



**Mutinda & another v Kavuli; Njogu (Third party) (Land Case 201 of 2018) [2022] KEELC 2237 (KLR) (21 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2237 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
LAND CASE 201 OF 2018  
FM NJOROGE, J  
JUNE 21, 2022**

**BETWEEN**

**ANGELINE NYAKERARIO MUTINDAA ..... 1<sup>ST</sup> PLAINTIFF**

**REUBEN KIOKO MUTYAENE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PAULINE KAVULI ..... DEFENDANT**

**AND**

**AMOS KIBE NJOGU ..... THIRD PARTY**

**JUDGMENT**

1. Long ago, before the first decade of the twenty first century had attained a half of its span, there lived in the then not so fashionable thoroughfares of Langalanga estate within Nakuru Municipality, before that urban precinct accomplished its now celebrated city ranking, a gentleman named Raphael together with his family of one wife and several children. Raphael subsequently associated with a second lady living within the neighbourhood and both cleft together in marriage thereby initiating his second family. That second family left Langalanga Estate for a life in a more prestigious address by the name Fairview Estate with an accompaniment of change of fortune. Whereas Raphael had rented premises in Langalanga for his first family to live in, that was not the case in Fairview estate, where a plot was acquired from one Amos by way of purchase, upon which a dwelling was soon erected in which the second family, together with one son from the first family, lived for a while before Raphael died. Meanwhile Raphael's first wife left for Raphael's ancestral land of Kitui, and lived there with Raphael's mother. Raphael's demise in an accident in the year 2008 suddenly widowed the two women he had married. Having lost a breadwinner, the younger of the two widows did with not continue with life in the new house without her beloved Raphael, and she sold the Fairview residence to one Reuben without as much as a notification to the elder widow; upon learning of the sale and the assumption of



possession by Reuben the elder widow took to attempts to seize the property from Reuben without court action. Those are the events that birthed this dispute. Today is the last day of the 12 years' lifespan of this suit, for the younger widow and Reuben, being the Plaintiffs herein, disconcerted by Pauline's attempts to overthrow Reuben's occupation of the premises joined hands to lodge the present suit against the elder widow, the defendant herein by way of a plaint dated 22/6/2011. The defendant then joined Amos, the land seller as a Third Party in these proceedings. At the hearing of these proceedings the cardinal issue of who between Raphael and his second wife, purchased the suit land. Also arising for determination is whether the disposal to Reuben of the suit land was fraudulent or not and if Amos was involved in the fraud, if any, and, if so, whether he is liable to the Defendant for indemnity.

2. In their plaint, the plaintiffs entreated this court for the following orders against the Defendant:
  - a. A declaration that the 2<sup>nd</sup> Plaintiff is the lawful owner of the parcels of land known as LR. No.4730/471 and 472 (FAIRVIEW ESTATE) and that the defendant has no claim over it.
  - b. A temporary injunction restraining the defendant by herself, agents and/or servants from entering, taking possession, alienating or in any manner whatsoever from interfering with the 2<sup>nd</sup> Plaintiff's possession of LR. No. 4730/471 and 472 (FAIRVIEW ESTATE).
  - c. A permanent injunction restraining the defendant by herself, agents and/or servants from entering, taking possession, alienating or in any manner whatsoever from interfering with the 2<sup>nd</sup> Plaintiff's possession of LR No. 4730/471 and 472 (FAIRVIEW ESTATE).
  - d. Costs of the suit.
3. Hearing proceeded on the basis of that Plaint, the Further Amended Statement of Defence and Counterclaim filed 22/11/2018 by the defendant, the Supplementary Third-party notice also dated 22/11/2018 and also the Third Party's statement of defence dated 13/10/2011.
4. In the supplementary Third-Party Notice, which articulates the defendant's claim against the third party, the defendant stated as follows:
  1. The Third Party had long before sold all that parcel of land known as LR No. 4730/471 and LR No.4730/472 (Fairview Estate (both formerly known as LR No. 4730/126) to the late Raphael Mutinda who was the husband to the Defendant.
  2. The Third Party lacked capacity to resell all that parcel of land known as LR No. 4730/471 and LR No.4730/472 (Fairview Estate (both formerly known as LR No. 4730/126) whether severally or jointly with the 1<sup>st</sup> Plaintiff and the purported joint sale between the 1<sup>st</sup> Plaintiff and the Third Party to the 2<sup>nd</sup> Plaintiff was fraudulently procured.

#### PARTICULARS OF FRAUD ON THE PART OF THE THIRD PARTY

- a. Purporting to jointly sell the suit land with the 1<sup>st</sup> Plaintiff to the 2<sup>nd</sup> Plaintiff when he had already sold the same property to the late Raphael Mutinda Moki;
- b. Purporting to sell the suit property which is an asset to the estate of the late Raphael Mutinda Moki without any colour of right;
- c. Purporting to sell the suit property at an under value, a property whose market value would not be less than Kshs.10 million;



- d. Purporting to enter into a formal sale agreement with Angeline Nyakerario Mutinda and the 2<sup>nd</sup> Plaintiff after an alleged sale of the suit property;
- e. Purporting to have surrendered the suit property to the 2<sup>nd</sup> Plaintiff without any money paid;
- f. In the alternative, and without prejudice to the foregoing, fraudulently receiving money in respect of the suit property without any colour of right and or knowledge of the beneficiaries to the estate of the late Raphael Mutinda Moki.

REASONS WHEREOF this Honourable Court enters judgment against the Third Party for payment to the Defendant on behalf of the estate of the Late Raphael Mutinda Moki through a bank account to be opened in that regard to equivalent of the current market value of LR.4730/471 and LR. No.4730/472 (Fairview Estate (both formerly known as LR No.4730/126) upon valuation by government surveyor as General Damages.”

