



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU**

**ELC NO. 83 OF 2013**

**DOMINIC MBURU NJUGUNA.....PLAINTIFF**

**VERSUS**

**PETER NJUGUNA GITAU.....1<sup>ST</sup>DEFENDANT**

**GATIMU KARIITHI.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

***(Plaintiff seeking ownership of land registered in the name of the 2<sup>nd</sup> defendant; plaintiff alleging to have purchased the land from the 1<sup>st</sup> defendant; 2<sup>nd</sup> defendant filing counter claim against the plaintiff for vacant possession of the same land; 2<sup>nd</sup> defendant also claiming to have purchased the same land from the 1<sup>st</sup> defendant; 1<sup>st</sup> defendant denying ever selling land to the plaintiff or 2<sup>nd</sup> defendant but seeking no orders of cancellation of title of the 2<sup>nd</sup> defendant; Evidence showing that there is no sale agreement between the plaintiff and the 1<sup>st</sup> defendant; plaintiff cannot therefore succeed in his suit for ownership of the land; no reason to impeach title of 2<sup>nd</sup> defendant as 1<sup>st</sup> defendant not claiming the said land; plaintiff's suit dismissed; judgment entered for the 2<sup>nd</sup> defendant).***

1. This suit was commenced through a plaint which was filed on 13 January 2010. In the plaint, the plaintiff pleaded that on 2 July 2002, the 1<sup>st</sup> defendant sold to him the land parcel Nakuru Municipality Block 16/286/15 (new number Nakuru Municipality Block 16/634) for a consideration of Kshs. 250,000/= which the plaintiff avers that he paid in full. It is pleaded that upon payment, the plaintiff took possession of the land and developed it. On 4 January 2010, the 2<sup>nd</sup> defendant came to the plot and claimed that he has also purchased it from the 1<sup>st</sup> defendant and sought to have the plaintiff move out of the property. The plaintiff contends that if the 1<sup>st</sup> defendant sold the suit land to the 2<sup>nd</sup> defendant, no title could pass since the property was already sold to him. The plaintiff has thus asked for the following orders :-

*(a) A declaration that the plaintiff is the lawful owner of the land parcel Nakuru Municipality Block 16/286/15 (new number Nakuru Municipality Block 16/634).*

*(b) A declaration that the alleged sale of the suit property by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant is null and void ab initio as the 1<sup>st</sup> defendant had no title to pass to the 2<sup>nd</sup> defendant.*

*(c) Cancellation of the title certificate of the suit property issued to the 2<sup>nd</sup> defendant with an order that the registrar issue the title to the plaintiff.*

*(d) Costs of this suit.*

*(e) Any other relief that this honourable court may deem fit and just to grant.*

2. In his statement of defence, the 1<sup>st</sup> defendant denied having sold the suit land to the plaintiff and also denied receipt of the purchase price of Kshs. 250,000/=. He also denied selling the land to the 2<sup>nd</sup> defendant and contended that there was no valid sale agreement between himself and either the plaintiff or 2<sup>nd</sup> defendant. He pleaded that both plaintiff and 2<sup>nd</sup> defendant dealt with a stranger and that their claims should be directed against Elshenezer Management Consultants and General Commission Agents (Elshenezer). He asked that the suit be dismissed with costs.

3. On his part, the 2<sup>nd</sup> defendant averred in his defence that on 15 May 2002, he purchased from the 1<sup>st</sup> defendant the suit land, and that on 3 July 2007, a Certificate of Lease was issued in his name. He filed a counterclaim seeking orders for a mandatory injunction for the plaintiff to deliver vacant possession and a permanent injunction restraining the plaintiff from the land. He also sought mesne profits from 2 July 2002 until the time that he will get vacant possession.

