



**Ngugi v Kinyanjui & 3 others (Environment & Land Case
149 of 2013) [2022] KEELC 3418 (KLR) (19 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3418 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 149 OF 2013**

**JO MBOYA, J
JULY 19, 2022**

BETWEEN

EDWARD KIHARA NGUGI PLAINTIFF

AND

JAMES MUIGAI KINYANJUI 1ST DEFENDANT

**MONICAH MURUGI MUNGAI (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF SAMUEL KINYANJUI WAIGANJO (DECEASED) 2ND DEFENDANT**

RICHARD KUNGU KINYANJUI 3RD DEFENDANT

PHILIS NJAMBI KINYANJUI 4TH DEFENDANT

JUDGMENT

Introduction and Background:

1. Vide the Amended Plaintiff dated the January 29, 2020, the Plaintiff herein has approached the court seeking for the following Reliefs;
 - a. The 2nd Defendant do excise a Portion of Land, one measuring 22.86 by 50.3 meters and two measuring 0.25 acres each out of Land Parcel No. Dagoreti/Kinoo/2465 and transfer the same to the Plaintiff.
 - b. That the portion of land so excised be reckoned out of the entitlement of the 1st 3rd and 4th Defendants, respectively from the Estate of Samuel kinyanjui Waiganjo, Deceased and in particular, Land Parcel No. Dagoreti/Kinoo/2465.
 - c. That in the alternative, the 2nd Defendant do pay out of the Estate Of the Deceased, all monies paid to the 1st, 3rd and 4th Defendants together with the agreed Penalties and such payment be reckoned out of their respective shares from the Estate of the Deceased.



- d. Cost of the suit be met by the Defendants in any event.
2. Upon filing and service of the Amended Plaintiff, the 1st Defendant duly entered appearance on the 11th March 2013 and thereafter filed a Statement of Defense, the latter which was filed on the 28th February 2020 and which relates to the Amended Plaintiff filed by the Plaintiff.
3. On the other hand, the 2nd Defendant duly entered appearance on the February 18, 2020 and thereafter filed a Statement of Defense on the February 27, 2020. For clarity, the 2nd Defendant herein denied and/or disputed the claim at the foot of the Amended Plaintiff.
4. On his part, the 4th Defendant entered appearance on the February 25, 2020 and also filed a Statement of Defense on even date.
5. Nevertheless, the 3rd Defendant herein duly entered appearance but does not appear to have file any Statement of Defense or at all.

Evidence by the Parties:

a. Plaintiff's Case

6. The Plaintiff's case is premised on the Evidence of two witnesses; namely, Edward Kihara Ngugi and Joseph Muhoro Njoroge, who testified as Pw1 and Pw2, respectively.
7. It was the Evidence of Pw1, that on or about the year 2007, the 1st Defendant herein offered to sell unto him a portion of Land measuring 22.6 by 50.3 Meters or thereabouts, which portion was to be exercised from L.R No. Dagoreti/Kinoo/2465. For clarity, the witness further testified that the designated portion was being sold at a consideration of Kshs.1, 400, 000/= only
8. Further, the witness testified that on or about the February 13, 2007, the 1st Defendant and himself entered into a Land Sale Agreement, which was reduced into writing and thereafter executed by the respective Parties.
9. Besides, the witness also testified that pursuant to the Sale Agreement, same has since paid to and in favor of the 1st Defendant the sum of Kshs.1, 023, 000/= Only, out of the Purchase price, which was agreed upon and that the balance due and outstanding was only to be paid upon the issuance of the Title document.
10. On the other hand, the witness further testified that since the portion of land he was buying fell within and/or formed part of the Estate of the Deceased, namely, Samuel Kinyanjui Waiganjo, same requested the other beneficiary of the Estate of the Deceased to confirm their concurrence and/or Consent to the transaction.
11. Besides, the witness further testified that on the March 19, 2007, himself together with the Beneficiaries of the Estate of the Deceased proceeded to the offices of the Area Chief and that while thereat, an Agreement was drawn which was signed and/or executed by all the Beneficiaries of the Estate of the Deceased.
12. It was the testimony of the witness that later on the 1st Defendant herein procured and/or obtained a Certificate of Confirmation of Grant and thereafter proceeded to and had the title over and in respect of the suit property registered in the names of the Beneficiaries jointly.
13. Other than the foregoing, the witness further testified that after the suit property was transferred and registered in the names of the Beneficiaries of the Estate of the Deceased jointly, the 3rd Defendant



proceeded to and sold in favor of the witness a portion of the suit Property measuring 0.25 acres, at the agreed price of Kshs.7, 000, 000/= only.