- 5. The Third Party filed a defence dated 13/10/2011 in which he denied the defendant’s claims of impropriety and stated further that the defendant lacks locus standi as she is not the administrator to the deceased’s estate; that there is no privity of contract, and that he had sold the suit land to the 1<sup>st</sup> plaintiff.
- 6. In the Further Amended Statement of Defence and Counterclaim the defendant stated sought the following orders.
  - a. Vacant possession of LR No.4730/471 and LR. No.4730/472 (FAIRVIEW ESTATE) (both formerly known as LR No.4730/126).
    - (aa) A declaration that LR No.4730/471 and LR No.4730/472 (FAIRVIEW ESTATE (both formerly known as LR No. 4730/126) were owned by the late Raphael Mutinda Moki (the Deceased).
    - (aaa) Cancellation of the registration of the 2<sup>nd</sup> Plaintiff as the owner of the suit property known as LR No.4730/471 and LR No.4730/472 (FAIRVIEW ESTATE) (both formerly known as LR No. 4730/126), registration Raphael Mutinda Moki (the deceased) as the owner and rectification of the Land Register to reflect the same.
  - b. Orders of eviction from LR No. 4730/471 and LR No.4730/472 (FAIRVIEW ESTATE) (both formerly known as LR. No. 4730/126).
    - (bb) In the alternative payment of the equivalent of the current market value of LR. No.4730/471 and LR No.4730/472 (FAIRVIEW ESTATE) (both formerly known as LR No. 4730/126) upon valuation by a government valuer as General Damages to the Defendant on behalf of the estate of the late Raphael Mutinda Moki through a bank account to be opened in that regard.
  - c. Costs of the Counter Claim.
  - d. Interest on (c) above.



- e. Any other relief which this Honourable Court deems fit to grant.
7. Replies were filed to both the defence of the Third Party and the defendant's further amended statement of defence and counterclaim.

### **The Plaintiffs' Evidence**

8. PW1 – Angeline Nyakerario Mutinda, the plaintiff gave sworn evidence on 5/12/2018. Her evidence was brief and as follows: that she bought a plot at Kiratina in the year 2005 from Amos Kibe who was the then owner, herein now named as the Third Party. They both executed a written agreement dated 2<sup>nd</sup> August 2010 (P. Exh 1). The purchase price was Kshs.500, 000/=. She started paying the consideration in the year 2005. She produced copy of the Certificate of Title as (PExh 2); she raised the purchase price from her business, her savings from money given to her by her husband and from money given to her by her father; she built a house on the plot; then the 2<sup>nd</sup> plaintiff Reuben Kioko bought the plot from her for the consideration of Kshs.3, 600, 000/=. They signed an agreement dated 17<sup>th</sup> August 2010 (P. Exh 3). She knows the defendant as the widow of Raphael Mutinda. She too considers herself as the wife of Raphael Mutinda as at the time of his death. By then, the defendant was no longer married to him; she was not aware that the defendant is the administrator of the late Raphael Mutinda's estate and she does not know of any properties owned by the deceased besides the suit property. The deceased was not involved in any way in the purchase of the property. In the year 2005 the plaintiff was running a salon business. The defendant has never lived on the plot.
9. Upon cross-examination by Mr. Orege, the following emerged: that before she bought the land, she obtained a copy of the Certificate of Title and confirmed that the land belonged to Mr Kibe vendor and that the land had been transferred to him on 16<sup>th</sup> February 2005. She bought it from Mr Kibe, the 3<sup>rd</sup> party in August 2005. The third party had bought the main parcel at Kshs. 5, 000, 000/= on 16<sup>th</sup> February 2005. That she is not related to the 3<sup>rd</sup> party. There was no fraud. She paid the Kshs. 500, 000/= in instalments in cash. At that time, she was living with Raphael Mutinda at Langalanga in Nakuru and he was then working at Kenya Power; Raphael was paying rent for their home but the plaintiff was paying rent for her business. Raphael was aware that the plaintiff was buying the plot from Kibe. She did not make a sale agreement with Kibe in 2005 because she had not paid the full purchase price and did not have all the money needed. She completed paying the consideration in 2010. Raphael died in 2008. By 2008, she had paid around Kshs.300, 000/=; it is not her husband who bought the property from Kibe. However, she admitted that P. Exh 1 does show that the property was bought in 2005; her husband was healthy and he died as a result of an accident. PW1 stated that she did not know how much her husband was earning from Kenya Power, but pressed further, she stated that her husband's gross pay was Kshs.149, 991.89 while his net pay was Kshs.70, 880/=. PW1 used to earn around Kshs.30, 000/= per month from her business; she had a salon but she did not find it necessary to file any documents in court regarding her financial capability; she was also operating a hotel in Kiratina until her husband passed away. When referred to P. Exh 1 she insisted that Kibe sold the plot to her. When she bought the plot from Kibe, it was not valued, but she paid him fully. She stated that agreement (P. Exh 3) mentioned Kibe because he had not processed title in her name. She stated that in that agreement she, and not Kibe, was the seller and her lawyers instructed the valuer to do a valuation before she sold the plot to 2<sup>nd</sup> Plaintiff; at Kshs.3,600,000/=. The valuation report by Prime Valuers dated 21<sup>st</sup> February 2011 gave an open market value of Kshs.4, 500, 000/=. She contributed more than her husband to the purchase price but her husband helped her to develop the property. She had a development plan before developing the property; however, the plan was in the name of her late husband Raphael Mutinda Moki. She is the one who sent him to get it. While living with her husband at Fairview, her step child, Malombe Mutinda, whose biological mother is the defendant also



