



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 380 OF 2014

ANNAH MUTHONI NJAIMWE.....PLAINTIFF

VERSUS

PHILIP KIRICHU NGUGI.....1ST DEFENDANT

CHIEF LAND REGISTRAR.....2ND DEFENDANT

MARGARET NYAMBURA NGUGI.....3RD DEFENDANT

GEORGE WAWERU NGUGI.....4TH DEFENDANT

JUDGMENT

The plaintiff brought this suit through a plaint dated 26th March, 2014 which was amended on 15th April, 2014 and further amended on 27th February, 2017. In her further amended plaint dated 19th January, 2017, the plaintiff sought a permanent injunction restraining the defendants from interfering with or in any manner dealing with all that parcel of land known as L.R No.7785/402 (hereinafter referred to as “the suit property”). In the alternative, the plaintiff sought an order for the eviction of the 1st and 3rd defendants from the suit property. The plaintiff averred that she was the registered owner of the suit property having acquired the same from the estate of one, Ngugi Gaturo (Deceased). The plaintiff averred that the suit property was transferred and registered in her favour in the year 2009 thereby confirming her as the true and legal owner of the property. The plaintiff averred that after the suit property was transferred to her, she took possession of the property together with the temporary structures that were standing thereon which were sold to her together with the land.

The plaintiff averred that on or about 6th February, 2014, the 1st defendant unlawfully entered upon the suit property and purported to occupy part of the temporary structures thereon. The plaintiff averred that the 1st defendant refused to vacate the suit property despite having been served with a notice to do so. The plaintiff averred that she was apprehensive that unless the 1st defendant was restrained by the court he would continue with the said acts of trespass.

The 1st, 3rd and 4th defendants filed a joint amended defence and counter-claim on 8th November, 2017. The 1st, 3rd and 4th defendants (hereinafter jointly referred to as “defendants”) denied the plaintiff’s claim in its entirety. The defendants averred that if at all the plaintiff was registered as the proprietor of the suit property, such registration was procured by fraud and/or misrepresentation and without any consideration having passed to the estate of Ngugi Gaturo, deceased (hereinafter referred to only as “the deceased”). The defendants averred that the suit property was sold and transferred to the plaintiff by the 3rd defendant pursuant to a grant of letters of administration which had been revoked by the High Court on 3rd April, 2000 in Succession Cause No. 2704 of 1999. The defendants contended further that the sale and transfer of the suit property to plaintiff was procured by false pretense that the suit property was wholly owned by the 3rd defendant contrary to a confirmed grant of letters of administration in respect of the estate of the deceased issued on 24th September, 2004 in Kiambu Succession Cause No. 80 of 1998, Re Estate of Ngugi Gaturo(deceased). The defendants denied that the plaintiff had taken vacant possession of the suit property or that the 1st defendant had invaded the same and occupied a portion thereof. The defendants averred that contrary to the plaintiff’s allegations, it was the plaintiff who had attempted to forcefully gain possession of the suit property in March, 2014 on the strength of the fraudulent title that she had obtained in respect of the suit property and was repulsed by the tenants who were in occupation of the suit property. The defendants averred that the plaintiff did not have a valid title to the suit property and as such had no capacity to issue a notice to the occupants of the suit property to vacate the same.

In their counter-claim, the defendants reiterated the contents of the defence and averred that the suit property belonged to Ngugi Gaturo (deceased) and devolved to his estate for the benefit of his children and widow in accordance with the confirmed grant of letters of administration in respect of the estate of the deceased issued on 24th September, 2004 in Kiambu Succession Cause No. 80 of 1998. The defendants averred that the plaintiff caused herself to be registered as the proprietor of the suit property fraudulently and attempted to evict the tenants who were in occupation of the property. The defendants sought judgment against the plaintiff by way of a counter-claim for:

1. The plaintiff's suit be dismissed with costs;
2. An injunction to restrain the plaintiff, her agents, representatives, her employees or anyone claiming under her from entering upon, trespassing, disposing off, alienating, charging, taking possession or in any other manner whatsoever interfering with the suit property;
3. An order directed at the Chief Land Registrar to cancel entries numbers 2 and 3 registered on 20th March, 2009 against the title of the suit property and to revert the property to the estate of Ngugi Gaturo(deceased);
4. Costs of the counter-claim;
5. Interest on the cost of the suit and counterclaim;
6. Any other relief as the court may deem just and expedient to grant.

