



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Environmental & Land Case 132 of 2012**

**MARY JERONO MENGICH.....PLAINTIFF**

**VS**

**DAVID KIPLETING RUGUT..... 1ST DEFENDANT**

**BENJAMIN KOGEI ..... 2ND DEFENDANT**

**STANDARD CHARTERED BANK LIMITED ..... 3RD DEFENDANT**

***(Suit by plaintiff claiming that suit land was transferred to 1st defendant by fraud; standard of proof in a case of fraud; whether the allegations of fraud have been proved; whether title of the 1st defendant liable to being cancelled).***

**JUDGEMENT**

This suit was commenced by way of a plaint filed on 19 January 2004. The plaintiff has described herself as the wife and administrator of the estate of Kibet Arap Mengich (deceased) who died on 19 December 1994 at Kaplamai sub-location in Nandi District. It is pleaded that during his lifetime Arap Mengich owned the land parcel described as Nandi/Serem/277 measuring about 4.2 Hectares having become the first registered proprietor on 15/2/1982. It is pleaded that as wife of the deceased, she moved into the said land immediately after her marriage to the deceased and has continued to reside on the said land to the time of filing suit. She has pleaded that her occupation of the land was peaceful until Arap Mengich died. It is pleaded that in 1995, the 1st defendant, David Rugut (Rugut) brought surveyors to the land for purposes of demarcating it and also started developments on the same. It is then that she discovered that the 1st defendant was claiming the land as purchaser. It is further pleaded that prior to his death, the 2nd defendant, Benjamin Kogei (Kogei), who is a niece (probably meant nephew) of the deceased, took the deceased to his (Kogei's) home away from the suit land where the deceased used to reside. The plaintiff has also pleaded that the purported sale of the suit land to the 1st defendant through the 2nd defendant was procured by fraud and collusion between the 1st and 2nd defendants. The particulars of fraud pleaded are as follows :-

- (i) Failing to pay any consideration to the deceased person towards the purchase of the suit land.
- (ii) Failing to obtain valid consent of the Land Control Board with respect to the transaction.
- (iii) Exerting undue influence on the deceased person who was frail and of an advanced age.
- (iv) Purporting to sale (sic) the land secretly without the knowledge and participation of the plaintiff.
- (v) Forging transfer and land control board documents in order to effect a transfer of the said parcel of land into the 1st defendant's name.

(vi) Securing the sale of the land without regard and without taking into account the interests of the plaintiff who was the deceased person's widow and the party in possession.

(vii) Confining the deceased person away from his family with the sole aim of procuring the sale of the suit land.

(viii) Inducing the deceased person with food and alcohol with the sole aim of procuring the sale of the suit land.

For the above reasons the plaintiff has sought orders for :-

(a) A declaration that the purported sale and transfer of land parcel number Nandi/Serem/277 by the late Kibet Arap Mengich to the 1st defendant was fraudulent and is therefore null and void and of no legal consequence.

(b) An order directing the land Registrar Nandi District to rectify the register of the land parcel number Nandi/Serem/277 by deleting the 1st defendant's name as the registered proprietor thereof and substituting therewith the plaintiff's name.

(c) A permanent injunction restraining the defendants by themselves, servants and or agents from trespassing into, transferring charging and or otherwise interfering with the plaintiff's possession and or enjoyment of land parcel number Nandi/Serem/277.

(d) costs of this suit.

(e) Any other further relived (sic) as the court may be pleased to grant.

Upon being served, the two original defendants filed their appearances and defence through two different firms of advocates.

The 1st defendant in his statement of defence denied that the plaintiff is wife to the deceased and further stated that the plaintiff does not reside on the suit land. He pleaded that the plaintiff, soon after her marriage to Arap Mengich, absconded from the matrimonial home and never returned during the lifetime of the deceased. He has pleaded that he has had peaceful uninterrupted possession since 1990 when he moved into the suit land after purchasing it from the deceased and that he was already in occupation of the land when Arap Mengich died. He has asserted that he purchased the land directly from Arap Mengich and not through the 2nd defendant. He has pleaded that at the time of sale, Arap Mengich was of sound mind and that the sale was lawful. He has denied all the particulars of fraud and has pleaded that the plaintiff is not entitled to the reliefs sought.

