



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 290 OF 1999 (O.S.)

HANNAH NJERI MUONGI PLAINTIFF

VERSUS

EDWARD NGUGI GEORGE DEFENDANT

JUDGMENT

The plaintiff moved the Court by Originating Summons dated 26th January, 1999 and filed on 15th February, 1999. Her prayers were as follows:

- (i) that, the Court do order *Edward Ngugi George* to transfer to herself and her family the title for land parcel L.R No. Muguga/Kanyariri/543;
- (ii) that, the respondent be restrained from alienating, encumbering or in any manner disposing of any part of the said property;
- (iii) that, the Court be pleased to grant such other or further relief as may be just, in the circumstances;
- (iv) that, the costs of this application be borne by the respondent.

The plaintiff swore a supporting affidavit the content of which may be summarized as follows:

- (a) the deponent had married *John Muongi Njoroge* on 10th May, 1969 but her husband died on 18th August, 1996;
- (b) the late *John Muongi Njoroge*, during the subsistence of the said marriage, had purchased land, L.R No. Muguga/Kanyariri/543;
- (c) since death of her husband, the plaintiff has taken out letters of administration, and the same have been duly confirmed;
- (d) since the death of *John Muongi Njoroge*, the respondent has been endeavoring to deprive the deponent of the said property;
- (e) in these circumstances, the deponent believes she is entitled to have the suit property transferred to her name.

The defendant filed a memorandum of appearance on 13th April, 1999 and his statement of defence on

20th April, 1999. The statement of defence may be set out in summary as follows:

The defendant's late father, *George Njoroge Gathuku*, was the owner of the parcel of land which he subdivided into seven equal plots of 0.27 acres each, six of these in the names of his several sons – *Stephen Kinyuru; Leonard Njuguna; Francis Thiongo; Edward Ngugi; John Muongi*, and *John Maina*. The plaintiff has her homestead in her late husband's portion of land, i.e., *Muguga/Kanyariri/545*. She manages and cultivates the said parcel of land independently, and without let or hindrance. The departed *George Njoroge Gathuku* had retained plot *L.R No. Muguga/Kanyariri/543* as his own; and his ultimate intention was that it would devolve upon his only unmarried daughter, *Alice Ngendo* who was then residing in West Pokot, in the Rift Valley.

The benefactor, *George Njoroge Gathuku*, died before he had presented his six sons to the Land Control Board for approval of the sub-division of his land into *seven equal parts*. But there followed *Succession Cause No. 146 of 1984* which was filed at the Senior Resident Magistrate's Court at Kiambu; and approval for the devolution of the several parcels of land was given. Each of the six sons became the registered owner of the portion allocated to him by the benefactor, and they obtained their title deeds.

What became of the status of the one plot, *Muguga/Kanyariri/543* which the benefactor had reserved for himself, and which had been earmarked for inheritance by the unmarried daughter, *Alice Ng'endo*? The five beneficiary – sons who were then alive, together with their mother, *Gladys Njeri Geroqe*, agreed on the occasion of hearing the succession cause at the Kiambu Court, that it should be registered in the name of the defendant (*Edward Ngugi George*), in trust for the said mother and the unmarried daughter, *Alice Ng'endo*. Only because of the perception of security associated with *trust*, was the property registered in the name of the defendant; otherwise it would have been registered exclusively in the name of the mother (now deceased).

There was subsequently a conspiracy of the brothers to upset the trust – and thus to defeat the potential claim of the unmarried sister, *Alice Ngendo*. On 21st September, 1988 four brothers, *Kinyuru, Thiongo, Ngugi* and *Muongi* (husband of the plaintiff – and now deceased) agreed to sell *L.R No. Muguga/Kanyariri/543* to one of their number, the late *John Muongi Njoroge*; and this was behind the backs of their mother and the households of the remaining brothers. It is pleaded that one of the conspirators was the defendant, the trustee who had been registered as title-holder on behalf of his mother and unmarried sister, *Alice Ngendo*. The conspirators saw an advocate who drew a sale agreement for the disposal of the suit land to *John Muongi Njoroge*.

