



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO. 102 OF 2008

SOLOMON KIRUBARA

MBUI.....PLAINTIFF

VERSUS

**JENNIFER MWARANIA IKABU (AS LEGAL REPRESENTATIVE OF IKABU
MBUI)....DEFENDANT**

**LUCY AGNES NTHIORI.....INTERSTED
PARTY**

J U D G M E N T

This suit was filed on 31st July, 2008 by way of Originating Summons. The summons read:

“LET JENNIFFER MWARANIA IKABU the legal Representative of IKABU MBUI (deceased) of P. O. Box 53 Meru within 15 days after service of this summons enter appearance to these summons which is issued on the application of SOLOMON KIRUBARA MBUI who claims to be entitled to 1/3 of L. R. NO. NTIMA/NTAKIRA/1366 By adverse possession and for the determination of the following questions:

- 1. *Is the plaintiff in adverse possession of 1/3 of L. R. NO. NTIMA/NTAKIRA/1366 in terms of the Limitation of Actions Act?***
- 2. (a) *Is the plaintiff entitled to be registered as the proprietor of the 1/3 of L.R. NO.NTIMA/NTAKIRA/1366 he occupies under Section 38 of Limitation of Actions Act.***
- 3. *Who pays the costs of this suit?”***

By a letter dated 21st February, 2009, Solomon Kirubara Mbui the plaintiff and Jennifer Mwarania Ikabu (as legal representative of Ikabu Mbui) through their advocates wrote to the Deputy Registrar, High Court of Kenya, Meru requesting the Deputy Registrar to enter a consent judgment in the following terms:

- (a) *That the plaintiff is in adverse possession of 1/3 of L. R. NO. NTIMA/NTAKIRA/1366.***
- (b) *That the Defendant do sub-divide L. R. NO. NTIMA/NTAKIRA/1366 and transfer 1/3 of the same to the plaintiff.***
- (c) *Plaintiff do pay survey fees for the said sub-division.***

(d) In default the Executive Officer of this Court be and is hereby empowered to sign all the necessary documents and forms leading to sub-division of L. R. NO.NTIMA/NTAKIRA/1366 and transfer 1/3 of the same to the plaintiff.

(e) Each party to pay its own costs.

On 15th November, 2011, the court issued orders in the following terms:

- 1. THAT the Land registrar be and is hereby ordered to sub-divide L.R. No. NTIMA/NTAKIRA/2687 and NTIMA/NTAKIRA/2688 and give 1/3 of each to the Plaintiff/Applicant as earlier ordered by the court in respect of NTIMA/NTAKIRA/1366.***
- 2. Each party to bear its own costs.***

Later on, on 27th June, 2011 an order of inhibition against land parcels Nos. NTIMA/NTAKIRA/2687 and NTIMA/NTAKIRA/2688 was issued. I note that the plaintiff and the defendant had agreed by consent to have the said order of Inhibition granted.

On 4th June, it was ordered: **“That the Executive Officer of this court is appointed and empowered to sign and execute all the necessary documents to effect the court's order dated 15th November, 2011 and issued on 25th November, 2011.”**

On 26.6.2013, the interested party was granted an order to be enjoined in the suit and the suit was thereafter heard orally.

As the plaintiff and the defendant had settled their suit by consent and obtained various orders by consent, what remained was for the parties to canvas the interested party's application dated 5th December, 2013. This application sought Orders:

- 1. THAT this application be certified urgent and the same be heard ex- parte in the first instance.***
- 2. THAT the Honourable Court be pleased to enjoin the applicant herein as defendant in the suit.***
- 3. THAT the Honourable Court be pleased to set aside consent orders recorded and made on 15th November, 2011 and on 4th June, 2011 and all other consequential and subsequent orders pending hearing and determination of this application.***
- 4. THAT this Honourable Court be pleased to order stay of execution of orders made on 15th November, 2011, and on 4th June, 2012 and/or any subsequent orders pending hearing and determination of this application.***
- 5. THAT this Honourable Court be pleased to issue an order of inhibition inhibiting any dealings whatsoever with Land Parcel No. NTIMA/NTAKIRA/2687 or any subsequent sub-divisions thereof until this application is heard and determined.***
- 6. THAT this Honourable Court be pleased to issue injunction orders restraining the plaintiff and defendant by themselves, their agents, employees, relatives and/or anybody else acting on their behalf from entering, remaining on, building, cultivating and/or anyhow else howsoever interfering with the applicant use and/or enjoyment of land parcel No. NTIMA/NTAKIRA/2687 until this application is heard and determined.***
- 7. THAT the costs of this application be provided for.***

