



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC CASE NO.162 OF 2017**

**(FORMERLY NAIROBI HCCC NO. 473 OF 2006 (O.S))**

**JOHN GEORGE MUGEKENYI (SUING AS THE ADMINISTRATOR OF  
THE ESTATE OF MBUGUA MUGEKENYI(DECEASED)).....PLAINTIFF**

**VERSUS**

**ARTHUR KABIRIRI WAWERU.....1<sup>ST</sup> DEFENDANT**

**SHEM KIHORO.....2<sup>ND</sup> DEFENDANT**

**JOHN MBURU WAWERU.....3<sup>RD</sup> DEFENDANT**

**AMOS KAHUHA.....4<sup>TH</sup> DEFENDANT**

**JAMES MUCHAI WACHIRA.....5<sup>TH</sup> DEFENDANT**

**MARY WACHUKA WACHIRA.....6<sup>TH</sup> DEFENDANT**

**NJUGUNA MATHU.....7<sup>TH</sup> DEFENDANT**

**PETER WANGO GATHATA.....8<sup>TH</sup> DEFENDANT**

**PETER NDUGU MBUGUA.....9<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR-KIAMBU.....10<sup>TH</sup> DEFENDANT**

**THE HON.ATTORNEY GENERAL.....11<sup>TH</sup> DEFENDANT**

**JUDGMENT**

By a Further Amended Originating Summons dated **1<sup>st</sup> February 2011**, the Plaintiff brought this suit against the Defendants seeking for orders that ;

**1. THAT the land Register in respect of L.R Lari/ Kirenga / 671 (now closed and illegally opened into L.R Lari/ Kirenga/ 17899,1822,1784,1820,1811,1818 and 1819 be rectified and the said sub divisions be cancelled and the said land be recombined into the original L.R Lari/Kirenga/671, and be registered into the name of the deceased Mbugua Mugekenyi.**

**2. Declaration that Mbugua Mugekenyi (deceased) held L.R Lari/Kirenga 671 now closed illegally opened into L.R Lari/Kirenga 1786, 1822 in trust for himself and John George Mbugua Mugekenyi and the said trust be determined.**

The Summons is based on the grounds that the subdivisions and transfer of **L.R Lari/Kirenga/671**, was obtained through **fraud** as the deceased did not apply for subdivisions before his death. Further that the deceased held the suit land in **trust** for himself and **John George**

**Mugekenyi** and that the deceased never applied nor did he attend and or obtain **Land Control Board Consent** for subdivision and then transfer of the property. It was contended that the original title deed was not cancelled before the new title deeds were purportedly issued and or surrendered to the **Lands Office, Kiambu**, and thus the purported application for **Land Control Board's Consent** was a forgery as the deceased never signed any mutation forms and neither did he execute any transfer forms in favour of the Defendants.

The suit is contested and the Court notes that though there was a further amended Originating Summons, the Replying Affidavits focused on the amended Originating Summons filed on **20<sup>th</sup> July 2007**.

The 7<sup>th</sup> Defendant **Njuguna Mathu**, in contesting the suit filed a Replying Affidavit dated **30<sup>th</sup> May 2012**, and averred that he is the bonafide purchaser for value of **L.R 1822**, having bought the same from the deceased's son **George Mugekenyi Mbugua**, for **kshs. 180,000/=** and his title is therefore protected under **Section 28**, of the **Registered Land Act(now repealed)**. He further averred that his property was excised from **L.R 1785**, owned by the deceased's son and does not form part of the deceased's Estate. It was his contention that **Peter Ndungu Mbugua**, in his Affidavit in another suit filed in **Githunguri Law Courts**, acknowledged that the subdivisions and transfers were genuine. He denied that the Plaintiff has ever resided on the property and averred that the deceased was survived by two sons.

