



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 798 OF 2012**

**MARION WANJIRU NJORGE.....PLAINTIFF**

**VERSUS**

**MARGARET WAMBUI NJAU.....1<sup>ST</sup> DEFENDANT**

**WALLACE MWAURA MUNGAI.....2<sup>ND</sup> DEFENDANT**

**VIOLET KAWIRA.....3<sup>RD</sup> DEFENDANT**

**SILAS KIVUITU.....4<sup>TH</sup> DEFENDANT**

**REGISTRAR OF LANDS THIKA LAND REGISTRY.....5<sup>TH</sup> DEFENDANT**

**GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED.....6<sup>TH</sup> DEFENDANT**

**JAMES NJAU NDIRANGU.....7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

By an amended Plaint dated the 5<sup>th</sup> December, 2012, the Plaintiff prays for judgment against the Defendants for orders that:

- i. Land Title No. Ruiru Kiu Block 2 (Githunguri) 4252 and all the title deeds emanating from the subdivisions of the suit land.
- ii. The Registrar of Lands Thika be compelled to produce records of ownership and subdivision and transfer of Land Title No. Ruiru Kiu Block 2 (Githunguri) 4252.
- iii. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants be ordered to remove all the illegal structures erected on the suit land, being the whole of that parcel of land comprised in Shamba No. 4252/ Block 2 measuring 1¼ acres otherwise referred to as Ruiru Kiu/ Block 2 (Githunguri) 4252 measuring 0.500 Ha and restore the land to cultivable state at their own cost.
- iv. The Registrar of Lands Thika Land Registry be ordered to issue a title deed in the name of the Plaintiff herein notwithstanding any restriction by Githunguri Constituency Ranching Company Limited or any other person.
- v. General Damages for causing anguish and inconvenience to the Plaintiff.
- vi. Costs of this suit.

The 1<sup>st</sup> Defendant though duly served, failed to enter appearance nor file a Defence. The 2<sup>nd</sup> Defendant filed his Statement of Defence dated 15<sup>th</sup> April, 2013 where he denied the allegations in the Plaint except for the descriptive. He denied ever purchasing land parcel number RUIRU KIU / BLOCK 2 (GITHUNGURI), 4252 hereinafter referred to as the 'suit land' from the Plaintiff and denies any particulars of fraud as well as illegality in acquiring the said land. He contended that on the 25<sup>th</sup> October, 2010, he conducted a search that confirmed that the 1<sup>st</sup> Defendant was the proprietor of the suit land and there were no encumbrances registered thereon. He averred that on 14<sup>th</sup> September, 2010 he entered into an agreement of Sale with the 1<sup>st</sup> Defendant at a consideration of Kshs. 3.2 million. Thereafter, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant were issued with the Land Control Board Consent and on 24<sup>th</sup> February, 2011 after which he obtained a title deed. He claimed that he obtained consent to subdivide the suit land and filled the necessary mutation forms. Further, that he has already sold the subdivided plots to third parties. He reiterated that he is a purchaser for value with no notice and that the court has no jurisdiction to determine the

matter.

The 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Defendants filed a joint Defence dated the 3<sup>rd</sup> July, 2014 where they denied all the averments in the Amended Plaint except the descriptive. They denied the particulars of fraud, illegality and bad faith associated with them. They explained that on or about September, 2011, they came across an advertisement in the Daily Nation Newspaper offering for sale certain parcels of land within Ruiru. They followed up and learnt the plots were registered in the name of the 2<sup>nd</sup> Defendant and undertook a search at the Land Registry which confirmed the title deeds were clean. They aver that they entered into separate agreements with the 3<sup>rd</sup> Defendant for purchasing parcel number Ruiru/ Kiu Block 2/ 7587 at Kshs. 700,000/=; 4<sup>th</sup> Defendant purchased Ruiru/ Kiu Block 2/ 7590 at Kshs. 1,100,000/= while the 7<sup>th</sup> Defendant bought Ruiru/ Kiu Block 2/ 7575 at Kshs. 700,000/=. They state that the 7<sup>th</sup> Defendant caused his parcel to be registered in the name of Cashflow Technologies and title deed was issued in favour of the said company on 21<sup>st</sup> March, 2012. They reiterate that they are innocent purchasers for value without notice.