lived with them and they had a cordial relationship with him. They were also living with their two children, Britney and Judith. She is aware that there is HC Succession Cause No. 303/2011 (Nakuru) in respect to her late husband's estate. She is in the list of beneficiaries as a co-widow but she does not know who applied for the grant of letters of administration. She also knows that the defendant herein and Malombe had applied for the letters of administration, but she is not comfortable that they so petitioned. Her plot is not listed as an asset in the succession cause. She did not know if her husband was divorced or separated from the defendant at the time of his death. Her late husband was buried in Kitui. She does not know who owns the land where he is buried. PW1 was given some land in Kitui. There was a house on the Kitui land under construction for her. She does not know its state now. She did not receive the full purchase price from the 2<sup>nd</sup> Plaintiff and there is a balance of Kshs.300, 000/= . She nevertheless signed an agreement with the 2<sup>nd</sup> plaintiff without any idea as to when she will get the Kshs.300, 000/= and the property now belongs to the 2<sup>nd</sup> plaintiff. She has not given the defendant or her children any money out of the Kshs. 3,300,000/= proceeds of the sale she has received, and she has spent it on herself and to pay school fees for her children. Before his death, her husband had not authorized her to sell the plot. She did not get authority from the defendant to sell the plot. Besides Malombe, her late husband had other children. She does not owe her husband's estate any money. When referred to item 3 and 4 on plaintiffs' further list of documents she admitted that she had received a total of Kshs. 3,200,000/- million as at 1<sup>st</sup> April 2011 from the 2<sup>nd</sup> plaintiff but she was later paid more money and the balance now is Kshs.300, 000/= . She is not in a position to refund the Kshs. 3,300,000/= . She normally receives Kshs.18, 000 per month from Kenya Power being her late husband's pension; that she is named 7<sup>th</sup> in the retirement benefits scheme trustees letter dated 9/1/2009 which lists 9 beneficiaries while the 1<sup>st</sup> beneficiary is the defendant and that the document is accurate. She stated that she has sued the defendant because she is harassing the 2<sup>nd</sup> plaintiff who is currently occupying the property as owner, but the property is still registered in the name of Kibe, the third party. She admitted that it is not her who ought not to have sued the defendant but the 2<sup>nd</sup> plaintiff.

10. Upon cross-examination by Mr. Kisilah, PW1 stated that the parcel she bought from Amos Kibe was a quarter of an acre in the form of two 50 x 100 plots; that the title that Kibe had was 5 acres and that he had bought for Kshs.5, 000,000/= which was much bigger than what he sold to her. She stated that she had paid Kibe in full. Having later sold the plot to the 2<sup>nd</sup> plaintiff, she was interested in the 2<sup>nd</sup> plaintiff having peaceful possession since he still owes her money; however, the title to the plot is still not ready and the plot is still registered in Amos Kibe's name. PW 1 stated that there is agreement that shows that her husband bought the plot.
11. Upon re-examination by Mr. Okiro she stated that when she bought the land, it had been hived off from the main parcel; she did not need to pay it at once as was not able to raise the Kshs 500, 000/= . The 2011 valuation put the property's value at Kshs.4.5million. In 2010 when she sold it to 2<sup>nd</sup> plaintiff, the plot was valued at Kshs. 3.600,000/= . She has not yet fully transferred the land to the 2<sup>nd</sup> plaintiff and she therefore still has interests to protect. Under her agreement with the 2<sup>nd</sup> plaintiff, it was agreed that the 2<sup>nd</sup> plaintiff gets peaceful possession. There is no indication in the Grant of Letters of Administration that the suit property is part of the estate of her late husband. Amos Kibe was in the agreement only because he is the registered owner. She did not have any responsibility to hand over any part of the purchase price to the defendant. The sale agreement between her and Amos Kibe was voluntary.
12. PW2 – Reuben Kioko Mulyaene the 2<sup>nd</sup> Plaintiff testified on 9/6/2021 and adopted his witness statement dated 22<sup>nd</sup> June 2011. His evidence is as follows: that he purchased the suit land for Kshs.3,600,000/= from the 1<sup>st</sup> plaintiff but paid the sum of Kshs. 3,300,000/= leaving a balance of Kshs. 300,000/= as captured in agreements of 1<sup>st</sup> February 2011 produced as P. Exh 4, 5 and 6



respectively; further payments were made by banker's cheque dated 18<sup>th</sup> August 2010 (P. Exh. 7) and as per Kenya Commercial Bank banking slip dated 1<sup>st</sup> April 2011 (P. Exh 8). Upon purchase, his occupation was not peaceful as the defendant claimed that the property belongs to Raphael Mutinda who was the husband of the 1<sup>st</sup> defendant; however, there is no dispute between him and the 1<sup>st</sup> plaintiff. Sometime in 2011 the defendant broke the gate to the property and stayed there until the court ordered her to vacate. PW2 received a demand letter dated 6<sup>th</sup> May 2011 (PEXh.9) from Rodi, Orege & Co. advocates. PW2 conducted due diligence before purchase. He met Amos Kibe who was the registered owner who confirmed that he had sold the suit land to the 1<sup>st</sup> plaintiff. The third party also showed him a copy of his title and the map. Since he wanted to get a loan, he obtained a valuation report dated 21<sup>st</sup> February 2011(P. Exh 10).

13. Upon cross-examination by Mr. Orege, PW2 stated that as at the date he recorded a witness statement the balance was Kshs. 400,000/= though it was not captured in the statement; it was however captured in an agreement. P. Exh 2 is the document he was shown by Mr. Kibe and the 1<sup>st</sup> Plaintiff. The official search was conducted by the Valuers on 9<sup>th</sup> February 2011. Entry No. 4 shows transfer to Mr. Kibe. The land reference number thereon is 4730/126. PW2 is the one who requested for the valuation report through KCB. The loan was however not advanced by the bank. P. Exh. 1. is the agreement between Mr. Kibe and the 1<sup>st</sup> plaintiff. It is dated 2<sup>nd</sup> August 2010. The property sold was 4730/471 and 4739/472. LR No. 4730/126 is not in the agreement. In P. Exh 3 the date is 17<sup>th</sup> August 2010. It is the agreement through which LR 4730/471 and 4730/472 were sold to PW1, a portion of the main block. He is currently occupying what was sold to him which is a quarter of an acre. At the time he purchased it, it had a residential house on it. He does not know the defendant. He has never met or talked to her. However, he stated that the defendant, her son Malombe, a Mr. Malonza and others entered his compound when he was not around and that he was informed of the developments by his househelp. When he asked the 1<sup>st</sup> plaintiff why that was happening, she explained that the defendant was falsely claiming that the property belonged to her deceased husband which assertion he believed. The 1<sup>st</sup> plaintiff had informed him that her husband was known as Mutinda and he had passed away. PW1 did not find out if the 1<sup>st</sup> plaintiff and Mutinda had lived on the suit property as that detail was not important to him. The valuation report had a survey map of Fairview Estate which showed the plot numbers of the plots which PW1 had purchased. It does not show a date or the name of the person who prepared it. The valuation report was prepared after he had purchased the property. The properties are currently registered in his name and the titles were issued recently. When he received the demand letter, he did not find it necessary to take any action against the 1<sup>st</sup> plaintiff. He has a title in his name for plot Nos 471 and 472, processed and registered while the instant suit was pending. He does not have anything showing that the year when 1<sup>st</sup> Plaintiff bought the property from Mr. Kibe was 2005. He did not find it to be a concern that PW1 bought the land before she got into the formal agreement and he further stated that she had explained that she did not do a formal agreement since she was paying in instalments; the formal agreement was done when she finished paying. Concerning the plan of a proposed development, he stated that the client is stated to be Raphael Mutinda Moki P. O Box 104 Nakuru, and that the 1<sup>st</sup> plaintiff did not show him the plan. He asserted that had the plan been shown to him, he would have not have changed his mind, as he was only concerned with the title document. He stated that he bought the property from 1<sup>st</sup> Plaintiff who had purchased it from the 3<sup>rd</sup> party who was the then registered owner.
14. Upon cross-examination by Mr. Kisilah, PW2 stated that he has no claim against the Third Party; that he signed an agreement with him only for purposes of facilitating transfer from 1<sup>st</sup> Plaintiff to himself; that he is aware that LR No. 4730/471 and 472 were subdivisions of LR 4730/126, and he has never been shown any sale agreement for the properties between the 3<sup>rd</sup> party and the late Raphael



