



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 1097 OF 2016

FORMERLY HCC NO. 163 OF 2011

WILSON ANTHONY NYANGAGA.....PLAINTIFF

VERSUS

PAUL ONSAKIA ONDIKA.....1ST DEFENDANT

CHRISTOPHER NYARINGO NGOGE.....2ND DEFENDANT

JUDGMENT

1. The plaintiff instituted the instant suit vide a plaint dated 18th August 2011 filed in court on 24th August 2011. The plaintiff's claim was that he was at all material times the registered proprietor of land parcel known as **LR No. Wanjare/Bokeire/4287** (hereinafter referred to as "**the suit land**"). The plaintiff averred that the 1st and 2nd defendants procured fraudulent and/or fake awards from Suneka Land Disputes Tribunal allegedly given vide complaint Nos. 29 of 2009 and 36 of 2009 respectively which were subsequently adopted as judgments and decrees issued vide Kisii Chief Magistrate's Court Miscellaneous Civil Application Nos. 27 of 2010 and 24 of 2010 respectively. The decrees/orders obtained authorized the subdivision of the suit land to create land parcels **Wanjare/Bokeire/5031, 5032 and 5033** without the plaintiff's consent.

2. The plaintiff contends the verdicts of the Tribunal utilized to obtain the judgments and decrees were a nullity as they were not validly issued by the Tribunal and could not consequently be validly adopted as judgments of the court. The plaintiff inter alia prays for:-

1. A declaration that the Decrees issued in Kisii CM Miscellaneous Civil Application Nos. 24 and 27 of 2010 and the resultant creation of title Nos. Wanjare/Bokeire/5031, 5032 and 5033 are illegal for being nullities ab initio.

2. That title Nos. Wanjare/Bokeire/5031, 5032 and 5033 be cancelled and the status quo ante the creation there of be restored.

3. That the costs of the suit be borne by the defendants jointly and severally.

3. The defendants filed a joint defence dated 7th October 2011 filed in court on the same date. The defendants averred that the plaintiff procured the registration of the suit land in his name fraudulently and further contended that the plaintiff's suit was misconceived as he approached the court irregularly by way of plaint when he could either have brought a judicial review application or appealed against the decision and/or orders he was aggrieved with. The defendants denied the particulars of fraud attributed to them in the plaint.

4. The suit was part heard by my predecessor Okong'o, J. who took the evidence of the plaintiff (PW1) and by Kullow, J who took the evidence of PW2 on 20th March 2017 when a service week was conducted in the station and the plaintiff's case was closed. With the consent of the parties, the suit proceeded before me on 23rd July 2018 from where the previous Judges had reached. The witness statement of the 1st defendant was admitted in evidence by consent and he was not called to testify. I took the evidence of the 2nd defendant, Christopher Nyaringo Ngoge (DW1) and the defence closed its case.

Evidence by the parties:

5. The plaintiff, Wilson Anthony Nyangaga testified as PW1. The plaintiff's evidence was to the effect that he purchased a portion of land from the 1st defendant's original land parcel LR No. **Wanjare/Bokeire/1245** and that after subdivision the portion that he purchased and was transferred to him was LR No. **Wanjare/Bokeire/ 4287** as per copy of certificate of official search produced as "**PEx.1**" included in the plaintiff's bundle of documents. The plaintiff stated that after he was registered as the owner of the suit land, the 1st defendant lodged a complaint with the Suneka Land Disputes Tribunal claiming that he (the plaintiff) got more land than that which he had sold to him. The 1st

defendant was thus claiming a portion of the suit land from the plaintiff. The Tribunal heard the dispute and found no merit in the 1st defendant's claim. The copy of the Tribunal's proceedings dated 14th August 2009 was produced in evidence as "PEX. 2" exhibited at page 21 of the plaintiff's bundle of documents. The Tribunal in its verdict disallowed the 1st defendant's claim that the plaintiff had encroached onto his (1st defendant's) land and held that the plaintiff was properly entitled to the suit land as there was evidence he purchased the same from the 1st defendant.