14. Further, the witness testified that the Agreement between the 3rd Defendant and himself was similarly reduced into writing and same was executed by the Parties.
15. On the other hand, the witness further testified that the 4th Defendant herein also sold to and unto him a portion of the suit Property measuring 100 fit by 100 feet, at a price of Kshs.7, 000, 000/= Only, and that the sale agreement was duly reduced into writing and same was thereafter executed by the 4th Defendant and himself.
16. Nevertheless, the witness further testified that despite having purchased and acquired portions of the suit property, which was hitherto registered in the name of the Deceased, the 2nd Defendant herein, who was appointed as the Legal administratrix of the Estate of the Deceased has since disowned the witness and failed to take into account the beneficial right of the witness, over and in respect of the Estate of the Deceased.
17. Be that as it may, the witness herein has further testified that on or about the February 15, 2019, the Succession court referred the dispute pertaining to ownership and his entitlement to the suit property to this court, for purposes of adjudication and determination.
18. Besides, the witness herein testified that upon entering into the various Sale Agreements, same was allowed to and indeed entered upon the suit property and built various houses thereon. However, the witness further testified that the houses, which were built by him, were subsequently demolished by the 2nd Defendant albeit without a Court order.
19. Other than the foregoing, the Witness herein referred to the witness statement which was filed on the January 30, 2013 and the Supplementary Witness Statement dated the February 10, 2020 and same sought to rely on the two Written Statements in his Evidence- in- chief.
20. Pursuant to the request by and/or at the instance of the witness, the two written Statements were duly adopted and admitted as Further Evidence- In – Chief of the Witness herein.
21. Besides, the witness also referred to the Supplementary List of Documents dated the February 10, 2020, containing 11 documents, which the Plaintiff sought to rely on as part of his Documentary Exhibits.
22. Suffice it to point out that the Documents at the foot of the List of Documents dated the 10th February 2020 were thereafter admitted as Plaintiffs exhibits 1 to 11, respectively.
23. On cross examination, by Learned Counsel for the 1st and 4th Defendants, the witness stated that prior to and or before purchasing a portion of the suit property, same carried out and/or undertook due diligence, including obtaining Certificate of official search from the Land registry.
24. On the other hand, the Witness further stated that it was the 1st Defendant who approached him and wanted to sell a portion of the suit Property.
25. Further the witness testified that the 1st Defendant is also the one who summoned and/or caused to be summoned all his Brothers and Sisters to the offices of the Area Chief, culminating into the Agreement, wherein the Beneficiaries gave their consent to the transaction.
26. On the other hand, the witness stated that the Agreement which was crafted at the office of the Area Chief was also signed by the 2nd Defendant and that the Signature of the 2nd Defendant was at page 25 of the Plaintiff bundle of Documents.



27. Other than the foregoing, the witness also stated that despite having bought portions of the suit property, the 2nd Defendant herein has since denied that same is entitled to a portion thereof on account that same is not a Beneficiary of the Estate of the Deceased.
28. Further, the witness stated that after entering into the various Sale Agreements with the 1st, 3rd and 4th Defendants, same was allowed and/or authorized to enter upon the purchased portions and thereafter he proceeded to and constructed various houses.
29. Be that as it may, the witness further testified that the Houses/Structures which he had 2ND built on a Portion of the suit Property were thereafter demolished by the Defendant.
30. As pertains to the denial by the 4th Defendant that same did not receive any money on account of the Sale Agreement, the witness contended that the 4th Defendant was indeed paid Deposit, which she acknowledged by signing the Sale Agreement dated the March 28, 2013.
31. On cross examination by counsel for the 2nd Defendant, the witness testified that the 1st portion of land which he bought, was brought from the 1st Defendant.
32. Further the witness confirms that the portion of land that he bought was from the 1st Defendant and not the Deceased.
33. Further, the witness also admitted that same subsequently bought portions of land from the 3rd and 4th Defendants, but underscored that he never bought and/or purchased any land from the Deceased.
34. On the other hand, the Witness admitted that by the time he entered into the Sale Agreement with the 1st 3rd and 4th Defendants, the Land in question had not been subdivided.
35. At any rate, the witness also admitted that the Land in question was still registered in the name of the Deceased.
36. Other than the foregoing, the witness stated that he did not know that the land in question was undergoing Succession and that he only got to know the existence of the Succession cause when his houses were destroyed.
37. Further, the witness stated that he thereafter applied to be joined into the Succession cause, but same could not recall when he applied to be joined.
38. On the other hand, the witness stated that same was not aware of when the titles which had hitherto been registered in the names of the Beneficiaries of the deceased jointly was revoked.
39. Nevertheless, the witness admitted that he knows/knew that the land in question was thereafter reversed and reverted back to the name of the Deceased.
40. Besides, the witness herein conceded and underlined that same did not enter into any Sale Agreement with the 2nd defendant or the Estate of the Deceased. For clarity, the witness stated that no monies were ever paid to the Estate of the Deceased.
41. On re-examination, the witness herein confirmed that at the time he was purchasing the portion of land from the 1st Defendant, the Land was registered in the name of the Deceased.
42. Besides, the witness stated that at that point in time the 1st Defendant undertook to carryout Succession Proceedings and to succeed the Estate of the Deceased.
43. Further, the witness stated that he is aware that the 1st Defendant undertook and obtained Grant of Letters of Administration, over and in respect of the Estate of the Deceased.



44. Finally, the witness stated that same had commenced the process of acquiring and obtaining portions of the suit property well before the Grant of Letters of Administration.
45. Be that as it may, the witness reiterated that same did not pay any monies to the 2nd Defendant but has sued same insofar as the 2nd Defendant is the duly appointed and constituted Administratrix of the Estate of the Deceased.
46. Other than Pw1, the other witness who testified was Joseph Muhoro Njoroge who stated that he is conversant with both the Plaintiff as well as the 1st, 3rd and 4th Defendants herein.
47. Further, the witness testified that he is aware that the Plaintiff entered into various Land Sale Agreements with the 1st, 3rd and 4th Defendants and that the Sale Agreements were duly reduced into writing and were signed by all the Parties.
48. It was the further testimony of the Witness herein that during and in the course of the negotiations towards the Sale of land, he was involved and he was therefore conversant with the terms of the Sale Agreement.
49. Other than the foregoing, the Witness further stated that on the March 19, 2007, same was present when the Plaintiff and the rest of the Beneficiaries of the Estate of the Deceased met at the office of the Area chief, where an Agreement was drawn and was thereafter signed by the Plaintiff and all the Beneficiaries.
50. Be that as it may, the witness thereafter alluded to his witness statement dated the 10th February 2020 and sought to adopt and rely on same. In this regard, the said witness statement was admitted and deemed as the Witness' further Evidence- in Chief.
51. On cross examination by the 1st Defendant, the witness stated that at the time when the 1st Defendant entered into the Sale Agreement with the Plaintiff, the 1st Defendant did not have a Certificate of Title in respect of the suit Property.
52. Besides, the witness also admitted that he was present when the 1st Defendant was arrested by police on the basis that same was trying to sell the portion of land to a Third Party before transferring the portion which was sold to and in favor of the Plaintiff.
53. On cross examination by the 2nd Defendant, the witness stated that prior to the crafting of the Sale Agreement between the Plaintiff and the 1st Defendant, same procured and obtained Certificate of official search.
54. Further, the witness testified that the Certificate of Official search revealed that the suit property was still in the names of the Deceased.
55. At any rate, the witness stated that the 1st Defendant was selling a portion of the land in his capacity as the Administrator of the Estate of the Deceased.
56. In respect of whether the same witnessed the Sale Agreement between the Plaintiff and the 4th Defendant, the witness confirmed that he was present and saw money being paid to the 4th Defendant. However, the witness testified that no acknowledgment was prepared or signed.
57. With the foregoing, the Plaintiff's case was closed.



