



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC SUIT NO. 155 OF 2012**

**GODFREY NJOGU MUNGAL.....PLAINTIFF**

**VERSUS**

**FRANCIS KAGIYA.....1<sup>ST</sup> DEFENDANT**

**JACKSON NGUGI KARANJA.....2<sup>ND</sup> DEFENDANT**

**JAMES NJENGA GACHERE.....3<sup>RD</sup> DEFENDANT**

**(ALL SUED IN THEIR PERSONAL CAPACITIES AND AS**

**TRUSTEES OF MUTURA SELF HELP GROUP)**

**JEDIDAH MUGURE KUNGU.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background:**

At all material times, one George Kimani Wainaina (hereinafter referred to as “the seller”) owned all that parcel of land known as Nachu/Ndacha/562 measuring approximately 1.86 hectares (approximately 4.6 acres) (hereinafter referred to as “the original parcel”). Through an agreement of sale dated 18<sup>th</sup> January, 2005, the seller sold the original parcel to the plaintiff, the 1<sup>st</sup> to 3<sup>rd</sup> defendants (hereinafter together referred to as “Mutura”), the 4<sup>th</sup> defendant and one, Geoffrey Karanja Ngereko (hereinafter referred to as “Ngereko”) jointly at a consideration of Kshs. 360,000/-. According to clause 3 of the agreement of sale (hereinafter referred to as “the agreement”), the plaintiff, Mutura, the 4<sup>th</sup> defendant and Ngereko bought undivided portions of the original parcel measuring 1.5 acres, 1.5 acres, 1 acre and 0.5 of an acre respectively. When the original parcel was sold to the plaintiff, Mutura, the 4<sup>th</sup> defendant and Ngereko (hereinafter together referred to as “the parties” where the context so permits) the same had not been subdivided and there was no indication in the agreement that the parties had agreed on how the property was to be subdivided and the ground location of each party’s portion of the original parcel.

The seller transferred the original parcel to the parties jointly on 17<sup>th</sup> February, 2005. On 7<sup>th</sup> July, 2005, the original parcel was registered in the name of the plaintiff, the 1<sup>st</sup> to 3<sup>rd</sup> defendants as trustees of Mutura, the 4<sup>th</sup> defendant and Ngereko jointly. On 12<sup>th</sup> September, 2006, the parties signed a Mutation Form for the partition of the original parcel. In the Mutation Form, the original parcel was to be subdivided into four (4) portions and a road. The four portions were marked in the Mutation Form as A, B, C and D measuring 0.57 of a hectare (approximately 1.41 acres), 0.59 of a hectare (approximately 1.45 acres), 0.40 of a hectare (approximately 1 acre) and 0.20 of a hectare (approximately 0.5 of an acre) respectively. The road measured 0.06 of a hectare (approximately 0.15 of an acre). According to the field diagram that was prepared by the surveyor which formed part of the said Mutation Form, the original parcel was subdivided in such a manner that portions A and D measuring 0.57 of a hectare and 0.20 of a hectare respectively faced an existing road and were also served by the new road that was created during the subdivision while portions B and C measuring 0.59 of a hectare and 0.40 of a hectare respectively were at the back and had no frontage to the existing road. The two plots were connected to the existing road by the new road that was created during the subdivision. The said Mutation Form was registered on 15<sup>th</sup> May, 2008 and the portions A, B, C and D were assigned parcel numbers Nachu/Ndacha/1513, 1514, 1515 and 1516 respectively.

In accordance with the agreement of sale, Ngereko who purchased undivided portion of the original parcel measuring 0.5 of an acre was to get portion D (Nachu/Ndacha/1516) in the mutation while the 4<sup>th</sup> defendant who purchased undivided portion of the original parcel measuring 1 acre was to get portion C (Nachu/Ndacha/1515) in the mutation. The plaintiff and Mutura who purchased undivided portion of the suit property measuring 1.5 acres each were to get the remaining portions A (Nachu/Ndacha/1513) and B (Nachu/Ndacha/1514).

After the partitioning of the original parcel, the sub-plots Nachu/Ndacha/1513, 1514, 1515 and 1516 were registered in the names of the 1<sup>st</sup> to 3<sup>rd</sup> defendants (Mutura), the 4<sup>th</sup> defendant, the plaintiff and Ngereko respectively. As I have mentioned, the 4<sup>th</sup> defendant was supposed to be registered as the owner of Nachu/Ndacha/1515 and not Nachu/Ndacha/1514 while the plaintiff was to be registered as the owner of either Nachu/Ndacha/1513 or Nachu/Ndacha/1514 and not Nachu/Ndacha/1515. I have not seen on record the instruments of transfers pursuant to which the sub-plots were transferred to each of the parties.

The plaintiff's claim:

In his plaint dated 22<sup>nd</sup> March, 2012, the plaintiff contended that when the parties bought the original parcel from the seller, the seller pointed out to each of them their respective undivided portions of the original parcel which they purchased and that each of them took possession and started using the said respective portions. The plaintiff contended that he took possession of the portion of the original parcel that was marked A in the mutation that was latter assigned land parcel number Nachu/Ndacha/1513, Mutura took possession of the portion of the original parcel that was marked B in the mutation that was assigned land parcel number Nachu/Ndacha/1513, the 4<sup>th</sup> defendant took possession of the portion that was marked C and assigned land parcel number Nachu/Ndacha/1515 and Ngereko took possession of the portion that was marked D that was assigned land parcel number Nachu/Ndacha/1516.

The plaintiff averred that during the partitioning of the original parcel, the surveyor took into account the acreage of the original parcel that each of the parties had purchased and the portions of the said property that each of the parties was occupying on the ground. The plaintiff contended that according to the Mutation Form dated 12<sup>th</sup> September, 2006, the plaintiff was supposed to be registered as the owner of Nachu/Ndacha/1513. The plaintiff averred that contrary to the terms of the agreement of sale and to the location of the portions of the original parcel that each party was occupying on the ground, the plaintiff was registered as the proprietor of Nachu/Ndacha/1515 measuring 0.40 of a hectare, Mutura was registered as the proprietor of Nachu/Ndacha/1513 measuring 0.57 of a hectare while the 4<sup>th</sup> defendant was registered as the proprietor of Nachu/Ndacha/1514 measuring 0.59 of a hectare.

The plaintiff averred that the said registrations were wrongful and came about as a result of a fraudulent conspiracy and collusion by the defendants aimed at dispossessing the plaintiff of his rightful portion of the original parcel. The plaintiff urged the court to cancel the said registration and order for the rectification of the registers of the affected parcels of land as follows; the plaintiff to be registered as the owner of Nachu/Ndacha/1513 measuring 0.57 of a hectare, Mutura to be registered as the owner of Nachu/Ndacha/1514 measuring 0.59 of a hectare and the 4<sup>th</sup> defendant to be registered as the owner of Nachu/Ndacha/1515 measuring 0.40 of a hectare.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants (Mutura) filed a joint statement of defence on 26<sup>th</sup> April, 2012. Mutura admitted that the parties purchased the original parcel from the seller on 18<sup>th</sup> January, 2005. Mutura also admitted the terms of the agreement of sale. Mutura contended that the agreement of sale did not identify the ground location of the original parcel that each party was buying. Mutura averred further that when the parties partitioned the original parcel, they did not indicate how the two portions measuring approximately 1.5 acres were to be allocated between the plaintiff and Mutura. Mutura denied that the plaintiff was allocated the portion that was marked A in the Mutation Form by the seller. Mutura averred that as at the time of partitioning the original parcel, the same was in the name of the parties and as such there was no way the seller could have come in to allocate portions thereof.

Mutura averred that the portion of the original parcel known as Nachu/Ndacha/1513 was registered in its name on 15<sup>th</sup> May, 2008 and a title in respect thereof was issued to it on 5<sup>th</sup> January, 2012. Mutura averred that the subdivision of the original parcel and registration of the subdivisions of the original parcel in the names of the parties was carried out by the District Surveyor, Kiambu and District Land Registrar, Kiambu. Mutura contended that if there was any fraud or mistake in the process, the blame should be put on the said officers and not on Mutura. Mutura averred that it was lawfully registered as the proprietor of Nachu/Ndacha/1513 and that he had taken possession of the same. Mutura averred that before the partitioning of the original parcel the same was being cultivated by the parties communally and none of the parties had a right to any particular portion of the said property conferred either by the seller or the other parties.

Mutura averred that the plaintiff's claim should be in respect of Nachu/Ndacha/1514 which is slightly larger and not Nachu/Ndacha/1513 owned by Mutura. Mutura averred that its rights as proprietor of Nachu/Ndacha/1513 cannot be defeated by the flimsy, unsubstantiated and false allegations by the plaintiff. Mutura averred that the plaintiff's suit is fatally defective for failure to plead the particulars of fraud and for non-joinder of the Registrar of Lands and the Attorney General to the suit. Mutura urged the court to dismiss the plaintiff's suit with costs.

The 4<sup>th</sup> defendant filed a defence on 13<sup>th</sup> February, 2019. The 4<sup>th</sup> defendant admitted most of the averments in the plaint. The 4<sup>th</sup> defendant admitted that she was erroneously registered as the owner of Nachu/Ndacha/1514 measuring 0.59 of a hectare instead of the portion measuring 0.40 of a hectare that she had purchased. The 4<sup>th</sup> defendant averred that she was not aware that she had been registered as the owner of the said property erroneously until the present suit was filed. The 4<sup>th</sup> defendant denied that she was involved in the alleged fraudulent registration of the said property in her name. The 4<sup>th</sup> defendant averred that she was entitled to a portion of the original parcel measuring 0.40 of a hectare. The 4<sup>th</sup> defendant urged the court to make an order for the rectification of the register of the parcel of land registered in her name so that her title reflects that she owns land measuring 0.40 of a hectare.

At the trial, the plaintiff gave evidence and called one witness. In his evidence, the plaintiff reiterated the contents of his plaint that I have highlighted at length earlier. It is not necessary to reproduce the same here. The plaintiff also adopted his witness statement dated 16<sup>th</sup> March, 2012 and produced his bundle of documents dated 23<sup>rd</sup> January, 2012 as exhibits. The plaintiff called one witness, Jackson Mungai (PW2). PW2 told the court that he was a neighbor to the plaintiff in Nachu Ndacha where the property in dispute is situated. He corroborated the plaintiff's evidence that the plaintiff had taken possession and fenced the parcel of land that was assigned land parcel number Nachu/Ndacha/1513.

After the close of the plaintiff's case, the 4<sup>th</sup> defendant was the first to give evidence for the defence. The 4<sup>th</sup> defendant reiterated the contents of her defence and adopted her witness statement dated 20<sup>th</sup> February, 2019. She told the court that she purchased a portion of the

original parcel measuring 1 acre. The 4<sup>th</sup> defendant told the court that she was surprised that she was registered as the owner of land measuring 0.59 of a hectare instead of the 1 acre that she had purchased. The 4<sup>th</sup> defendant stated that she was erroneously registered as the owner of Nachu/Ndacha/1514. She urged the court to order that she be issued with the correct title.

The second witness for the defendants was the seller, George Kimani Wainaina (DW2). DW2 supported Mutura's case. He adopted the contents of his affidavit sworn on 19<sup>th</sup> April, 2012 as his evidence in chief. He stated that when he sold the original parcel to the parties, he did not show each one of them their respective portions. He stated that the original parcel measured 5 acres and that it had not been subdivided. DW2 stated that it was up to the parties to subdivide the original parcel and allocate portions thereof to themselves as they deemed fit. He stated that he sold the property to the parties as a group and that the same was transferred and a title issued in their joint names. He stated that he was not involved in the subdivision of the original parcel. He stated that the transaction between the parties and he ended after the property was transferred to the parties.

The 3<sup>rd</sup> witness for the defence was the 2<sup>nd</sup> defendant, Jackson Ngugi Karanja (DW3) who gave evidence on behalf of Mutura. DW3 reiterated the contents of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants' defence. He adopted his witness statement dated 26<sup>th</sup> April, 2012 and produced the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants' bundle of documents filed in court on 29<sup>th</sup> October, 2014 as exhibits. DW3 denied that Mutura acquired Nachu/Ndacha/1513 fraudulently. He stated that it was discovered at the Lands Office that the plaintiff's land had an error with regard to the acreage. He stated that the problem was confirmed by the District Surveyor in a letter dated 7<sup>th</sup> July, 2021.

After the close of evidence, the parties were directed to make closing submissions in writing. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the plaintiff and the 4<sup>th</sup> defendant filed their submissions on 14<sup>th</sup> January, 2021, 2<sup>nd</sup> June, 2021 and 4<sup>th</sup> June, 2021. I have considered the pleadings, the evidence tendered by the parties and the submissions by the advocates for the parties. The issues arising for determination in this suit in my view are the following;

1. Whether the plaintiff, Mutura, the 4<sup>th</sup> defendant and Ngereko were shown their individual portions of the original parcel on the ground and as such the plaintiff owned an identifiable portion of the said property before partition.
2. Whether the defendants fraudulently conspired to wrongly register the plots that resulted from the subdivision of the original parcel with the intention of dispossessing the plaintiff of the portion of the original parcel that he purchased.
3. Whether the plaintiff is entitled to the reliefs sought.
4. Who is liable for the costs of the suit?

Whether the plaintiff, Mutura, the 4<sup>th</sup> defendant and Ngereko were shown their individual portions of the original parcel on the ground and as such the plaintiff owned an identifiable portion of the said property before partition.

The original parcel was registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). Section 103 of the Registered Land Act provided as follows:

**(1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.**

**(2) No proprietor in common shall deal with his undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld.**

There is no dispute from the evidence on record that the parties purchased the original parcel with the intention of subsequently subdividing it so that each party could have a separate title for his/her portion. After purchasing the original parcel, the same was registered in their joint names. Although it was not indicated in the instrument of transfer or the title deed that the parties held the original parcel as tenants in common, there is no dispute that the parties held the original parcel as tenants in common in undivided shares. The agreement of sale and the evidence on record supports that position. In Kurshed Begum Mirza v Jackson Kaibunga [2017] eKLR the court stated as follows on tenancy in common:

**“.....By definition, a tenancy in common is a tenancy by two or more persons, in equal or unequal undivided shares, with each person having the right to possess the whole property but no right of survivorship. The central characteristic of a tenancy in common is that each tenant is deemed to own by himself, a physically undivided part of the entire parcel (see. Black's Law Dictionary, 9th Edn and Thomas F. Bergin & Paul G. Haskell, 'Preface to Estates in Land and Future interests 54 2nd Edn, 1984).”**

In Megarry & Wade, The Law of Real Property, 17<sup>th</sup> Edition at pages 493 and 494 paragraphs 13-009 to 13-012, the authors have stated as follows regarding the nature of a tenancy in common:

**“1. The tenants hold in undivided shares. Unlike joint tenants, tenants in common hold in undivided shares. Each tenant in common has a distinct share in property which has not yet been divided among the co-tenants. Thus tenants in common have quite separate interests. The only fact which brings them into co-ownership is that they both have shares in a single property which has not yet been divided among them. While the tenancy in common lasts, no one can say which of them owns any particular parcel of land.**

2. There is no right of survivorship. The size of each tenant's share is fixed once and for all and is not affected by the death of one of his companions. When a tenant in common dies, his interest passes under his will or intestacy, for his undivided share is his to dispose of as he wishes...

3. Only the unity of possession is essential. Although the four unities of a joint tenancy may be present in a tenancy in common, the only unity which is essential is the unity of possession. In particular, it should be noted that the unity of interest may be absent and the tenants may hold unequal interests, so that one tenant in common may be entitled to a one-fifth share and the other to four-fifths, or one may be entitled for life and another in fee simple".

In John Mbogua Getao v Simon Parkoyiet Mokare & 4 others [2021] eKLR the Supreme stated as follows regarding the characteristics of a tenancy in common:

"....Therefore, the type of tenure operative in a group ranch under the Land (Group Representatives) Act, is what is known at common law as "a tenancy in common", as opposed to "a joint tenancy" (the ingredients of which may be clarified in future litigation). Members of the group ranch are "tenants in common" as opposed to "joint tenants".

[40] At common law, each co-owner is as much entitled to possession of *any part of the land as the others*. He cannot point to any part of the land as his own to the exclusion of the others; if he could, there would be separate ownership and not co-ownership. No one co-owner has a better right to the property than another. Tenants in Common hold in undivided shares. Each tenant in common has a distinct share in property which has not yet been divided among the co-tenants. The only fact which brings them into co-ownership is that they both have shares in a single property which has not yet been divided among them. Therefore, while the tenancy in common lasts, no one can say which of them owns any particular parcel of land. (See Megarry and Wade, *'The Law of Real Property' 6th Edition Pages 477 and 480*).

....Can it be said that a group ranch comes into existence on the basis of its value as opposed to its acreage? Hardly so. The frontiers of a group ranch can only be determined by its acreage as established by a Survey which then maps its boundaries. This explains why the mechanism that is used by the group representatives at the time of sub-division is *balloting*. Balloting is *acreage sensitive* but *value blind*. After sub-division, individual parcels are bound to differ in terms of value, depending on various factors. However, such differences in the value of distinct parcels are a post sub-division phenomenon, and therefore irrelevant to the process."

From the evidence on record, I am not persuaded that the parties had agreed on the ground location of each of their shares in the original parcel when they purchased the same or at any time thereafter. The seller denied such agreement and the plaintiff did not place before the court any convincing evidence of such agreement.

Due to the foregoing, it is my finding that the parties did not agree on the ground location of the portions of the original parcel that each purchased from the seller.

Whether the defendants fraudulently conspired to wrongly register the plots that resulted from the subdivision of the original parcel with the intention of dispossessing the plaintiff of the portion of the original parcel that he purchased.

From the authorities that I have cited above, the manner of user of the original parcel by the parties while they held the same in common is not a determinant in law of the location of each party's share of the original parcel. The parties were supposed to agree on the manner of subdividing the original parcel and in the absence of an agreement, the Land Registrar was supposed to carry out the subdivision in any manner he deemed appropriate.

Section 104 of the Registered Land Act provides as follows:

- (1) An application in the prescribed form to the Registrar for the partition of the land owned in common may be made by -
  - (a) any one or more of the proprietors; or
  - (b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree, and, subject to the provisions of this Act and of any written law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar shall effect the partition of the land in accordance with any agreement of the proprietors in common or, in the absence of agreement, in such manner as the Registrar may determine.(emphasis added)

(2) Partition shall be completed by closing the register of the parcel partitioned and opening registers in respect of the new parcels created by the partition and filing the agreement or determination.

Since the parties did not agree on how to partition the original parcel, it was up to the Land Registrar to determine how to go about it. The 1<sup>st</sup> to 3<sup>rd</sup> defendants (Mutura) pleaded and led evidence that the task of subdividing the original parcel and registering portions thereof in the names of the parties was left to the District Surveyor and District Land Registrar, Kiambu. I am convinced that the parties left the exercise of subdividing the original parcel and registering the sub-plots in the name of the parties to the Land Surveyor and Land Registrar, Kiambu. I am of the view that the mistakes that were made during the registration of the portions of the original parcel in the names of the parties would not have happened if there was an agreement between the parties that was communicated to the Land Registrar or if the Land Registrar was acting on the instructions of any of the parties.

Since the Land Registrar was not made a party to the suit, we may never know what determined the registration of Nachu/Ndacha/1513 and not Nachu/Ndacha/1514 in the name of Mutura or Nachu/Ndacha/1515 and not Nachu/Ndacha/1513 in the name of the plaintiff. There is also no one to explain why Nachu/Ndacha/1514 and not Nachu/Ndacha/1515 was registered in the name of the 4<sup>th</sup> defendant. The plaintiff did not tender any evidence in proof of his allegation that the defendants colluded to have Nachu/Ndacha/1513 registered in the name of Mutura and Nachu/Ndacha/1514 in the name of the 4<sup>th</sup> defendant. I am unable to see what the 4<sup>th</sup> defendant would have gained by having herself registered as the owner of a parcel of land that she did not purchase and she was not occupying. Furthermore, since the 4<sup>th</sup> defendant was related to Mutura which is alleged to have hatched the fraudulent plot, I wonder why she was not assisted to get the correct title for her land. In Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd [2004] 2 E.A KLR 269, the Court of Appeal held that:

**“Fraud is a serious quasi-criminal imputation and it requires more than proof on a balance of probability though not beyond reasonable doubt”.**

In Kampala Bottlers Ltd. v Damanico (UG) Ltd. East Africa Law Reports [1990-1994] E.A141(SCU), the Supreme Court of Uganda stated that:

**“To impeach the title of a registered proprietor of land, fraud must be attributable to the transferee either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of some act by somebody else and taken advantage of such act. The burden of proof must be heavier than a balance of probabilities generally applied in civil matters.”**

It is my finding that the plaintiff has not proved the allegations of fraudulent conspiracy in the registration of Nachu/Ndacha/1513 in the name of Mutura, Nachu/Ndacha/1515 in the name of the plaintiff and Nachu/Ndacha/1514 in the name of the 4<sup>th</sup> defendant.

Whether the plaintiff is entitled to the reliefs sought.

From the evidence on record it is my finding that the registration of Nachu/Ndacha/1514 in the name of the 4<sup>th</sup> defendant instead of Nachu/Ndacha/1515 and Nachu/Ndacha/1515 in the name of the plaintiff instead of Nachu/Ndacha/1514 was a mistake that was committed by the Land Registrar. I have not found any mistake or error in the registration of Nachu/Ndacha/1513 in the name of Mutura. As I have stated earlier, since the parties did not agree on the partition of the original parcel, the Land Registrar had power to partition the property as he deemed appropriate. Since the Land Registrar was not made a party to the suit so as to give the court the reason why he registered Nachu/Ndacha/1513 in the name of Mutura and not in the name of the plaintiff since both were entitled to own either Nachu/Ndacha/1513 or Nachu/Ndacha/1514, I am unable to find fault in his decision since doing so would amount to condemning him unheard. I will therefore not interfere with his decision with regard to Nachu/Ndacha/1513. With regard to Nachu/Ndacha/1514 and Nachu/Ndacha/1515, this court has power to correct the mistake which is apparent on the face of the record and which has been admitted by all the parties.

Conclusion.

In the final analysis and for the foregoing reasons, I hereby make the following orders;

1. I declare that there are errors in the registers and title deeds relating to Land Parcel Numbers, Nachu/Ndacha/1514 and Nachu/Ndacha/1515 occasioned by a mistake made by the Land Registrar.
2. The Land Registrar shall rectify the register for Nachu/Ndacha/1514 by cancelling entry numbers 1, 2 and 3 thereon and registering the plaintiff, Godfrey Njogu Mungai as the proprietor of the property and shall issue him with a title deed.
3. The 4<sup>th</sup> defendant, Jedidah Mugure Kungu shall surrender the title deed that was issued to her in respect of Nachu/Ndacha/1514 to the Land Registrar for cancellation.
4. The Land Registrar shall rectify the register for Nachu/Ndacha/1515 by cancelling entry numbers 1 and 2 thereon and registering the 4<sup>th</sup> defendant, Jedidah Mugure Kungu as the proprietor of the property and shall issue her with a title deed.
5. The plaintiff, Godfrey Njogu Mungai shall surrender the title deed that was issued to him in respect of Nachu/Ndacha/1515 to the Land Registrar for cancellation.
6. The caution that was registered against the title of Nachu/Ndacha/1513 by the plaintiff, Godfrey Njogu Mungai on 24<sup>th</sup> January, 2012 as entry number 3 is removed.
7. Due to the nature of the dispute before the court, each party shall bear its own costs

**DELIVERED AND DATED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2021**

**S. OKONG'O**

**JUDGE**

**Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:**

Mr. Njogu for the Plaintiff

Mr. Wamiti Njagi for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Ms. Nderitu for the 4<sup>th</sup> Defendant

Ms. C. Nyokabi-Court Assistant