



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 132 OF 2012

NJOROGE JOHN GITAU.....PLAINTIFF

=VERSUS=

JOHN GITAU NJOROGE.....DEFENDANT

JUDGMENT

Introduction:

1. This is an interesting case. The Plaintiff and the Defendant have similar names. Both of them are claiming to be the proprietors of land known as LAMU/LAKE KENYATTA II/355 (the suit property).
2. In the Plaint dated 10th August 2012, the Plaintiff has averred that he is the registered proprietor of the suit property.
3. The Plaintiff has averred in the Plaint that he was issued with a letter of offer on 31st January, 1997 by the Director of Land Adjudication and Settlement. After paying Kshs.16,890, a discharge of charge was prepared and handed over to him. The suit property was eventually transferred to him on 27th February, 2012.
4. The Plaintiff has averred that after clearing the land which was bushy, he was informed that the Defendant had invaded the land and planted banana stems. The Plaintiff is seeking for a declaration that he is the legally registered proprietor of the suit property and for a permanent injunction to be issued restraining the Defendant from interfering with the suit property.
5. The Defendant filed his Defence and Counter claim on 1st July 2013.
6. In the Defence, the Defendant has stated that the letter of offer dated 31st January 1997 was not addressed to John Njoroge Gitau or Gitau John Njoroge but to Njoroge John Gitau, who is the same person as John Gitau Njoroge; that the signing of the transfer and the collection of the title deed by the Plaintiff was by impersonation of the Defendant and that the said collection of the title deed by the Plaintiff was done fraudulently and by misrepresentation of facts.
7. The Defendant averred in his Defence that it is him who has been in occupation and possession of the suit property and that he has extensively developed it over the years.
8. In the Counterclaim, the Defendant has stated that he applied to be allocated the suit property in 1997 after his land LAMU/LAKE KENYATTA II/722 was earmarked for public use; that when he was allocated the suit property, he requested for the waiver of the 10% deposit and that he took possession of the suit property.
9. After waiting for the title document to be issued to him, the Defendant averred that he saw strangers invading the suit property under the supervision of the Plaintiff. In the Counter claim, the Defendant is seeking for an order that the title document for LAMU/LAKE KENYATTA

II/355 be released to him.

The Plaintiff's case:

10. The Plaintiff, PW1, informed the court that his name is John Njoroge Gitau, a retired civil servant. PW1 produced a copy of his national identity card as PEXB1.
11. It was the evidence of PW1 that he was allocated the suit property after he applied for the same. This was after an advertisement was put up at the District Commissioner's Office.
12. PW1 produced the letter of offer dated 31st January, 1997 in respect to the suit property which was marked as PMFI 2.
13. It was the evidence of PW1 that he paid the requisite 10% deposit fee of Kshs.1,160 and was given a receipt dated 9th April 1997 for the said amount which he produced as PEXB3. After making the payment, PW1 stated that he received another letter demanding for a further payment of Kshs.751 for the suit property. The letter was marked as PMFI 4. The receipt evidencing the payment of Kshs.751 was produced by the PW1 as PEXB 5. After this payment, it was the evidence of PW1 that he visited the suit land which was bushy and that thereafter, a charge in favour of Settlement Fund Trustees was prepared. PW1 was supposed to pay Kshs.16,890 before the property could be discharged.
14. It was the evidence of PW1 that he paid to the Settlement Fund Trustee Kshs.17,000, Kshs.620 and Kshs.171 which was inclusive of the accrued interest. The receipts for the said amounts were produced as PEXB7, 8 and 9 respectively. A discharge was then prepared and registered whereafter the title deed was prepared in his name, which he picked from the Mpeketoni office. The discharge of charge was marked as MFI 10 while the Transfer document was marked as MFI 11. The title deed that was issued to PW1 was produced as PEXB 12.
15. PW1 informed the court that after the title deed was issued to him, he visited the suit property in the company of his sons. He found the suit property was still bushy. It was his evidence that he employed the neighbours who cleared the land and put up a shelter on the land. PW1 produced photographs showing the state of the suit property after clearing the bush as PEXB 4(a) - (c).
16. Later on, the Plaintiff was summoned by the D.O vide a letter dated 26th March 2012 which was marked as P MFI 15. It was the evidence of PW1 that he met the Defendant for the first time in the DO's office and that the D.O bullied him.
17. PW1 produced in evidence an official search as PEXB 16. It was his evidence that after the meeting with the DO, the shelter that he had put on the suit property was demolished.
18. In cross-examination, PW1 stated that his name as appears in the national identity card is John Njoroge Gitau. It was the evidence of PW1 that he applied to be allocated land in Lamu when he saw an advertisement at the DC's office while in Lamu. He applied to the District Land Adjudication & Settlement Office, Lamu to be allocated land within Lamu which was not identifiable as at that time.
19. According to PW1, the letter of offer dated 31st January 1997 was sent to him by the District Land Adjudication and Settlement Officer and that he paid the requisite charges before the expiry of 90 days.
20. When he went to make the payments for the land on 9th April 1997, it was the evidence of PW1 that he was shown the land by the officers from the settlement office on the same day.
21. The Sub-county Land Adjudication and Settlement Officer, Lamu, PW2, informed the court that he was in possession of the original file in respect to the suit property.
22. It was the evidence of PW2 that the suit property was offered to one Njoroge John Gitau of ID No. 3348117 on 31st January 1997.
23. PW2 informed the court that the 10% deposit for the suit property was paid by the allottee, Njoroge John Gitau of ID Number 3348117. PW2 stated that MFI 2 is the copy of the letter of offer which was also in his file. He produced the said letter of offer as PEXB 2.
24. PW2 stated that after the deposit for the land was paid by the allottee, the charge document was prepared by his office and the same was issued to Mr. Njoroge John Gitau of ID Number 3348717. PW2 produced a letter dated 5th July 2007 advising the Director of Land Adjudication and Settlement to prepare a discharge of charge and Transfer in favour of Njoroge John Gitau.
25. According to PW2, the discharge of charge and the Transfer were prepared in favour of Njoroge