The said conspiracy was exposed, and it then became known that *John Muongi Njoroge* had paid *Kshs.22,500/=* to the brothers with whom he had conspired. Their late mother directed that the said sum be refunded to the intended purchaser, and that the suit property be held strictly in trust for *Alice Ng'endo*. However, the conspirators had no money to make the refund. Two of the brothers, *Ngugi* (the defendant, and the trustee) and *Thiong'o*, then entered upon yet another conspiracy; they now attempted to talk *Alice Ng'endo* into sharing the suit land with the “purchaser”, *John Muongi Njoroge*. The defendant, on 22nd December, 1993 secretly took *John Muongi Njoroge* and *Alice Ng'endo* to the Land Control Board offices, with a view to obtaining approvals for subdivision. But before consent was given, the mother, *Gladys Njeri George*, got to know; she denounced the deal, and directed once again that the suit land would go exclusively to *Alice Ng'endo*, in accordance with the trust then held by the defendant. She asked *Ng'endo's* son, *Stephen Kamau*, to move to construct his own house on *L.R No. Muguga/Kanyariri/543*. She offered building material to *Stephen Kamau*, after having her own store-house pulled down to supply the same, so that he could construct his house on the suit land; and the house thus constructed, to-date, remains *Stephen Kamau's* residence, and his brother who is married also has his house on this same parcel of land. An intended further appearance of the conspirators before the Land Control Board was averted, and the necessary consent of the Board was not given.

John Muongi Njoroge died on 18th August, 1996 a week or so after his mother who had died on 7th August, 1996; and both were buried on the suit plot which had been the home of the benefactor and of his widow.

Further attempts to have the suit land shared between *Alice Ng'endo* and the plaintiff failed. The Senior Resident Magistrate's Court, at Kiambu, made orders approving an award of the Land Disputes Tribunal, of 9th June 1998. It was decreed that the suit land belonged to *Alice Ng'endo*; the plaintiff was to be refunded Kshs.22,500/=; the plaintiff was to withdraw a caution which she had registered against the title to the suit land; the defendant was to transfer the suit land immediately to *Alice Ng'endo*. Such was the content of the decree issued by the Senior Principal Magistrate, on 15th July, 1998. But when *Alice Ng'endo* later applied for the removal of the caution lodged by the plaintiff herein (in **Land Case No. 12 of 1998 : Alice Ngendo Njoroge v. Edward Ngugi George**), the same Senior Principal Magistrate now ordered as follows:

“On looking at the proceedings of the Tribunal, I find that the claim of the plaintiff is outside the jurisdiction of the Tribunal as provided for by s.3(1) of the Land Disputes Tribunal Act. The proceedings are therefore null and void and cannot be enforced in law. The plaintiff ought to file her case in [a] Court with jurisdiction”.

After *Oguk, J* gave directions, on 9th July, 1999 that “the main application dated the 26th January, 1999 be now heard at Nairobi for one day based on the affidavits listed and also by viva voce evidence”, hearing began two and a half years later, before *Mr. Justice Waki* (as he then was). The learned Judge was able to hear all the evidence for the plaintiff, and I continued from where he left off, with the defence evidence. In accordance with the orders of the learned Judge made on 8th July, 2003 under Order XVII, rule 10 the proceedings were typed, and this will be my entry point in the review of the evidence.