The application was supported by the affidavit of the applicant and was premised upon the following grounds:

1. ***THAT the applicant and her brother FRANCIS IKABU MBWIRI are the absolute registered owners of land parcel No. NTIMA/NTAKIRA/2687, as tenants in common.***
2. ***THAT parcel No. 2687 was excised from Land Parcel No. NTIMA/NTAKIRA/1366 through a court order which order has never been appealed to date.***
3. ***THAT the plaintiff and the defendant approached this court fraudulently and made a consent judgment without presenting all facts to this court and kept the applicant and her brother in the dark.***
4. ***THAT the plaintiff and the defendant misrepresented facts before this Honourable court and did not mention existence of this Honourable Court orders on the same and obtained orders to revert back to Land parcel No. 1366.***
5. ***THAT the plaintiff had earlier sued the defendant the applicant and her brother on the same issues and the case was dismissed for want of prosecution and thus this case is Res Judicata.***
6. ***THAT the plaintiff and defendant are on the verge of canceling the applicant land title and distributing the said parcel between themselves.***

vii) ***THAT the plaintiff's and defendant's actions have already occasioned lumpsum losses and will result to irreparable damage and loss if the plaintiff and defendant are not restrained.***

On 17.3.2014, the firm of advocates which had been representing the plaintiff informed the court that relevant documents had been filed in court indicating that the plaintiff was representing himself. This position was confirmed by the plaintiff. The defendant and the Interested Party also informed the court that they would act in person and therefore would not be represented by advocates.

In his evidence, the plaintiff explained that he had sued Jennifer Mwarania Ikabu as the legal representative of Ikabu Mbui, the defendant, who owned his father's land. He told the Court that Jennifer had sub-divided the land properly to all beneficiaries pursuant to court orders obtained after he had filed this suit. He concluded that he did not have anything else to tell the court.

On being cross-examined by the Interested Party, he told the court that he was not interested in parcel No.2687 which the Interested Party was claiming. He also told the Court, upon cross-examination by the interested Party that he was not aware that there was a case, High Court Civil case No. 212 of 1989 between the Interested Party and her brother Francis Ikabu Mbwiri and the deceased defendant. He also denied knowledge of Civil Suit No. 348 of 1994, which he had filed against Ikabu Mbui (1st defendant), Francis Ikabu Mbwiri (2nd defendant) and Lucy Agnes Nthiori (3rd defendant) and now the Interested Party in this suit.

The defendant, Jennifer Mwarania Ikabu gave evidence that the suit land belonged to their father, meaning the father of her husband. She told the Court that upon the death of her husband, Ikabu Mbui, her mother in law instructed her to subdivide the land into 3 portions. Asked about High Court Civil Suit No. 212 of 1989 and High Court Civil Suit No. 348 of 1994, she said that she was not aware of any suits regarding the suit Land.

The defendant called 2 witnesses. The first one, Paul Kaburia, merely testified that the defendant became responsible for affairs regarding the suit land after her husband died. His evidence was a mere assertion that the defendant had sub-divided the property into three portions. He also told the court that he was not aware of when the land was sub-divided. He did not proffer any useful evidence touching upon the Interested Party's application.

DW3, the defendant's 3rd witness, Evangeline Muguongo, testified that she was a neighbour to the suit land and that when the defendant sub-divided the land, she did so fairly and added that the area chief and the land officer were present. She said that she was aware that the defendant was not staying with her

husband for some years but she could not say that it was 32 years. She however, admitted that she only returned after her husband died.

I find that the evidence of this witness was not useful in as far as the claims in this application are concerned.