- John Gitau of ID number 3348117. The discharge of charge was produced as PEXB 10.
26. The witness also produced a letter dated 23rd November 1998 which was a response to John Gitau Njoroge's (the Defendant's) complaint in respect to the suit property. In the letter, the District Land Adjudication & Settlement Officer, Lake Kenyatta Settlement Scheme informed the Defendant that the plot was officially allocated to Mr. John Njoroge Gitau of ID No.3348117 who had already paid the mandatory deposit and conveyancing fees.
 27. In cross-examination, PW2 stated that what was in his possession was the entire file in respect to the suit property.
 28. PW2 stated that the Application by the allottee was not on the file and that all applications for allocation of land are done by the plot allocation committee and not their office.
 29. When PW2 was shown a letter dated 20th August 1997 which was in the Defendant's list of documents showing that the allottee was John Gitau Njoroge of national identity card number 8520131/71, he stated that that mistake was rectified vide a letter dated 23rd November 1998.
 30. The Defendant, DW1, informed the court that his name is John Gitau Njoroge. DW1 produced a copy of his national identity card as D EXB 1.
 31. According to the Defendant, the name in his voter's card is Njoroge John Gitau. The voter's card was produced as DEXB 2. It was the evidence of DW1 that when he was registering as a voter, the registration officer started with his surname; that his names are the same as the Plaintiff's name if you were to start with his surname and that he is currently staying on the suit property.
 32. It was the evidence of DW1 that initially, he was allocated plot number 722 in Lake Kenyatta Settlement Scheme II. Later on, he was told to apply for land within the scheme like everyone else after he was told to move out of plot number 722 which was to be used for the construction of a cattle dip for public purpose. The Defendant produced a letter dated 28th January 1998 which advised him to move out of plot number 722 as DEXB 3.
 33. It is the Defendant's case that he was issued with a letter of offer dated 31st January 1997 and that the names on the said letter of offer are his names. The letter of offer dated 31st January 1997 was marked as DMFI 4.
 34. Although PEXB 2 (the letter of offer) has the same date and names as DMFI 4, it was the evidence of DW1 that the said letters of offer are not the same in terms of the signature. According to DW1, his letter of offer was stamped by the author instead of being signed unlike the Plaintiff's letter that was produced as PEXB 2.
 35. DW1 informed the court that after the letter of offer was given to him, another letter in respect to the said property was sent from the Lamu settlement office to Nairobi requesting for the preparation of legal documents. The letter gives the name of the allottee as John Gitau Njoroge of national identity card number 8520131/71, which is his identity card number.
 36. It was the evidence of DW1 that when the said letter was sent to Nairobi, it was tempered with by changing the national identity card number on it. The said letter was marked as DMFI 5.
 37. It was the evidence of DW1 that he used to occupy plot number 722 which is in Lake Kenyatta I. He was later told to move to the suit property which is situated in Lake Kenyatta II. The Defendant marked a handwritten letter dated 6th September 1994 confirming that he used to stay on plot 722 as DMFI 6. The Defendant also produced photographs showing the status of the suit property as DEXB 7(a)-(c).
 38. It was the evidence of the Defendant that when he was allocated the suit property, he intended to sell it to a family friend. However, the sale fell through because of the dispute between him and the Plaintiff over the suit property. The agreement of sale was produced as DEXB 8.
 39. In an attempt to settle the dispute, the DO summoned the Plaintiff and the Defendant in his office by way of a letter dated 26th March 2012. After hearing both parties, the D.O confirmed that the land belonged to the Defendant. The letters from the D.O were marked as DMFI 9 and 10.
 40. The Defendant finalised his evidence in chief by stating that the Plaintiff's names are not Njoroge John Gitau; that the registered proprietor of the suit property is Njoroge John Gitau which is him and that the title deed that was collected by the Plaintiff is his and that he took the title deed after impersonating him
 41. DW1 stated that it is the Plaintiff who paid for the discharge after impersonating him and that he was ready to refund him the money he paid to the Settlement Fund Trustees.
 42. In cross-examination, DW1 stated that he is a former politician. DW1 informed the court that he