The plaintiff, *Hannah Njeri Muongi*, was taken through the examination-in-chief on 28th February 2002. She testified that the defendant, in whose name the suit land, L.R. No. Muguga/Kanyariri/543, was registered, was brother to her late husband; and she was suing him seeking orders that he transfer to her the *whole* of the suit land. She was making this claim because her late husband, *John Muongi Njoroge*, had purchased the suit land. She produced her husband's death certificate (plaintiff's exhibit No. 1) to show that he had died in 1996. She testified that she was the legal wife of *John Muongi Njoroge*; she produced the marriage certificate (plaintiff's exhibit No. 2). She took out letters of administration following the death of her husband, and she produced the confirmed grant (plaintiff's exhibit No. 3). She testified that she had been present when her late husband was purchasing the suit land, for which he had paid the sum of Kshs.22,500/=. The transaction was based on a sale agreement entered into between the deceased and his brothers – *Edward Ngugi, Francis Thiong'o* and *Stephen Kinyuru*. She said the suit land had not been transferred to her husband's name before he died. Upon conducting a search she found that the suit land was registered in the defendant's name (search certificate, plaintiff's exhibit No.5). She averred that the defendant refused to transfer the land to her when she requested such transfer. She testified that she lives on plot L.R No. Muguga/Kanyariri/545 which had devolved upon her husband from the benefactor. She said that L.R No. Muguga/Kanyariri/543 *did not* belong to *Alice Ng'endo*; rather, it belonged to her, the plaintiff, because her husband had *purchased it*. She was seeking an order for the transfer to her of the suit land. She averred that the defendant had given the suit land to the children of his sister (*Alice Ng'endo*), to cultivate. She testified that her deceased husband was buried on the suit land. She prayed for an injunction to stop *Alice Ng'endo's* children from interfering with the suit land.

Upon cross-examination, the plaintiff testified that she was already married to her deceased husband when the benefactor's land was subdivided and apportioned to each of the six sons, with one plot being *reserved for her deceased mother-in-law* (this being L.R No. Muguga/Kanyariri/543. She testified that the suit plot “**became the defendant's when he was selling it to my husband**”. She further said: “**I only know the person who sold was the defendant. He was together with his [three] brothers.**”

On re-examination, the plaintiff said that the suit plot was registered in the defendant's name, *but it belonged to my mother-in-law*. It is where she was living and I found her there when I was married. That is why it was agreed it [could not] be transferred until she died. It was sold to my husband when she was still alive”.

On the same day, 28th February, 2002 the plaintiff's case closed, and the defendant (DW1) commenced upon his evidence-in-chief. He testified that his late father, *George Njoroge Gathuku*, decided in 1980 to sub-divide his land, L.R No. Muguga/Kanyariri/225, into *seven* portions; he gave six to each of his sons, but he retained one for himself. This reserved plot, the benefactor said, was *for him and his unmarried daughter, Alice Ng'endo*, who used to stay in West Pokot. *George Njoroge Gathuku* died on 12th September, 1980 before formalizing his land grants through the consent process of the Land Control Board. In the aftermath, a succession cause was filed at the Kiambu Senior Resident Magistrate's Court, and authority was given for the registration of the several plots as allocated by the benefactor. The plaintiff's husband was one of the six beneficiaries; but the seventh plot was registered in the defendant's name, as a trustee for *Alice Ng'endo*; this was the *agreed position as amongst all the brothers and their mother*; they were in court during the succession cause.

DW 1 testified that, in breach of the said trust in favour of *Alice Ng'endo*, he and two of his brothers and the plaintiff's husband, *conspired on 21st September, 1988 to sell the suit land secretly*. The conspiracy became known, and riled the mother who directed that the plaintiff's husband's money be immediately refunded. A further conspiracy to have the suit land shared between the plaintiff's husband and *Alice Ng'endo* was also thwarted by the defendant's mother, *Gladys Njeri George*. Following the death of the defendant's mother the family arrived at the consensus that the suit land would go to *Alice Ng'endo* and her children. After the death of the plaintiff's husband, attempts to get the plaintiff and *Alice Ng'endo* to share between them the suit plot, proved unsuccessful; *Alice* refused and was prepared to refund to the plaintiff the alleged purchase price of *Kshs.22,500/=*. This dispute was placed before the Land Disputes Tribunal, which supported *Alice Ng'endo's* position. Its award was later approved by the Senior Principal Magistrate at Kiambu; but there was much confusion when the same learned Magistrate later nullified her own decree, on the basis that the Land Disputes Tribunal had lacked the jurisdiction to make its award.