At the trial, the plaintiff (PW1) adopted her witness statement dated 26th March, 2014 as her evidence in chief. The plaintiff thereafter testified as follows: In the year 2009, a property agent by the name Anthony Gichere informed her that the 3rd defendant, Margaret Nyambura was selling the suit property whose title documents had been deposited with AGN Kamau Advocates. The plaintiff thereafter met the 3rd defendant at the office of AGN Kamau Advocates where they settled on a purchase price of Kshs. 3.5million. The plaintiff carried out a search on the title of the suit property which revealed that the same was registered in the name of the 3rd defendant's late husband. The 3rd defendant gave the plaintiff a copy of the certificate of confirmed grant in respect of her deceased husband's estate after which they entered into a sale agreement. The plaintiff paid to the 3rd defendant the purchase price through her advocate Mr. AGN Kamau in cash and through cheques. The property was subsequently transferred and registered in the plaintiff's name and she was accordingly issued with a certificate of title.

The plaintiff stated that she got a caretaker to watch over the suit property on her behalf. The caretaker lived on a structure which was on the suit property. The plaintiff fenced the suit property with barbed wire on a number of occasions and each time the fence was brought down by unknown people. In the year 2014, she was informed by a neighbour that the children of the 3rd defendant were claiming ownership of the suit property alleging that the same had not been sold. She visited the property and found additional structures put up on the suit property which incident she reported to the chief and the police at Githogoro, Runda.

On the advice of the chief, the plaintiff issued eviction notices to the people who were occupying the structures on the suit property. Some of the occupants vacated while others refused to do so. The 1st defendant thereafter moved to the suit property with dogs making it impossible for her to access the property. The plaintiff stated that she reported the matter to the police and recorded a statement. The 3rd defendant also recorded a statement with the police in which she confirmed selling the suit property to her. The plaintiff stated that she moved to court and obtained orders for the maintenance of status quo which were ignored by the 1st defendant who continued to put up more structures on the suit property. She stated that the occupants of the suit property increased. The plaintiff urged the court to issue eviction orders against the occupants of the suit property. In the alternative, the plaintiff prayed for compensation based on the market value of the suit property. The plaintiff produced as a bundle the documents that were attached to her list of documents dated 26th March, 2014 as plaintiff's exhibit 1.

In cross-examination, the plaintiff stated that a search conducted before she purchased the suit property revealed that the suit property was registered in the name of the 3rd defendant's late husband, Ngugi Gituro(deceased). She stated that the 3rd defendant produced a certificate of confirmation of grant issued on 28th June, 1999 in respect of the estate of the deceased. The plaintiff contended that her advocates confirmed that the said certificate of confirmation of grant was genuine and gave her a go ahead to purchase the suit property. The plaintiff stated further that when she purchased the suit property, there was a temporary structure on the property which was unoccupied. In re-examination, the plaintiff stated that the certificate of confirmation of grant that was given to her by the 3rd defendant indicated that the suit property had been bequeathed to the 3rd defendant alone.

For the defendants, the first to give evidence was the 4th defendant, George Waweru Ngugi (DW1). DW1 adopted his statement filed on 8th November, 2017 as part of his evidence. He told the court as follows: The suit property belonged to his late father, Ngugi Gaturo(deceased) who died on 12th September, 1997. Following the death of his father and without his knowledge, his mother, the 3rd defendant filed a succession cause in Kiambu namely, Kiambu SPM Succession Cause No. 80 of 1998 and was issued with a grant in 1999. The deceased had two wives namely, Margaret Nyambura Ngugi (the 3rd defendant) and Mary Njambi Ngugi (Njambi). He was from the house of Njambi. He was not satisfied with the mode of distribution of the deceased's estate. He applied successfully for the revocation of the grant that was issued in Kiambu SPM Succession Cause No. 80 of 1998. The said grant was revoked on 26th May, 2000 and the court ordered that the succession cause be heard afresh. Following a new hearing, the estate was distributed a fresh on 7th September, 2004 and any transfers that had been made pursuant to the earlier grant were cancelled. The court also directed the 3rd defendant to surrender any titles issued to her pursuant to the earlier grant. DW1 stated that this order was still in force when the plaintiff purchased the suit property. DW1 stated that the 3rd defendant did not produce the certificate of title for the suit property to pave way for the distribution of the estate of the deceased. He stated that the suit property was yet to be distributed amongst the heirs of the deceased. He produced as a bundle the documents attached to his list of documents filed on 8th June, 2017 as defendants' exhibit 1.