- was a councillor from 1992 until 1997 and that during the allocation of land in Lake Kenyatta Settlement Scheme, he was given a letter of offer dated 31st January 1997. By that time, he was still a councillor.
43. DW1 admitted that he did not pay the requisite 10% deposit within 90 days or at all as stipulated in the letter of offer.
 44. DW1 admitted that he had not produced any evidence to show that he has a house on the suit property.
 45. It was the evidence of DW1 that he applied to be allocated the suit property; that he took the application letter to the settlement office and that he received DMFI 5 (which was produced as DEXB 5) from the settlement office.
 46. It was the evidence of DW1 that all along, he was not aware that somebody had paid for the plot.
 47. When the court cross-examined DW1, he stated that he realised the plot had a problem when he attempted to sell it in 1997.
 48. DW2 informed the court that he works with the Land Adjudication and Settlement office, Lamu. DW2 stated that he was in possession of the official file in respect of the suit property. DW2 produced DMFI 6 as DEXB 6 and DMFI 4 as DEXB 4. DW2 also produced DMFI 5 as DEXB 5 which is a letter dated 20th August 1997. According to DW2, the letter was authored by the Lamu Land Adjudication and Settlement officer requesting the Director to prepare legal documents for plot number 355 (the suit property).
 49. According to DW2, the letter of 20th August 1997 stated that the legal documents should be in the names of John Gitau Njoroge of ID Number 8520131/71 (the Defendant) and the letter further stated that “the number of the ID should be amended appropriately”.
 50. DW2 informed the court that the original letter of 20th August 1997 (DEXB 5) was not on the file because it was sent to Nairobi. A letter similar to DEXB 5 but without the handwritten instructions was produced as DEXB 11.
 51. According to DW2, the name of the person who was being allocated the suit property was one, that is, Njoroge John Gitau. Those are the names in the letter of offer, the discharge and the title deed that was issued. According to DW2, DEXB 3 shows that the money in respect to the suit property was paid by Njoroge John Gitau and he is the one who should be given the title document.
 52. In cross-examination, DW2 confirmed that DW2 is his senior at the Land Adjudication and Settlement Office, Mpeketoni, Lamu.
 53. DW2 admitted that the copy of the letter of offer in the file does not indicate the identification number of the allottee and that the offer was valid for 90 days after which the land could be allocated to somebody else.
 54. DW2 stated that the 10% deposit was paid on 9th April 1997 and that the official file for plot number 355 has only one receipt dated 24th January 2004 paid by Njoroge J. Gitau.
 55. DW2 stated that in most cases, the names on documents start with the surname but not all the time. DW2 informed the court that the discharge of charge shows that the holder of national identity card number 3348117 is the one who paid for the land.