The 6<sup>th</sup> Defendant filed a statement of defence dated the 1<sup>st</sup> November, 2018 where it admitted the descriptive paragraphs in the Amended Plaint and acknowledged that the Plaintiff was a bona fide member who was allocated 1¼ acres of land. It admitted that it issued the Plaintiff with a clearance certificate for acquisition of her title at the Thika Lands Registry. It averred that the 1<sup>st</sup> Defendant is not their member and has never been their member and if at all she got registered as owner of the suit land, then her registration is fraudulent and obtained through corrupt scheme. Further, that any documents presented must have been forged or illegally acquired. It reiterated that the suit land belongs to the Plaintiff absolutely and any party claiming ownership especially the 1<sup>st</sup> Defendant and other person claiming through her is not a bona fide owner and their registration is tainted with illegality. It contended that it has not connived or been in cahoots with any of the Defendants to fraudulently acquire the suit land.

### **Evidence of the Plaintiff**

The Plaintiff called two witnesses. The Plaintiff as PW1 testified that she is still a member of the Githunguri Constituency Ranching Company Limited. She claimed that she was allocated the suit land and issued with a Ballot Number 565; Share Certificate No. 4942 as well as a Clearance Certificate to enable her obtain her title deed from the Thika Land Registry. She contended that on proceeding to the said Land Registry, she discovered that the title deed had been issued to somebody else. She denied selling the said land to a third party. She produced various documents including the Receipts for payment; Clearance Certificate and Ballot Number to confirm she was the original allottee of the suit land. PW2 who is a daughter to the Plaintiff explained that she was unable to raise funds to process title in respect to the suit land and when she discovered it had been issued to a third party, she raised the concern with the 6<sup>th</sup> Defendant whose director advised her to register a restriction with the Land Registry in Thika which was registered on 30<sup>th</sup> August, 2012. Further, that despite following up with the Police, they were unable to assist them. She reiterated that at the time she discovered the purported fraud, the suit land had not been developed nor subdivided into plots.

### **Evidence of the Defendants**

The 1<sup>st</sup> Defendant never entered appearance nor filed a Defence to controvert the Plaintiff's averments.

The 2<sup>nd</sup> Defendant as DW1 testified that he purchased the suit land from the 1<sup>st</sup> Defendant. It was his claim that he executed a Sale Agreement dated the 14<sup>th</sup> September, 2010. Further, he undertook a search at the Thika Land Registry on 25<sup>th</sup> October, 2010 where he confirmed that the said land was owned by the 1<sup>st</sup> Defendant. He purchased the suit land for Kshs. 3.2 million. They were issued with a consent of the Land Control Board on 24<sup>th</sup> February, 2011 and thereafter he obtained title deed to the suit land. He proceeded to subdivide the suit land and sold the resultant plots to third parties. He produced various documents including the Sale Agreement dated 14<sup>th</sup> September, 2010; Official Search dated 13<sup>th</sup> August, 2010; Certificate No. 693 in the name of 1<sup>st</sup> Defendant; Certificate No. 2304; title deed to the suit land dated the 25<sup>th</sup> January, 2010 and one in his name; Consent of the Land Control Board dated 12<sup>th</sup> October, 2010; as well as the official searches for RUIRU BLOCK 2/7584 & RUIRU BLOCK 2/7595 as exhibits.

The 3<sup>rd</sup> Defendant testified that she entered into a Sale Agreement dated the 10<sup>th</sup> March, 2011 with the 2<sup>nd</sup> Defendant for the purchase of land parcel number Ruiru/ Kiu Block 2/ 7587 from the 1<sup>st</sup> Defendant for Kshs. 700,000/=. She obtained title deed in her favour on 21<sup>st</sup> March, 2012 and has developed the said land. She was in the process of undertaking further development before the suit commenced but stopped and has since experienced great distress and loss as some of the materials she purchased continue to waste. She produced various documents including a copy of the title deed for the suit land and title in her name; Certificate of official Search for Ruiru/ Kiu Block 2/7587; Sale Agreement; Receipts and Photographs as exhibits to prove her claim.

