



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC NO 36 OF 2017

(FORMERLY NAKURU HCC 216 OF 2012)

VIRGINIA WANGUI NJENGA.....PLAINTIFF

VERSUS

RUTH WAITHERA MWANGI.....DEFENDANT/RESPONDENT

JUDGEMENT

1. This case was originally filed at the Nakuru High Court on the 6th December 2012 vide a Plaint with an equal date as Civil Case No. 216 of 2012. On the 9th September 2013 the said plaint was amended where the Plaintiff herein sought for:

- i. An order of temporary injunction restraining the Defendant her servants, agents, or employees from burying the remains of Mwangi Waregi Githuku on land parcel No. Nyandarua/South Kinangop/372.
- ii. An order of cancellation and or revocation of title No. Nyandarua/South Kinangop/9788, 9779, 9780, 9781, 9782 and 9783 and fresh titles be issued in the name of the Plaintiff.
- iii. An order of eviction against the Defendants herein, her servants, agents or employees from land parcel No. Nyandarua/South Kinangop/9788, 9779, 9780, 9781, 9782 and 9783.
- iv. A perpetual injunction restraining the Defendants herein from transferring, trespassing, interfering, constructing or dealing in any other manner whatsoever from dealing with land parcel No Nyandarua/South Kinangop/ 9788, 9779, 9780, 9781, 9782 and 9783.
- v. Costs of the suit together with interest.

2. Pursuant to the filing of an amended plaint, the Defendants herein filed their amended defence dated the 24th July 2017 on the 25th July 2017 wherein they stated that the 1st Defendant was the legal representative of the estate of Mwangi Waregi Thuku who was the registered proprietor of parcels of land No. Nyandarua/South Kinangop 9778, 9779, 9781, 9782 and 9783 whereas the 2nd Defendant was the sole registered proprietor of parcel of land No. Nyandarua/South Kinangop 9780. To that effect, the Defendants opined that the Plaintiff had not proved ownership of the parcels of land and therefore did not deserve orders to have the said titles cancelled on account of fraud.

3. On the 25th July 2017 counsel for the Defendant informed the court that they had realized that their amended statement of defence had not been properly drafted and sought for 7 days to rectify the same. Leave was granted.

4. On the 17th October 2017 the court was informed that parties had complied with the provisions of order 11 of the Civil Procedure Rules wherein the matter was confirmed ready for hearing which hearing proceeded on the 11th December 2017.

Plaintiff's case

5. The Plaintiff herein, while relying on her statement recorded on the 30th November 2017, testified as Pw1 to the effect that upon the death of her Husband one Kimani Ngure, she had procured limited letters of grant vide Nakuru Succession Cause No. 170 of 2012. She produced the said letters as Pf exhibit 1.

6. She also testified that her husband had not sold any land to Mwangi Wairegi Thuku whom she knew. She confirmed that her husband had a land in Kinangop, which he had been given by the government.

7. That although the land had been given to her husband, the documents he had been given were taken by Mwangi who subsequently registered the land in his own name, reasons for which she had filed the present suit against him seeking the cancellation of the titles he held since they were fake.

8. She also confirmed that there had been no case filed in court by either her deceased husband or Mwangi.

9. In Cross examination, the witness had stated that both Virginia Wangui Kimani Ngure and Virginia Wangui Kimani were her names. That Virginia Wangui Njenga was the name registered on her National identity card.

10. She confirmed that although she had letters confirming that the land was her late husbands and that the title was in his name, she did not have the documents with her. Further that although she had appeared before the chief accompanied by elders, she had not been given any money so the letter the defendant had in his possession claiming that she had been given some money was false. She testified that all they had discussed at the chief's office was that the Defendants were to leave the suit land. She refuted the suggestion put to her that her husband had sold the suit land.

11. When questioned by the court, the plaintiff responded that she was 80 years old. The Plaintiff closed its case after the testimony of Pw1.

Defendant's case

12. The Defendant, Ruth Waithera Mwangi in her defence testified that the suit land was hers since she had inherited it from her husband who had died in the year 2012 and who was the registered proprietor having bought the same from the Plaintiff's husband. She produced a copy of the title which was marked as Df exhibit 1 and a sale agreement dated 27th March 1986, but written in kikuyu language and which was marked for Defence identification 2. The court thus directed that a translated copy of the agreement be filed and served to the Plaintiff's counsel within the next 30 days.