a. The 1st Defendant's Case:

58. The 1st Defendant herein testified as Dw1 and same stated that same indeed entered into a Land Sale Agreement with the Plaintiff, wherein it was agreed that the Plaintiff would pay unto him the sum of Kshs.3, 000, 000/= only, as the Purchase price.
59. However, the witness stated that the Plaintiff herein only paid unto him the sum of Kshs.700, 000/= only.
60. Other than the foregoing, the witness testified that even though the Plaintiff did not complete the payment in respect of the portion of Land which same was selling, the Plaintiff forcefully entered upon and commenced to construct illegal structures on a portion of the suit property.
61. Besides, the witness further testified that out of the illegal structures that the Plaintiff built and/or constructed on a portion of the suit property, same has since received more than Kshs.7, 000, 000/=Only.
62. On the other hand, the witness further testified that the Sale transaction with the Plaintiff was never concluded and in the premises the plaintiff is not entitled to any portion of the suit property.
63. In any event, the witness also testified that though he entered into a Land Sale Agreement in respect of a portion of the suit property, the land in question belonged to the Deceased and hence same had no authority to sell any portion thereof.
64. Finally, the witness referred to his Witness statement dated the July 9, 2021and sought to have same admitted as his Further Evidence. Consequently, the witness statement dated the July 9, 2021was deemed as the witness further Evidence- in- chief.
65. Other than the foregoing, the witness also alluded to the list and bundle of Documents dated the July 9, 2021and same sought to have the Documents produced as evidence.
66. Pursuant to the request by the 1st Defendant, the documents at the foot of the List dated July 9, 2021 were produced and admitted in evidence as exhibits D1 to D8, respectively.
67. On cross examination by counsel for the Plaintiff, the witness admitted that same had a Sale Agreement with the Plaintiff over a portion of the suit property, but indicated that the suit property belonged to the Estate of the Deceased.
68. The witness further admitted that the Sale Price and/or consideration at the foot of the Sale Agreement was Kshs,1, 400, 000/= and not Ksh.3, 000, 000/=Only.
69. On the other hand, the witness further testified that though he entered into a Land sale Agreement with the Plaintiff, the signature contained at the foot of the Sale Agreement dated the February 13, 2007was not his.
70. The witness further admitted that the Plaintiff herein only paid unto him the aggregate sum of Kshs.500, 000/= only.
71. Further, the witness testified that same later on filed and or commenced the succession proceedings culminating into the issuance of a Grant of the Letters of Administration in his favor, but the Grant of Letters of Administration was revoked at the instance of the 2nd defendant.



72. On the other hand, the witness herein stated that despite the Sale Agreement entered into with the Plaintiff neither the Plaintiff nor himself carried out any measurement in respect of the portion of land which was being sold.
73. On cross examination by counsel for the 2nd Defendant, the witness stated that the portion of land which he was endeavoring to sell to the Plaintiff was still in the name of the Deceased. Further the witness stated that what he was agreeing to sell was a portion of the land which was to be given to him after the Succession.
74. On the other hand, the Witness herein further confirmed that even though a Grant of Letters of Administration was issued in his favor, but the said Grant of Letters of Administration was similarly revoked by the court.
75. Be that as it may, the witness stated that he never appealed against the revocation of the Grant of Letters of Administration which had been issued in his favor.
76. Finally, the Witness conceded that the land in question which he was attempting to sell belongs to and was registered in the name of the Deceased.
77. At this juncture, the 1st Defendant's case was closed.

b. The 2nd Defendant's Case:

78. The 2nd Defendant herein testified as Dw2 and same essentially relied on her witness Statement dated the 27th February 2020.
79. Further, it was the witness' testimony that same was duly appointed and/or constituted as the Legal Administratrix of the Estate of Samuel Kinyanjui Waiganjo, Deceased, on the 30th August 2016, vide Nairobi HCC Succession cause Number 1208 of 2006.
80. Further, the witness testified that L.R No. Dagoreti/Kinoo/2465 belonged to and was registered in the name of the Deceased.
81. On the other hand, the witness testified that prior to being appointed and constituted the Administratrix of the Estate of the Deceased, her Brothers,, namely John Brown Njenga Kinyanjui and the 1st Defendant had previously been appointed as the Legal Administrators of the Estate of the Deceased.
82. Besides, the witness also testified that upon the appointment of John Brown Njenga and himself, as the Legal Administrators of the Estate of the Deceased, same proceeded to and obtained a Certificate of Confirmation of Grant which arose on the July 9, 2007.
83. Nevertheless, the witness testified that in the course of the Confirmation of Grant in favor of John Brown Njenga Kinyanjui and the 1st Defendant, some Beneficiaries of the Estate of the Deceased were left out and as a result of the foregoing, an Application for Revocation of the Grant was mounted and same was ultimately allowed.
84. Further, the witness testified that between the filing of the Application for Revocation of Grant and the ultimate delivery of the Ruling in respect thereof, which Ruling was delivered on the February 21, 2013, the Honourable Court variously granted orders of Status Quo, for purposes of preserving the Estate of the Deceased.
85. Be that as it may, the witness testified that when the Ruling was ultimately delivered, the Honourable Court proceeded to and revoked the Grant of Letters of Administration which was hitherto issued



