; and a further Kshs 1000 as legal fees to Nyairo & Company. He also claims to have paid Kshs 3000 to Settlement Fund Trustees (exhibits 12 and 13). The earlier sale to Mr. Yego was rescinded and a sum of Kshs 50,000 refunded. PW3 said he never appeared before the Land Control Board for *consent*. It casts into doubt the validity of the sale. PW3 said he left the transfer forms with his lawyers. There is sketchy evidence that he took possession through one Makori Nyachae from 1979 to around April 1998. I say so very carefully and without making a finding.
41. The plaintiffs were not occupying the land. PW1 only returned to the land in 1978. She said she was living in *Chepkumia*. I got the impression she was less than candid on that score. The 1st defendant says the land was vacant. He denies evicting PW3 or PW4. But his version of events is *betrayed* by three matters: first, for nearly *sixteen years* he did not take up possession. I am prepared to accept he was overseas for a considerable period and had instructed DW2, Joseph Simiyu Wekesa, to keep watch over the farm. Secondly, he is further betrayed by his complaint to the Director of Land Adjudication in a letter dated 15th May 1998. He was seeking his assistance to *evict* squatters or trespassers on the farm. Thirdly, there are the pleadings in the suit I mentioned at the Eldoret High Court number 78 of 1998 *Charles Machungo v John K. Malembi & another*.

- In view of the pendency of the latter suit I cannot make a final finding on the matter to avoid embarrassing the trial court: but I cannot state with *full* confidence or certainty that there was a *valid* sale in 1979. I say that very carefully and without making a final finding.
42. What is material is that the *transfer* of the land to Charles Machungo was not *completed*. The transfer that was *registered* is the one to the 1st defendant. I have already found that the sale to the 1st defendant was doubtful, void and unenforceable. It does not mean that the 1st defendant has no remedy against the estate. If well advised, he can, for example, maintain a claim for refund of any sums paid to the deceased or to the 2nd defendant. I say so very carefully in view of the evidence surrounding the alleged payment to the deceased.
43. It must also follow as a corollary that since *no* valid transfer occurred the title must *revert* to the 2nd defendant in *trust* for the estate of the deceased. The transfer to the estate would obviously be conditional upon the estate settling any outstanding charge debt. I am fortified in that finding because the title to the 1st defendant was clearly defeasible under the system of registration that then existed. No transfer had ever been made to the *deceased*. I found that the deceased defaulted in the loan repayments. That is why the title must first *revert* to the 2nd defendant.
44. I have said enough to demonstrate that the plaintiffs have partially proved their case on a balance of probabilities but only as against the 1st defendant. I find they are entitled to some of the reliefs pleaded in the amended plaint. In the result, I order as follows-

- a. That the suit against the 2nd defendant be and hereby dismissed but with no order on costs.
- b. That the transfer of the land known as Kakamega/Mabusi/14 by the 2nd defendant to the 1st defendant is null and void; and, it is hereby cancelled.
- c. That the title is hereby restored to the 2nd defendant for transfer (subject to payment of any outstanding charge debt) to the estate of William Jedevera Mudembei, deceased.
- d. That a permanent injunction shall issue against the 1st defendant restraining him, his servants or agents from dealing in any manner with the title Kakamega/Mabusi/14.
- e. That since the plaintiffs; or, the deceased are *not* the registered owners of the land, the prayer for eviction of the 1st defendant is *dismissed*.
- f. Costs follow the event and are at the discretion of the court. I grant the plaintiffs costs to be met by the 1st defendant.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 17th day of November 2015.

GEORGE KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:-

Mr. Onyinkwa for the plaintiffs instructed by Onyinkwa & Company Advocates.

Ms. Nasiloli for the 1st defendant instructed by Kalya & Company Advocates.

Mr. Ngumbi for the 2nd defendant instructed by the Attorney General.

Mr. J. Kemboi, Court clerk.