



REPUBLIC OF KENYA
HIGH COURT AT NYERI

CIVIL CASE 70 OF 2007

KAGIRI WAMARWE PLAINTIFF

VERSUS

SAMUEL KIBUU MAINA 1ST DEFENDANT

PAUL MURIUKI MAINA 2ND DEFENDANT

J U D G M E N T

In this suit commenced by way of a plaint dated 27th August 2007 and filed in court on 29th August 2007, **Mr. Kagiri Wamarwe** hereinafter referred to as the plaintiff claims against **Mr. Samuel Kibui Maina** and **Paul Muriuki Maina**, hereinafter referred to as the 1st and 2nd defendants respectively:-

- (a) A declaration that the agreement between him and the defendants is invalid and void ab initio.**
- (b) A declaration that the registration of the defendants as owners of Nyeri/Naromoru/ 1770 is fraudulent and an order for cancellation of the title to Nyeri/Naromoru /1770.**
- (c) An order for rectification of the land register in respect of Nyeri/Naromoru/1770 so as to reinstate the plaintiff as the registered owner.**
- (d) A permanent injunction restraining the defendants by themselves, their servants, agents or employees and or anyone claimng under them from entering upon, trespassing on, subdividing, transferring, charging, selling, alienating or in any other way whatsoever from interfering with the plaintiff's quiet enjoyment of land parcel Nyeri/Naromoru/ 1770 or any portion thereof.**
- (e) Costs of this suit and interest at court rates.**

The suit was informed by the following facts; the defendants are the registered owners of that piece of parcel of land known as **Nyeri/Naromoru/170** measuring approximately 4 hectares hereinafter referred to as "*the suit premises*". Prior to the registration of the defendants as proprietors of the suit premises, the plaintiff was the registered owner thereof. On or about 5th May 2006 the Plaintiff and defendants entered into an agreement whereof the defendants agreed to lend the Plaintiff Kshs.300,000/= on the strength of the title of the suit premises being pledged to them as security. It was a term of the agreement that the loan was repayable within six months with interest calculated at 128.3% per month. At the same time the Defendants caused the Plaintiff to execute a transfer form over the suit premises as well as an application seeking land control board consent to transfer. On or about 5th and 8th May 2006, the defendants fraudulently obtained land control board consent and fraudulently caused the suit premises to be

transferred into their names. Particulars of fraud attributed to the defendants were; purporting to create a charge over the suit premises in total disregard of the law, colluding and purporting to have land control board consent issued without the knowledge of the plaintiff, transacting in total disregard of the legal requirement, misrepresenting to the plaintiff that the title was being offered as security in the event of default knowing and with intention of acquiring the suit premises, colluding with the land registrar to cause the suit premises to be transferred in their names hurriedly and in total disregard of the law; colluding with District Officer to have the land control board consent issued without the consent or involvement of the Plaintiff and finally transacting hurriedly to defeat challenges from rightful owners, hence the suit.

Upon being served, the defendants entered an appearance and filed a joint statement of defence and counterclaim. They stated that they purchased the suit premises from the Plaintiff vide a sale agreement dated 4th April 2006 for Kshs.1,500,000/=. Accordingly, the suit premises were validly regularly and legally transferred and registered in their names. They denied allegations of fraud attributed to them as aforesaid. They also denied that they were trespassers on the suit premises. The prayers for declaration, injunction and rectification were unavailable and the claim had no legal and or factual basis as the process by which the suit premises were acquired by defendants was not fraudulent at all but was open, voluntary and above board. In their counterclaim they prayed that the plaintiff do deliver up vacant possession of the suit premises to the defendants to enable them enjoy their proprietary rights over the suit premises as absolute proprietors thereof who hold indefeasible title.

