



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 403 OF 2009**

**ANNE WAMBUI GITHURI.....PLAINTIFF**

**VERSUS**

**MAKFAM INVESTMENTS LIMITED.....1<sup>ST</sup> DEFENDANT**

**SAMUEL GAKURU P/A**

**GAKURU & CO. ADVOCATES.....2<sup>ND</sup> DEFENDANT**

**EQUITY BANK LIMITED.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiff seeks a permanent injunction to restrain the 1<sup>st</sup> Defendant or its agents from transferring, alienating or disposing the Plaintiff's proprietary rights and interest in plot A measuring approximately one acre which was subdivided from land reference number (L.R. No). 14675, Kiambu belonging to the 1<sup>st</sup> Defendant ("the Suit Property") in the Amended Plaint dated 12/4/2017. She also seeks a permanent injunction to restrain the 1<sup>st</sup> Defendant or its agents from emitting or directing the flow of any effluence into the Suit Property. Further, she seeks an order of specific performance of the sale agreement dated 20/12/2004 and the transfer of the Suit Property to her free from any encumbrances together with a declaration that the charge registered over L.R. No. 14675 on 6/12/2006 by the 1<sup>st</sup> Defendant in favour of the 3<sup>rd</sup> Defendant to secure payment of the sum of Kshs. 3,500,000/= plus interest was secured fraudulently and should be discharged forthwith.

2. In its defence filed in court on 10/5/2018, the 1<sup>st</sup> Defendant denied the Plaintiff's claim and averred that the Plaintiff was the one who breached the terms of the sale agreement with regard to the completion date. The 1<sup>st</sup> Defendant urged that the Plaintiff was never ready to complete the sale by the completion date. The 1<sup>st</sup> Defendant averred that by the time it charged the land to the 3<sup>rd</sup> Defendant, the sale agreement between the Plaintiff and the 1<sup>st</sup> Defendant had lapsed owing to the Plaintiff's failure to perform her obligations under the sale agreement. The 1<sup>st</sup> Defendant averred that it only received the deposit of the purchase price but not the balance of Kshs. 700,000/= which was paid to the 2<sup>nd</sup> Defendant.

3. In the Counterclaim, the 1<sup>st</sup> Defendant averred that it intended to sell the Suit Property to raise school fees for the education of one of its shareholders and that when the Plaintiff failed to pay the purchase price by the completion date, the 1<sup>st</sup> Defendant charged his property to the 3<sup>rd</sup> Defendant to obtain fees for the student who was proceeding to the United States of America (USA) for studies. It claimed that it refunded the Plaintiff the sum it had received on account of the Suit Property but the Plaintiff rejected the refund. Further, it claimed that the Plaintiff undertook developments on the Suit Property in July 2009 to keep the 1<sup>st</sup> Defendant at bay.

4. The 1<sup>st</sup> Defendant counterclaimed a permanent injunction to restrain the Plaintiff or her agents from wasting, maintaining a caveat, or in any manner dealing with the parcel of land known as L.R. No. 14675, Kiambu. Further it sought an order for the Plaintiff to hand over vacant possession to it of the Suit Property in default of which the Plaintiff is to be evicted from the land. In addition, the 1<sup>st</sup> Defendant sought mesne profits at the rate of Kshs. 35,000/= from 1/1/2005 for loss of use of the property together with costs.

5. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not file defences. The Plaintiff gave evidence. The land in dispute is the portion known as plot A measuring one acre which was to be excised from L.R. No. 14675, Kiambu belonging to the 1<sup>st</sup> Defendant. She purchased the Suit Property from the 1<sup>st</sup> Defendant vide a sale agreement made on 20/12/2004. Both the vendor and the purchaser were represented by the same firm of advocates, M/s Kimani and Kairu Advocates in the sale transaction. Subsequently the 1<sup>st</sup> Defendant appointed the 2<sup>nd</sup> Defendant to act for it in completing the sale transaction. The purchase price under clause 4 of the sale agreement was Kshs. 2,600,000/= out of which the sum of Kshs. 1,500,000/= was to be paid on execution of the agreement while the balance of Kshs. 1,100,000/= was payable on the completion date. The vendor was to hand over vacant possession of the Suit Property to the purchaser once the vendor was paid the deposit of Kshs.

1,500,000/=. The property was sold free of any encumbrances.