- on the February 24, 2009 and also declared all the acts and transactions which had been taken on the strength of the said Grant of Letter of administration to be null and void.
86. It was the witness' further testimony, that the Honourable Court also proceeded to and revoked the Certificate of Confirmation of Grant which had been issued on the July 9, 2007, and thereafter directed the surviving children of the Deceased to commence the Succession De-novo.
 87. Further, the witness testified that based on the fact that the Estate of the Deceased had not been fully succeeded and fully administered neither the 1st, 3rd and 4th Defendants could sell and/or alienate any portion of the Estate of the Deceased.
 88. On the other hand, the witness testified that she had occasion to look at the Sale Agreements, which were alluded to by the Plaintiff and she confirmed that the land, whose portions were being sold, were still registered in the names of the Deceased and that none of the Vendors, had the requisite capacity to alienate and/or sell any portions thereof, either to the Plaintiff or any Third party.
 89. In any event, the witness further testified that the Sale Agreement which was allegedly entered into between the Plaintiff and the 3rd Defendant on the January 29, 2013, was part of the transactions that were declared null and void by the Honourable Court vide Ruling rendered on the 21st February 2013.
 90. As pertains to the Sale Agreement entered into between the Plaintiff and the 4th Defendant, the witness stated that same was entered into after the Revocation of the previous Grants of Letters of Administration and before any other Grant of Letters of Administration could issue and/or be granted.
 91. Other than the foregoing, the witness essentially adopted the witness statement dated the February 27, 2020 and sought to have same deemed as her Further Evidence- in Chief.
 92. Pursuant to the request by the witness, the Witness Statement was duly admitted and deemed as the Witness' further Evidence- in chief.
 93. Other than the foregoing, the witness herein referred to the List and Bundle of Documents dated the February 27, 2020, containing 13 Documents and sought to have same admitted as her Exhibits. Consequently, the said Documents were admitted and deemed as Exhibits D11 to 23, respectively.
 94. On cross examination by counsel for the Plaintiff, the Witness stated that she was duly appointed and constituted as the Legal Administratrix of the Estate of the Deceased in the year 2016.
 95. Further, the Witness admitted that prior to her being appointed as the Legal Administratrix in 2016, her brothers, namely, John Brouwn Njenga Kinyanjui and the 1st Defendant had been previously appointed as the Legal Administrators.
 96. The Witness further stated that the first Grant of Letters Of Administration was issued in the year 2007 and later, same was confirmed on the July 9, 2007.
 97. However, the witness stated that the said Certificate of Confirmation of Grant issued on the July 9, 2007, as well as the Grant that was issued on the February 24, 2009 were revoked by the court vide Ruling rendered on the 21st February 2013.
 98. As to whether the 1st Defendant had any Capacity to sell any portion of the Estate of the Deceased, the witness answered in the negative.
 99. Further, the witness admitted having signed an Agreement dated the March 9, 2007, before the Area Chief, but same clarified that by the time of the signing of the said Agreement, the succession in respect of the Estate of the Deceased had not been filed and/or commenced.



100. Other than the foregoing, the Witness herein stated that the Plaintiff herein is not entitled to any portion of the Estate of the Deceased.
101. Nevertheless, the witness testified that by the time the Plaintiff entered into the Sale Agreement with the 1st Defendant, the initial Grant of Letter of Administration, which was issued in favor of John Brown Kinyanjui and the 1st Defendant had not been revoked.
102. However, the witness clarified that by the time the Plaintiff and the 1st Defendant entered into a Sale Agreement, the initial Grant of Letters of Administration had not been Confirmed.
103. Besides, the witness stated that the Plaintiff herein was wrong to have bought and/or purported to buy a portion of the suit property, while same was still registered in the name of the Deceased.
104. Further the witness contended that the Plaintiff herein neither acquired any rights nor interest in respect of the suit property.
105. On re-examination, the witness herein stated that though Grant of Letters of Administration issued in her favor has since been confirmed, the Certificate of Confirmation of Grant has not been processed and issued in her favor.
106. Further, the witness testified that at the time when the Plaintiff purported to buy Land from the 1st, 3rd and 4th Defendants, the Land in question was not available for sale.
107. Suffice it to point out, that with the foregoing testimony, the 2nd Defendant's Case was closed.

c. The 3rd Defendant's Case:

108. It was pointed out elsewhere herein before that other than entering appearance in respect of the subject matter, the 3rd Defendant neither filed Statement of Defense nor witness statement.
109. Consequently, when the 3rd Defendant attempted to testify, an objection was taken that same had not filed any Pleadings and hence same could not tender and/or adduce any Evidence before the court.
110. Premised on the objection, the court was called upon to render a Ruling. In this regard, the Court indeed rendered a Ruling and observed that in the absence of any pleadings by the 3rd Defendant, same could not tender any evidence.
111. In the premises, the 3rd Defendant's case was closed without any Evidence being tendered and/or offered on his behalf.

d. The 4th Defendant's Case

112. The 4th Defendant herein testified as Dw3 and same essentially relied on and adopted her Witness Statement dated the July 21, 2021.
113. In particular, the witness stated that same has never been appointed and/or constituted as the legal administratrix over and in respect of the Estate of the Deceased.
114. On the other hand, the witness further stated that the Land in question, namely, L.R No. Dagoreti/ Kinoo/2465, belonged to and was registered in the name of the Deceased.
115. It was the witness' further testimony that same did not have any piece of land capable of being sold to and in favor of the Plaintiff.