First to testify was the Plaintiff. His testimony was along these lines; that previously he was the registered proprietor of the suit premises. On 5th May 2006, he approached the defendants to advance him a loan of Kshs.300,000/=. The defendants were shylocks. On that day they gave him Kshs.20,000/= and asked him for the title to the suit premises, transfer form duly executed as well as a duly signed application form for the land control board consent. He was to repay the loan in six months time totalling Kshs.770,000/= inclusive of interest. The agreement was reduced into writing in their offices. On 8th May 2006, he received a further Kshs.20,000/= from the defendants. The balance being Kshs.260,000/= was then transferred to the Plaintiff's account with KCB, Nyeri branch. However on the same date the defendants transferred the suit premises to themselves. The Plaintiff went on to testify that the transfer was not proper as he did not attend the land control board meeting for purposes of the consent. The consent given was thus fraudulent as he never sold the suit premises. A few days later the defendants started harassing his wife threatening her with eviction. Though he had not repaid the sum of Kshs.300,000/= to the defendants he was nonetheless willing to do so. He has a house on the suit premises, had planted trees and rear cows on the same. The plaintiff maintained that he never sold the suit premises to the defendants. All the documents used in the transfer were therefore fraudulent. He never appeared before an advocate on 4th April 2006 nor did he receive Kshs.1,500,000/= by way of purchase price. The alleged agreement of sale drawn by **Andrew Kariuki advocate** was thus a forgery. He therefore prayed for judgment in terms of the plaint and that the defendants counterclaim be dismissed with costs.

The Plaintiff was cross-examined at length by **Mr. Muthoni**, learned counsel for the defendants. The Plaintiff stated that he had no copy of the agreement for Kshs.300,000/= advanced to him as aforesaid. He had no witness to the transaction either. He never asked for a copy of the agreement. Though the agreement dated 4th April 2006 is said to have been drawn by **Andrew Kariuki advocate** he never saw him. He conceded that he signed blank forms for the application to the land control board and transfer forms. He signed the blank forms because he was in dire need for the money. He was required to repay the same in six months but had nothing to show that fact. Though the transfer form had his photograph, he did not know where the defendants got it from. He had refused to repay the amount because of breach of agreement by the defendants. Though he complained to the police with regard to the forgeries however he had nothing to show. Nobody has been charged with the alleged forgery. He conceded though that he had been sued by his wife with regard to the suit premises. But could not recall what became of the suit. However he immediately recalled that the wife had lost to him in the court of appeal.

In support of his case, the plaintiff called **Francis Sospeter Maina Munuhe** as a witness. He testified

that he has been a member of Kieni East land control board since 2004. For a consent to be given the applicant must make the application accompanied by official search certificate, receipt for payment of the application and if the applicant is married he/she must be accompanied by the spouse. On 19th April 2006, there was the land control board meeting. However the plaintiff did not attend. The suit premises were not among those for discussion on that day. The minutes showing that the suit premises were discussed on that day are not genuine. No consent was given on that day.

Cross-examined by **Mr. Muthoni**, the witness responded as follows; that he had nothing to show that he was a board member and that he had not been send by the board to testify. Rather he had been summoned by the Plaintiff. Nor did he have the agenda for the meeting of the day.

The 2nd witness called by the Plaintiff was the Assistant Commissioner of police, **Emmanuel Kenga**. He is the in-charge of document examination section of the C.I.D. headquarters, Nairobi. His daily duties are examination of disputed documents and questioned signatures. On 1st November 2007 his office received exhibits from **Messrs Kairo Mbutia** and **Kiingati advocates** requesting examination of the agreement for sale dated 4th April 2006 and specimen signature of the Plaintiff. The request was to examine the questioned signature with standard signature provided. He subjected the signatures to the equipments in the laboratory to determine individual characteristics on the signatures. He found that the characteristics on the questioned signature were not similar to those of the standard signature. The questioned signature shows a different style. Thereafter he prepared the report dated 5th November 2007 which he tendered in evidence.

Cross-examined by **Mr. Muthoni**, the witness maintained that one cannot disguise a signature and handwriting.

The final witness called by the Plaintiff was chief inspector **Stephen Mutira**. He is the deputy in charge C.I.D, Nyeri. On 3rd June 2009, he received summons requiring him to produce an inquiry file number 5 of 2006. The inquiry was in respect of a dispute reported by the D.C. Nyeri where the defendants were suspects. It was in respect of the suit premises. The allegation was that the said suit premises had been fraudulently transferred to the defendants without the consent and knowledge of the Plaintiff. Investigations were commenced to establish the circumstances of the transfer. The investigations have not been completed to date partly because as the investigations were on going this suit was filed. Consequently the investigations were suspended pending the outcome of this suit. The witness then tendered in evidence the inquiry file. The statement of the 1st defendant talks of the circumstances of the transaction. The transaction was on 8th May 2006 and amount paid was Kshs.770,000/=.

