



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL NO. 128 OF 2011

ESTHER NDEGI NJIRU.....1ST PLAINTIFF

JANE MUGO WANJIRU..... 2ND PLAINTIFF

VERSUS

LEORNARD GATEI..... DEFENDANT

JUDGMENT

Introduction and Background

The Plaintiffs commenced this suit by way of a plaint dated 23rd March 2011 which was subsequently amended on 26/4/2011 to correct the name of the Defendant and to briefly sought the following orders:-

- a. a declaratory order that they are the registered owners of Title NO. **Ruiru Kiu/Block 2/3104** and their title was absolute and indefeasible,
- b. a declaration that the Defendant was a trespasser,
- c. a permanent order of injunction restraining the defendant his agents, servants and/or employees from in any way dealing with or interfering with the suit property being land parcel **Ruiru Kiu/block 2/3104**,
- d. General and aggravated damages against the Defendant for trespass.
- e. Refund of the sum of Kshs.132,000/-
- f. Costs of the suit.

The plaintiffs as per the plaint aver that they were at all material times relevant to this suit the registered owner of land parcel **Ruiru Kiu/Block 2/3104** situated at Ruiru within the Republic of Kenya having purchased the same from one **James Kinuthia Waiharo** in 2008 for the consideration of Kshs.400,000/-. The plaintiffs aver that at the time of purchase the property was vacant and that they had the survey beacons re-established and placed to demarcate the boundaries after the completion of the sale transaction. The plaintiffs claim that when they visited the suit property on or about 5th February 2011 they found the beacons they had placed had been removed and that somebody had placed a Notice on the property with the inscription “**NOT FOR SALE**” and which notice carried a telephone **NO. 0723867571**.

The plaintiffs state that upon calling the number appearing on the notice, the Defendant responded and stated he was the owner of the suit property which he stated he had purchased from two persons who were unknown to the plaintiffs. The plaintiffs contend that since the property was transferred to them they have been the owners and have not sold and/or transferred the property to any other person and further

contend that the defendant was a trespasser and had no right or authority to remove the survey beacons and/or destroy the vegetation in the plaintiffs said parcel of land.

The Defendant filed a defence and counterclaim dated 23rd June 2011. The Defendant in his defence contended that the plaintiffs ought not to have been registered as the owners of the suit property as the person whom they purportedly purchased the property from had fraudulently obtained the title to the land and could not pass a good title to the plaintiffs. The Defendant by the counterclaim avers he was at all material times the beneficial owner of the suit property title number **Ruiru/Block 2/3104** represented by share certificate **NO. 4948** and Ballot NO. 38A issued by **Githunguri Constituency Ranching Co. Ltd** (the 1st defendant in the counterclaim). The Defendant/Plaintiff in the counterclaim avers that he purchased the parcel of land from the late **Githinji Macharia's** children namely **Peter Kiguta Githinji** and **Nancy Wanjira Githinji** who were the beneficiaries of the parcel of land. The Defendant contends forged documents were used to transfer his parcel of land firstly to the 1st Defendant and secondly to the 3rd and 4th Defendants in the counterclaim and avers no good title could have passed to the plaintiffs herein.

The Defendant/Plaintiff in the counter claim seeks a declaration that he is the owner of the suit property Title NO. **Ruiru Kiu/Block 2/3104** and a further order directing the cancellation of the title held by the plaintiffs and a further order that a fresh title be issued in the name of the Defendant.

Evidence by the Parties

Both the 1st and 2nd plaintiffs testified in support of their case and they each relied on their filed written witness statements and the bundle of documents that had been filed on behalf of the plaintiffs and which were all admitted in evidence. The plaintiffs testified that they purchased the suit property from one **James Kinuthia Waiharo** who was the registered owner and that they paid the sum of **Kshs.400,000/-** as the consideration. It was the 1st plaintiff's evidence that before they purchased the property they had conducted a search at the Thika Lands Registry which confirmed that indeed the said **James Kinuthia Waiharo** was the registered owner of Title number **Ruiru Kiu/Block 2/3104**.

