



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 594 OF 2010

1. JANE NJERI KIBUTHA

2. GLADYS NJAMBI KABI

3. ELIZABETH THABA KARURA

4. AGNES WAIRIMU KARANJA

5. REBECCA WANJIRU KARURA.....PLAINTIFFS

=VERSUS=

1. PENNINAH WAMBUI KINUTHIA

2. MILKA MWAURA

3. MIRIAM WANJA MWAURA

4. PAULINE WANGUI KARIUKI.....DEFENDANTS

JUDGEMENT

1. By a plaint dated 3rd December 2010, the plaintiffs seek judgment against the defendants jointly and severally for:-

(a) An order for a permanent injunction directed at the defendants, their servants, agents, employees or any other persons acting under their instructions from trespassing, selling, alienating, wasting, damaging or in any other manner however from interfering with the plaintiffs' quiet enjoyments of their proprietary rights over the plaintiffs' land parcel known as Githunguri/Kimathi/966.

(b) Exemplary damages

(c) Interest on (c) above.

(d) Any other reliefs or orders that this honourable court may grant in sole discretion on the plaintiffs' circumstances.

2. Upon being served with copies of plaint and summons to enter appearance the 1st and 4th defendants entered appearance through the firm of Macharia, Gakaria & Associates. They also filed a defence and counterclaim dated 19th January 2011 and filed in court on the 20th January 2011. The 2nd and 3rd defendants dispute being served and did not enter appearance and/or file any defence.

The Plaintiffs' Case

3. The plaintiffs are the registered proprietors of the all that parcel of land known as Githunguri/Kimathi/966 (hereinafter referred to as "the suit property"). The suit property was transferred to the plaintiffs by Hannah Karura Kimunya (hereafter referred to as "the Deceased"). The deceased was the registered owner of the suit property having inherited from her late mother, Elizabeth Thara Karanja.

4. The said Elizabeth Thara Karanja was the registered owner of Parcel No. Githunguri/Kimathi/588 which was subdivided into

Githunguri/Kimathi/965 and Githunguri/Kimathi 966; the two portions were registered in the names of the 1st defendant and the deceased respectively.

5. The deceased did not have children of her own. So she adopted the 1st, 3rd and 5th plaintiffs who were children of her cousin by the name Elizabeth Wambui Kabue. The deceased also invited the 2nd plaintiff to stay with her and help in daily chores and farming activities. The 4th plaintiff is also a relative of the deceased.

6. It is also the plaintiff's case that the 1st defendant was never in contact with her sister, the deceased. That it was only after her death that she started claiming the suit property. She filed Tribunal Case No 2 of 2010 before Githunguri Land Disputes Tribunal. The Tribunal found in favour of the plaintiffs. The 1st defendant was dissatisfied and preferred an appeal to Nyeri Provincial Appeals Committee. The Appeals Committee reversed the award of Githunguri Land Disputes Tribunal and gave the 1st defendant "Walkland to the graves" in the suit land No Githunguri/Kimathi/966. The plaintiffs filed judicial review proceedings in the High Court at Nairobi in which orders for stay were issued against the Award of the Provincial Appeals Tribunal.

7. It is further the plaintiffs' case that the defendants started to trespass on the suit property by selling coffee and planting trees thereon. They pray that the defendants be restrained from interfering with their quiet enjoyment and proprietary rights.

The 1st and 4th Defendants' Case

8. They filed a statement of defence and counterclaim dated 19th January 2011. In paragraph 4 of the plaint the particulars of fraud of the plaintiffs are given as:-

(i) Causing transfer of the suit land without the authority or consent of the registered owner.

(ii) Causing transfer of the suit land by using forged documents.

(iii) Purporting to transfer the suit land to themselves with full knowledge that the land was held in trust by the deceased the previous registered owner in trust for the 1st defendant.

(iv) Purporting to cause the registered owner to execute transfer of the suit land knowing well that she did not have the capacity to execute any document due to her failing health.

