



REPUBLIC OF KENYA

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

**Civil Suit 304 of 2001**

**TABITHA KAMWANGI**

**(Suing as Next Friend and Mother of Mutegi Kanga).....**  
**PLAINTIFF**

**VERSUS**

**JOHN GITONGA NJERU..... 1<sup>ST</sup>**  
**DEFENDANT**

**DOMIZIANO KABURU NJERU..... 2<sup>ND</sup>**  
**DEFENDANT**

**JUDGMENT**

The Plaintiff herein Tabitha Kamwangi Kanga filed this suit on 23<sup>rd</sup> February 2001 by way of a Plaint dated 21<sup>st</sup> February 2001. She has brought the suit in the capacity of mother and next friend of Mutegi Kanga the registered proprietor of land parcel No. KARINGANI/NDAGAINI/109 prior to the events lending basis to her claim against the two defendants John Gitonga Njeru and Domiziano Kaburu Njeru. In her Plaint as well as oral testimony, the Plaintiff alleges that the said Mutegi Kanga was at all material times illiterate and of unsound mind and that the first Defendant, a neighbour exploited that condition, caused the parcel of land KARINGANI/NDAGAINI/109 to be subdivided into two portions, namely, KARINGANI/NDAGAINI/4259 and KARINGANI/NDAGAINI/4260, the former portion being registered in his name and the latter in the name of the said Mutegi Kanga. The First Defendant then transferred the first portion i.e. KARINGANI/NDAGAINI/4259 to the 2<sup>nd</sup> Defendant for a paltry sum of Shs.20,000/=. The Plaintiff claims that the subdivision of the original plot and the subsequent hasty transfer of plot No. 4259 was fraudulent. She therefore claims, on behalf of Mutegi Kanga, the following reliefs against the Defendants jointly and severally.

a) An order for an injunction against the 2<sup>nd</sup> Defendant restraining him from transferring, dealing with or entering into any agreement for sale, mortgage, lease, transfer or assignment over the parcel of land L.R. No. KARINGANI/NDAGAINI/4259

b) A declaratory order, to wit, that the subdivision of L.R. KARINGANI/NDAGAINI/109 into L.R. No. KARINGANI/NDAGAINI/4259 and 4260 was fraudulent.

c) An order directing the 2<sup>nd</sup> Defendant to transfer L.R. No. KARINGANI/NDAGAINI/4259 to Mutegi Kanga and/or directing the Deputy Registrar of

**this Court to execute the transfer**

- d) An order declaring the consent issued by Tharaka Nithi Land Control Board for the subdivision of the original parcel of land void and illegal**
- e) Exemplary damages**
- f) Costs of the suit**
- g) Interest on the damages and costs awarded under (e) and (f)**
- h) Any other or further relief as the Court would deem fit and expedient.**

The Plaintiff alleges that the two defendants colluded in the subdivision and transfer of part of the suit land wherein the 1<sup>st</sup> Defendant represented himself as an agent of the owner thereof before the Tharaka Nithi Land Registry, collecting the original Title Deed and without consulting the family of the registered owner, whom he knew to be of unsound mind, causing him to sign Land Board consent forms under pretext and thereafter presenting the same to the Land Control Board and, on the strength thereof, obtaining consent to subdivide and transfer the land. The second Defendant is said to have been aware or to have had notice of the true ownership of Plot No. KARINGANI/NDAGAINI/109, by Mutegi Kanga.

The 1<sup>st</sup> Defendant in his Defence filed on 15<sup>th</sup> June 2001 denies that Mutegi Kanga is of unsound mind or that he was the registered owner of KARINGANI/NDAGAINI/109. He denies having fraudulently subdivided L.R. No. KARINGANI/NDAGAINI/109, appropriated and transferred L.R. No. KARINGANI/NDAGAINI/4959 and avers that the same was voluntarily given to him by Mutegi Kanga in consideration for assisting him secure his title deeds lying at the Lands Office. He says the land was given to him “as a gesture of appreciation.” He further claims to have had the land registered in his name after due compliance with all procedural requirements and with the full knowledge and consent of Mutegi Kanga and with the knowledge of his family. He therefore contends that the transfer of the portion known as L.R. No. KARINGANI/NDAGAINI/4259 to the 2<sup>nd</sup> Defendant was legal and valid as he, the 1<sup>st</sup> Defendant had acquired a valid title thereto. The 2<sup>nd</sup> Defendant relies mainly on this submission of the 1<sup>st</sup> Defendant in his Defence wherein the claims be a bona fide purchaser for value without notice of any fraud. Consequently he avers that, having been registered as proprietor of the land, he now has an absolute right of ownership of the same which cannot be defeated by the injunction order sought. Both Defendants pray that the Plaintiff’s suit be dismissed.

