



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 2670 of 1998

MARGARET W. WARIMA .....PLAINTIFF

VERSUS

PHYLIS W. THAIRU .....1<sup>ST</sup> DEFENDANT

GRACE WANGECHI NDIRANGU .....2<sup>ND</sup> DEFENDANT

NAIROBI CITY COUNCIL .....3<sup>RD</sup> DEFENDANT

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

**Introduction**

1. Evidence in this case was taken first before Ondeyo J (now retired) and then Mutungi J (also since retired). Mutungi J reserved judgment for 14/05/2009, but the honourable judge retired before he wrote his judgment. Thereafter proceedings were typed and on the 22/07/2009 when the parties appeared before Waweru J for mention, they agreed that another judge could prepare and deliver the judgment upon the evidence recorded by Ondeyo J and Mutungi J. Waweru J then referred the matter to the Hon. the Chief Justice for directions.
2. By his order of 15/12/2009, his Lordship the Honourable the CJ nominated me to write and deliver the judgment in this matter. This is how I find myself in this unenviable position of writing a judgment based on evidence given by witnesses whom I did not have the privilege to observe as they testified. The parties must therefore receive this judgment with this background in mind.
3. The parties appeared before me on the 16/12/2009 for directions on a judgment date. I gave them 5/03/2010 as the date for judgment, but due to other exigencies of service the judgment could not be delivered on that date.

**The Pleadings**

4. The Plaintiff's claim is contained in the Re-amended plaint dated 25/09/2003 and filed in court on the 6/10/2003. The dispute concerns a piece of land known as plot Number CU 999 situated at Umoja II Zone Six Type "Core Unit" new number Nairobi/Umoja Block 107/1/CU/999, (the suit property) being part of the project that was funded by the Housing Development of the City Council of Nairobi. The Plaintiff claims that she is the legal and lawful allottee of the suit property that was allegedly bought from the 1<sup>st</sup> Defendant through an oral agreement in June 1989. The Plaintiff avers that the oral agreement was reduced into writing on 21/08/1989 after the Plaintiff made certain payments to the 1<sup>st</sup> Defendant and one **Hezron Ndirangu** (now deceased) and upon certain terms and conditions. The Plaintiff avers that the Defendants fraudulently breached the terms of the agreement by going

behind the back of the Plaintiff and obtaining a clearance and subsequent transfer from the 1<sup>st</sup> Defendant without the knowledge of the Plaintiff. Reasons wherefore, the Plaintiff prays for judgment against the Defendants jointly and severally for orders:-

(a) *A declaration that the transfer, alteration, any clearance and documents signed in favour of the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant in respect of plot number CU 999 Umoja II Zone six type “Core Unit” New Number Nairobi/Umoja Block 107/CU/999 is invalid.*

ai) *An order cancelling the transfer and certificate of lease over plot Number CU 999 Umoja Zone Six Type “Core Unit” New Number Nairobi/Umoja Block 107/1/CU/999 to the 2<sup>nd</sup> Defendant.*

(b) *A declaration that the Plot Number CU 999 Umoja II Zone Six Type “Core Unit” New Number Nairobi/Umoja Block 107/1/CU/999 legally and lawfully belongs to the Plaintiff.*

bi) *An order for transfer of the suit premises namely plot Number CU 999 Umoja II Zone Six Type “Core Unit” New Number Nairobi/Umoja Block 107/1/CU/999 to the Plaintiff.*

c) *General damages and costs of this suit.*

d) *Any other or such further relief as this Honourable Court may deem just and fit in the circumstances.*

5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a joint statement of defence on the 10/12/1998. The two Defendants deny all the allegations leveled against them by the Plaintiff and in particular the two Defendants deny that there was any binding agreement between the Plaintiff and the 1<sup>st</sup> Defendant. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants also aver that they are unaware of any payments made by the Plaintiff towards the purchase price of the suit property or at all and state that obtaining of the clearance and transfer of the suit property to the 2<sup>nd</sup> Defendant was both transparent and above board. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants pray that the Plaintiff's suit be dismissed with costs to themselves.

6. The 3<sup>rd</sup> Defendant's Statement of Defence is dated 15/06/1999 and was filed in court on 16/06/1999. The 3<sup>rd</sup> Defendant avers that he is a total stranger to the Plaintiff's claims regarding the 3<sup>rd</sup> Defendant's involvement in the transaction in respect of the suit property and that it was not privy to any such transaction. In the alternative the 3<sup>rd</sup> Defendant pleads that it was duty bound to receive and approve any requisite payment. The 3<sup>rd</sup> Defendant prays that the Plaintiff's suit be dismissed with costs.