The 4<sup>th</sup> Defendant testified that he entered into a Sale Agreement dated the 10<sup>th</sup> March, 2011 with the 2<sup>nd</sup> Defendant to purchase land parcel numbers Ruiru/ Kiu Block 2/ 7590 and Ruiru/ Kiu Block 2/ 7591 at Kshs. 1,100,000/= of which he duly paid the full purchase price. He obtained title deeds to the two parcels of land on 20<sup>th</sup> July, 2011. He insists he is an innocent purchaser for value. He stopped further developments on the two parcels of land as a result of the law suit herein. He claims he has suffered great distress and losses as some of the materials he purchased continued to waste. He produced various documents including a copy of the title deed for the suit land and his two certificates of title; Certificate of official Search for Ruiru/ Kiu Block 2/ 7590 and 7591; Sale Agreement; Receipts and Photographs as exhibits to support his case.

The 5<sup>th</sup> Defendant's testimony was given by ROBERT MUGENDI who was the Land Registrar, Thika Registry. He provided the chronology of the status of the suit land and stated that it is the 6<sup>th</sup> Defendant that issued a letter dated the 5<sup>th</sup> June, 2009 certifying the 1<sup>st</sup> Defendant as owner of the said land. Further that the Green Card was opened on 8<sup>th</sup> January, 2010 and title deed issued to 1<sup>st</sup> defendant on 25<sup>th</sup> January, 2010. He confirmed that the suit land was transferred to the 2<sup>nd</sup> Defendant on 24<sup>th</sup> February, 2011 and the said title deed closed on subdivision on 14<sup>th</sup> April, 2011 with new numbers 7584 – 7595 issued to that effect. He outlined the ownership in respect of the resultant

subdivisions as follows for: Parcel No. Ruiru Kiu Block 2/7584 a title deed was issued to Beth Ndei on 3<sup>rd</sup> August, 2011 and a restriction registered on 30<sup>th</sup> August, 2012. As for Ruiru Kiu Block 2/7585, it was transferred to Wilson Muiruri on 3<sup>rd</sup> August 2011 and a restriction registered on 30<sup>th</sup> August, 2012; a restriction was entered against parcel number. Ruiru Kiu Block 2/7586 on 30<sup>th</sup> August, 2012 while parcel number Ruiru Kiu Block 2/7587 was transferred to Violet Kawira Mwiandi on 21<sup>st</sup> March, 2012 and a restriction registered on 30<sup>th</sup> August, 2012. As for parcel number Ruiru Kiu Block 2/7588 it was transferred to Peter Wambugu Kimani on 5<sup>th</sup> July, 2012 but a restriction registered thereon on 30<sup>th</sup> August, 2012 while parcel number Ruiru Kiu Block 2/7589, was transferred to Mary Wanjiku Kioi on 21<sup>st</sup> March, 2012 and parcel number Ruiru Kiu Block 2/7590 transferred to Silas Kivuti Njeru on 20<sup>th</sup> July, 2011 with a restriction registered thereon on 30<sup>th</sup> August, 2012. For parcel number Ruiru Kiu Block 2/7591 it was also transferred to Silas Kivuti Njeru but a restriction was registered against it on 30<sup>th</sup> August, 2012; while parcel number Ruiru Kiu Block 2/7592 is still registered in the 2<sup>nd</sup> Defendant's name but a restriction was entered thereon on 30<sup>th</sup> August, 2012; parcel numbers Ruiru Kiu Block 2/7593 and Ruiru Kiu Block 2/7594 were transferred to Christopher Kyalo Nganga on 20<sup>th</sup> July, 2011 respectively but a restriction subsequently entered on 30<sup>th</sup> August, 2012; Parcel number Ruiru Kiu Block 2/7595 was transferred to Cashflow technologies on 21<sup>st</sup> March, 2012 but a restriction also entered thereon on 30<sup>th</sup> August, 2012. He testified that the Land Registrar relied on the documents presented and was not complicit in any alleged fraud, negligence or misrepresentation. He produced certified copies of the respective green cards for the suit land as well as the resultant subdivisions including Mutation Form registered on 14<sup>th</sup> April, 2011, transfer form dated 11<sup>th</sup> January, 2011 and a letter from the 6<sup>th</sup> Defendant dated the 5<sup>th</sup> June, 2009 as exhibits.