As the Interested Party in her evidence said that she wanted to rely on her Supporting Affidavit dated 5th December, 2013, I have decided to reproduce the numbered paragraphs of the said affidavit in full here below:

1. ***THAT I am the above named interested party and I am conversant with the matters in this suit hence competent to swear this affidavit.***
2. ***THAT I am aware that this application relates to my right to enjoy quiet possession of my property known as NTIMA/NTAKIRA/2687 which right is under imminent threat due to acts and omissions of the plaintiff and the defendant herein.***
3. ***THAT the plaintiff and the defendant are related to me in that the plaintiff is my uncle (my father' step brother) and the defendant is the widow of my other uncle (the late IKABU MBUI).***
4. ***THAT the plaintiff, defendant (late IKABU MBUI) and my father were brothers and the three of them were the sons of MBUI KIRORA (my grandfather).***
5. ***THAT my grandfather, the said MBUI KIRORA was the sole owner of the Land Parcels known as NTIMA/NTAKIRA/1366, 1459, and 1546 which parcels were inherited by his three sons aforesaid (my father included) upon my grandfather's death.***
6. ***THAT my father who was known as MBWIRI MBUI was the eldest son of my grandfather but he died long before his father (my grandfather) and before Land Demarcations were carried out in Meru District.***
7. ***THAT my father is survived by Myself and my brother FRANCIS IKABU MBWIRI.***
8. ***THAT when my father died, my brother and myself were minors and we were left in the custody of our uncle IKABU MBUI (the defendant herein).***
9. ***THAT During gathering and demarcation, my uncle Ikabu Mbui (the defendant) gathered all our grandfather's lands which were to be shared among the three sons (my late father included) and he was registered as the proprietor of the same on behalf of the households of his other two brothers.***
10. ***THAT the Land parcel Known as NTIMA/NTAKIRA/1459 was given direct to one uncle namely SOLOMON KIRUBARA MBUI, the plaintiff herein and he was duly registered as the sole proprietor.***
11. ***THAT the Land Parcel known as NTIMA/NTAKIRA/1546 remained in my uncle's name (Ikabu Mbui) the defendant herein, and the said shamba now devolves to his widow JENIFFER MWARANIA IKABU who is the legal representative of the defendant in this case.***
12. ***THAT the land parcel known as NTIMA/NTAKIRA/1366 was to be shared between my father's household and the defendant's house but our uncle (IKABU MBUI) categorically refused to give my brother and myself our father's half share of the said shamba as a result of which my brother (FRANCIS IKABU MBWIRI) and myself (LUCY AGNES NTHIORI) filed a case against him before this Honourable Court being MERU HCCC NO. 212 OF 1989 whereby we sought a declaration that our uncle, the defendant herein held the family lands namely NTIMA/NTAKIRA/1366 and 1546 in trust for himself and ourselves in equal shares.***

