



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 292 OF 2017

(FORMERLY NRB ELC 908 OF 2015)

JOHNSON KEIRU WAGURA.....1ST PLAINTIFF

STEPHEN KARIUKI MACHARIA.....2ND PLAINTIFF

SAMUEL WAHIKI MAINA.....3RD PLAINTIFF

(Suing as the officials and on behalf

of Ndururuno Self Help Group 2002)

VERSUS

LUCY NGENDO MWANGI.....1ST DEFENDANT

BETH WANJIRU MWANGI.....2ND DEFENDANT

RICHARD MBURU NJIRAINI.....3RD DEFENDANT

JUDGMENT

By a Plaint dated 18th June 2015, the Plaintiffs sought for the following Orders against the Defendants;

- a) *A temporary injunction restraining the 1st and 2nd Defendants from interfering, trespassing, leasing and/or selling the parcel of land Title No. L.R No. Ruiru East/Juja East Block 2/4328 pending the hearing and determination of this suit.*
- b) *An order by this Hon. Court declaring that the legal rightful owners and bonafide purchasers of Title No. L.R No. Ruiru East/Juja East Block 2/4328 are the Plaintiffs and transfer should be effected to the same.*
- c) *An order of this Honourable Court compelling the 1st and 2nd Defendants to give the Plaintiffs vacant possession of the said parcel of land Title No. L.R No. Ruiru East/Juja East Block 2/4328.*
- d) *Damages and compensation for the suffering , waste, delay in transfer and illegal trespass on the Plaintiffs piece of land by the 1st and 2nd Defendants.*
- e) *Interest on (a) to (d) above at Court rates.*
- f) *Any further relief as the Court may deem fit and just to grant.*

In their statement of claim, the Plaintiffs averred that Ndururuno Self Help Group 2002, entered into a sale agreement on the **8th October 2009**, with the 1st and 2nd Defendants for the purchase of the suit property which was paid for in full and receipt issued for the same. That the 1st Defendant's name was on the original Title Deed but that the 2nd Defendant's son **John Gakungu Mwangi(deceased)** was also on the title and the 2nd Defendant acted on his behalf as the Administratrix of his Estate. They contended that the sale process was done in the presence of **Njiraini, Mburu Muchoki & Co Advocates**. Further, that they gave the Advocate **Kshs. 30,000/=** together with the original title deed given to them by the vendors to facilitate the transfer process. However, despite their best efforts, the transfer has never been effected.

They further averred that they made a Complaint with the Advocates Complaints Commission against the said Advocate and a meeting was convened where it was resolved and agreed that Advocate **Njiraini** would return the said title deed to the Plaintiffs within the next three months, but he never did. That despite reporting the matter to the CID Offices in Ruiru for investigations, nothing had been done. However, when they visited the suit property, they found a board erected on the property indicating that ' Vision Housing Cooperative Society were the owners.

They particularised **negligence** and **fraud** on the part of the 1st and 2nd Defendants as, entering into a sale agreement without having the legal capacity to do so, not taking due diligence and care in ensuring that they passed a good title, purporting to sell the suit property to other purchasers. They further particularised negligence on the part of the 3rd Defendant as; acting unprofessionally and negligently in not carrying out his professional duty as an Advocate in facilitating the transfer process to its conclusion, withholding client documents and acting contrary to clients instructions.

The suit is contested and the 3rd Defendant filed a defence dated **19th November 2015**, and denied all the allegations contained in the Plaint. He averred that he advised the Plaintiffs appropriately on the legal implications of buying the land which advise the Plaintiffs ignored. He further averred that he refused to witness the agreement, but took over once the Plaintiffs instructed him to follow the matter with their agent who also acted for the vendor. It was his contention that the Plaintiff and the 2nd Defendant agreed that the sale was subject to a Succession Cause, which had not been done by the time he moved out of the matter. He alleged that the Plaintiffs were to blame as they insisted on their way of doing the sale and as they refused to wait for the Succession Cause to be filed. That the documents forwarded by the vendor's brokers namely **Thuo** were forged and that when the Plaintiffs withdrew their instructions, and started the disciplinary process, he could not handle the matter any more. He averred that he was never given any document of title and the money so held was to pay for Stamp duty. That he was wrongly enjoined in the matter and urged the Court to dismiss the suit with costs.