116. Nevertheless, the witness conceded to have entered into a Land Sale Agreement dated the March 28, 2013, but denied that same was paid any monies at all.
117. It was the witness' further testimony that the advocate who attested the sale agreement between the Plaintiff and herself was the Plaintiff's Advocate. However the witness reiterated that she was paid any monies at all.
118. On cross examination by counsel for the 2nd Defendant, the witness confirmed that same was aware of the Revocation proceedings, which were instituted as pertains to the Grant of Letters of Administration which had hitherto been issued to one John Brown Kinyanjui and the 1st Defendant.
119. Besides, the witness also stated that the portion of land which same was selling at the foot of the Sale Agreement dated March 28, 2013, was a portion of the land, which was registered in the name of the Deceased.
120. Nevertheless, the witness conceded that at the time of entering into the Sale Agreement, same did not have the authority and/or consent of the rest of her Siblings/Beneficiaries of the Estate.
121. On cross examination by Counsel for the Plaintiff, the witness stated that she was aware that at some point in time the suit property was transferred and registered in the names of 4 Beneficiaries of the Estate of the Deceased, including herself, but same stated that the said entries were false.
122. Further the witness stated that by the time same entered into the land sale agreement with the Plaintiff on the March 28, 2013, the previous Grant of Letters of Administration had been revoked by the court.
123. For clarity, the witness stated that the Grant of Letters of Administration which had hitherto been issued, was revoked in February 2013.
124. At any rate, the witness reiterated that though she entered into a land sale Agreement with the Plaintiff, same was never paid any money.
125. On the other hand, the witness further stated that the Plaintiff entered upon and took possession of a portion of the suit property, but the entry upon and the taking of possession of the portion of the Land, was without her permission and/or consent.
126. At this juncture, the 4th Defendant's case was closed.

Submissions by the Parties

127. At the close of the hearing, the Advocate of the Parties agreed to file and exchange written submissions. Consequently, the Honourable Court proceeded to and circumscribed timelines for the filing and exchange of the written submissions.
128. Pursuant to the foregoing, the Plaintiff filed his written submissions dated the March 16, 2022 and in respect of which the Plaintiff raised four pertinent issues for determination.
129. Essentially, the Plaintiff sought to have the court to determine the legal effect of the Sale Agreements which were entered into between himself on one hand and the 1st, 3rd and 4th Defendants on the other hand.
130. Secondly, the Plaintiff herein also sought to have the court to determine whether the subsequent revocation of the Grant of Letter of Administration that had hitherto been granted, had any effect on the Sale Agreements, which same had entered into with the 1st, 3rd and 4th Defendants, respectively.



131. Thirdly, the Plaintiff sought to have the court to declare and/or determine whether same had any legitimate rights and/or entitlements to and in respect of the Estate of the Deceased.
132. On her part, the 2nd Defendant filed her written submission dated the May 19, 2022, and same similarly, raised Four pertinent issues for determination by the court.
133. Firstly, the 2nd Defendant sought to have the court to determine whether the 1st, 3rd and 4th Defendants had the Legal Capacity to enter into any Land Sale Agreement with the Plaintiff, pertaining to and/or concerning a portion of the suit property which was registered in the name of the Deceased.
134. Secondly, the 2nd Defendant sought to have a determination on whether the Plaintiff herein could accrue any orders as against the 2nd Defendant, in her capacity as the legal administratrix of the Estate of the Deceased.
135. Thirdly, the 2nd Defendant sought a determination as to whether the Estate of the Deceased owed any monies and in favor of the Plaintiff.
136. Finally, the 2nd Defendant, implored the court to make a determination on the legal impact and/or consequence of the Revocation of the previous Grant of Letters which had hitherto been issued and whether such revocation, coupled with the declaration that all the transactions effected on the strength of the previous Grants had any effect on the transactions/ Sale Agreements, relied upon by the Plaintiff.
137. On behalf of the 1st and 4th Defendants, the written submissions were dated the 20th May 2022 and same only raised two issues for determination.
138. Firstly, it was submitted that neither the 1st nor the 4th Defendants had any legal Capacity over and in respect of the Estate of the Deceased, to warrant entry into and execution of the impugned Sale Agreements.
139. Secondly, it was submitted that the actions and/or activities underlining the sale agreements between the Plaintiff and the 1st and 4th Defendants amounted to intermeddling with the estate of the deceased, which was contrary to and in contravention of Section 45 of the Law of Succession Act, Chapter 160, Laws of Kenya.
140. Other than the foregoing, it is also imperative to point out that though the 3rd Defendant had not filed any pleadings in respect of the matter, same also proceeded to and filed written submissions dated the May 20, 2022.
141. For clarity, the written submissions on behalf of the 3rd Defendant are also part of the record of the court.
142. Suffice it to state that I have perused and appreciated the contents of the written submissions filed and/or mounted on behalf of the respective Parties. In this regard, the said contents, where appropriate shall inform the Decision of the Honourable Court.

Issues for Determination:

143. Having reviewed the Pleadings filed by and/or on behalf of the Parties herein, the Witness Statements and the Bundle of Documents which were filed on behalf of the Parties and having similarly considered the Oral Testimony adduced by the witnesses; and upon evaluating the written submissions filed by the respective Parties the following do arise and are thus germane for Determination;



- i. Whether the Sale Agreements entered into between the Plaintiff and the 1st, 3rd and 4th Defendants respectively were lawful and capable of conferring any Legal Interest to and in favor of the Plaintiff as pertains to the portions of the suit property.
- ii. Whether the Plaintiff herein procured and/or obtained any legitimate Rights to the Suit Property capable attracting an order for Specific Performance.
- iii. Whether the Plaintiff is entitled to Refund of the Monies paid to and in favor of the 1st, 3rd and 4th Defendants and whether such Refund is due out of the Estate of the Deceased or otherwise.

Analysis and Determination:

Issue Number 1 & 2

Whether the Sale Agreements entered into between the Plaintiff and the 1st, 3rd and 4th Defendants respectively were lawful and capable of conferring any Legal Interest to and in favor of the Plaintiff as pertains to the Impugned portions of the suit Property.

Whether the Plaintiff herein procured and/or obtained any Legitimate Rights to the suit Property capable attracting an order for Specific Performance.

