



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

**CIVIL CASE 182 OF 1992**

**GLADYS WANJIRU NGACHA ..... PLAINTIFF**

**VERSUS**

**1. TERESIA CHEPSAAT ..... 1<sup>ST</sup> DEFENDANT**

**2. PIUS KIBWETTI SEVREY ..... 2<sup>ND</sup> DEFENDANT**

**3. BERNAD KATHANGA ..... 3<sup>RD</sup> DEFENDANT**

**4. KERUGOYA/KUTUS MUNICIPAL COUNCIL) .....  
4<sup>TH</sup> DEFENDANT**

**5. THE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

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

This suit was commenced by way of a plaint dated 24<sup>th</sup> June 1992 and filed in court on 26<sup>th</sup> June 1992. In the said plaint, the plaintiff initially sought from the five defendants orders in terms:-

**“(a) That she is the legal owner of half share of**

**Inoi/Kerugoya/250/282**

**(b) And in the alternative and without prejudice to**

**(a) above – judgment against the 2<sup>nd</sup> and 4<sup>th</sup>**

**Defendants for a refund of Kshs.88,575/= paid to**

**the 1<sup>st</sup> defendant and Kshs.5700/= paid to the**

**4<sup>th</sup> defendant.**

**(c) Costs of this suit**

**(d) Interest on (b) and (c) above at court rates**

**(e) Any other relief this court may deem fit to grant”**

Subsequently thereto the plaint was amended twice on 19<sup>th</sup> October 1992 and 10<sup>th</sup> March 2008 respectively. The last amendment aforesaid was pursuant to leave of court granted on 6<sup>th</sup> March 2008. In this further amended plaint, the plaintiff now prayed that:-

**“(a) The said Plot rightfully belongs to the**

**Plaintiff.**

**(b) That the fraudulent sale between 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant be set aside, and declared null and void.**

**(c) That the 4<sup>th</sup> and 5<sup>th</sup> Defendants be ordered**

**to rectify the Records pertaining to the said Plot forthwith.**

**(d) A permanent injunction against 3<sup>rd</sup>**

**Defendant from interfering with and or otherwise dealing with the said plot.**

**(e) Costs against all the Defendants jointly and**

**severally and that Judgment be entered in the terms of the above orders with costs to the Plaintiff.”**

The Plaintiff’s claim was anchored on the fact that she and the 1<sup>st</sup> defendant were allegedly allocated **Inoi/ Kerugoya/250/282** which later became **Inoi/Kerugoya /19A** or is it **Inoi/Kerugoya/250**. Nonetheless I will henceforth refer to all of them as “*the suit premises.*” They were later issued with a letter of allotment. However the 2<sup>nd</sup> defendant, a husband of the 1<sup>st</sup> defendant later approached her and orally offered to sell to her the 1<sup>st</sup> defendant’s interest in the suit premises at Kshs.88,575/=. She paid the consideration after which she took possession and started developing the suit premises by depositing thereon building materials. Unknown to her however, the 2<sup>nd</sup> defendant on 5<sup>th</sup> June 1998 fraudulently sold and transferred the suit premises to the 3<sup>rd</sup> defendant for Kshs.100,000/=. A fictitious letter of allotment was subsequently obtained by the 3<sup>rd</sup> defendant from the 5<sup>th</sup> defendant and the suit premises were later registered in his name and certificate of lease thereof issued. Hence this suit.