(v) Purporting to transfer the suit land to 1st defendant with full knowledge that the land is originally ancestral land that is not subject to transfer to third parties or to anybody else.

(vi) Purporting to transfer the suit land to themselves with full knowledge that the official position was that the suit land was ancestral land and was held in trust for the 1st defendant by the previous registered owner who is deceased.

(vii) The defendants are not related to the purported transferees to get priority over the property of a deceased person and therefore incapable of transferring any land to them.

9. In paragraph 11 the particulars of fraud are given as:-

(i) Causing transfer of the suit land without the authority or consent of the registered owner.

(ii) Causing transfer of the suit land using forged documents.

(iii) Purporting to transfer the suit land to themselves with full knowledge that the land was held in trust by the deceased the previous registered owner in trust for the 1st defendant.

(iv) Purporting to cause the registered owner to execute transfer of the suit land knowing well that she did not have capacity to execute any documents due to her failing health.

(v) Purporting to transfer the suit land to 1st defendant with full knowledge that the land is originally ancestral land that is not subject to transfer to third parties or to anybody else.

(vi) Purporting to transfer the suit land to themselves with full knowledge that the official position was that the suit land was ancestral land and was held in trust for the 1st defendant by the previous registered owner who is deceased.

(vii) The defendants are not related to the purported transferees to get priority over the property of a deceased person and therefore incapable of transferring any land to them.

10. They pray that the plaintiffs' suit be dismissed and Judgment be entered as prayed in the counterclaim in the following terms:-

(i) A declaration that the 1st defendant is the sole legitimate and rightful beneficial owner of parcel of land number

Githunguri/Kimathi 966 to the exclusion of all others.

(ii) An order directing the District Land Register, Kiambu 5th Defendant to forthwith revoke and cancel title documents in respect of parcel number Githunguri/Kimathi/966 to revert to its original status in the names of Hanna Karura Kimunya the deceased.

(iii) A permanent injunction against the plaintiff his agents, servants, officers, employees and any other person acting at the behest of or under directions or instructions of the plaintiff, restraining them from alienating or in any way interfering with the 1st defendants quiet possession of LR No Githunguri/Kimathi/966 together with the building erected thereon.

(iv) Special damages against the plaintiffs jointly and severally for loss of crops on the land, tree, fruits and coffee tress from the suit property from Githunguri/Kimathi/966.

(v) Costs of this counter claim.

(vi) Any other relief.

11. It is their case that the registration of the plaintiffs as the owners of the suit property was in contravention of the law and fraudulent. That the plaintiffs caused the transfer of title without consent of the registered owner, using forged documents. Further that the plaintiffs transferred to themselves the suit property held in trust by deceased for the 1st defendant. The deceased had no capacity to execute a transfer due to her failing health.

12. Further that this was ancestral land and the 1st defendant carried out farming activities on the suit property. Her relationship with the deceased was cordial. They pray that the plaintiffs' suit be dismissed and the prayers sought in the counterclaim be granted.

Evidence of the Plaintiffs

13. The plaintiffs called three witnesses. PW1 Jane Njeri Kibutha, the 1st plaintiff told the court the deceased Hannah Karura was her mother's cousin. That she was her foster mother as she brought them up. She told the court that the 3rd and 5th plaintiffs are her sisters. The 2nd plaintiff was assisting the deceased with daily activities and the 4th plaintiff was her daughter in law. PW1 also confirmed that the 1st defendant is the deceased's sister while the 4th defendant is her (1st defendant's) daughter.

14. PW1 adopted her witness statement filed in court on 18th September 2013 and relied on the bundle of documents dated 5th January 2013 (Exhibits P1 – P19), supplementary list dated 17th September 2013 (exhibit P20 – P24). She told the court the plaintiffs are registered proprietors of the suit property. That the deceased informed them of her intention to transfer the land to them. They all attended Githunguri Land Control Board and a consent to transfer was granted. That subsequently a title deed was issued on their names. She further stated that they followed all the procedures before they obtained the title deed.