6. The plaintiff stated that Tribunal proceedings dated 14th August 2009 and the decision made thereof on 1st September 2009 was not filed in court but instead some other proceedings where he was not a party were filed by the 1st defendant and adopted by the Magistrate's Court as judgment and a decree issued. The plaintiff produced the purported proceedings of the Tribunal relied upon by the 1st defendant also dated 14th August 2009 as ("PEX.3"). The plaintiff stated that the second set of the proceedings of the Tribunal filed by the 1st defendant were fake and fraudulent and were manufactured with the object of defrauding the plaintiff. He pointed out that the true proceedings of the Tribunal dated on 14th August 2009 carried the verdict made on 1st September 2009 and were signed by the 6 members of the tribunal, including Zebedeo Matoke Onkundi who was the duly appointed chairman of the Tribunal. In contrast he stated "the doctored" tribunal proceedings "PEX.3" were signed only by 4 members. He stated Andrew Ombasa Keren who signed as the chairman was not the chairman of the Tribunal.

7. The plaintiff further stated the 1st defendant used the fictitious Tribunal award to obtain a decree from the Magistrates Court vide Kisii CMC Misc. Application No. 27 of 2010 dated 25th March 2010 ("PEX.4") which he (the 1st defendant) utilized to get the plaintiff's land subdivided to create land parcels LR Nos. **Wanjare/Bokeire/5031, 5032 and 5033**. The plaintiff further explained that although the 2nd defendant had not lodged any dispute at the Tribunal against him, the 2nd defendant nevertheless lodged a decision of the tribunal with the court for adoption. The proceedings and decision of the Tribunal dated 29th December 2009 ("PEX.6") was produced in evidence. The decision of the Tribunal was adopted as judgment vide Kisii CMCC Misc. Application No. 24 of 2010 and a decree issued on 25th May 2010 ("PEX.7"). Following the subdivision of the plaintiff's land, the 2nd defendant was given land parcel **LR No. Wanjare/Bokeire/5033**. The plaintiff maintained that he was only aware of only one Tribunal matter/proceeding which was between him and the 1st defendant which the Tribunal determined against the 1st defendant on 1st September 2009 as per ("PEX.2"). He was emphatic that the two Tribunal decisions filed in court by the 1st defendant and the 2nd defendant were fictitious and fraudulent as there never was such proceedings. He stated it was not practical for the Tribunal to issue two different verdicts in the same proceedings. He explained that he had never sold any land to the 2nd defendant so that he could have claimed land from him. He stated that the 2nd defendant bought land from the 1st defendant and not from himself (plaintiff). The plaintiff prayed that the decrees issued in the Magistrates Court be declared null and void and the titles resulting from the subdivision of his land be cancelled and his original land parcel **Wanjare/Bokeire/4287** be restored.

8. PW2, Zabedeo Matoke testified that in 2009 he was the chairman of the Land Disputes Tribunal for Suneka and he stated that during the period the Tribunal handled a dispute between the plaintiff and the 1st defendant where the latter was the complainant involving land parcel **Wanjare/Bokeire/4287**. The Tribunal heard the dispute and made a decision on 1st September 2009 overruling the 1st defendant and in favour of the plaintiff. He affirmed he signed the verdict as the chairman and the other members of the Tribunal equally signed the verdict. PW2 was categorical that "PEX.3" was not a verdict of the Tribunal and he asserted the signatures appearing thereon were not genuine stating that he was familiar with the signatures of the members and the signatures thereon were not their signatures. He stated Andrew Ombasa who signed as chairman was never a chairman and could not validly sign as the chairman. He stated the Tribunal could not have made two decisions on the same dispute.