13. **THAT** upon the conclusion of the said HCCC NO. 212 OF 1989, this honourable Court decreed and ordered the defendant to sub-divide NTIMA/NTAKIRA/1366 and transfer to my brother and myself one half (½) of the said shamba measuring 11.5 acres to be held by myself and my brother as tenants in common in equal shares. (Attached hereto is a copy of the said Decree marked "LAN 1").
14. **THAT** still in the year 1994, the plaintiff herein SOLOMON KIRUBARA MBUI filed a case in this Honourable Court being MERU HCCC NO. 348 of 1994 against the defendant, myself and my brother claiming one third (1/3) share of the original NTIMA/NTAKIRA/1366.
15. **THAT** the plaintiff failed to prosecute the case which was subsequently dismissed by this Honourable court in the year 2006. (Attached hereto is a copy of the Decree in the said case marked "LAN2").
16. **THAT** pursuant to the decree in HCCC NO. 212 of 1989 aforesaid and after dismissal of the plaintiff's case the shamba known as NTIMA/NTAKIRA/1366 was sub-divided into two portions namely: - NTIMA/NTAKIRA/2687 measuring 11.5 acres which title was duly registered jointly in my name and that of my brother FRACIS IKABU MBWIRI (attached hereto is a copy of our title deed and a certificate of search (Green Card) dated 17th December, 2012 and marked "LAN 3a and b") dated 17th December, 2012) and marked "LAN 3a and b").
17. **THAT** the Defendant's household retained the other portion of the land measuring about 12 acres and being NTIMA/NTAKIRA/2688.
18. **THAT** in the year 2008 the plaintiff without including or informing me and/or my brother slyly filed this suit, and Originating Summons claiming adverse possession of One third (1/3) share of the said original NTIMA/NTAKIRA/1366 which property ceased to exist on the 28th day of 1993 when this Honourable court decreed in HCCC NO.212 of 1989.
19. **THAT** I have been in occupation of my land parcel which was sub-divided, surveyed and excised from Land Parcel No. 1366 NTIMA/NTAKIRA after the High Court decision of 1993.
20. **THAT** the plaintiff's suit by Originating Summons is res Judicata and waste of this Honourable Court precious judicial time as his Meru HCCC NO.348 of 1994 suit involved the same parties and sought the same prayers. The said suit was dismissed for want of prosecution as shown on "LAN 2" above.
21. **THAT** the said Title Number NTIMA/NTAKIRA/1366 having been extinguished by this Honourable Court in HCCC NO. 212 of 1989 and having been replaced by new ownership and the new ownership having not been made a party to the plaintiff's Originating Summons herein, this scenario renders the plaintiff's suit incompetent from the very beginning as the order sought could not be enforced on a non-existent parcel of land and a non-existent owner as the defendant had ceased to own the said parcel of land way back in the year 1993.
22. **THAT** I verily believe that the Originating Summons was instituted with the collusion of the plaintiff and the defendant herein with the sole purpose of depriving my brother (Francis Ikabu Mbwiri) and myself of our rightful entitlement to our late father's property bestowed upon us by HCCC NO. 212 OF 1989.
23. **THAT** it is my belief that all the orders obtained by the plaintiff in this matter are fraudulent and void ab initio as they have been obtained by concealment of crucial and material facts relating to the subject property.
24. **THAT** by a Consent Order made by the plaintiff and the defendant before this Honourable Court on 26.02.2009, the plaintiff was handed over by adverse possession. One third (1/3) share of Title Number NTIMA/NTAKIRA/1366 which title both parties knew very well did not

exist, and which orders were fraudulent and solely intended to deprive my brother and myself that which rightly belonged to us.

25. ***THAT*** the plaintiff has never been in occupation and or use of my land parcel No. 2687 and allegations of adverse possession are baseless and orchestrated to disinherit my brother and myself.
26. ***THAT*** again on the 15th day of November, 2011, both the plaintiff and the defendant appeared before this Honourable court and colluded to the granting (unopposed) of the plaintiff's application dated 23rd June, 2011 ordering the Land registrar Meru to sub-divide L.R. NO.NTIMA/NTIAKIRA/2687 without disclosing to this Honourable Court that the said title was owned by third parties who were not party to this suit and who were therefore unaware of the adverse order being made against them by this Honourable court.
27. ***THAT*** again on the 4th June, 2012 the plaintiff and the defendant colluded again to allow the (unopposed) granting of the plaintiff's application dated 21.02.2012 appointing and empowering the Land Registrar, Meru to sign and execute all the necessary documents to effect the court's order dated 15th day of November, 2011.
28. ***THAT*** even as both parties were colluding to empower the Land registrar to execute the necessary transfer documents, they concealed before this Honourable the existence of and/or the whereabouts of the owner's of the said property which was being directly alienated by the orders of this Honourable Court.
29. ***THAT*** on 4th September, 2012 both the plaintiff and the defendant caused the Land control Board of Miriga Mieru West to consent and approve the sub-division of my property NTIMA/NTAIKRA/2687 into (2) portions of 1.55 Hectares. (Attached hereto and marked "LAN 4") is a copy of the said Land Board Minutes showing the case of my land Parcel as item Number 285 thereof.
30. ***THAT*** the approval of sub-division of my land by the said MIRIGA MIERU WEST Land Board on 4th September, 2012 is illegal and void as I was not consulted, present or involved and I did not consent to the sub-division as a registered owner whose title had not been cancelled and/or invalidated by any competent court or any lawful authority in the country.
31. ***THAT*** by sub-diving my land without my consent, all the parties involved have infringed upon my Constitutional rights to property with extreme impunity and I pray to this Honourable court to immediately cease the furtherance of this impunity.
32. ***THAT*** by concealing the existence of other suits which had been previously determined by this Honourable Court in relations to the subject property, the plaintiff and the defendant herein deprived this Honourable Court of the opportunity of arriving at the correct and just judgment, in this matter.
33. ***THAT*** I have learned that the plaintiff and the defendant are in the process of obtaining further consents from the Land Board to enable them transfer my property to the plaintiff.
34. ***THAT*** I moved to this court with an application dated 21st January, 2013 which I prepared but my Advocate on record at that time said it was defective and withdrew it and did not make an attempt to make a fresh amended application and I took it upon myself to make this application.
35. ***THAT*** I have no way of stopping the plaintiff and the defendant from unlawfully, alienating my land and I humbly pray to this Honourable Court in the interest of justice to grant me the orders as prayed.
36. ***THAT*** unless the said judgment and orders are set aside and an inhibition order granted I