The hearing of the suit commenced on 3<sup>rd</sup> April 2003 wherein the Plaintiff gave her evidence before the Honourable Lady Justice Rawal. Her testimony concerning the history of the suit land as recorded by the Court is brief and not detailed at all. One thing which stands out is that the Plaintiff does admit that she is very advanced in age, does not know where the title documents were kept and could only guess the acreage of the suit land. She was sure however that the land was extensive in size and was aware of one plot belonging to her late husband which she named as L.R. No. KARINGANI/NDAGAINI/109. The Plaintiff testified that the same could not have been registered in the name of Mutegi Kanga he being of unsound mind since birth and illiterate. She testified that she knew the two defendants and that together they had “stolen” her land. She stated that John (1<sup>st</sup> Defendant) grabbed the land from Mutegi and sold it to Kaburu (2<sup>nd</sup> Defendant) whom she knew. She believed that the land was in her name and that of her husband. Although she told the Court that she was told by her daughter one Kairi that the 1<sup>st</sup> Defendant had grabbed the land, the Plaintiff did testify that the 2<sup>nd</sup> Defendant himself asked her to vacate the portion said to have been bought by him. She further testified that she was chased by the 2<sup>nd</sup> Defendant and she left. The Plaintiff did not call witnesses to support her testimony. Similarly the first Defendant gave only his testimony without calling any witnesses and produced six documents in support of his defence which is mainly that the son of

the Plaintiff, Mutegi Kanga, voluntarily transferred to him the suit premises in appreciation of his goodwill expressed through the giving of material, physical and financial support through the years. The 1<sup>st</sup> Defendant told this Court that although the said Mutegi Kanga happens to be about six years older than himself he has consulted the 1<sup>st</sup> Defendant since the latter was young. The 1<sup>st</sup> Defendant testified that Mutegi requested his assistance in obtaining his Title Deeds from the Lands Office and in consideration thereof he promised to subdivide the parcel of land, namely L.R. No. KARINGANI/NDAGANI/109 and give to him one portion, which he did. He also testified that the land had been initially registered in the name of Mutegi's father who then bequeathed the same to Mutegi under a will. The 1<sup>st</sup> Defendant told the Court that he applied for the requisite Land Board consent "on behalf of Mutegi." In his own words he told this Court that "I completed the forms and Mutegi thumb printed them in the presence of Mugo, Advocate." The named advocate testified before this Court as the 2<sup>nd</sup> Defendant's witness but could not recall what part he had played in the transaction between the 1<sup>st</sup> Defendant and Mutegi Kanga if any. The application form referred to was not produced in evidence to support the 1<sup>st</sup> Defendant's contention. The 1<sup>st</sup> Defendant went to pains to explain that Mutegi Kanga is not a person of unsound mind as alleged by the Plaintiff and that he attended the Land Control Board proceedings in respect of the subdivision of L.R. No. KARINGANI/NDAGAINI/109 and the transfer of L.R. KARINGANI/NDAGAINI/4259 which followed. The 1<sup>st</sup> Defendant produced a certified copy of the Land Control Board's consent dated 29.5.97 to prove the consent given for the subdividing of the land but none to prove consent to transfer. He also produced a photocopy of the certified greencard opened on 5<sup>th</sup> July 1976 showing Mutegi Kanga as the original proprietor of KARINGANI/NDAGAINI/109 and an entry of a mutation closing the title upon subdivision of the plot and the allocation of new Title No's. 4259 and 4260. The 1<sup>st</sup> Defendant further produced certified copies of Greencards in respect of the said new portions which were marked Exhibits "D1-3" and "D1-4". In his defence, the 1<sup>st</sup> Defendant also relies on a judgment of the Chief Magistrate's Court at Meru in Criminal Case Number 1196 of 1997 (produced herein as Exhibit D1-6) in which he and others were acquitted of a charge, inter alia, of conspiracy to defraud potential buyers of L.R. No. KARINGANI/NDAGAINI/109. The acquittal was on the basis of failure by the prosecution to prove the case beyond reasonable doubt, the Magistrate having found that there arose serious doubts from the evidence adduced before him which he doubts found to favour the accused persons.