The 2nd Defendant also filed his Defence dated **9th December 2015**, and filed on **11th December 2015**, and denied all the allegations made in the Plaint. She averred that she is a stranger to any sale agreement and its contents. That she has not filed any Succession Cause in any Court relating to the estate of her deceased son and that if any succession matter has been filed, then the same was done fraudulently by the 1st Defendant without her knowledge and or consent. It was her contention that the suit property is registered in the name of the 1st Defendant and her deceased's son and as such the 1st Defendant fraudulently entered into a sale agreement with the Plaintiffs and subsequently filed a Succession Cause in respect of the deceased's Estate without her authority.

She particularised fraud by the 1st Defendant as; entering into a sale agreement over the suit property and executing the sale agreement on behalf of the deceased Estate without having legal capacity, affixing her pictures onto the transfer document and signing thereunder, causing another individual to sign the transfer document and affix his photograph on the transfer document purporting to be the deceased. She averred that that she has been charged with the offence of obtaining money by false pretense. She therefore urged the Court to dismiss the suit.

The 1st Defendant filed a defence dated **22nd December 2015**, and filed on **13th January 2015**, and denied all the allegations made in the Plaint. She averred that the Plaintiffs do not have any *locus standi* to file the suit as their alleged outfit is unregistered with no powers to sue or be sued and therefore the suit is incurable defective and incompetent. She denied ever signing the sale agreement dated **8th October 2009**, and averred that the signature is a forgery. It was her contention that the sale agreement is null and illegal as the sale involved a deceased vendor and at the time of sale, no letters of Administration had been filed on his behalf. Further that the alleged sale was subject to the consent of the Land Control Board, yet none was obtained.

It was further alleged that the sale agreement does not indicate the name and address of the persons who drew the sale agreement. She further averred that the suit property does not exist and therefore the Court cannot issue any orders as prayed.

The matter proceeded by way of Viva voce evidence wherein the Plaintiff called three witnesses and the Defendants called 3 witnesses.

PLAINTIFFS' CASE

PW1 Johnson Keiru Wagura adopted his witness statement as evidence in Court and testified that the Plaintiffs bought a parcel of land using their Self Help Group in the year **2009**. That the land was identified and they visited with **Chege Nderitu** who had been shown the land by **Kibe**, a land broker. That they then hired an Advocate, one **Mburu Njiraini** and that the land was being sold by one **Thuo** at **Kshs. 380,000/=** who was also a land broker. Further that they then instructed their Advocate to carry on with the transaction and they visited **Thuo's** office.

He further testified that **Beth Wanjiru** and **Lucy Ngendo Mwangi** were the owners of the suit property. That they met with the owners who showed them the title documents, which were in the names of **John Gakungu** (deceased), who was the son of **Beth Wanjiru Mwangi** and **Lucy Ngendo Mwangi**. That a sale agreement was drawn and that both **Lucy Wanjiru** and **Beth Wanjiru** were present and their Advocate gave them the title document for the land and promised to transfer it to them. Further that they paid the purchase price through the bank and they were to pay the Advocate **Kshs. 40,000/=** but that there was a balance of **Kshs. 10,000/=**.

However, their Advocate failed to transfer the land and informed them that the documents were lost and promised to look for them but he failed to do so. He produced the bundle of documents as Exhibit 1 and Further list of documents dated **18th January 2016** as Exhibit 2.

He further testified that he was the Chairman of Ndururuno Self Help Group a registered organization though the Certificate was not in Court. It was his testimony that he did not know about the Succession Cause in respect of the Estate of **Gakungu Mwangi**. That when they paid the purchase price, a receipt dated **23rd October 2009**, was issued by **Dantesh Management Limited**. He told the Court that they withdrew the money and paid in cash and after payment of the money, they did not deal with the 1st and 2nd Defendants again.

He acknowledged that the 2nd Defendant's name was not in the title. That they took the 3rd Defendant to the LSK Disciplinary Committee as they had given him their document. Further that the 3rd Defendant was present when the monies were paid though he was not present during the first visit. That they met at **Thuo's** office in Thika Town together with the 3rd Defendant and the agreement was written in **Thuo's** office. He acknowledged that they had already conducted a search by the time they met the 3rd Defendant and that they got to know that **John Gakungu** was deceased when they went to pay for the land.