Upon being served with the further amended plaint, **Messrs Machira & Co. Advocates** filed Amended defences on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. These defendants denied that the plaintiff and 1<sup>st</sup> defendant had been issued with a letter of allotment in respect of the suit premises as tenants in common. The 1<sup>st</sup> and 2<sup>nd</sup> defendants went on to deny that they entered into an oral agreement regarding the sale of the suit premises to the plaintiff and received the alleged purchase price. They also denied having put the plaintiff into possession of the suit premises or at all. To the 1<sup>st</sup> defendant, she was the rightful and sole owner of the suit premises which she had sold and transferred to the 3<sup>rd</sup> defendant. She denied that the alleged sale was fraudulent. As for the 3<sup>rd</sup> defendant, he maintained that he was the rightful owner of the suit premises which was subsequently registered in his favour having purchased the same from the 1<sup>st</sup> & 2<sup>nd</sup> defendants in vacant possession on 5<sup>th</sup> June 1990. He denied allegation of fraud and or illegality in the transaction attributed to him by the plaintiff. Subsequent to the purchase he was issued with certificate of lease under the directive of the 5<sup>th</sup> defendant and in the circumstances the Plaintiff’s claim against him was untenable in law and incompetent. The 3<sup>rd</sup> defendant acquired first registration of the suit premises after due process of law and in the circumstances his title cannot be impeached.

As for the 4<sup>th</sup> defendant, through **Messrs P.M. Muchira & Co. Advocates**, it denied all the plaintiff’s allegations against it. In the alternative it averred that the plaintiff’s further amended plaint was incompetent, bad in law and improperly before court for offending the provisions of order VI rule 7 (2) and (3) of the Civil Procedure Rules.

From the record, it would appear that the Attorney General did enter appearance on behalf of the 5<sup>th</sup> defendant but failed to file a defence.

Following the close of pleadings the hearing of the case then commenced before me on 30<sup>th</sup> September 2008. On that occasion, the plaintiff, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants were represented by **Messrs Mahan, Machira and Muchira**, learned counsel respectively. The Attorney General and or his representative for the 5<sup>th</sup> defendant was nowhere to be seen though. Having been satisfied that the Attorney General had been duly served with the hearing notice, going by the affidavit of service on record, I ordered the case proceed to hearing, the absence of the Attorney General and or his representative notwithstanding.

The plaintiff testified as follows, that she did not know the 1<sup>st</sup> Defendant. However she knew the 2<sup>nd</sup> defendant as a husband of the 1<sup>st</sup> defendant. She testified that she owned the suit premises which was allocated to her by the 4<sup>th</sup> defendant jointly with the 1<sup>st</sup> defendant. In support of that contention she tendered in evidence minutes of the 4<sup>th</sup> defendant's meeting held for that purpose on 10<sup>th</sup> July 1987. Subsequent to that meeting, they were issued with a letter of allotment which she also tendered in evidence. Sometimes later the 2<sup>nd</sup> defendant, who used to work in Kirinyaga District as a special branch officer was involved in a road traffic accident and approached the plaintiff for assistance. He asked for Kshs.88,575/- from the Plaintiff in return for the 1<sup>st</sup> defendant's ½ share in the suit premises. The 1<sup>st</sup> defendant apparently was a wife of the 2<sup>nd</sup> defendant. The plaintiff duly parted with the amount and took possession of the suit premises and started developing it. She spent Kshs.900,000/= on building materials and kept paying the stand premium due to the 4<sup>th</sup> defendant for the suit premises. However before she could commence construction she was informed by the 4<sup>th</sup> defendant that the suit premises had changed from **Inoi/Kerugoya/250/282** to plot **No. Kerugoya 19A** and was no longer hers. She complained to the District Commissioner on the turn of events to no avail. Later the 2<sup>nd</sup> defendant caused her arrest and she was locked up in police custody. In the process she lost some vital documents relating to the suit premises. She however had building materials on the suit premises. The 2<sup>nd</sup> defendant later sold the suit premises to the 3<sup>rd</sup> defendant. Much as she did not have title to the suit premises, nonetheless she was asking this court to assist her reclaim the suit premises since the transfer to the 3<sup>rd</sup> defendant was without her consent and was indeed fraudulent.

Cross-examined by **Mr. Machira**, learned counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the plaintiff stated that she owned plot **No. Kerugoya town/286** that was adjacent to the suit premises. That the suit premises had been let out by the 3<sup>rd</sup> defendant and was being used as a garage. That her building materials had since been removed from the suit premises. She conceded that she was aware that the 3<sup>rd</sup> defendant had a valid title to the suit premises and that the agreement between her and the 2<sup>nd</sup> defendant had been oral. Finally she opined that the 3<sup>rd</sup> defendant did not lawfully obtain the title to the suit premises.