and my brother stand to suffer irreparable loss and damage as this is the only land that we have and it's the source of my livelihood.

37. THAT in the interest of justice and fairness, I humbly request this Honourable Court to protect my proprietary rights on Land Parcel No.2687 NTIMA/NTAKIRA/ADJUDICATION SECTION.

38. THAT I swear this affidavit in support of my application attached hereto.

39. THAT the facts deponed to herein are true to the best of my knowledge, information and belief.

The Interested Party commenced her evidence by producing, as exhibits relating to High Court Civil Case No. 212 of 1989, the Mutation form, the apposite land Board consent and a copy of a Green Card showing that the land had been registered in the name of Ikabu Mbui. She also produced the Decree in respect of the above suit as another exhibit. She further produced as an exhibit Kenya Gazette Notice No. 2498 of 4.4.2008. I deem this to be an important document as it cites Meru Civil Suit No. 212 of 1989 and also mentions the hands of the then this Court's Executive Officer and the Land Registrar, Meru Central District, in the implementation of the decree obtained regarding that suit. I reproduce it here below:

“GAZETTE NOTICE NO. 2498

THE REGISTERED LAND ACT (Cap.300, section 33) REGISTRATION OF INSTRUMENT

WHEREAS Ikabu Mbui, is registered proprietor of that piece of land known as NTIMA/NTAKIRA/1366, situate in the district of Meru, and whereas the chief magistrate's court at Meru, in civil suit No.212 of 1989, has ordered the said piece of land to be transferred to (1) Francis Ikabu Mbwiri and (2) Lucy Agnes Nthiori, and whereas the executive officer of the said court has in pursuance to an order of the said court executed a transfer of the said piece of land in favour of the said (1) Francis Ikabu Mbwiri and (2) Lucy Agnes Nthiori, and whereas all efforts made to compel the registered proprietor to surrender the land title deed issued in respect of the said piece of land to the land registrar have failed, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with the registration of the said instrument of transfer and issue a land title deed to the said (1) Francis Ikabu Mbwiri and (2) Lucy Agnes Nthiori, and upon such registration, the land title deed issued earlier to the said Ikabu Mbui, shall be deemed to be cancelled and of no effect.

Dated the 4th April, 2008.

P. M. MUTEGI,

Land Registrar,

Meru Central District,

It is noted that the Gazette Notice wrongly refers to C.M's Suit No. 212 of 1989 instead of HCCC 212 of 1989.