He confirmed that **Beth Wanjiru** was to file a Succession Cause and that **Beth** had told them that she would give them the land after the Succession Cause. He further testified that they tried to place a caution in the year 2014 and he signed an affidavit prepared by their Advocate.

PW2 Stephen Kariuki Macharia the Secretary of **Ndururuno Self Help Group**, adopted his witness statement dated **18th June 2015** and further produced the bundle of documents as exhibit in Court. It was his testimony that he was present during the purchase of the suit land and that they paid the purchase price in cash after withdrawing the money from the bank. That the succession for the late **John Gakungu** had not been done. He further testified that the Agreement was done in Thuo's office, but in their Advocates presence. It was his testimony that before filing the instant suit, they filed a complaint against their Advocate at the LSK .

He told the Court that he never saw the 1st and 2nd Defendants after payment of the money but that when they visited the land, they found a Board for **Vision Company Limited**. That they reported the matter to the police. He acknowledged that they did not conduct a search at the Lands office to confirm if Visions Company Limited owned the land and that unless it was changed, the registered owners are **Lucy Ngendo and John Gakungu**. He further testified that their land had been subdivided and that it had beacons. That there is a sale agreement dated **8th October 2009**, showing the name of **Beth Wanjiru Mwangi**, as she is the one who sold to them the suit property though the title deed did not have her name. He confirmed that they were advised by their Advocate that the sale agreement was okay. Further that he was only seeing the said Beth in Court apart from the date of the purchase.

That he did not sign the sale agreement, but that he was present when the money was paid but that the agreement showed that the payments were made to **Lucy Ngendo**, and that the receipt showed that the money was paid on **23rd October 2009**. He acknowledged that the documents were not original and that the title deed was a photocopy and that no Succession Cause had been filed. That Beth had admitted that she had taken the money and would give them the land once Succession had been done. Further that the 3rd Defendant took the documents and that they had reported him to the disciplinary tribunal where he was ordered to return the title deed as he had taken their documents and also took long to safe guard their interest.

PW3 Samuel Wachiku Maina adopted his witness statement and testified that he was the treasurer of **Ndururuno Self Help Group**. He further testified that they entered into an agreement dated **8th October 2009** at a consideration of **Kshs, 380,000/=**. However, he did not sign the said agreement. It was his testimony that they withdrew money from the bank and gave it to the 1st and 2nd Defendants and that they gave the money to **Beth**, who was to share it with **Lucy**. Further that when they carried out a search in **2015**, the land was registered in the name of **Lucy Ngendo and John Gakungu**. He confirmed that the name of **Beth Wanjiru** was not in the agreement as her name is not in the title. That **Beth** signed a letter that she could not write or read well and the latter was written by their Advocate. Further that he only saw Beth in Court as he has never met her again after payment of the purchase price.

He acknowledged that they knew that **John Gakungu** was deceased and that they had seen the land before they instructed the 3rd defendant. He further confirmed that they are the ones who introduced Thuo, to the 3rd Defendant and that a Succession Cause was to be filed by **Beth**. That the 3rd Defendant had told them that he would return the title to them after they had taken him to the Disciplinary tribunal as he was the one who was given the title. That he did not know if the title deed has been transferred to a third party as their Advocate was to ensure that the title deed was registered in their name.

1ST DEFENDANT'S CASE

DW1 Lucy Ngendo Mwangi, the 1st Defendant herein adopted her witness statement dated **22nd December 2015**. It was her testimony that she did not know the plaintiffs nor was she given any money. That she did not go to the **Land Control Board** for sale of the suit property nor has she ever received any monies for the sale of the suit property. Further, that the land was owned by Gakungu and herself and that after the death of **John Gakungu**, she filed a Succession Cause and there was no objection and she therefore sold the suit property to a third party. It was her testimony that **John Gakungu** was his step son and that when he died, she got letters of Administration and listed him as her son and that the title document that the Plaintiff holds is a forgery. It was her further testimony that she involved the siblings of the late John in the Succession Cause but did not involve his mother.

She denied receiving monies from **Beth Wanjiru** for the sale of the suit property to the plaintiff and that she did not raise any objection to the Succession Cause.