The 2<sup>nd</sup> Defendant's defence is mainly that he bought L.R. No. KARINGANI/NDAGAINI/109 from the 1<sup>st</sup> Defendant for Shs.2,750,000/= in a legally valid transaction and having obtained the relevant Land Board consent, executing and registering valid transfer documents. The Defendant did not produce any of the documents evidencing the Land Board Control proceedings, consent or Transfer. He however called a witness, from his bank, Savings and Loan who confirmed the payment of Shs.2,750,000 to the 1<sup>st</sup> Defendant from the 2<sup>nd</sup> Defendant's account which she debited on 26<sup>th</sup> September 1997 under instructions from the 2<sup>nd</sup> Defendant. The witness produced a microfilm of the cheque given to the 1<sup>st</sup> Defendant and had the same marked exhibit "D2-1". The 2<sup>nd</sup> Defendant also called the advocate said to have drawn and witnessed the transfer. In his testimony the said advocate said that he only drew a Sale Agreement for the parties which he produced as exhibit "D2-3". The existence of the said document had however been denied by the 2<sup>nd</sup> Defendant who said that only a transfer had been drawn and executed. Coupled with this contradiction is the fact that the said agreement states the purchase price as Shs.2,750,000/= but the price shown on the Green card marked exhibit "D1-3" is Shs.20,000/=. Both the 2<sup>nd</sup> Defendant and his 2<sup>nd</sup> witness were surprised at this piece of evidence and denied prior knowledge thereof. In cross examination the 2<sup>nd</sup> Defendant's witness intimated to the Court that the lesser sum could have been stated to avoid paying a high Stamp Duty as would have been payable if the correct sum of Shs.2,750,000 was disclosed. The 2<sup>nd</sup> Defendant could not recall how much stamp duty he had paid on the Transfer alleged to have been registered in his favour. In addition to the oral testimony of the various witnesses, Counsel for the three litigants filed short written submissions on behalf of

their clients which, in my view did not add much value to the evidence on record. Counsel for the 1<sup>st</sup> Defendant has, in his submissions pointed out defects in the Plaintiff and verifying affidavit but I must state, however that I do not consider it appropriate to deal with technicalities at this stage being of the view that a final judgment must deal with substance and not the form. The Court's duty at this stage is to determine the real issues in dispute in order to resolve the same. I therefore uphold the Plaintiff's submission that the 1<sup>st</sup> Defendant's attack on the plaintiff and verifying affidavit in his advocate's written submission is misplaced. My study of the record shows that the parties herein did not file any list of issues agreed or otherwise. Neither did their respective advocates consider it necessary to frame the issues for determination hence their seemingly scattered thoughts displayed in their written submissions.

The Plaintiffs claim is basically that the 1<sup>st</sup> Defendant defrauded and/or misappropriated her son Mutegi Kanga of the suit premises taking advantage of his mental indisposition and sold the same to the 2<sup>nd</sup> Defendant. The Defendant's defence is that the Plaintiff voluntarily transferred the suit premises to the 1<sup>st</sup> Defendant who then transferred the same for valuable consideration to the 2<sup>nd</sup> Defendant in a legally valid sale transaction. That being the case I find it appropriate to frame the issues for determination as follows:

- 1. Was the Plaintiff's son Mutegi Kanga the proprietor of the parcel of land known as L.R. No. KARINGANI/NDAGAINI/109 at the material time?**
- 2. Did the said Mutegi Kanga voluntarily have the said parcel of land subdivided into two portions LR. No. KARINGANI/NDAGAINI/4259 and KARINGANI/NDAGAINI/4260?**
- 3. Did the said Mutegi Kanga voluntarily transfer L.R. No. KARINGANI/NDAGAINI/4259 measuring 11.35 acres to the 1<sup>st</sup> Defendant?**
- 4. Was the transfer of the said parcel of land carried out in accordance with requisite legal requirements?**
- 5. Did the 1<sup>st</sup> Defendant acquire a valid title to the said parcel of land as to confer a valid transfer of ownership to the 2<sup>nd</sup> Defendant?**
- 6. Were all legal formalities met in the transfer of L.R. No. KARINGANI/NDAGAINI/4259 by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant?**
- 7. Is the 2<sup>nd</sup> Defendant's title over the said parcel of land valid and indefeasible?**
- 8. Is the Plaintiff entitled to the reliefs sought in her plaint?**