4. In his evidence, the plaintiff stated that he did purchase the suit land on 2 July 2002, from the 1<sup>st</sup> defendant. He was at that time a taxi operator and he was shown the suit land by one of his customers who happened to be a land agent. He accompanied the agent to the site but the agent could not locate the specific plot and she called the 1<sup>st</sup> defendant to come and show them the beacons. The 1<sup>st</sup> defendant then came almost immediately and showed them the beacons to the plot. He was informed of the purchase price and he went to the bank and withdrew the sum of Kshs. 144,000/= and proceeded to the agent's office. There, the agent brought out a sale agreement which was then signed by himself and the agent. The agent then took the agreement and informed the plaintiff that she will bring it later in the day after everybody else has signed it. It was later brought back to him and he produced it as an exhibit. He stated that on this day, he paid the sum of Kshs. 148,000/= and was issued with a receipt by Elshenezer, though the receipt was dated 1 July 2002. As to the balance, he stated that on 16 September 2002, he paid Kshs. 32,000/= to the same office and person, and was issued with a receipt for Kshs. 32,000/= in the name of Twiga Enterprises. He noted the discrepancy in the names in the two receipts but the agent told him not to worry since he was dealing with the same office. On 14 July 2005, he paid a further Kshs. 10,000/= and the receipt showed that it was issued by Twiga Enterprises. The final payment was of Kshs. 60,000/= and was done on 20 June 2008. He got a receipt showing that it was issued by Njupe Enterprises. This final instalment, he explained, was not paid to the agent but to the office of the 1<sup>st</sup> defendant. He deposited the money directly into the account of the 1<sup>st</sup> defendant at Equity Bank, brought the deposit slip into his office and was issued with the receipt.

5. He testified that the land that was pointed out to him is the same land that he has developed. He marked this plot on a subdivision plan that he had and which was given to him by the agent. The number of the plot as indicated in the subdivision was No. 19.

6. He testified that he went to ask for his title and the 1<sup>st</sup> defendant asked him for copies of his ID and PIN which he handed over, but since then, he has never heard from the 1<sup>st</sup> defendant. He stated that he has been paying rates for the plot identified as Nakuru Municipality Block 16/286/15 although the name of the rate payer is noted to be the 1<sup>st</sup> defendant. He made development plans for the land which were approved and he commenced construction in the year 2004. He built 4 units of one bed roomed houses in two blocks. He came to court after the 2<sup>nd</sup> defendant claimed to also own the land.

7. Cross-examined by Mr. Henia, learned counsel for the 2<sup>nd</sup> defendant, he asserted that he purchased Plot No. 15, hence the identity Nakuru Municipality Block 16/286/15. What he bought was not a corner plot. Shown the subdivision plan, he however pointed to the Plot No. 19, as what he purchased and what he developed. He acknowledged that his receipts show Plot No. 15. His first two receipts also showed payment for Nakuru Municipality Block 16/286/15, although the 3<sup>rd</sup> receipt showed Nakuru Municipality Block 16/286/634. The final receipt of Kshs. 60,000/= showed the plot Block 16/286/15. He stated that this new number, No. 634, was given to him by the agent. He mentioned that his development of 2004 was not approved by the authorities and he acknowledged that the plans he produced in evidence were approved in the years 2009 and 2011. He did a second development in the year 2011 of a double storey building with 4 houses of two bedrooms each. This construction was done while this case was on going. He now charges Kshs. 6,000/= for the one bed roomed units and Kshs. 8,500/= for the two bed roomed houses. He stated that he went to the seller in the year 2007, and that is when he gave out his copy of ID and PIN. He agreed that he did not pay the seller despite claiming to have been with him on the day he was shown the plot. He corrected his evidence by saying that he was shown the plot on 1<sup>st</sup> July 2002, and not 2<sup>nd</sup> July 2002, and that it was on 1<sup>st</sup> July 2002 that he paid the first instalment. He signed the agreement the following day, 2 July 2002. He admitted that the agreement provided that he should pay the balance in 90 days which he did not adhere to. He realized that there was a dispute in the year 2007 when the defendant came to the plot. He did not bother to get a surveyor to confirm whether he had developed on the plot No. 15.