The plaintiffs affirmed that after paying the purchase price of **Kshs.400,000/-** a transfer was executed in their favour and the same was registered and they were issued with a title deed for the suit property on 23rd October 2008. The plaintiffs testified that after obtaining the title to the suit property in their name they instructed a surveyor to re-establish the boundaries and replace the beacons which was done at the cost of **Kshs.132,000/-**. The plaintiffs further testified that on or about 5th February 2011 they visited the suit property and were surprised to find somebody had trespassed therein and had removed the beacons marking the boundaries and that whoever it was had placed a notice thereon "**NOT FOR SALE**" with a telephone Number 0723867571. The plaintiffs state that the person(s) who had trespassed onto the land had destroyed vegetation on the property.

When later the 1st plaintiff called the number appearing on the notice a person who identified himself as **Bernard Gatei** answered the phone and he claimed he was the owner of the property having purchased the same. The plaintiffs reported the matter to the police who carried out investigations which established that the Defendant had purchased the property from the children of a deceased person who had been allocated but had not processed the title to the property and only held certificates of ownership from **Githunguri Constituency Ranching Company Limited**. The plaintiffs produced in evidence a copy of the official search and a copy of the title to show that they are presently the registered owners of the suit property.

The Defendant testified and adopted his recorded witnesses statement dated 23rd June 2011 as his evidence and relied on the Defendant's filed bundle(s) of evidence. The Defendant called 3 witness being Dw2 and Dw3 who were the brother and sister who sold the parcel of land (suit plot) that had been left to them by their deceased father one **Simon Githinji Macharia**. The Defendant testified that following the purchase of the suit property from the representatives of **Simon Githinji Macharia** (deceased) he obtained the share certificate NO. 4948 issued by **Githunguri Constituency Ranching Company** and

Ballot for the plot NO. 38A and that the directors of the company effected transfer of the share to the defendant from the late **Simon Githinji Macharia** (deceased) who was registered as the owner of the share and corresponding parcel of land. The Defendant testified that he was issued with a clearance certificate by the company to enable him to process the title to the suit property but on proceeding to Thika Lands office to process the title found that title to the property had been issued to the plaintiffs. The Defendant stated that he purchased the suit property in 1996 and produced the agreement of sale pursuant to which he purchased the property. The Defendant further testified that he paid the full purchase for the property whereupon the share was transferred to him.

DW2 Peter Kiguta Githinji and **DW3 Nancy Wanjira Githinji** testified for the Defendant and admitted the plot (suit property) was awarded to them as beneficiaries of the estate of their late father **Simon Githinji Macharia** and that they in 1996 sold the property to the Defendant notwithstanding that they had not taken out grant of letters of administration to their late father's estate. The Defendant bought the plot with full knowledge that the said **Peter Kiguta Githinji** had buried his wife and son on the plot.

Dw4 John Maina Mburu a director and Chairman of **Githunguri Constituency Ranching Company** Ltd testified for the Defendant. The witness brought to the court the original list of members and in his evidence confirmed that **Simon Githinji Macharia** (deceased) was the holder of share certificate **NO.1465** which was later changed to 4948 and the same was transferred on 28th May 1997 to **Leonard Gatei Mbugua**, the Defendant herein who was issued with a new share certificate **NO.7306**. The witness testified that in the company's register they never had any person by the name **James Kinuthia Waiharo**. The witness denied that the share certificate held by the said person described as **James Kinuthia Waiharo** which he transferred to the plaintiffs was from the company. The witness also testified that the ballot paper held by the said **James Kinuthia Waiharo** was not from the company. To illustrate the anomaly in the documents in possession of the said **James Kinuthia Waiharo** he stated that the share certificate he held was issued on 20/9/2003 which was on a Saturday yet the company's offices were never opened on Saturdays.