13. The Defendant proceeded to testify that even after her husband and the Plaintiff's husband had reduced their agreement into writing, the Plaintiff was not satisfied and had started claiming ownership of the suit land.

14. The Defendant testified that initially the land had belonged to the Settlement Fund trustee and after the sale agreement, her husband had taken possession of the land which was transferred from Settlement Fund scheme vide a transfer dated the 4th June 2007, herein produced as Df exhibit 3. That subsequently her husband had paid the Settlement Fund Trustee loan through payments made to the Co-operative. The charge was discharged on the 13th Mach 2006. She produced the discharge as Df exh 4.

15. She also testified that her husband also paid for the rates as per the receipts dated the 29th May 2003 herein produced as Df Exhibit 5. She also produced the receipt dated 28th March 1996, as Df Exhibit 6 (a) and b) to prove her testimony.

16. That it had been after all the payments had been made that the Plaintiff and her husband had disagreed wherein the Plaintiff had claimed that her husband had not sold the land following which her husband had written letters complaining that the Plaintiff's husband had not surrendered the documents required.

17. She produced as Df exh 7, a letter from Ministry of Lands and Settlement dated the 18th January 1973 and addressed to Mr. Ngure (the plaintiff's advocate) requesting for the surrender of the legal documents to enable them transfer the parcel of land.

18. That subsequently, a letter dated the 13th April 2006, herein produced as Df Exhibit 8, was written to the District Land Adjudication by the Divisional Settlement Office reporting on the ground status of the suit plot.

19. Evidence was further adduced to the effect that parties had even gone before the Chief at South Kinangop after the Plaintiff had demanded back the suit land. During the meeting, the Plaintiff had been given ksh 4,000/= wherein she in turn had surrendered to the Defendant her (Plaintiff's) husband's death certificate, herein produced as Df exhibit 9, and left.

20. She testified that after the Plaintiff had given her husband's death certificate, she never saw her again until they met in court. That there was no other case apart from the present one which had been filed in Nakuru. She also confirmed that before her husband's death in 2012, he had placed a caution on the suit land. She produced the caution dated 30th September 1997 as Df exhibit 10.

21. Further testimony was that after her husband had paid the loan and rates, he had been issued with a letter dated 31st May 2007 herein produced as Df exh 11, from the Lands Adjudication and Settlement department discharging him. She thus prayed for the dismissal of the Plaintiff's suit with costs.

22. On cross examination, the Defendant testified that her husband had bought the land in 1965 and that after selling the land the Plaintiff's husband had died after one year. She confirmed to have witnessed the sale although she could not remember the exact date, but that the land had been sold for ksh. 4,000/= which money was given by her husband to the Plaintiff's husband.

23. That from the year 1963 – 1973 they had summoned the Plaintiff who refused to respond, her husband had also not responded to the summons to transfer the land and that was why they had gone to court.

24. The Agreement was translated into English language as ordered by the court. The Defendant was cross examined on it wherein she produced the original agreement as Df Exhibit 2(a) and the translated version as Df Exhibit 2(b) She confirmed her earlier testimony that the

land had belonged to Njenga Ngure but he had sold it to her husband for Ksh 4,000/=. That after her husband discharged the charge to the Settlement Fund Trustee, the land had been transferred to him in the 60's and a title subsequently issued in the year 2000.

25. That parties had obtained consent from Land control Board before the land was transferred. That she did not know whether her husband had filed suit against Njenga Ngure but that she knew Njenga Ngure had consent from his wife to sell the land because when her husband went to the Njenga's place, his wife had given him the death certificate wherein she had taken the balance of ksh 4,000/=

26. The second defence witness, Dw2 one Paul Mwangi Barnard Waithaka testified that he knew Ruth Waithera the defendant herein and that she had land in south Kinangop.

27. That as an assistant chief in Kinangop, the Plaintiff herein who was the wife of Njenga Ngure had informed them in a meeting that she had wanted to go back to Kandara to her husband's place wherein she had been given money by Mr. Mwangi Waireri who used to live in Kinangop.