8. Cross-examined by Mr. Ndubi for the 1<sup>st</sup> defendant, he could not recall the name of the agent. At the time that the land was shown to him, he had previously not met the 1<sup>st</sup> defendant and did not know him before that day. He stated that he paid the money on the same day the plot was shown to him but did not receive the sale agreement on that day. The same was availed to him the following day which is when it was signed. When the agreement was brought to him, he stated that it already bore two signatures and he placed his as the final signature. It was put to him that this evidence is different from what he had stated before and he answered that he cannot now recall, and that it could have been either way. He never asked who prepared the sale agreement and never paid any legal fees, and neither was he asked to pay any. Neither did he inquire from the agent whether the 1<sup>st</sup> defendant had signed the agreement. Neither did he see any document of appointment of an agent. He also did not confirm from the 1<sup>st</sup> defendant whether the lady was actually his agent. He did not find it unusual to pay an agent while the owner of the land was available. Neither was his suspicion raised over the receipts being issued by different entities. He had no evidence that this money ever reached the 1<sup>st</sup> defendant. On the last instalment that he paid to the 1<sup>st</sup> defendant, he stated that he went to his office with a banker's cheque, and one of the employees of the 1<sup>st</sup> defendant took the cheque and issued him with a receipt. He never met the 1<sup>st</sup> defendant on this day. He stated that he decided to pay quickly on this day, as at this time, he was aware that the plot had developed a dispute. He decided to pay to the offices of the 1<sup>st</sup> defendant since the agent could not be traced and her office was closed. He agreed that he undertook the 2<sup>nd</sup> phase of his development despite there being this case.

9. On his part, the 2<sup>nd</sup> defendant's appointed attorney, Mr. Joseph Githinji Karithi, testified that he is brother to the 2<sup>nd</sup> defendant who now lives in the USA. He testified that the 2<sup>nd</sup> defendant purchased the plot identified as Block 16/286/17 through a sale agreement of 15 May 2002. The 1<sup>st</sup> defendant was subdividing his land parcel Nakuru Municipality Block 16/286 into several plots hence this type of description. He affirmed that the 2<sup>nd</sup> defendant purchased the plot No. 17 which is now Nakuru Municipality Block 16/634. He testified that the full purchase price was paid and the title is now with the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant then took possession but did not develop it. Later, the plaintiff came and developed it. He referred to the agreement of sale displayed by the plaintiff and stated that the same refers to the Plot No. 15, which is not what the 2<sup>nd</sup> defendant purchased, his plot being No.17. He thus contended that the plaintiff has developed on the plot of the 2<sup>nd</sup> defendant.

10. Cross-examined by Mr. Ndubi for the 1<sup>st</sup> defendant, he agreed that the sale agreement that he had shows that it was signed in the presence of Elshenezer. He was not present when the agreement was done. He stated that the payment receipts show that they were issued by Elshenezer and he had no receipt issued by the 1<sup>st</sup> defendant. He was asked about the transfer instrument and stated that he did not have it. He reiterated that the 2<sup>nd</sup> defendant purchased the plot No. 17 whereas the plaintiff purchased the plot No. 15 in the subdivision sketch. He denied that the 2<sup>nd</sup> defendant irregularly obtained a lease for the suit land.

11. Cross-examined by Mr. Kimatta for the plaintiff, he testified that he was not personally present when the land was sold and pointed out to the 2<sup>nd</sup> defendant. When he saw the developments that the plaintiff was making, he tried to stop him, and looked for him. They eventually met in November or December 2009 and discussed the issue with him. The plaintiff then decided to sue so that he is not kicked out of the property. He stated that the Plot No. 15 that the plaintiff purchased was now registered as Nakuru Municipality Block 16/657 but he was not aware that the said plot is now registered in the name of another person, one William Ochami Matonga. He admitted that the payment receipts that he held were issued by Elshenezer and Twiga Enterprises and the receipts appeared to be of the same person.

12. The 1<sup>st</sup> defendant on his part testified that in the year 2002, he was in the real estate business. He would buy land and subdivide the same into plots which he would then sell at a profit. He traded in the business name of Njupe Enterprises. He stated that he owned the land parcel Nakuru Municipality Block 16/286 which was about 4 acres and he subdivided it into 28 portions of 50 X 100 feet plots identified in the subdivision sketch. He then gave out the properties to agents to look for buyers and they would then come to his office with the buyers. In his office he had employed two sales agents and he also had an assistant surveyor who would take people to the ground to show them the plots. There was also a secretary who would collect money and acted as a cashier.