The witness confirmed that the defendant was the genuine allottee of the suit plot as he was the registered owner as per the company's records and further that the plot had never been transferred by the company from the defendant. The witness confirmed that although the plot was originally allocated to **Simon Githinji Macharia** (deceased) it was transferred to the Defendant since the family of the deceased agreed to sell the plot to the Defendant and to have the same transferred to the Defendant. The witness stated that where an allottee was deceased and the deceased family were in agreement the company usually effected the transfers without requirement of grant of letters of administration to the deceased estate. The witness testified that the supplementary list of documents tendered by the plaintiffs comprising a share certificate, a ballot paper, and a clearance certificate were not genuinely issued by the company. The witness illustrated by way of the original list of members that **Simon Githinji Macharia** (deceased) was registered as member NO. 76 and was issued a ballot NO. 38 A a share certificate **NO.1465 (4948)** which were subsequently transferred to the Defendant on 28th May 1997 who was issued a new share certificate NO. 7306 and in respect of which the Defendant was issued with a clearance certificate by the company on 25/6/2010 to process title in respect of plot NO. 3104.

The 2nd Defendant to the counterclaim the said **James Kinuthia Waiharo** was served with the pleadings and vide a Notice of Appointment of Advocates dated 6th July 2011 and filed in court the same day appointed the firm of **Gichuhi Ndungu & Company Advocates** to act for him but the said firm did not file any further pleadings and neither did the firm or the 2nd Defendant participate in the proceedings.

Submissions and issues

The plaintiffs and the Defendant filed written submissions as directed by the court. The plaintiffs submissions dated 17th April 2014 were filed in court on 23rd April 2014 and the Defendant's submissions dated 6th May 2014 were filed in court on the same date. I have reviewed and considered the pleadings the evidence by the parties and the submissions by the parties and though the parties did not file any agreed issues for determination and have on their part submitted on the issues that they consider to

arise for determination, the court identifies the following issues for determination.

- i. **Whether the 2nd Defendant to the counterclaim held a valid title to the suit property which he could sell and transfer to the plaintiffs.**
- ii. **Whether the registration of the plaintiffs as the owners of the suit property is absolute and indefeasible and not liable to be challenged.**
- iii. **Whether the Defendant/Plaintiff in the counter-claim is entitled to be registered as the owner of the suit property.**
- iv. **Who bears the costs of the suit.**

Analysis and determination of issues

As relates to issue NO.(1) whether or not the 2nd Defendant to the counterclaim held a valid title which he could lawfully transfer to the plaintiffs the court has to review the totality of the evidence adduced by the plaintiffs and the Defendants and the law applicable. The plaintiffs in this matter have taken the position that they are innocent purchasers for value without any notice of any defect in the title. The plaintiffs evidence is that they carried out due diligence before purchasing the suit property from the 2nd Defendant in the counterclaim. The search revealed that the 2nd Defendant to the counterclaim was the registered owner of the suit property and that there were no encumbrances registered against the title and on that basis the plaintiffs went ahead and purchased the suit property at the consideration of **Kshs.400,000/-** whereupon the property was transferred to them and they were issued with a title deed to the property under the provisions of the Registered Land Act (now repealed).

The plaintiffs have submitted that under section 27(a) of the repealed Registered Land Act Cap 300 Laws of Kenya they were upon registration of the property in their names vested with absolute ownership of the suit land with all rights and privileges belonging or appurtenant thereto. It is their further submission that they were innocent purchasers for value and having followed due legal process their title is indefeasible. The plaintiffs further submit the registration of **James Kinuthia Waiharo** was a first registration and was therefore not liable to be defeated even if it is proved the registration was obtained fraudulently. The plaintiffs refer to section 143 of the repealed Act for this proposition which provided thus:-

143.(1) subject to subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake”

The plaintiffs further placed reliance on the case of **Gladys Wanjiru Ngacha –vs- Teresia Chepsaat & 4 others** (2008) eKLR where the court held that:-

“The 3rd Defendant registration being a first registration this court cannot impugn it. To do so will amount to an assault to section 142 and 143 of the same Act. It matters not that the 3rd defendant may have obtained the registration through fraud”.