15. When cross examined by the defendant's counsel she told the court that the transfer was complete before the deceased died. That they attended Land Control Board at Githunguri and later Kiambu Land Registry. The deceased paid Kshs.20,000/= in order for the title to be processed. She also confirmed that the deceased was in good health, physically and was sound in mind. That they used public means to go to Kiambu Lands Registry.

16. PW2, Elizabeth Thaba Karura, the 3rd plaintiff adopted her witness statement as part of her evidence in court. She confirmed that the deceased approached the area chief and told him of her desire to transfer the land to the plaintiffs. The chief then advised her to go to the Land Control Board. The deceased then took them to Githunguri Land Control Board and the application to transfer was granted. They all signed the documents before an Advocate in Kiambu to conclude the transfer. She also told the court that later a title deed was issued in their names. She also stated that though the deceased had cancer she was of sound mind and knew what she was doing.

17. When cross examined by the defendants' counsel she told the court that the deceased took her to school, she completed at class eight. She said after the title deed was ready she picked it up in December 2009 from Kiambu Land Registry. She was accompanied by Pastor Ngoci. She also stated that she used to accompany the deceased on her hospital visits. She confirmed that they got registered as proprietors of the suit property after following the proper procedure.

18. PW3 Agnes Wairimu Karanja the 4th plaintiff confirmed what PW1 and Pw2 told the court that the deceased transferred the suit property to her and her co-plaintiffs on her volition. She also told the court that the 2nd plaintiff lived with the deceased for about fifteen (15) years. She was assisting with the daily activities on the farm. She adopted her witness statement filed on 24th October 2014.

19. When cross examined by the defendants counsel she told the court that she resides on Githunguri/Kimathi/963 and that her husband died in 2008. She told the court that the deceased was an aunt to her husband. That having been married there in 1980 she knew that the deceased and the 1st defendant were not in good terms. That the 1st defendant who is her mother in law came to the farm when the deceased became ill but they would not talk.

20. She further stated that the 1st defendant used to own Land Parcel Nos Githunguri/Kimathi 965 where she would do farming but not on this suit property. She further stated that the deceased is the one who brought up the 1st, 3rd and 5th plaintiffs. She confirmed that the deceased took them to Land Control Board Githunguri where her application to transfer was granted. That thereafter, they went to an advocate's office in Kiambu where they signed the transfer forms. Later the title deed was issued on their names. She also confirmed that

the 2nd and 3rd plaintiffs would accompany the deceased on her hospital visits.

The 1st and 4th Defendants Evidence

21. DW2, Peninah Wambui Kinuthia, the 1st defendant herein, adopted her witness statement filed in court on 12th May 2011. She also relied on the bundle of documents filed in court on 12th May 2011. The documents were produced as exhibits D1-D24 respectively. She told the court that the deceased had no children of her own. That the 2nd plaintiff entered the suit property as a tenant of the deceased, as she lived in the kitchen and was not related to the deceased.

22. It is her case that she has been carrying out farming activities on the suit property together with the deceased until her demise on 6th January 2010. Further that on the suit property there is a portion which was reserved as a family burial site in which the deceased and their mother were buried. Further that the transfer on 29th December 2009 was done when the deceased was on her death bed and she was not in a position to execute the transfer documents as she was very ill.

23. That the deceased was ailing since June 2009 and would not have capacity to transfer the suit property to the plaintiffs. She prays that the prayers in the counterclaim be allowed.

24. DW2, Pauline Wangui Kariuki, the 4th defendant herein adopted her witness statement filed in court on 12th May 2011. She told the court that the 1st defendant is her mother and the deceased was her aunt. She adopted the bundle of documents filed in court on 12th May 2011. She told the court that the deceased did not have mental capacity to execute any transaction in regard to the suit property. This is when they filed a complaint in the Githunguri Land Disputes Tribunal. That they also made a report to the DCI at Kiambu on the allegations of forgery and investigations are still on going. Further that the plaintiffs destroyed all the crops and trees on the suit property.