I have considered the written submissions filed herein against the pleadings and the evidence tendered by each of the parties. The 1<sup>st</sup> Defendant has submitted that the Plaintiff has failed to prove her allegations of fraud and that her oral evidence contradicted her averments in the Plaintiff to such an extensive degree that the Court should disregard her evidence in its entirety. He also accuses her of being motivated by a desire to misappropriate the land herself. The 1<sup>st</sup> Defendant also submits that the Plaintiff has failed to prove her son's insanity or that she is a registered owner of the property together with her late husband who the 1<sup>st</sup> Defendant claims to have been duly registered prior to bequeathing the land to Mutegi under a will. The 1<sup>st</sup> Defendant in his submissions through Counsel states that

**"It is clear from the registration of Parcel No. KARINGANI/NDAGAINI/109 that the first registration was of Kanga Rutere the father of Mutegi Kanga."**

This does not appear correct from the documents produced before the Court. In particular, the

Greencard produced as exhibit "D1-1" shows Mutegi Kanga as the first registered proprietor as from 5<sup>th</sup> July 1976. As earlier stated herein, the 1<sup>st</sup> Defendant, in his efforts to prove his innocence relies heavily on the judgment of the lower Court in CMCC Meru No. 1196/97 wherein he and three others were acquitted of charges of, inter alia, conspiracy to defraud, contrary to Section 317 of the Penal Code. I take the view that the nature of the acquittal in the criminal case does not avail a strong defence in the present suit wherein the Defendant must discharge the burden placed upon him by proving that on the balance of probabilities, he acquired good title from Mutegi Kanga which he in turn passed on to the 2<sup>nd</sup> Defendant. In other words, the issues framed hereinabove must be answered in the affirmative wherever the same touch on the 1<sup>st</sup> Defendant. The maxim that he who alleges must prove does not apply as against the Plaintiff alone and the burden herein clearly shifts to the Defence. The first Defendant clearly admits in his evidence that he did not pay any money for the transfer of L.R. No. KARINGANI/NDAGAINI/4259 although in the greencard produced by him as Exhibit "D.1-3" it is indicated that the said parcel of land was transferred to him for a sum of Kshs.10,000/= on 19<sup>th</sup> August 1997. He has admitted selling the same to the 2<sup>nd</sup> Defendant for a whopping Shs.2,750,000/= about a month thereafter and that none of the said amount went to Mutegi Kanga whom he claims to have been taking care of all his life. The said Mutegi Kanga, according to the 1<sup>st</sup> Defendant still lives an obviously needy life with one Gitari who accommodates him as he grazes his herd of two cows and 5 goats. This is a situation which clearly puts one on notice as to the obvious incapacity of Mutegi to make a reasonable decision as to how to reap any benefit from his land. He is obviously a vulnerable human being and I feel inclined to accept the evidence of his 100 year old mother that he is mentally impaired, the degree of such impairment not being of great concern. The said Mutegi Kanga appeared in Court in the course of these proceedings but the 1<sup>st</sup> Defendant did not call him to confirm that indeed he voluntarily subdivided his land and gave a part thereof to the 1<sup>st</sup> Defendant free of charge. This would have been the best option for the 1<sup>st</sup> Defendant in his attempt to prove that indeed the transfer of the land to him was consensual and voluntary. That the 1<sup>st</sup> Defendant was not able to enlist support from the said Mutegi goes to make it more probable that the 1<sup>st</sup> Defendant's story is less plausible than that of the Plaintiff's mother.