#### **The Issues for Determination**

7. As stated herein above, the dispute in this case revolves around the suit property, which property originally belonged to the City Council of Nairobi. In 1988, the suit property was allotted to the 1<sup>st</sup> Defendant and up to the time of filing of suit, the suit property was still registered in the 1<sup>st</sup> Defendant's names.

8. The Plaintiff's case is that she purchased the suit property from the 1<sup>st</sup> Defendant for valuable consideration sometime in 1989 and that she has been in possession of the same since then. Somewhere along the way in or about 2/03/2001 the suit property was transferred to the 2<sup>nd</sup> Defendant in a manner which the Plaintiff alleges was fraudulent, irregular and contemptuous of court orders.

9. The parties filed the following agreed issues for determination by the court, that is to say:-

1. *Who is the lawful owner of the suit property?*

2. *Was there a binding contract of sale over the suit property between the 1<sup>st</sup> Defendant and the Plaintiff? If yes did the Plaintiff fulfill the terms of the agreement to entitle her ownership of the property?*

3. *Was the Plaintiff married to Hezron Ndirangu?*

4. *Was the sale agreement(s) entered into between the 1<sup>st</sup> Defendant and Hezron Ndirangu fraudulent?*

5. *Has the Plaintiff been in possession of the suit property? If yes, since when?*

6. *Is the suit property developed? If yes, by whom?*

7. Was the transfer of the suit property from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant legal, procedural and regular?
8. Do the Defendants have a Defence against the Plaintiff's claim?
9. Is the Plaintiff entitled to the orders she has sought?

**Technical Issues**

10. On technical grounds, the Plaintiff avers that her claims against the three Defendants as contained in the Re-Amended plaint dated 25/09/2003 and filed in court on 6/10/2003 have not been contested by any of the three Defendants who failed to file any amended statement of defence to the Re-Amended plaint. The inference drawn the Plaintiff in this regard is that all the three Defendants admit the Plaintiff's allegations as provided under Order 6 Rule 9(3) of the Civil Procedure Rules which reads:-

*“9(3). Subject to sub-rule (4), every allegation of fact made in a plaint or counterclaim which the party on whom it is served does not intend to admit shall be specifically traversed by him in his defence to counterclaim; and a general denial of such allegations, or a general statement of non-admission of them, shall not be a sufficient traverse of them.” See **Pharmaceutical Manufacturing Company –vs- Novelty Manufacturing Limited [2001] 2 EA 521.***

11. On the above ground alone, the Plaintiff has urged the court to hold that the allegations of fraud on the part of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as pleaded in paragraphs 16 of the Re-Amended plaint have been admitted and enter judgment in favour of the Plaintiff as prayed in the plaint. Paragraph 16 of the Re-Amended plaint reads:-

*“16. The Plaintiff states that the action of the 1<sup>st</sup> Defendant and deceased Hezron Ndirangu is illegal, unlawful and fraudulent in that they purport to transfer the Plaintiff's plot without her knowledge, consent and or authority.”*

**PARTICULARS OF FRAUD OF THE 1<sup>ST</sup> DEFENDANT AND THE DECEASED HEZRON NDIRANGU**

- (a) *Purporting to enter into a sale agreement over the suit premises while fully aware there was a valid sale agreement between the Plaintiff and 1<sup>st</sup> Defendant for which consideration had been given and in respect of which parties had partly performed.*
  - (b) *Colluding to transfer the suit premises to the deceased while fully aware that the 1<sup>st</sup> Defendant had received full consideration for the suit premises from the Plaintiff.*
  - (c) *Purporting to enter into a sale agreement in respect of the suit premises without the knowledge or consent of the Plaintiff while fully aware that the Plaintiff was the beneficial owner of the said premise.*
  - (d) *Conspiring to defraud the Plaintiff and to dispossess her off the suit premises.(sic)*
  - (e) *Causing the transfer of the suit premises to the 2<sup>nd</sup> Defendant while fully aware of a valid court order to maintain the status quo in relation to the transfer.*
  - (f) *Preparing the said transfer without the knowledge or consent of the Plaintiff while fully aware that the issue of ownership was pending before the court for determination.*
  - (g) *Conspiring to defeat the course of justice.*
  - (h) *Conspiring to defraud the Plaintiff and to dispossess her off the premises.(sic)*
12. Secondly, the Plaintiff avers that the transfer of the suit property from the 1<sup>st</sup> to the 2<sup>nd</sup> Defendant and the issuance of the Certificate of title dated 2/03/2001 was in contempt of court orders for maintenance of status quo made by Aluoch J (as she then was) on 10/06/1998 in the following terms:-