13. He testified that he got to know of the dispute herein when the 2<sup>nd</sup> defendant called him through his attorney and informed him that a person was interfering with his plot. On the sale agreements of the plaintiff and 2<sup>nd</sup> defendant, he pointed out that the ID indicated in the agreements was not his ID number. The postal address noted was also not his postal address. He contended that the mark therein showing the signature of the vendor was not his signature. The document showed that it is signed before Elshenezer and the name of Teresia W. Wanjau (Teresia) noted and the stamp of Elshenezer placed. He mentioned that Teresia was a commission agent and used to bring purchasers to his office. In other words she acted as a broker. She is now deceased. He stated that he never authorized her to sign on his behalf and the only authority she had was to bring buyers to his office and a sale agreement would follow. He refuted authorizing Teresia to collect money on his behalf. He was not certain whether the money Teresia collected was ever remitted to his office as he could not trace the records. He testified that by the end of the year 2002, all plots had been sold and his secretary kept the records. Whenever a buyer had completed payment he (the 1<sup>st</sup> defendant) would sign the transfer documents in his favour and title issued to such purchaser. Titles were issued in accordance with the sketch plan and the Plot No. 15 assigned the parcel No. 657 and plot No. 19 parcel No. 634. He was not able to tell whether he executed transfer for the plot No. 634 as he could not trace his file. He denied having gone to the ground with the plaintiff and explained that it was his surveyor who used to point out beacons to purchasers. He also stated that he sold all plots at Kshs. 200,000/= and not Kshs. 250,000/= or Kshs. 245,000/=, which prices were never revealed to him.

14. Under cross-examination, he testified that in as much as he engaged agents to look for buyers he was the one to sign the sale agreements and receive the money. The buyers were being handled by his secretary and office personnel as he was busy, working as Member of Parliament for Mwea. He stated that the confusion on the settlement on the ground was not caused by his office but by the person who showed the plaintiff and 2<sup>nd</sup> defendant the plots on the ground. He reiterated that he was not aware of the sale agreements by the plaintiff and 2<sup>nd</sup> defendant. I questioned him and he stated that what the 2<sup>nd</sup> defendant purchased was plot No. 17 in the subdivision sketch, and the plaintiff plot No. 15. The title of the 2<sup>nd</sup> defendant is however to plot No. 19.

15. I allowed counsel to file written submissions which they duly did. In his submissions, Mr. Kimatta, for the plaintiff, inter alia submitted that what the 2<sup>nd</sup> defendant purchased was plot No. 19 which is in a different location from the plaintiff's plot. He submitted that since the plaintiff has fully developed his plot, the 1<sup>st</sup> defendant should buy the 2<sup>nd</sup> defendant another plot and that the title of the 2<sup>nd</sup> defendant should be revoked and the same to go to the plaintiff unconditionally. He submitted that all the mess was created by the 1<sup>st</sup> defendant and his agents and he should therefore bear the costs.

16. On his part, Mr. Henia for the 2<sup>nd</sup> defendant, inter alia submitted that the 2<sup>nd</sup> defendant is the registered proprietor of the suit land and as such he is entitled to quiet possession and enjoyment of the property. He submitted that the plaintiff has been trespassing on the property and needs to pay mesne profits at Kshs. 58,000/= which is the amount that he collects as rent. He was of the view that the subdivision sketch plan is unreliable as it bears two numbers per plot and no mutation form was produced.

17. Mr. Ndubi for the 1<sup>st</sup> defendant, submitted that the sale agreement of the plaintiff does not comply with Section 3 of the Law of Contract Act, Cap 23, as it was not signed by his client. He further submitted that the agreement was not attested. He also called into issue the conduct of the plaintiff, who despite knowing that there was a dispute, proceeded with construction of the disputed land.

18. I have considered all issues in the matter and I am of the following view.

19. Lest we forget, it is the plaintiff who has brought this suit, claiming ownership of the land parcel Nakuru Municipality Block 16/634 (the suit land). That land is now registered in the name of the 2<sup>nd</sup> defendant and the 2<sup>nd</sup> defendant has lodged a counterclaim for the plaintiff to vacate the said land. The 1<sup>st</sup> defendant was the original owner of the land from which the suit land was carved out of. He had subdivided the land into 28 plots which were to be sold to potential buyers. Both plaintiff and 2<sup>nd</sup> defendant developed interest in purchasing a plot and they purported to purchase through an agent.

20. The core question in this matter is whether the plaintiff has proved that he is entitled to ownership of the suit land. He has of course based his claim on the sale agreement and also on the allegation that he was shown the suit land on the ground by the 1<sup>st</sup> defendant and his agent. I will need to interrogate whether first, the plaintiff has a valid sale agreement and secondly, if indeed he has any worthy claim over the suit land so as to entitle him to the prayer of cancellation of the title of the 2<sup>nd</sup> defendant.

21. It is trite law that for one to claim that he is entitled to land by way of purchase, he must demonstrate a written agreement. This is provided for in Section 3 (3) of the Law of Contract Act, Cap 23, Laws of Kenya, which provides as follows :-

*(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—*

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

*Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.*

*(4) Subsection (3) shall not apply to a contract made in the course of a public auction nor shall anything in that subsection affect the creation or operation of a resulting, implied or a constructive trust.*

22. Now, it will be seen from the above, that for one to enforce a contract for the sale of land, such person must show that he has a written agreement which is signed by the parties and that the signatures are properly attested.

23. I have seen the sale agreement that the plaintiff relies upon and which has been refuted by the alleged vendor, the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant has stated that he never signed the said agreement despite his name being in the document. He has also pointed out that the identity card noted is not his. This indeed has not been challenged by the plaintiff. The plaintiff himself acknowledges that he never saw the 1<sup>st</sup> defendant sign the agreement. He only signed his part and he does not know how the other parts were signed. I believe the 1<sup>st</sup> defendant when he states that he never signed the sale agreement.

24. I think simple prudence would have led the plaintiff to suspicion, that there is something not quite right about the agreement that he was executing. First, the documents were all being prepared by a land agent who had not displayed any authority from the land owner. Secondly, he never dealt with the land owner and the land owner was nowhere when he was signing the sale agreement. Thirdly, the receipts that were being issued to him were being issued by different entities and it was not clear whether these entities had the permission of the land owner to accept the monies. It is necessary for persons dealing with land to exercise some common prudence. As stated by Okello JA, in the Ugandan case of *Sir John Bagire vs Ausi Matovu*, Court of Appeal at Uganda, Civil Appeal NO. 7 of 1996 (cited in the case of *Katende vs Haridas & Company Limited (2008) 2 EA 173*), “...lands are not vegetables that are bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only of the land but also of the seller before purchase.”

25. I find it difficult to make any finding in favour of the plaintiff that he had any valid sale agreement with the defendant over the suit land.

26. Even if there was such an agreement, and assuming that it was valid, what the plaintiff was buying was a plot No. 15 which is what is noted in the said sale agreement. The plaintiff stated that he was shown the ground and also given a subdivision sketch plan. If indeed, the suit land is what he was shown on the ground, a simple look at the subdivision sketch plan would have revealed to the plaintiff, that what he was shown on the ground is not the plot No. 15 on the subdivision sketch plan and therefore does not tally with what is in the sale agreement. The plot No. 15 was on the far right of the subdivision sketch plan, whereas the suit land, which is Plot No. 19 (or probably 17) is the second plot on the bottom left of the sketch plan. The plaintiff never bothered to find a surveyor if indeed he was not too sure of the location of the Plot No. 15. In fact, he betrayed his own careless attitude when he stated in cross-examination as follows :- “*I did not bother to confirm that the plot I was shown would be the same plot reflected in the agreement.*” When asked whether he went to get a surveyor once the dispute was revealed to him, he stated as follows , :- “*I did not bother to get a surveyor to confirm to me whether I had developed on plot No. 15...if I had built for over 6 years, why would I look for somebody else to confirm.*”

27. This plot No. 15 is now the land parcel Nakuru Municipality Block 16/657 and not Nakuru Municipality Block 16/634 which is the suit land. It is therefore apparent that the plaintiff decided to take possession of a plot of land that he never purchased and he saw no obligation on his part to confirm that he had settled on the correct plot. One could sympathise with the plaintiff but even his conduct after he was informed that he was on the wrong plot was not one of a prudent man. When the 2<sup>nd</sup> defendant emerged and informed him that he is on the wrong plot and that he (the 2<sup>nd</sup> defendant) had title to the land, instead of the plaintiff moving to make amends and probably try to settle the matter, given that he already had some bit of developments in it, he started to furiously make additional developments on the plot. He also went to the 1<sup>st</sup> defendant’s office and deposited a cheque of Kshs. 60,000/= on 20 June 2008, which is what he believed he owed after adding what he had paid the agent, while in the knowledge the 2<sup>nd</sup> defendant already held a title issued on 3 July 2007. Maybe the plaintiff’s behaviour was an attempt to curry some favour and sympathy from the court, but I am afraid that courts are not moved by such behaviour. Courts may be moved by prudence and honest mistakes, but certainly not by brazen attempts to steal a march on the other party.

28. As we speak the plaintiff has no title to the land that he claims; neither does he have any valid sale agreement for the suit land; and even if he had a sale agreement, he went to settle on a different plot, and still proceeded to make additional developments despite being warned that he was on the wrong plot. I am therefore afraid that the plaintiff cannot succeed in his suit. He cannot succeed to get the prayer for a declaration that he owns the suit land for he never purchased it; neither can he succeed in his prayer for a declaration that the sale of the suit land to the 2<sup>nd</sup> defendant was null and void; he also cannot succeed to cancel the title of the 2<sup>nd</sup> defendant for he himself is not entitled to the said land. His case is hereby dismissed with costs. The only award I can make for him is for refund of Kshs. 60,000/= which he paid to the 1<sup>st</sup> defendant and which is yet to be returned to him. For the other monies that he paid, he will need to follow whomever he paid.

29. I will now turn to the counterclaim of the 2<sup>nd</sup> defendant. His case is that he has title to the suit land and he is thus entitled to vacant possession of the land. I do not see how the plaintiff can defeat the counterclaim of the 2<sup>nd</sup> defendant. However, the 1<sup>st</sup> defendant has alleged that both plaintiff and 2<sup>nd</sup> defendant dealt with strangers and in his defence, he denied selling land to the 2<sup>nd</sup> defendant. If indeed the 1<sup>st</sup>

defendant wanted to have back this land, then he needed to have a claim against co-defendant and pray for a cancellation of the title of the 2<sup>nd</sup> defendant. He has not done so. What I can see is that the 2<sup>nd</sup> defendant has title to the suit land and since the 1<sup>st</sup> defendant is not claiming it, and the plaintiff has failed in his quest to have the 2<sup>nd</sup> defendant's title cancelled, I have no reason not to enter judgment in favour of the 2<sup>nd</sup> defendant for the ownership and possession of the suit land.

30. There is a claim for mesne profits. However, I do note that the claim is calculated based on the developments made by the plaintiff and not the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant could only claim mesne profits if he had demonstrated what loss he has suffered, not because of the developments of the plaintiff, but for what he proposed to gain from the plot, whether as a vacant plot or as a developed plot. He has not revealed to me this evidence and I am afraid that I am unable to grant the prayer for mesne profits.

30. I believe that I have dealt with all issues in this matter and I make the following orders :-

**(a) The plaintiff's suit is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> defendants save only that the 1<sup>st</sup> defendant is ordered to refund the plaintiff the sum of Kshs. 60,000/= within the next 14 days and in default, execution may issue.**

**(b) The 2<sup>nd</sup> defendant's prayer for vacant possession of the suit property is hereby allowed and the plaintiff is hereby ordered to give vacant possession to the 2<sup>nd</sup> defendant within 14 days of this judgment, and in default, the plaintiff be evicted from the suit land.**

**(c) The 2<sup>nd</sup> defendant's prayer for mesne profits is not allowed for want of proof.**

**(d) The 2<sup>nd</sup> defendant shall have the costs of the counterclaim as against the plaintiff.**

31. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 6<sup>th</sup> day of March 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. Kimatta present for the plaintiff.

No appearance on the part of M/s Robert Ndubi & Co. for the 1<sup>st</sup> defendant.

Ms. Cheruto holding brief for Mr. Anzala for the 2<sup>nd</sup> defendant.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**