Turning to the law, it is clear that no instrument of transfer was executed between the 1<sup>st</sup> Defendant and Mutegi Kanga in order to confer a right of proprietorship as is necessary under Section 29 of the Registered Land Act. The 1<sup>st</sup> Defendant's allegation of having obtained the Land Board's Consent to transfer remains unsupported as no such consent was produced in Court to prove the allegation. These being the facts surrounding the alleged voluntary transfer from Mutegi Kanga to the 1<sup>st</sup> Defendant, what interest in L.R. No. KARINGANI/NDAGAINI/109 did the 1<sup>st</sup> Defendant transfer to the 2<sup>nd</sup> Defendant? The 2<sup>nd</sup> Defendant was quick to tell this Court that he did not consider it necessary to investigate the title beyond the 1<sup>st</sup> Defendant's registration as the proprietor as at 19<sup>th</sup> August 1997. I accept his Counsel's submission that he is not, under Section 39(1) of the Registered Land Act required to inquire or ascertain as to the circumstances or the consideration for which the 1<sup>st</sup> Defendant became proprietor. However, it is incumbent upon any prudent purchaser of land to exercise caution and diligence and to ensure that all legal formalities are followed to ensure that indeed a proper and legal title is obtained in exchange for the monetary consideration, in order to enjoy the statutory protection available under Section 143(1) and (2) of the Registered Land Act.

The speed with which the 2<sup>nd</sup> Defendant's acquisition of L.R. No. KARINGANI/NDAGAINI/4259 was effected would make him the envy of many Kenyans. The 2<sup>nd</sup> Defendant testified that he was introduced to the suit premises on or about 20<sup>th</sup> or 21<sup>st</sup> September 1997. He conducted a search of the same at the Chuka Lands Registry soon thereafter and negotiated the purchase price of Shs.2,750,000 which he paid promptly on 22<sup>nd</sup> September 1997 after executing an agreement for sale of the same date. According to him, the Land Board met on 24<sup>th</sup> September 1997, gave consent to transfer on the same day and the Lands Registry issued a Title Deed in

favour of the 2<sup>nd</sup> Defendant on the same day. A file copy of the Sale Agreement was produced herein as exhibit "D2-3" by the 2<sup>nd</sup> Defendant's second witness Charles Mugo, advocate who drew and witnessed the same. According to the 2<sup>nd</sup> Defendant's advocate's written submissions, the said agreement is said to be the document upon which the registration of the 2<sup>nd</sup> Defendant as purchaser was effected. The said advocate at page 4 of the submissions, as paginated by this Court, has stated that

**"...A search of title showed that DW1 (whom the Court assumes to be the 1<sup>st</sup> Defendant) had a clear title which he purchased vide a sale agreement drawn by I.C. Mugo advocates...."**

The 2<sup>nd</sup> Defendant also testified that on 24<sup>th</sup> September 1997 he together with the 1<sup>st</sup> Defendant appeared before the Land Control Board and obtained consent to the transfer. As earlier observed, no such Consent was produced in these proceedings and no Transfer has been shown to have been executed or filed at the Registry. Moreover the greencard produced herein as Exhibit "D1-3" shows the consideration for the said sale as Shs.20,000/= which the 2<sup>nd</sup> Defendant claims not to have been aware of. The 2<sup>nd</sup> Defendant claims to have paid stamp duty on the transaction but does not remember how much. Nor did he produce any evidence of payment of legal fees.

The 1<sup>st</sup> Defendant testified that he is a teacher by profession while the 2<sup>nd</sup> Defendant is a Deputy Director of Agriculture. They cannot be said to be so naïve as to be unaware of the procedures involved in land transactions. It is plainly clear from their evidence that they were indeed aware of what they were required to do and also that everything they did concerning the transfer and acquisition of the suit land by either of them was deliberate and calculated. That they have been accused of fraud is no surprise to this Court in the light of the general definition of fraud defined in P.G. Osborn's Law Dictionary 5<sup>th</sup> Edition as follows:

**"fraud in general means obtaining of a material advantage by unfair or wrongful means; it involves moral obliquity ...It is proven when it is shown that a false representation has been made (1) knowingly or (2) without belief in its truth or (3) recklessly, carelessly whether it be true or false...."**

That the 1<sup>st</sup> Defendant obtained a material advantage from the Plaintiff's son by unfair means is not in doubt. The 2<sup>nd</sup> Defendant too cannot be said to be innocent of this taking into consideration that he observed from his search of KARINGANI/NDAGAINI/109 the fact that the 1<sup>st</sup> Defendant is said to have purchased the suit land for Shs 10,000/= on 19<sup>th</sup> August 1997, yet he bought the same from him for Shs. 2,750,000/= on or about 24<sup>th</sup> September 1997. To make matters worse, the 2<sup>nd</sup> Defendant either directly or indirectly caused the consideration for the plot to be entered in the register as Shs.20,000. I am persuaded that a case of fraud by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants has been made out.