In his **Replying Affidavit** dated **30<sup>th</sup> May 2012**, the 8<sup>th</sup> Defendant, **Peter Wango Gathata**, averred that he is the bonafide purchaser for value of **L.R Lari/Kirenga/1786** having bought it from the deceased **Mbugua Mugekenyi** for **Kshs, 200,000/=** and that the deceased's son admitted that the subdivision and transfers were genuine. It was his contention that the **L.R No. Lari / Kirenga /671**, belonged to the deceased alone and that it never belonged to the two of them. Further that the Plaintiff never resided on **L.R 1786**.

The 3<sup>rd</sup> Defendant **John Mburu Waweru** in his **Replying Affidavit** sworn on **30<sup>TH</sup> May 2012**, averred that he is the bonafide purchaser for value of **L.R 1818**, having bought the same from **Arthur Kabiriri Waweru** for **Kshs, 97,500**, which portion was excised from **L.R 1783**, which was owned by the deceased's son **Peter Ndungu Mbugua**, and that it did not form part of the deceased's Estate. It was his contention that he had no dealings with deceased and the Court should therefore not cancel his title.

The 2<sup>nd</sup> Defendant **Shem Kihoro**, in his **Replying affidavit** dated **30<sup>th</sup> May 2012**, averred that he is the bonafide purchaser for value of **L.R 1817** which he bought from **Arthur Kabiriri Waweru** for **Ksh. 97,500/=** which was excised from **L.R 1783**, which was owned by **Peter Ndungu Mbugua**, who had admitted that the subdivisions and transfers were genuine.

In her **Replying Affidavit** dated **30<sup>th</sup> May 2012**, the 6<sup>th</sup> Defendant **Mary Wachuka Wachira**, averred that she is the bonafide purchaser for value of **L.R Lari/Kirenga/1821**, which she bought from the deceased's son **George Mugekenyi Mbugua** for **Ksh.200.000/=** portion which was excised from **L.R 1785**, which had been owned by the deceased's son **George Mugekenyi Mbugua** and that the same does not form part of the deceased's estate.

After close of pleadings, the suit proceeded via *viva voce* evidence wherein the Plaintiff gave evidence for himself and called one witness and the Defence called seven witnesses and closed their case.

#### **PLAINTIFF'S CASE**

**PW1 John George Mbugua Mugekenyi**, testified that he is the Administrator of the Estate of his brother **Mbugua Mugekenyi** (deceased), the registered owner of the suit property. He further testified that the title deed was issued on **3<sup>rd</sup> January 1969**, the land having been registered on **29<sup>th</sup> December 1958**, during demarcation. It was his testimony that he was born in **Kimathi** and they later moved to **Lari/Kirenga 671**, after demarcation and that they lived there during their childhood until **1976**, when he was arrested and jailed for murder. He testified that when he was released in **1993**, he went back to **Lari/Kirenga 671** and his brother was on the said land upon which they agreed to subdivide the said land. However, he later learnt that the land was sold without his brother's consent.

He denied attending the **Land Control Board** to get **consent**. It was his evidence that when their Advocate wrote a letter to the Land Registrar, the Land Registrar, responded via letter dated **1<sup>st</sup> October 1996** informing them that there had been subdivision of the property resulting to **L.R Nos. 1783, 1784, 1785 and 1786**.

It was his evidence that they then moved to court in **Githunguri** wherein they sued **Peter Ndungu Mbugua and Mugekenyi Mbugua in Civil Case No.110 of 1997**, but his brother died before the case could be determined. He told the Court that they then placed cautions on the suit premises, but that the land was further subdivided into **L.R Nos. 1817, 1820, 1821 and 1822**. That when they complained to the Chief Land Registrar, the Chief Land Registrar referred them to the **police** after which they were referred to Court where they learnt that there were people with fake title deeds over the suit property. It was his further evidence that their land was initially in **Kimathi** and after demarcation they moved to **Lari/Kirenga/671**, where he put up a house but he was chased away by the Defendants. He confirmed that the Defendants bought the land in **1994** and that when they bought the land there were no cautions as they used the green cards to obtain their title deed.