On cross-examination, DW1 testified that *Alice Ng'endo* had not been present during the subdivision of the benefactor's land in 1980, as she used to stay in West Pokot. Why was there this conspiracy to sell the suit plot? DW 1 said : **“We were conspiring to sell the land because we had no money. Muongi was part of the conspiracy. We shared the money between : Francis Thiong'o; Edward Ngugi; Stephen Kinyuru; John Muongi.”** He testified that **“The piece of land was to be sold for [Kshs.] 30,000/= and we were each getting Shs.7,500/=.”** DW1 testified that following the conspiracy he took both *John Muongi* and *Alice Ng'endo* to the Land Control Board, where the consent forms were filled in and signed. DW1 testified that he had been registered as the title holder for the suit land on *5th August, 1986* ahead of his mother's death on *7th August, 1996*.

DW 1 testified that one *Lucy Njeri Kinuthia*, his mother's grand daughter had known of the dispute over the suit land, and of her grandmother's position in the matter.

Continued hearing took place before me on 15th June, 2005 when DW 2, *Margaret Wambui Kinuthia* was sworn and gave her evidence. She testified that she was a daughter to the late benefactor, *George Njoroge Gathuku*. She said the larger, original parcel of land belonged to her father, and it was subdivided into *seven equal shares – for six boys and a lady*. Four of the men then colluded to deprive the lady of her allocation. These four were: *Stephen Kinyuru; Edward Ngugi; Francis Thiong'o; and John Muongi*. The first three sold to *John Muongi*; but the mother, *Gladys Njeri George*, who was still alive, rejected such a transaction. The collusion took the form of silence until the mother would die. The conspirators went to *J.K Gatuguta*, Advocate to prepare a sale agreement for them. But the conspiracy came into the open when *Alice Ng'endo's* son entered upon the task of constructing a house on the suit plot. When *Kamau*, son of *Alice Ng'endo*, brought building posts on site, *John Muongi* refused to allow the construction, on the basis that the building site was part of land already *sold to him*, sometime in 1992. The sale agreement had been made sometime in 1987.

DW 2 testified that the mother, *Gladys Njeri George*, had directed the defendant to ensure the suit land was registered in the name of *Alice Ng'endo*, and that it was on this footing that *Alice Ng'endo* and the defendant had visited the Land Board Office; but when the two got there, *Ng'endo* realized that the conspirators had been there before: because the arrangement in place was now, that the suit land was to be

divided between *Ng'endo* and *John Muongi*. *Ng'endo* then refused to allow the process of consent to proceed, as she wanted the *whole* suit plot registered in her name exclusively. *Ng'endo* later informed her mother who was still alive, and she on her part refused to allow the subdivision in the manner then being proposed. Thereafter the conspiracy was not prosecuted, and things remained still until the ailing mother died on 7th August, 1996. Then on 18th August, 1996 *John Muongi* himself died.

When, subsequently, *Alice Ng'endo* accompanied the defendant to the Land Office at Kiambu to have the suit land registered in her name it was found that the now - deceased *John Muongi* had registered a caution against the property.

On cross-examination, DW2 testified that she was sister to the defendant, in whose name the suit land was registered. She averred that the agreement of the conspirators to sell the suit land to one of their number, was an attempt to steal that land, which was intended for *Alice Ng'endo*. The witness said she herself, had not been allocated any land by her father; for she was married, and her husband had land; *Alice Ng'endo* by contrast, was not married. The witness testified that *Alice Ng'endo* had children who she was endeavoring to bring up. *Ng'endo* had in the past conducted farming in Narok, on rented land, for the purpose of earning money for bringing up her children. *Ng'endo's* sons had been staying with their grandmother; and one of them was grown up and needed to build his own house. She said *Alice Ng'endo* lives on the suit land, in the same house in which her mother had lived. *Ng'endo* is at present ill and paralyzed, and her sons live with her on the same land.