Submissions:

56. The Plaintiff's counsel submitted that the Defendant never complained when he realised that the land had not been allocated to him; that he waited until the Plaintiff sued him and that the Defendant is time barred from recovering the suit property pursuant to the provisions of section 7 of the Limitation of Actions Act.
57. Counsel submitted that if indeed the Defendant was issued with a letter of allotment in 1997, he should have paid the requisite 10% deposit within 90 days; that the Defendant is using the provincial administration to grab the Plaintiff's land and that the Defendant has not followed the procedure laid down in the Land Adjudication Act to claim the land.
58. Counsel also relied on the provisions of section 143 (1) of the repealed RLA and submitted that the Defendant cannot succeed to have the register rectified even if he proves fraud because the registration of the suit property in favour of the Plaintiff was the first one (a first registration).
59. On the other hand, the Defendant's advocate submitted that the person who appeared before the

- court as the Plaintiff did not file this case in his name because his national identity card has the name of John Njoroge Gitau while the Plaintiff in this case is Njoroge John Gitau. Consequently, it was submitted, there is no valid Plaint before the court and the Plaint should be struck out *in limine*; that the Counterclaim should succeed because it was defended by John Gitau Njoroge a.k.a Njoroge John Gitau and not the Plaintiff.
- 60.The Defendant's counsel submitted that the title deed that was issued in respect to the suit property ought not to be cancelled because it is already in the name of the Defendant; that according to the letter of offer of 31st January 1997, the land was offered to Njoroge John Gitau, the Defendant, and that there was no other letter of allotment in the names of John Njoroge Gitau.
- 61.Counsel finally submitted that the person referring to himself as the Plaintiff collected the title deed by impersonating the Defendant and that the payments for the land were made by the wrong person.

Analysis and findings:

- 62.The facts of this case are interesting, and were it not for the serious issues raised, amusing.
- 63.The Plaintiff, Njoroge John Gitau, is in possession of a title deed in respect of land known as Lamu/Lake Kenyatta II/355. The name of the Plaintiff in his national identity card number 3348117 is John Njoroge Gitau.
- 64.The Defendant, John Gitau Njoroge, is claiming that the title deed that the Plaintiff is holding was issued in his (the Defendant's) name and that indeed the letter of offer in respect to the suit property was addressed to him. The name of the Defendant as indicated in his national identity card number 8520131 is John Gitau Njoroge.
- 65.The Defendant's counsel has submitted that even without looking at the facts surrounding the issuance of the title, there is no Plaintiff in this matter. According to counsel, PW1 identified himself in court using his national identity card as John Njoroge Gitau and yet the Plaint shows that the Plaintiff is Njoroge John Gitau.
- 66.Mr. Ogeto, counsel for the Defendant, submitted that the correct Plaintiff in this case should therefore be either John Njoroge Gitau or Gitau John Njoroge and not as stated in the Plaint.
- 67.According to counsel, names of a person should be stated in the order that they appear in the national identity card. Alternatively, it was urged, the names should start with the surname, which is always the last name appearing in the national identity card.
- 68.It is the contention of the Defendant's counsel that there is no Plaintiff in this matter because one cannot start with his middle to identify himself. The Defendant's counsel did not offer to this court any authority to support that argument. The Defendant's counsel did not also cite any law barring someone from writing his name on a pleading or an official document by starting with his middle name.
- 69.In my view, the name John Njoroge Gitau can be written in any order on a pleading or an official document. That name can still refer to one and the same person even if it starts with the middle name, that is, Njoroge, whether on a pleading or an official document.
- 70.What is important is for one to identify himself either by his distinct national identity card number or by some other means.
- 71.The Plaintiff and the Defendant are not illiterate landless squatters in Lamu. The Plaintiff was a civil servant for many years. Before he retired, he was a personnel officer in the Ministry of Agriculture. On the other hand, the Defendant is a farmer and a politician. The Defendant was a councillor between 1992 and 1997. Indeed, by the time the suit property was allocated to "Njoroge John Gitau", he was still serving as a councillor in Lamu.
- 72.The evidence of PW1, John Njoroge Gitau, of national identity card number 334117 (the Plaintiff herein) was that he applied for land in Lake Kenyatta Settlement Scheme after seeing an advertisement at the D.C's office, Lamu.
- 73.It was the evidence of PW1 that he was informed that he had been allocated the suit property. He went to the adjudication and settlement office in Mpeketoni and collected the letter of offer dated 31st January 1997 which he produced as PEXB 2.
- 74.The Plaintiff's evidence on the issue of being allocated the suit property was collaborated by the evidence of the sub-county land adjudication and settlement officer, Lamu, who informed the court that the documents in his file indicated that the suit property was offered to one John