25. It is her case that the plaintiffs have no right to claim ownership of the suit property as the land is an ancestral and cannot be transferred to outsiders without consulting the family. That the transfer to the plaintiffs was fraudulent.

26. At the close of the oral testimonies parties tendered final written submissions.

The Plaintiffs' Submissions

27. They are dated 17th July 2020 and filed on 19th August 2020. The plaintiffs are the registered owners of Land Parcel LR No Githunguri/Kimathi/966. They have given evidence on how they acquired the suit property. It was given to them during the life of the deceased and all processes were followed to wit the search, land control board consent, execution of the transfer form among other requisite documents.

28. The plaintiffs lived in the suit property with the deceased who had taken them in as her own children under Kikuyu customary law and practice. The current suit was instituted when the 1st defendant's children began interfering with the plaintiffs' land, uprooting crops and trees. The 1st defendant testified before she passed on.

29. The plaintiffs' case has been proved as by law required, that is on a balance of probability. They pray that the reliefs sought by the plaintiffs be granted so that they can enjoy quiet possession of the suit property.

The 1st and 4th Defendants Submissions

30. They are dated 14th December 2019 and filed on 18th December 2019. The plaintiffs have alleged that the land was gifted to them by the deceased and a will was prepared at the area chief's office. No evidence was produced to support the allegation nor the chief called to testify. A will can only be effective upon the demise of the maker. The plaintiffs never supported the deceased in any way during her lifetime to deserve any share of her estate.

31. The transfer was carried out when the deceased was on her death bed and the plaintiffs took advantage of the deceased who was too fragile to comprehend any issue. The transfer was registered on 29th December 2009 and the deceased died on 6th January 2010. The plaintiffs are not bonafide owners of the suit property and the same should revert to the estate of the late Hannah Karura Kimunya for distribution to the rightful owners.

32. The 1st and 4th defendants have a right to the suit property as the same is ancestral land which has been handed down from generation to generation and belongs to the family of Elizabeth Tharu. They have relied on Section 26(1) of the Land Registration Act, 2012. Section 26(1) (b) is to remove protection from an innocent purchaser or innocent title holder. It can be impeachable as long as the title was obtained illegally, unprocedurally or through a corrupt scheme. They have put forward the cases of **Alice Chemtai Too vs Nicholson Kipkirui Korir & 2 Others [2013] eKLR; Arthi Highway Developers Ltd vs West End Butchers Ltd & 6 Others [2016] eKLR.**

33. They pray that the plaintiffs' acquisition and subsequent registration as owners of the suit property be found to be fraudulent. They pray that the plaintiffs' suit be dismissed and the prayers in the counterclaim be granted.

34. I have considered the pleadings and the evidence on record. I have considered the written submissions filed on behalf of the parties and the authorities cited. The issues for determination are:-

(i) Whether the transfer of the suit property LR No Githunguri/Kiambu/966 to the plaintiffs was fraudulent.

(ii) Whether the deceased held LR NO Githunguri/Kimathi/966 in trust for the 1st defendant.

(iii) Whether the defendants have trespassed on the suit property.

(iv) If so, are the plaintiffs entitle to damages?

(v) Who should bear costs of this suit?

35. Section 24 of the Land Registration Act 2012 provides that:-

(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; and

(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 or expressed agreements, liabilities or incidents of the lease

Section 25 of the Act provides that:-

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

36. It is not in dispute that Hannah Karura Kimunya (the deceased) was the registered owner of the suit property LR NO Githunguri/Kimathi/966. This was confirmed by the 1st defendant who stated that she (1st defendant) was the owner of LR NO Githunguri/Kimathi/965.

37. It is not also in dispute that the deceased did not have any children of her own but had taken in the 1st, 3rd and 5th plaintiffs who are the children of her cousin. She educated them and treated them as her own. This evidence by PW1, Jane Njeri Kibuthia was confirmed by the 1st and 4th defendants though they (defendants) claimed they used to visit and leave. There is no evidence to the contrary that the 1st, 2nd and 5th plaintiffs were taken care of by the deceased. The allegation that they are strangers cannot stand. I find that the evidence tendered by the 1st, 3rd and 5th plaintiffs that the deceased took care of them has not been controverted.