Cross-examined further by **Mr. Muchira**, learned counsel for the 4<sup>th</sup> defendant, the plaintiff testified that the receipt issued to her in respect of the stand premium did not have the plot number and that it was not possible to tell for which plot she had made the payment. She conceded though that she no longer pays annual rates and premiums to the 4<sup>th</sup> defendant in respect of the suit premises. The same is however now being paid by the 3<sup>rd</sup> defendant. Finally she conceded that she did not have approved plans from the 4<sup>th</sup> defendant for her intended developments on the suit premises. With that testimony, the plaintiff closed her case.

At this juncture, **Mr. Machira** indicated to court that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were unavailable to testify. That their appearance was in any event of no consequence as their evidence would not affect the 3<sup>rd</sup> defendant's case. He therefore proceeded to dispense with their presence. He then called the 3<sup>rd</sup> defendant to the stand. The 3<sup>rd</sup> defendant testified that he was the registered proprietor of the suit premises. He tendered in evidence the certificate of lease issued to him by the 5<sup>th</sup> defendant on 24<sup>th</sup>

December 1993. That for the last 6 years or so he had let out the suit premises to a mechanic who runs a garage thereon. He went on to testify that on 5<sup>th</sup> June 1990 he had met the 2<sup>nd</sup> defendant who offered to sell him the suit premises at Kshs.100,000/= which amount he duly paid to him. Thereafter they proceeded to the 4<sup>th</sup> defendant and the transaction was processed and concluded. The plot was then transferred to him on 15<sup>th</sup> November 1990. A letter of allotment issued by the 5<sup>th</sup> defendant dated 23<sup>rd</sup> January 1991 thereafter followed. It is at this stage that the plot was changed to **Kerugoya 19A**. He followed through the demands contained in the letter of allotment and was subsequently issued with a certificate of lease. Since then he has been paying the annual rates and rent due to the 4<sup>th</sup> defendant for the suit premises. He produced a bundle of documents in support of his case. He denied that the Plaintiff had any building materials on the suit premises. Rather the same were on the Plaintiff's adjoining plot aforesaid. He therefore prayed for the dismissal of the suit with costs.

Cross-examined by **Mr. Mahan**, learned counsel for the Plaintiff, the 3<sup>rd</sup> defendant stated that the 2<sup>nd</sup> defendant did not show him a title when he offered to sell the suit premises to him. He only took him to the 4<sup>th</sup> defendant and signed away his interest in the suit premises. In any event the suit premises at the time did not have a title deed. Further there was nothing on the suit premises and was unoccupied. At that time he did not know that the plaintiff had a dispute if any, with the 1<sup>st</sup> defendant regarding the suit premises. That marked the close of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants' case.

It was then the turn of the 4<sup>th</sup> Defendant to testify. Through its deputy town clerk, it testified as follows; that; according to its records the owner of the suit premises was the 3<sup>rd</sup> defendant. The rent due to the 4<sup>th</sup> defendant has all along been paid by the 3<sup>rd</sup> defendant. The witness knew the plaintiff. According to him she owned the adjoining plot No. **20A, Kerugoya** for which she had been paying rent to them. He therefore prayed for the suit to be dismissed. Cross-examined by **Mr. Mahan**, the witness confirmed that he had been working for the 4<sup>th</sup> defendant since 1995. With that the 4<sup>th</sup> defendant's case came to a close.

At this juncture respective counsel suggested and which suggestion was endorsed by the court that they file and exchange written submissions regarding their respective positions in the case. Such written submissions were indeed subsequently filed and exchanged. I have carefully read and considered them together with the authorities cited.

To my mind there are only two issues in this dispute that calls for determination. These are one, between the plaintiff and the 3<sup>rd</sup> defendant, who is in law entitled to the ownership and possession of the suit premises and secondly, costs of the suit.