2ND DEFENDANT'S CASE

DW2 Beth Wanjiru Mwangi adopted her witness statement dated **3rd August 2017**. It was her testimony that she is **John Gakungu's** mother and that the suit property was registered in the joint name of **John Gakungu** and the 1st Defendant. She further testified that the land was supposed to be hers after the death of her son and she denied even filing a Succession Cause for her son's Estate. She further denied selling land to the Plaintiffs nor signing any sale agreement and receiving money from the Plaintiff.

3RD DEFENDANT'S DEFENCE

DW3 Richard Mburu Njiraini adopted his witness statement dated 4th September 2017, and produced the list of documents as Exhibit 1. He testified that they wanted to file a Succession Cause for the Estate of **John Gakungu Mwangi**, but that they noted that the same had been filed and the land sold to **Vision Housing Company Society**, even before the Grant could be confirmed. That he found difficulties from the Plaintiff and the Advocate who had taken over.

That he did the sale agreement, but that the sale did not go through. That though he witnessed the sale agreement, it was later abandoned. That the sale agreement was signed by the 2nd Defendant and that the sellers were **Beth Wanjiru** selling as the Intended administrator and heirs to the Estate of **John Gakungu**. However, the sale was subject to Succession Proceedings. Further that the vendors and the purchaser had their agents who introduced them to each other and that **Beth** acknowledged to have received the money and was to transfer the property to the purchaser once she filed the Succession Cause.

That **Lucy Ngendo** did not sign the sale agreement and that **Beth Wanjiru** signed the agreement. He testified that he carried out due diligence, and the parties took him to Thuo's office and he witnessed signing of the sale agreement on behalf of the Plaintiff after he had talked to the Vendors. That they abandoned the 1st sale agreement and went with the 2nd written agreement. However, there was no revocation of the 1st Agreement. Further that the money was paid in cash but he was not there, during the payment that he undertook to file the Succession Cause on behalf of **Beth** and that after the money was paid, they had to look for the title which was left with **Thuo** who alleged that the title was lost.

Further that he has never met the 1st Defendant and that though he had seen the copy of the title deed, Beth received the money on her own behalf and that she was selling the share that belonged to her son **John Gakungu Mwangi**. It was his further testimony that he had advised the purchasers to claim for their money since the sale had not gone through. That when he realized that Succession Cause had already been filed, he did not do anything else. However, during his disciplinary hearing, he learnt that the Chief's letter stated that **John Gakungu** was survived by his mother **Beth Wanjiru**. That Thuo had presented himself as an Advocate and that he told him that he dealt with Conveyance matters and that the Advocate for the Vendor was **Mwaniki Muthomi** and **Mburu Muchoki** stamp was in the agreement that was abandoned.

Further that he discovered that the sale agreement dated 8th October 2009, was signed by a wrong party and that he did not deal with **Lucy Ngendo** directly. That the sale could not go through without the Succession Cause and that all the documents referred to the 2nd Defendant. He further testified that the original title deed was given to Thuo and that from the original title deed, it was confirmed that the money had been paid. It was his evidence that the documents that were shown at the CID were fake. That Beth appeared before him several times and that a lady had signed the agreement and that Beth did not confirm receipt of any money and that her name did not appear in the title.

After close of viva voce evidence, the parties filed submissions which the Court has carefully read and considered. The Court has also considered the pleadings by the parties and the evidence adduced. The issues for determination are;

1. Whether the Plaintiffs have locus standi to Institute the suit

2. Whether the sale Agreement is valid

3. Whether the Plaintiffs re entitled to the orders sought

4. Who should bear the costs of this suit.

1. Whether the Plaintiffs have locus standi to institute the suit.

The 1st Defendant has alleged that the Plaintiffs do not have the **locus standi** to institute the instant suit as the Plaintiff is not a registered Self Help Group. Though the Plaintiffs testified that they are registered and that they have a registration certificate, the same was not produced before Court.

Locus standi has been defined In the case of **Law Society of Kenya ...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000**, where the Court held that;-

*“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of **Alfred Njau and Others ..Vs.. City Council of Nairobi (1982) KAR 229**, the Court also held that;-*

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

Further in the case of **National Environmental Tribunal... Vs... Overlook Management Limited & 5 Others (2019) eKLR** the Court held that

“In determining a person's capacity to sue, the Court had to be satisfied that the action was justifiable and a dispute between the parties existed”.

And the Court quoted the case of:-**Elendu...Vs...Ekwoaba(1998)12 NWLR (Pt.578)320** where the Court held that;

“that in determining whether a person has locus standi or not, the following factors may serve as guidelines;

- i. For a person to have locus standi in an action, he must be able to show that his civil rights and obligations have been or are in danger of being infringed.*
- ii. The fact that a person may not succeed in an action does not have anything to do with whether or not he has a standing to sue.*
- iii. Whether a person’s civil rights and obligations have been affected, depends on the particular facts of the case.*
- iv. The court should not give an unduly restrictive interpretation to the expression locus stand.*

In determining whether or not the Plaintiffs have **locus standi**, the Court is persuaded by the above authorities. The question then begs whether the Plaintiffs have sufficient interest and whether a dispute arose between the parties. It is not in doubt that the Plaintiffs have alleged that they bought the suit property from the Defendants. Therefore, it means that there is interest and further the plaintiffs have alleged that the Defendants have failed to transfer the suit property to them and in essence a dispute as arose, this Courts finds and holds that the Plaintiff has **locus standi** to bring this suit.

2. Whether the sale Agreement is valid

The Plaintiffs have alleged that they entered into a sale agreement for the purchase of the suit property and that while the 1st Defendant signed on the Sale agreement, the 2nd Defendant being the legal representative of **John Gakungu Mwangi**(deceased) who was a co proprietor of the suit property was given the consideration of **Kshs. 380,000/=** and the Plaintiffs issued with a receipt from her broker and the Vendor undertook to file a Succession Cause and thereafter transfer the suit property to the Plaintiffs.

It is not in doubt that the suit property was registered in the name of the 1st Defendant and **John Gakungu (deceased)** While the Plaintiff have testified that the 1st Defendant was present and signed the Sale agreement dated **8th October 2009**, and the 2nd Defendant was given the money, the Defendants have denied ever meeting the Plaintiffs or signing the sale agreement.

With regards to the 2nd Defendant, **Beth Wanjiru Mwangi**, the Plaintiffs evidence has been corroborated by the 3rd Defendant in his testimony who confirmed that the said 2nd Defendant appeared before him severally and that in the sale agreement, it was confirmed that money had been paid.

Further with regards to the 1st Defendants the Court notes that the issue is “*he says she says*”. While the Plaintiffs have testified that the 1st Defendant was there when they made the agreement, the 1st defendant has denied meeting the Plaintiffs. Further in his evidence, the 3rd Defendant has also stated that he never met the 1st Defendant and that a different lady had signed the sale agreement, but he would later realise that a wrong person signed the agreement.

The Court notes that it is faced with a “*he says she says*” situation and therefore the Court in weighing which party to believe, has perused the documents produced before it. In her statement that was recorded at the Police station dated 28th May 2014, the Court notes that the 1st Defendant indicated that the signature in the sale agreement is not hers as she only uses her thumbprint due to her age, However, the Court acknowledges that it is not an expert in handwriting. Further, the Court has looked at the signature that the 1st Defendant used in her witness statement, and the one used in the sale agreement and the one used in the transfer that the defendant produced in Court, though they may not be the same, they are alike. For the avoidance of doubt, this is to contradict the 1st defendant’s statement that she does not sign documents. In all the documents produced by the 1st Defendant apart from the police statement, none has been thumb printed. The Court is therefore inclined to believe the Plaintiff and is satisfied that the Defendants took part in the sale agreement.

However, though the signature may be valid, the Court still has to determine whether the sale agreement was valid. It is not in doubt that the suit property has been registered in the name of the 1st Defendant and **John Gakungu** (deceased). It is also not in doubt that letters of Administration of the Estate of the deceased had not been taken out and therefore there was no Administrator of the Estate of the deceased. When two proprietors own land together, it is presumed that they own the property in Common unless otherwise stated. See the case of **Moses Bii ...Vs... Kericho District Land Registrar & another [2015] eKLR where the Court held that;**

“My view is that if the register does not reflect whether land is held jointly or in common, the fallback position should be to presume that the land is held in common. Joint proprietorship, where the same has not been explicitly indicated, should only be presumed in the clearest of circumstances, where there can be no shred of doubt that the contemplation of the parties was to have the property held jointly. I for myself cannot think of such a state of affairs other than where the proprietors are spouses, though I cannot rule out other situations, but they really must be so clear as to obviate debate on it.”