9. As regards the Tribunal proceedings of 29th December 2009, filed in court for adoption by the 2nd defendant as the complaint and the plaintiff as the respondent, PW2 stated that it was not a valid ruling of the tribunal. He stated he did not sign it and the signature shown to be for Andrew Ombasa (Ombasa's) and that further Ombasa was not his and he was not the chairman of the Suneka Land Disputes Tribunal and could not have signed as such. He stated further that he never remitted the ruling as chairman to the court for adoption. He maintained that there was no time the Tribunal ruled that land parcel **Wanjare/Bokeira/4287** be subdivided. He explained that the dispute the Tribunal heard involving the plaintiff and the 1st defendant was about encroachment. He maintained the reports filed in court for adoption were fraudulent and stated that he had infact reported the matter to CID for investigation. He stated in the event he was not available to chair the Tribunal proceedings, he would normally nominate a member to chair the proceedings.

10. The 2nd defendant who relied on his witness statement in his evidence placed further reliance on the bundle of documents that the defendants had filed. He stated the plaintiff participated in the Tribunal proceedings and the subsequent proceedings in court where the tribunal's award was adopted by the Magistrate's Court in Kisii CM's Misc. Application No. 24 of 2010.

11. In his evidence the 2nd defendant stated that he and the plaintiff purchased land from the 1st defendant out of land parcel **Wanjare/Bokeire/1245** which was then registered in the name of the 1st defendant's father who was deceased. He stated he bought the upper portion and that following subdivision the portion he purchased became land parcel **Wanjare/Bokeire/5032**. He further stated that they each now occupied their respective parcels on the ground. The 2nd defendant further stated that the plaintiff unilaterally caused the transfer of the whole land parcel **Wanjare/Bokeire/1245** to his name ignoring the fact that he (the defendant) had also purchased a portion of the land. He further went on to state that the plaintiff later got the land registered as **Wanjare/Bokeire/4287**. The 2nd defendant stated that it was after they discovered the plaintiff had transferred the property to himself that they referred the matter to the D.O Suneka who caused the Tribunal proceedings to be undertaken.

12. DW1 in his evidence stated that the plaintiff did not challenge the award of the Tribunal or the decision of the Magistrate's Court adopting the Tribunal's award. He further stated that the plaintiff never explained how he got title for land parcel 4287. In cross examination the 2nd defendant admitted that Zebedeo Matoke Okundi (PW2) was the chairman of the Suneka Land Disputes Tribunal. He stated further that the award of the Tribunal awarded him land parcel **Wanjare/Bokeire/4287** although the decree that he obtained from the court and which was executed was for the excision of a portion of 66ft by 170ft from the parcel of land. The witness said at the time he bought the land

from the 1st defendant he was aware the property was registered in the name of the 1st defendant's deceased father. He was not aware whether any succession was undertaken but stated he and the 1st defendant went to the Tribunal when they discovered the plaintiff had gotten the whole land registered in his name.

13. The parties filed their closing written submissions following the closure of the trial. Upon review of the pleadings, the evidence and the submissions filed by the parties, the following are the issues that arise for determination:

(i) Whether the plaintiff was the registered proprietor of land parcel number Wanjare/Bokeire/4287?

(ii) Whether the Suneka Land Disputes Tribunal awards that were adopted by the Kisii Magistrates Court resulting in decrees that caused the subdivision of land parcel Wanjare/Bokeire/4287 were fraudulent and hence null and void?

(iii) Whether the resultant titles Wanjare/Bokeire/5031, 5032 and 5033 from the subdivision of land parcel Wanjare/Bokeire/4287 were properly and validly created?

(iv) Whether the plaintiff's suit is misconceived?

14. The parties identified varying issues in their filed written submissions but I am satisfied the issues I have set out above broadly capture the issues that arise in this suit. The issues raised by the plaintiff and the defendants primarily do not arise from the pleadings and the evidence adduced and there would be no real basis to spend time considering the same.