Mutinda Moki. He was not bothered with the building plans because they are not title documents. He is currently the registered owner of LR 4730/471 and 472 and there was no order barring him from processing title in his favour. The end of PW2's evidence marked the closure of the plaintiff's case.

### **The defendant's evidence**

15. DW1, Pauline Kavuli Mutinda the defendant gave sworn evidence in Swahili and adopted her two witness statements filed on 22/8/2011 and 23/9/2019 and the lists of documents filed on 2/8/2011, 8/2/2012 and 22/11/2018 respectively. She produced the documents in the three lists as exhibits in the instant case. According to her evidence, Raphael Mutinda Moki, now deceased, was her husband, and the 1<sup>st</sup> Plaintiff is her co-wife. She had six issues of her marriage with the deceased; they had lived as family at Langalanga Estate , Nakuru while Raphael was working with Kenya Power & Lighting Ltd; that they were neighbours with the 1<sup>st</sup> plaintiff and her parents in Langalanga before an intimate affair developed between her and Raphael which led to a marriage between them; she then relocated to her late husband's home in Kitui but she frequently visited her late husband both in Langalanga and Fairview estates. Her husband bought the suit land from the third party, who was known to her and developed it. He later relocated from Langalanga to Fairview and lived on the suit land with the 1<sup>st</sup> plaintiff and his son Malombe Mutinda; the property was accessible to all members of his family and he had informed her that he had purchased it for the entire family. In August 2010, she learnt that the third party and the 1<sup>st</sup> plaintiff had sold the suit property to the 2<sup>nd</sup> plaintiff without the beneficiaries' knowledge, authority or consent. Upon discovering that the 2<sup>nd</sup> plaintiff was in occupation of the suit premises she and her son DW2 visited the third party and enquired whether any balance of purchase price was due from the deceased and he confirmed that the deceased had paid in full for the land; that all the personal effects of the deceased remained within the suit property upon his demise; that she obtained from her late husband's employer a proposed residential development plan bearing his name; retirement benefits documents dated 9/1/2009 bearing details of beneficiaries to his estate; and Stima Welfare documents bearing payments.
16. Upon cross-examination by Mr. Okiro DW1 stated that she has never made any report to the police and that the plaintiffs have not been charged with forgery in a criminal case; that she has never seen any sale agreement or any transfer of land between the two or seen any document showing payment made by Raphael to Kibe. They used to live at Langa with her late husband but later on she moved to Kitui. The deceased used to visit her while she was in Kitui. Raphael also informed her that he had bought the land.
17. Upon cross-examination by Mr. Kisila DW1 stated that she met with Amos Kibe first in September 2008. She did not know Mr. Kibe before and she did not have any agreement with him. She admitted that the 2<sup>nd</sup> plaintiff stays on the plots, but she does not know if Reuben has title to the suit land. She reiterated that she has never seen any agreement of sale between Kibe and the 1<sup>st</sup> Plaintiff. And that she has no evidence of payment by Raphael to Kibe or any transfer signed by Kibe. She obtained a grant of letters to Raphael's estate but the succession cause is still pending. The two plots were included in the succession proceedings.
18. Upon re-examination by Mr. Orege: DW1 maintained that her husband told her that Kibe sold him the land; that she lived with her husband first at Langalanga but she never lived with him in the house on the suit land; that she went to live in Kitui with her mother-in-law who had a medical problem; that she has sued on the premise that the property belongs to Raphael's estate and she therefore brought the suit on behalf of the estate of the deceased. She stated that even the 1<sup>st</sup> plaintiff and her daughters were all part of the late Mutinda's family. Her claim against Mr. Kibe is in the third-party Notice.