She also produced as an exhibit the title to Land Parcel No. NTIMA/NTAKIRA/2687. Finally she produced as an exhibit in the form of Minutes of the proceedings of Miriga Mieru West Land Control Board Meeting held on 4th September, 2012 at the D.O's Office. Item 285 thereof read as follows:-

“285.Ntima/Ntakira/2687 – Proposed sub-division of 4.654 ha. by the Executive Officer I/C High Court of Kenya on behalf of the registered proprietor into 2 portions of 1.55 ha and balance – Approved”

Item 286 read as follows:

“286.Ntima/Ntakira/2688 – Proposed Sub-division of 4.86 ha by the Executive Officer I/C High Court of Kenya Meru on behalf of the Registered Proprietor into 2 portions of 1.56 ha and balance - Approved”

I do agree with the Interested Party's suggestion that it is only items 285 and 286 out of the 24 items handled by the Miriga Mieru Land Control Board on 4th September, 2012 that did not contain the names of the parties involved. This suggests that there was a scheme to hide those identities meant to make secretive the apposite dealings in the subject parcels of land. It is noted that the Executive Officer was supposedly acting at the behest of the registered proprietors of parcel No. NTIMA/NTAKIRA/2687 without their knowledge. Indeed no attempt was made to enjoin them in this suit.

I find that in their cross-examination of the Interested Party, the Plaintiff and the defendant did not impeach, even remotely, the evidence adduced by the Interested Party. They did not respond to the interested Party's supporting Affidavit sworn by her on 5th December, 2013. The contents of the said affidavit, therefore, remain uncontroverted.

The defendant, though claiming to have sued as Legal Representative of Ikabu Mbui, defendant, did not, when she filed this suit annex Letters of Limited Grant, allowing her to represent the deceased.

It is clear that the Judgment in High Court Civil Suit No. 212 of 1989 between Francis Ikabu Mbwiri and Lucy Agnes Nthiori (Plaintiffs) and Ikabu Mbui (defendant) was not appealed against. The Judgment was implemented and Lucy Agnes Nthiori and Mbwiri Francis Ikabu, were on 5.10.2009 registered as proprietors in equal shares of Land Parcel No. NTIMA/NTAKIRA/2687. A title deed, which they still hold, was issued on 15.10.2009.

The Executive Officer of this Court executed all documents that facilitated the transfer of parcel No. NTIMA/NTAKIRA/2687 to the Interested Party and her brother, Mbwiri Francis Ikabu.

I find that the claim by the plaintiff and the defendant that they did not know of the existence of Civil Suit No. HCC 212 of 1989 to be strange. As the case was filed against the deceased husband of the representative defendant, she ought to have been aware of the case.

The plaintiff's plain demonstration of his vintage status as a liar is contained in his Supporting Affidavit to his Notice of Motion dated 23rd June, 2011 seeking to sub-divide L. R. NOS.NTIMA/NTAKIRA/2687 and 2688 and to give 1/3 of each to him. It also sought Orders of Inhibition to be registered against the two titles.

The supporting Affidavit sworn on 23rd June, 2011 stated as follows:

“1. THAT I am the Plaintiff/Applicant herein and therefore competent to make and swear this affidavit.

- 2. THAT I filed Originating Summons in this court claiming 1/3 of L. R. NO. NTIMA/NTAKIRA/1366 which I was entitled to through adverse possession.***
- 3. THAT the land was then 9.5 ha. Which is about 24 acres and was therefore entitled to 8 acres (Annexed is a copy of the original register marked “SKM 1”)***
- 4. THAT my case was not challenged and the defendant admitted I was entitled to 1/3 of he said land and the court issued an order for the same on 18th March, 2009 (Annexed is a copy of the order marked “SKM 2”).***
- 5. THAT as I was following sub-division which needed money that I had to look for the defendant allowed a sub-division into two equal portions making it impossible for the court order to be***

implemented. (Annexed are copies of the resultant parcels of land marked “SKM3” and “SKM4”)

6. ***THAT each sub-division has 4.686 which is about 12 acres.***
7. ***THAT for the court order to be implemented I should be allowed to get 4 acres from each sub-division.***
8. ***THAT since the defendant's plans are not known it is necessary to preserve the two parcels of land by way of inhibition before my application is heard.***
9. ***THAT the contents of this affidavit are true to the best of my knowledge, information and belief.***