*“By consent, the present status quo that is if the transfer has not been signed the same should be stayed awaiting further orders of the court.”*

13. According to the testimony to the expert witness called by the court, Mr. Mogire advocate working with the 3<sup>rd</sup> Defendant, it would be irregular for the 3<sup>rd</sup> Defendant to approve a transfer and issue title documents when a matter was still pending in court or where a complaint was pending for determination. The Plaintiff also avers that the transfer of the suit property to the 2<sup>nd</sup> Defendant was shrouded in mystery, first because despite the transfer and issuance of the Certificate of lease, the records at the relevant Department of the 3<sup>rd</sup> Defendant were never changed into the name of the 2<sup>nd</sup> Defendant and secondly that there were two Agreements of Sale both of the same date, one specifying the property being sold while the other one was silent, and thirdly,

because the 1<sup>st</sup> Defendant who was and still is the registered owner of the suit property was never called to testify in the case though she was represented by counsel.

### **The Plaintiff's Evidence**

14. The Plaintiff testified as PW1. She gave the history of how she acquired the suit property from the 1<sup>st</sup> Defendant in 1989 and what steps she took to ensure that the suit property passes to her. The Plaintiff also produced documents to support her case.
15. By the Agreement dated 21/08/1989 the 1<sup>st</sup> Defendant agreed that by the said Agreement which she indicated she had read and understood, she ceased to be the owner of the suit property which she said now belonged to Margaret W. Warima and that she (1<sup>st</sup> Defendant) had no other claim whatsoever on the plot. The 1<sup>st</sup> Defendant also agreed to offer her full assistance for any correspondence or transfer of ownership concerning the suit property at an appropriate time.
16. PW1 also stated that she paid the full purchase price of Kshs.95,000/= with the last payment of Kshs.75,000/= being made by cheque (a copy of which was produced as PExhibit 1). The Plaintiff also produced some receipts that is to say PExhibit 3A-3N being payments towards the outstanding loan amount to the Housing Development of the Nairobi City Commission. Though all the receipts are in the name of the 1<sup>st</sup> Defendant, PW1 explained that the payments had to be paid in that manner to facilitate transfer of the suit property into her (PW1's) name after clearance of all the loan monies.
17. It was also PW1's evidence that soon after execution of the Agreement of Sale dated 21/08/1989, she took possession of the suit property and commenced construction. PW1 said that the suit property houses a number of tenants. This evidence by PW1 was corroborated by PW2, one Gideon Murori and PW3, Veronica Wambui. PW4, Mr. P.S. Mburu Kinyanjui, testified that he is a neighbour of PW1 and that he had known PW1 as the owner of the suit property since 1990. PW4 also testified that it was him who introduced PW1 to the building contractor. PW5 was Samson Otieno, whose testimony it was that he took charge of the construction on the suit property; that the construction took about 8 months to complete.
18. PW1 also testified that she had all along paid rates and land rent in respect of the suit property as per PExhibits 7A and 7B. PW1 also exhibited Demand Letters from the City Council of Nairobi and also showed that she paid Kshs.9,200/= and 12,800/= respectively to stem off threatened evictions. The Plaintiff also produced as PExhibits 9 and 10 payment receipts for water and electricity.
19. PW1 also testified that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered into a fraudulent Sale Agreement for the same suit property and proceeded to procure transfers from the 3<sup>rd</sup> Defendant. It is to be noted here that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not file any amended defence to the Plaintiffs Re-Amended Plaint which contained all these allegations against them. The special expert witness called by the court confirmed the following facts regarding the suit property:-
  - (a) *The expert witness: He testified that the suit property was allocated to the 1<sup>st</sup> Defendant on the 8<sup>th</sup> September, 1988 by way of an Allotment letter dated 8<sup>th</sup> September, 1998.*
  - (b) *To be able to transfer property an Allottee is required to execute a sale agreement and give a Power of Attorney to the purchaser. This was to enable the council to prepare an Assignment to be signed by the purchaser and sealed by the Town Clerk and his worship the Mayor. The Assignment is required to be registered at the lands department.*
  - (c) *For the transfer to be effected the Housing Department Committee must authorize by way of an approval in a duly constituted meeting of the committee.*
  - (d) *The witness testified that all the above was never followed. The plot is still registered in the names of Phyllis Wanjiru Thairu according to the records at the Housing Development Department.*
  - (e) *Further the witness testified that there is evidence of the Agreement between the Plaintiff and the 1<sup>st</sup> Defendant entered on 21<sup>st</sup> August, 1989. It is his evidence that upon the filing of the suit, the transaction was held in abeyance to await the outcome of the court case. He confirmed to the court that as at the time he gave evidence the property was still in the name of the 1<sup>st</sup> Defendant.*