DW 3, *Lucy Njeri Kinuthia*, was sworn and gave her evidence on 21st July, 2005. She said she was a farmer, lived at Kanyariri, and knew the defendant. The defendant is her uncle, and the suit land *belonged to her grandmother*. She said she had good relations with her late grandmother, and had been visiting her everyday while she lived. The witness had found her grandmother in tears, sometime in 1993. The grandmother had protested about the conspiracy which had just been unearthed, in which four of her sons had contrived to sell to one of their number land reserved to *Alice Ng'endo*.

DW3 testified that the suit land had been registered in the defendant's name after the benefactor died, and the defendant held the land *in trust for others*. She said her grandmother had dictated a letter which she had written, in 1993 in which it was stated that the suit land would devolve to *Alice Ng'endo*, and she was familiar with her grandmother's will in this matter. She showed the said letter in court, even though its authenticity appeared uncertain.

Upon the close of the defendant's case, the defendant urged that the plaintiff's purchase money for the suit land be refunded, and the land be registered in the name of *Alice Ng'endo*, for herself and her children.

Learned counsel for the plaintiff, *Ms. Opondo*, urged that the suit land, at the time of the alleged sale and as of now, was and is registered in the name of the *defendant*. The deceased husband of the plaintiff *did pay* in respect of the sale the sum of Kshs.22,500/=, and the plaintiff is the administrator of the estate of the deceased. Counsel cited a clause in the sale agreement:

“... it is further mutually agreed between the vendors and the purchaser that the transfer of the said property shall not be effected during the lifetime of their mother *GLADYS NJERI GEORGE* who is currently occupying the property aforesaid with the consent of all parties herein provided further that the purchaser shall not interfere with her peaceful occupation of the said property during her lifetime.”

Counsel submitted that the condition in the above clause, namely the death of *Gladys Njeri George*, had been indeed fulfilled, and therefore the suit property should have been transferred to the plaintiff. She argued that the said agreement was in every respect valid and binding, and the suit property should be ordered transferred to the plaintiff. She submitted that there was a valid contract *at least* between the defendant and the late *John Muongi*, the defendant having received *a share* of the purchase price.

Ms Opondo also urged that the transaction related to a *first* registration in the name of the defendant. But

it was not clear how this helped the plaintiff's case, as, assuming it was a first registration and therefore not subject to challenge under the Registered Land Act (Cap. 300), nobody really had challenged the registration in the name of the defendant. It had only been contended that the defendant had been holding the suit property *in trust* for others.

Learned counsel contended that the late *Gladys Njeri George's* will or wishes in relation to the devolution of the suit land, were irrelevant to the plaintiff's claims – because **“it was not her free property which she could dispose of in her lifetime”**. Counsel urged that the suit property was not part of the estate of *Gladys Njeri George*, and so she had no control over its mode of disposal.

Ms Opondo, however, clearly appreciated that the defendant, in his holding of title over the suit land, was *in a position of trust*; as she submitted that the defendant while complying with the terms of the agreement of 21st September, 1988 as to transfer (to the plaintiff), **“can give Ng'endo some other land”**. She continued to submit : **“Those who took money do not have to give Ng'endo this particular land which is already sold”**.

Ms Opondo contested the prayer of the defendant that he be allowed to refund the sum of Kshs.22,500/= which had been paid by the plaintiff's husband in 1988. She contended that the said sum would now have *changed in value*, whereas the defendant had made no proposition on such changing values.