6. Clause 9 stipulated that completion would take place at the parties' advocates offices on or before 31/3/2005, or any other date the parties would agree to in writing, when it was expected that the vendor would have finalised the subdivision formalities; the purchaser would have paid the balance of purchase price to the parties' lawyers; the vendor would hand over to the parties' lawyers all the documents required to complete the transaction. These were the original grant number I.R. 46560, original deed plan for the property, transfer of the property to the purchaser duly executed by the vendor, original certificate of subdivision, rates clearance certificate and the consent to transfer the land from the Commissioner of Lands. The Law Society Conditions of Sale (1989 edition) were applicable, where they were not inconsistent with the sale agreement. The purchaser was liable to pay interest at the rate of 15% per annum to the vendor on late completion. In the event that the vendor did not complete the subdivision exercise by the completion date, then it was to refund all sums the Plaintiff had paid towards the purchase of the land together with interest at 15% per annum, which was to be calculated from the completion date until payment in full. The agreement would stand rescinded with the consent of the parties. The refund was to be made at the request of the purchaser.

7. The Plaintiff stated that in compliance with the terms of the sale agreement, she paid the 1<sup>st</sup> Defendant the sum of Kshs. 1,500,000/= upon signing the agreement in December 2004 after which the 1<sup>st</sup> Defendant gave her possession of the property. She claimed that she had been in possession of the Suit Property to date. After execution of the agreement, the 1<sup>st</sup> Defendant embarked on subdividing the suit land and informed their joint advocates that the process of subdivision was under way. The Ministry of Lands in its letter of 7/2/2005, approved the subdivision of L.R. No. 14675 upon certain conditions to wit, the new annual land rent would be assessed on completion of the survey, adequate measures would be taken to avoid environmental degradation and any other conditions stipulated by the local authority by laws. The 1<sup>st</sup> Defendant wrote to Apollo Surveyors and Consultants on 8/3/2005 stating that the survey had been done and the three deed plans had been submitted to Survey of Kenya for approval. The letter was copied to Kimani Kairu and Company Advocates, the parties' advocates. The 1<sup>st</sup> Defendant vide its letter of 16/3/2005 forwarded to Kimani Kairu and Company Advocates the original grant I.R. No. 46560, the deed plan, the original deed plan numbers 259/53, 259/54 and 259/55 for the subdivision of L.R. No. 14675 and amalgamation of the excised portion with L.R. No. 14676. These were forwarded together with the original letter of provisional approval from Commissioner of Lands.

8. The Plaintiff contended that despite being ready to complete the sale on 31/3/2005, the sale could not be completed because the deed plans the 1<sup>st</sup> Defendant had procured had not been registered by the 1<sup>st</sup> Defendant's surveyor to facilitate the surrender of the original titles over L.R. No. 14675 and 14676. Kimani Kairu and Company Advocates asked the 1<sup>st</sup> Defendant to procure another firm of advocates in its letter of 17/5/2005 when it became untenable for this firm to continue representing both parties in the sale transaction. The 1<sup>st</sup> Defendant wrote to Kimani Kairu and Company Advocates on 19/5/2005 demanding the return of the completion documents. Gakuru and Company Advocates, sued as the 2<sup>nd</sup> Defendant confirmed in their letter dated 30/5/2005 that they had been instructed to represent the 1<sup>st</sup> Defendant in the transaction. The Advocates stated in that letter that they would be asking for the balance of the purchase price once their client availed the original subdivision certificate and final approval of subdivision.

9. Gakuru and Company Advocates wrote to Kimani Kairu and Advocates on 22/6/2005 confirming that the 1<sup>st</sup> Defendant had no objection to this firm to continuing to represent the purchaser, who is the Plaintiff. The letter requested the advocates to prepare surrenders for L.R. Nos. 14675 and 14676 to facilitate re-grant of L.R. No. 27240. The letter stated that the surveyor's fees would be shared by both parties and requested the release of the balance of the purchase price to Gakuru and Company Advocates to hold in trust pending the registration of the new titles.

10. Acting on behalf of the Plaintiff, Kimani Kairu and Company Advocates forwarded grant number I.R. No. 46560 together with the rates clearance certificate to Gakuru and Company Advocates on 9/8/2007. He also forwarded grant number I.R. No. 47144 in the names of James W. Mugereki, Emilio K. Ngotho and Elijah J. Kinyanjui; partial re-conveyance of mortgage dated 31/1/1989; transfer dated 31/1/1989 from James W. Mugereki, Emilio K. Ngotho and Elijah J. Kinyanjui to the Plaintiff in respect of L.R. No. 14676. These were forwarded together with deed plan numbers 259154, 259155 and 259153 in respect of L.R. Numbers. 27240/1, 27240/2 and 27240 respectively. The letter also forwarded a cheque for Kshs. 1,300,000/= being the balance of the purchase price which Gakuru and Company Advocates were required to hold until Kimani Kairu and Company Advocates confirmed that the property had been registered in the Plaintiff's name.

11. Kimani Kairu and Company Advocates wrote to Gakuru Company Advocates on 15/8/2005 pointing out that they had overpaid the purchase price by Kshs. 200,000/= and sought a refund of this sum. The letter was copied to the Plaintiff. Gakuru and Company Advocates forwarded a cheque for Kshs. 200,000/= on 15/8/2005 on account of the overpayment. The Plaintiff maintained that as at 9/8/2005, she had fully paid the purchase price and was waiting for the 1<sup>st</sup> Defendant to complete its part of the agreement.

12. The Plaintiff later discovered that the 1<sup>st</sup> Defendant charged L.R. No. 14675, Kiambu to the 3<sup>rd</sup> Defendant through the charge dated 6/12/2006 to secure payment of the sum of Kshs. 3,500,000/= which was in total disregard of the Plaintiff's interest in this land. The Plaintiff contended that the 1<sup>st</sup> Defendant breached the sale agreement by failing to procure the registration of the deed plans so as to complete the subdivision process. Further, that it failed to obtain the necessary consent to facilitate the registration of the land in the Plaintiff's name; it failed to transfer the Suit Property to the Plaintiff despite the fact that she had paid the entire purchase price and went ahead to charge L.R. No. 14675 to the 3<sup>rd</sup> Defendant. The Plaintiff learned of the charge to the 3<sup>rd</sup> Defendant in January, 2009 when her lawyers did a search at the lands office which showed the encumbrances against this land.

13. The Plaintiff claimed that the 2<sup>nd</sup> Defendant colluded with the 1<sup>st</sup> Defendant and released the balance of the purchase price to the 1<sup>st</sup> Defendant together with the completion and title documents without the Plaintiff's consent. The Plaintiff maintained that the 2<sup>nd</sup> Defendant breached its professional undertaking to the Plaintiff's advocates which was the basis upon which the balance of the purchase price was released to it. The Plaintiff averred that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acted fraudulently by secretly charging L.R. No. 14675 to the 3<sup>rd</sup> Defendant and representing to the Plaintiff up to January 2009 that they were in the process of procuring the title documents in her name yet by that time the land was already charged to the 3<sup>rd</sup> Defendant. Further, that they acted fraudulently by purporting to unilaterally rescind the sale of the land and returning to the Plaintiff the sum of Kshs. 1,500,000/=.

14. The letter from Gakuru and Company Advocates dated 21/9/2006 addressed to Kimani Kairu and Company Advocates stated that the process of surrender, new grant and re-grant had been slow and laborious and the advocates expected the titles to be availed in 60 days. The Plaintiff attached a copy of the letter dated 9/1/2009 from Wangalwa Oundo and Company Advocates stating that the transaction could not be completed owing to reasons that were not of the 1<sup>st</sup> Defendant's making and giving notice of the intention to refund the sum of Kshs. 1,500,000/=. Gakuru and Company Advocates wrote to Kimani Kairu and Company Advocate on 19/1/2009 confirming that in February 2006 the titles had been released for surrender and consolidation and that they had recalled the 1<sup>st</sup> Defendant's title. The letter further stated that the advocates had released part of the deposit to the 1<sup>st</sup> Defendant from whom they were now seeking a refund. The letter stated that a cheque for Kshs. 400,000/= was enclosed.

15. The Plaintiff gave evidence of the substantial improvements that she had made on the land since being granted possession by the 1<sup>st</sup> Defendant. These include fencing the plot with cedar polls at Kshs. 40,000/=; planting a Keiapple fence at Kshs. 5,000/=; setting up six fish ponds at Kshs. 300,000/=; buying and installing a water pump at Kshs. 30,000/=; buying and installing a booster electrical pump and piping this to the fish ponds at Kshs. 50,000/=; setting up beehives at Kshs. 25,000/=; planting Napier grass and doing the sewer drainage system at Kshs. 45,000/=. She gave the total of these and added the estimated value of an acre in that general locality bringing the total of her claim to Kshs. 40,495,000/=. The Plaintiff stated that the 1<sup>st</sup> Defendant had on diverse dates interfered with her peaceful and quiet enjoyment of the Suit Property by destroying her fence and releasing toxic waste into her property as a result of which her pedigree dogs and geese died. The Plaintiff confirmed that the 1<sup>st</sup> Defendant's advocate did not forward the refund of Kshs. 1,500,000/= mentioned in their letter.

16. The Plaintiff called David Gachanja Kagu, a licensed land surveyor to give evidence. He stated that he was instructed by the Plaintiff's advocate in September 2018 to establish if L.R. No. 14675, Kiambu had been subdivided and ascertain if deed plan numbers 259153, 259154 and 259155 obtained by the 1<sup>st</sup> Defendant had been registered so as to facilitate the transfer of the subdivided portion to the Plaintiff. Mr. Kagu confirmed that the deed plans existed at the survey office and got certified copies which he produced in evidence. Deed plan number 259153 for L.R. No. 27240 shows the area as 1.539 hectares and is dated 16/3/2009. Deed plan number 259154 for L.R. No. 27240/1 gives its size as 1.014 hectares while deed plan number 259155 for L.R. No. 27240/2 gives the size of this land as 0.5214 hectare. Mr. Kagu also produced a copy of his report dated 6/11/2018 in which he found that L.R. Numbers 14675 and 14676 were amalgamated and given a new L.R. number 27240, which was then subdivided into L.R. no. 27240/1 and 27240/2 which are on survey plan F/R No. 446/65. Three deed plans were drawn and signed by the Director of Surveys in respect of that survey. Deed plan number 259153 is in respect of the amalgamated land being L.R. No. 27240. Deed plan number 259154 for L.R. No. 27240/1 comprises what was previously L.R. No. 14676 and an additional 0.39 ha. Deed plan number 259155 for L.R. No. 27240/2 comprises the plot which was previously L.R. No. 14675, less 0.39 ha which was amalgamated with the previous L.R. No. 14675 to form L.R. No. 27240/1. The surveyor recommended that it would be necessary to have L.R. No. 14675 subdivided into two portions with each portion getting a separate deed plan. Since the subdivided plot falls on the South Western end of the plot and will not have an access road, it can be amalgamated with L.R. No. 14676. He recommended that new survey plans will need to be drawn to reflect the subdivision and amalgamation. The surveyor pointed out the fact that in the survey that resulted in the creation of L.R. No. 27240, two plots belonging to different people had been amalgamated and that such survey work is not registrable.

17. Francis Peter Kirangi gave evidence for the 1<sup>st</sup> Defendant. He confirmed that he entered into a sale agreement with the Plaintiff on 20/12/2004. He maintained that by 31/3/2005 which was the completion date under the agreement, he had obtained and remitted all the necessary documents for the transfer of the Suit Property to the Plaintiff. He stated that the Plaintiff failed to pay the balance of Kshs. 1,500,000/= on the completion date and that he needed the sale proceeds to pay fees for one of the directors who was going to USA for further studies. He confirmed that he instructed Gakuru and Company Advocates to act for the 1<sup>st</sup> Defendant. He also confirmed that after obtaining the documents and title for the suit land he proceeded to use the title over L.R. No. 14675 as a security for the loan of Kshs. 3,500,000/= which he took from the 3<sup>rd</sup> Defendant.

18. He stated that the 1<sup>st</sup> Defendant directed its advocate to refund the Plaintiff the sum of Kshs. 1,500,000/= being the deposit which she paid on execution of the sale agreement. The witness stated that the Suit Property was vacant until June 2009 when the Plaintiff started excavating the suit land by digging trenches and ponds of water. He stated that he was ready and willing to refund the balance since the transaction was incapable of being completed.

19. He confirmed that he handed over vacant possession to the Plaintiff and he was expected to complete the subdivision. He stated that he did not forward the original certificate of subdivision because their common advocate, Mr. Kimani was supposed to procure that document. He also confirmed that he did not rescind the agreement or issue any notice to the Plaintiff. He confirmed that at the time he took the loan from the 3<sup>rd</sup> Defendant he had not refunded the purchase price paid by the Plaintiff. On the payment of the balance of the purchase forwarded by the Plaintiffs advocate to Gakuru and Company Advocates, the witness stated that Mr. Kimani Advocate made a mistake by sending the cheque to Mr. Gakuru. He maintained that he did not receive any money from the 2<sup>nd</sup> Defendant who was his lawyer. He stated that the 1<sup>st</sup> Defendant took the title from Mr. Gakuru Advocate in 2006 since there was no sale agreement in force and the 1<sup>st</sup> Defendant needed to charge the land to get money to pay his son's school fees.

20. The court asked Mr. Kiranga whether the Suit Property had been discharged and his response was that the 3<sup>rd</sup> Defendant had signed the discharge of charge which he had not registered at the lands office.

21. Parties filed submissions which the court has considered. The Plaintiff submitted that the 1<sup>st</sup> Defendant did not serve a completion notice in line with condition 4 (7) (f) of the Law Society Conditions of Sale which requires either party who is ready, able and willing to complete, to serve on the other party a notice to complete the transaction where the sale is not completed on the completion date. The Plaintiff relied on the case of *Ayub Ndung'u v Marion Waithera Gacheru [2006] eKLR* in which the court stated that rescission of a contract for the sale of land can only arise where the party in default has been notified of the default and given an opportunity to rectify it. Further, that where there is rescission of a contract for the sale of land, the vendor is required to return the deposit to the purchaser in order to escape liability for breach of contract. The court stated that rescission is only allowed where restitution is possible which cannot be the case where possession has been given to the purchaser who has developed the land.

22. The Plaintiff maintained that the 1<sup>st</sup> Defendant did not rescind the sale agreement and denied that the sale was vitiated. The Plaintiff urged the court to find that the Defendant was in breach of the sale agreement dated 20/12/2004 by his failure to complete the subdivision process and to obtain all the necessary documents, and facilitate the registration of the Suit Property in the Plaintiff's name; refusing to transfer the land to the Plaintiff after being paid the full purchase price and charging the land to a bank after receiving the purchase price from the Plaintiff. The Plaintiff submitted that she is entitled to specific performance.

23. The 1<sup>st</sup> Defendant denied that the Plaintiff paid the balance of the purchase price to their advocates before 31/3/2005 and maintained that this was forwarded on 22/4/2005 in breach of clause 9 of the sale agreement. It denied that there was a variation of the completion date. It further submitted that it availed all the completion documents by 31/3/2005. The 1<sup>st</sup> Defendant submitted that the Plaintiff did not produce evidence of the substantial improvements she made to the suit land to support her claim. The 1<sup>st</sup> Defendant contended that the Plaintiff's claim against the 3<sup>rd</sup> Defendant is unfounded and misplaced based on the evidence placed before the court that the land was discharged before the suit was filed. The 1<sup>st</sup> Defendant claimed it did not receive the sum of Kshs. 700,000/= from the 2<sup>nd</sup> Defendant. It urged the court to dismiss the Plaintiff's claim and allow its counterclaim.

24. The issue for determination is whether the court should grant the orders sought in the Amended Plaint dated 12/4/2017 or those sought in the 1<sup>st</sup> Defendant's Counterclaim dated 7/5/2018. It is not contested that the Plaintiff entered into a sale agreement dated 20/12/2004 with the 1<sup>st</sup> Defendant for the purchase of an acre that was to be excised from the 1<sup>st</sup> Defendant's land known as L.R. No. 14675, at the agreed consideration of Kshs. 2,600,000/=. It is also not in dispute that the Plaintiff paid a deposit of Kshs. 1,500,000/= on execution of the sale agreement in accordance with clause 4 of the agreement and was given possession of the Suit Property by the 1<sup>st</sup> Defendant. L.R. No. 14675 is adjacent to L.R. No. 14676 which belongs to the Plaintiff.

25. The balance of the purchase price of Kshs. 1,100,000/= was to be paid on the completion date which was given as 31/3/2005 under the agreement. Under clause 9 of the sale agreement, the 1<sup>st</sup> Defendant was to hand over completion documents comprising the original grant number I.R. 46560, the original deed plan for the land, original certificate of subdivision, duly executed transfer, rates clearance certificate from Kiambu Municipal Council and consent to transfer from the Commissioner of Lands. The 1<sup>st</sup> Defendant contended that the Plaintiff did not pay the balance of the purchase price by the completion date. Both parties were represented by the same advocates in the sale transaction but the 1<sup>st</sup> Defendant later instructed Gakuru and Company Advocates to represent it.

26. On the evidence adduced, the court is satisfied that the Plaintiff paid the balance of the purchase price to the 1<sup>st</sup> Defendant based on Kimani Kairu and Company Advocates' letter dated 9/8/2005 which forwarded the cheque for Kshs. 1,300,000/= to Gakuru and Company Advocates. This is further supported by the cheque for Kshs. 200,000/= forwarded by Gakuru and Company Advocates to Kimani Kairu and Company Advocates, being the refund for the overpayment of the balance of the purchase price. The 1<sup>st</sup> Defendant's remedy lies in suing the 2<sup>nd</sup> Defendant for the balance of the purchase price which its lawyers received on its behalf.

27. The 1<sup>st</sup> Defendant did not issue a completion notice to the Plaintiff and was not ready and able to complete the transaction by the completion date for the reason that his land being L.R. No. 14675 had not been subdivided for purposes of hiving off the acre that the Plaintiff was purchasing from the 1<sup>st</sup> Defendant. It was dishonest of the 1<sup>st</sup> Defendant to proceed to charge his land to the 3<sup>rd</sup> Defendant after the Plaintiff had paid the full purchase price for the acre of land she was buying from the Defendant. This was also done after giving possession of the Suit Property to the Plaintiff. The 1<sup>st</sup> Defendant's witness confirmed that the 3<sup>rd</sup> Defendant presented to him the discharge of charge over his land, L.R. No. 14675, but he had not registered the discharge of charge against this land at the lands registry. The witness did not give any reason for the 1<sup>st</sup> Defendant's failure to register the discharge of charge. This can only have been intended to frustrate the Plaintiff's effort.

28. David Gacanja Kagu, the licensed land surveyor stated in his evidence that L.R. No. 14675 belonging to the 1<sup>st</sup> Defendant was amalgamated with L.R. No. 14676 belonging to the Plaintiff to create L.R. No. 27240 which was to be subdivided into L.R. No. 27240/1 and L.R. No. 27240/2. He termed the survey that resulted in the creation of L.R. No. 27240 as irregular for amalgamating plots belonging to different parties. That survey was never registered and the two plots exist as they were before, as L.R. No. 14675 and L.R. No. 14676. The surveyor stated that the proper way to go about the survey would have been to have an acre excised from the 1<sup>st</sup> Defendant's land, that is L.R. No. 14675 then have a second survey through which the acre hived off the 1<sup>st</sup> Defendant's land would be amalgamated with the Plaintiff's land being L.R. No. 14676.

29. Weighing the evidence of the Plaintiff against the evidence presented by the 1<sup>st</sup> Defendant, the court is persuaded that the Plaintiff has proved her case on a balance of probabilities and directs the 1<sup>st</sup> Defendant to specifically perform its obligations under the sale agreement dated 20/12/2004 within 30 days of the date of this judgement. In default, the 3<sup>rd</sup> Defendant will prepare and deliver up another discharge of charge over L.R. No. 14675 to the Plaintiff to enable the Plaintiff undertake the subdivision of L.R. No. 14675 for purposes of hiving off an acre to be transferred to the Plaintiff. If the Defendant fails to undertake the survey and transfer of an acre from L.R. No. 14675 to the Plaintiff within 30 days, the Deputy Registrar will execute all the documents necessary to effect the transfer of an acre from L.R. No. 14675 to the Plaintiff.

30. The court also grants prayers (a) and (c) of the Amended Plaint together with the costs of the suit. The Plaintiff is awarded general damages of Kshs. 300,000/= against the 2<sup>nd</sup> Defendant for breach of the professional undertaking. The 1<sup>st</sup> Defendant's counterclaim is dismissed with costs to the Plaintiff. The 1<sup>st</sup> Defendant will also pay costs to the 3<sup>rd</sup> Defendant.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of July 2019.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. B. Ouma for the Plaintiff

Mr. G. Odhiambo holding brief for Mr. Wangalwa for the 1<sup>st</sup> Defendant

Ms. B. Mureithi holding brief for Ms. Gathara for the 2<sup>nd</sup> Defendant

Mr. B. Situma holding brief for Ms. Njoroge for the 3<sup>rd</sup> Defendant

Mr. V. Owuor- Court Assistant