He further testified that he moved to **Kanjai** after being chased away from **Lari/Kirenga/671**, where he had a house. It was his evidence that **Mbugua Mugekenyi**, lived on the suit land. He further testified that his brother had two children one **Peter Ndungu Mbugua** and **George Mugekenyi**. Further that the deceased children sold the land to the Defendants, but that the deceased never transferred the land to his sons. He confirmed that the Defendants lived on the suit land and that they had built permanent house. He further testified that the land was swindled from them as he had sued **Peter Ndungu** and **George Mugekenyi** and that the said George moved out of the land.

**PW2 George Mugekenyi**, testified that the Plaintiff was his father's brother and that the suit land was in the name of his father in **1995** and that he was born in the suit land. He further testified that when his father's younger brother came from prison, it was decided that the land was to be subdivided into two portions but that there was no money for subdivisions though they still used the land.

It was his evidence that in **1996**, his elder brother **Peter Ndungu** told him that he would rent the land and they then went to **Githunguri** and talked to one **Wacuka**, who informed them that she would till the land for several years. He further testified that he was then given money to pay his **school fees** and that they signed a form. He denied that they appeared before the **Land Control Board**, but acknowledged that he was then taken to a broker, where he might have signed some documents. He testified that their father had allowed them to use the land, but not to hire it out or sell it. He further testified that their father did not accompany them when they signed the documents and that he was never given any monies. He confirmed that he signed the documents and that his signing was witnessed and he received **Kshs. 60,000/=** and not **kshs. 200,000/=**.

He denied that his father transferred the land to him and denied signing the agreement. It was his further evidence that he only leased the land to the said **Mary Wacuka**, and that he had not seen the Application and **consent** to transfer the land from the Land Control Board.

## **DEFENCE CASE**

**DW1 Arthur Kabiriri Waweru**, adopted his witness statement dated **23<sup>rd</sup> April 2012**, and produced his list of documents as evidence. It was his evidence that he owns **L.R Lari/Kirenga/1819**, and that he had a title deed to that effect having bought it from **Peter Ndungu Mbugua** (deceased) on **14<sup>th</sup> August 1996** at **Kshs. 390,000/=** to which he paid the money in full. He testified that at the time he bought his land, it was **2 acres** and that two other people helped him purchased the land and therefore they each got  $\frac{1}{2}$  an acre and he was left with **one acre** which he has planted tea bushes. He told the Court that in **Succession Cause No. 409 of 2001**, the court made an order that the administrators of the Estate of **Mbugua Mugekenyi** file a case to determine ownership of **Lari/Kirenga/671**, which is not his land.

He further testified that before the land was registered in his name, he went to the **Land Control Board** and sought for **consent**, which was given and thereafter there was transfer and partition. It was his testimony that he filed and signed all the forms and he signed the partition forms.

**DW2 Shem Kihoro**, adopted his witness statement and testified that he bought **L.R Lari/Kirenga/ 1817**, from **Arthur Kibiriri** after paying him **Kshs.97,500**. He testified that they went to the **Land Control Board** and they got the **consent** dated **26<sup>th</sup> November 1996**. It was his testimony that the land was transferred from **Peter Ndungu Mbugua**, to the **1<sup>st</sup> Defendant** and then transferred to him and that his land did not have anything to do with **L.R 671**. It was his evidence that vide an affidavit dated **13<sup>th</sup> February 2006**, he confirmed that his land was hived from **L.R 1783**, and that **671** did not exist as it was closed on **4<sup>th</sup> July 1996** but he could not recall who owned **L.R 671**.