Cross-examined by **Mr. Muthoni**, the witness stated that the inquiry is still pending and nobody had so far been charged. The parties attended land control board and consent was given. With that evidence, the Plaintiff closed his case.

For the defence, only the 1st defendant testified. His testimony was as follows; he was an insurance agent and knew the Plaintiff. Sometimes in 2005, the Plaintiff approached him and offered to sell to him the suit premises since he had financial problems. The 1st defendant did not have money then and asked him to come in 2006. He came back on 5th May 2006 and negotiated the purchase price to Kshs.1,500,000/=. The 1st defendant approached his brother, the 2nd defendant so that they could buy the suit premises jointly. The agreement was reduced into writing on 4th April 2006 by **A.K. Kariuki advocate**. Before they could part with the purchase price, the defendants requested the plaintiff to book an appointment with the land control board for the necessary consent. The purchase price was paid to he plaintiff before the said advocates in cash. Between the two defendants, they each paid Kshs.770,000/=. On 8th May 2006 they appeared before the board. He tendered in evidence the sale agreement, application forms for the consent duly filled and signed by the plaintiff as well as transfer form duly executed. Subsequent thereto they were issued with the title deed which he also tendered in evidence. The plaintiff had requested to be given time to vacate the suit premises latest by 30th December 2006. In January 2007, the 1st defendant went to the suit premises and found a woman thereon and when he asked her whether the

plaintiff had talked to her about the suit premises, she attacked him with stones. He started tracing the plaintiff. Four months down the line, he managed to get the plaintiff who confirmed to him that he had sold him the suit premises and he should evict the woman. He did not pursue the eviction as advised by the plaintiff. Later, the plaintiff called on him again and demanded a further Kshs.20,000/= and when the 1st defendant refused the plaintiff threatened him that he would never get the suit premises. He therefore prayed for the suit to be dismissed with costs and judgment entered as prayed in the counterclaim.

The 1st defendant was cross-examined by **Mr. Kiingati**, learned counsel for the plaintiff. It was his case that he first met the plaintiff in 2003 when he told him that he had money problems and wanted to sell the suit premises. However they could not discuss the value of the suit premises and purchase price as he had not seen the suit premises. In March 2006 they met again in the presence of the 2nd defendant. They discussed the value of the suit premises and when they could visit the same. They visited the suit premises on 2nd April 2006. The plaintiff wanted to sell the same for Kshs.2,000,000/=. On 4th April 2006 the duo went to the plaintiff's advocate, **A.K. Kariuki**, who drew the sale agreement and the Plaintiff was paid in cash Kshs.1,500,000/=. At that time the 1st defendant had not seen the title deed nor had he received a transfer form duly signed. Neither had he seen the application for the consent. The money was not paid to the advocate to hold in trust pending completion of the transaction. Rather it was paid to the plaintiff directly as they trusted him. He had never known the plaintiff before. Consent was eventually given and the suit premises were then transferred to hem. He denied that they advanced the plaintiff Kshs.300,000/= and was to refund Kshs.770,000/= within 6 months inclusive of interest. He also denied having deposited any money in his account. However Exh. 2 showed a transaction of Kshs.260,000/= on 8th May 2006 which was a direct deposit. The deposit slip showed that the money was deposited into the plaintiff's account with KCB by **Paul Muriithi**. The documents were lodged with the lands office on 8th May 2006 and the title deed was issued the following day. The 1st defendant conceded that he did not have the stamp duty valuation form for purposes of stamp duty. He however maintained that they had paid stamp duty though he had no prove of such payment. He could not even remember the amount paid as stamp duty. He conceded having recorded a statement with the police dated 20th July 2006. This was because of harassment by the police. That is why he signed the statement. The dispute had sucked in the permanent secretary, the provincial Commissioner and District Officer. Part of the information in the statement was correct though. With that the defendants closed their case.

Parties thereafter agreed to file and exchange written submissions. This was subsequently done. I have carefully gone over those submissions together with the authorities cited.