- Njoroge Gitau of ID number 3348117 on 31st January 1997.
75. On the other hand, the Defendant also produced a similar letter of offer similar to the Plaintiff's which he says he received from the Land Adjudication and Settlement Office, Lamu. The Plaintiff's letter of offer was signed by Mr. A. K Tono for the Director of Land Adjudication and Settlement while the Defendant's letter of offer was not signed but stamped with the name "Mr. A. K. Tono".
76. According to the evidence of the Defendant, he was initially allocated plot number 722 which is in Lake Kenyatta II. However, by a letter dated 28th January 1998 which was produced as DEXB 4, the Defendant was informed that the plot number 722 was earmarked for public purpose. Part of the letter reads as follows:

"The purpose of this letter therefore, is to order you to vacate the said plot as soon as practically possible but not later than 31st March 1998. It is my duty to remind you that you have already been allocated plot no. 355 at Lake Kenyatta Phase II and that you no longer have any legitimate reasons to continue occupying the said plot against public interest."

77. By the time the Defendant received the letter dated 28th January, 1998 telling him to vacate plot number 722, he was already aware that the Plaintiff was also claiming the suit property.
78. I say so because the Defendant informed the court that after he learned that he had been allocated the suit property, he entered into a sale agreement dated 12th May, 1997 with one Peter Kibathi Kimohu in respect to the suit property. The agreement was produced as DEXB 8. However, the agreement fell through because of the claim by the Plaintiff.
79. The letter of offer that was produced by both the Plaintiff and the Defendant stipulated that it was valid for 90 days within which period one was supposed to pay a deposit of 10% failure of which would lead to the cancellation of the offer.
80. The Plaintiff produced an original receipt showing that he paid Kshs.1,160 being the 10% deposit for the suit property on 9th April 1997. The Plaintiff produced other original receipts showing that he made further payments to SFT on 4th September 1998, 7th June 2005, 24th June 2002 and 1st December 2000. The total amount paid by the Plaintiff as indicated in the receipts is Kshs. 20,791.
81. After paying the 10% deposit, the Plaintiff signed the charge document on 8th January 1999 which was registered on 19th January 1999. The charge document was produced as PEXB 6.
82. A discharge of charge duly signed by the Plaintiff (according to the identity card number on the document) was later on registered in respect to the suit property. The Transfer was signed by Njoroge John Gitau of ID Number 3348117 (the Plaintiff) and the title deed was issued to the Plaintiff on 28th August 2006.
83. PW2 confirmed that indeed the receipts evidencing the payment of the requisite fees by the Plaintiff were in the official file held by the Land Adjudication and Settlement office. PW2 also confirmed that the charge, the discharge and the transfer documents were duly executed by Njoroge John Gitau of National identity card number 3348117, (the Plaintiff).
84. The national identity card produced in court shows that it is the Plaintiff, otherwise known as John Njoroge Gitau, who paid the requisite fees for the suit property, signed the charge, the discharge of charge and the transfer documents for plot number 355.
85. The Defendant admitted that he never paid a single cent to the SFT because he had been dispossessed plot number 722. However, the Defendant did not tell the court if he sought and received from the SFT the waiver for the payments of the requisite fees and why he did not stop the preparation of the document in favour of the Plaintiff.
86. The Defendant did not also adduce evidence to show that he was indeed allocated plot number 722 and that he paid the required fees for that plot before he was evicted and allocated the suit property. One would have expected the Defendant to produce the letter of offer for plot number 722 and the receipts to show that he had paid for it before he was evicted.
87. Before perfecting the allocation of the suit property, if at all, the Defendant sought to sell the suit property in April 1997 to a third party. The action of the Defendant in attempting to sell the property a few months after the purported allocation to him, and before even paying the required