With respect, I think the position has changed with the repeal of the Registered Land Act as section 106(1) of the Land Registration Act NO.3 of 2012 provides that the repealed Acts shall cease to apply. Section 106(1) provides:-

“On the effective date, the repealed Acts shall cease to apply to a parcel of land to which this Act applies”.

The equivalent to section 143(1) of the repealed Act is section 80(1) of the Land Registration Act which provides:-

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

This provision in the new Act omits reference to (“**other than a first registration**”) meaning that no registration is exempted from rectification through cancellation or amendment where the court is satisfied that the same was obtained, made or omitted by fraud or mistake. Indeed this was a welcome provision in the new Act as previously the court’s hands were shackled even in glaring instances of irregularities perpetuated through fraudulent means where the registration happened to be a first registration. The repealed provision quite clearly could be used as an instrument to perpetuate injustice as it would appear the provision shielded fraudsters so long as they happened to hold “**first registrations**” of the title that would be the subject matter.

From the date of commencement of the Land Registration Act, 2012 the registers maintained under the repealed Acts were deemed to be the land register for the corresponding registration unit established under the Land Registration Act pursuant to section 104 of the Act. The titles held under the repealed Acts were equally under section 105 of the of the Land Registration Act deemed to be titles issued under the said Act. It is thus clear that the applicable law would be the law as presently contained in the new Land Acts.

Under section 26(1) of the Land Registration Act the title of a registered proprietor is prima facie evidence that the proprietor is the absolute and indefeasible owner of the land subject to any encumbrances, easements restrictions and conditions contained or endorsed in the certificate. Such title however may be challenged on the ground of fraud or misrepresentation to which the proprietor is proved to be a party and or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

Section 26(1) provides:-

26.(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except

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

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

The Defendant/Plaintiff to the counterclaim testified that he was the lawful allottee of the suit property from **Githunguri Constituency Ranching Company Ltd** having purchased the share previously allocated to one **Simon Githinji Macharia** (deceased). DW2 and Dw3, the son and daughter of the deceased respectively confirmed the sale and transfer of their deceased father’s share to the Defendant. Dw4, the Chairman of **Githunguri Constituency Ranching Company** also confirmed the sale and transfer of the deceased share to the Defendant and availed records from the company to show that the deceased was their member and that the deceased share and plot was transferred to the Defendant. DW4 testified that the 2nd Defendant to the counterclaim one **James Kinuthia Waiharo** was not a member of the company and had never been and that the documents he used to process title to the suit property were forgeries and did not emanate from the company. According to DW4 if the 2nd Defendant to the counterclaim was a member of the company his name would have been on the company’s records and register as every transaction where the company is involved is recorded.

The Defendant/Plaintiff in counterclaim has submitted the title transferred to the plaintiffs by the 2nd Defendant to the counterclaim was fraudulently and illegally obtained by the 2nd Defendant. The said 2nd Defendant did not enter a defence in the suit and neither did the plaintiffs procure his attendance as a witness. No witness was called from the company in regard to the documents which the plaintiffs tendered in their supplementary bundle of documents. DW4 the Chairman of the 1st Defendant in the counterclaim stated these documents were forgeries and were not issued by the company. There was no

evidence to the contrary. The failure by the 2nd Defendant to file a defence after appointing Advocates to represent him can only lead to the inference that he had no answer to the counterclaim. Under paragraph 11 of the counterclaim particulars of fraud attributed to the 2nd Defendant are set out and include:-

- i. Forging documents purporting to be true receipt and share certificate for the said parcel of land,
- ii. Making false entry into the register of the **Githunguri Constituency Ranching Co. Ltd** purporting to be true share holder of the company,
- iii. Preparing forged documents and presenting the same to the Registrar of Land at Thika purporting to be a genuine share holder thus obtaining title deed **NO. L.R. Ruiru Kiu/Block 2/3104**.
- iv. Using the said title deed fraudulently acquired to transfer the said parcel of land to the 3rd and 4th Defendants knowing very well that he had no title to pass as he had no good title.