15. On the first issue there is no dispute that the plaintiff was the registered owner of land parcel **Wanjare/Bokeire/4287**. The plaintiff produced as copy of the certificate of official search in regard to the property dated 6th August 2009 as "**PEX.1**" which shows the plaintiff, Wilson Anthony Nyangara, was registered as the proprietor and issued a title deed for the property on 12th February 2009 and 18th February 2008 respectively. The certificate of official search evidencing the registration of the plaintiff as the owner of the suit property constitutes prima facie evidence that the plaintiff was the registered owner of property in terms of Section 26 of the Land Registration Act, 2012. Section 26 of the Act provides as follows:-

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except -

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Regis

16. The defendants in their joint statement of defence under paragraph 3 concede that the plaintiff was the registered owner of land parcel **Wanjare/Bokeire/4287** save that they contend the plaintiff procured the registration fraudulently by including portions of land that belonged to the defendants. The defendants did not plead any part particulars of the alleged fraud by the plaintiff. The complaints that the defendants supposedly made against the plaintiff at the Suneka Land Disputes Tribunal was on the basis that the plaintiff had unlawfully caused portions of their parcels of land to be registered and included in the title **Wanjare/Bokeire/4287** that he held. There was therefore no contest whether or not the plaintiff was registered as the owner of the land parcel **Wanjare/Bokeire/4287** and I accordingly answer the first issue affirmatively that the plaintiff was indeed the registered owner of the property.

17. On the second issue whether the Suneka Land Disputes Tribunal awards relied upon by the defendants and which were utilized to secure decrees from the Magistrates Court that were eventually executed, were fraudulently obtained, the parties submitted at considerable length and the bulk of the evidence revolved around the validity or otherwise of the Tribunal's proceedings. The plaintiff's evidence was to the effect that the two awards filed by the 1st and 2nd defendants before the Magistrates Court in Kisii CM's Court Misc. Civil Application No. 27 of 2010 arising from Tribunal complaint No. 29 of 2009 and Kisii CM's Court Misc. Civil Application No. 24 of 2010 arising from Tribunal Complaint No. 36 of 2009 were fake and intended to mislead the court that they were valid proceedings of the Tribunal. The plaintiff maintained he did not participate in the alleged proceedings as shown. The plaintiff however conceded that the 1st defendant had instituted Tribunal proceedings against him alleging encroachment onto his (1st defendant's) land but in regard to that complaint the tribunal made an award dismissing the 1st defendant's complaint. This award ("**PEX.1**") was not filed in court. The plaintiff denied he participated in any Tribunal proceedings where the 2nd defendant was a party.

18. The plaintiff's evidence crucially got support from Zebedeo Matoke Onkundi who was the chairman of the Suneka Land Disputes Tribunal in 2009. He testified as PW2 and he was emphatic that the two tribunal awards filed in the Magistrates Court were not genuine. He stated they were not signed by the chairman of the Tribunal who was himself and more significantly he stated the appended signatures were forgeries and did not belong to the members to whom they were ascribed. He admitted that as chairman of the Tribunal they handled a dispute between the 1st defendant and the plaintiff involving encroachment and that the decision was not remitted to the court.

19. The 2nd defendant in his evidence merely relied on the Tribunal proceedings and their consequent adoption by the court. The defendants did not adduce any evidence to demonstrate that indeed the Tribunal proceedings they relied on were genuine. My view is that given the

evidence of the plaintiff and PW2 which challenged the validity of the Tribunal proceedings and in particular the evidence of PW2 who was the chairman of the tribunal during the period the proceedings are alleged to have been taken and who categorically stated the proceedings were fake, it was incumbent upon the defendants to adduce evidence to demonstrate the Tribunal proceedings were indeed valid. Once, PW2 testified and gave evidence the presumption of the genuineness of the tribunal proceedings was rebutted and it became incumbent upon the defendants to prove that indeed the proceedings were genuine. It is not clear why the defendants could not get some of the members of the Tribunal who are shown to have signed the award to testify unless they feared the evidence they would have given would be adverse to them.

20. The plaintiff vide the plaint had challenged the validity and/or genuineness of the awards of the Tribunal relied upon by the defendants and indeed tendered evidence that cast serious doubts as to the authenticity of the Tribunal proceedings leading to those awards. In the face of that evidence the defendants were duty bound to adduce evidence to prove the Tribunal Proceedings and the award were indeed genuine. They could not just sit back and rely on the end product, the Magistrate's Court's decree and the execution thereof to justify the position that they were holding subdivision titles arising from what could have been a flawed process. The defendants in my view did not discharge the burden of proof placed on them by Sections 107, 108 and 109 of the Evidence Act, Cap 80 Laws of Kenya which provides as follows:

107. Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

21. On the basis of my evaluation of the evidence, it is my determination that the tribunal proceedings and the awards that were filed in court were not genuine or valid and were manufactured with the object of misleading the court to issue unlawful and illegal decrees. In the premises, I answer the second issue in the affirmative.

22. Having determined the Tribunal proceedings and the awards submitted to the Magistrates Court for adoption were fake and/or fraudulent the issue to determine is whether the resultant decrees that were executed were null and void. The defendants have argued that the awards having been adopted and decrees issued by the Magistrate's Court which were executed, the plaintiff's only available options were either to appeal against the decision of the Tribunal as provided under the Land Disputes Tribunal Act No. 18 of 1990 or to apply for judicial review to quash the Tribunal's award. The defendants submit that as the plaintiff did not avail himself of either of the options, the present suit is unsustainable.

23. Further the defendants submitted that as the plaintiff did not enjoin the tribunal or the Magistrate's Court to the suit whose decisions and/or orders he seeks to have annulled and cancelled, the suit is fatally defective for misjoinder. In support of the submission the defendants rely on the case of **Mtesa Francis Igesa -vs- Zara Jamal Sala & Another: Kisii ELC No. 171 of 2012 (unreported)** where Okong'o J. in the suit similarly challenging the decision of a tribunal and the adoption of the same by a Magistrate's Court and they were not enjoined in the suit stated as follows:-

"I am of the view that the plaintiff should have made the Attorney General a party to this suit to represent the interest of the tribunal and the Magistrate's Court. The order and decree sought to be declared nullities by the plaintiff were not made by the 1st defendant. If this court grants the orders sought by the plaintiff; the Tribunal, the Magistrate's Court and Apondi would have been condemned unheard contrary to the rules of natural justice."

24. The defendants further in support of their submission that the court cannot entertain the suit where the decision of the tribunal was adopted and implemented referred the court to the case of **Samuel Tai -vs- Joyce Masira (Kisii ELC No. 94 of 2010) (unreported)** where Okong'o J. held that once a tribunal's decision was adopted, it ceased to be a decision of the Tribunal and became a judgment and further that where a party fails to exercise their option of appeal as provided under the Act or to seek a judicial review, such party could not properly file a suit for declaratory orders. In his judgment in the **Samuel Tai's** case (supra) Okong'o J. stated thus:-

"...The plaintiff in my view could only challenge the said decision before this court on a second appeal from the decision fo the Provincial Appeals Committee or by way of an application for judicial review. I don't think that in the circumstances of this case, the plaintiff had a right to challenge the decision of the tribunal in this court by way of a declaratory suit."

25. The Judge however appears to have acknowledged there may be instances where a party could file a declaratory suit when he observed thus:-

"The plaintiff participated fully in the proceedings before the Tribunal and was accorded statutory rights of appeal. The plaintiff having failed to partake of those rights cannot purport to challenge the decision of the tribunal which has already been adopted as a judgment of the court in these proceedings. The situation would have been different if the plaintiff had not

participated in the proceedings before the Tribunal and did not have notice of the Tribunal's decision until after the time limited for appeal had lapsed such that the only option left for him to get just was to file a suit before this court."

In regard to joinder of the tribunal and the Magistrate's Court or the Attorney General to represent their interests in the suit, my view is that they were not necessary parties to the suit and they needed not be enjoined. What is in issue in this suit is whether the 1st and 2nd defendant acted fraudulently by presenting fictitious tribunal verdicts for adoption by the court. The plaintiff has no complaint against the tribunal and/or the Magistrate's Court. It is the duty of the court to ascertain whether the complaints of fraud by the plaintiff against the defendants are proved.

26. The Land Disputes Tribunal Act No. 18 of 1990 under Section 3(1) provided for the jurisdiction of the Tribunals. The dispute that the Tribunal handled between him and the 1st defendant was one that related to claim of encroachment by the plaintiff onto the 1st defendant's land. That was a dispute that easily fell under the jurisdiction of the tribunal. Section 3(1) of the Act provided as follows:-

3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to -

(a) the division of, or the determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land,

Shall be heard and determined by a Tribunal established under section 4.

27. The dispute touched on all the three jurisdiction areas; it could have been boundary, dispute; dispute as to right to occupy and work land or even trespass. The Tribunal properly entertained the dispute and made an award disallowing the claim by the 1st defendant against the plaintiff on 1st September 2009. This was the only tribunal proceedings the plaintiff participated in. The other tribunal proceedings giving rise to the awards as I have held were fake and fraudulent and the plaintiff could not have participated or have been aware of them. The expectation is that the award submitted to court under Section 7 of the Act would be a valid award made in compliance with the provisions of the Act. The composition of the panel of the Tribunal includes a chairman appointed under Section 4(2) of the act which provides:-

4(2) Each Tribunal shall consist of:-

(a) A chairman who shall be appointed from time to time by the District Commissioner from the panel of elders appointed under Section 5;

28. Under Section 6(2) (a) of the Act the chairman was to preside over all the hearings. Section 6(2) (a) provides as follows:-

(2) Whenever a dispute is being heard by the Tribunal:-

(a) the chairman shall preside at the hearing; and

(b) the decision of the Tribunal shall be that of the majority of the members hearing the dispute.

Under Section 7(1) of the Act it is the Chairman who is mandated to have the decision filed with the court. Section 7 of the Act provides as follows:-

7(1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.

29. I have abstracted the relevant provisions of the Act to illustrate that the proceedings and decisions of the tribunal filed in court were clearly not in conformity with the Act. The plaintiff and PW2 in their evidence aptly demonstrated that the proceedings and awards were works of the fiction. The Act would not have contemplated that a fraudulent award would be filed in court and if that happened this court which exercises supervisory jurisdiction over tribunals and the subordinate court's cannot be powerless. The court must rise to the occasion to remedy any illegalities that may have been perpetrated. In the present matter, there was simply no award that the court could have adopted as it was clearly fraud that the court would be being asked to sanction.

30. In the words of Lord Denning Master of the Rolls in the case of **Macfoy -vs- United Africa Co. Ltd [1961] 3 ALL ER 1169** he stated as follows:-

"If an act is void, is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so."

In the present matter there were no valid tribunal verdicts that could properly be adopted by the Magistrate's Court. The verdicts presented were fictitious and therefore void. The adoption was meaningless as there was nothing to adopt as those were not verdicts of the Tribunal. The resultant decrees equally were of no legal effect as they could not legitimize illegalities. They were null and void and could not confer any interest. The resultant execution of the decrees was null and void and subtitles created from the subdivision of land parcel **Wanjare/Bokeire/4287** being land parcels **Wanjare/Bokeire/ 5031, 5032** and **5033** are null and void and must be cancelled.

31. On the basis of the foregoing analysis and discussion, I have to answer the third issue in the negative that the creation of land parcels **Wanjare/Bokeire/5031, 5032** and **5033** was irregularly and illegally procured and therefore the same are a nullity. That leaves the fourth issue whether the plaintiff's suit is misconceived. The defendants' argument was predicated on the fact that the plaintiff neither appealed nor sought a judicial review respecting the decision of the tribunal and the adoption of the award by the court. The plaintiff could not appeal against the tribunal decisions he knew nothing about and neither could he seek judicial review for the same reasons.

32. The net result is that the court finds and holds that the plaintiff has proved his case on a balance of probabilities against the defendants. I accordingly enter judgment in favour of the plaintiff against the defendants jointly in terms of prayers (b), (c) and (d) of the plaint.

JUDGMENT DATED, SIGNED and DELIVERED at KISII this 20TH DAY of MARCH 2019.

J. M. MUTUNGI

JUDGE

In the Presence of:

Ms. Kebungo for Nyamurongi for the plaintiff

N/A for the 1st and 2nd defendants

Ruth Court Assistant

J. M. MUTUNGI

JUDGE