### The Defendants' Evidence

20. The 2<sup>nd</sup> Defendant, Grace Wangechi Ndirangu testified and said she was the widow to Hezron Ndirangu. She admitted that she did not serve the Plaintiff with citations when she took out Letters of Administration in respect of her husband's estate. She also testified that she only came to know of this suit upon the death of her husband, but added that she did not know the Plaintiff to be wife to her deceased husband. She also stated that her deceased husband had informed her that he had bought the suit property and that there were tenants in it.

### The Plaintiff's Submissions

21. Counsel for both parties filed written submissions. Counsel for the Plaintiff filed their submissions on behalf of the Plaintiff. It was submitted that the Plaintiff's claims as per the Re-Amended Plaint remain uncontroverted; that the Defendant's evidence is full of contradictions and therefore that the same lacks credibility. Counsel for the Plaintiff pointed out the following as some of the inconsistencies in the Defendants' case:-

- (a) *That the Sale Agreement dated 27/11/1997, namely DExhibit 4 contradicts the Agreement produced by Hezron Ndirangu (deceased) as Exhibit "HN1" annexed to the deceased's affidavit sworn on 10/12/1998.*
- (b) *That Mr. Migos Ogamba (DW2) the advocate who drew and witnessed the conflicting agreements was unable to explain the discrepancies in those two agreements, only saying that the correct agreement was the version annexed to PExhibit 13.*
- (c) *That whereas the deceased clearly stated that he purchased the suit property for Kshs.95,000/= the contradictory agreements show the purchase price to be Kshs.89,000/= as per DExhibit 6.*
- (d) *That the evidence of DW1 – the 2<sup>nd</sup> Defendant – contradicts the sale agreement dated 11/11/1997, that it could not be true that the suit property was being constructed in 1992 and 1993 because PExhibits 13 and 14 showed that by then the suit property had not been purchased.*
- (e) *There is a glaring 8 year lapse between the payment by cheque of Kshs.75,000/= and the date of the agreement made on 27/11/1997.*
- (f) *That there is no evidence to support the Defendant's contention that the Plaintiff defaulted in making payments towards the purchase price.*

Because of the above alleged discrepancies, the court is being asked to disregard the evidence given by the Defence witnesses, namely DW1 and DW2.

22. The Plaintiff's counsel further submitted that the Plaintiff has proved her case way above the standards required in civil cases; that the evidence by Plaintiff that she purchased the suit property has not been controverted; that failure by 1<sup>st</sup> Defendant to come to court and testify should be weighed in favour of the Plaintiff and that if 1<sup>st</sup> Defendant had been called as a witness, she would not have given evidence that was favourable to the 2<sup>nd</sup> Defendant.

23. Counsel for the Plaintiff cited two authorities to buttress the Plaintiff's case, namely **Mutsonga –vs- Nyati [1984] KLR 424** and **Koinange & 13 Others –vs- Koinange [1986] KLR 23**. Relying on the **Koinange case**, the Plaintiff submitted that she had proved all allegations of fraud against the Defendants. It was also submitted that the records at the City Council of Nairobi touching on the suit property have never been changed which can only mean that no transfer to the 2<sup>nd</sup> Defendant has ever been effected.