The Defendant has tendered evidence through DW4 that the documents the 2nd Defendant used to process title in his name were fraudulent and were forgeries as they were not issued by **Githunguri Constituency Ranching Co. Ltd** as alleged. The Defendant has further tendered evidence that he purchased the share in the company that was held by **Simon Githinji Macharia** (deceased). The Defendant bought the plot (share) notwithstanding that DW2 had revealed to him that he had buried his son and wife therein. On the basis of the evidence tendered I am satisfied that the 2nd Defendant fraudulently acquired title to the suit property and could not therefore have acquired a good title to the property. It would thus in my view follow that if the 2nd Defendant did not have a good title in the property he could not pass a good title to anybody else. Were the title still in the name of the 2nd Defendant the Defendant/Plaintiff in the counterclaim would be entitled to challenge the title under section 26(1)(a) of the Land Registration Act on the ground of fraud to which the 2nd Defendant was a party. On the first issue I would therefore hold and find that the 2nd Defendant to counterclaim did not hold a valid title to the suit property which he could sell and transfer to the plaintiffs.

As regards the issue whether the registration of the plaintiffs as the owners of the suit property is absolute and indefeasible and not liable to be challenged. I would answer in the negative. Having held and found that the 2nd Defendant fraudulently processed and acquired the title to the suit property in his name my view is that he did not acquire a good title to the property and no interest in the property could pass to him. The 2nd Defendant therefore not having any good title or interest in the suit property could not pass a good title to the plaintiffs. The plaintiffs have submitted that the title held by **James Kinuthia Waiharo** being a first registration was protected under the law and could not be defeated and in that regard make reference to section 28 and section 143 (1) of the repealed Registered Land Act Cap 300 Laws of Kenya. I have earlier on in this judgment stated that the repealed Acts ceased to have any application from the date of commencement of the Land Registration Act NO. 3 of 2012.

Under the Land Registration Act a first registration is not accorded the protection previously accorded to it under the repealed Registered Land Act. The case of **KURIA GREENS LIMITED –VS- REGISTRAR OF TITLES & ANR, (2011)e KLR** referred to the court by the plaintiff to support the proposition that the court cannot interfere with a first registration even where fraud, misrepresentation or mistake is proved was decided before the coming into force of the Land Registration Act and it is my view that it no longer can be good law as regards the sanctity of title. As I observed earlier on **section 80** of the Land Registration Act and **section 26 1(a) and (b)** does not shield a first registration in the manner it was shielded under the repealed Registered Land Act. My view therefore is that where fraud or mistake is proved even what would qualify to be a first registration would under the provisions of the Land registration Act be liable to be rectified and/or cancelled.

The Defendant/Plaintiff in the counterclaim referred the court to the case of **Elijah Makeri Nyangw'ra – vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. **Hon Justice Munyao Sila** in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.

For the first limb, it appears to me that the title of the 1st defendant was obtained by fraud or misrepresentation. However, there is no evidence that the 1st defendant was a party to the fraud or misrepresentation. Indeed, to me the 1st defendant was an innocent purchaser for value. He was probably conned of his money by the 2nd Defendant and that is why he is the complainant in the first count of the criminal charges facing the 2nd Defendant. I am not of the view that he was a party to the fraud or misrepresentation that conveyed the land to him. He was a victim of the scheme employed by the 2nd defendant. I cannot therefore impeach the title by virtue of the provisions of section 26 (1) (a).

Is the title impeachable by virtue of section 26(1) (b)? First, it needs to be appreciated that for section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26(1) (b) is to remove protection from an innocent purchaser of innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26(1)(b) in my view is to protect the real title holders from being deprived of the titles by subsequent transactions”.

The situation that **Munyao, Judge** faced in the above referred to case is some what similar as in the present case before me. I am in agreement with his interpretation and application of section 26 1(a) & (b) of the Land Registration Act.