The 6<sup>th</sup> Defendant's witness was one JOHN MAINA MBURU who is its Director. He confirmed that as per their records, the suit land was allocated to the Plaintiff. Further, that the suit land was generated from previously unsurveyed 1¼ acre land held by Ballot No. 565. It was his testimony that the 1<sup>st</sup> Defendant had never been their member and if she became the owner of the suit land, then she obtained her registration fraudulently. He produced letters the 6<sup>th</sup> Defendant had issued in respect of the suit land.

The 7<sup>th</sup> Defendant in his testimony stated that he is the Director of Cashflow technologies. He claimed that sometime in April 2011 he saw an advertisement in the Daily Nation Newspaper offering land for sale in Ruiru. He followed up and confirmed this was the suit land, which was registered in the name of the 2<sup>nd</sup> Defendant. He perused the Mutation form and thereafter entered into a Sale Agreement dated the 10<sup>th</sup> March, 2011 for the purchase of land parcel number Ruiru/ Kiu Block 2/ 7595 and paid the full purchase price after which the title deed was issued in the Company's name. He insists that the company is an innocent purchase for value. Further, that it has undertaken permanent development on the land and stopped continuing to do so due to the suit herein. He contends that the company has suffered losses. He produced copy of title deed to the suit land, Mutation Form; Sale Agreement; Payment Receipts; Company's title deed and photographs to support its claim.

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants filed their respective submissions that I have considered.

### **Analysis and Determination**

Upon consideration of the pleadings, witness testimonies, exhibits and submissions filed in respect of the suit herein, the following are the issues for determination:

- Whether the Plaintiff was the legitimate owner of the suit land.
- Whether the 1<sup>st</sup> Defendant acquired a legal title to transfer to the 2<sup>nd</sup> Defendant
- Whether the 3<sup>rd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> Defendants are bona fide purchasers for value
- Who should bear the costs of the suit.

As to whether the Plaintiff was the legitimate owner of the suit land. The Plaintiff claimed she was a member of the 6<sup>th</sup> Defendant who allocated her the suit land. She explained that she paid for the suit land as evidenced in the receipts that she produced as an exhibit and was issued with a ballot no. 565 after which she was allocated the suit land. It was PW2's testimony that the Plaintiff was issued with a Clearance Certificate which was produced as an exhibit and she proceeded to process the title deed in respect of the suit land but found when the said title deed had been issued to the 1<sup>st</sup> Defendant. The 6<sup>th</sup> Defendant through its witness one JOHN MAINA MBURU confirmed the Plaintiff's claim. The said witness stated in court that as per their records, the suit land which measured 1¼ acres was allocated to the Plaintiff through Ballot No. 565. He was categorical that the 1<sup>st</sup> Defendant had never been a member of the 6<sup>th</sup> Defendant and that she became the owner of the suit land by obtaining a fraudulent registration. I note the Clearance Certificate dated the 22<sup>nd</sup> January, 1992 was addressed to the Land Registrar, Thika and confirmed the Plaintiff was the registered owner of the suit land with ballot No. 565 and Share Certificate No. 4942. I further note that neither the 1<sup>st</sup> nor 2<sup>nd</sup> Defendants produced Certificate of Clearance to detail the process that was adhered to in acquiring the suit land. None of the Defendants produced evidence to controvert the Plaintiff's and 6<sup>th</sup> Defendant's averments in respect of the suit land. Based on the evidence before me, I find that the Plaintiff was indeed the legitimate owner of the suit land.

As to whether the 1<sup>st</sup> Defendant acquired a legal title to transfer to the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant never entered appearance nor file a Defence to controvert the Plaintiff's averments. It was the 2<sup>nd</sup> Defendant's Defence that he bought the suit land from the 1<sup>st</sup> Defendant who was its duly registered owner. It was his testimony that the 1<sup>st</sup> Defendant showed him the Certificate of Clearance issued by the 6<sup>th</sup> Defendant and undertook an official Search confirming the suit land was owned by the 1<sup>st</sup> Defendant. These were done before executing the sale agreement. He further visited the suit land to confirm vacant possession. He explained that they entered into a Sale Agreement with the 1<sup>st</sup> Defendant and they obtained consent to transfer suit land to him, after which he obtained title. He insists he was a bona purchaser for value and relied on the cases of *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura Vs Attorney General & 4 others (2017)*