In cross-examination, DW1 stated that the suit property was still in the deceased's name. He denied knowledge of an appeal No. 20 of 2011 challenging the fresh distribution of the estate of the deceased. On examination by the court, DW1 stated that the 3rd defendant was still alive. He stated that the grant that was issued by the court at Kiambu was revoked by the High Court on 3rd April, 2000 in Succession Cause No. 2704 of 1999 which was transferred to Kiambu to be consolidated with Kiambu Succession Cause No. 80 of 1998. DW1 alleged that efforts to force the 3rd defendant to surrender the title of the suit property were unsuccessful as she declined to attend court.

The next witness for the defence was the 1st defendant, Philip Kirichu Ngugi (DW2). DW2 adopted his statement dated 26th September 2017 as part of his evidence in chief. He testified as follows: The suit property belonged to his deceased father, Ngugi Gaturo. He was the son of the 3rd defendant. The deceased had another wife. He learnt from the tenants who were occupying the suit property that the 3rd defendant had sold the property while he was out of the country. The suit property had 10 residential houses and the 3rd defendant used to collect rent through an agent by the name Mrs. Murigi before they took over the rent collection when the 3rd defendant became senile. He alleged that the suit property was vandalized and destroyed by goons at the behest of the plaintiff. He stated that the damage caused to the suit property was valued and a valuation report dated 28th April, 2014 was produced as part of the defendant's exhibit 1. DW2 stated that the suit property was still under succession and urged the court to allow the counter-claim and cancel the plaintiff's title to enable them complete the succession process.

In cross-examination, DW2 stated that he left Kenya for Britain in 2003. He denied that in the year 2009 the suit property had one structure and averred that when he left the country, there were 10 houses on the suit property. He stated that the photographs that had been produced in evidence showed old structures which were put up by his late father in the year 1992. He contended that the plaintiff was responsible for the vandalism and demolitions that were carried out on the suit property in March 2014. He stated that the plaintiff had visited the suit property previously in the company of the goons who were well known in the area. He stated further that the suit property was fraudulently transferred to the plaintiff and contended that the plaintiff should compensate them for the damage that was caused to the structures on the suit property in accordance with the valuation report that they had produced in evidence. He admitted however that they had not sought compensation in their counter-claim.

Submissions:

After the close of evidence, the parties were directed to make their closing submissions in writing. The plaintiff filed her submissions dated 18th May, 2018 on 22nd May, 2018 while the defendants filed their submissions on 4th October, 2018. The plaintiff submitted that the sale transaction between her and the 3rd defendant complied with the requirements of section 3(3) of the Law of Contract Act as was restated in Hanington Malingi Janji v Katana Pekeshe & 7 others [2013] eKLR. The plaintiff also referred to section 23(1) of the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) and the case of Shimoni Resort v Registrar of Titles & 5 others [2015] eKLR and submitted that her title to the suit property could only be challenged on grounds of fraud or misrepresentation to which it could be proved that she was a party.

The plaintiff also referred to section 26(1) of the Land Registration Act, 2012 and the case of Esther Ndegi Njiru & another v Leonard Gatei [2014] eKLR and argued that the defendants had not demonstrated that she acquired the title to the suit property fraudulently, through misrepresentation, mistake, illegally, unprocedurally or through a corrupt scheme. The plaintiff submitted further that the defendants had not led evidence implicating the office of the chief land registrar with any wrongdoing and as such the entries made on the register in respect of the suit property were valid, legal and the title issued to her pursuant thereto sacrosanct and unimpeachable.