As to whether legal requirements were complied with in the subdivision and subsequent transfers of the suit premises, I have found it appropriate to consider the provisions of the Registered Land Act, (Cap 300), the Land Control Act (Cap 302) and the Law of Contract Act (Cap 23). Section 85(2) of the Registered Land Act provides that a legal transfer of ownership

will occur where there is a Transfer by instrument in the prescribed form, completed by the registration of the transfer and by filing of the instrument. As already found herein, no instrument of transfer has been proven to have been executed and/or registered in both transactions involving firstly the 1<sup>st</sup> Defendant and Mutegi Kanga or between the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant. Additionally the 1<sup>st</sup> transfer had not been shown to have received the necessary Land Board consent as required under Section 8 of the Land Control Act. The law being that failure to obtain Land Control Board consent renders a sale transaction void for all purposes, it is clear that the 1<sup>st</sup> Defendant did not acquire any valid title as he would have legally passed to the 2<sup>nd</sup> Defendant. This was the position taken by the Court of Appeal in ONYANGO –vs- LUWAYI [1986] KLR 513 and KARIUKI –vs- KARIUKI [1983] KLR 225.

The acquisition of L.R. No. KARINGANI/NDAGAINI/4259 by the 1<sup>st</sup> Defendant also offends the provisions of Section 3 of the Law of Contract Act which states that any disposition of an interest in land must be in writing. An affirmation of this is found in Section 3 (3) which clearly states that

“No suit shall be brought upon a contract in land unless:

**(a) The contract upon which the suit**

**(i) is founded is in writing**

**(ii) is signed by the parties thereto**

**(iii) incorporates all terms which the parties have expressly agreed in one document**

**(b) the signature of each party signing has been attested by a witness who is present when the**

**contract was signed by such party.**

Taking the evidence adduced herein, all the circumstances of the case and applying the law, it is clear to me that the suit land KARINGANI/NDAGAINI/4259 was indeed acquired from Mutegi Kanga and passed onto the 2<sup>nd</sup> Defendant by fraud. Secondly, the 2<sup>nd</sup> Defendant does not befit the description of a bona fide purchaser for value without notice. The law being that fraud renders a contract voidable at the option of the injured party, I have no doubt in my mind that the 2<sup>nd</sup> Defendant herein cannot avail himself of the protection of Section 143 of the Registered Land Act in that his acquisition of the suit land is tainted with fraud and did not comply with legal formalities. Even if, which is doubtful, the 2<sup>nd</sup> Defendant had no knowledge of the 1<sup>st</sup> Defendant's fraudulent act in acquiring the suit land, he substantially contributed to it in the casual, negligent and indolent manner in which he handled his own transaction and in not being concerned that a property purchased at Shs.10,000/= should be sold to him for Shs.2,750,000/= a month after the initial transfer. That alone was enough to put him in inquiry.

In light of the foregoing, I hold that Mutegi Kanga was indeed the proprietor of the original parcel of land in dispute and that he did not voluntarily have the same subdivided into two. Neither did he in my view voluntarily transfer KARINGANI/NDAGAINI/4259 to the 1<sup>st</sup> Defendant. I find further that the 1<sup>st</sup> Defendant's registration as proprietor of the said parcel of land was fraudulent and done without compliance with the required legal formalities with the effect that no valid title can be said to have passed from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant. That being the case, the 2<sup>nd</sup> Defendant's title to the said parcel of land is neither valid nor indefeasible. I find therefore that the Plaintiff has proven her case against the two Defendants jointly and severally and that she is entitled to the reliefs sought in her plaint save for the prayer for damages which appears to have been abandoned in the proceedings and in submissions by

Counsel. She is to be commended for her zealousness for justice and motherly concern for the welfare of her mentally impaired son. Accordingly, I hereby enter judgment in favour of the Plaintiff in accordance with prayers (a) (b) (c) (d) and (f).

Dated and delivered at Nairobi this 24<sup>th</sup> day of February, 2006.

**M.G. Mugo**

**Judge**

**In the presence of:**

***Musili h/b for Njoroge for the Plaintiff***

***N/A for the 1<sup>st</sup> Defendant***

***N/A for the 2<sup>nd</sup> Defendant***