Although he deponed in paragraph 9 thereof that the contents of his affidavit were true to the best of his knowledge and belief, nothing can be further from the truth. The sub-division of the mother title L. R. NO. NTIMA/NTAKIRA/1366 was done by this Court's Executive Officer when he implemented this Court's Judgment in High Court Civil Suit No.212 of 1989. Therefore, the statement in paragraph 5 of the affidavit that the defendant (Jennifer Mwarania Ikabu – representing her deceased husband) had allowed sub-division of the land is factually incorrect and therefore a blatant lie. By the time the plaintiff filed the suit, land Parcel No. 1366 did not exist. It had been sub-divided, through orders of Court into parcels No. NTIMA/NTAKIRA/2687 and 2688. Parcel No. 2687 already belonged to the Interested Party and her brother Francis Ikabu Mbwiri. It follows, ipso facto, that there is no way the defendant (Jennifer Mwarania) would have allowed the sub-division of a non-existent parcel of land.

Regarding his claim of lack of knowledge of HCC Civil Suit No. 212 of 1989, the plaintiff casts himself in bad light as an incorrigible liar. This is because he had filed High Court Civil Suit No. 348 of 1994 as the plaintiff. The defendants were Ikabu Mbui (his deceased brother and in this suit represented by Jennifer Mwarania Ikabu as defendant), Francis Ikabu Mbwiri (the brother of the Interested Party) and Lucy Agnes Nthiori (the Interested Party).

This suit was dismissed for lack of prosecution by the Hon. Justice Lenaola, Judge, on 8th June, 2006.

It is clear from the evidence adduced that the plaintiff and the defendant devised a grand scheme to contrive the adoption of a Consent Judgment that they used to subvert the course of justice and to obtain subsequent orders meant to sidestep and trample upon desired legal processes. Having obtained their fraudulent judgment, they even obtained orders for this Court's Executive Officer to facilitate the implementation of their nefarious scheme. I find that this cleverly executed fraudulent scheme amounts to the highest abuse of judicial processes. And more so when this suit is Res judicata HCCC 212 of 1989 and HCCC 348 of 1994. It is not only veritably egregious in its nature, it depicts the plaintiff and the defendant as persons of very low integrity who are willing to use the highest degree of subterfuge to subvert the course of justice. This is one instance of misuse of the avenues offered by consent arrangements, which indeed expedite resolution of disputes, to obtain court orders and to misuse court officers, to perpetrate injustice. Courts of law will always be courts of justice and will not allow themselves to be transformed into courts of injustice. In the circumstances, I find that the Interested Party's application dated 5th December, 2013 has merit. I grant the following orders:

1. ***Consent orders recorded on 15th November, 2011 and on 4th June 2011 and all other consequential and subsequent orders are nullified and of no legal effect, having been fraudulently obtained by the Plaintiff in collusion with the defendant.***
2. ***All titles obtained through the fraudulent orders obtained by the Plaintiff and the Defendant are declared void and are hereby cancelled.***
3. ***That the Land Registrar reinstates the Land Register in respect of Land Parcel***

NO.NTIMA/NTAKIRA/2687 to the position that existed before the fraudulent orders were obtained with the effect that Land Parcel No. NTIMA/NTAKIRA/2687 will remain registered in the names of Lucy Agnes Nthiori (ID/7677568) and Mbwiri Francis IKABU (ID/3333014) and Land Parcel No. NTIMA/NTAKIRA/2688 to revert to its original owner.

4. An order of permanent injunction is hereby issued restraining the plaintiff and the defendant by themselves, their agents, employees, relatives and/or anybody else acting on their behalf from entering, remaining on, building, cultivating and/or anyhow else howsoever interfering with the applicant's use and or enjoyment of Land Parcel No. NTIMA/NTAKIRA/2687.

5. I award costs against both the plaintiff and the defendant to the Interested Party.

The effect of this judgment is that this suit stands dismissed in its entirety as against both the plaintiff and the defendant.

It is so ordered.

Delivered in Open Court at Meru this 8th day of October 2014 in the presence of:

Cc Daniel/Lilian

Solomon Kirubara Mbui – Plaintiff

Jennifer Mwarania Ikabu – Defendant

Lucy Agnes Nthiori – Interested Party

P. M. NJOROGE

JUDGE