As to whether the defendants had established the allegations of fraud levelled against her, the plaintiff cited the case of Nancy Kahoya Amadiwa v Expert Credit Ltd & another [2015] eKLR and submitted that allegations of fraud must be distinctly alleged and proved. The case of Arthi Highway Developers Ltd. v West End Butchery & 6 others [2015] eKLR was also relied on by the plaintiff in support of her argument that the alleged acts of fraud and/or misrepresentation were not proved to the required standard. The plaintiff submitted further that since the orders restraining the transfer of the suit property and those revoking the grant that had been issued to the 3rd defendant were not registered against the title of the suit property, nothing could have drawn the attention of the chief land registrar to the existence of the same so as to prevent the registration of the transfer in favour of the plaintiff.

The plaintiff submitted that if any act of fraud was committed, the same could only be attributable to the 3rd defendant who presented the confirmation of grant that had been revoked and certificate of title to facilitate the transfer of the property in favour of the plaintiff. The plaintiff contended that the 3rd defendant who sold the suit property to her had the legal capacity as the widow and administratrix of her late husband's estate to sell the suit property thereby absolving the plaintiff of any wrong doing in acquiring the suit property. The plaintiff argued that in the circumstances, the plaintiff was a bona fide purchaser of the suit property for value without notice. In support of this submission, the court was referred to the cases of Arthi Highway Developers Ltd v West End Butchery & 6 others (supra), Compar Investment Ltd v National Land Commission & others [2016] eKLR and Lawrence P. Mukiri v attorney General & 4 others [2013] eKLR.

In their submissions in reply, the defendants submitted that the certificate of confirmation of grant pursuant to which the suit property was allegedly sold and transferred to the plaintiff ceased to be valid upon its revocation. The defendants relied on the case of R v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waitthaka (2013) eKLR where the court stated that once a court order is made, the same remains valid unless set aside on review or appeal. The defendants submitted further that the plaintiff could not claim to be an innocent purchaser for value without notice. The defendants contended that the plaintiff did not undertake due diligence to ensure that the 3rd defendant had capacity to sell the suit property. The defendants submitted that the plaintiff failed to confirm the validity of the grant of letters of administration on the basis of which the 3rd defendant purported to sell the suit property thereby relying on an invalid grant which had been revoked and which conferred no capacity on the 3rd defendant to sell and transfer the suit property to the plaintiff.

The defendants submitted further that the plaintiff's title was impeachable. The defendants submitted that the 3rd defendant was aware of the fraudulent and illegal manner in which she procured the title in respect of the suit property which could not be allowed to stand together with the titles issued thereafter. In support of this submission, the defendants cited the cases of Josephat Muthui Mwangi v Chief Land Registrar & 2 others [2015] eKLR, Alice Chemutai Too v Nickson Kipkurui Korir & 2 others [2015] eKLR and Elijah Makeri Nyangwara v Stephen Mungai Njuguna & another [2013] eKLR.

Finally, the defendants referred to section 7 of the Civil Procedure Act and the case of ET v Attorney General & another [2012] eKLR and submitted that this suit was res judicata since a court of competent jurisdiction had revoked the grant on the basis of which the suit property was transferred to the plaintiff and cancelled subsequent transfers which may have been effected by the 3rd defendant pursuant to the revoked grant.

Determination:

I have considered the pleadings, the evidence adduced by the parties in support of their respective cases and the submissions by the advocates for the parties. The parties did not agree on the issues for determination by the court. From the pleadings, I am of the view that the following are the issues that arise for determination in this suit:

1. Whether the plaintiff acquired the suit property lawfully;
2. Whether the defendants trespassed on the suit property;
3. Whether the plaintiff is entitled to the reliefs sought in the further amended plaint;
4. Whether the defendants are entitled to the reliefs sought in the amended counter-claim;
5. Who is liable for the costs of the suit and the counter-claim?

Whether the plaintiff acquired the suit property lawfully:

It was not disputed that the plaintiff was the registered owner of the suit property. It was also not disputed that the suit property was previously registered in the name of Ngugi Gaturu(deceased). The plaintiff testified that she bought the suit property from the 3rd defendant in the year 2009. It was the plaintiff's case that she acquired the suit property lawfully from the 3rd defendant who was the administratrix of the estate of the deceased. The defendants adduced uncontroverted evidence that the grant of letters of administration in respect of the estate of the deceased on the strength of which the 3rd defendant purported to sell the suit property to the plaintiff was revoked by the High Court in Succession Cause No. 2704 of 1999 on 3rd April, 2000 several years before the transaction between the 3rd defendant and the plaintiff.