144. Before venturing to address the first issue herein, it is appropriate to state and underscore that L.R No. Dogoreti/Kinoo/2465, which is the subject of the instant proceedings, belonged to and was at all material times registered in the name of one Samuel Kinyanjui Waiganjo, now Deceased.
145. On the other hand, it is similarly appropriate to observe that up to and including to date, the subject property, which forms part of the Estate of the Deceased, has not been distributed amongst of the Beneficiaries of the Estate of the Deceased.
146. Having made the foregoing observations, it is now appropriate to venture and determine the legality or otherwise of the various Sale Agreements which were entered between the Plaintiff on one hand and the 1st, 3rd and 4th Defendants on the other hand.
147. First and foremost, it is appropriate to point out that by the time the Plaintiff herein entered into and executed a land sale agreement with the 1st Defendant, which Agreement is dated the 13th February 2007, the Grant of Letters of Administration which had been issued by then had not been Confirmed.
148. For the avoidance of doubt, the Plaintiff herein testified and admitted that though the Sale Agreement was entered into on the February 13, 2007, the Grant of Letters of Administration which the 1st Defendant was anchoring the sale on, was due for Confirmation on the July 9, 2007.
149. To the extent that the Land Sale Agreement between the Plaintiff and the 1st Defendant, was entered into and executed prior to and/ or before the Confirmation of the Grant of Letters of Administration, same was thus illegal, unlawful and void for all intent and purposes.
150. To anchor the foregoing observation, it is imperative to take cognizance of the Provisions of Section 82 of the *Law of Succession Act*, Chapter 160, Laws of Kenya which provides as hereunder;
 82. Powers of personal representatives

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-

 - (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;



- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that-

- (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
 - (ii) no immovable property shall be sold before confirmation of the grant;
- (c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;
 - (d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation:

Provided that, except so far as otherwise expressly provided by any will-

- (i) no appropriation shall be made so as to affect adversely any specific legacy;
- (ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.

- 151. Based on the proviso to Section 82 (supra) it is evident and/or apparent that there cannot be any sale, alienation and/or disposal of any interest over and in respect of the Immovable Estate of the Deceased prior to and/or before Confirmation of the Grant of Letters of Administration.
- 152. Consequently, given that the Plaintiff was aware of and/or privy to the fact that the Grant of Letters of Administration which the 1st Defendant was relied upon had not been Confirmed, same must therefore be taken to be cognizant of the consequences of the law, as pertains to the transaction that same was entering into.
- 153. As pertains to the purported Sale Agreement between the Plaintiff and the 3rd Defendant, which was entered into on the January 29, 2013, it is appropriate to point out that by the time the Plaintiff and the 3rd Defendant were entering into the said transaction, the Probate and Administration Court had issued orders for Maintenance of Status Quo and Preservation of the Estate of the Deceased.
- 154. For the avoidance of doubt, it is imperative to take cognizance of the Orders which were rendered by Hon Justice D. A. Ony'ancha, Judge, on the November 20, 2007 and Lady Justice K. Rawal on the February 13, 2009. For clarity, the orders for the maintenance of the status quo subsisted up to and



including the February 21, 2013, when the Summons for Revocation of Grant was allowed vide Ruling rendered on even date.

155. Premised on the foregoing, it is therefore evident that the Sale Agreement which was entered into and executed on the January 13, 2013, was undertaken contrary to and in contravention of lawful orders of the court.
156. In any event, it is also worthy to recall that vide the ruling rendered on the February 21, 2013, other than revoking the Grant of Letters of Administration issued on the February 24, 2009 and the Certificate of Confirmation of Grant dated the July 9, 2007, the court proceeded to and declared as hereunder;
- “All the acts of doings and transactions effected on the strength of this Grant be and are hereby Declared Null and Void”
157. For the avoidance of doubt, the transaction which were being declared null and void were those transactions, if any, that were predicated and/or premised on the Grant of Letters of Administration which had been issued on the February 24, 2009.
158. To my mind, the transactions premised on the previous Grants of Letters of Administration having been declared null and void, the Sale Agreement entered into on the January 29, 2013, would thus confer no Legal rights and/or interest.
159. I am aware that the Plaintiff herein has contended and or otherwise submitted that same were neither Party to nor aware of the orders of the status quo, as well as the revocation of the previous Grant Of Letters of Administration, but the critical point is not whether same was Party thereto, but the Legal implication arising therefrom.
160. In any event, it is imperative to point out that if the Plaintiff was aggrieved by the Orders of the Probate and Administration court which revoked the previous Grant of Letters of Administration upon which the sale agreements in his favor were premised, then the Plaintiff ought to have ventilated his grievances before the Probate and Administration Court and not otherwise.
161. Suffice it to note, that sitting as an Environment and Land court, I am not seized of any capacity , mandate and/or Jurisdiction to interrogate the propriety and/or validity of the decision of the Probate of Administration Court, presided by a Puisne Judge.
162. In any event, it is important to observe that whenever a Court of law grants an order, irrespective of the nature of the order and the perception of the Parties affected thereby, it behooves all and sundry to comply with and/or adhere with the terms of the court order, until same is varied or otherwise, Discharged.
163. To buttress the foregoing position, it is appropriate to adopt and restate the holding of the court in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR, where the Court held as hereunder;

“A court order is not a mere suggestion or an opinion or a point of view.

It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door.