**DW3 John Mburu Waweru** testified that he bought his land from the **1<sup>st</sup> Defendant** for **Kshs.97,500/=** vide a sale agreement dated **15<sup>th</sup> September 1996** and after the transfer his land became **Lari/ Kirega/ 1818**. It was his testimony that **Peter Mbugua** sold the land to the **1<sup>st</sup> Defendant** and that in the year **2000**, he buried his father on his property without his consent and he filed a case in Kiambu. He testified that he has been living on the suit land. He confirmed that in an affidavit that he swore in **2006**, he had confirmed that the land came from, **L.R 1783**. He further testified that the **1<sup>st</sup> Defendant** was buying **L.R No. 1783** but he did not have a title deed for it. That he only had a search which he gave to his Advocate.

**PW4 Mary Wachuka Wachira**, adopted her witness statement testified that her land was **Lari/Kirega/1821**, being **one acre**, It was her testimony that she bought the land from **George Mbugua Mugekenyi**, the son of **Mbugua Mugekenyi(deceased)**, and that he has never disputed that he sold the land to her. She testified that she had planted tea bushes, biogas and had a borehole on the suit property. She further testified that she bought her land for **Kshs.200, 000/=** and that there were witnesses. She stated that they went to the **Land Control Board**, wherein she applied for **consent** to partition and it was granted. She further testified that her property was a subdivision of **L.R 1785**, which came from **L.R 671**. It her evidence that she had the consent dated **5<sup>th</sup> November 1996**, from the minutes.

**DW5 Njuguna Mathu**, the **7<sup>th</sup> defendant** testified that his property is **1822**, and adopted his witness statement dated **5<sup>th</sup> December 2012**, and **28<sup>th</sup> November 2017**. He further produced his list of documents as exhibit in court. It was his testimony that he bought his land from the son of **Mbugua Mugekenyi** for **Kshs. 180,000/=**. He further testified that they attended the **Land Control Board** for **consent** and he took possession of the suit property and that he has lived on the property for **22 years** and planted **3500** tea bushes. It was his evidence that the subdivision was done on **10<sup>th</sup> September 1997**, and that he did not know whether his property came from **L.R 671**.

**DW6 Peter Wango Gathata**, adopted his witness statement and further testified that his land was **L.R 1786** having bought it from **George Mugekenyi**. He also produced his list of documents. It was his testimony that he bought the suit property from **Mbugua Mugekenyi**, who was the original allottee of **Lari/Kirega/671**, and that he knew him as he had leased the land before. He further testified that he bought the land and paid a consideration of **Kshs. 200,000/=**. That **Mbugua Mugekenyi** took him to the **Land Control Board** and the transfer was allowed and he was later issued with the title deed for **1786**. He further testified that during the board meeting, the vendor requested for transfer of several portions to his son **Ndungu** and that **1784** was for his other son **George Mugekenyi**. It was his testimony that the **Land Control Board** sat on **9<sup>th</sup> July 1996**, and there were witnesses.

He confirmed that the parcels of land emanated from **L.R 671**, and that the subdivision was done on **10<sup>th</sup> September 1997**. He stated that though there was a consent to transfer, he did not have it in Court and that he did not fill the forms at the lands office.

**DW7 Joseph Mwangi Rothi**, adopted his witness statement dated **5<sup>th</sup> December 2017**, and testified that the **7<sup>th</sup> Defendant** bought a parcel of land from **George Mugekenyi Mbugua** for **Kshs. 180,000/=** vide a sale agreement. It was his testimony that the land was **L.R 671**, before subdivision and that he witnessed the sale agreement but he did not see the title to the suit land.

After close of viva voce evidence, the parties filed written submissions which the Court has carefully read and considered together with all the pleadings. The issues for determination are;

1. Whether the subdivisions were excised from L.R Lari/ Kirenga/ 671.
2. Whether the subdivisions and subsequent transfers were Lawful
3. Whether the deceased held the suit property in trust for the Plaintiff.
4. Whether the Defendants are Bonafide purchasers for value.
5. Whether the Plaintiff is entitled to the orders sought.