The defendants also produced before the court evidence showing that following that revocation, a fresh order on distribution of the estate of the deceased was made on 7th September, 2004 under which the suit property was given to the 3rd defendant and the 4th defendant. Under the said order, the 3rd defendant was also required to surrender to the court the original copy of the confirmed grant that was issued to her earlier and also the title documents that came to her possession by virtue of the said grant. The 3rd defendant did not seek a review or the setting aside of the order revoking the confirmed grant of letters of administration that had been issued to her on 28th June, 1999. She however appealed against the fresh distribution of the estate of the deceased to the High Court on 8th October, 2004 in High Court Civil Appeal No. 53 of 2004. No evidence was placed before the court showing that the appeal was successful.

It is clear from the foregoing that the grant of letters of administration in respect of the estate of the deceased that was issued in favour of the 3rd defendant and registered against the title of the suit property on 20th March, 2009 was null and void as the same had been set aside by the court. The said grant of letters of administration was also kept by the 3rd defendant in defiance of a court order that directed her to surrender the same to the court. In the cases of Kenya Tea Growers Association v Francis Atwoli & 5 Others [2012] eKLR and Clarke and Others v Chadburn & Others [1985] 11 ALL ER (P.C) 211, it was held that an act that is done in defiance of a court order is illegal and no advantage or benefit should be derived from it. That is the grant on the strength of which the 3rd defendant sold and transferred the suit property to the plaintiff. In the case of Macfoy v United Africa Co. Ltd.(1961) 3 All E.R 1169, Lord Denning stated as follows at page 1172 concerning an act which is a nullity:

“if an act is void, then it 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 much ado, though it is sometimes convenient to have the Court to declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse”.

Arising from the foregoing, I am in agreement with the defendants that the 3rd defendant had no interest in the suit property which she could convey to the plaintiff. In the case of African Line Transport Co. Ltd. v The Hon. Attorney General, Mombasa HCCC No. 276 of 2003, Njagi J. dealing with a similar case stated as follows:

“.....And if the grant to Mr. Omari was null and void ab ignition, it conferred no interest in Mr.Omari. By extension of the principle of nemo dat quod non habet, if Mr. Omari acquired no interest in the property, then he had no interest to transfer to the plaintiff. And that is the plaintiff's lot. There was a gross irregularity which went to the very root of the title to the suit property, and the plaintiff acquired no interest out of it.”

The plaintiff had also contended that she was a bona fide purchaser of the suit property for value without notice. In the Court of Appeal case of Arthi Highways Developers Limited v West End Butchery Limited & 6 others(supra), that was cited by the plaintiff in her submissions, the court stated as follows on the applicability of the doctrine of “bona fide purchaser without notice”:

“67.

Furthermore, the protection accorded by law in the event of fraud, is to a “bona fide purchaser without notice” and even then, only against equitable interests. We have seen the definition of “bona fide purchaser” from **Black's Law Dictionary** and from **the Katende case** (supra). The onus is on the person who wishes to rely on such defence to prove it, and the defence is against the claims of any prior equitable owner. **Snell's Principles of Equity** (supra) illustrate the issue, thus:-

“An important qualification to the basic rule is the doctrine of the purchaser without notice, which demonstrates a fundamental distinction between legal estates and equitable interests.

The doctrine. A legal right is enforceable against any person who takes the property, whether he has notice of it or not, except where the right is overreached or is void against him for want of registration. If A sells to C land over which B has a legal right of way, C takes the land subject to B’s right, although he was ignorant of the right. But it is different as regards equitable rights. Nothing can be clearer than that a purchaser for valuable consideration who obtains a legal estate at the time of his purchase without notice of a prior equitable right is entitled to priority in equity as well as at law. In such a case equity follows the law, the purchaser’s conscience not being in any way affected by the equitable right. Where there is equal equity the law prevails.”

As I have stated earlier, the 3rd defendant had no interest in the suit property that she could transfer to the plaintiff. The plaintiff did not therefore acquire any interest in the suit property. Even if it assumed that she did acquire an interest in the property, her interest that was acquired from a fraudster in the name of the 3rd defendant could not defeat the 4th defendant’s legal interest in the suit property that was conferred upon him by a court of law on 7th September, 2004. The 4th defendant’s right in the suit property supersedes that of the plaintiff whether the plaintiff acquired her interest with notice of the 4th defendant’s interest or not.