In the present case the plaintiffs cannot shield themselves with the title that they hold though without any doubt they were bonafide and innocent purchasers from the 2nd Defendant. The act of the 2nd Defendant of processing the title to his name using fake or forged documents were patently illegal and the 2nd Defendant must have known they were. The processing of the title in his name and thereafter selling the parcel of land to the unsuspecting plaintiffs was illegal and unprocedural. The 2nd Defendant must have known what he was doing. He was simply a conman otherwise he would have appeared to defend and/or clear his name. While it is clear the title held by the plaintiffs cannot be impugned under section 26(1) (a) of the Act as they were not party to any fraud or misrepresentation the title is nonetheless impeachable under section 26(1) (b) as the title transferred to them by the 2nd defendant was obtained illegally and unprocedurally.

Whereas the law respects and upholds sanctity of title the law also provides for situations when title shall not be absolute and indefeasible. The rampant cases of fraudulent transactions involving title to land has rendered it necessary for legal practitioners dealing with transactions involving land to carry out due diligence that goes beyond merely obtaining a certificate of search. Article 40 (6) of the Constitution removes protection of title to property that is found to have been unlawfully acquired. This provision of the constitution coupled with the provision of section 26(1) (a) and (b) of the Land Registration Act in my view places a responsibility to purchasers of titled properties to ascertain the status of a property beyond carrying out an official search. In this era when there are many cases of what has been described as “**grabbed public lands**” it is essential to endeavour to ascertain the history and/or root of the tile.

Question of share certificate Vis –a-Vis Title

The plaintiff submitted that the Defendant/Plaintiff to counterclaim anchored his claim to a share certificate that was not properly issued by the company since the person in respect to whom it was issued was dead as at the time it was issued. Further the plaintiffs submitted no letters of administration had been issued to enable the share to be transferred to the Defendant. Finally the plaintiffs submitted a share

certificate was in the nature of a letter of allotment and could not supersede the title issued to the plaintiffs.

DW4 testified that members are issued share certificates by the company and where a member dies and there is no dispute in the family the share is transferred in accordance with the family's wishes as in the present case. An outsider who is not a member of the company cannot get a share certificate and titles to the parcels of land were processed on the basis of clearance certificates issued by the company. The clearance certificate used by the 2nd Defendant to process the title was fake and/or forged. The resultant title was of no consequence and therefore the plaintiffs title cannot supersede the share certificate of the true owner of the parcel of land. The Land Registrar could only properly process a title against a validly issued clearance certificate by Githunguri Constituency Ranching Company and once it is proved that no proper clearance was tendered for issue of a title such a title in my view would have been unlawfully and unprocedurally procured and therefore voidable.

Conclusion and decision

Having come to the finding that the plaintiffs did not obtain a valid and/or a good title from the 2nd defendant it follows that the title issued to the plaintiffs is for cancellation and I accordingly order and direct that the title issued to the plaintiffs on 23rd October 2008 be cancelled forthwith and the plaintiffs names be deleted from the register of land Title Number **Ruiru Kiu/Block 2/3104**. Having considered and reviewed all the evidence and material placed before the court I find and hold that the plaintiffs have not proved their case against the Defendant on a balance of probabilities and I order that the same be and is hereby dismissed.

I am satisfied that the Defendant/Plaintiff in the counter claim has proved his counter claim on a balance of probabilities and I enter judgment for the Defendant/Plaintiff in counterclaim in the following terms:-

- a. A declaration that the Defendant/Plaintiff is the lawful owner of Title NO. **RUIRU/KIU BLOCK 2/3104**.
- b. An order that the Title Deed over Title Number **RUIRU/KIU BLOCK 2/3104** issued on 23rd October 2008 in the names of **JANE WANJIRU MUGO & ESTHER NDEGI NJIRU** be cancelled forthwith by the Land Registrar at Thika.
- c. That the Defendant/Plaintiff **LEONARD GATEI MBUGUA** be issued with a Title Deed in respect of Land Title Number **RUIRU/KIU BLOCK 2/3104** forthwith.
- d. That each party meet their own costs of the suit and counterclaim.

Judgment dated, signed and delivered at Nairobi this...**30th** day of **September** 2014.

J.M. MUTUNGI

JUDGE

In presence of:

Mr. Sarvyia for Muraguri..... For the Plaintiffs

Mr. Kinyanjui..... For the Defendant