28. He also confirmed that Njenga Ngure had land No. 372. That there had been a time that the government had sought for people to pay up the loan for their parcels of land in default to which it would repossess them. That since Njenga Ngure had no money, he had relinquished his land to Waireri informing him that he had given it to him and asked him to pay the government loan. Mr. Waireri had continued to pay the loan to its completion wherein the land had become his. That later on, he had heard that Mr. Njenga had died in Kandara on the 30th July 1973 before transferring the land to Mr. Waireri.

29. That Mr. Waireri had also died in the year 2012 and was buried on plot No 372 South Kinangop. He confirmed that the Defendant herein has lived on the suit plot No. 372 to date. That the land belongs to Mwangi Waireri.

30. On Cross examination, it was the witness' testimony that he was not present when the sale agreement took place and that all the witnesses who were present at the time had died. He testified that he had heard that Waireri had been given the title but did not know if there was another case between the parties. He also testified that the elders had informed him that the Plaintiff had picked the ksh 4,000/=:, which money was meant for the loan, and after she had picked the money, she had left her husband's death certificate with the Defendant's husband.

31. At the close of the defence case, parties filed their respective submissions.

The Plaintiff's submissions.

32. The Plaintiff's brief history of the matter is that her late husband, the late Njenga Kimani Ngure was the proprietor of the suit lands herein, which were initially Plot No. 372 South Kinagop That upon his death in 1973, the Defendant's husband started laying claim to the same claiming purchaser's interest. The matter was escalated to the elders who returned their verdict in favour of the Defendant's husband. The award was later adopted by the Magistrate's court but which verdict was overturned by the High court in NBI HCCC No. 148 of 1988. The Defendant's husband being dissatisfied with the Magistrate's verdict, had filed suit to the High Court but which case was demised for lack of prosecution in HCCC No.360 of 1999. This did not stop the Defendant's husband who went ahead and sub-divided Plot No. 273 and registered the resultant plots in his name in the pendency of the dispute in court.

33. That it was after the Plaintiff's husband had fallen ill and had asked the Defendant's husband, who had been placed on the suit land as its caretaker, to use the proceed of the milk from his land to repay the loan on his behalf, that the Defendant's husband had taken advantage of the illness and the fact that he had repaid the loan on behalf of the Plaintiff's husband, to claim ownership of the suit land.

34. The Plaintiff further submitted that the Defendant's husband had fraudulently obtained title to the property when the case was still pending in court so as to support the present suit but it was too late as the suit had already been dismissed.

35. That there was no evidence adduced by the Defendant to support the fact that the Plaintiff's husband had sold the suit land to the Defendant's husband. That the so called agreement produced as Df exh 2 (b) was not a sale agreement to sale whatsoever and the Ksh 4,000/referred to was in fact monies paid to the Plaintiff as fare and not as part payment of the purported sale agreement.

36. Indeed as deduced from the Defendant's evidence, she testified that she did not know whether the transfer had been effected or whether the consent from the land control board had been obtained before the transfer. That since the purported transfer was effected in the year 2006, there ought to have been a consent obtained or an extension of time applied for in order to obtain the consent. This was not the case herein.

37. That Section 3(3) of the Law of Contract Act was clear to the effect that a suit could not be brought on a contract for disposition in an interest in land unless the contract upon which the suit was founded on was in writing, signed by all parties and the signature of each party signing had been attested by a witness. The Defendant also relied on the decided case of **Joseph Mathenge Kamutu vs Joseph Wainaina and Another [2015] eKLR** and **Solomon Amani vs Salome Muteyeny Otunga [2016] eKLR** to submit that the purported sale agreement herein produced as defence exhibit did not meet the criteria laid down of a valid contract.

38. That the Dw 2 in his testimony did not adduce any evidence that there had been a binding contract between the parties, neither had he witnessed that transaction nor the handing over of the Ksh 4,000/= to the Plaintiff.

39. Further, that the receipts produced by the Defendant only went to confirm that indeed the Plaintiff's husband had asked the Defendant's Husband to use the proceeds from the milk on the farm to repay the loan since he could no longer do it by virtue of his ill health.

40. That there being no valid agreement on which the Defendant placed their defence, the court should declare the entire process of acquiring

the title as being null and void ab initio.