The plaintiff had also sought solace under sections 23(1) of the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) and section 26(1) of the Land Registration Act, 2012. I am of the view that the said provisions of the law cannot protect a title that was created illegally. In the case Henry Muthee Kathurima v Commissioner of Lands & Another (2015) eKLR, the Court of Appeal stated that:

“We have considered the provisions of Section 26 of the Land Registration Act in light of the provisions of Article 40(6) of the Constitution and it is our considered view that the concept of indefeasibility of title is subject to Article 40(6) of the Constitution Guided by Article 40 (6) of the Constitution, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that the title to the property was unlawfully acquired.”

In the case of Arthi Highways Developers Limited v West End Butchery Limited & 6 others(supra) the court stated as follows with regard to the protection accorded under section 23(1) of the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed):

“66.

We have found already, on evaluation of the recorded evidence, that fraud was committed both at the registry of companies as well as the Lands office. The consequence is that West End did not divest its registered interest in the disputed land which was not an equitable one. It was the proprietor of the legal interest in the disputed land and did not part with it, as alleged or at all. The trial court held, following previous court decisions, that an innocent holder of legal Title to land cannot be dispossessed of that interest by a fraudster, and that Section 23 protects “Title issued to a purchaser upon the transfer or transmission by the proprietor thereof”. Those decisions are the Alberta Mae Gacie case (supra) and the Iqbal Singh Rai case (supra) which emanated from the High Court. With respect, we are persuaded by the reasoning in those cases as it accords with the law.”

Due to the foregoing, it is my finding that the plaintiff did not acquire the suit property lawfully. The plaintiff obtained a fraudulent and illegal title from the 3rd defendant which conferred no estate of whatsoever nature upon her.

Whether the defendants trespassed on the suit property:

Trespass is defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, **Clerk & Lindsell on Torts, 18th Edition, page, 923, paragraph, 18-01**. From what I have held above, the plaintiff had no valid interest in the suit property. The evidence that was adduced in court also shows that the plaintiff was not in possession of the suit property. In the absence of any interest in the suit property, the plaintiff could not maintain an action against the defendants for trespass. In any event, the 1st, 3rd and 4th defendants as heirs of the deceased had a right to enter and occupy the suit property until the same was distributed as was ordered by the court. In the circumstances, it cannot be said that the defendants had no justifiable cause for entering the suit property. It is my finding therefore that the defendants did not trespass of the suit property.

Whether the plaintiff is entitled to the reliefs sought in the further amended plaint:

From my findings above, there is no doubt that the plaintiff has failed to prove her claim against the defendants. The plaintiff has failed to prove that she was the lawful owner of the suit property and that the defendants trespassed thereon. There is no basis in the circumstances for the injunctive relief and an order of eviction sought in the further amended plaint.

Whether the defendants are entitled to the reliefs sought in the amended counter-claim:

From the evidence on record and the findings I have arrived at above, the 1st, 3rd and 4th defendants have proved their claim against the plaintiff and are entitled to the reliefs sought in the counter-claim. They have established that the plaintiff acquired the suit property unlawfully and that she is not entitled to interfere with their possession and enjoyment of the same.

Who is liable for the costs if the suit and the counter-claim?

Cost follow the event. In this case, no grounds have been put forward to warrant a departure from this established rule on costs. The defendants have succeeded in the case as against the plaintiff and are entitled to the costs of the suit and the counter-claim.

Conclusion:

In conclusion I hereby make the following orders:

1. The plaintiff's suit is dismissed.
2. Judgment is entered for the 1st, 3rd and 4th defendants against the plaintiff in terms of prayers (ii) and (iii) of the amended counter-claim dated 26th September, 2017.
3. The costs of the suit and the counter-claim is awarded to the 1st and 4th defendants.

Delivered and Dated at Nairobi this 30th day of April 2019.

S. OKONG'O

JUDGE

Judgment read in open court in the presence of:

Ms. Gichuhi h/b for Mr. Kamau for the Plaintiffs

Ms. Kivindu for the 1st, 3rd and 4th Defendants

N/A for the 2nd Defendant

C. Nyokabi-Court Assistant