- 10% deposit leads to only one conclusion, that is, that he knew the property had been allocated to a different person and he wanted to transfer the dispute to an unsuspecting third party.
88. It would appear that the Defendant was aware that the suit property had been allocated to a person with names similar to his because on 20th August 1997, a form which was produced as DEXB 5 was sent to the Director of Land Adjudication and Settlement by a Mr. Fredrick O. Okoth who was based in the settlement office, Lamu. In the form, Mr. Okoth was informing the Director to prepare legal documents for plot number 355 in the name of John Gitau Njoroge, ID No.820131/71 (the Defendant).
89. At paragraph (a) of the form, the said Mr. Okoth is purported to have indicated that the allottee who had paid the deposit and conveyancing fees vide a receipt No. BH 465584 dated 9th April 1997 of Kshs.1,160 was John Gitau Njoroge of ID number 8520131/71. Those are the Defendant's names and the number of his national identity card.
90. The Defendant admitted in evidence that he did not pay the money quoted in the said form. The quoted amount was paid by the Plaintiff. The original receipt number BH 465584, which is the same number appearing in the form, is what the Plaintiff produced in evidence as PEXB 3. A copy of the receipt is in the file held by the settlement office and it must have been used by the said Mr. Okoth to try and mislead the Director of Land Adjudication and Settlement.
91. Other than the typed form whose intention was to have the legal documents prepared in the name of the Defendant, more information was written on the form by hand. An additional receipt number BN139095 for Kshs.751 was added. Again, it is the Plaintiff who is in possession of the original receipt number BN139095 for Kshs.751 which was produced as PEXB 5.
92. For emphasis, the said Mr. Okoth or whoever added the information in the form, wrote as follows:

“Attached please see my copy of ID card to enable you amend the number as appropriately and return the same for further processing.”

93. Those words clearly shows that the people who were trying to have the legal documents for the suit property issued in favour of John Gitau Njoroge of ID number 8520131/71 (the Defendant) knew that the correct information had already been sent to the Director of Lands Adjudication & Settlement. However, because of the similarity in the names between the genuine allottee, that is the Plaintiff, and the Defendant, they sought to have the legal documents prepared in favour of the Defendant by informing the Director to amend the national identity card number that had already been send to him appropriately.
94. Indeed, considering that the Defendant was by then a councillor, he must have been aware about the allocation of the suit property to somebody with a name similar to his, and he sought to benefit from the said allocation without paying a cent. However, that did not happen because all the documents pertaining to the suit property were signed by the Plaintiff and the title deed was issued to him after complying with the terms in the letter of offer.
95. It would appear that after the scheme to have the title deed and the legal documents issued in the name of the Defendant failed, Mr. Okoth, the purported author of the form dated 20th August 1997 had to put the record straight.
96. In a letter dated 23rd November, 1998, the said Mr. Okoth informed the Defendant that the plot was officially allocated to Mr. John Njoroge Gitau of ID number 3348117 (the Plaintiff). The author further informed the Defendant that the Plaintiff had the original letter of offer while the Defendant only had a photocopy of the same and that the Plaintiff had paid all the requisite charges.
97. The Defendant seem not to have raised any complaint with the Director of Land Adjudication & Settlement after receiving the said letter neither did he move to court to stop the issuance of the title deed to the Plaintiff.
98. From the evidence that has been placed before me, I find and hold that it is the Defendant who attempted to defraud the Plaintiff out of the suit property. In fact, the Defendant was never issued with a letter of allotment considering that what he produced in court is a file copy. All original letters emanating from government offices are usually signed by the author while the copies that remain in the file are stamped or not signed at all. What the Defendant had was the file copy of what was sent to the Plaintiff. The Plaintiff produced in evidence the copy of the signed letter of offer while the Defendant produced a copy of the same letter but not signed by the author.

99. It does not matter, as I have already stated, that the Plaintiff's name as appears in his national identity card is John Njoroge Gitau while the names in the title deed is Njoroge John Gitau. The name Njoroge John Gitau refers to the Plaintiff in this case because of the reasons I have given above .
100. There is no evidence before me to show that the Defendant has developed the suit property or that he is residing thereon. Even if he had developed the suit property, his claim will still not have succeeded.
101. In the circumstances, and for the reasons I have given above, I allow the Plaintiff's Plaint as prayed and dismiss the Defendant's Counter claim with costs.

Dated and delivered in Malindi this **10th** day of **October**, 2014.

O. A. Angote

Judge