19. DW2, Jacob Malombe Mutinda, gave sworn evidence and adopted his witness statement dated 22/8/2011 and another supplementary statement filed on 23/9/2019 as his evidence-in-chief and stated as follows: that the Defendant is his biological mother and the 1<sup>st</sup> plaintiff his step mother; that he knows Amos who sold his father the suit land; that he lived with his father and the 1<sup>st</sup> plaintiff on the suit land and the third party visited his father several times and his father introduced the third party as the seller of the suit land; that while he was living with the two on the suit land, his father worked with Kenya Power & Lighting Company Ltd while the 1<sup>st</sup> plaintiff was neither employed nor doing business; that after his father met his demise the 1<sup>st</sup> plaintiff chased him away from the suit premises; in another statement he stated that following the death of his father he became a boarder at Kiamunyeki Academy where he had been schooling as the 1<sup>st</sup> plaintiff became hostile to him; that when later on it was discovered that the 2<sup>nd</sup> plaintiff was occupying the property, he and the defendant visited the third party and upon enquiry the latter informed them that his father had settled the entire consideration for the suit land and that after his father's demise, all his personal belongings remained in the suit premises.
20. Upon cross-examination by Mr. Okiro DW2 stated that he has never reported forgery to the police; however, the plaintiffs were charged in a Nakuru High Court but he does not have the criminal case number; he used to know the land reference number for the suit land which he had forgotten; however, he never saw any agreement of sale or any transfer form from Amos to his father. He could not remember the purchase price offhand. By the time of his father's demise in 2008, he used to live in the house on the suit land but before that, they lived with his father at Langalanga. His father showed him a sale agreement, but he does not recall where it could be; his father bought the land in 2005. There was a house there in 2005 but it was incomplete; his father lived there from the year 2008. Between 2005 – 2008 his father never lived on the land. His mother came to visit them on the suit land. The house was not complete by then. The suit is claiming plots Nos. 4730/471 and 472 which are different from No. 334.
21. Upon cross-examination by Mr. Kisilah, DW2 stated that he filed one witness statement. When shown the two statements in his name on the record he only owned up to the signature on the statement filed on 23/9/2019 and stated that the signature on the statement dated 22/8/2011 is not his. He came to know Amos Kibe when he met him at home; his father introduced Mr Kibe to him in 2008 during Mr Kibe's visit to their house. He also reiterated that his father showed him a sale agreement for the land and that he saw a title for the land sold by Mr. Kibe; that the title for the suit land was in his father's name.
22. Upon re-exam by Mr. Orege; DW2 denied knowledge of any other case save the instant suit against the plaintiffs; his father bought the land and built a house; they occupied the house before it was completed. His mother came to the land in 2005. His father showed him a sale agreement while at Fairview; that after his father's death he was chased away from the Fairview land by the 1<sup>st</sup> plaintiff; he began living on the suit land in 2005. He also acknowledged the two witness statements in the court record to be his. He stated that he cannot know if the title deed he saw was for the suit land or for another parcel. The evidence of DW2 marked the close the defence case and the counterclaim.

### **The Third Party's evidence**

23. The Third Party, Amos Kibe Njogu gave sworn evidence and adopted his witness statement dated 16/9/2019. He further stated as follows: he knows the plaintiffs but she does not know the defendant and has never dealt with her; he only dealt with the 1<sup>st</sup> plaintiff by selling her the plots No. 4730/471 and 472 vide the agreement produced as PExh.1; the two portions were excised from a larger portion which he had subdivided; that Angelina paid him and he has no claim against her. He signed PExh.3;



- by then the titles to the plots had not been issued; under that agreement, the titles, once issued, would bear the name of the 2<sup>nd</sup> plaintiff and not the 1<sup>st</sup> plaintiff. He denied selling the plots to the deceased. However, the 1<sup>st</sup> plaintiff and her husband used to come to him together and some payments may have been made by the deceased. The Third Party never signed any transfer in favour of the deceased. He denied the allegation that there was fraud. He signed the two agreements. However, he admitted that there was no building on the land while he was selling it.
24. Upon cross-examination by Okiro the Third Party reiterated that he never sold any land to Raphael and that Angeline purchased the land.
25. Upon cross-examination by Mr. Orege, the witness stated that he sold plots Nos. 4730/472 and 4730/471 and that DExh.1 is the mother title to the plots he sold Angeline; that RIM shows that the titles 471 and 472 were created; there were no titles issued for the two plots by the time they wrote the agreements; while executing the agreement of 2/8/2010, Mr. Mutinda was not there; by the time of selling the land, Mr. Mutinda was there; they met at the plots with Mr. Mutinda; he had a signboard erected there; he dealt with the two plaintiffs, Angeline and Mutinda in year 2005; the plots were being bought over a long period. Kshs.500,000/= had been paid earlier, not at the execution of the agreement; the buyers paid in bits; he denied selling the land first to Mutinda and later dealing with his wife, and admitted that if that had happened, then it would have amounted to fraud; that it was Angeline who requested that the transaction be formalised in writing; by 17/8/2010, that is, the date of PExh.3, titles had not issued; that he was only a witness to the agreement between the Plaintiffs; he admitted that making an agreement much later after a transaction is not normal. He does not recall seeing DW1. However, he recalled deliberating on the sale while with the 1<sup>st</sup> plaintiff and Mr. Mutinda; both of them participated, and both of them used to come and pay the money until the full purchase price was paid; if either of them produced the money, the interested party is not able to state whose money it was; and in the agreement he only admitted what he had received; he later obtained the titles to the plots around the year 2020 in the 2<sup>nd</sup> plaintiff's name, while this suit was still pending; though he was informed of his demise, he never attended Mutinda's burial.
26. Upon re-examination by Mr. Kisilah, the Interested Party stated that he sold the property to the 1<sup>st</sup> Plaintiff and that her husband used to come along. However, the husband never insisted on an agreement. The agreement with the 1<sup>st</sup> plaintiff was the first regarding the suit land; sometimes, the interested party used to receive money from Mr. Mutinda, yet there was no agreement they had signed between them.
27. At that juncture the Third Party's case was marked as closed consequent to which the court ordered the parties to file their written final submissions. The plaintiffs filed their submissions on 3/3/2022 and supplementary submissions on 19/4/2022 while the defendant filed hers on 8/3/2022. The 3<sup>rd</sup> party filed his submissions on 3/3/2022.

### **Determination.**

28. It is the plaintiff's case that she, and not her husband Raphael Mutinda Moki (now deceased) whom she shared with the defendant, purchased the suit land from the third party and subsequently sold it to the 2<sup>nd</sup> plaintiff, and the two plaintiffs jointly seek an injunction against the defendant. On the other hand, the summary of the defendant's claim as stated in her defence and counterclaim is that the suit land was sold to Raphael by the third party and so it forms part of Raphael's estate; Raphael developed the land and lived thereon till his demise in 2008; that she claims that the 1<sup>st</sup> plaintiff purchased the land and her attempt to sell the same to the 2<sup>nd</sup> defendant is pure fraud as it was done without right and without the knowledge of the other beneficiaries of the estate and also sold at a gross undervalue; that



HC Succession No 303 of 2011 - Nakuru has been filed to preserve the estate of the deceased for the beneficiaries thereof, including the 1<sup>st</sup> plaintiff and her children. On his part, the Third Party contends that the defendant lacks locus standi to urge the case against him because she is not the administrator of Raphael's estate. He maintains that he sold the suit land to the 1<sup>st</sup> plaintiff and denies any impropriety in the whole transaction. He admits that the 1<sup>st</sup> plaintiff and the deceased used to visit him together and that some money was paid by the deceased for the suit land as consideration though there was no written agreement between them.