41. That initially the Defendant had chosen the defence of a sale agreement but when they discovered that the same did not favour her, she decided to lean on the defence of the repayment of the loan. That this was an abuse of the court process as it was not the courts responsibility to choose a recourse or evidence for a party to trial. The Defendant's action therefore was an act to steal a match from the Plaintiff's deceased husband.

Defendant's Submission.

42. The Defendant on the other hand submitted that the Plaintiff had not established a prima facie case against the Defendant as expected by virtue of the provisions of Section 24(a) of the Land Registration Act.

43. That the deceased Mwangi Wairegi Thuku the Defendants' Husband was the proprietor of parcel of Land No. Nyandarua/South Kinangop 372 and its subdivisions save for parcel No 9780 and that at no time had parcel No 372 been registered to the Plaintiff husband's name as per the green card herein produced as evidence.

44. The Defendant also relied on the definition of the term 'Fraud' as found in the Black Law's Dictionary and submitted that as required by the law, an accusation of such nature if pleaded, ought to be proved as a matter of evidence to the standard above the balance of probabilities but not beyond reasonable doubt. That the allegation which was considered serious must be pleaded, particularized and proved to a standard higher than a balance of probabilities. The Defendant relied on the following decided cases in their submissions.

i. HCCC No. 135 of 1998, Insurance Company of East Africa vs The Attorney General & 3 Others [2001]eKLR.

ii. Arthi Highway Developers Ltd vs Westend Butchery Limited & Others [2015] eKLR.

iii. Dr. Joseph N. K. Arap Ngok vs Justice Moiyo Ole Keiwua & 4 Others Civil Appl. No.NAI 60 of 1997.

45. That the Plaintiff had not proved her case to the required standard and her suit ought to be dismissed.

46. Considering the evidence adduced in the trial court, I find the issues for determination as being;

- i. Whether there was a sale agreement between the deceased persons Njenga Kimani Ngure and Mwangi Wairegi Thuku
- ii. Whether the Mwangi Wairegi Thuku was the proprietor of parcel No. Nyandarua/South Kinangop 372 and its subdivisions save for parcel No 9780
- iii. Whether the Plaintiff established fraud in the procurement of the Defendant's title.
- iv. Whether the resultant parcels of land had been in the pendency of a suit.

47. The history of the matter being that after the death of Njenga Kimani Ngure, and upon Mwangi Wairegi Thuku lying claim to the suit land, the Plaintiff herein had referred the matter to the elders for arbitration who found in favour of the Defendant's husband. Subsequently the award was adopted by the Magistrate's court sitting in Naivasha in RMC No 63 of 1986. The Plaintiff appealed against the award in Nairobi HCC No 148 of 1988 where the court held in her favour stating that the tribunal had no jurisdiction to adjudicate over the land. The Defendant's husbands attempted to appeal against the said decision had been dismissed for want of prosecution in Nakuru HCCC No 360 of 1999, which then gave rise to the present suit.

48. The Plaintiff's case was based on the fact that her late husband Njenga Kimani Ngure was allotted the suit land No Nyandarua/South Kinangop 372 by the government after which the same was charged to the Settlement Fund Trustee wherein before he could complete servicing the loan, he had passed away and the Defendant laid claim to the suit land claiming purchaser's interest and subsequently registered it in his name fraudulently wherein he subsequently subdivided the same

49. The defendant, in her defence, testified that the suit land was sold to her husband Mwangi Wairegi Thuku by the Plaintiff's husband Njenga Kimani Ngure wherein the Plaintiff had even picked the last payment of Ksh 4,000/-for the consideration of the sale. She produced the sale agreement as Df exh 2(a) and its translation as Df exh 2(b)

50. Section 3(3) of the Law of Contract Act provides that;

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:

51. Section 3(3) of the *Law of Contract Act*, came into effect on 1st June, 2003. Section 3(7) of the *Law of Contract Act* excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection. The said Section reads as follows:

The provisions of subsection (3) shall not apply to any agreement or contract made or entered into before the commencement of that subsection.