If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

164. As concerns the Sale Agreement entered into between the Plaintiff and the 4th Defendant, which was entered into and executed on the March 28, 2013, it is appropriate to point out that by the time of entering into the said Agreement, all the previous Grants of letter of administration, including the Certificate of Confirmation issued on the July 9, 2007 and the Grant of Letters of Administration issued on the February 24, 2009, had all been revoked.
165. Besides, it is worthy to state that upon the revocation of the previous Grants of Letters of Administration, the Probate and Administration court gave liberty to the Surviving children of the Deceased to take appropriate Steps and appoint the Legal Administrator/Administratrix.
166. For the avoidance of doubt, the new Legal administrator/ Legal Administratrix was only appointed and/or constituted on the August 30, 2016, when the 2nd Defendant herein was indeed constituted as such.
167. Based on the foregoing, it becomes crystal clear that between the February 21, 2013 and the August 30, 2016, the Estate of the Deceased remained administered and devoid of any Legal administrator.
168. In the circumstances, no transaction touching on and/or concerning the Estate of the Deceased could be entered into and/or undertaken, irrespective whether same was a Beneficiary or otherwise. Consequently, the purported Sale Agreement dated the March 28, 2013, was therefore an illegality.
169. Be that as it may, I must also point out that any engagement and/or transaction that would affect the estate of the deceased prior to and or before the grant of letters of administration, would be tantamount to intermeddling with the estate of the deceased, which Ipso jure, constitutes a criminal offense.
170. In respect of the foregoing observation, it is imperative to refer to the provisions of Section of 45 of the [Law of Succession Act](#), Chapter 160, Laws of Kenya, whose terms are explicit and apt.
171. For convenience, the provisions of Section 45 (supra) are reproduced as hereunder;
 45. No intermeddling with property of deceased person
 - (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.



172. Other than the foregoing position of the law, I also beg to adopt and restate the holding of the court vide the Decision in the case of the *Estate of Veronica Njoki Wakagoto (Deceased)* 2013 eKLR, where the Court stated as hereunder;

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence’.

173. Having found and held that the various Sale Agreements which were entered into between the Plaintiff on one hand and the 1st, 3rd and 4th Defendants on the other hand and which touched on and concerned the Estate of the Deceased were illegal and void, the question that arises is whether any rights can accrue to and in favor of the Plaintiff.

174. To my mind an illegal contract cannot generate any legal and/or legitimate claim. Simply put, such Contracts are void ab initio.

175. In any event, it is sufficient to invoke and restate the Dictum in the case of *Macfoy versus. United Africa Co. Ltd* [1961] 3 All E.R. 1169 Lord Denning while delivering the opinion of the Privy Council at page 1172 (1) are relevant. For clarity, the revered Judge said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so.

176. In view of the foregoing, my answer to issues number one and two; are that the Plaintiff neither attracted nor accrued any lawful interest over and in respect of the suit property. Consequently, no order for Specific Performance, by whatever name called can ensue and/or be granted in favor of the Plaintiff.

177. In respect of a claim for Specific Performance, coached in the terms that the 2nd Defendant does excise portions of the suit property and transfer same to the Plaintiff, it is worthy to note that an order of specific performance, which is Equitable in nature, cannot issue where the contract in question is replete with illegality.

178. To vindicate the foregoing observation, it is worthy to adopt and restate the holding in the case of *Reliable Electrical Engineers Ltd.....Versus....Mantrac Kenya Limited* (2006) eKLR, where Justice Maraga (as he then was) stated that:-

“Specific performance like any other equitable remedy is discretionary and the Court will only grant it on well laid principles”

“The Jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages



an adequate remedy specific performance may still be refused on the ground of undue influenced or where it will cause severe hardship to the defendant.”

179. In a nutshell, the Plaintiff has no legitimate claim to the suit property, which lawfully forms and/or constitutes the Estate of the Deceased.

Issued Number 3

Whether the Plaintiff is entitled to Refund of the Monies paid to and in favor of the 1st, 3rd and 4th Defendants and whether such Refund is due out of the Estate of the Deceased.

180. During the hearing of the subject matter, the Plaintiff herein testified and indicated that the Sale agreements, which were entered into between himself and the 1st, 2nd and 3rd Defendants respectively, were entered into with the said Defendants’ in their personal capacities.
181. On the other hand, the Plaintiff also tendered evidence that what the 1st, 3rd and 4th Defendants were covenanting to sell were their respective portions which would be hived out of the Estate of the Deceased and allocated unto them, ex-post the conclusion of the Succession.
182. Besides, the Plaintiff herein admitted and acknowledged that the monies at the foot of the impugned Sale Agreements were neither paid to the Estate of the Deceased nor to the Legal Administrator of the Estate of the Deceased, namely, the 2nd Defendant.
183. Premised on the admission by the Plaintiff that the monies were neither paid to the Estate of the Deceased nor to the duly constituted Legal administratrix of the Estate, it is not feasible and/or legally tenable to obtain an order that such monies which were paid to the 1st, 3rd and 4th Defendant be paid out of and/or be recovered from the Estate of the Deceased.
184. To my mind, the Estate of the Deceased was neither Party nor privy to the transaction between the Plaintiff on one hand and the 1st, 3rd and 4th Defendants.
185. Based on the foregoing, the Plaintiff’s claim can only lie as against the 1st, 3rd and 4th Defendants and not otherwise. For clarity, the Plaintiff’s suit as against the 2nd Defendant is therefore legally untenable and does not Disclose any reasonable cause of action.
186. As concerns the Doctrine of Privity of Contract and whether a claim can lie against a Party who was not Privy to the Contract, it is imperative to take note of the decision in the case of *Savings and Loans Kenya Ltd v Kanyenje Karangaita Gakombe & another* (2015) eKLR where the Court of Appeal held as hereunder;

“In its classical rendering, the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly, a contract cannot be enforced either by or against a third party. In *Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915] AC 847, Lord Haldane, LC rendered the principles thus:

“My Lords, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it.”

In this jurisdiction that proposition has been affirmed in a line of decisions of this Court, among them *Agricultural Finance Corporation v Lendetia Ltd* (supra), *Kenya National Capital Corporation Ltd v Albert Mario Cordeiro & another* (supra) and *William Muthee Muthami v Bank of Baroda*, (supra).



Thus in *Agricultural Finance Corporation v LEngetia Ltd* (supra), quoting with approval from *Halsbury's Laws of England*, 3rd Edition, Volume 8, paragraph 110, Hancox, JA, as he then was reiterated:

“As a general rule a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”

Over time some exceptions to the doctrine of privity of contract have been recognized and accepted. Among these exceptions is where a contract between two parties is accompanied by a collateral contract between one of them and a third party relating to the same subject matter. Thus in *Shanklin Pier v Detel Products Ltd* (1951) 2 KB 854, for example, the plaintiff owned a pier, which it wished to be repainted. After the defendant represented to the plaintiff that some particular paint was fit for purpose, the plaintiff directed its contract to use that paint. The contractor purchased the paint from the defendant, which proved unfit for purpose. Upon a suit by the plaintiff against the defendant, the court found for the plaintiff notwithstanding the fact that there was no privity of contract between the plaintiff and the defendant, as far as the contract for the sale of the paint was concerned.

While the proposition that a contract cannot impose liabilities on a non-party has been widely embraced and accepted as rational and well founded, the proposition that a contract cannot confer a benefit other than to a party to it has not been readily accepted and has in fact been the subject of much criticism. In *Darlington Borough Council v Wiltshire Northern Ltd* [1995] 1 WLR 68 Lord Steyn eloquently demonstrated the flaw in the proposition in the following terms.

“The case for recognizing a contract for the benefit of a third party is simple and straightforward. The autonomy of the will of the parties should be respected. The law of contract should give effect to the reasonable expectations of contracting parties. Principle certainly requires that a burden should not be imposed on a third party without his consent. But there is no doctrinal, logical or policy reason why the law should deny effectiveness to a contract for the benefit of a third party where that is the expressed intention of the parties. Moreover, often the parties, and particularly third parties, organize their affairs on the faith of the contract. They rely on the contract. It is therefore unjust to deny effectiveness to such a contract.”

Some jurisdictions have, accordingly and in a bid to introduce reforms and ameliorate the harshness of the rule, resorted to legislative intervention. The best examples are the United Kingdom and Singapore where the *Contracts (Rights of Third Parties) Act*, 1999 and the *Contract (Rights of Third Parties Act)*, 2001 have respectively been enacted.’

187. Having found and held that the Plaintiff's claim only lies as against the 1st, 3rd 4th Defendants, the only outstanding issue that seeks determination is whether an order can be made as against the said Defendants for any Refund in respect of the Subject matter.
188. The answer to the foregoing question is twofold. First and foremost; the claim by the Plaintiff for refund, is a claim for Special Damages, which by law must not only be particularly pleaded but specifically proved.



189. In respect of the foregoing observation, it is appropriate to invoke and rely in the observation in the case of *Hahn V. Singh*, Civil Appeal No. 42 of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:

“Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

190. In respect of the subject matter, it is apparent that the Plaintiff neither pleaded the claim for the Refund with the requisite particularity, nor did same specifically prove the claim.

191. Secondly, it is also evident that the Plaintiff herein did not make any pleading seeking any Refund from the 1st, 3rd and 4th Defendants. To the contrary, the only pleading, which was in the alternative was a claim against the 2nd Defendant to pay out, some undisclosed monies from the Estate of the Deceased.

192. In my considered view, the Court is barred from making an order and/or granting a Relief which never sought for vide the Pleadings of the Parties, the Plaintiff herein, not excepted.

193. To this end, I am guided and do take succor in the dictum of the Court in the Case of *Independent Electoral Boundaries Commission v Stephen Mutinda Mule* (2014) eKLR, where the Honourable Court of Appeal restated the law as hereunder;

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any other Business” in the sense that points other than those specific may be raised without notice.”

194. Based on the foregoing, even though the Plaintiff would have been entitled to claim Refund against the 1st, 3rd and 4th Defendants, same chose not to pursue that aspect, obviously, for reasons only known to himself.

195. Consequently, it is appropriate to find and hold that the Plaintiff waived and/or otherwise relinquished his claim for Refund from the designated Defendants, with whom he transacted and/or engaged with.



196. In view of the foregoing, my answer to issue Number three is that the Plaintiff is not entitled to any Refund payable out of the Estate of the Deceased, either as claimed or at all. For clarity, the Estate of the Deceased did not owe unto the Plaintiff any Debt.

Final Disposition

197. Having addressed and/or dealt with the issues for determination that were highlighted in the body of the Judgment herein, it is now appropriate to terminate and bring the Judgment herein to an end.

198. However, in the course of the deliberation hereinbefore, the court has endeavored to and answered the issues in question and consequently, what remains outstanding are the Final orders.

199. In the premises, I come to the conclusion that the Plaintiff's case is devoid of merits and same be and is hereby Dismissed.

200. Notwithstanding the foregoing, there is still the issue of Costs to be addressed and/or deliberated upon. In this regard, it is worthy to note that the 1st, 3rd and 4th Defendants entered into some semblance of Agreements with the Plaintiff and for which same were paid some monies.

201. However, the Plaintiff did not seek for any express order to recover the said monies from the said Defendants and based on that failure, the 1st, 3rd and 4th Defendants have gone home with what was illegally procured and obtained at the foot of the illegal Transactions.

202. Premised on the foregoing, it would be unjust and unconscionable to decree and/or award to the 1st, 3rd and 4th Defendant any cost as against the Plaintiff herein.

203. Nevertheless, the Plaintiff herein admitted and acknowledged that no monies were paid to and in favor of the Estate of the Deceased and further that no monies were paid to and in favor of the 2nd Defendant.

204. Despite the foregoing, the Plaintiff herein courageously and relentlessly continued with the suit as against the 2nd Defendant and the 2ND Defendant, was obligated to and indeed defended the Suit.

205. In the circumstances, I find and hold that the 2nd Defendant is entitled to recompense. Consequently, the 2nd Defendant be and is hereby awarded Costs of the suit as against the Plaintiff, to be taxed and certified by the Taxing officer of the Court.

206. It so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JULY 2022.

HON. JUSTICE OGUTTU MBOYA

JUDGE

In the Presence of;

Kevin Court Assistant

Mr. Njuguna for the Plaintiff

Mr. Kahuthu for the 1st and 4th Defendants

Mrs Susan Ndirangu for the 2nd Defendant.

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