The Plaintiff in paragraph 9 of her further amended plaint pleaded thus **“By an Oral Agreement between the Plaintiff and the 1<sup>st</sup> Defendant the Plaintiff agreed to buy the 1<sup>st</sup> Defendant's half share and in these negotiations the 2<sup>nd</sup> Defendant being the husband negotiated the purchase price of Kshs.88,575/=, which the Plaintiff duly paid to the 2<sup>nd</sup> Defendant on behalf of the 1<sup>st</sup> defendant at the premises of the 4<sup>th</sup> defendant for the transfer of the half share on or before 22<sup>nd</sup> August 1989. The 2<sup>nd</sup> Defendant did not acknowledge the receipt of the said purchase price in writing.”**

From the foregoing and the Plaintiff's own evidence in court it is clear that the Plaintiff's case is based on an Oral Agreement for the sale of land and or interest therein. That agreement was not however between the Plaintiff and the 1<sup>st</sup> defendant but between the Plaintiff and 2<sup>nd</sup> defendant ostensibly acting on behalf of his wife, the 1<sup>st</sup> defendant. Although this oral agreement is alleged to have taken place sometimes in the month of August 1989, it is trite law that such oral agreement cannot sustain the instant action pursuant to the provisions of Section 3(3) of the Law of Contract Act as amended. Though the said provision of law has been the subject of several amendments since 1990, the bottom line is that this suit is unsustainable. Even before those amendments were enacted an Oral Agreement would only have sustained the plaintiff's claim in respect of the suit premises on certain stringent conditions, one, that the plaintiff had in part performance of the contract taken possession of the suit premises or any part thereof and secondly being already in possession, continued in possession in part performance of the contract and

had done some other acts in furtherance of the contract. Much as the plaintiff did claim that she took possession of the suit premises and started developing the same upon paying the purchase price, I doubt that indeed this is what happened. There is clear evidence that when the 3<sup>rd</sup> Defendant was shown the suit premises it was unoccupied. There is clear and unequivocal evidence that the building materials that the Plaintiff claims to have brought on the suit premises pursuant to the sale agreement were fact placed in her own plot neighbouring the suit premises. The Plaintiff admitted that much in cross-examination. If indeed the building materials had been placed on the suit premises by the Plaintiff as she wanted this court to believe how come they were removed and relocated to her own plot without as much as her protesting and or raising a finger. Further in her own evidence, she stated that she did not know the 1<sup>st</sup> defendant. She only knew the 2<sup>nd</sup> defendant. If that is the case, how come a letter of allotment would have been issued in their names jointly and yet they were strangers. I also note that from the alleged letter of allotment, the Plaintiff's names are in ink whereas the 1<sup>st</sup> defendant's was typed. Is not possible therefore that the Plaintiff's name may have been subsequently added on the letter of allotment thereby putting in question the authenticity of the said. The Plaintiff herself did not attempt to explain away this patent anomaly. Further it is the evidence of the plaintiff that she purchased the 1<sup>st</sup> defendant's interest through the 2<sup>nd</sup> defendant. If that be the scenario, where is the privity of contract between the Plaintiff and 1<sup>st</sup> defendant capable of enforcement? I discern none. On the whole I am inclined to believe the evidence of the 3<sup>rd</sup> defendant having considered all the circumstances of the case that when he purchased the suit premises, they were unoccupied. The 3<sup>rd</sup> defendant's evidence was not at all challenged by the Plaintiff's counsel in cross-examination and or in her written submissions. The 3<sup>rd</sup> defendant further unchallenged evidence was that he had been in occupation of the suit premises since purchase and that he had let it out to a mechanic who runs a garage thereon.

It should also be noted that the alleged payment of the sum of Kshs.88,575/= being the purchase price was never acknowledged by the 2<sup>nd</sup> defendant in writing. In any event how could he have sold something which did not belong to him! The totality of the foregoing is that the plaintiff has not been able to satisfy me with the provisions of section 3(3) of the Law of contract Act prior to and after the amendments.