***eKLR and Zebak Limited V Nadeem Enterprises Limited (2016) eKLR*** to support his argument. I note in the 2<sup>nd</sup> Defendant's evidence, he never brought in the 1<sup>st</sup> Defendant to prove she is the one who sold the land to him. The 2<sup>nd</sup> Defendant admitted that he had been called by the Police in respect of the suit land. Further, from the testimony of the 6<sup>th</sup> Defendant's in respect of the suit land, he disputed the root of the 2<sup>nd</sup> Defendant's title. The Land Registrar stated that he acted on the documents lodged and was not complicit in any alleged fraud. From the Letter of Consent from the Githurai Land Control Board dated 12<sup>th</sup> October, 2010, it refers to undated application for consent yet the 2<sup>nd</sup> Defendant produced a dated application to Land Control Board as an exhibit. I note the 2<sup>nd</sup> Defendant produced Share Certificate No. 693 in the name of the 1<sup>st</sup> Defendant, and another one No. 813 dated the 11<sup>th</sup> October, 1989 in the name of the Plaintiff. However, the Plaintiff's Share Certificate Number indicated in the Clearance Certificate is 4942 and not 693. The Plaintiff denied transferring her shares to anybody and it was testimony of the 6<sup>th</sup> Defendant's witness that the Plaintiff was still their member. The 5<sup>th</sup> Defendant who was the Land Registrar produced a Certificate of Clearance for Residential Plot dated the 5<sup>th</sup> June, 2009 in the name of the 1<sup>st</sup> Defendant but it never indicated the ballot number nor Share Certificate Number. This Certificate was disputed by the 6<sup>th</sup> Defendant's witness. In the case of ***James Njoroge Gitau V Lucy Chepkurui Kimutai (2018) eKLR***, Justice Sila Munyao held as follows: ' ***What is before me is a straight contest over who between the plaintiff and the defendant ought to own the land. For either litigant to succeed, they need to demonstrate to me, the root of their title, and the root of their title must originate from the shares held at Kalenjin Enterprises. I have already outlined that the plaintiff purchased shares from Mr. Chumo who had in turn purchased shares from Mr. Morogochi. This is affirmed by the company through its director, Mr. Chelaite who testified as PW-2. Mr. Chelaite produced a register of the company, and I have absolutely no reason to doubt that register. The register shows the name of the plaintiff and assigns him the plot No. 7. This evidence is coming from the company itself, and cannot be taken lightly. It is the company which knows its members and which knows what land it has assigned to the members. If the company refutes that one is a member, then that person needs to rebut this, through cogent evidence. I am afraid that the defendant had not delivered any evidence to me that Kimutai held any shares at Kalenjin Enterprises. She has not delivered any share certificate, nor any receipt for payment for survey so as to be assigned the suit land. All that the plaintiff had was a document, titled "Rift Valley Enterprises (Koelel Farm) List of Allottees" as proof that the suit land was assigned to the deceased.***'

In the case of ***Munyu Maina Vs Hiram Gathiha Maina, Civil Appeal No.239 of 2009***, the Court of Appeal held that:- ***"We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register."***

In relying on the evidence before me as well as the cases I have cited above, I find that since the root of the title the 1<sup>st</sup> Defendant held is challenged as she was not a member of the 6<sup>th</sup> Defendant and neither did she have a valid Clearance Certificate from them to acquire her title, there is no proper evidence to prove that she legally acquired the title to the suit land which she then transferred to the 2<sup>nd</sup> Defendant. I opine that no wonder she failed to file her response to the suit herein. The 2<sup>nd</sup> Defendant in his testimony had said he is a land agent. It is my view that he would have known the proper process to be adhered to when he acquired land from 6<sup>th</sup> defendant as well as documents to be relied on to prove validity of title. It is against the foregoing that I find that the 1<sup>st</sup> Defendant did not hold a valid title to transfer to the 2<sup>nd</sup> Defendant.