**1. Whether the subdivisions were excised from L.R Lari/Kirenga/671.**

It is not in doubt that the deceased **Mbugua Mugekenyi**, was the registered owner of **L.R Lari/Kirenga/671** purportedly until the year **1996** when the same was subdivided and transferred to other parties. Though some of the Defendants have alleged that their properties have nothing to do with **L.R 671**, it is clear that the same were resultant subdivisions of from **L.R 671**.

In his letter dated **1<sup>st</sup> October 1996**, the Land Registrar acknowledged that on **4<sup>th</sup> July 1996**, **L.R 671**, was subdivided and the same gave rise to **L.R Lari/Kirenga/1783, 1784, 1785 and 1785** and transferred to various people. It was also clear that the said parcels of land were further subdivided to give rise to **1817, 1818, 1821 and 1822** and that the subsequent subdivisions all came from the subdivisions that arose as a result of partitioning **L.R 671**. Therefore, the Court holds and finds that all the suit properties were excised from **L.R 671**, as they arose from various subdivisions.

**2. Whether the subdivisions and subsequent transfers were Lawful.**

It has been the Defendants contention that the subdivisions and transfers of the properties were genuine as they were sold to them by the deceased's sons. However, according to the pleadings filed in **Githunguri Law Courts**, the deceased denied this fact and alleged that his sons had conspired to defraud him. PW2 who is also one of the sons that was allegedly given the property by his father as a gift, gave evidence and denied ever having the power to sell the property. It was his evidence that the transactions were done without his father's knowledge and therefore they had no authority to sell and or subdivided the property.

In his letter dated **1<sup>st</sup> October 1996**, the Land Registrar insinuated that he went ahead with the subdivision of the property without having been provided with the title deed. PW1 produced the **original title deed** that was held by the deceased. This Court cannot understand why the deceased would not want to hand in a title deed that he had for a process that he was a part to. The fact that the original title deed was never cancelled would mean that the deceased title was still valid and therefore the other titles and the subdivisions were not in any way lawful. See the case of **Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura ...Vs...Attorney General & 4 others [2017] eKLR** where the Court held that;

**“As at the date of the trial, the appellant was still holding a valid Title Deed to the suit property, which title was issued to him in 1992. The 2<sup>nd</sup> respondent was allegedly issued with a Title Deed for the same property in 1996. A property cannot have two valid title deeds. Even assuming that the second title had been issued by mistake, the first in time prevails;”**

Further the Plaintiff has produced before this Court an official search dated **12<sup>th</sup> May 2000**, that indicated that the deceased was still the owner of the suit property. Further while exhibits have been produced before this Court with regards to **Land Control Board Consent** that was issued in respect to the subsequent subdivisions there has been no **consent** or any other documentation that was produced before this Court that relates to the subdivision and transfer of the initial suit property into the four subdivisions. Therefore, the Court is satisfied that the fact that the Land Registrar had to resort to subdivide land without production of the original title deed despite the fact that it was still in place, meant that the deceased was not part of that process of subdivision. Further, there is no evidence that the notice was ever sent or that the Deceased ever received the said notice. Consequently, the Court holds and finds that the subdivisions and subsequent transfers of the suit properties were not lawful as they did not have the blessings of the registered owner of the suit property.

**Section 28 of the Registered Land Act (Repealed)** which is replicated into **section 26 of the Land Act 2012**, gave the registered owner of the property **absolute** rights and privileges that appertained to the property. As the registered owner of the property, the deceased had the powers and privileges to consent to subdivision and transfer of the property. It is doubtful whether the said consent was sought herein.