So what are the issues for determination in this case? They were well captured by the plaintiff in his written submissions. These are

- (1) Whether the Plaintiff was lent the sum of Kshs.300,000/= by defendants repayable within six months in the sum of Kshs.770,000/= inclusive of interest.**
- (2) If so whether such agreement was valid.**
- (3) Whether the Plaintiff entered into a valid sale agreement with the defendants for the sale of the suit premises.**
- (4) If so whether the plaintiff was paid the sum of Kshs.1,500,000/=.**
- (5) Whether the transfer of the suit premises to the defendants was fraudulent.**
- (6) Whether the plaintiff is entitled to the orders prayed for in the plaint.**
- (7) Whether the defendants are entitled to the orders sought in the counterclaim.**
- (8) Who should bear the costs of the suit**

On my part I would add the following as a further issue.

(9) Whether this suit is res judicata.

Before I deal with the above issues I must state from the onset that the 1st defendant struck me as a wholly unreliable and untruthful witness. Indeed his evidence was contradictory and lacked consistency and one could not tell what his case was all about. For instance in his evidence in chief he stated that he first met the plaintiff in 2005. However he did not amplify the circumstances under which they met. He made it appear like the Plaintiff out of the blue merely walked to him and offered to sell the suit premises to him. He also testified that the second time they met was on 5th May 2006. During cross-examination he said that he first met the Plaintiff in May 2003 and the second time in March 2006. In re-examination he said he first met the Plaintiff in 2003, then he met him again the following year, 2004. The 1st defendant testified that the plaintiff approached him at least a year or two before the transaction. The Plaintiff apparently had money problems. How then did he know that the defendants could assist him resolve his financial problems. During the first encounter, the 1st defendant never discussed with the Plaintiff the value of the suit premises. Yet during the 2nd encounter, one year or so later, the defendants had the money. How could they have known that the Plaintiff would sell the suit premises at Kshs.1,500,000/= and kept the money ready even before they had seen the suit premises. Further the 1st defendant testified that the sum of Kshs.1,500,000/= was paid to the Plaintiff. This is a substantial sum of money and one would obviously be looking for evidence as to where it came from. However the defendants were content with saying that they had kept the money in their houses. This is simply incredible. Even if they had kept the money in their houses, surely it must have come from somewhere. It is this source that the defendants should have told the court so that they could be believed. There is evidence that the defendants paid the money directly to the Plaintiff without even asking for acknowledgment or even security. Their answer was that they trusted the Plaintiff. How do you entrust someone with such a substantial amount of money when you hardly know such a person? They had only met twice or thrice on previous occasions. Prior to that they were all strangers to each other. If this was a genuine transaction and since an advocate was involved, the defendants would have paid the money to the said advocate **A.K. Kariuki esq.**, to hold in trust for the Plaintiff pending completion of the transaction. To cap it all, the defendants surrendered the money to the plaintiff, even before the plaintiff had executed the transfer documents nor even the application for land control board consent. This is on the basis that they trusted the Plaintiff. That is simply incomprehensible. So much for credibility of the 1st defendants.

On the other hand I found the evidence of the Plaintiff consistent and credible. The evidence of PW3, Emmanuel Kenga corroborates the evidence of the Plaintiff that the purported sale agreement was a forgery. Much as the defendants challenged the evidence of this witness on the basis that the agreement submitted for examination being a photocopy could easily be manipulated, the witness was nonetheless categorical that one cannot disguise a signature and or handwriting. I believe him. It would appear thus that the purported agreement had a forged signature purported to be that of the Plaintiff. That agreement was however drawn by a prominent advocate of this court. The defendants would have absolutely nothing to lose if they had called this advocate to testify to counter the Plaintiff's claim that he never knew him nor did he appear before him to execute the sale agreement. Similarly the transaction seem to have been hurriedly conducted in the circumstances leading to only one conclusion that the same was not above board as correctly submitted by **Mr. Kiingati**.