The second defendant on his part has pleaded that he is a nephew of the late Arap Mengich but has denied that he took Arap Mengich away from his home. He has denied that the suit land was fraudulently sold to the 1st defendant through him and has denied all the particulars of fraud. He has also pleaded that it is within his knowledge that the plaintiff left the matrimonial home soon after marrying the deceased and never came back during the lifetime of the deceased. He has averred that the deceased was a person of sound mind fully in charge of his property. He has pleaded that he has no interest in the suit land and that the orders sought are being sought against him in futility.

On 25 November 2009, the plaintiff filed an amended plaintiff after leave was granted to do so in which she introduced the third defendant, Standard Chartered Bank Ltd to the suit. The amended plaintiff indicates that the suit land is charged to the 3rd defendant. It is also pleaded that the charging of the property was fraudulent, null and void. In addition to the prayers in the original plaintiff, the plaintiff has sought to have an order cancelling the charge over the suit land. The 3rd defendant upon being served, entered appearance and filed a Statement of Defence in which it put the plaintiff to strict proof of all averments in the Amended Plaintiff.

The parties having finalized with preliminaries set down the suit for hearing. Mr. Magare, learned counsel for the plaintiff commenced the suit by putting the plaintiff in the witness stand. It however emerged that the plaintiff was unable to communicate, possibly due to old age, and was stood down. Later, an application was made and allowed to have one Joseph Nyongi be included in the proceedings as next friend to the plaintiff because the plaintiff had become infirm.

PW- 1, Noah Kuto, testified that Arap Mengich was his relative. He affirmed that Arap Mengich was married to Mary Jerono, the plaintiff herein, and that they lived together in the land parcel Nandi/Serem/277 (the suit land). Prior to his marriage to the plaintiff, Arap Mengich was married to another woman who eloped. PW-1 testified that Arap Mengich used to work for him (Kuto) from 1972 - 1984 when he went back home because his legs got swollen and he was unable to work. After he returned home, PW-1 testified that arap Mengich and Benjamin Kogei (2nd defendant) started visiting each other until 1993 when arap Mengich went to the home of Kogei and never came back. It was later learnt that arap Mengich died and was buried in the land of Kogei and that this information also came with the information that Arap Mengich had sold the suit land.

He stated that in their Nandi tradition, one cannot be buried without his family being around him. PW-1 produced the Certificate of Death for arap Mengich which shows that he died on 19 December 1994 at Kaplamai sub-location. He testified that Arap Mengich never had children but had adopted a boy named Allan Kiprotich. PW-1 later learnt that the land was bought by David Rugut (the 1st defendant). He produced the transfer document (plaintiff's exhibit No.4) a consent to transfer dated 29/01/1991 ( exhibit No.5) and an application for consent to transfer (exhibit No.6). He further testified that he later learnt that David Rugut had taken a loan with Standard Chartered Bank and he produced the application for consent to charge as exhibit No7. He stated that the transfer documents indicate that the land was sold for only kshs.20,000/= yet the land is about 10.5 acres. It was his evidence that at the time of sale, land in the area was going for about Kshs.60,000/= per acre and a fair selling price ought to have been around Kshs.600,000/=. He further stated that the amount in the documents,i.e, kshs.20,000/= was not the same amount that was mentioned by Benjamin Kogei in proceedings that went before the Land Disputes Tribunal. In the Tribunal, the selling price was said to be Kshs.100,000/=. He stated that he has never seen an agreement for the sale of land. It was also his evidence that at some point, Rugut gave the plaintiff 4 acres which the plaintiff refused and instead filed the case at the Tribunal, which awarded her the whole land. He stated that the information that the land was sold came from the same people who said that Arap Mengich had died and to him this was very suspicious. The selling price of kshs.20,000/= to the witness was also too low for 10 acres of land.

Cross-examined by Mr. Maritim, learned counsel for the 1st and 2nd defendants, PW-1 affirmed that Arap Mengich and Benjamin Kogei were friends and used to visit each other. He was however not aware of the status of his health when he visited Kogei for the last time and never came back. He was aware that arap Mengich had a sister who lived at Kogei's place where arap Mengich died. He affirmed that Arap Mengich and Kogei were relatives, but did not quite know the exact relationship. On the decision of the Tribunal, the witness stated that the same was quashed by the High Court. Cross-examined on when the plaintiff adopted a boy, the witness could not answer whether it was before or after arap Mengich had died.

Cross-examined by Mr. Mokuu, learned counsel for the 3rd defendant, the witness admitted that the Kogei's were relatives to Arap Mengich but in his view they were distant relatives.

PW-2, Barnaba Karan testified that he resides and owns land not far from the suit land. He stated that he knew Arap Mengich and that he had heard that he died when he went to visit his nephew Arap Kogei. He therefore never attended the burial of Arap Mengich. He thought it unusual that one would be buried without the knowledge of his wife and relatives. He affirmed that he (Arap Mengich) was married to the plaintiff after his first wife eloped. He testified that he heard that the land was sold but was not aware how it was sold. He stated that the plaintiff was evicted from the suit land after the hearing of the Tribunal case.

Cross-examined, PW-2 stated that it is in 1994 when the buyer came to claim the land. He stated that

under Nandi custom, if one did not have land, he was buried in the land of his relatives. He refuted that Arap Mengich had sold the land as the neighbours were not aware of such sale.

Joseph Nyongi, the plaintiff's next friend, testified as PW-3. He testified that the plaintiff, now resides with him since 1999. He produced the proceedings of the land disputes tribunal as exhibit No.8. He referred to the evidence of the plaintiff in the tribunal proceedings and to a meeting of elders (minutes exhibit No.9) held before the tribunal proceedings. He stated that the land was sold without the knowledge of the family. He also testified that Arap Mengich died without the family being informed. He similarly took issue with the discrepancy in the amounts in the transfer documents (kshs.20,000/=) and the evidence given by Mr. Kogei at the tribunal that the land was sold for kshs.100,000/=. He produced the official search of the suit land which shows that it is under charge to Standard Chartered Bank for kshs.93,000/= issued in 1992. He testified that the plaintiff is now old and produced her witness statement as an exhibit.

In cross-examination, PW-3 confirmed that he was the Chairman of the meeting of the elders referred to in exhibit No.9. He did not quite know when Arap Mengich and Kogei started visiting each other and stated that he was not aware that Kogei treated Arap Mengich and fed him. He stated that he never witnessed the selling of the land and did not know whether there was any agreement for sale of the land. He did not know whether Kogei and Arap Mengich were relatives. He affirmed that the reason for holding the belief that the land was never sold is because they (the family of Arap Mengich) were not involved in the sale. He could not tell whether the transfer form is genuine or a forgery and also did not know whether consent of the land control board was ever issued. Cross-examined on why they have not sued the Lands Registrar, the witness stated that they do not know of the procedure for suing the lands registrar.

The plaintiff then closed her case.

The 1st defendant, David Kiplating Rugut, testified that he came to know Arap Mengich around 1985 through Benjamin Kogei who was his (Arap Mengich's) uncle. Around the year 1989, Kogei informed him (Rugut) that Arap Mengich wished to sell his land and in 1991 they agreed to have the land sold for kshs.100,000/=. No written agreement was made as Kogei was a Chief and the agreement was made in trust. He stated that he paid Kshs. 80,000/= as a first installment and the second installment of kshs.20,000/= was paid when consent to transfer was obtained. He produced the letter of consent as his defence exhibit No.1. He also produced a certified copy of the transfer form as his defence exhibit no.2. He was issued with a title deed and later charged the land to Standard Chartered Bank. He testified that when they were negotiating the sale, arap Mengich was in a good state of mind although he was old. He refuted that he bought the land from Kogei and stated that Kogei was only a witness to the sale.

Cross-examined by Mr. Magare, the 1st defendant stated that the transfer form was signed in the presence of the Registrar of Lands. He confirmed that the transfer form indicates kshs.20,000/= as the purchase price and that the witness was Benjamin Kogei. He testified that the application for consent is dated 29/01/1991 which is the same date that consent was issued. He further testified that the land control board held a meeting and when questioned where he would go after selling his land, Arap Mengich answered that he would go and live with Kogei. He stated that after purchasing the land, he sub-divided it into two not because he wanted to give a portion to the plaintiff but for his own purpose. He stated that Arap Mengich moved out of the land in 1993. The dispute with the plaintiff started when he moved his worker into the land and the matter was referred to the land disputes tribunal. He himself has never lived on the land.

The 2nd defendant, a retired Chief, on his part testified that Arap Mengich was his uncle. He testified that he used to live alone on the suit land until 1984 when he moved to live with him at Kaplamai. He testified that Arap Mengich was married to one Taplekoï but they separated because they could not get children and Arap Mengich never took another wife. He testified that Arap Mengich decided to sell the land because he was living alone. He had shopped for buyers himself in vain and later asked the 2nd defendant to get him a buyer. It is then that the 2nd defendant got the 1st defendant to buy the land. He stated that he witness Arap Mengich being paid kshs.80,000/=. He was aware that an application for consent to transfer

was made to the land control board and consent issued. After the consent to transfer was issued, the 2nd defendant testified that Arap Mengich moved to live with him at Kaplamai. He confirmed that Arap Mengich died in his (Kogei's) home in 1994 and was buried in Kogei's land. He stated that the family of arap Mengich was informed when he died. He stated that he never knew Mary Jerono, the plaintiff.

In cross-examination, the 2nd defendant stated that he never knew the plaintiff as wife to Arap Mengich and he never informed her that arap Mengich had died because he never knew her.

DW-3 Joseph Kichwen Maritim, testified that he has been a councillor since 1979. He knew arap Mengich. He testified that arap Mengich was earlier married to one Tapletgoi but she left. Later Arap Mengich cohabited with the plaintiff. DW-3 stated that he was a member of the land control board and that Arap Mengich appeared before the board. He stated that at the Board meeting, Arap Mengich stated that he would go and live with Kogei after selling his land.

In cross-examination, DW-3 stated that there was no formal marriage between Arap Mengich and the plaintiff. He did not come with her to the land control board meeting and it was never asked what would happen to her. He stated that he became aware of a complaint by Mary about the sale when she filed a complaint in the land disputes tribunal.

The defence then closed its case.

I invited the parties to make submissions and they opted to file written submissions.

In his submissions, counsel for the plaintiff argued that the circumstances surrounding the purported sale of the suit land were clearly fraudulent and as such, null and void and of no legal consequences. He argued that the particulars of fraud pleaded had been proved. First, it was counsel's submission that there was no consideration paid for the suit land and that if there was any consideration, the same was neither sufficient nor adequate; in his view the purchase price of kshs.20,000/= was fraudulent. He stated that the alleged purchase price of kshs.100,000/= was never proved by any evidence.

Secondly, counsel argued that the procedure for obtaining consent of the land control board was never followed as the family and wife of the deceased were not involved. He also argued that DW-3 confirmed that they approved the application for consent after the 2nd defendant wrote a letter to the board in his capacity as Chief to support the application which was irregular and an indication of influence, fraud and collusion with the 1st defendant to defraud the deceased. He further argued that Arap Mengich was exploited due to his age and poor health and could not have understood the consequences of his actions. He alleged that the documents of transfer were forged by the 1st defendant since he was the custodian of the title to the land.

He pressed that there was no sale agreement contrary to Section 3 of the Law of Contract Act and therefore the sale herein was void. He further argued that the sale was subject to the overriding interest of any person in possession in line with the provisions of Section 30(g) of the Registered Land Act (now repealed). He argued that the defendant never made inquiries to establish the plaintiff's claim. He argued that the 1st defendant was issued with title in 1991 and charged the property since he could not take possession while Arap Mengich was still alive. He also stated that the deceased was buried in secret in furtherance of the fraud. Counsel also argued that the suit herein was not caught up by limitation of time and referred to Section 26 (b) of the Limitation of Actions Act. No authorities were relied upon by counsel for the plaintiff.

On his part, counsel for the 1st and 2nd defendants, argued that the sale was above board. He referred to the application for consent, letter of consent and transfer form. He argued that there was no evidence of fraud and neither was there evidence that the plaintiff was married to Arap Mengich. He argued that no witness came forth to confirm whether there was any marriage ceremony nor the payment of dowry. Counsel further argued that there was no law in 1991 that made it mandatory for the contract to be in writing. He argued that the current law came into force vide legal notice No.2 of 2002 which cannot be retrospective. He argued that the amount paid for the sale was irrelevant and that Arap Mengich had full

capacity to enter into the contract. He refuted that Arap Mengich was buried in secret as a burial permit was issued. He argued that the prayers sought by the plaintiff seek the 1st defendant to be deregistered yet the Land Registrar is not a party to the proceedings. He argued that the plaintiff never called any witness from the lands office to show that the registration was irregular. Counsel referred to two authorities being Nakuru HCCC NO. 335 of 2008, *Charles Wachira Ngundo v Corporate Insurance Limited* (2009) eKLR and *Schoon Noorani v Damji Ramji Patel & 2 others* (2006) eKLR.

On his part, counsel for the 3rd defendant argued that the plaintiff has not proved any fraud against the defendants in so far as the sale is concerned. He stated that no evidence was tendered to prove the allegations of fraud. He referred to Section 26 of the Land Registration Act and averred that the certificate of title issued to the 1st defendant is prima facie evidence that he is the absolute and indefeasible owner of the suit land. He argued that any allegations of fraud needed to be proved for the plaintiff to succeed. He referred to the case of *Mutsonga v Nyati (1984) KLR 425* and *Koinange & 13 others v Koinange (1986) KLR 23* to demonstrate that fraud needs to be proved to a level that is beyond a mere balance of probabilities.

He further argued that the plaintiff has not put forth any evidence that would entitle the register to be rectified.

I have considered the pleadings, the evidence and the submission of the parties. I think it is important at the outset to understand the case of the plaintiff. The plaintiff has filed this case as administratrix of the estate of Arap Mengich (deceased) so as to claim the suit land on behalf of the estate of the deceased which she believes was fraudulently transferred to the 1st defendant. Her pleadings reveal that she is not claiming ownership of the land by virtue of being wife to the deceased. Neither has she filed this suit claiming any overriding rights of possession. She is instead claiming the land on the basis that the same was not properly sold and therefore legally belongs to the estate of Arap Mengich. She has placed herself in the shoes of Arap Mengich and she can only succeed if Arap Mengich could have succeeded in the same suit if he were alive to prosecute it. Her case is based on fraud and she has alleged that the suit land was fraudulently transferred to the 1st defendant. It is therefore incumbent upon the plaintiff to prove the particulars of fraud that she has alleged against the defendants. I agree with the authorities provided by counsel for the defendants that fraud needs to be proved at a scale that is beyond proof on a balance of probabilities, though the standard is not as high as one beyond reasonable doubt. That being the position, it is not enough to merely allege fraud but tangible proof of the fraud has to be provided.

I had set out the particulars of fraud pleaded by the plaintiff at the beginning of this judgment and it is not necessary for me to set them out again. The first allegation of fraud is that there was no consideration paid to the deceased towards the purchase of the suit land. In my assessment, none of the witnesses called by the plaintiff have proved that no consideration was paid to the deceased. In fact the very documents relied upon by the plaintiff demonstrate that consideration of at least Kshs.20,000/= was paid for the suit land. This is shown in the application for consent of the land control board, the consent of the land control board and the transfer form. The 1st and 2nd defendants stated that the consideration was Kshs.100,000/= but there is no proof of this by way of an agreement or otherwise and I must take it that the consideration was of Kshs.20,000/=. The plaintiff has placed emphasis on the argument that this amount was too little for the suit land. I do not think that it is necessary for me to determine whether the amount was in concert with the value of the land. This is because it is settled law that consideration need not be adequate but only sufficient. Land can even be transferred as a gift where no monetary consideration is necessary. It cannot be said, without supporting evidence to the contrary, that where land is transferred for a consideration that is seemingly less than its market value or is transferred as a gift, then that transaction is fraudulent. There has to be more to support such allegation and I have not seen any evidence to support this.

The second allegation of fraud raised by the plaintiff is that there was a failure to obtain a valid consent of the Land Control Board with respect to the transaction. Counsel for the plaintiff in his submissions averred that the family and wife of the deceased were not involved in the land control board. I have perused the Land Control Act and the Land Control Regulations made under the Act and I have not seen any provision that makes it mandatory for the family of a seller of land to be present when the board is

deliberating on whether or not to allow a transaction. The closest provision is Section 17 of the Land Control Act. It provides as follows :-

*17. (1) Where an application for consent or an appeal is before a board, the board may -*

*(a) require the applicant or appellant or any person interested in or affected by the application to attend before it;*

*(b) require the applicant or appellant to adduce evidence to its satisfaction as to the applicant's identity and as to the ownership of the land to which the application relates;*

*(c) require any person to produce any document or other evidence relating to the land, and shall allow such reasonable time as it may think fit for a person to appear before it or produce a document or other evidence.*