38. PW1 told the court that the 2nd plaintiff Gladys Njambi Kabi was brought in by the deceased to assist in the daily farming activities. She lived in the kitchen which belonged to the deceased. The 1st and 4th defendants claim she was tenant who was paying rent. When cross examined, they could not tell how much rent she was paying, if any. Their claim that she was a tenant is neither here nor there.

39. The 4th plaintiff is a daughter in law to the 1st defendant. she resides on LR NO Githunguri/Kimathi/967 which belongs to her late husband. she is also one of the registered owners of the suit property. She told the court that the deceased and the 1st defendant did not see eye to eye. She told the court that the 1st defendant started visiting the suit property when the deceased started ailing.

40. The 1st defendant did not tender any evidence to show that she and her sister were close. The only evidence is the fact that the 1st defendant was able to convince the administrators of Kijabe Missions Hospital after the demise of the deceased to release the body to her. There is evidence that the 3rd plaintiff is the one who signed documents when the deceased was admitted. There is evidence by the plaintiffs

that the 2nd and 3rd plaintiffs used to accompany the deceased on hospital visits. They were the people close to her during her lifetime.

41. PW1 told the court that deceased informed them of her desire to gift them the suit property. She approached the area chief who advised her to go before the Land Control Board Githunguri. They went before the Land Control Board and the application to transfer was granted. This was sometime in November 2009. Later they all executed transfer documents before an advocate in Kiambu. The transfer in favour of the plaintiffs was registered on 29th December 2009 shortly before the deceased passed on. It appears to me that the proper procedure was followed in transferring the suit property to the plaintiffs. The deceased was the absolute proprietor of the suit property. She had right to deal with it in whatever manner she deemed fit. In this case she made a decision to gift the same to the plaintiffs.

42. It is on record evidence that the deceased was suffering from cancer of the throat. No evidence has been tendered by the 1st and 4th defendants to the effect that she was of un sound mind or that the disease had affected her mental faculties. The defendant ought to have tendered evidence of her in capacity to transact due to illness. When cross examined by the plaintiffs' counsel the 1st defendant (DW1) admitted that the deceased told her "she wishes to leave the land with people who work for her". The 1st defendant interpreted this to mean the land would be left for her. However, going by the evidence tendered by the plaintiffs it was obvious that the deceased was referring to the plaintiffs. From the foregoing I find that the transfer to the plaintiffs was not fraudulent.

43. Accordingly to the Black's Law Dictionary 10th Edition fraud is defined as:-

"Fraud consists of some deceitful practice or willful device, resorted to with interest to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Fraud, as applied to contracts, is the cause of one error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to one party or to cause an inconvenience or loss to the other. Fraud, in the sense of a court of equity, properly includes all acts, omissions and concealments which involve breach of legal or equitable duty, trust or confidence firstly reposed, and are injurious to another, or by which an evidence and unconscientious advantage is taken of another".

I find that the 1st and 4th defendants have failed to prove the particulars of fraud attributed to the plaintiffs in paragraphs 4 and 11 of the statement of defence and counterclaim. In the case of **Gichinga Kibutha vs Caroline Nduku [2018] eKLR** the Court of Appeal stated thus:-

"Fraud is essentially a common law tort of deceit and its essentials are:-

(a) false representation of existing facts;

(b) with the intention that the other party should act upon it;

(c) the other party did act on it;

(d) the party suffered damage".

44. It is now well settled law that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt as was held in **Arthi Highway Developers Ltd vs West End Butchery Ltd & 6 Others [2015] eKLR** where the court stated that:-

"It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from Bullen & Leake & Jacobs Precedent of pleadings 13th Edition at page 427:-

"Where fraud is intended to be charged, there must be a clear and distinct allegations of fraud upon the pleadings, and though it is not necessary that the word fraud should be used the facts must be so stated as to show distinctly that fraud is charged (willing ford v Mutual Society [1880] 5 APP Case 685 at 697 701, 709, Garden Neptune v Occident [1989] 1 Lloyd's Rep.305, 308).

The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see) Lawrence vs Lord Norreifs (1880) 15 App Case 210 at 221). It is not allowed to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (Davy V Garrett (1878) 7 Ch.D 473 at 489) "General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice."

45. The 1st and 4th defendants stated that the plaintiffs took advantage of the ailing deceased and defrauded her of the suit property. They have questioned the transfer in favour of the plaintiffs. **Section 107** of the Evidence Act provides that:-

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

46. The 1st and 4th defendants allege that the deceased's Identification Card on the transfer documents reads 4815134 while on the green card

it is 4815316167. That this is a case of forgery. They however did not tender the correct identification card number of the deceased. I find that the 1st and 4th defendants have failed to prove the allegations of fraud on the part of the plaintiffs. I find that the transfer in favour of the plaintiffs by the deceased was not fraudulent.

47. The 1st defendant in her counterclaim prays that she be declared the sole legitimate and rightful beneficial owner of the suit property. That this being an ancestral land the deceased held the suit property in trust for her hence could not be transferred to the plaintiffs.

48. It is not in dispute that the 1st defendant has her own suit land being LR No Githunguri/Kimathi/965. She told the court that she has given the same to her children and now owns no land. As stated earlier the deceased was the absolute owner of the suit property. She had a right to do what she wished with it. The suit property ceased to be ancestral land the moment it was subdivided from the mother title Githunguri/Kimathi/588. The 1st defendant got her own portion and chose to give it to her children.

49. I find that the deceased did not hold the suit property in her trust. In the case of **Twalib Hatayan & Another vs Said Saggar Ahmet Al Heidy & Others [2015] eKLR** the Court of Appeal examined and stated the law of trust as follows:-

“According to Black’s Law Dictionary 9th Edition; a trust is defined as:-

“1. The right enforceable, solely in equity to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary)” under the Trustee Act”.....

A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing.....

.....A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee.....

This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention (see Snell’s Equity 29th Edition, Sweet & Maxwell P175)”.

50. In the instant scenario the fraud alleged by the 1st and 4th defendants against the plaintiffs on how they acquired the suit property was not proved hence constructive trust would not apply. The deceased intimated that she would transfer the suit property to the plaintiffs a fact which was confirmed by the 1st defendant on her testimony. This means the deceased intended to confer a beneficial interest of her suit property to the plaintiffs.

51. As to whether the defendants trespassed on the suit property. I find that the 1st and 4th defendants did not deny entry into the suit property as they believed it was their property. The 2nd and 3rd defendants’ did not respond to the suit at all. In the case of **Park Towers Ltd vs John Muthamo Njika & 7 Others [2014] eKLR** J Mutungi stated as follows:-

“I agree with the learned judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case”.

In the instant suit I note that the parties herein are related except for the 2nd plaintiff. I decline to award any damages for trespass. This is to avoid further acrimony between the parties who reside in the same area.

52. In conclusion, I find that the plaintiffs have proved their case against the defendants on a balance of probabilities. In essence the 1st and 4th defendants’ counterclaim is dismissed with costs to the plaintiffs.

53. Accordingly judgment is entered for the plaintiffs as against the defendants as follows:-

(a) That an order of permanent injunction is hereby issued restraining the defendants, their servants, agents, employees or any other persons acting under their instructions from trespassing, selling, alienating, wasting, damaging or in any other manner interfering with the plaintiff’s quiet enjoyment of their proprietary rights over the plaintiffs’ land parcel known as Githunguri/Kimathi 966.

(b) That costs of the suit is awarded to the plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 22ND DAY OF JULY 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiffs

Mr. Gakara for the 1st and 4th Defendants

No appearance for the 2nd and 3rd Defendants

Phyllis - Court Assistant