### The Defendant's Submissions

24. The Defendant's submissions are dated 7/04/2009 and were filed in court on the same day. Regarding ownership of the suit property, counsel for Defendants submitted that the 2<sup>nd</sup> Defendant is the lawful registered owner of the suit property vide the Certificate of Lease issued by the City Council of Nairobi (DExhibit 7). The Certificate of Lease is dated 2/03/2001. Counsel for the Defendants argued that the Plaintiff has produced no tangible evidence to show that she is the registered owner of the suit property or that she bought the same.
25. On the allegations of fraud, counsel for the Defendants submitted that these were not proved. First, it was argued that there is no evidence of a valid court order that could have stopped the sale transaction between 1<sup>st</sup> and 2<sup>nd</sup> Defendants, since the suit had been

dismissed by Justice Kasanga Mulwa for want of prosecution resulting in a decree that was exhibited as DExhibit 6. Counsel for the Defendants referred to other interlocutory applications to the effect that by the time the Certificate of Lease to the 2<sup>nd</sup> Defendant was issued, there was no binding court order that could have stopped the transfer from the 1<sup>st</sup> to the 2<sup>nd</sup> Defendant.

26. On the Plaintiff's allegation that the Defendants have no defence to the Plaintiff's Re-Amended plaint; counsel for the Defendants submitted that there was no need to do so since the Plaintiff's claim had been traversed seriatim. Counsel also submitted that the evidence by DW2, Mr. Omondi clearly showed that the Sale Agreement on which the Plaintiff purported to rely was not valid for the reason that the same has not been drawn by council lawyers. Mr. Rombo, counsel for the Defendants urged the court not to rely on the evidence of Mr. Mogire who was called by the court on the insistence of counsel for the Plaintiff. On this same ground, counsel for the Defendants submitted that failure to follow procedure on the part of the Defendants was not pleaded by the Plaintiff, and that since it is trite law that parties are bound by their pleadings, the court should find that the Plaintiff could not adduce evidence on such a fact. It was further argued that even if procedure had not been followed, which is denied by the Defendants, such failure would not have vested the suit property in the Plaintiff. That in any event, no evidence of the requisite procedure was produced in court to assist the court infer that such procedure had been breached.
27. In conclusion, counsel for the Defendants submitted that the Plaintiff had failed to prove ownership of the suit property; that the Defendant having been issued with the 1<sup>st</sup> title deed, the same was indefeasible irrespective of whether fraud was committed or not and that neither fraud nor misrepresentation has been proved by the Plaintiff as against the Defendants.

#### **The Plaintiff's Reply to Defendant's Submissions**

28. Counsel for the Plaintiff submitted that there is no doubt that the Plaintiff has proved ownership of the suit property, particularly in view of the two conflicting Agreements (DExhibit 4 and PExhibit 13) that were signed by the same parties on the same date and before the same advocate.
29. On allegations of fraud, counsel for the Plaintiff submitted that the Certificate of Lease was issued on 2/03/2001 when the case was pending in court, and especially against the backdrop of evidence of the expert witness Mr. Mogire. Counsel for the Plaintiff also submitted that the Defendants have not availed such vital documents such as the Lease, Assignment for them to assert that the suit property belongs to the 2<sup>nd</sup> Defendant. That this suit was reinstated on 14/03/2000 so that by 2/03/2001 when the Certificate of Lease was issued to the 2<sup>nd</sup> Defendant the case was very much alive in court.
30. Citing the case of **ODD JOBS –VS- MUBIA [1970] EALR 476**, counsel for the Plaintiff urged the court to grant the orders sought.
31. The court has now considered the pleadings, including the defences filed by each of the three Defendants. The court has also considered the law and the submissions made by both parties. At the outset, I would like to point out that this is one of those cases that has made my heart bleed for the reason that there seems to have been total lack of transparency in the way transactions were made between parties. The court would also like to point out that it is not clear why the 1<sup>st</sup> Defendant did not give evidence in this case. Her evidence would have provided a critical link in the chain of events that led to the issuance of the Certificate of Lease dated 2/03/2001.
32. Having said the above, I now return to the issues that were framed and agreed by the parties to see whether indeed the Plaintiff has proved her case against the Defendants on a balance of probabilities. The first issue is who is the lawful owner of the suit property. From the evidence on record, I have no doubt in my mind that the 2<sup>nd</sup> Defendant is the lawful owner of the suit property. The said 2<sup>nd</sup> Defendant has in her possession a Certificate of Lease issued to her on 2/03/2001. Under the provisions of section 27 of the Registered Land Act (the RLA) the registration of the 2<sup>nd</sup> Defendant as the proprietor of the suit property vested in her the absolute ownership of that land. Section 27 of the RLA reads:

*“27. Subject to this Act –*

- (a) *the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto*

(b) *the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.”*

33. Further the provisions of section 28 of the RLA also cushion the 2<sup>nd</sup> Defendant’s interest in the suit land from being defeated, save as provided under the Act. The Plaintiff in this case has not adduced evidence to show that the 2<sup>nd</sup> Defendant or the 1<sup>st</sup> Defendant was holding the suit property in trust for her.
34. The second issue is whether there was a binding contract of sale between the 1<sup>st</sup> Defendant and the Plaintiff. My answer to this question is in the negative. The purported contract of sale between the Plaintiff and the 1<sup>st</sup> Defendant lacks all the ingredients of a valid agreement for sale. It does not show who drew it and further the names of the parties are inserted in hand. Although the document appears to have been duly stamped, it does not meet the parameters for a validly drawn agreement for sale. Having answered the first part of the second issue in the negative, it follows that whatever the parties may have done under the purported sale agreement was null and void.
35. The third issue is whether the Plaintiff was married to Hezron Ndirangu the husband of the 2<sup>nd</sup> Defendant. From the evidence on record, it is not proved that the Plaintiff was ever married to the said Hezron Ndirangu. There is no evidence of either a traditional or civil marriage having taken place between the Plaintiff and the said Hezron Ndirangu. There is no evidence of any children having come out of the said union. Further, none of the witnesses called by the Plaintiff stated that the Plaintiff lived with Hezron Ndirangu as man and wife. It was incumbent upon the Plaintiff to ensure that she left no stone unturned in letting the court know that she was married to Hezron Ndirangu.
36. Regarding issue number four, it is admitted that there were two agreements of sale between the 1<sup>st</sup> Defendant and Hezron Ndirangu. DW2, Mr. Julius Migo’s – Ogamba advocate explained that the parties wanted it that way, and that it was the agreement in which both the suit property and the purchase price were indicated that was to be used for Stamp Duty purposes. I have no reason to doubt that explanation. Further, having found that the purported sale agreement between the Plaintiff and the 1<sup>st</sup> Defendant was null and void, I do not think that there was anything fraudulent about the Sale Agreement(s) between the 1<sup>st</sup> Defendant and Hezron Ndirangu. Infact the evidence of DW1 – Rowlands Omondi Achieng confirms that all the transactions between the 1<sup>st</sup> Plaintiff and Hezron Ndirangu were done in accordance with the law, including the donation of the Power of Attorney by the 1<sup>st</sup> Defendant to Hezron Ndirangu. DW1 also stated that had it not been for the death of Hezron Ndirangu at the assignment of lease stage by the City Council of Nairobi, the Certificate of Lease issued to the 2<sup>nd</sup> Defendant in 2001 would have been issued directly to the said Hezron Ndirangu.
37. What is the answer to issue number 5. Yes, it is true that the Plaintiff has been in possession of the suit property from as early as 1990 or thereabouts. The evidence that is before the court is that the Plaintiff has been in possession of the suit property as tenant, alongside other tenants. Admittedly the suit property is developed. The Plaintiff says she developed the property, but she did not produce documentary proof for purchase of materials in her name. The 2<sup>nd</sup> Defendant testified that her late husband is the one who paid the purchase price of the suit property and though the Plaintiff may have been on site doing construction, it does not mean that she is the one who financed the development of the suit property.
38. As regards issue number seven, I am satisfied that the transfer of the suit property from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant was legal, procedural and regular. I have already referred to the evidence of DW1 and I need say no more on the point. Accordingly, I find that the Defendants have a defence against the Plaintiff’s claim for the reasons that the 2<sup>nd</sup> Defendant has a Certificate of Lease issued to her by the 3<sup>rd</sup> Defendant in 2001 and that the issuance of the said Certificate of Lease was done in accordance with the law.
39. The upshot of what I have said above is that the Plaintiffs claim against the Defendants has no merit. The same is hereby dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Orders accordingly.

**Dated and Delivered at Nairobi this 17<sup>th</sup> day of March, 2010.**

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:-

Miss Ndirangu (present) for the Plaintiff/

Mr. Rombo (present) for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants

Holding brier for Nyaboke for 3<sup>rd</sup> Defendant

Weche - court clerk