**3. Whether the deceased held the suit property in trust for the Plaintiff.**

Though it has been contested by the Defendants, it was the evidence of **PW1 and PW2** that the deceased held the suit property in trust for the Plaintiff as the land belonged to their father and that they had agreed that the deceased would be the one who would be registered as the owner. In the suit papers in the case filed in **Githunguri Law Courts**, the deceased acknowledged as much and though the Defendants disputed these assertions, they did not bring in any evidence to support their allegations. **Section 107 of the Evidence Act** provides that whoever alleges must prove and that any party seeking to rely on a fact must then prove that fact. The Defendants having failed to call any evidence to contradict these allegations, means that the Court has no option but to hold that the deceased held the property in **trust** for his brother the Plaintiff herein.

**4. Whether the Defendants are Bonafide purchasers for value.**

**In the case of Katende ...Vs...Haridar & Company Limited [2008] 2 E.A.173 the Court of Appeal in Uganda held that:**

**“For the purposes of this appeal, it suffices to describe a *bona fide* purchaser as 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 that:**

- (a) he holds a certificate of title;**
- (b) he purchased the property in good faith;**
- (c) he had no knowledge of the fraud;**
- (d) he purchased for valuable consideration;**
- (e) the vendors had apparent valid title;**
- (f) he purchased without notice of any fraud;**
- (g) he was not party to any fraud.”**

Further in the case of *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura ...Vs...Attorney General & 4 others [2017] eKLR the Court held that;*

**“In our view, the conduct of the 3<sup>rd</sup> respondent was not of a diligent *bona fide* purchaser as described in *KATENDE V HARIDAR & COMPANY LIMITED (supra)*. The 3<sup>rd</sup> appellant is not an illiterate person. He was a Director of a Tea Factory who definitely knew or ought to have known how to go about a land transaction; particularly the need for a written sale agreement. The 3<sup>rd</sup> respondent had an advocate by the name Samuel Waiganjo, who allegedly “witnessed the oral (sale) agreement” as well as payment of Kshs.650,000/= being the balance of the purchase price. The said advocate was not called as a witness by the 3<sup>rd</sup> respondent.”**

This Court must then establish whether the Defendants were bonafide purchasers for value. As the Defendants, each bought the property separately the Court will first determine the viability by the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant alleged that he bought the suit property from the deceased sons one **Peter Ndungu**. From the documentation produced before this Court, it is clear that there was a sale agreements that satisfied the conditions of **Section 3(3) of the Law of Contract Act**, Further the parties attended the **Land Control Board** for the **consent** and from the exhibit produced in Court, it is clear that 1<sup>st</sup> Defendant conducted due diligence and being that the said **Peter Ndungu** was the deceased’s son, and the documentation having been proper, the Court finds that there was nothing that would have alerted the 1<sup>st</sup> Defendant as to the illegality of the title . This is so as the 1<sup>st</sup> defendant has also provided evidence to show that he made payments towards the purchase of the property.

As for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants the Court finds that they too have produced documents that show that they bought the suit property from the 1<sup>st</sup> Defendant without notice of any defect.

Therefore, the Court finds that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were bonafide purchasers for value.

As for the 6<sup>th</sup> Defendant, she alleged that she bought the suit property from **George Mugekenyi Mbugua**, who is the son of the deceased. Having gone through the documentation produced before this Court , it is not in doubt that the sale agreement dated **23<sup>rd</sup> August 1996**, presented by the 6<sup>th</sup> Defendants meets the criteria as envisaged in **section 3(3) of the Law of Contract Act**,PW2 who is the vendor in this instant has alleged that he thought that he was leasing out the land and that the 6<sup>th</sup> Defendant only paid him Kshs.**60,000/=** However the 6<sup>th</sup> Defendant has alleged that she paid **Ksh. 200,000/=** .Without any evidence to back that allegation, it would mean that the transaction did not meet the threshold for one to be declared a **bonafide** purchaser for value.