52. The sale agreement herein relied on by the Defendant was made on 27th March 1986 which was prior to the amendment of Section 3(3) of the *Law of Contract Act* in 2003, the subsection at the time read as follows:

(3) No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which, the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it;

Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-

(1) Has in part performance of the contract taken possession of the property or any part thereof; or

(11) Being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract. '

53. **In the case of Nelson Kivuvani vs. Yuda Komora & Another, Nairobi HCCC No.956 of 1991**, the Court held that:-

“the agreement for sale of land which contains the names of the parties, the number of the property, the purchase price and the conditions attached thereto, the obligations, express or implied, of each of the parties and signed and witnessed by two witnesses who signed against their names amount to a valid contract”.

54. Looking at the agreement dated the 27th March 1987, the same is not a sale agreement in terms of the above captioned authority. I find that the said document gave neither description of the property in issue nor the consideration, but was a description of an event being a sale that had occurred in the year 1966, it also confirmed that in the year 1982, the Ksh 4,000/= that Mwangi Wairegi Thuku had given to the Plaintiff's wife had been for the funeral expenses for Njenga Kimani Ngure. It also noted down the reasons why the elders had reached their decision. An agreement for sale would ordinarily contain the parcel number, the terms of the agreement such as the consideration, completion, default, etc. This document I find was Mwangi Wairegi Thuku's personal diary in the strict sense as it had recorded events and or personal activities, transactions and observations that had transpired over the years. The above analysis draws the Court to the only conclusion that there was no agreement of sale between the deceased Plaintiff's husband and the deceased Defendant's husband. The onus of proof rested with the Defendant which she has not discharged.

55. The next issue for our consideration is whether the consent of the Land Control Board was required for the sale transaction between the parties. The suit property was situated in South Kinangop and as such, it was an agricultural land that requires consent of the Land Control Board. The fact that it was also registered under the Registered Lands Act (Cap 300 of the Laws of Kenya) lent credence that indeed it was an agricultural land and any dealing with it therefore required consent of the Land Control Board.

56. Having noted from the document produced as Df exh 2 that the purported sale transaction between the deceased parties had been entered into in the year 1966, wherein the Defendant took possession of the suit property and further the fact that the commencement date of the Land Control Act was 12th December, 1967, this transaction, which was entered into before the commencement of the Act did not require consent of the Land Control Board as the Act does not operate retroactively. The agreement between the parties hereto having been entered into in 1966 was outside the purview of the Land Control Act.

57. That having been said and done, we now turn onto the issue as to whether the deceased, Njenga Kimani Ngure had *transferable interest in the suit land which he could transfer* to Mwangi Wairegi Thuku. It is not in dispute that the suit land was allocated to Njenga Kimani Ngure by the Settlement Fund Trustee and that before he had discharged the same. He had purportedly sold it to the deceased Mwangi Wairegi Thuku. Indeed from the letter dated the 18th January 1973 produced as Df exh 7 from the Settlement Fund Trustee office and addressed to Njenga Kimani Ngure, the same was to the effect that Njenga Kimani Ngure had illegally transferred the said parcel of land without completing the necessary legal documents and getting consent from the office.

58. The court of Appeal in the case of **John Kamunya & another v John Nginyi Muchiri & 3 others [2015] eKLR** held as follows:

We believe it was because there was no contractual obligation between the 1st respondent and the Settlement Fund Trustees. It is therefore safe to say that no contractual relationship with regard to the suit land could have legally been created as between the 1st respondent and Saul the deceased until and after Saul the deceased had fulfilled his indebtedness to the Settlement Fund Trustees, causing the title to the suit land to be transferred into his name as an owner before he could exercise his free will as to its disposal. It therefore follows that in this regard Saul the deceased had no legally transferable interests in the suit land as at the time he purported to enter into an agreement for sale of the suit land with the 1st respondent. Nothing therefore turns on the two agreements that the 1st respondent relied upon to move to Court to seek remedy for his alleged grievances as against Saul the deceased.

59. I therefore find that the alleged sale of the original suit land Plot. No.372 by the deceased Njenga Kimani Ngure to the deceased Mwangi

Wairegi Thuku was of no consequence because at the time it was sold, the title was still been held in the name of the Settlement Fund Trustees and therefore Njenga Kimani Ngure had no *transferable interest in the suit land which he could transfer to Mwangi Wairegi Thuku*.

60. **Clearly from the above sequence of events and having found that** Njenga Kimani Ngure had no *transferable interest in the suit land which he could transfer to Mwangi Wairegi Thuku* and further there having been no evidence adduced that the suit land was re allocated to Mwangi Wairegi Thuku by the Settlement Fund Trustee, it goes without saying that the root of the title was questionable and therefore obtained fraudulently.