Who should make a plea on the changing values of money to be refunded – the one who is to refund, or the one who is to be refunded? The logical practice is for the *claimant* to propose such changing values, I believe, within the framework of prayers for *alternative remedies*. If this is not done, then the whole question must remain dependent on the discretion of the court.

FURTHER ANALYSIS, AND DECREE

It emerges clearly from the evidence that the suit property, L.R No. Muguga/Kanyariri/543 had been reserved by the benefactor, *George Njoroge Gathuku* for himself when he distributed equal sizes of property to his six sons. His intention was that upon his death, the suit property should devolve to his unmarried daughter, *Alice Ng'endo*. After *George Njoroge Gathuku* died, the intended devolution process was completed through Court order in Succession Cause No. 146 of 1984 – orders which were made *in the presence of all the six sons and the widow (Gladys Njeri George)* of the benefactor. It was *agreed by all the seven*, before the court, during the Succession proceedings, that the seventh plot, namely L.R No. Muguga/Kanyariri/543 be registered in the name of the defendant herein, *Edward Ngugi George*, as a *trustee for Alice Ng'endo*.

Notwithstanding the original intent of the benefactor, as faithfully confirmed through collective family commitment before the Succession Court which culminated in *Edward Ngugi George* (defendant) being registered as title-holder in respect of L.R No. Muguga/Kanyariri/543 as trustee for *Alice Ng'endo*, the same trustee in a censurable conspiracy with a select three of his brothers (*Stephen Kinyuru* (proprietor of L.R No. Muguga/Kanyariri/540), *Francis Thiong'o* (proprietor of L.R No. Muguga/Kanyariri/542) and *John Muongi* (plaintiff's husband, and proprietor of L.R No. Muguga/Kanyariri/545), and not taking into account the position of the household of two other brothers (*Leonard Njuguna*, proprietor of L.R No. Muguga/Kanyariri/541; and *John Maina*, proprietor of L.R No. Muguga/Kanyariri/546), on 21st September, 1988 instructed *J.K Gatuguta*, Advocate to prepare for them a sale agreement in respect of L.R No. Muguga/Kanyariri/543, the suit land which was held in trust.

In the sale agreement of 21st September, 1988 the vendors are named as (i) *Edward Ngugi George* (the defendant); (ii) *Stephen Kinyuru Njoroge*; (iii) *Francis Thiong'o Njoroge*; the purchaser is named as *John Muongi Njoroge* (the plaintiff's husband). The land being sold is described as Muguga/Kanyariri/543. The price is stated as Kshs.22,500/=.

The sale agreement has four special conditions which may be set out here:

1. *“The property being sold is approximately 0.27 of an acre and it is registered in [the] name of*

the first vendor, i.e., EDWARD NGUGI GEORGE in trust for the 2nd, 3rd vendors and the purchaser ALL of whom are brothers.

2. “Now it is hereby mutually agreed between all the parties herein that the 1st, 2nd and 3rd vendors shall sell their respective shares in the property aforesaid to the purchaser at a total sum of Kenya Shillings Twenty Two Thousand Five Hundred (Kshs.22,500/=) to be shared equally by the said vendors.

3. “However it is further mutually agreed between the vendors and the purchaser that the transfer of the said property shall not be effected during the lifetime of their mother GLADYS NJERI GEORGE who is currently occupying the property aforesaid with the consent of all parties herein, provided further that the purchaser shall not interfere with her peaceful occupation of the said property during her lifetime.

4. “It is further agreed between the vendors and the purchaser that the purchase price shall be paid on or before signing this agreement.”