From the evidence on record it does appear to me that actually the Plaintiff sought from the defendants a loan of Kshs.300,000/=. He was paid Kshs.40,000/= in cash on two occasions and the balance thereof of Kshs.260,000/= was directly credited to his account by the 2nd defendant on 8th May 2006. The Plaintiff tendered in evidence a bank statement and a deposit slip showing such credit. The 2nd defendant did not testify. It must be taken therefore that what is alleged against him as aforesaid must be true. The 1st defendant did not allude to this amount in his testimony. Nor did he deny that the 2nd defendant paid the said money into the account of the Plaintiff. So for what purpose was the 2nd defendant paying the amount into the account of the Plaintiff. It must be on the basis of what the Plaintiff has stated in his evidence. I have also looked at the 1st defendant's statement in the inquiry file number 5 of 2006. What

he stated in the evidence in this court is a complete departure from what he recorded in his statement. He makes no mention of the 2nd defendant as a joint purchaser of the suit premises. He does not talk of the purchase price being Kshs.1,500,000/=. He talks of meeting the Plaintiff in the company of his wife. He never said so in his evidence. He talks of paying only Kshs.770,000/= to the Plaintiff as the purchase price. Contrary to what he stated in his evidence, he never attended the land control board meeting for the consent. Rather on 8th May 2006, he went with the Plaintiff to the D.O's office for the consent. He was left outside as the Plaintiff entered the office. Soon thereafter the plaintiff allegedly came out with the consent to the transfer. The sum of Kshs.770,000/= allegedly paid to the Plaintiff as aforesaid would seem to tie in with the Plaintiff's claim that he was advanced by the defendants a sum of Kshs.300,000/= on condition that he repays the same in 6 months in the sum of Kshs.770,000/= inclusive of interest. Towards this end he was given kshs.20,000/= in cash on the same day, a further 20,000/= on 8th May 2006 and the balance thereof, of Kshs.260,000/= was credited into his account by the 2nd defendant on the same day. He was then made to sign a blank transfer form and an application for land control board consent on the same date. I take judicial notice of the fact that land control boards do not meet daily to transact business. Accordingly I find it incredible that the Plaintiff would simply walk into a D.O's office and without first having filed an application for consent walk out with the consent duly issued. The totality of the foregoing is that the plaintiff was lent a sum of Kshs.300,000/= by the defendants repayable within 6 months as Kshs.770,000/= inclusive of interest.

Was the agreement valid? I do not think so. The defendants were not a financial institution to lend money and in return charge the property to themselves. The Plaintiff testified that the defendants were shylocks. This is an illicit and illegal trade. It is not recognised by our laws. Being a non-financial institution having advanced the Plaintiff the amount, they had no right to charge such high excessive, exorbitant and unconscionable interest of Kshs.128.3% on the Plaintiff.

Did the Plaintiff enter into a valid sale agreement with the defendants for the sale of the suit premises? From what I have already observed hereinabove, the answer must be obvious to all and sundry; NO! Besides what I have already stated, the defendants were unable to tender in evidence valuation forms for purposes of stamp duty, receipts for payment of stamp duty, receipts for payment of the transfer and receipt for payment of application for land control board. These documents would ordinarily be in the possession of the purchaser, i.e. the defendants. It is noteworthy that they were served with Notice to produce the said documents by the Plaintiff. They did not. As correctly submitted by **Mr. Kiingati**, the reason why the same were not produced was because the documents do not exist. The relevant procedure for sale and transfer of land was thus not followed including payment of stamp duty, application for land control board consent and transfer. In the absence of such documentation the subsequent registration of the suit premises must have been fraudulent. As again correctly pointed out by **Mr. Kiingati**, it is noteworthy that whereas the 1st defendant alleged that they went for land control board consent on 8th May 2006, the suit premises were transferred on the same date. The speed with which the transaction was conducted certainly raises eyebrows. What comes out of the statement of inquiry by the 1st defendant is that there was actually no land board meeting on that day and even if there was the suit premises were not the subject of deliberations. The 1st defendant categorically stated that he was left outside the D.O's offices as the Plaintiff entered. However where he was standing he could see the D.O. signing the consent. I do not think that the business of the land control boards are transacted in that manner. No wonder PW2 stated categorically that as a board member of the Kieni East land control board he was certain that the suit premises were not among those for discussion on the material day. Though **Mr. Muthoni**, learned counsel for the defendants submitted that the Plaintiff was conveniently feigning ignorance of the relevant documents, to wit, agreement made on 4th April 2006, application for land control board consent and transfer form amongst others, it should be noted that the sale agreement has been impugned on account of the forged signature of the Plaintiff. Further it was within the reach of the defendants to produce the other documents. They were duly served with the notice to produce. They failed to comply leading to the irresistible conclusion that the transaction was not above board. The answer to issue number 3 framed is an emphatic NO!

Arising from the answer to issue 3 aforesaid, the answer to issue 4 should also be obvious. The Plaintiff was not paid Kshs.1,500,000/= being the alleged purchase price. As already stated the sources where this

money came from was disclosed by the defendants. They all just said that they retrieved the money from their respective houses. The statement under inquiry by the 1st defendant varies in material particulars with the evidence he tendered in court. I have already pointed out elsewhere in this judgment those variances.

Was the transfer of the suit premises fraudulent? From the totality of the evidence tendered, there is no doubt at all that, that was indeed the case. The Plaintiff specifically pleaded fraud and gave the particulars thereof. There is no doubt on the evidence that the defendants colluded with the D.O. to have the land control board consent issued without the knowledge and consent of the Plaintiff, the hurried manner in which the whole transaction was attended to leaves no doubt at all that it was not done in good faith, the defendants created a charge over the suit premises fraudulently and in total disregard of the law and finally the defendants misrepresented to the Plaintiff that the title was being offered as security in the event of default knowing and with intention of acquiring the suit premises for themselves. Much as the Plaintiff did not lead evidence specifically on each and every aforesaid particulars of fraud aforesaid, the evidence led taken in totality points at those particulars of fraud.

Is the Plaintiff's suit Res judicata? To say yes in the circumstances of this case would be stretching that doctrine too far. First and foremost, the defendants did not raise it in their pleadings. However as it is a question of law it can be raised at any time. In support of the submission that the suit was res judicata, **Mr. Muthoni** referred to the case involving the Plaintiff and his wife with others. This was civil appeal number 181 of 2002. In this case the Plaintiff's wife, **Margaret Mumbi Kagiri** had sued the Plaintiff, District Land Registrar, Nyeri, Hon. Attorney General and Agricultural Finance Corporation. The dispute was a family dispute over various parcels of land which the Plaintiff had appropriated without the knowledge and consent of the wife. Included in those parcels of land was the suit premises. She wanted a declaration that the suit premises which were still registered in the name of the Plaintiff was joint property and that it ought to be registered in their joint names.

Under section 7 of the Civil Procedure Act, res judicata arises where a court hears a suit in which the matter directly and substantially in issue has been tried in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit. This is not the case here. The parties involved in this suit are not the same as in the civil appeal save for the Plaintiff. The issues canvassed in the civil appeal are not the same as in the instant case. Much as the suit premises were subject of litigation in the civil appeal, the cause of action was totally different from the one in the instant case. This suit cannot therefore be res judicata by any stretch of imagination.

The plaintiff having succeeded in his claim, there is no basis for the counterclaim. Finally as costs follow the event, I see no reason why the Plaintiff should not be entitled to the costs of the suit. However he would not be entitled to the costs of the counterclaim. Reason; he admitted having been loaned Kshs.300,000/= by the defendants. He was to repay the same. He has not done so to date. He cannot have his cake and eat it.

This court must do substantive justice to the parties herein. We must find a way for the defendants to be refunded the amount that the Plaintiff has freely agreed that he received from them as a loan. One would have expected that as a sign of good faith, the plaintiff should have in his pleadings and evidence offered to refund the money paid to him as aforesaid. Instead he pleads that he refused to pay back the amount because the defendants breached the agreement. The Plaintiff cannot have back his land and continue to appropriate Kshs.300,000/= loaned to him aforesaid. He will have to repay back to the defendants the sum of Kshs.300,000/= aforesaid. I note though that the defendants did not specifically pray for the refund of the money in the counterclaim. However I will invoke Section 3A of the Civil Procedure Act and order that the Plaintiff refunds the defendants the sum of Kshs.300,000/= with interest at court rates with effect from 8th May 2006.

In summary these are the orders I have made in this suit;

(a) Judgment is entered in favour of the Plaintiff as against the defendants jointly and severally

in terms of prayers (a), (b), (c), (d) and (e) of the plaint.

(b) The defendants' counterclaim is hereby dismissed with no order as to costs.

(c) The Plaintiff shall refund the defendants the sum of Kshs.300,000/= with interest therein at court rate from 8th May 2006 until payment in full.

(d) The refund aforesaid shall be within the next thirty days from the date of judgment failing which the defendants shall be at liberty to execute for the same against the Plaintiff.

Dated and delivered at Nyeri this 17th day of September 2009

M. S. A. MAKHANDIA

JUDGE