61. **In the case of George Mbiti Kiebia & Another vs. IsayaTheuri M'lintari & Another (2014) eKLR** the Court of Appeal stated that:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title which is in challenge and the registered proprietor must go beyond the instrument and rebut the notion that the property is not free from any encumbrances including any and all interests which need not be noted in the register.”

62. It is trite that *‘he who alleges must prove’*. **Section 107** of the **Evidence Act** is also very clear on the above stated claim. It states:-

“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”.

63. I find that the Defendant herein failed to rebut the *notion that the property was not free from any encumbrances*.

64. The Plaintiff has sought for the cancellation and or revocation and cancellation of title deeds No. Nyandarua/South Kinangop/9788, 9779, 9780, 9781, 9782 and 9783 which are resultant subdivisions from land parcel No. Nyandarua/South Kinangop/372 for reasons that the same were procured fraudulently when the suit was pending in court.

65. Indeed there is no dispute that this matter was heard by the panel of elders wherein their award was later adopted by the Magistrate’s court on the 5th December 1986. That vide a judgment delivered on the 25th October 1989, award was found to be a nullity by the High Court in Nairobi Civil Appeal No.148 of 1988. The Defendant’s husband then filed an Originating summons before the Nakuru High Court Civil Suit No 360 of 1999 which suit dismissed on the 14th July 2012.

66. **This brings us to the last issue for determination. An official search conducted on the parcel** No. Nyandarua/South Kinangop/372 on the 25th July 2012 yielded the result that the said suit land which had been registered in the name of Mwangi Wairegi Thuku **on the 25th June 2007 had been subdivided into No. 9778-9783 and the title closed on the 10th November 2010.**

67. There is no doubt therefore that parcel No. Nyandarua/South Kinangop/372 was sub divided in the pendency of Nakuru High court Civil suit No 360 of 1999.

68. The doctrine of *lis pendens* which is based on the legal maxim *‘ut lite pendente nihil innovetur’*. It simply means that during litigation nothing new should be introduced. The essence of said doctrine is that it prohibits a party to a suit from transferring or as in this case, altering the status of the suit premises, while the suit is pending.

69. In **Rajender Singh & Ors. vs. Santa Singh & Ors. AIR 1973 SC 2537**, while dealing with the application of doctrine of *lis pendens*, the Supreme Court of India held as under:-

“The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending by private dealings which may remove the subject matter of litigation from the ambit of the court’s power to decide a pending dispute or frustrate its decree.”

70. It is trite law that a transfer of suit property or any dealing with a property during the pendency of the suit is prohibited except with the authority of the court. A party who thus deals with such property during the pendency of a suit cannot expect a court to countenance those actions. Equity never looks with favour upon such a party and this court would not condone such conduct.

71. It is clear that the Defendant herein, knowing that he had filed suit at the Nakuru High Court being Civil suit No 360 of 1999 which matter was still pending before court, went ahead to subdivide parcel No. Nyandarua/South Kinangop/372. The subsequent subdivisions of the said land, I find was unlawful and illegal and the resultant subtitles issued consequent to the illegal actions and/or transactions of the defendant are null and void and thus liable to impeachment under section 26(1) (b) of the Land Registration Act, 2012.

72. In the result, the court is satisfied that the Plaintiff has proved and established her case on a balance of probabilities; the evidence clearly establishes that Njenga Kimani Ngure had no *transferable interest in the suit land which he could transfer to Mwangi Wairegi Thuku* and therefore all the transactions that resulted in the transfer and subdivision of parcel No. Nyandarua/South Kinangop/372 were fraudulent and the court cannot allow them to stand. In the premises, judgment is entered in favour of the Plaintiff as prayed further to which :-

i. The Land Registrar Nyandarua/Samburu is directed to cancel the unlawful and illegal registration and any subdivisions of land parcel Nyandarua/South Kinangop/372 and to restore the land to the original title in the name of Settlement Fund Trustee to await the discharge of the same by the Plaintiff herein.

ii. The costs of the suit are awarded to the plaintiff.

Dated and delivered at Nyahururu this 28th day of May 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE