



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 510 OF 2010**

**ADRIAN GILBERT MUTESHI.....PLAINTIFF**

**VERSUS**

**HON. WILLIAM SAMOEI RUTO.....1<sup>ST</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT**

**DOROTHY JEMUTAI YATOR.....4<sup>TH</sup> DEFENDANT**

**PATRICK OPIYO ADEOR T/A**

**OPIYO& ASSOCIATES.....5<sup>TH</sup> DEFENDANT**

**J U D G E M E N T**

1. The plaintiff Adrian Gilbert Muteshi filed suit through a plaint dated 19/10/2010. He has sued the 5 defendants. The first (1<sup>st</sup>) defendant is Hon. William Samoei Ruto. At the time this suit was filed the 1<sup>st</sup> defendant was the Member of Parliament for Eldoret North Constituency and a cabinet minister in the Government of Kenya. Currently he is the Deputy President of the Republic of Kenya. The second (2<sup>nd</sup>) defendant is the Attorney General. The Third (3<sup>rd</sup>) defendant is the Commissioner of Lands. The fourth 4<sup>th</sup> defendant is Dorothy Jemutai Yator. The fifth (5<sup>th</sup>) is Patrick Opiyo Odero a licensed Land Surveyor.

**PLEADINGS**

The plaintiff averments and claims as per the plaint are as follows;

2. On 3<sup>rd</sup> October, 1968 or thereabouts, the third defendant on behalf of the settlement fund trustees allotted to the plaintiff parcels of land numbers 33, 34, 35, 36 and P.I. 83 in the Kaptabei Scheme which allotment the plaintiff duly accepted and made the requisite payments as required by the third defendant and the settlement fund trustees. That the settlement fund trustees charged the said parcel numbers 33, 34,35,36 and P.I. 803 Kaptabei Settlement Scheme to secure the repayment by the plaintiff of the principal sum and interest immediately after the plaintiff's purchase of the said parcels of land which purchase was completed on 11<sup>th</sup> October 1968 or thereabout. That on 15<sup>th</sup> October, 1968 or thereabouts the plaintiff was given vacant possession of the said parcels of land in the Kaptabei scheme which was subsequently renamed Tapsagoi Settlement Scheme. The

plaintiff continued farming activities on the said parcels of land including production of cereals, sheep and goat rearing and dairy farming and continued being in peaceable occupation of the said parcels of land and enjoyed all rights of proprietor of freehold land under the Laws of Kenya as absolute proprietor.

3. Over a period of time the third defendant through its settlements department, merged, consolidated and or amalgamated the said parcels numbers 33,34,35,36 and P.I. 803 all under one parcel that became parcel number 33 Tapsagoi, and a Title deed was duly issued on 17<sup>th</sup> March, 1989 in favour of the plaintiff after the plaintiff had fully satisfied his obligation and the charge in favour of the settlement fund trustees. That the said title deed was issued for title number Uasin Gishu/Tapasagoi/33 in the name of the plaintiff Adrian Gilbert Muteshi and the approximate area is 35.00 Hectares or approximately 100 acres. The title was issued under the Registered Land Act Cap 300 of the Kenya Laws. That in pursuit of his farming activities the plaintiff sought and obtained finances from the Agricultural Finance Corporation, which charged the said title to secure financial accommodation to the plaintiff. This charge was to remain in place until 29<sup>th</sup> December 2004 when the balance outstanding was written off or waived. Simultaneously the Agriculture Finance Corporation executed a notification of discharge of charge and released the title deed to the plaintiff. The said title is therefore free from any encumbrance and in the plaintiff's possession.
4. In the year 1992 following tribal clashes in the Turbo West area of the Uasin Gishu District, the plaintiff's farm was raided and animals stolen. The plaintiff nevertheless remained in the possession of the said parcel of land carrying on farming activities albeit on a reduced scale as the plaintiff remained in fear for the security of his staff on the farm. The said state of affairs continued until January 2008 or thereabouts when again after the disputed elections of December 2007 the plaintiff's farm was invaded by Kalenjin tribesmen who turbulently drove away the plaintiff's dairy cattle, sheep and goats and converted his tractors and farm tools and equipment. The said tribesmen chased away the plaintiff's staff under threats of brutal death. The plaintiff's efforts to regain possession of the property have been thwarted as his workers are threatened with sure deaths should they return to the farm, which incidentally is situated within the Eldoret South Constituency neighbouring the Eldoret North Constituency. That the plaintiff has been kept away from his property, which is currently under the use and occupation of the 1<sup>st</sup> defendant. He therefore claims mesne profits from January 2008 until he is given vacant possession of the property.
5. The plaintiff avers further that he has made reports to the Provincial Administration Security asking for help but there has been no help and the plaintiff has remained helpless in the circumstances, not knowing who the Kalenjin tribesmen that trespassed upon his land and converted his cattle, sheep and goats, tractor and farm equipment were. The plaintiff has not regained possession of his farm to date and is scared for his own life as well as that of any worker he may engage. That he has no personal contact with or knowledge of and has had no dealings with the first defendant, the fourth defendant or the fifth defendant all who are total strangers to the plaintiff save that the plaintiff knows that the first defendant at the time of filing this suit, as a minister in the Kenya Government, currently responsible for the Ministry of Higher Education Science and Technology. That at the beginning of the year 2009 the plaintiff received unconfirmed reports that the person who had taken over and was in illegal occupation of his land was the first defendant, his servants and agents. The plaintiff's efforts to carry out a search on Title Number Uasin Gishu/Tapsagoi/33 were defeated by the Lands office personnel in Eldoret who refused to avail any certificate of official search, leading the plaintiff to conclude that something was amiss and that officers in the Uasin Gishu district Land Registry at Eldoret were hiding something from him and or were colluding with persons unknown to the plaintiff but who were acting against his interests as the registered proprietor of Titles number Uasin Gishu/Tapsagoi/33/. That he made calls and personal visits to the offices of the 3<sup>rd</sup> defendant Chief Land Registrar and to the settlement office at Nairobi in order to find out the status of his said title after being informed that the fourth defendant had purportedly wrongfully subdivided and sold the plaintiff's land. That prompted by a

letter from the 3<sup>rd</sup> defendant dated 21<sup>st</sup> April 2010 the District Land Registrar, Uasin Gishu, wrote to the Deputy Commissioner of Lands (3<sup>rd</sup> Defendant) stating that:

- i. That the records in the Registry at Eldoret show that title number Uasin Gishu/Tapsagoi/33 was opened on 23<sup>rd</sup> June, 1980.
  - ii. That on 20<sup>th</sup> August, 2007 a Discharge and Transfer of land in the settlement scheme was registered in favour of the 4<sup>th</sup> Defendant i.e Dorothy Jemutai Yator.
  - iii. That the said Dorothy Jemutai Yator (4<sup>th</sup> Defendant) had subdivided the said title and a mutation registered on 28<sup>th</sup> November 2007 to create new title numbers Uasin Gishu/Tapsagoi/957 which were subsequently transferred to the first defendant i.e William Samoei Ruto.
6. That upon receipt of a copy of the letter from the Uasin Gishu District Land Registrar, the plaintiff's fears was confirmed that his said title number Uasin Gishu/Tapsagoi/33 had been fraudulently subdivided and sold to the first defendant. The plaintiff states that the defendants jointly and or severally have acted fraudulently against his interests as the registered proprietor of title number Uasin Gishu/Tapsagoi/33.
7. The plaintiff particularises the defendants' fraud as follows.

That;

- a. The plaintiff's interest in title number Uasin Gishu/Tapsagoi/33 can be traced from 1968 and not on 23<sup>rd</sup> June, 1980 as was erroneously and a misrepresentation sought to be shown in order to deceptively justify the deprivation of the plaintiff's parcel of land.
- b. The Settlement fund trustee, which is under the 3<sup>rd</sup> Defendant having transferred title number Uasin Gishu/Tapsagoi/33 to the plaintiff on 17<sup>th</sup> March 1989, had no residual power to deal with the said land to the exclusion of the plaintiff or otherwise purport to transfer the same to the 4<sup>th</sup> defendant as it purported to do. This is inconsistent with an innocent error on its part.
- c. The settlement fund trustee purported to transfer title number Uasin Gishu/Tapsagoi/33 to the 4<sup>th</sup> defendant in consideration of Kshs. 130,000/= vide a transfer back dated the 14<sup>th</sup> May 2003 but lodged for registration on 20<sup>th</sup> August 2007 with the result that the 4<sup>th</sup> defendant would not be registered as proprietor at an earlier date than 20<sup>th</sup> August 2007. That the Soy/Turbo Land Control Board wrongfully issued consent to subdivide Title number Uasin Gishu/Tapsagoi/33 to the 4<sup>th</sup> defendant when she was not the registered proprietor of the said title.
- d. The Soy/ Turbo Land Control Board unprocedurally and wrongfully issued a letter of consent to the 4<sup>th</sup> defendant to subdivide the said Title number Uasin Gishu/ Tapsagoi/33 on the 15<sup>th</sup> March 2007 when there was no evidence that the 4<sup>th</sup> defendant was the registered proprietor of the said Title or had any *locus standi* to apply for such consent. That the irregular issuance of the Land Control Board consent to a person who is not a registered proprietor was in furtherance of an illegal objective of depriving the actual owner of the said property.
- e. The transfer by the settlement fund trustees of Title No. Uasin Gishu/ Tapsagoi settlement scheme to the 4<sup>th</sup> defendant was invalid for want of proper execution
- f. The said transfer was allegedly lodged for registration and speedily registered on the same day 20<sup>th</sup> August 2007 which was inordinate and unusual having regard for the usual processes and delays in registration of transactions
- g. The 4<sup>th</sup> defendant's execution of the said transfer is allegedly attested by one B.M. Serebemuon who was designated as District Land Adjudication/Settlement officer when he was neither competent nor impartial as an attesting witness in respect of documents to which his employer is a party or at all.
- h. The said transfer was executed by a single trustee of the Settlement Fund Trustee who allegedly sealed the same thereby making nonsense of the process of execution under seal of official documents.
- i. A discharge on the said Title was registered on 14<sup>th</sup> May 2003 when there is no evidence of any

- charge, loan or borrowing by the 4<sup>th</sup> defendant from the Settlement Fund Trustees
- j. The Land Registrar Uasin Gishu had no statutory power under section 16 of the Registered Land Act to open a new edition of the register in respect of the same Title No. Uasin Gishu/Tapasagoi/33 when a register for the same was already in existence and in favour of the plaintiff, and while the same had not for any reason been invalidated or cancelled.
  - k. The said Transfer was registered by a person whose name and number is not disclosed contrary to the official practise within the Lands Ministry country wide, where every Land Registrar has a stamp showing his or her name and number endorsed against his/ her signature. This defeats the presumption that the signature on the Transfer is that of a bona fide Registrar.
  - l. The defendants jointly and severally conspired between themselves and staff of the Uasin Gishu District Land Registry to defeat the plaintiff's rights to Title No. Uasin Gishu/Tapasagoi/33.
  - m. The 1<sup>st</sup> Defendant being a person who knows the Tapsagoi area very well knew or reasonably ought to have known that Title No. Uasin Gishu /Tapsagoi/33 belonged to the plaintiff and that the 4<sup>th</sup> defendant did not own the same.
  - n. The 1<sup>st</sup> defendant knew or reasonably ought to have known that the plaintiff owned Title No. Uasin Gishu/Tapasagoi/33 and even the local administration would have known this.
8. The plaintiff avers that the title fraudulently acquired by the 4<sup>th</sup> defendant and passed to the 1<sup>st</sup> defendant was not one that deserves protection by the first registration indefeasibility doctrine. That Officers in the Settlement Fund Trustees, in the District Lands Registry in Eldoret and the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants conspired to make belief and deceive that **Title Number Uasin Gishu/Tapsagoi/33** was registered for the first time on **23<sup>rd</sup> June, 1980** and that the Plaintiff's title for the same parcel issued on 17<sup>th</sup> March, 1989 did not exist and all this with the object of depriving him of his land. That the Officers in the Third Defendant's Office knew or reasonably ought to have known that Title Number Uasin Gishu/Tapsagoi/33 had been registered in favour of the Plaintiff on **17<sup>th</sup> March, 1989** and has never been cancelled.
9. That Soy/Turbo Land Control Board on **18<sup>th</sup> September, 2008**
- Purported to approve the transfers of Title Numbers **Uasin Gishu/Tapsagoi/957,958,959,960,961,962,963,964 and 965** all by the 4<sup>th</sup> Defendant to the First Defendant who had been in wrongful occupation of the said Titles since January 2008 or thereabouts. That in the premises the Plaintiff states that the First Defendant is the prime mover of the wrongful occupation, sub-division and transfer of the Plaintiff's property and is not a purchaser for value without Notice, since he is centrally linked to fraud against the Plaintiff. That the sub-division of Title Number Uasin Gishu/Tapsagoi/33 into Title Numbers Uasin Gishu/Tapsagoi/ 957 to 965 was intended to obfuscate the legal identity of the Plaintiff's Land which was then under the wrongful occupation of the First Defendant. That the entire process of title acquisition by the 4<sup>th</sup> Defendant, the sub-division and eventual transfer of all the new titles was intended to sanitize or otherwise legitimize the wrongful acquisition of the Plaintiff's property by the 1<sup>st</sup> Defendant. That if the sub-division was lawful or bona fide (which it certainly is not) there would have been no reasonable necessity to sub-divide a Title on 28<sup>th</sup> November 2007 and sell the new sub titles to the sitting illegal occupant of the same simultaneously.
10. The Plaintiff states that the 5<sup>th</sup> Defendant is the person who exclusively and wrongfully undertook the Survey of Title Number Uasin Gishu/Tapsagoi/33 prepared and filed the sketch of development plan and submitted Mutation Forms for and in collusion with the 1<sup>st</sup> and 4<sup>th</sup> Defendant. That fifth Defendant wrongfully trespassed upon his Land Title Number Uasin Gishu/Tapsagoi/33 and wrongfully caused, facilitated or actualized its subdivision in furtherance of the illegal design of depriving the Plaintiff of his land for the benefit of the 1<sup>st</sup> and 4<sup>th</sup> Defendants. That he has never appointed or otherwise authorized the 5<sup>th</sup> defendant to enter upon or carry out any survey work on his premises. That the 5<sup>th</sup> defendant knew or reasonably ought to have known that even as at 15<sup>th</sup> March 2007 before the Land Control Board gave consent to

subdivide the title, the 4<sup>th</sup> defendant was not the registered proprietor of title number Uasin Gishu/Tapsagoi/33 whether legally or illegally. That the 5<sup>th</sup> defendant as a professional surveyor knew or reasonably ought to have known that he could not carry out survey and sub-division work on the instructions of a person who was not the registered proprietor of the property.

11. The plaintiff states that the transfer of Title Number Uasin Gishu/Tapsagoi/33 to the 4<sup>th</sup> defendant by the Settlement Fund Trustees is fraudulent null and void and that the subdivision of Title number Uasin Gishu/Tapsagoi/33 into sub plots i.e Uasin Gishu/Tapsagoi/957- to 965 inclusive is fraudulent invalid null and void. That the transfer to the 1<sup>st</sup> defendant by the 4<sup>th</sup> defendant and any other transactions thereafter in relation to titles numbers Uasin Gishu/Tapsagoi/957 to 965 is fraudulent null and void. The plaintiff prays for a declaration that the transfer dated 14<sup>th</sup> May, 2003 by the settlement fund trustee to the 4<sup>th</sup> defendant is fraudulent null and void. He states that he has the constitutional right of owning land in any part of Kenya and that his said rights ought to be protected by the State. That he now fears that the 1<sup>st</sup> defendant, 4<sup>th</sup> defendant and their agents have targeted the plaintiff's land because the plaintiff is not member of their ethnic group.
12. The plaintiff prays for judgment against the defendants jointly and severally for:
  - a. **A declaration that the transfer of land in Settlement Scheme executed by the settlement fund trustees in favour of the 4<sup>th</sup> defendant and dated 14<sup>th</sup> May 2003 and lodged for registration and registered on 20<sup>th</sup> August 2007 is fraudulent null and void.**
  - b. **A declaration that the letter of consent issued by the Soy Land Control Board authorizing the subdivision of title number Uasin Gishu/Tapsagoi/33 on the application of the 4<sup>th</sup> defendant is illegal, wrong and void.**
  - c. **A declaration that the process of subdivision of Title No. Uasin Gishu/Tapsagoi/33 undertaken by the 4<sup>th</sup> defendant is null and void.**
  - d. **A declaration that the opening of new registers for Title No. Uasin Gishu/Tapsagoi/957, 958,959,960,961, 962,963, 964 and 965 and all procedural steps leading thereto are null and void.**
  - e. **A declaration that the transfers of Title numbers Uasin Gishu/Tapsagoi/957, 958,959,960,961,962,963,964 and 965 to the 1<sup>st</sup> defendant by the 4<sup>th</sup> defendant are all null and void.**
  - f. **A declaration that all transaction effected upon Title No. Uasin Gishu/Tapsagoi/957, 958,959,960,961, 962,963,964 and 965 by the 1<sup>st</sup> defendant or others claiming through or under him are invalid null and void.**
  - g. **The Registers and Titles issued for Title No. Uasin Gishu/957,958,959,960,961,962,963,964, and 965 be cancelled.**
  - h. **The District Land Registrar does forthwith reinstate the register and Title for title number Uasin Gishu/33 in the name of the plaintiff.**
  - i. **A declaration that the plaintiff is entitled to ownership and exclusive use, occupation and vacant possession of title number Uasin Gishu/Tapsagoi/33 to the exclusion of the defendants or any person claiming through any one of them.**
  - j. **An order of eviction be issued against the 1<sup>st</sup> and 4<sup>th</sup> defendants or any of them, their servants, agents and others claiming through them and that such Order be effected under the supervision of the Officer Commanding Station Turbo Police Station.**
  - k. **The defendants, their servants and agents or other claiming through them do forthwith give the plaintiff vacant possession of the property known as Title number Uasin Gishu/Tapsagoi/33 whether under that titles or under the new Titles Numbers Uasin Gishu/Tapsagoi/957, 958, 959, 960,961, 962, 963, 964 and 965 or any other tiles or interests derived therefrom.**
  - l. **The defendants jointly and severally by themselves, their servants or agents and others claiming through them be restrained by injunction from entering, remaining upon, using, dealing with or otherwise transacting upon on title number Uasin Gishu/Tapsagoi/33 or title numbers Uasin Gishu/Tapsagoi/957, 958, 959, 960,961, 962,963,964 and 965 or any other title**

- interest derived there from.**
- m. **Mesne profits in respect of the wrongful occupation and user of the plaintiff's property.**
  - n. **General damages in addition to the other prayers (a) to (I) and detinue and conversion of the plaintiff's cattle, sheep, goats, tractor and firm implements and tools.**
  - o. **In the alternative and without prejudice to the prayers aforestated, damages being the open market value of the suit property as particularized in paragraph 13 Kshs. 50 million.**
  - p. **Costs of the suit and interest thereon and on all monetary awards at either court rates or commercial rates as may be deemed reasonable by this honourable Court.**
  - q. **Such other or alternative remedy as this honourable court may deem apt to grant.**

The 1<sup>st</sup> defendant Hon. William Samoei Ruto filed a **defence dated 6<sup>th</sup> December 2010**. He avers as follows that;

13. He bought the parcel from the 4<sup>th</sup> defendant through legitimate process having been made aware of the availability of the suit property for sale. He is thus an innocent purchaser for value. That the Ministry of Lands confirmed that, that property was available for sale. That what he did was to engage the process of purchasing a property and the Ministry/Department approved the said purchase from the 4<sup>th</sup> defendant and issued titles thereto. Nothing conceivably wrong could have therefore been committed by him. That his take over of the property was not illegal as alleged but he did take over upon being duly registered and issued with valid titles by the offices of the 3<sup>rd</sup> defendant. The allegation of illegal take over is denied and the plaintiff is put to strict proof. That he makes no admission to the contents of paragraph 22 of plaint that the property was sold to him fraudulently. That he was not and still is not privy to the on goings at the 3<sup>rd</sup> defendant's offices save for the knowledge that documents are normally presented by third parties or through their agents and its only the 3<sup>rd</sup> defendant's officers who transact any further on the documents presented.

14. That further and without prejudice to the averments;

- a. That there is nothing conceivably wrong that he could have committed.
- b. That he is an innocent third party purchaser of the subject property for value.
- c. That it is not within his powers to muscle and or in any way control the performance of its duties by the 3<sup>rd</sup> defendant
- d. That he paid value for the property thus his registration as the proprietor and the issuance of title in his name.
- e. That every allegation made against him is misconceived and maliciously made.

15. He puts the plaintiff to strict proof on the allegation that the he ought to have known that the plaintiff was the registered proprietor and not the 4<sup>th</sup> defendant. He denies the contents of paragraph 26 of the plaint and avers that he entered into occupation after the transfer was completed and having obtained titles to the said property hence was entitled as the registered proprietor to take over the parcels thereof. He denies that the plaintiff is entitled to any of the reliefs sought in the plaint.

The 2<sup>nd</sup> and 3<sup>rd</sup> defendant's statement of defence is dated the **18<sup>th</sup> August 2011**. Their joint defence is as follows;

16. They deny that the current market value of Uasin Gishu/Tapsagoi/33 is approximately Kshs.50 Million. That they in collusion with unknown persons refused to avail official search certificates to the plaintiff or at all and put the plaintiff to strict proof. That they knowingly participated in any fraudulent registration, subdivision and sale of title number Uasin Gishu/Tapsagoi/33. That in the

alternative and without prejudice the registration of the 4<sup>th</sup> defendant was procured through misrepresentation of facts and documents and as such was fraudulent.

### **Particulars of Fraud and Misrepresentation of the 4<sup>th</sup> Defendant.**

- a. The 4<sup>th</sup> defendant was not allocated Title No. Uasin Gishu/Tapsagoi/33 since the files and records held by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and which contain all background information on how the land was allocated to the plaintiff do not make any reference to the 4<sup>th</sup> defendant. The allocation and registration of the 4<sup>th</sup> defendant, which is denied, must therefore have been procured through misrepresentation of facts and documents.
  - b. The transfer of land in settlement scheme letter dated 14<sup>th</sup> May, 2003 which was used as authority to open Green Card and subsequent issue of title to the 4<sup>th</sup> defendant is a forgery and did not originate from the Director of Land Adjudication and Settlement.
  - c. B. M. Serebemuom the District Land Adjudication and Settlement Officer who is alleged to have on 12<sup>th</sup> July 2004 witnessed the signing of the transfer of land in Settlement Scheme letter dated 14<sup>th</sup> May, 2003 had as at that date been transferred from Uasin Gishu District to Nyandarua District. That the transfer was vide letter dated 5<sup>th</sup> February 2004 and the said B. M. Serebemuom reported to Nyandarua District and confirmed vide letter dated 18<sup>th</sup> February 2004. The signature allegedly made on 12<sup>th</sup> July 2004 is therefore a forgery and or signed by a person without authority.
17. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants denied the rest of the averments contained in the plaint and put the plaintiff to strict proof.

The 4<sup>th</sup> defendant's defence is dated the 9<sup>th</sup> December 2010. She avers as follows;

18. That the plaintiff does not hold a first registration under the Registered Land Act, Cap 300 as the plaintiff is not indicated in the register of the land parcel known as Uasin Gishu/Tapsagoi/33 as the first registered proprietor. That her signature has been forged and she has never had any dealings with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants over the land parcel known as Uasin Gishu/Tapsagoi/33. That in the alternative but without prejudice to the foregoing the 4<sup>th</sup> defendant avers that she is an elderly person and she will rely on doctrine of non-est factum in defence of any documents allegedly executed by her. That without prejudice to the foregoing she avers that no privity of contract or estate exists between her and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants over the land parcel known as Uasin Gishu/Tapsagoi/33.
19. That without prejudice to the foregoing denial, she avers that she has never applied for any consent or been a party to any controlled transaction involving the land parcel known as Uasin Gishu/Tapsagoi/33, in terms of the Land Control Act, Cap 302. She denies being in occupation of the suit land or any attendant parcels thereto or carrying out any conveyancing dealings over the suit land. That no privity of contract exists between herself and the 5<sup>th</sup> defendant over any contract in respect of subdivision or conveyancing of the suit land. That if any contract exists between her and the 5<sup>th</sup> defendant which is denied in respect of surveying the suit land parcel the same is a forgery and she will rely on the doctrine of *non-est factum*. She avers that the plaintiff's relief lies in an action of indemnity against the government of Kenya in tandem with Section 144 of the Registered Land Act, Cap 300. That the plaintiff's claim for compensation for lost property is a claim for special damages that must be specifically pleaded which has not been done. That the plaintiff is not the registered proprietor of the land parcel known as Uasin Gishu/Tapsagoi/33 in terms of section 32 of the Registered Land Act, Cap 300 hence he cannot sustain the suit.
20. The 4<sup>th</sup> defendant denied the rest of the averments contained in the plaint and put the plaintiff to strict proof.

The 5<sup>th</sup> defendant defence is dated 22/11/10. He states as follows in his defence;

21. The 5<sup>th</sup> defendant contends that in all the circumstances of this case, he discharged his professional duties as empowered by law. That in or about June 2007 his office received instructions to subdivide land reference Uasin Gishu/Tapsogoi/33 measuring approximately 35.0 hectares into nine parcels from one Dorothy Jemutai Yator; the 4<sup>th</sup> defendant. That as a pre requisite to his visit, the said Dorothy Jemutai Yator confirmed that she was the registered owner of land reference Uasin Gishu/Tapsogoi/33 by production of the consent to sub-divide issued by the Soy/Turbo Land Control Board dated the 15<sup>th</sup> of March 2007. That having satisfied himself that the land reference Uasin Gishu/Tapsogoi/33 was agricultural land requiring the authority to sub-divide land under the fourth schedule of the Survey Act (Cap 299) Laws of Kenya, he scheduled a visit to the land with the registered owners. That having satisfied himself that the consent tendered to him by the registered owner was issued in compliance with Section 6 of the Land Control Act (Cap 302) Laws of Kenya. He contends that he breached no statute relating to his professional conduct. That at the time he carried out the subdivision prepared, signed and registered the mutation forms, the actual and apparent registered owner of Land Reference Uasin Gishu/Tapsogoi/33 was Dorothy Jemutai Yator to whom the resulting subdivision, Land Reference Numbers Uasin Gishu/Tapsogoi/957 to 965 were registered. That besides carrying out his professional duty with due diligence in the sub-division of Land Reference Uasin Gishu/Tapsogoi/33 he had no other input in the acquisition of the said land by the 4<sup>th</sup> defendant and its subsequent transfer to the 1<sup>st</sup> defendant.

#### **EVIDENCE AND WITNESS STATEMENTS:**

Parties in this matter filed witness statements and also gave evidence in Court. During their evidence in court they adopted their written statements and were cross-examined on the content of their statement and the oral evidence adduced in court.

#### **SUMMARY OF PLAINTIFF'S EVIDENCE.**

22. The plaintiff adopted his statement filed in court on the 5<sup>th</sup> of May, 2011. In brief this is his evidence; That in January 1968 he bought a farm in Turbo West in the Uasin Gishu District situated from Kaptabei Scheme. The said property consisted of a permanent self contained six bed room house, staff quarters and an external store, external kitchen with an external firewood cylinder and water heating equipment. The house was on a 2 acre plot while the actual farm land consisted of 4 plots Nos. 33, 34, 35, and 36 all making a total of 100 acres all within Kaptabei Scheme which was later on renamed Kapsagoi Scheme. To support this, the plaintiff produced an application by him to purchase the land the Minister of Lands and Settlement **Ext. 1A** and the Sale Agreement and Loan Agreement **Ext. 1B**. The loan was repayable over 30 years. He was given vacant possession on the 15<sup>th</sup> of October 1968, **Ext. 2&3**. By a letter dated the 26<sup>th</sup> October 1968 the Settlement officer Kaptabei Scheme was given a copy of the letter of allotment, a copy of the charge sheet and working capital for his record. That after he bought the property together with his wife, he developed the place by fencing it, cultivating it and planting crops. He bought farm equipment, a tractor (**log book Ext.5**), a plough, a harrow, a trailer, dairy cattle (**Ext 6** purchase of Ayrshire cattle), sheep and goats. They became members of KCC and KFA and they would deliver produce and milk. They lived as a family in the said farm. He completed payment for the property loan in December 1988 (**Ext. 7 and 9**). That all plots Nos. 33, 35, 36 36 and P.I. 803 were later amalgamated under the title number Uasin Gishu/Tapsogoi/33 (Ext.8). He was issued with a title deed on the 17<sup>th</sup> March 1989. He took a loan for development with AFC which was later on written off (**Ext.11**). That he continued with profitable farming for the entire period except in 1992 when operations at the farm were temporary interfered with during the clashes of that period. He however continued to do farming in the said farm.

23. That his farming operation were brought to an end when post election violence broke out in January 2008. His farm was targeted and it was pillaged, livestock stolen and all farm equipment

converted. That he made inquiries and got information from some previous workers and neighbours that people who had invaded his farm were brought by the 1<sup>st</sup> defendant. That the names of the workers could not be disclosed because, to do so would bring wrath and possible death at the hands of his aggressors. That in May 2010 he confirmed that the persons occupying his farm were the servants and workers of the first defendant, who had had a bountiful harvest in 2009. That according to the statistics in the Ministry of Agriculture and Kenya Seed Company Ltd the average output of maize in Turbo region is 42 bags per acre and the price is about Kshs. 2,300/= per bag of maize. That he was informed by the workers of the 1<sup>st</sup> defendant that the 1<sup>st</sup> defendant had purchased the farm from the 4<sup>th</sup> defendant and subdivided it into 9 titles. That he made several attempts to carry out an official search on his title in Eldoret at the Uasin Gishu District Registry but the staff were uncooperative even after making written applications and paying for the searches (**Ext.12**). That he does not personally know the 1<sup>st</sup> defendant neither the 4<sup>th</sup> defendant neither has he sold his farm to either of them.

24. That on the 4<sup>th</sup> March, 2010 he wrote to the 3<sup>rd</sup> defendant seeking assistance in officially identifying the persons who had wrongfully sub-divided and claimed ownership of his land, **Ext. 13**. The 3<sup>rd</sup> defendant forwarded a copy of his letter dated 4<sup>th</sup> March, 2010 for an urgent response to the District Land Registrar Uasin Gishu (Eldoret). The said officer responded through his letter dated the 8<sup>th</sup> June, 2010 when he disclosed that on the 20<sup>th</sup> of August 2007 a discharge of charge (**Ext.16**) and a transfer of land in Settlement Scheme (**Ext.17**) had been registered in the name of the 4<sup>th</sup> defendant who had subdivided the property into 9 plots Uasin Gishu/Tapsagoi/957-965 (copy of the plan for the titles Nos. Uasin Gishu/Tapsagoi/957-965), which were then transferred to the 4<sup>th</sup> defendant and were ultimately transferred to the 1<sup>st</sup> defendant. During his investigation he found out the Mr. Serebmuom was not in Eldoret on the 12<sup>th</sup> of July 2004 and did not sign the transfer of Land in Settlement Scheme, **Ext.19** and that the subdivision of the 9 Titles into Titles No. 957-965 were undertaken by the 5<sup>th</sup> defendant, yet he had no personal dealing with the 5<sup>th</sup> defendant. His counsel wrote to the 5<sup>th</sup> defendant (**letter Ext. 20**) who replied on the 1<sup>st</sup> July 2009 (**Ext. No. 21&22**), indicating that he had been instructed by the 4<sup>th</sup> defendant as evidenced in the Land Control Board consent letter dated the 15<sup>th</sup> March, 2007. He later saw the mutation form which shows that the 5<sup>th</sup> defendant prepared it on the 21<sup>st</sup> November 2007, (**Ext. 23**). His investigation also showed that on the 18<sup>th</sup> September, 2008 while the 1<sup>st</sup> defendant was in wrongful occupation of his land the 4<sup>th</sup> defendant applied for consent to fraudulently transfer the Titles Nos. Uasin Gishu/ Tapsagoi 957-965. Accordingly to the plaintiff the land consents of 15<sup>th</sup> March 2007 to subdivide and 18<sup>th</sup> September 2008 to transfer the said titles in favour of the 4<sup>th</sup> defendant and 1<sup>st</sup> defendant were fraudulent and wrongful. That his interest in the suit land can be traced from 1968 and not 23<sup>th</sup> June 1980 as shown in the documents. That no other person held any claim to the title of the suit land before it was allocated to him.

25. That the Settlement Funds Trustee (hereinafter referred to as the SFT) which is under the control of the 3<sup>rd</sup> defendant having transferred the suit Title No. Uasin Gishu/ Tapsagoi/33 to him had on the 17<sup>th</sup> March 1989 no residual power to deal with the land to his exclusion or otherwise purport to transfer it to the 4<sup>th</sup> defendant and that this is inconsistent with an innocent error on its part and is pertinently fraudulent. That it is worth noting that the SFT purported to transfer Title No. Uasin Gishu/Tapsagoi/33 to the 4<sup>th</sup> defendant vide a transfer dated the 14<sup>th</sup> March 2003 but lodged it for registration on 20<sup>th</sup> August 2007 with the result that the 4<sup>th</sup> defendant would not be registered as the proprietor at a earlier date than 20<sup>th</sup> August 2007. That he did not apply for the subdivision neither did he attend the Soy/Turbo Land Control Board for the said purpose. That the consent letter dated the 15<sup>th</sup> March 2007 issued by the said board was done so unprocedurally and wrongfully and that this was done with the illegal objective of depriving him of the ownership of his property and was fraudulently. That the transfer executed by a single Trustee of the SFT made the whole process of execution non sense. That the discharge of charge on the said Title was registered on 20<sup>th</sup> August, 2007 when there is no evidence of any charge, loan or borrowing by the

4<sup>th</sup> Defendant from the SFT, this therefore make a documents fraudulently as they give the false impression that the said defendant was a bona fide purchaser of the suit property. That the Land Registrar Uasin Gishu had no Statutory Power under Section 16 of the Registered Land Act to open a New edition of the Register in respect of Title Number Uasin Gishu/Tapsagoi/33 when a register for the same was already in existence and in his favour. That the transfer by the SFT in favour of the 4<sup>th</sup> Defendant was done by a person whose name and number is not disclosed contrary to the official practice at the Land Ministry. That the defendant jointly and severally conspired between themselves and staff of the Uasin Gishu District Land Registry to defeat his rights to the suit property. That the 1<sup>st</sup> Defendant being a person who knows the Tapsagoi area very well knew or reasonably ought to have known that Title Number Uasin Gishu /Tapsagoi/33 belonged to him and that the 4<sup>th</sup> Defendant did not own the same. That the transfer of the 1<sup>st</sup> Defendant were intended to legitimize his wrongful of the Land. That Soy Turbo Land Control Board had no legitimate reason for issuing Consent on 15<sup>th</sup> March, 2007 to the 4<sup>th</sup> Defendant to sub-divide Title Number Uasin Gishu/Tapsagoi/33 as she was not the registered proprietor of the Title and therefore the Land Control Board was in collusion with or in conspiracy with the 1<sup>st</sup> and 4<sup>th</sup> Defendant in their effort to illegally acquire his property in favour of the 4<sup>th</sup> and 1<sup>st</sup> defendants. That the 4<sup>th</sup> defendant address given by the 5<sup>th</sup> Defendant P.O BOX 6884, Nairobi belongs to Karanja Mercy Wanjiku and not the 4<sup>th</sup> defendant, **Ext. 27**. The Plaintiff blames the Government and Attorney General for having done nothing to assist him to claim the Land. That the Constitution of Kenya guarantees him the right to owning property and living within any part of Kenya. That the open market value of his property is more than Kshs. 50,000,000/= and this is exclusive of the farm implements, tools, equipment and capital invested in the property. That the average production of maize per acre of land and the average expense per acre for the Soy/Turbo area will be based on Government Statistics. In his oral evidence in Court the plaintiff stated that the outcome of the Maize on average per acre one can get 38 to 42 bags. That in 2009 a bag of maize costs 2300/= hundred and in December, 2011 when he testifies a bag was 3500/= to 4000/=.

The Plaintiff sought the Judgment in accordance with the Complaint filed on the 26<sup>th</sup> October, 2010

26. When the plaintiff was cross-examined by defendants' counsels he reiterated his evidence in chief and testified further that he does not know if the 1<sup>st</sup> defendant went to the Land Control Board. That he had no idea that the 4<sup>th</sup> defendant's husband is a land officer. That after the invasion of 1992 he remained on the land on a reduced scale and that he was not physically removed from the land but his workers were evicted. That he was not there when the farm was invaded in 1992 and in 2008 but he had workers on the land, he learnt about the invasion from his workers and neighbours. That he is not in the business of selling land. That the police did not take his report of 2008 because of fear and the possible repercussion. He stated that he has not given the value of the animals the farm equipments and the farm products neither did he do any valuation of the suit land but has estimated its value at more than 50 million. That he is claiming mesne profits from the one who used the farm. That from the search he did the title No. 33 was not cancelled by the Land Registrar at Eldoret. That a search done on his behalf by one Rogers revealed that the suit land had been sub-divided into Uasin/Tapasagoi/957 to 965. That he did not take his title to the Land Officer at Eldoret but to Mr. Ngatia at the Ministry of lands. That he did not give the Land Registrar at Eldoret a chance to investigate as he understood that he was not a straightforward person. That he never surrendered his title to anyone. That there was no title in the 4<sup>th</sup> defendant's name nor did she did get with him to buy the land nor did she speak to him. That he visited his land in early 2010 he went there incognito to find out what was happening to the land. That he has never seen the green card or the documents of the search done on the 31/1/12. That as per the documents he has the land was transferred to the 4<sup>th</sup> defendant on the 20/8/07

27. In re-examination the plaintiff testified that the Registrar Tom Chebukwesi told him that the 1<sup>st</sup> defendant's title came from their office. That he never applied for subdivision of the land, neither did he visit the Land Control Board. That he saw the transfers when he came to court. That he got his discharge of charge from the SFT in 1989. That though he met with the 1<sup>st</sup> defendant after the case started, he had no agreement with him to sell the land to him. That at their meetings the 1<sup>st</sup>

defendant stated that he was cheated. That his claim is over the occurrences of 2008 and not 1992, mense profits for 2008. That most of his records were destroyed at that time. That he had a manager Charles Musungu and 4 workers and that since 2009 he does know where his manager is. That he does not know the position of his title but he has the original title. That he went through mental torture and the AG did not protect him. That he is asking for money he would have earned if he used the said land.

#### 1ST DEFENDANT'S CASE.

The 1st defendant filed a witness statement dated the 16th of August 2011 sworn by himself and that of Hosea Ruto his witness dated the 11<sup>th</sup> September 2011. The 1<sup>st</sup> defendant did not testify but his witness did.

28. This is the 1<sup>st</sup> defendant's evidence in his statement; that in the year 2008 when he was approached by Dorothy Jemutai Yato offering to sale to him 9 parcels of land situated around Turbo area, Uasin Gishu County, he accepted the offer but indicated to her that he had to first satisfy himself with the existence and merchantability of the said pieces of land. As a legal requirement and out of abundance of caution, he proceeded to Uasin Gishu District Lands Offices being the District within which the parcels of land are situate and conducted an official search for all the nine parcels of Land is **Uasin Gishu/Tapsagoi/957 to 965**. The search results confirmed that Dorothy Jemutai Yator, the lady who had approached him with the offer was the registered proprietor of all the nine parcels and further that the parcels of land were all free of any encumbrances an indication that the title was good, merchantable and that the parcels of land were available for sale. The assurance that accompanies an official search and the indemnity attached encouraged him to carry on with the transaction. That he embarked on negotiations with the vendor Dorothy Jemutai Yator and they agreed on the purchase price of each of the nine parcels of land noting that the nine parcels were all of different acreage/size. That the vendor applied for consent to transfer land from the Soy/Turbo Land Control Board and the consent was given in respect of the said 9 parcels of land vide various letters dated 18<sup>th</sup> September, 2008 further confirming that the parcels were merchantable. That he paid the vendor the purchase price of all the nine pieces of land as she availed all her documents to effect a transfer from her name to his name. That she provided her particulars including the national identification card, copy of her personal identity number and passport size photographs he also supplied his particulars as required in law before any transfer of land is effected. That these documents were all forwarded with the transfer documents to the Registrar of Lands who checked them and cross-checked with the land records at their registry and being convinced by the forwarded documents that indeed due process had been followed the Registrar went ahead and processed the transfer. That he made all the requisite statutory payments in respect of the nine parcels of land; which include the stamp duty which was assessed by a government valuer, he paid the transfer fee to the land registry and all the necessary payments without which the transfer would not have been effected in his name. That he was then registered as the proprietor of the 9 parcels of Land **Uasin Gishu/Tapsagoi/957 to 965** and was issued with the Title deed in his name on 7<sup>th</sup> October, 2008. That the land now belonged to him legally hence he had unhindered access. That he subsequently moved into and occupied the parcels which were then vacant and ready for occupation. There was no eviction of any occupant since as the time of his purchase, the parcels were vacant and free for occupation.

29. That he has been in occupation of the said 9 parcels of land from the date he was issued with the title deeds and he has since improved it, he has been using it for agricultural purposes. That he was shocked and surprised when he received a letter from the plaintiff's advocate indicating to him that the 9 parcels of land that had been successfully transferred to him did not belong to him as the registered proprietor was on Adrian Gilbert Muteshi who the letter said had purchased the piece of land in 1968 and subsequently issued with the tile the same year. That he was perturbed as he had not purchased the parcels from the said Adrian Gilbert Muteshi and neither did he know him and he only had knowledge of the registered proprietor as per the search he conducted who was then Dorothy Yator and as far as he is concerned he entirely relied on it to proceed with the transaction. That he subsequently instructed his advocates on record who informed him which information he

verily believe to be true that as an innocent *bona fide* purchaser for value and as a third party to the transaction good and merchantable title had passed to him. That he maintains that he purchased this land from then registered proprietor and at no point did he influence the decisions of the Land Control Board as he had no control over the said board or its sittings. Further he is a law abiding citizen and at no point has he fraudulently deprived anybody of his property whatsoever. That as far as he is concerned the said parcels of land were transferred to him legally and procedurally as it involved various government institutions and individuals whose work is to ensure that all land transactions are done in accordance with the law and that they are all above board which they did to the best of their knowledge. That he is an innocent party to this transaction and should the court find any of the alleged fraudulent transactions then the same would not be visited on him. In the alternative he asks that he be deemed as a victim of the said fraud having bought the land in the mistaken belief and misrepresentation that the land was registered in the name of the 4<sup>th</sup> defendant and that it was available for sale. That he is the registered proprietor of the land according to the records at the land's office and to his knowledge that confers him with all the rights and privileges to the said parcels of land. That he pray for dismissal of the plaintiffs case and declaration that the parcels of land be declared as legally acquired by himself.

The 1<sup>st</sup> defendant chose not to testify. His statement was therefore not tested under cross-examination it remains a statement on record. His defence however is on record.

30. The 1<sup>st</sup> defendant filed a Notice of Concession during the Hearing which is reproduced in this judgment as follows;

#### **NOTICE OF CONCESSION**

1. **The 1<sup>st</sup> defendant makes no concession and/or admission save as expressly set out in this notice, particularly as averred herein and to the extent of expressly making a concession as to:-**
  - i. **The claim on the plaint.**
  - ii. **The point in time of the concession.**
2. **The 1<sup>st</sup> defendant reiterates all his averments in his defence and in his statement save as conceded in the notice.**
3. **The 1<sup>st</sup> Defendant is conceding with effect from the date of this notice:-**
  - i. **Title to ownership to the land parcel UASIN GISHU/TAPSAGOI/33 (957,958,959,960,961,962,963,964 and 965).**
  - ii. **Possession and proprietorship of the land parcel UASIN GISHU/TAPSAGOI/33 (957,958,959,960,961,962,963,964 and 965).**
  - iii. **To give vacant possession within two (2) months of this notice, (on or before 10<sup>th</sup> April 2012); the two (2) months being necessary to enable him remove his properties, including fences and hedges.**
4. **The 1<sup>st</sup> defendant makes the concession made herein on account of the averments contained in the defence filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants dated 18<sup>th</sup> August 2011, filed in Court on 26<sup>th</sup> August 2011 and served on the 1<sup>st</sup> defendant on 26<sup>th</sup> August 2011; And particularly the extent to which the said defence states that a mistaken set of documents and representations contained in the said documents were used to effect transfer to the 1<sup>st</sup> defendant, and holding out the position that transfer to the 1<sup>st</sup> Defendant was based on mistakes emanating from particulars relating to presumed property rights of the 4<sup>th</sup> Defendant, hence impeaching the 1<sup>st</sup> defendant's bona fide purchase, transfer, ownership and possession by lack of proper title upon which to transfer to the 1<sup>st</sup> defendant.**

5. **The concessions made by the 1<sup>st</sup> defendant are:-**

- a. **With effect from the date of this notice, (and as a result of study of the defence of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants).**
  - b. **No concessions and or admissions of any wrongdoing and or culpability on his part at any point in time, and are neither concessions nor admissions for any wrongdoing and or culpability for any act of commission or omission at any point in the process of sale, transfer and conveyance generally.**
  - c. **Not concessions and or admissions of any liability for any damages and or losses and or prejudice to any party.**
  - d. **Not concessions and or admissions of any liability for costs to the plaintiff or any party whatsoever.**
  - e. **Not concessions and or admissions of any other prayer made by the Plaintiff or by any other party whatsoever.**
6. **The 1<sup>st</sup> Defendant reserves his rights to separately claim redress, compensation, payments, interests and costs from parties who proffered to him representations expressly and impliedly that the said land parcel UASIN GISHU/TAPSAGOI/33 (957,958,959,960,961,962,963,964 and 965) had a good title, upon which he could get bona-fide and incontestable ownership, possession and enjoyment thereof.**

31. Hosea Kibet Ruto was the 1<sup>st</sup> defendant's witness. He adopted his statement filed in court on the 11<sup>th</sup> September 2011. This is his evidence as written in his statement and orally in court; he is a businessman engaged in general merchandise he lives in Jabali Settlement Scheme, Uasin Gishu County and conducts his business in Uasin Gishu and Nairobi. That sometime in the year 2008, Hon. William Ruto, first Defendant told him that he had been told that a land parcel measuring about 100 acres was on sale in Tapsagoi, and he wanted him to assist him locate its owner for purposes of possible purchase. That he went to Tapsagoi and pursuant to inquires, he was shown by people bordering the parcel the said land, but they did not know the owner. He did not find anybody on the parcel who could tell him the owner of the parcel and any details of the sale. Thereafter he went to Uasin Gishu District Lands Offices, and the District Lands offices Registry told him that they could not see from their maps and files and 100 acre land block in the general area of Tapsagoi where he was looking. Amongst the people he spoke to was the District Land Registrar then, Mr. Chepkwesi. He perused the survey map for the area but could not locate the parcel, even after he had used references like the neighbouring school (Tapsagoi Primary School) and cattle dip. There was no parcel as big as about 100 acres. He was told at District Land Registry that the land parcels around the region he was inquiring about were previously parcels belonging to Settlement Fund Trustees (S.F.T) and was advised to go to SFT offices in Eldoret. That the District Land Registry staff informed him that Mr. Kiptugen and Mr. Bethwell of S.F.T had been transacting on some Tapsagoi Scheme parcels and it might help if he contacted them for any information on what he was looking for. That he went to SFT offices at Eldoret hoping to meet its Lands District Settlement Officer, one Mrs. Ogega, who was not in but he met one Mr. Peter Kosgei, an SFT officer who works in its accounts office. That in the course of a casual conversation with Mr. Peter Kosgei whom he previously knew, he told Peter he was looking for Mrs. Ogega to assist me confirm if there was any parcel in Tapsagoi measuring approximately 100 acres. To his surprise, Mr. Peter Kosgei told him he knew the parcel and its owner Dorothy Yator. He told him that he himself and two persons, Kipsang Bethwell nicknamed Emmanuel and Mr. Kiptugen had been jointly assigned the role of selling nine (9) parcels by Mrs. Dorothy Yator. Peter Kosgei told him the parcels had been sub-divided into nine (9) parcels and he showed him six (6) original titles he had in his drawer and told him he would get another 3 (three) titles and also consulted with his colleagues assigned to sell the parcel, together and get back to him. He informed him that the 9 parcels totalled up to about 85 acres not 100 acres. Mr. Peter Kosgei confirmed that the parcel was initially one block but was sub-divided into 9 units, by Dorothy Yator, using a surveyor, and all process including land control board consent followed. He told Peter Kosgei that he wanted to meet and talk to the registered owner, Dorothy Yator .Peter told

him that the real and beneficial owners were both Dorothy Yator and Mr. Kiptugen, her husband and that they (himself and Bethwell) had full authority on behalf of Dorothy and Mr. Kiptugen. That he took his mobile number and gave him his number, 0721204823. He told him some of the parcels were in the process of being sold, but any sales would be cancelled so as to sell as block the about 85 acres if his principal was interested. He later called him and he met Peter Kosgei and Mr. Kipsang Bethwell alias Emmanuel and they confirmed they were speaking on their own behalf, and on behalf of Mrs. Dorothy Yator and her husband Mr. Kiptugen and they were ready to sell the land to his principal. They also had possession of the additional three (3) titles that Mr. Peter Kosgei did not previously have. That Mr. Kiptugen is the husband of Dorothy Yator and was and is a physical planner at the Ministry of Lands and was in Kapsabet lands office in 2012. That he had not been mandated by Hon. W. Ruto/1<sup>st</sup> Defendant to negotiate the purchase so he arranged for the vendors and agents to go meet Hon. W. Ruto. He gave them transport of Kshs. 20,000/= to Peter Kosgei, Bethwell Kipsang alias Emmanuel, Mr. Kiptugen and Dorothy Yator to travel to Nairobi and meet Hon. W. Ruto in Nairobi. The money was given to Peter Kosgei and Bethwell Kipsang. About a week later Peter Kosgei and Kipsang Bethwell alias Emmanuel came to Nairobi as pre-arranged and he took them to meet Hon. W. Ruto. They gave apologies on behalf of Mr. Kiptugen and Dorothy Yator saying they were unable to travel, but that they had full permission to speak on their behalf. He was present when they apologized, but left them to their meeting thereafter, and did not participate in the negotiations he waited outside the room. Later Peter Kosgei and Kipsang (Emmanuel) Bethwell reported to him that they had agreed and were given part payment for the parcel by Hon. W. Ruto. He was given a token sum of Kshs 60,000/= on account of arranging the successful transaction, and as a refund of the Kshs 20,000 he had given them as transport to travel from Eldoret to Nairobi. He was thus convinced that they had arrived at a sale agreement for about 85 acres. That in addition to informing him of the agreement to sell, and part payment Peter Kosgei and Kipsang (Emmanuel) Bethwell told him they had agreed on an advocate, one Elizabeth Rotich to conduct the transaction and that the advocate was also known to the registered owner Dorothy Yator, and her husband Mr. Kiptugen (vendors). That since he was shown the titles he did not do a search neither was he suspicious of the ownership of the land. That the plaintiff's name never came up during the negotiations.

32. Later he was also told to pay stamp duty and to give Elizabeth Rotich the stamp duty receipt which he did. That the 1<sup>st</sup> defendant later told him that he had sent Kipsang (Emmanuel) Bethwell to deliver to Advocate Elizabeth Rotich a transfer form he had signed, together with his photographs, copy of his Identity Card, (I.D) and copy of Personal Identification Number (P.I.N). That sometimes in early 2009, he was given Kshs. 600,000/= by Hon. W. Ruto as balance of purchase price to give to Peter Kosgei, Mr. Kipsang (Emmanuel) Bethwell, Dorothy Yator and Mr. Kiptugen. Peter Kosgei and Kipsang (Emmanuel) Bethwell came to collect the amount and he gave them after they told him they were collecting the amount for and on their own behalf and on behalf of Dorothy Yator and Mr. Kiptugen. He presumed that Advocate E. Rotich, Peter Kosgei, Mr. Kipsang (Emmanuel) Bethwell, Dorothy Yator and Mr. Kiptugen had jointly or severally assessed the value of the parcels, upon which the stamp duty payable was assessed. He also presumed that Advocate E. Rotich, Peter Kosgei, Mr. Kipsang (Emmanuel) Bethwell, Dorothy Yator and Mr. Kiptugen jointly or severally surrendered the original titles. He was later told to collect nine (9) titles from Advocate E. Rotich, which he did, duly transferred in favour of Hon. W. Ruto. He knew for a fact that Messrs Peter Kosgei, Mr. Kipsang (Emmanuel) Bethwell and Mr. Kiptugen (the husband of the vendor, Dorothy Yator) were all employees of Ministry of Lands in the year 2008, and by early 2012 they were still in the said Ministry working as an accountant, clerical officer and planning officer respectively. That he was aware of the fact that questions have been raised as to Mr. Kiptugen possibly having used the name of his wife Dorothy Yator in other land transactions that subsequently was subjected to scrutiny. That at no time in the whole process did he suspect anything foul in the purchase process. That later about the year 2010 when the Plaintiff Mr. Adrian Muteshi raised a complaint about his land having been taken away, he tried to contact him for two purposes. One was to know the true position of the matter. Secondly was to attempt to resolve the matter if possible. He spoke to both Mr. A. Muteshi and his advocate Mr. Lubulellah. He was not able to get the matter resolved as Hon. W. Ruto was being difficult at having to be challenged on a parcel he had bought and had a title from Lands. A. Muteshi was

insisting on getting his land unconditionally.

33. When Mr. Hosea Ruto was cross-examined he responded as follows; That he has known the 1<sup>st</sup> defendant since his childhood. That the person he inquired from about the land is a neighbour called Kirui and he did not find anyone in the suit land who claimed to be an owner. That he did not talk to the area chief nor did he do an official search. That the officer at SFT did not tell him who owned the land. That he did not discuss the price of the said land with Kosgei but Kosgei told him that Dorothy and Kiptugen had given them the authority to sell the said land. That he never saw a Power of Attorney, neither did he do a search on any of the titles. That he would not know if the 3 had no agreement. That Bethwell and Kosgei told him that they were paid other sums by the 1<sup>st</sup> defendant. That he believed the 3 were agents of Dorothy and Kiptugen but he had not seen the couple nor did he meet Dorothy in any of the meetings. That he does not believe that there was no land control board consent to transfer the land. He denied being part of a scheme to sell the said land. That the District land Registrar told him the land belongs to Dorothy Yator but he did not pursue the physical file.
34. In re-examination he stated that he did not do a search on the titles as they looked genuine. That the District Land Registrar told him that a surveyor Patrick Opiyo the 5<sup>th</sup> defendant had surveyed the said land and that he saw green cards with the name of Dorothy Yator.

## **2<sup>ND</sup> AND 3<sup>RD</sup> DEFENDANTS CASE**

Mr. Silas Kiongora Mburugu a Principal Land Administration Officer testified on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. He also filed a witness statement dated the 2/3/12. This is his evidence; That his duties entail amongst other things, giving instructions to the Attorney General on civil suits and attending Court cases to give evidence on behalf of the Commissioner of Lands. That he was aware that parcel No. Uasin Gishu/Tapsagoi/33 was allocated by Settlement Fund Trustees to Adrian Gilbert Muteshi. That the allottee made part payment for the land allocated to him of Kshs. 10,000/- in 1968. That the balance of payment of Ksh. 39,240/- remained as loan charged to the said land which the allottee paid in installment and in 1988 a letter was written to the estate manager confirming all the loan has been paid and the land could be discharged and title released. The land title issued to Dorothy Jemutai Yator the 4<sup>th</sup> Defendant in this matter seem to have been acquired fraudulently because, the files for plot No. Uasin Gishu/Tapsagoi/ 33 which contain all the background information on how the land was allocated to Adrian Gilbert Muteshi do not make any reference to Dorothy Jemutai Yator the 4<sup>th</sup> Defendant in this matter. That the transfer of land in settlement scheme letter obtained from District Land Registry, which was used as authority to open green card and subsequent issue of alleged title to Dorothy Jemutai Yator did not originate from the Director of Land Adjudication and Settlement Office. That Mr. B.M. Serebemuom, the District Land Adjudication and Settlement Officer alleged to have witnessed the signing of transfer letter to Dorothy Jemutai Yator on 12<sup>th</sup> July, 2004 had been transferred from Uasin Gishu Office to Nyandarua District Offices by that time. That from the provided information it is clear that land registry in Uasin Gishu District were altered to issue a title to the 4<sup>th</sup> Defendant and then a subsequent transfer to the 1<sup>st</sup> defendant. That it was not established how the transfer was processed at the Ministry headquarters. That if a sum of Kshs. 130,000/- was paid there could have been evidence of it. That the document took 3 years before it was lodged at the Ministry one could wonder why it took so long.

35. When Mr. Silas Kiongora Mburugu was cross-examined he reiterated his evidence and also responded as follows; That the documents used to transfer the title to Dorothy was suspicious and if they found the officer who had conducted the transfer he could have been disciplined although no action has been taken yet. That when this matter came up they tried to reconstruct the file and it is clear that some documents were plucked from it as the green cards were not there and they suspect that there was collusion between their staff and a member of public. That they want to involve police to investigate. That the titles issued to the 1<sup>st</sup> defendant are not valid as there were

irregularities noted. He admitted that what he had merely done was investigations. That Dorothy's name appears in the Eldoret file and that if there was any transfer between Dorothy and Hon. Ruto it must be in the Eldoret file and also the title that was issued to Hon. Ruto. He explained that in conveyancing a title for transfer is usually taken for assessment of stamp duty at lands office and once it is established that all documents are in order it is taken to the collector of stamp duty for payment and if that the payment is not done in full the payment is not valid. He stated that at the time the surveyor did the survey the documents were in the names of Dorothy Yator.

In re-examination he stated that the stamp duty of 8<sup>th</sup> October 2008, was not a re-evaluation but was payment of stamp duties of parcels nos.957,958,959, 960 and 965.

#### **4<sup>TH</sup> DEFENDANT'S CASE.**

36. Dorothy Jemutai Yator 4<sup>th</sup> defendant filed a written statement she also testified in court. This is her evidence that she has never had any dealings with the 1<sup>st</sup> Defendants in respect of the land parcel know as Uasin Gishu/Tapsagoi/33. That she has never applied for any consent from the Land Control Board nor attended any board meeting to sub-divide and transfer the land parcel known as Uasin Gishu/Tapsagoi/33. That she has never entered into any contracts to sale the sub-divided parcels of land arising from Uasin Gishu/Tapsagoi/33 to the 1<sup>st</sup> Defendant. That she has never met the 1<sup>st</sup> Defendant save to learn of his existence through the media as a political figure. That she is a stranger to all the allegations leveled against her in respect to the land in question. That her signature if it appears on any documents relating to the suit land is a forgery and or was secured fraudulently. That she has never appeared before any designated officer for verification and alteration of her signature on any instruments relating to the suit land and any attendant parcels. She has never contracted the 5<sup>th</sup> Defendant to survey or subdivide the suit land. She is an elderly woman, married with children and concerned with the earning of a just life style and in fact she hails from Elgeyo Marakwet and would not have an interest in land within Turbo under Uasin Gishu County. She gave her ID card no. 216021477. That she was never approached by Ruto as alleged in the statement neither did she borrow any money from the settlement scheme or make payments of Kshs.130,000/-.

37. That she did not sign the transfer forms that the documents were a forgery and the photographs too are not hers. That she is a victim in this case. That she was never before any Lands Control Board to apply to subdivide the land. She has never appeared before any advocate called Elizabeth Rotich. That her husband told her he never took any documents to transact on the said land nor did she authorize Bethwel and Peter Kosgey to subdivide the land. That at on the 23<sup>rd</sup> of June 1980 as shown in plaintiff's Ext.15 she was 6 years old and she had no capacity to negotiate or transfer land. She is a victim and has had no role to play in the plaintiff's land. That somebody forged her signature. That it is the 1<sup>st</sup> defendant who benefited not her. She never received any money from him.

38. In cross-examination she reiterated her evidence in chief and responded as follows; she admitted that David Kiptugen is her husband. That he has never worked in Eldoret but has worked in Kapsabet in the physical Planning Development Office. She admitted that her husband could have access to her ID and photos but she doesn't know where the 1<sup>st</sup> defendant got her photographs. That she is not protecting her husband that she opted to go the handwriting expert instead of the police. That she has evidence of an handwriting expert to support her evidence. That she doesn't know if her husband knows Kosgey and Bethwell and she is not aware if they were paid on her behalf. She stated that did not know if her husband had access to Eldoret Land office.

#### **5<sup>TH</sup> DEFENDANT'S CASE**

39. Patrick Opiyo Adero the 5<sup>th</sup> defendant filed a written statement and he also testified in court. His evidence was as follows; as per his written statement he states he is a registered and licensed Land Surveyor and Planner trading in the name and style of Opiyo & Associates, 2<sup>nd</sup> Floor – Diamond

Plaza, High Shopping Centre Masari Road Parklands, Nairobi. That on or about June 2007, his office received instructions to sub-divide Land Reference Uasin Gishu/Tapsagoi/33 measuring approximately 35.0 Hectares into nine parcels from one Dorothy Jemutai Yator, who was the registered owner per the Search Certificate presented to him. That as a prerequisite to his site visit, the said Dorothy Jemutai Yator, through her husband, one Kiptugen, an employee of the Ministry of Lands, Physical Planning Department based in Kapsabet, confirmed that she was the registered owner of Land Reference Uasin Gishu/Tapsagoi/33 by production of the consent to sub-divide issued by the Soy/Turbo Land Control Board dated the 15<sup>th</sup> March, 2007. That having satisfied himself that Land Reference Uasin Gishu/Tapsagoi/33 was agricultural land requiring authority to sub-divide under the fourth schedule of the Survey Act (Cap 299) Laws of Kenya, he scheduled a visit to the land with the registered owner. He also satisfied himself that the consent tendered to him by the registered owner was issued in compliance with Section 6 of the Land Control Act (Cap 302) Laws of Kenya. That at the time he carried out the sub-division, prepared, signed and registered the mutation forms, the actual and apparent registered owner of Land Reference Uasin Gishu/Tapsagoi/33 was Dorothy Jemutai Yator to whom the resulting sub-division, Land Reference Numbers Uasin Gishu/Takpsagoi/957-955 are registered. That when he carried out his work, he was not privy to the Plaintiff's claim of ownership over Land Reference UASIN GISHU/TAPSAGOI/33. Beside carrying out my professional duty with due diligence in the subdivision of Land Reference Uasin Gishu/Tapsagoi/33. That he had no other input in the acquisition of the said land by the 4<sup>th</sup> Defendant and its subsequent transfer to the 1<sup>st</sup> Defendant. That he has no other interest in Land reference Uasin Gishu/Tapsagoi/33 or 957,958,959,960,961,962,963,964 and 965 and stand bound by any orders that this Court shall issue regarding the *bonafide* owner of the land. That at no time did he conspire with the other defendants to defraud the Plaintiff of his interest in the land and he should therefore not be held liable in damages or condemned to pay costs.

40. In his oral evidence in court, he recalled that he was in Kisumu in August 2008 he got a call from David Kiptugen for a job in Eldoret. At that time Kiptugen was unknown to him. However he went and met Kiptugen who told him that his wife had a piece of land in Tapsagoi which she wanted to divide. He gave him a copy of title Uasin Gishu/Tapsagoi/33 and the consent of subdivide. Thereafter he did a search at Eldoret and found that the land was registered in the name of Dorothy Jemutei Yator. Having confirmed the same, he travelled to Tapsagoi and carried out the exercise. Kiptugen told him that Dorothy was his wife and paid him for the works. Kiptugen did not sign the mutation form. He handed over the mutation form to Kiptugen. Apart from doing this work he had no interest with the land. He never conspired with the other defendants to defraud the plaintiff with his land. He carried out his work with due diligence.
41. In cross-examination, he reiterated his evidence in chief and responded further that he did not retain the copy of the title he was given that bears the name of Dorothy Yator. That he never opened a file for this client as he usually doesn't. That the consent he saw was to divide the land into nine subtitles and he complied. He confirmed that he had never met Dorothy Yator. That he never asked the neighbors who owned the land. That he had no written authority to carry out a search by Dorothy Yator neither did her husband have a Power of Attorney from the wife. That he never met the 1<sup>st</sup> defendant in regards to this transaction. That it is not mandatory for surveyors to attend Land Survey Board.
42. The 4<sup>th</sup> defendant called one witness Martin Esakua Papa the Director Global Forensic Security Services. He testified that on the 6<sup>th</sup> May 2012 Dorothy Yator went to his office accompanied by Mr. Mburu Maina and after consultations he was asked to do a re-examination on Dorothy's signature. Later he was supplied with a specimen of her signature together with documents for examination which were transfer forms and Land Board consent forms. After comparing the questioned signatures and with the standard signatures he could not find any indications of common origin or any similarities between the questioned signatures. He produced his report on the said signatures as 4<sup>th</sup> defendant's Ext.3.

43. In cross-examination he stated that he did not witness Dorothy Execute the samples he was given and that the samples he was given can never be identical and that what he has given the court is his opinion but Dorothy did not sign or make the documents.

## SUMMARY OF THE SUBMISSIONS

### PLAINTIFF'S SUBMISSION

44. The plaintiff in his submissions analysed the evidence adduced which has laid out in this judgment and I need not reproduce it. The plaintiff pointed out certain irregularities for instance, that consent dated the 15<sup>th</sup> March 2007, to subdivide title Number Uasin Gishu /Tapsagoi/33 into 9 units provided by the 5<sup>th</sup> Defendant was well before the 4<sup>th</sup> Defendant could have been registered as a proprietor on 20<sup>th</sup> August 2007 therefore as at 15<sup>th</sup> March 2007 the 4<sup>th</sup> Defendant had no locus standi to apply for consent to apply for subdivision of the property. That the 5<sup>th</sup> Defendant relied on the letter of consent issued on 15<sup>th</sup> March 2007 as authority to for him to carry out the subdivision of the property, that if the 4<sup>th</sup> Defendant became a registered proprietor on 20<sup>th</sup> August 2007 it is instructive that there was no valid application for consent to subdivide the property and no such consent was issued to the 4<sup>th</sup> Defendant after 20<sup>th</sup> August 2007. That the registration of the mutation forms was on 21<sup>st</sup> November 2007 and the entire subdivision of title Number Uasin Gishu/Tapsagoi/33 by the 5<sup>th</sup> Defendant are null and void by dint of section 6 of the Land Control Act Cap 302 for this he relied on the case of **Leonard Njonjo Kariuki-vs-Njoroje Kariuki Alias Benson Njonjo Civil Appeal No 26 of 1974** and the case of **Omulo –vs- Small Enterprises Finance Co Ltd & Another [2005]KLR 668**. The Plaintiff further submitted that although the 1<sup>st</sup> Defendant was on the suit property since January 2008 an application for consent title numbers Uasin Gishu /Tapsagoi /957-965 was made on 18<sup>th</sup> September 2008 whose clear motive was to facilitate the transfer of the said titles to the 1<sup>st</sup> Defendants. That the postal address used by the 4<sup>th</sup> Defendants belonged to a one Karanja Mercy Wanjiku and that the transfers did not show who drew them and that since the 1<sup>st</sup> Defendant relied on the said transfer documents he could explain where he got the addresses from and also the 5<sup>th</sup> Defendant was to explain the origin of the address on the letter of consent to subdivide the suit property. The plaintiff also produced in evidence letters of demand written on his behalf by his advocates on record to the District Commissioner Uasin Gishu District as chairman of the Soy/Turbo Land Control Board and did not receive any response and that their lack of response could only mean that they had something to hide in respect of the role the board played. That further the 1<sup>st</sup> Defendant ignored 2 letters addressed to him by the plaintiffs advocates and did not respond to the claim to ownership or entitlement to possession of the property. The plaintiff made a critique the evidence of Hosea Ruto pointing out the irregular on how he participated in acquiring the land. Counsel submitted that Section 3 (3) of the Law of Contract Cap 23 is clear that no suit for sale of land may be brought on an agreement or contract which is not on writing and signed by all the parties as well as attested by a competent witness. He relied on the case of **Morgan –vs- Stubenatis 1977 KLR 188, Wachiengo –vs- Gerald 1988 KLR 406** where it was held that an oral agreement for sale of land is unenforceable. That there is no evidence showing that there existed an enforceable agreement for sale between the 1<sup>st</sup> and 4<sup>th</sup> Defendants. That it was a well-established rule of evidence that whoever asserts a fact is under an obligation to prove it in order to succeed for this he relied on the case of **Koinange & 13 others –vs- Koinange [1986] eKLR 23** and also on section 107 of the Evidence Act Cap 80 Laws of Kenya. . The plaintiff went on to submit that it was not clear who drew the transfer alleged to vest title numbers to the 1<sup>st</sup> Defendant and it was also not clear whether the same were prepared by Elizabeth Rotich Advocate who allegedly attested execution of the same by the 1<sup>st</sup> Defendant. That this witness was not called to aid the 1<sup>st</sup> Defendant case. That this noncompliance with section 35 of the Advocates Act invalidates the transfers in favour of the 1<sup>st</sup> Defendant since they ought to have been registered. The plaintiff relied on the case of **Omulo-vs- Small Enterprises Finance Co Ltd & Anor [2005]1 KLR 668** where the court made it clear that an unqualified person cannot purport

to exercise the rights and duties of a qualified advocate and that an action by such unqualified person is void. That the onus of proving this evidence rests on the 1<sup>st</sup> Defendant but has not been discharged by him. He submitted that he is entitled to mesne profit and or damages for trespass. On the 3<sup>rd</sup> and 2<sup>nd</sup> Defendants evidence, the plaintiff submitted that the witness called to testify on their behalf one Mr Silas Kiogora Mburugu stated that the plaintiff's title was authentic and stated that the titles issued to Dorothy Jemutai Yator as proprietor of the title numbers Uasin Gishu /Tapsagoi/957—905 seems to have been done and titles acquired fraudulently. On the evidence of the 4<sup>th</sup> Defendant the plaintiff submitted that the 4<sup>th</sup> Defendant denied meeting the 1<sup>st</sup> Defendant or being involved in any transaction involving the suit property with the 1<sup>st</sup> Defendant. On the 5<sup>th</sup> Defendant's evidence the plaintiff submitted that he received instructions from Mr Kiptugen and not the 4<sup>th</sup> Defendant. That this statement contradicts paragraph 5 and 6 of his defence in which he pleads that he was given instructions by the 4<sup>th</sup> Defendant in June 2007.

### THE 1<sup>ST</sup> DEFENDANT'S SUBMISSIONS.

45. The 1<sup>st</sup> defendant at paragraph 12 of his submissions conceded title, ownership and possession and stated that the only issue pending for determination was whether or not mesne profits are due to the plaintiff and from whom and whether or not the costs are payable and by whom to whom. The 1<sup>st</sup> Defendant submitted that he will not pay the mesne profit neither will he pay costs because he purchased the parcel after an official search, paid for parcels and got transfer to his name before entering the parcel and exercising right ownership and possession therefore the only awardable mesne profits and costs. The 1<sup>st</sup> defendant submitted that the evidence plaintiff gave the court would have to make an unsupported estimated if any award is to be made. No valuations and or assessments or receipts of proof of expenses were produced in support of the said claim. That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are answerable for damages and or costs due ad they guaranteed the 1<sup>st</sup> Defendant that the title they were giving to him was good and entitled him as a right to possession and ownership. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are also liable for all process of transfer to the 4<sup>th</sup> Defendant and 1<sup>st</sup> Defendant and of all related consents. The 1<sup>st</sup> Defendant submitted that he already relied on a notice of concession dated 5<sup>th</sup> March 2012 stating that he no longer contests ownership of the property considering that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had filed a defence stating that the title was transferred to him in error and by mistake. The error and mistake was wholly on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant that the 1<sup>st</sup> Defendant did not and does not claim that they had any hand in the erroneous and mistaken transfer and that the 1<sup>st</sup> Defendant does not insist on possession any longer. The 1<sup>st</sup> Defendant also submitted that he had already given ownership by the 1<sup>st</sup> Defendant in line with the said notice dated 5<sup>th</sup> March 2012 and filed in court on the same day. The 1<sup>st</sup> Defendant went further to submit that Article 40(1) expressly provides citizens right to own property and thereby impliedly also protection of title or otherwise and quoted Article 40(1) on the right to own property and acknowledges Article 40(6) which states that ***“The rights under this Article do not extend to any property that has been found to have been unlawfully acquired*** “On the issue of validity of registration the 1<sup>st</sup> Defendant relied on the case of **Dr Joseph N.K ArapNgok –vs- Justice Moiwo Ole Keiwua and 4 others Civil Application No.NAI 60 of 1997** which stated that ***“Title to landed property normally comes into existence after issuance of a letter of allotment meeting the conditions stated in such a letter and actual issuance thereafter of the title document pursuant to provisions held”*** and referred to section 26 of the Land Registration Act 2012. He submitted that although none of the parties alleges any liability on the part of the 1<sup>st</sup> Defendant in transfer of the parcel the 1<sup>st</sup> Defendant observes that if a party is to allege that a buyer colluded or had knowledge of fraud the burden of proof is on the party who alleges. He relied on the case of **Milan Kumarn Shah & 2 Others –vs- City Council of Nairobi & Anor** where the court stated that ***“we hold that the registration of title is absolute and indefeasible to the extent firstly that the creation of such title was in accordance with the applicable law and secondly where it is demonstrated to the degree higher than the balance of probability that such registration was procured through persons or body which claims and relied on that principle has not himself been part of a cartel which schemed to disregard the***

***applicable law and the public interest***” he also relied on the case of **Mutsonga –vs- Nyati** where court held that ***“allegations of fraud must be strictly proved and although the standard of proof may not be so heavy as too require proof beyond reasonable doubt a high degree of probability is required which is something more”*** than a mere balance of probabilities and it is a question for the trial judge to answer. He submitted that he was legally the registered proprietor for value consideration without notice of a defect title at all material times when he took possession and ownership hence he is not liable for any damage, mesne profits, compensation or costs which was established by the conduct of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants issuing him with a title deed that was in his name proving his ownership of the suit land and that the legal effect of the said registration can only be determined by applying the fundamental priority rules. The rules are that firstly equitable rights bind the world except the bonafide purchaser for value of a legal estate without notice of the equitable right. Secondly where the bonafide purchaser is a purchaser of an equitable interest the rule is that as between competing equitable interests the first in time prevails as it is an established principle that equitable interest rank in order of creation.

As regards liability, the 1<sup>st</sup> Defendant does not admit liability for any damages compensations, mesne profits or costs. He quoted Hulsbury’s Laws of England 4<sup>th</sup> Edition Paragraph 258 and section 2 of the Civil Procedure Rules. That the wrongful possession is the very essence of a claim for mesne profits and the very foundation of the unlawful possessor’s liability therefore liability to pay mesne profits goes with actual possession of land. Therefore the plaintiff must show that defendant was in wrongful possession on the land, and that the onus is on the plaintiff to prove what profits he might have received. On the issue of mesne profit he submitted it must be viewed in the context of the circumstances on the ground. Having believed that the 4<sup>th</sup> Defendant had passed to him a good title and having found the suit property vacant with just bush and tress he proceeded to cultivate the parcel of land and put up a fence in belief that he was the rightful owner of the land. He prayed that this court should not burden the 1<sup>st</sup> Defendant with damages and or compensation and or mesne profits and or costs. The 1<sup>st</sup> defendant invited the court to Order 21 Rule 13(1) (b) of the Civil Procedure Rules which states that ***“where a suit is for the recovery of possession of immovable property and for rent or mesne profit the court may pass a decree for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profit”*** and relied on the case of **Cathrina –vs- Allis** where the court stated ***“the argument is that mesne profit are allowed under section 196 of the Civil Procedure Code and as the section vests a discretion in the court on the question of allowing mesne profits”***

46. On the issue of costs the 1<sup>st</sup> Defendant urged this court to order the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant to bear the costs since all the transfers and consents given on the parcels resulted from the actions of the 2<sup>nd</sup> Defendant and the 3<sup>rd</sup> Defendant hence are liable for the loss and damages suffered. That the role of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant granting the suit land to the 4<sup>th</sup> Defendant and together to the 1<sup>st</sup> Defendant gives the 1<sup>st</sup> Defendant indemnity from any claim.

## **2<sup>ND</sup> AND 3<sup>RD</sup> DEFENDANTS’ SUBMISSION**

47. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants’ submission summarised the Plaintiff’s evidence in brief and stated that the issues to be determined are whether the plaintiff was fraudulently deprived his suit property and if the answer was in affirmative, whether damages/mesne profits sought are payable and if so which party should pay costs. They mentioned that the 1<sup>st</sup> defendant conceded ownership and possession of the suit property in vacant possession to the plaintiff and therefore the issue of ownership of the suit property is not in dispute as the plaintiff is already in possession of the same. They submitted further from the evidence adduced the land belonged to the plaintiff and the purported transfer to the 1<sup>st</sup> and 4<sup>th</sup> defendant was illegal. That it is neither denied that the 1<sup>st</sup> defendant occupied the suit land parcel in the years 2008, 2009, 2010, 2011 and 2012 until around mid 2012 after the said notice calendar years. That the question of ownership was settled. That the 1<sup>st</sup> Defendant relinquished his claim to the suit property with effect of his notice dated 5<sup>th</sup> March,

2012. He did not file a counter claim and his pleadings silent on his right to claim ownership. They submitted that the title of the 1<sup>st</sup> defendant should be cancelled and that the plaintiff granted his prayer for entitlement to ownership, exclusive us, occupation and vacant possession of Title number Uasin Gishu/Tapasagoi/33.

48. On mesne profit and damages the 2<sup>nd</sup> and 3<sup>rd</sup> defendant cited the Court of Appeal of decision of **East Africa in RIOKI ESTATE CO. (1970) LIMITED –VS- KINUTHIA NJOROGI (1977) KLR 146** where the court referred to the definition of “mesne profits” in section 2 of the Civil Procedure Act. The section provides:

**“Mesne profits, in relation to property, means**

**Those profits which the person in wrongful**

**Possession of such property actually received**

**Or might with ordinary diligence have received**

**There from, together with interest on such**

**Profits, but does not include profits due to**

**Improvements made by the person in wrongful possession.”**

They submitted further that mesne profits are payable for wrongful occupation and loss of user of property and that this claim can be equated to special damages which must be specifically pleaded and proved. They stated that the plaintiff is entitled to mesne profit as the 1<sup>st</sup> defendant has been in occupation of the property which was not his, however the plaintiff has not assisted the court how he arrived to a sum of 50 million. They relied on the case of **Shree Visa Oshwal Community Nairobi Registered Trustees Versus City Council of Nairobi Nambuye Judge** held as follows:-

**“.....The mesne profits claim can comfortably fall in the category of claims called special claims. This court has judicial notice of a rule of judicial practice developed by case law that the Court has judicial notice of, that, such claims must be specifically pleaded, particularized and proved.”**

In the case of **Karagita Self Help Group Vs Simon Kamau Ngethe, Ang’awa Judge** as she then was, declined to enter judgment as prayed since the Plaintiff had not proved mesne profits. They submitted further that the plaintiff did not prove the theft of his animals and equipment nor did he engage a valuer to get the value of his property. Counsel stated that the claim against the 2<sup>nd</sup> and 3<sup>rd</sup> defendant on mesne profit must fail for lack of prove. On fraud and collusion the 2<sup>nd</sup> and 3<sup>rd</sup> defendant submitted the adduced evidence of how the land was allocated to the plaintiff. That the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants failed to call witnesses that would have assisted the court in making a decision on where liability lies in regard to fraud. That the 5<sup>th</sup> defendant acted recklessly and not professionally and they concluded by saying that the suit against them should be dismissed.

#### **4<sup>TH</sup> DEFENDANT’S SUBMISSIONS**

49. The 4<sup>th</sup> Defendant in her submissions reiterated the contents of her pleadings. She submitted that while the plaintiff claimed that the 4<sup>th</sup> Defendant sold the suit land to the 1<sup>st</sup> Defendant he did not produce any sale agreement between the 4<sup>th</sup> and 1<sup>st</sup> defendants. That the 4<sup>th</sup> Defendant has never been in occupation of the suit land nor has she ever claimed ownership or a registered owner of the subject land. She submitted that the plaintiff stated that since 2008 when the 1<sup>st</sup> defendant

invaded the suit land he would have harvested between 32-38 bags of maize per acre and that a bag would retail at Kshs 3,500- 4000 and submitted that those were mere speculations which is not fact. That the plaintiff failed to adduce evidence to aid this court to quantify damages and as such his claim for special damages must fail. On the statements of the 1<sup>st</sup> Defendant, she submitted that Hosea Ruto the 1<sup>st</sup> Defendant's witness who stated that he went to the Settlement Funds Trustee offices where he met Mr. Peter Kosgei an accountant who pulled out six title documents for the subject land all in the 4<sup>th</sup> Defendant's name. That Hosea Ruto also stated that the 4<sup>th</sup> Defendant was with them and that the said parcels of land belonged to Mr. Kiptugen but during the examination in chief he said that he did not know Mr. Kiptugen and had never met him during him during all the phases of the transaction. She submitted that she never travelled to Nairobi nor gave any instructions to anybody in the transaction of the suit land. That she had never met the 1<sup>st</sup> Defendant nor had any dealings with him. She further submitted that the particulars of the purchaser and the vendor were included in the transfer forms but the photograph affixed did not belong to the 4<sup>th</sup> Defendant neither did the signature that was signed belong to the 4<sup>th</sup> Defendant. That the address appearing on the application for Consent as belonging to the 4<sup>th</sup> Defendant was not her address as demonstrated by the letter from the postmaster General dated 14<sup>th</sup> June 2010.

### **5<sup>TH</sup> DEFENDANT'S SUBMISSIONS**

50. The 5<sup>th</sup> defendant submitted that the plaintiff claim against the defendant is being deprived the land illegally and fraudulently and that the defendants colluded or conspired to achieve the purpose. That the 5<sup>th</sup> defendant is a licenced land Surveyor and planner and is authorised to operate in any part of Kenya and while carrying out his duties he is governed by the Survey Act (cap 299) Laws of Kenya. That the duties of a licensed Surveyor are provided for in the Act as follows:-

***Section 21 "Every Surveyor shall carry out every survey undertaken by him in such manner as will ensure that the survey accord in all respects with the provisions of his act and any regulations made there under, and shall be responsible for all the correctness and completeness of every survey carried out by him or under his supervision".***

***Section 23 gives a surveyor authority to enter any land for the purposes of carrying out his work.***

That from the above sections it is clear that the 5<sup>th</sup> Defendant was not bound to carry out any investigations in respect of the previous history of the land sought to be surveyed. That as a prudent professional he only needed to know that there was consent to subdivide and that the instructing client is the holder of that Consent. That it is not his duty to investigate whether the granting of the consent was right or wrong or the purposes of such sub-division. That the 5<sup>th</sup> Defendant did not know of the existence of the Plaintiff and as such the question of him appointing the 5<sup>th</sup> Defendant could not arise. That there is nothing on record to show that the 5<sup>th</sup> Defendant had any ulterior motives other than carrying out his professional calling. That after the 5<sup>th</sup> Defendant completed his assignment, he handed over the requisite documents to his client the 4<sup>th</sup> Defendant for her to pursue the registration and issuance of title and the 5<sup>th</sup> Defendant exited from the scene. That the injunctive orders sought by the Plaintiff are not applicable to the 5<sup>th</sup> Defendant who after completing his assignment as aforesaid had no further interest in the suit plots and can therefore not do any of the things the Plaintiff wants the parties to be restrained from doing. That the court should disallow the orders sought as against the 5<sup>th</sup> Defendant with costs.

### **ISSUES FOR DETERMINATION**

51. Parties filed issues at the beginning of this case which I have read and considered and after hearing the evidence adduced and considered the pleadings filed, submissions and the 1<sup>st</sup>

defendant's Notice of concession, in my view these are the issues for determination;

- i. ***Whether the plaintiff owned Uasin Gishu/Tapsagoi/33.***
- ii. ***Whether the subdivision of the said property to Uasin Gishu/Tapsagoi /957-965 was fraudulently done.***
- iii. ***The effect of the Notice of cossession filed by the 1<sup>st</sup> defendant dated 5<sup>th</sup> March,2012 and filed in court on the same day.***
- iv. ***Whether the defendants committed acts of fraud as pleaded in paragraphs 22 of the plaintiff's plaint dated the 19<sup>th</sup> of October 2010.***
- v. ***Whether the plaintiff is entitled to mense profit as prayed in the plaint at paragraphs m,n,and o.***
- vi. ***Whether the plaintiff is entitled to costs and who should pay costs?***

52. On the first issue of whether the plaintiff owned Uasin Gishu/Tapsagoi/33, I find that there is undisputed evidence adduced by the plaintiff that he acquired this land in 1968 from the Settlement Fund Trustee after he applied and was allotted the land and was issued with a title on the 17<sup>th</sup> March 1989 after he fully repaid the loan he had taken. This title (Ext. 10) is still in his possession and has never been surrendered by him or cancelled by the commissioner of lands. His evidence on this was supported by the evidence of Mr. Silas Kiongora Mburugu who testified that the plaintiff is the proprietor of the said land. This land was registered under the Registered Land Act, Cap 300 which is now repealed and was replaced by the Land Registration Act 2012 . Section 28 of the repealed Cap 300 stated that ***“the rights of proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever.*** This section is the current Section 26 of the Land Registration Act 2012 Act No. 3 of 2012, it states that ***“ 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”***

The Commissioner of Lands is the custodian of all titles. The 4<sup>th</sup> defendant denied being the proprietor of the said land. The 1<sup>st</sup> defendant too is not the owner. With the evidence of the 2<sup>nd</sup> and 3<sup>rd</sup> defendant's witness which support the plaintiff's evidence I can conclusively find that the plaintiff is the proprietor of Uasin Gishu/Tapsagoi/33.

**On the 2<sup>nd</sup> issue on whether the subdivision of the said property to Uasin Gishu/Tapsagoi /957-965 was fraudulently done.**

53. The plaintiff's evidence is that after his workers were chased from his land he did his investigations and found that the land had been subdivided by one Dorothy Yator in 2007 and sold to Hon. Ruto. 9 parcels were created after the said subdivision, The evidence of Mr. Silas Mburugu was that this subdivision was illegal as the plaintiff still held the title and the officer Mr. Serebemuon, who was alleged to have signed the transfer was not at the Eldoret Lands office in 2007. He admitted in court that officers from Lands office in Eldoret were involved in the disappearance of documents from the property file of Uasin Gishu/Tapsagoi/33. Evidence on the transfer forms that were produced, dates of the stamp duty and valuation did not tally. The letter of consent for the subdivision of the land is dated the 15/3/07. The transfer of land form from the settlement scheme was stamped and received on the 20<sup>th</sup> August 2007 and registered the same day. It states that the transferee Dorothy Yator paid Kshs. 130,000/= and it's dated the 14<sup>th</sup> May 2003. There is also the discharge of charge dated 14<sup>th</sup> May 2003 from the SFT. It is the evidence of the 4<sup>th</sup> defendant that she never owned the land and therefore could not have the land transferred to her as alleged. From the evidence adduced it is obvious that Hosea Ruto was

involved in looking for this land and was acting as a go between the alleged owners and Hon. Ruto. Mr. Hosea Ruto could not explain the difference in dates on the transfer forms and discharge of charge. It is obvious that the subdivision that took place was not only irregular but fraudulent as Dorothy Yator who is alleged to have sold the land completely denied before this court that she owned the land and that she had it subdivided and transferred to the 1<sup>st</sup> Defendant. She brought a handwriting expert to confirm the signature on the transfer of land forms and mutation forms were forged. She also denied that the passport photo on the transfer of land forms was not hers... Further the 1<sup>st</sup> defendant in his pleadings alleges that he was a bona fide purchaser but there is no evidence that was adduced to show evidence of a sale agreement as between him and the 4<sup>th</sup> defendant who has denied selling the land to him. He ought to have rigorously defended this allegation in court but he chose not to. Mr. Hosea in his statement and evidence in court mentioned Mr. Bethwell and Kosgei who allegedly told him they had authority to sell the land on behalf of Dorothy Yator. These two persons Bethwell and Kosgei were never called to testify to support this evidence nor were they joined as parties to the suit. Could it be that if they were called their evidence could have been adverse to the 1<sup>st</sup> defendant? I can only attribute the irregular acts in this matter to Mr. Hosea Ruto who testified as the 1<sup>st</sup> Defendant's witness and acted as his agent in the transaction, as the 1<sup>st</sup> defendant chose not to testify and to have his written statement tested in court. It is also interesting to note that the 5<sup>th</sup> defendant in this case was merely called by somebody one Kiptugen who he claims he did not know before, he received instructions and went ahead to subdivide land on a copy of title that he was shown. He testified in court that he met one Kiptugen in August 2008, yet his written statement states he was instructed by Dorothy Yator in June 2007. His conduct to me in the manner in which he performed his professional duty was negligent. All this evidence tied together in my view clearly shows that there were fraudulent activities in the manner in which the plaintiff's land was subdivided and therefore the subdivisions were not only irregular but illegal.

**On the 3rd issue of the effect of the Notice of concession filed by the 1<sup>st</sup> defendant dated 5<sup>th</sup> March, 2012 and filed in court on the same day.**

54. In my view this Notice of Concession which has been clearly laid out in this judgment makes it clear that the 1<sup>st</sup> defendant conceded to owning the titles to ownership of land title Uasin Gishu/Tapsagoi/33 (957-965) and being in possession of the said property. The next issue which I have to decide is whether the 1<sup>st</sup> defendant should pay mense profit and damages as claimed by the plaintiff.

**On the 4<sup>th</sup> issue on whether the defendants committed acts of fraud as plead in paragraphs 22 of the plaintiff's plaint.**

55. This issue has been discussed in the 2<sup>nd</sup> issue however I am persuaded by the evidence of the 4<sup>th</sup> defendant that she was not part of the fraud or irregular activities. She exonerated herself by being consistent in her evidence as written in her written statement and as stated in court, that she never owned the land and never transferred it to the 1<sup>st</sup> defendant as alleged. She even adduced evidence that her signature was forged. She testified that she was merely 6 years old when the initial transfers occurred as per the letter dated 8<sup>th</sup> June 2010 written by the District Land Registrar [DLR], Uasin Gishu to the Deputy Commissioner of Lands, where the DLR stated that their record on the land in the registry has it that the register for Uasin Gishu/Tapsagoi/33 was opened on 23<sup>rd</sup> June 1980. That at that time she had no capacity to transfer any land as she was a minor. Although her spouse was constantly named she explained that she had asked him about being involved and he denied. In law the evidence of a spouse cannot be used against another spouse except in exceptional cases.

**On the 5<sup>th</sup> issue on whether the plaintiff is entitled to mense profit as prayed in the plaint at**

paragraphs m, n, and o.

56. I agreed with the submissions made on mesne profit that they are damages that must be pleaded and proved specifically. In the Civil Procedure Act mesne profit is defined in section 2 *as follows* **“in relation to property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefore together with interest on such profits but does not include profits due to improvements made by the person in wrongful possession”** In this case the plaintiff is claiming mesne profit for loss of use of the suit land since January 2008 plus loss of animals and equipments. Having been denied access to his land the plaintiff is indeed entitled to mesne profits. But has he proved it? Mesne profits are profits which have accrued while there was a dispute over land ownership. If it is determined the party using the land did not have legal ownership, the true owner can sue for some or all of the profits made in the interim by the illegal tenant, which are thus called. The value of the premises, recovered in ejectment, during the time that the lessor of the plaintiff has been illegally kept out of the possession of his estate by the defendant such are properly recovered by an action of trespass. As a general rule, the plaintiff is entitled to recover for such time as he can prove the defendant to have been in possession, provided he does not go back beyond six years, for in that case, the defendant may plead the statute of limitations. Mesne profits are discretion of the court and are granted upon proof of the same.
57. Although the plaintiff has claimed mesne profit he has failed to adduce evidence to prove this claim. In the Court of appeal case of Malcom **Bell vs. Daniel Torotich and another 2012 eKLR** a bench of 2 Justice Koome and Okwengu, in a case where the appellant had sought mesne profits in a case of trespass the Judges held that **“the appellant sought orders of mesne profits in the appeal, but there was no satisfactory evidence to support both the claim for mesne profits or the claim for general damages.** The plaintiff testified that he had animals and equipment as at 2008 but there was no evidence to support this. It would have been helpful on the plaintiff’s part to adduce evidence of the existence of the said properties which he claims the 1<sup>st</sup> Defendant took possession, failure to do so tie the hands of this court. The plaintiff also testified that his land was worth 50 Million but he failed to adduce evidence to support this for instance a valuation report of the property by a valuer. In the absence of this evidence I am unable to award him mesne profit as claimed.
58. I find that the plaintiff has not adduced his evidence on the claim of detinue and conversion of his animals and farm implements. **Black’s Law dictionary defines detinue and conversion as follows.**

**Detinue** is a common law action to recover personal property wrongfully taken or withheld by another. A claim for detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them and who upon proper demand fails or refuses to deliver them up without lawful excuse.

**Conversion** is the wrongful possession or disposition of another’s property as if it were one’s own an act or series of acts of wilful interference without lawful justification with an item of property in manner inconsistent with another’s right whereby that other person is deprived of the use and possession of the property it is an act that interferes with the dominion of the true owner’s right and depriving him of the possession of the goods to an extent as to be inconsistent with the rights of the owner.

The plaintiff had no record of the animals and equipment he had on the farm as at 2008. However there is evidence from the plaintiff that he was ejected out of his land in 2008 and the 1<sup>st</sup> Defendant admits possession from 2008. With my findings on fraud, I can only find that the 1<sup>st</sup> defendant was a trespasser. In the case of **Alice Atieno Ochieng –vs Monica Juma Apela & Anr Kisumu HCCC No. 365 of 1996** the court held that **“the plaintiff having proved that she was the registered owner of the suit land which contention was not rebutted and that the defendants occupy /use the land without the plaintiffs consent /authority the defendants are thus in trespassers”**

The plaintiff being the owner of the land was denied access to his property by the 1<sup>st</sup> Defendant. The plaintiff adduced evidence that he wrote to the 1<sup>st</sup> Defendant in September 2009 and a reminder in November 2010[Exhibit 26 c] before filing suit. The 1<sup>st</sup> Defendant did not respond to these letters. The 1<sup>st</sup> Defendant has failed to prove that he was a bonafide purchaser for value. I do recognise the fact that the plaintiff enjoyed his land before it was taken away from him and I take judicial notice that the area in issue is a place where people have farms that produce grains that feed not only the area but parts of this country. It is not denied that the 1<sup>st</sup> Defendant was farming when in occupation as stated by the plaintiff. The plaintiff is entitled to compensation for the period he was denied access and possession. In my view the 1<sup>st</sup> Defendant must compensate the plaintiff. The 1<sup>st</sup> Defendant did not testify that he had given back the land to the plaintiff. In the plaint the plaintiff has sought any other relief that the court finds fit. I therefore award the plaintiff Kshs 5 Million to be paid by the 1<sup>st</sup> Defendant as compensation. Interest shall accrue from the date of filing suit until payment in full at courts rate.

59. The 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> Defendants were involved in the irregular acts as stated in this judgment but they did not enjoy the land. They should however pay costs to the plaintiff. In my view the 4<sup>th</sup> Defendant is not liable to pay any damages as she stated and proved satisfactorily to this court her non involvement in all the transactions and was consistent in her evidence and even called a handwriting expert who testified that her signature was forged. The plaintiff's suit against her fails, however she shall bear her own costs. The plaintiff is entitled to the following prayers as prayed in his plaint. I grant the following orders;

- i. **A declaration that the transfer of land in Settlement Scheme executed by the settlement fund trustees in favour of the 4<sup>th</sup> defendant and dated 14<sup>th</sup> May 2003 and lodged for registration and registered on 20<sup>th</sup> August 2007 was fraudulent null and void.**
- ii. **A declaration that the letter of consent issued by the Soy Land Control Board authorizing the subdivision of title number Uasin Gishu/Tapsagoi/33 on the application of the 4<sup>th</sup> defendant was illegal, wrong and void.**
- iii. **A declaration that the process of subdivision of Title No. Uasin Gishu/Tapsagoi/33 undertaken by the 4<sup>th</sup> defendant was null and void.**
- iv. **A declaration that the opening of new registers for Title No. Uasin Gishu/Tapsagoi/957, 958,959,960,961, 962,963, 964 and 965 and all procedural steps leading thereto are null and void.**
- v. **A declaration that the transfers of Title numbers Uasin Gishu/Tapsagoi/957, 958,959,960,961,962,963,964 and 965 to the 1<sup>st</sup> defendant by the 4<sup>th</sup> defendant are all null and void.**
- vi. **A declaration that all transaction effected upon Title No. Uasin Gishu/Tapsagoi/957, 958,959,960,961, 962,963,964 and 965 by the 1<sup>st</sup> defendant or others claiming through or under him are invalid null and void.**
- vii. **The Registers and Titles issued for Title No. Uasin Gishu/957, 958, 959, 960, 961, 962, 963, 964, and 965 be cancelled.**
- viii. **The District Land Registrar does forthwith reinstate the register and Title for title number Uasin Gishu/33 in the name of the plaintiff.**
- ix. **A declaration that the plaintiff is entitled to ownership and exclusive use, occupation and vacant possession of title number Uasin Gishu/Tapsagoi/33 to the exclusion of the defendants or any person claiming through any one of them.**
- x. **An order of eviction be issued against the 1<sup>st</sup> defendant his r servants, agents and others claiming through him and that such Order be effected under the supervision of the Officer Commanding Station Turbo Police Station.**
- xi. **The defendants, their servants and agents or other claiming through them do forthwith give the plaintiff vacant possession of the property known as Title number Uasin Gishu/Tapsagoi/33 whether under that titles or under the new Titles Numbers Uasin Gishu/Tapsagoi/957, 958, 959, 960,961, 962, 963, 964 and 965 or any other tiles or interests derived there from.**

The 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> Defendant shall pay costs to the plaintiff.

Orders Accordingly.

**R.E OUGO**

**JUDGE**

Dated, signed and delivered this 28<sup>th</sup> day of June 2013

In the Presence of:-

.....Plaintiff

.....1<sup>st</sup> Defendant

.....2<sup>nd</sup> Defendant

.....3<sup>rd</sup> Defendant

.....4<sup>th</sup> Defendant

.....5<sup>th</sup> Defendant

.....Court Clerk