As for the 7<sup>th</sup> Defendant, it is clear that for a contract of sale to be declared valid, it must be written, signed by both parties and the said execution witnessed by two witnesses. The sale agreement dated **6<sup>th</sup> August 1996**, presented by the 7<sup>th</sup> Defendant does not meet this threshold and it would therefore mean that the same was not valid. With the same being invalid, the Court finds and holds that the 7<sup>th</sup> Defendant was not a bonafide purchaser for value.

As for the 8<sup>th</sup> Defendant **Peter Wango**, he claims to have bought the suit directly from the deceased. However this Court has already held and found that the transfer was illegal. Further various red flags have been raised in this case. One being that he does not have any sale agreement to back his claim. Secondly while he claims to have bought the suit property for **Kshs. 200,000/=**, the evidence from the Land Registry seems to suggest that he was given the same as a gift. This Court therefore finds and holds that he was not a bonafide purchaser for value.

##### **5. Whether the Plaintiff is entitled to the orders sought.**

The Plaintiff had sought for various orders amongst them the declaration that the deceased held the property in trust for the Plaintiff. As already held by this Court above, the deceased acknowledged having held the property in **trust** for his brother and therefore the same prayer

is merited.

The Plaintiff has also sought for cancellation of the subdivisions and rectification of the register. **Section 143 of the Registered Land Act (Repealed)** and now replicated in **Section 80 of the Land Registration Act**, gave the Court the power to order for rectification of the register in instances where it is clear that the title were illegal. In the instant case, the Court has held and found that the transfer and initial subdivision of the initial and or original property **L.R Lari/Kirenga/671**, was unlawful. It is therefore only prudent that the subdivisions should be cancelled. However the Court has also found that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants were bonafide purchasers for value. The Court takes cognisance of the fact that the vendor in this case was also the son of the deceased who in any case remained his beneficiary and would have benefited from the property as the deceased died before him. It is not lost to this Court that the deceased being the **absolute and indefeasible** owner of the suit property had all the rights and privileges. However, there are bonafide purchasers and the Court finds that it is a Court of **Justice and Equity** and must allow the bonafide purchasers to keep their parcels of land.

Having now carefully read and considered the pleadings by the parties, the evidence adduced and the written submissions, the Court finds that the Plaintiff has proved his case on the required standard of balance of probabilities and allows his claim partially. However, the Court finds that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants all bonafide purchasers for value and should keep their parcels of land and therefore the cancellation of their properties is not allowed.

Even though it was alleged that the **4<sup>th</sup> and 5<sup>th</sup>** Defendants had passed away, there were no documents produced in Court to support the allegations and therefore the Court cannot hold with certainty that the suit against them had abated. However, with regards to the **10<sup>th</sup>** Defendant, **John George Mugekenyi** swore an Affidavit on the **22<sup>nd</sup> November 2010**, and annexed a burial permit confirming that the **10<sup>th</sup>** Defendant had died on **19<sup>th</sup> July 2010**. Being that he was never substituted, the Court finds that the suit against him had therefore abated.

Consequently, the Court enters Judgment for the Plaintiff against the **4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> & 11<sup>th</sup>** Defendants in terms of prayers **No. 1 and 2**. The import of the above holding is that all the resultant subdivisions that resulted from subdivisions of **L.R No.Lari/ Kirenga/ 671, be** and are hereby cancelled and the said land recombined except the parcels of land held by the **1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants** who are found to be bonafide purchasers for value without notice. Thereafter the recombined land can be distributed through succession cause wherein the Plaintiff will get his share during the distribution of the Estate in accordance with the trust.

Given the circumstances of this case, each party to bear his/her own costs

It is so ordered.

**Dated, Signed and Delivered at Thika this 8<sup>th</sup> day of April 2020.**

**L. GACHERU**

**JUDGE**

**Lucy- Court Assistant**

**ORDER**

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic and in light of the directions issued by the Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Ruling** has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

**By consent of;**

**Rakoro & Company Advocates for the Plaintiff**

**Mwicigi & Company Advocates for the Defendants**

**L. GACHERU**

**JUDGE**