### **Issues for determination**

29. I have considered the pleadings, the evidence and the submissions of the parties. The issues that arise for determination in the instant suit are as follows:
- a. Whether the defendant has locus standi to maintain the counterclaim against the third party;
  - b. Whether it was the 1<sup>st</sup> plaintiff or the deceased, Raphael Mutinda Moki, who purchased the suit land from the third party;
  - c. Whether the purported sale of the suit land to the 2<sup>nd</sup> plaintiff was fraudulent and whether the transfer and title issued to the 2<sup>nd</sup> plaintiff ought to be nullified;
  - d. Whether the defendant is entitled to indemnity as against the Third Party;
  - e. What substantive orders should issue? and
  - f. Who should bear the costs of these proceedings?

### **Whether the defendant has locus standi to maintain the counterclaim against the Third Party;**

30. In a suit, issues may be identified as between specific parties depending on the contents of their pleadings. The dispute regarding locus standi on the part of the defendant is, strangely enough, raised only by the third party and not by the plaintiffs. I have examined the reply to defence and counterclaim filed by the plaintiffs on 24/10/2012 and I have not found any objection therein to the defendant's locus standi. Parties are bound by their pleadings. The plaintiffs could not and did not call evidence on that issue which, in any event, was not pleaded in the plaint; therefore, the submissions of the plaintiffs on this issue need not be taken into consideration by this court for the foregoing reasons.
31. The main ground raised in the defence of the third party is that the defendant is not the administrator of the estate of the late Raphael Mutinda Moki. This issue was settled in favour of the defendant, in this court's view, by her production of a copy of the grant of letters of administration intestate issued on 30/9/2011 by the High Court at Nakuru, appointing her and her son as administrators to the deceased's estate.

### **Whether it was the 1<sup>st</sup> plaintiff or the deceased, Raphael Mutinda Moki, who purchased the suit land from the third party;**

32. It is clear that this court must bear in mind the observation that the 1<sup>st</sup> plaintiff amply demonstrated that she has recognised the defendant as her senior co-wife for a very long time. This court would therefore, in view of that knowledge, expect a certain measure of prudence in any of her dealings such as would not allow any confusion to reign regarding whether any of her acquisitions after the marriage belonged to her or to her husband.
33. When the issue arose as to who purchased the suit property from the third party, it was incumbent upon the 1<sup>st</sup> plaintiff to substantiate her claims to the purchase, for indeed the principal rule of evidence



is that whoever alleges proves. In her initial statement dated 22/6/2011 filed with the plaint she stated that she purchased the suit premises in 2005 for the consideration sum of Kshs 500,000/= which she paid in full and then, together with her husband, took possession. By then the plots had other land reference numbers. However, there was no written agreement evidencing her purchase of the suit land until the agreement dated 2/8/2010 was executed between her and the third party. While being cross-examined by Mr Orege she stated that at that time, she was living with Raphael Mutinda at Langalanga in Nakuru and he was then working at Kenya Power; Raphael was paying rent for their home but the plaintiff was paying rent for her business. Her evidence was that Raphael was aware that the plaintiff was buying the plot from Kibe, but she did not make a sale agreement with Kibe in 2005 because she had not paid the full purchase price and did not have the money. She completed payment of the consideration in 2010. The 1<sup>st</sup> plaintiff admitted to have lived on the suit premises with the defendant's son before her husband passed on. That son is Jacob Malombe Mutinda who testified as DW2. It is noteworthy that the plaintiff did not produce any evidence of income she was earning at that time. This court is for that reason inclined to believe DW2's evidence to the effect that the 1<sup>st</sup> Plaintiff was a housewife. Despite that evidence the 1<sup>st</sup> plaintiff stated that some of the resources used to purchase the land came from her and the rest were savings from money obtained from her husband. When asked about proof of her earnings, she stated that she never saw the need to file any documents in court to demonstrate her capability to purchase the suit land. Further on in her cross-examination by Mr Orege the 1<sup>st</sup> plaintiff yielded and admitted that her husband contributed to the purchase of the suit land. The Third party admitted that some of the money was paid by the deceased. I am not persuaded that this evidence so far leads to a conclusion that the 1<sup>st</sup> plaintiff single-handedly or at all bought the land in question.

34. The other statement that the 1<sup>st</sup> plaintiff made is that she built the house on the suit land with the deceased's assistance. This is what she stated:

“I contributed more than my husband to the purchase price. My husband helped me develop the property.”

35. She however admits that the building plans were prepared in the name of her husband. The Third Party admitted that there was no building on the land when he was selling it. Given that the defendant has established that the building plans were in her husband's name and that she obtained them from his erstwhile employer, it is curious that the 1<sup>st</sup> plaintiff claims to have built the house. It is also curious that she was given some land at Kitui by her husband and that there was a house being constructed by her husband for her in Kitui. Proof was given of the earnings received by her husband at the time. When proof of the deceased's earnings are contrasted with the 1<sup>st</sup> plaintiff's lack of evidence as to what income she had that would have enabled her purchase the suit land, this court comes to the conclusion that she did not purchase the land using her own independent resources. If any money was paid by her to the third party, it must have been given to her by the deceased. If the deceased had not been involved in the purchase, the probability is that he would not have accompanied the 1<sup>st</sup> Plaintiff to meet the Third Party; it is therefore immaterial that on some occasion the 1<sup>st</sup> Plaintiff was the one who paid the instalments of the consideration to the Third Party, in view of her lack of proof of income that the instalments must have come from her husband. The Third Party while under cross-examination and after being drawn to the execution of a sale between the plaintiffs on the first day of their transaction, admitted that making an agreement years after the purchase was not normal. Besides, it has not been denied that all the personal effects of the deceased were left in the house occupied by the 1<sup>st</sup> plaintiff. Consequently, the only persons who knew the truth, that is whether there was a written agreement between the deceased and the Third Party are the deceased, the 1<sup>st</sup> plaintiff and the Third Party. Dead men tell no tales, and it would not be expected of the 1<sup>st</sup> plaintiff to admit of existence of such an



agreement at the hearing for the obvious reason that it would negate the assertion that she purchased it and the 2<sup>nd</sup> plaintiff would pursue her for remedies if she did; it would not be expected of the third party to admit of any agreement or sale between him and the deceased for the reason that he has already committed himself to its non-existence by being a co-signatory to the sale agreement by which the 2<sup>nd</sup> plaintiff purported to purchase the suit land. Besides, there is no proof of receipt by the third party of the receipt of the piecemeal payments by the 1<sup>st</sup> plaintiff if she made any. This contrasts sharply with the very clear evidence of well-kept written records of how the 1<sup>st</sup> plaintiff obtained piecemeal payments from the 2<sup>nd</sup> plaintiff while selling the same land. It appears such a strange coincidence that neither the third party nor the 1<sup>st</sup> plaintiff kept any records of how payments for land purchase were made by the latter. Further the 1<sup>st</sup> plaintiff lacks evidence of payments for of house building materials or for building or for installation contracts or for services which could demonstrate that she built the house on the suit land. Having regard to these aforestated contradictions, this court concludes that the evidence of the third party and of the 1<sup>st</sup> plaintiff and regarding whether the latter or the deceased purchased the suit land or not is of negligible probative value in the circumstances adumbrated herein. This court is also of the view that both the third party and the 1<sup>st</sup> plaintiff were untruthful in stating that the land was not sold to the deceased. By reason of the foregoing, lack of written agreement notwithstanding, I find that the suit land was purchased, and the house thereon was constructed, wholly from the deceased's income as all evidence available points in that direction.

**Whether the purported sale of the suit land to the 2<sup>nd</sup> plaintiff was fraudulent and whether the transfer and title issued to the 2<sup>nd</sup> plaintiff ought to be nullified;**

36. As to whether the purported sale of the suit land to the 2<sup>nd</sup> plaintiff was fraudulent, it is clear that it took place after the demise of the 1<sup>st</sup> plaintiff's husband. Owing to this court's finding that the deceased had bought the land, the same devolved to his estate after his death and it ought to have been dealt in accordance with the *Law of Succession Act*, Cap 160.
37. Section 45 of that *Act* provides as follows:
- “(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
  - (2) Any person who contravenes the provisions of this section shall—
    - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
    - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”
38. The ordinary sequel to Raphael's demise would have been for the 1<sup>st</sup> plaintiff to take out a grant of letters of administration to the deceased's estate in her name or jointly with other eligible persons and then proceed to dispose of the property having regard to the rights of all the other beneficiaries of the estate. The 1<sup>st</sup> plaintiff failed to do this. In fact, she went ahead and purported to dispose of the suit property without such a grant, which in this court's view amounts to intermeddling, and also without



involving any other beneficiary of the deceased's estate. The facts of this case suggest that the 1<sup>st</sup> plaintiff knew she had no right to dispose of the suit property without seeking a grant. It is this court's view that she deliberately avoided contacting the defendant and her family over the sale of the suit premises so as to defeat their claim to the land, and she succeeded, with the third party's assistance, in getting the land registered in the 2<sup>nd</sup> plaintiff's name. This court is satisfied that the 1<sup>st</sup> Plaintiff's conduct was quite fraudulent.

39. Section 26(1) of the [Land Registration Act](#) provides as follows:

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
  - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

40. The third party in his submissions submits that for his title to be successfully impeached, then proof has to be availed that the title holder was a party to the fraud or misrepresentation. However, this court is minded to approach the issue at hand from the premise of *nemo dat quod non habet*, that is that no man can confer on another better title than that which he himself has. But even without this court delving into the *nemo dat* rule, it is important to examine the conduct of the 2<sup>nd</sup> plaintiff.

41. The two plaintiffs' joinder in this suit qua plaintiffs is evidence of their common intention to safeguard what they had acquired against apparent predation by the defendant. It appears that the 2<sup>nd</sup> plaintiff so much trusted in the locus of the 1<sup>st</sup> plaintiff in the sale transaction that even when the former admitted the defendant was also the late Raphael's widow, no alarm bells appeared to ring in his mind. There is freedom of choice of whom to sue. However, in the instant suit, there is no proper justification as to why the 2<sup>nd</sup> plaintiff, if he was not privy to the lack of locus on the part of the 1<sup>st</sup> plaintiff, never sued only the 1<sup>st</sup> plaintiff alone for breach of warranty to title, or the defendant for trespass, or the defendant jointly with the plaintiff in order for the court to determine liability between them on the various issues arising. He instead testified that there is no dispute between him and the 1<sup>st</sup> plaintiff which is quite surprising. He appears to be intent on protecting the Plaintiff's position even at the expense of his own rights against her under the contract. I have already indicated earlier in this judgment that the evidence of both the 1<sup>st</sup> plaintiff and the Third Party as to whether Raphael purchased the suit land is not to be trusted, yet these are the persons he dealt with in his agreement. Indeed, part of his due diligence is said to have been his meeting with Mr Kibe who showed him his title (P. Exh 2) and confirmed that



he had sold the land to the 1<sup>st</sup> plaintiff. He must have seen that the agreement between the 1<sup>st</sup> plaintiff and the Third Party. It appears that he had not concluded the transaction when the defendant and her sons sought to seize the premises. His evidence went as follows:

“The defendant and her son Malombe, Mr Malonza and others entered the compound when I was not around. I was informed by my housegirl. I asked the 1<sup>st</sup> plaintiff why that was happening and she explained that the defendant claimed that the property belonged to her deceased husband. She told me that the defendant’s claims were false. I believed her and upon my due diligence I proceeded. The plaintiff told me that her husband was called Mutinda and he had passed away. I did not find out if the 1<sup>st</sup> plaintiff and Mutinda lived on the suit property. That detail was not important to me.”

42. Later on, in cross-examination he was taken to task as to what he did after he received a demand letter from the plaintiff’s advocate. He stated as follows:

“When I received the demand letter, I did not find it necessary to take any action against the 1<sup>st</sup> plaintiff.”

43. The 1<sup>st</sup> Plaintiff admitted that he had nothing to show that the 1<sup>st</sup> plaintiff bought the property from Mr Kibe in 2005. I think there was sufficient basis for the 2<sup>nd</sup> plaintiff to start making inquiries from the 1<sup>st</sup> plaintiff as to the whereabouts of evidence that she had purchased the suit land in 2005, the whereabouts of evidence of payment to the Third Party, details as to whether Raphael had lived on the suit premises and finally, if the defendant was truly Raphael’s widow. Further, seeing that there was likely to be a dispute over the land he ought to have exercised prudence and sought evidence that the 1<sup>st</sup> Plaintiff built the house on the suit land. It appears that he knew of the building plan produced in evidence by the defendant but his evidence regarding that document was as follows:

“I was not bothered with the building plan because a building plan is not a title document.”

44. The suit premises were finally registered in his name and title thereto admittedly issued while the instant suit was still pending. The third party stated concerning the titles:

“I got titles to the plots around the year 2020 in Reuben’s name while this case was still underway.”

45. His terminal refuge, when pressed hard in cross examination by Mr Kisilah, was that there was no court order barring the processing of title in his favour, which smacks of impudence. The question on this court’s mind and which is likely to occur to every reasonable man is why, after both the 2<sup>nd</sup> plaintiff and the third party learnt of the claim by the defendant in 2010, proceeded with the transaction to the end and obtained title in the 2<sup>nd</sup> plaintiff’s name in 2020 while this suit was pending. The 2<sup>nd</sup> plaintiff may be said to have been innocent in the period preceding 2010 but the same cannot be said of the 1<sup>st</sup> plaintiff and the third party. After 2010, both the 2<sup>nd</sup> plaintiff and the third party were formally aware of the claim by the defendant and could not feign ignorance thereof. In this court’s view, the 2<sup>nd</sup> Plaintiff’s acquisition of knowledge that the defendant had laid a claim to the suit land as administrator of the deceased ought to have warned him not to proceed further with the transaction. It is my conclusion that the Plaintiffs’ concerted efforts were calculated to put the suit property out of reach of the defendant and other beneficiaries of the estate in furtherance of the fraud already committed by the 1<sup>st</sup> plaintiff in purporting that she had purchased the land from the Third Party. In the circumstances the 2<sup>nd</sup> plaintiff



falls squarely under the description of transferee who has knowingly engaged in acts in furtherance of fraud and therefore his title ought to be cancelled under Section 26 of the [Land Registration Act](#).

### **Whether the defendant is entitled to indemnity as against the Third Party;**

46. As to whether the defendant is entitled to indemnity as against the Third Party it is noteworthy that the plaintiff's claim is that the Third Party had already sold the suit land to the deceased by the time he and the two plaintiffs purported to enter into an agreement dated 8/11/2010, and he therefore lacked capacity to resell the suit land. This court has held that the third party was part of the fraud by which the land was transferred to the 2<sup>nd</sup> plaintiff. In this court's view the statement that the Third Party lacked capacity to resell the land is therefore correct. The plaintiff seeks in the supplementary Third-Party notice dated 22/11/2018 that the third party be condemned to pay the estate of the deceased the equivalent of the current market value of the suit premises, upon valuation by the Government Valuer, as general damages.
47. The Third Party however stated that he did as per the wishes of the 1<sup>st</sup> plaintiff in entering into the agreements dated 2/8/2010 and 17/8/2010. He stated that he never obtained any payment for his inclusion as owner in the second agreement. He avers that no evidence was led in proof of the case against him and therefore there is no basis for the claim of indemnity. This was corroborated by the Plaintiffs' own evidence.
48. I have herein earlier found that the defendant has proved his claim of fraud as against the Third Party. However, I am inclined to believe that the Third Party signed the agreement dated 17/8/2010 and transfers merely as a paper title holder of the land in order to make smooth the transaction between the plaintiffs, and that he never benefited financially or at all from the execution of the agreement, and only the plaintiffs did so. The proceeds of that sale agreement were therefore received only by the 1<sup>st</sup> plaintiff. It is for that reason that this court finds that the defendant's claim for indemnity from the Third Party in the form of the whole of the market value of the suit land is not merited such an order would be in considerable disproportion to the role the Third Party played in the obvious fraud. This remedy sought against him in the Third-Party notice must fail.

### **What substantive orders should issue**

49. In the end, I find that the plaintiffs have failed to establish their claim on a balance of probabilities while the defendant has proved her claim against them to the required legal standard. This court having found that the deceased purchased the land, and that the purported sale to the 2<sup>nd</sup> plaintiff was fraudulent, must issue orders that will correct the undesirable situation by cancelling the titles registered in the name of the 2<sup>nd</sup> plaintiff and the rectification of the land register to reflect the administrators of the estate of the deceased as the proprietors thereof.

### **Who ought to bear the costs of the suit?**

50. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are responsible for the situation brought about by their fraud and their actions occasioned the instant suit and counterclaim and they must be condemned to pay the costs of these proceedings.

### **Conclusion**

51. Consequently, I dismiss the plaintiffs' case and I enter judgment for the defendant in respect of her counterclaim and I issue the following final orders:



- a. It is hereby declared that LR NO 4370/471 and LR 4370/472 were purchased from Amos Kibe Njogu by the late Raphael Mutinda Moki and not by the 1<sup>st</sup> plaintiff herein and therefore they are now part of the estate of Raphael Mutinda Moki.
- b. The titles issued in the name of the 2<sup>nd</sup> plaintiff as proprietor of LR NO 4370/471 and LR 4370/472 are hereby cancelled.
- c. The Land Registrar, Nakuru, shall forthwith cancel all entries by which Reuben Kioko Mutyaene was registered as proprietor of LR NO 4370/471 and LR 4370/472 and he shall rectify the register by registering the Administrators of the Estate of the Late Raphael Mutinda Moki as the proprietors thereof.
- d. The 2<sup>nd</sup> plaintiff, Reuben Kioko Mutyaene shall give vacant possession of LR NO 4370/471 and LR 4370/472 and shall surrender all the fixtures thereon intact to the defendant as administrator of the estate of Raphael Mutinda Moki within 30 days of this order in default of which he shall be forcibly evicted therefrom.
- e. The defendant's claim against the Third Party is hereby dismissed with no orders as to costs.
- f. The costs of the main suit and the counterclaim shall be borne by both the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs only.

**DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 21<sup>ST</sup> DAY OF JUNE, 2022.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