As to whether the 3<sup>rd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> Defendants are bona fide purchasers for value. The 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> defendants claim they are purchasers for value. They all confirmed having acquired their respective parcels of land at different times from the 2<sup>nd</sup> Defendant. They all confirmed that they viewed the mutation forms, undertook a search and confirmed the 2<sup>nd</sup> Defendant was the owner of their respective parcels of land. They relied on the case of ***Lawrence Mukiri V Attorney General & 4 others (2013) eKLR and Ruhangi Properties Limited & 2 others V Standard Chartered Bank of Kenya Ltd & 2 others (2000)*** to buttress their arguments. The 5<sup>th</sup> Defendant relied on the case of ***Munyu Maina Vs Hiram Gathiha Maina, Civil Appeal No.239 of 2009***, and ***Albert Mae Gracie Vs Attorney General & 4 others (2006) eKLR*** to support their argument that a root of title has to be clean to enable one transfer his title to a third party. As to whether the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> defendants are bona fide purchasers for value, I wish to refer to **sections 26 (1) of the Land Registration Act** which states that: ***"The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge, except –***

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or***
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme."***

In the case of Case of ***Arthi Highway Developers Limited V West End Butchery Limited & 6 others (2015) eKLR*** the Court of Appeal dealt exhaustively with the issue of bona fide purchaser for value without notice and held that a party cannot invoke indefeasibility of title where the process of acquisition of the title is irregular. Further in the Uganda Court of Appeal Case of ***Katende V Haridar & Company Ltd*** cited with approval in the Kenya High Court the case of ***Lawrence Mukiri V Attorney General & 4 others ELC 169 of 2008***, on what amounts to bona fide purchaser for value it stated thus: ' ***...a bonafide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:***

- a. He holds a certificate of Title***
- b. He purchased the Property in good faith;***
- c. He has no knowledge of the fraud;***
- d. The vendors had apparent valid title;***

e. *He purchased without notice of any fraud;*

f. *He was not party to any fraud.*

***A bona fide purchase of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.'***

Further in the case of ***Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura Vs Attorney General & 4 others (2017) eKLR*** the Court of Appeal held that a party can not claim a bona fide purchaser for value where the vendor did not have a valid title.

Based on my finding above, I hold that the 2<sup>nd</sup> Defendant despite the subdivision did not have a good title to pass to the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Defendants since the 1<sup>st</sup> Defendant who sold him land did not have a good title to pass to him as the root of the said title is challenged. Mere subdivision and transfer of the suit land to third parties cannot defeat the Plaintiff's legitimate claim of ownership of land which she legally acquired from the 6<sup>th</sup> Defendant. In the circumstances and referring to ***section "80. (1) of the Land Registration Act which provides that: ' Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.***

***(2). The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the 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 any act, neglect or default."***

**That I direct the Land Registrar Thika to proceed to rectify the Land Register in respect of the suit land including the resultant subdivisions thereof and revert the same to land parcel number No. 4252/ Block 2 measuring 1¼ acres otherwise referred to as Ruiru Kiu/ Block 2 (Githunguri) 4252 to reflect that the Plaintiff is the proprietor. I know rectification of title is a painful process for a party who commenced developments on it but will direct that the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Defendants do seek compensation from 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively.**

On the issue of costs, I find that since the Plaintiff had been inconvenienced, she is entitled to the costs of the suits.

In the circumstances, I find that the Plaintiff has proved her case on a balance of probability and will proceed to make the following orders:

- a) A declaration be and is hereby issued that the Plaintiff is the legitimate owner of Land Title No. Ruiru Kiu Block 2 (Githunguri) 4252 and all the title deeds emanating from the subdivisions therefrom.
- b) The Land Registrar, Thika be and is hereby directed to rectify the Land Register of Land Title No. Ruiru Kiu Block 2 (Githunguri) 4252 and all the title deeds emanating from the subdivisions therefrom to reflect the name of the Plaintiff MARION WANJIRU NJOROGI as its proprietor.
- c) The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Defendants be and are hereby ordered to grant vacant possession of the respective portions of land they occupy in No. 4252/ Block 2 measuring 1¼ acres otherwise referred to as Ruiru Kiu/ Block 2 (Githunguri) 4252 measuring 0.500 Ha within 90 days from the date hereof.
- d) The Costs of this suit is awarded to the Plaintiff.

**Date signed and delivered in open court at Kajjado this 1<sup>st</sup> July, 2019**

**CHRISTINE OCHIENG**

**JUDGE**