*(2) A board may depute one or more of its members or appoint a representative to visit and report on any land to which the application or appeal relates.*

*(3) Any person who, without reasonable excuse, refuses or neglects to attend before a board or to produce, within the time allowed, any document or evidence, having been required to do so under subsection (1), shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.*

A plain reading of Section 17 will reveal that the Board has discretion to require the applicant, appellant, or person interested in or affected by the application to attend before it. Although welcome, it is not mandatory for the Board to require the family to be present. No specific provision requiring such attendance has been provided by counsel for the plaintiff and in the absence thereof I am unable to import such a provision into the statute. I have not seen anything that would invalidate the consent issued by the Land Control Board. I have seen that an application for consent to transfer was made and allowed, and pursuant thereto, the Board granted consent to transfer. What was invalid about this consent I am unable to see. Indeed the defendants called forth DW-3 who was present when the consent of the Board was granted. I am therefore unable to agree with counsel for the plaintiff that there was no valid consent of the land control board obtained.

The third allegation of fraud is that there was undue influence on the deceased person who was frail and of an advanced age. Again I do not think any evidence of undue influence was led. True, the 2nd defendant appears to have had a close relationship with the deceased but I have not seen any evidence where the deceased was unduly influenced. There is no evidence of pressure, coercion, or inducement on record. It was pleaded that the deceased was influenced by food and alcohol but absolutely no evidence was led to demonstrate such instances. Indeed not a single factual incidence of such influence was led in evidence and I cannot assume one where none has been forthcoming.

The allegation of confining the deceased away from his family in order to procure the sale of the suit land is also not supported by any evidence. The evidence on record shows a close relationship between the deceased and the 2nd defendant. There is no evidence of confinement which would be akin to a kidnap or false imprisonment. There is no evidence of any complaint received that the deceased was being confined against his will.

It is also pleaded that the deceased was led to sell the land secretly without the knowledge and participation of the plaintiff and that the sale was procured without regard to the interests of the plaintiff. I do not see how the non-involvement of the plaintiff would make the sale fraudulent. There is the more serious allegation of forgery, that the transfer and land board documents were forged. Again, I am afraid to say that there is no evidence of forgery. The documents indicate that the deceased placed a thumb print on the same and there is no evidence that the thumb prints on the documents are forged. An assumption of forgery cannot be made without tangible evidence.

I agree with counsels for the defendants that there is no evidence of fraud put forth by the plaintiff. My

own impression of the plaintiff's case is that it is based on a theory of conspiracy between the 1st and 2nd defendants which is however unproved. The plaintiff's theory as I understood it, is that because the deceased and the 2nd defendant were close, the 2nd defendant influenced the deceased to unfairly sell the suit land to the 1st defendant who was a close friend to the 2nd defendant. The theory comes close ,but falls short , of alleging that the 2nd defendant was in some way involved in the death of the plaintiff so that the land could be kept by the 1st defendant. This theory is further premised on the allegation that the deceased was buried secretly without his family being in the know. The 2nd defendant was nephew to the deceased and there is no doubt that he was close family. It is therefore not correct to state that the deceased was buried without his family being aware.

I am afraid to say that the plaintiff's theory is unsupported by any evidence. Indeed the plaintiff's evidence is full of innuendoes and suggestions which are completely uncorroborated by any evidence. No tangible evidence of fraud or undue influence was led by the plaintiff. This court cannot pass judgement based on a conspiracy theory but only on hard tangible evidence. None was forthcoming from the plaintiff.

For the above reasons, my considered view is that the plaintiff has failed to prove her case to the required standard. I have lots of sympathy for the plaintiff but I have to respect the proprietary rights of the 1st defendant who from the evidence on record appears to have acquired the suit land above board. In the premises, I have little option but to have the plaintiff's suit dismissed with costs.

It is so ordered

DATED and DELIVERED THIS 17TH DAY OF APRIL 2013

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT & LAND COURT AT ELDORET**

***Delivered in the presence of:***

***Mr. R.M. Wafula holding brief for Mr. Magare of Magare & Co for the plaintiff.***

***Mr. B.K. Langat of M/s Kibichiy & Co Advocates for the 1st and 2nd defendants.***

***Mr. J.K. Mokuia holding brief for M/s Amolo & Gacoka for the 3rd defendant.***