In this Instant, since the suit property as owned by two parties no one party could dispose off the suit property without the consent of the other party. The **Registered Land Act Cap 300** (Repealed) provided that

“103. (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. “

The said provisions of law have been replicated in **Section 91 of the Land Registration Act** which provides;

(5) If any land, lease or charge is owned in common, each tenant shall be entitled to an undivided share in the whole and on the death of a tenant, the deceased's share shall be treated as part of their estate.

(6) No tenant in common shall deal with their undivided share in favour of any person other than another tenant in common, except with the consent in writing, of the remaining tenants, but such consent shall not be unreasonably withheld

Therefore, it is not in doubt that since the parties owned the suit property in common, upon the death of **John Gakungu**, the same vested in his estate and only his Administrator could represent him in the sale agreement. It is clear that Succession proceedings had not commenced and automatically there is no way the deceased could be represented. Given that the 1st Defendant could not enter into sale agreement without the consent of the deceased's estate, any agreement was invalid. Even though the 2nd Defendant may have been the sole heir, she was never appointed an administrator. See the case of *Zacharia Wambugu Gathimu & another ...Vs... John Ndungu Maina [2019] eKLR* where the Court held that:-

153. It therefore follows that by the time Plot No. Nyandarua/Ndaragwa Block 4/Muricho No. 1010 was transferred to David Wangara Maina, the 2nd Plaintiff on the 27th April 2015 and Plot No. Nyandarua/Ndaragwa Block 4/Muricho 1007 to John Ndungu Maina the Defendant herein on the 9th March 2015, no succession proceedings have ever been filed in respect of the estate of the deceased thus the estate of the deceased has not been distributed.

154. It will therefore not be necessary to belabor the point that both these titles were improperly acquired. Section 45 of the Law of Succession Act provides as follows:-

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

155. In the case of Bahola Mkalindi vs. Michael Seth Keme & 2 others [2012] eKLR the court held that;

‘The Law of Succession Act, Cap. 160 is concerned with the administration of the estate of deceased persons. The estate of a deceased person has been defined by the Act as property which the deceased person was legally competent to freely dispose of during his lifetime, and in respect of which his interest has not been terminated by his death.

156. Section 55 of the Law of Succession Act stipulates that:-

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property unless and until the grant has been confirmed as provided by section 71.”

157. Having considered the evidence before me as well as the exhibits herein produced, it clearly emerges that Section 55 of the Law of Succession Act was not complied with before these properties were transferred. I therefore find that the said registration was a nullity as the estate of deceased could only have been dealt with under the law of succession Act after her death and not otherwise.

Having analysed the available evidence, and the relevant provisions of law and the above quoted relevant provisions of law and the above quoted decided cases the court finds that the sale agreement was not valid.

3. Whether the Plaintiffs re entitled to the orders sought

The Plaintiffs have sought to be declared the legal owner of the suit property and have also sought for vacant possession of the suit property from the Defendants. However, the Court has already held and found that the sale agreement that would have conferred on them ownership was not valid. Therefore, it follows that the prayers sought are not merited as the Law of Contracts provides that any disposition of land must be in writing.

However, the Plaintiff had also sought for any relief that the Court may deem fit. It is clear that they paid the considerations to the Defendants. This court therefore finds that the Plaintiffs are entitled to refund of the consideration together with interest.

4. Who should bear the costs of this suit.

As provided by **Section 27** of the **Civil Procedure Act** the Court has discretion to grant costs. Looking at the circumstances of this case, the Court finds that it warrants each party to bear its own costs.

Having now carefully considered the available evidence herein, the cited authorities and relevant provisions of the law and the written submissions, the Court finds that the Plaintiffs have not proved their case on the required standard of balance of probabilities. Consequently, the Plaintiffs' claim is **not merited** and the same is dismissed, save for **prayer no. (f)** on any other relief, where the court has found and held that the Plaintiffs are entitled to a refund of the purchase price with interest. Each party to bear its own costs.

It is so ordered.

Dated, signed and Delivered at Thika this 18th day of June 2020.

L. GACHERU

JUDGE

18/6/2020

Court Assistant - Jackline

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 His Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consents. 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 :

No Consent for the Plaintiffs

M/s L. W. Wahome & Co Advocates for the 1st Defendant

M/s Etole and Company Advocates for the 2nd Defendant

No Consent for the 3rd Defendant

L. GACHERU

JUDGE

18/6/2020