Of this agreement, several observations may be made which touch on its validity in law:

- (a) Four brothers, out of the larger family, had constituted themselves into the beneficiaries of the suit property.
- (b) These four brothers had full knowledge of the existence of the trust over the suit property, in favour of *Alice Ng’endo*.
- (c) Even if the trust had as beneficiaries others apart from *Alice Ng’endo*, these were now being overlooked, apart from the *four brothers* undertaking the sale and purchase transaction.
- (d) It would be impossible for *John Muongi* (husband of the plaintiff herein) to constitute himself into an *innocent purchaser for value without notice of the trust, and of the defect in the defendant’s title*.
- (e) *John Muongi* is to be deemed to have known abundantly that the defendant, *Edward Ngugi George*, had no title of his own, to L.R No. Muguga/Kanyariri/543 which he could pass to him, *John Muongi*, as purchaser. And so in this transaction the maxim applies, *nemo dat quod non habet*.

Yet the main thrust of the plaintiff’s case is constructed on the aforementioned *sale agreement*. Learned counsel, *Ms. Opondo* contended that the suit property should be held to have duly passed to the purchaser, *John Muongi*, because *all the special conditions had been fulfilled*. This contention, however, and with respect, misses the point. The agreement itself was, for all practical purposes, a fraudulent one. It was, besides, intended to *defeat a trust* the existence of which was well known to all the four brothers involved in the purported sale and purchase of the suit property. The purpose of the trust was to make *Alice Ng’endo* the beneficiary of the suit land. *Equity* must look to that intent, and this Court will reject the *contract – form* which the plaintiff is now claiming to be the basis of legal obligations to transfer the suit land to her. It is, moreover, clear that the *base cause* incorporated in the sale agreement is being proposed as the basis for seeking remedies in this Court. That cannot be allowed : *ex turpi causa non oritur action!*

The defendant, in purporting to sell the suit land to *John Muongi*, was one of the conspirators. In his testimony the defendant candidly said:

“We were conspiring to sell the land because we had no money. Muongi was part of the conspiracy. We shared the money between Francis Thiong’o, Edward Ngugi, Stephen Kinyuru, John Muongi.”

As already stated, the plaintiff’s husband, *John Muongi* knew of the *trust* existing in relation to the suit land, and so his estate under the management of the plaintiff, will not be allowed to reap from a *blatant breach of trust* by himself. From the evidence, it is no less clear that the suit property herein had not been

the personal property of the defendant which he could transfer at will. *Hannah Njeri Muongi*, the plaintiff, in her own evidence says: “[**The suit plot**] **because the defendant’s when he was selling it to my husband**”. So, in what capacity was the defendant holding that property before he contracted now to sell it? The plaintiff must have known that the defendant had been holding the property as a *trustee*. She is moreover unable to explain the part played by the other “**vendors**” in the transaction. In her words: “**I only know the person who sold was the defendant. He was together with his three brothers**”.

I therefore find in this suit in favour of the defendant and against the plaintiff. Specifically I will decree as follows:

- 1. The defendant, *Edward Ngugi George*, shall within 40 days of the date hereof, transfer title for L.R No. Muguga/Kanyariri/543 to *Alice Ng’endo* or to such member of her family as may be agreed, to hold in trust for the immediate family of *Alice Ng’endo*.**
- 2. If the said *Edward Ngugi George* shall fail to effect transfer of the suit property as specified in the foregoing paragraph, the Registrar of the High Court shall execute the necessary transfer documents, to ensure the transfer is effected.**
- 3. Any caution or restriction such as may have been registered against the suit property at the instance of the plaintiff herein, or of her deceased husband, shall be forthwith removed by the Land Registrar in charge.**
- 4. The defendant shall be under no obligation to refund, or to cause to be refunded, to the plaintiff any monies such as may have been paid by the plaintiff or the plaintiff’s husband, under the agreement for the sale of the suit property made on 21st September, 1988.**
- 5. The plaintiff shall bear the costs of the defendant in these proceedings.**

DATED and DELIVERED at NAIROBI this 30th day of September, 2005.

J.B OJWANG

JUDGE

Coram : Ojwang, J

Court Clerk : Mwangi

For the plaintiff/applicant :Ms Milly Odongo,

Instructed by the Federation of Women Lawyers.

Defendant in person