What is even worse for the Plaintiff as properly submitted by **Mr. Machira** is that the alleged sum of Kshs.88,575/= was never paid to the 3<sup>rd</sup> defendant who is currently the registered proprietor of the suit premises. The Plaintiff therefore cannot sustain any claim or action against the 3<sup>rd</sup> Defendant in those circumstances. In any event even against the 1<sup>st</sup> defendant the Plaintiff was unable to adduce convincing evidence as to the alleged payment and receipt by the 2<sup>nd</sup> defendant of the sum of Kshs.88,575/= being the purchase price.

Again the Plaintiff's claim is anchored on an alleged letter of allotment. It has been held severally that a letter of allotment perse is nothing but invitation to treat. It does not constitute a contract between the offerer and Offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land. See **Lilian Waithera Gachuhi v/s David Shikuku Mzee HCCC No. 10 of 2003 (unreported)**. However the law on the issue could not have been succinctly stated than in the case of **Wreck Motors Enterprises v/s The Commissioner of Lands and 3 others, civil appeal number 71 of 1997**. In that case the court of appeal opined:-

**“In our view, the endorsement or the appending of his signature by H.E. the President on the applications to the Commissioner of Lands for the suit plot or for that matter any other unalienated Government Land is not sufficient to grant title over any land to anyone. H.E. the President only approves the application for consideration by the Commissioner of Lands for allocation of any such property. It does not amount to the applicants obtaining title to such lands. Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held. See *Dr. Joseph N. K. Arap Ng'ok v/s Justice Moijo Ole Keiyua & 4 Others, Civil Application No. NAI. 60 of 1997 (unreported)*.”**

**Sections 23(1) of the Registration of Titles Act reads as follows:-**

**“Section 23(1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misinterpretation to which he is proved to be a party.”**

**The pleadings do not disclose any fraud on the part of the second respondent. In such event, therefore, the second respondent is a bona fide purchaser for value without notice. His title takes precedence and is supreme over all other alleged equitable rights of title. The Act is very specific on this protection and sanctifies title. In such circumstances, it is now too late and irrelevant whether or not the Commissioner of Lands ignored the appellant’s application for the suit plot. It would not, either, help matters to go to trial to ascertain whether or not the Commissioner of Lands abused his discretion as a public officer.”**

What happened in the circumstances of this case? According to the evidence, the plot was allocated to the Plaintiff jointly with the 1<sup>st</sup> defendant according to the minutes of the meeting of the 4<sup>th</sup> Defendant tendered in evidence. Subsequently thereto they were issued with a letter of allotment. That letter is dated 16<sup>th</sup> October 1987 and I have perused it. The same was issued on certain terms and conditions that were to be met by the allottees. One of the conditions was that they were to pay forthwith Kshs.3,900/=. There was no evidence tendered that indeed that amount was paid. Further the allottees were to erect for occupation within 24 months of the commencement of the term to put up a building based on designs approved by the 4<sup>th</sup> defendant. The evidence on record is to the effect that the Plaintiff commenced construction if any in 1992. That cannot have been within 24 months of the grant. Further by her own admission and as correctly submitted by **Mr. Muchira**, she never sought and obtained the approval of her building plan from the 4<sup>th</sup> defendant as required by the letter of allotment. That being the scenario, the Plaintiff cannot call in aid of her case the alleged letter of allotment as she violated and assaulted without remorse the terms and conditions imposed therein. The letter of allotment aforesaid was thus rendered inoperative.

On the other hand, the 3<sup>rd</sup> defendant having obtained a letter of allotment in respect of the suit premises proceeded diligently to comply with all the terms therein and in the fullness of time was duly issued with a certificate of lease dated 24<sup>th</sup> December 1993 pursuant to the Registered Land Act. It is clear then that this was a first registration. What is the effect of first registration?

According to Sections 27 and 28 of the Registered Land Act, the 3<sup>rd</sup> Defendant’s registration is protected and cannot be impeached by the Plaintiff on the basis of her alleged Oral Agreement between her and another party or the letter of allotment. Section 27 aforesaid in particular provides inter alia:-

- (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.**

The 3<sup>rd</sup> Defendant’s registration being a First Registration this Court cannot impugn it. To do so will amount to an assault on Sections 142 and 143 of the same Act. It matters not that the 3<sup>rd</sup> defendant may have obtained the registration through fraud.

Section 143 aforesaid is explicit and is in these terms:-

- (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a**

**first registration** (emphasis provided) has been obtained, made or omitted by fraud or mistake.

**(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the Land, Lease or Charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.**

The orders sought by the Plaintiff herein if granted will in effect amount to rectification of the register. The 3<sup>rd</sup> defendant is the first registered owner of the suit premises. Though fraud was pleaded and particularised by the plaintiff no evidence was tendered in support thereof. Mr. Mahan, in his submissions was content with resting the Plaintiff's case that since the 1<sup>st</sup> and 2<sup>nd</sup> defendants did not testify, the plaintiff's allegation of fraud remained uncontroverted. I do not think that submission holds water. The end result is that it cannot be said that the 3<sup>rd</sup> defendant obtained title to the suit premises fraudulently or had prior knowledge of fraud or mistake, or caused such fraud or mistake or substantially contributed to the same. There was no evidence led in that direction. These provisions of the law again provide the 3<sup>rd</sup> defendant the necessary shield against the plaintiff's salvos. The law on this subject is actually settled. See **Ambale v/s Masolia (1986) KLR 241, Obiero v/s Opiyo & Others (1972) E.A. 227.**

It is trite law that fraud and particulars thereof must be specifically pleaded and proved at the trial. It is not sufficient to merely band them around without as much as endeavouring to prove them or any of them. This is what has befallen the Plaintiff in the circumstances of this case. Commenting on the issue, the court of appeal in the case of **Dr. C.O. Okere v/s Esther Nduta Kiiyukia & 2 others, HCCC No. 20 of 2004 (unreported)** stated.

**“In short, the title documents do not show any interest claimed by the Plaintiff. The Plaintiff has specifically alleged that the suit property was unlawfully registered initially in the name of the 2<sup>nd</sup> Defendant and thereafter in the name of the 1<sup>st</sup> Defendant due to fraud, collusion and/or negligence on the part of the three defendants. I entirely agree with the submissions made by the counsel for the Defendants that the particulars of those allegations have to be strictly proved and the onus to prove it lies on the party alleging the same (See Koinange & 13 Others v/s Koinange (1986) KLR 23). The said principles is trite law of evidence and in this case the burden of proof definitely does not shift to the Defendants. I respectfully disagree with the Plaintiff's contention that there was fraud or collusion or negligence on the part of any of the Defendants, solely because there is no evidence to even suggest the same. The 2<sup>nd</sup> Defendant derived a lawful title from the 3<sup>rd</sup> Defendant which is, in any event, indefeasible even on (sic) the face of fraud and the 1<sup>st</sup> Defendant was a bona fide purchaser for value without notice and thus obtained a lawful title in respect of the suit property.**

**The interest of the Plaintiff, even if I do believe the same to be in existence, is an inchoate one and cannot defeat the registered proprietorship of 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Even as per the provisions of section 143 of the Registration Land Act both are entitled to the registration of title in their respective names.**

I entirely agree with the aforesaid reasoning much as the decision of persuasive authority only having been made by my brethren.

For all the foregoing reasons I am persuaded that the Plaintiff has not made out her case on balance of probability to warrant the prayers sought in the plaint. Accordingly I find in favour of the 3<sup>rd</sup> defendant on the first issue as framed.

As for the costs, they always follow the event. Nothing has been brought to my attention that will force me not to apply this time honoured maxim of the law on costs. Accordingly the plaintiff will have to

shoulder costs for the 3<sup>rd</sup> and 4<sup>th</sup> defendants in this suit. Otherwise the Plaintiff's suit is dismissed with costs as aforesaid.

*Dated and delivered at Nyeri this 28<sup>th</sup> day of November 2008*

**M. S. A. MAKHANDIA**

**JUDGE**