



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 327 OF 2013**

**CEREMENTINA MASINDE LIBONDA.....1<sup>ST</sup> PLAINTIFF**

**FRED NYONGESA LIBONDA.....2<sup>ND</sup> PLAINTIFF**

**BRAMWEL MASINDE LIBONDA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**ALBERT MASINDE LIBONDA.....1<sup>ST</sup> DEFENDANT**

**FERDINARD MASOLO.....2<sup>ND</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR, BUNGOMA.....3<sup>RD</sup> DEFENDANT**

**J U D G M E N T**

If another example is required of a case that is frivolous and vexatious, then this suit fits the bill perfectly well.

Until the 26<sup>th</sup> January 2016 when **CEREMENTINA MASINDE LIBONDA** (1<sup>st</sup> Plaintiff) and **BRAMWEL MASINDE LIBONDA** (3<sup>rd</sup> plaintiff) withdrew their claims against the defendants, the main protagonists in this case were a mother (1<sup>st</sup> plaintiff) and her three sons **FRED NYONGESA LIBONDA** (2<sup>nd</sup> plaintiff), **BRAMWEL MASINDE LIBONDA** (3<sup>rd</sup> plaintiff) and **ALBERT MASINDE LIBONDA** (1<sup>st</sup> defendant).

The dispute is in respect to the land parcel **NO E. BUKUSU/S. KANDUYI 1951** (the suit land) which has since been sub – divided to give rise to land parcels **NO E. BUKUSU/S. KANDUYI/15700, 15701, 15702, 15703, 15704** and **15705**. Parcel **NO E. BUKUSU/S. KANDUYI/15704** was also subsequently sub-divided to give rise to two parcels being **E. BUKUSU/S. KANDUNYI/15897** and **15898**.

By their Complaint dated 28<sup>th</sup> November 2013, the plaintiffs sought Judgment against the defendants in the following terms: -

**(a) An order of injunction to restrain and prohibit the defendants by themselves, their servants, agents, legal representatives and assigns from dealing in any manner whatsoever in the suit land until the determination of this suit.**

**(b) A declaration that the land parcel NO E. BUKUSU/S. KANDUYI/1951 was family land registered in the name of and held by the 1<sup>st</sup> defendant in trust for and/or subject to the rights and interests of all members of the plaintiff's family.**

**(c) A declaration that the sub-division of E. BUKUSU/S. KANDUYI/1951 and the resultant registrations of E. BUKUSU/S. KANDUYI/15700, 15701, 15702, 15703, 15704, 15705 as well as the sub – division of E. BUKUSU/S. KANDUYI/15704 into Nos E. BUKUSU/S. KANDUYI/15897 and 15898 and the purported sale of E. BUKUSU/S. KANDUYI/15897 to the 2<sup>nd</sup> defendant and his KENYA CHURCH OF CHRIST was fraudulent.**

**(d) An order cancelling the fraudulent sub – divisions made and any resultant registrations and the reversion of the land to the original NO. E. BUKUSU/S. KANDUYI/1951 which should thereafter be sub – divided and registered in terms of the rights and interests of the family in the following proportions: -**

**1. CEREMENTINA MASINDE LIBONDA – ¼ acre**

**2. FRED NYONGESA LIBONDA – 3 acres**

**3. BRAMWEL MASINDE LIBONDA – 3 acres**

**4. ALBERT MASINDE LIBONDA – 2 acres**

**And the Deputy Registrar of this Court be directed to execute all documents necessary to effect the same.**

**(e) The defendants be condemned to pay costs of this suit.**

The plaintiffs' case is that following the death of her husband, the 1<sup>st</sup> plaintiff sold the family land in **LUUYA VULLAGE** in or around 1976 and purchased the suit land at **BUEMA NAMISI VILLAGE** where she settled with her children who included the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs as well as the 1<sup>st</sup> defendant. The 1<sup>st</sup> plaintiff caused the suit land to be registered in the names of her eldest son the 1<sup>st</sup> defendant (the plaintiff wrongly refers to him as the 2<sup>nd</sup> defendant), to hold in trust for and/or subject to the rights and interests of all the family members in the following proportions: -

**1. CEREMENTINA MASINDE LIBONDA – ¼ acre**

**2. FRED NYONGESA LIBONDA – 3 acres**

**3. BRAMWEL MASINDE LIBONDA – 3 acres**

**4. ALBERT MASINDE LIBONDA – 2 acres**

In or about 1990 the three brothers i.e. 2<sup>nd</sup> plaintiff, 3<sup>rd</sup> plaintiff and 1<sup>st</sup> defendant amicably shared the suit land and planted boundaries and between 1990 and 2009, the plaintiffs had each sold their shares of the family land to third parties including the **NAMISI CHURCH OF CHRIST** under **PASTOR JAMES MISIKO WALUBAYI** and moved to settle elsewhere. In 2012, the 1<sup>st</sup> defendant without the consent of other family members stealthily and fraudulently caused the suit land which he still held subject to the rights and interests of the family, to be sub – divided into seven portions i.e. **E. BUKUSU/S. KANDUYI/15700, 15701, 15702, 15703, 15704** and **15705** in a manner adverse to the interests and wishes of the plaintiffs with parcel **NO. E. BUKUSU/S. KANDUYI/15704** further being sub – divided into **E. BUKUSU/S. KANDUYI/15897** and **15898**. In collusion with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the 1<sup>st</sup> defendant fraudulently caused a caution and restriction registered over parcel **NO. E. BUKUSU/S. KANDUYI/15897** which on the ground is the portion sold by the 2<sup>nd</sup> plaintiff to and is in the occupancy of **PASTOR JAMES MISIKO WALUBAYI** of **NAMISI CHURCH OF CHRIST** to be removed and the land to be transferred to the **KENYA CHURCH OF CHRIST** of the 2<sup>nd</sup> defendant. The particulars of fraud and collusion on the part of the defendants are pleaded into paragraph 10 of the said plaint and revolve around abuse of trust, transgression of the rights and interests of the plaintiff and collusion to remove the caution and restriction registered over land parcel **NO. E. BUKUSU/S. KANDUYI/15897**.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a joint statement of defence in which it is pleaded, inter alia, that indeed the suit land was family land belonging to the plaintiffs and 1<sup>st</sup> defendant but added that each of the family members, with the consent of the 1<sup>st</sup> defendant as trustee, sold their share and moved out. That also with the consent of the plaintiff, the 1<sup>st</sup> defendant sold 1 acre to the **KENYA CHURCH OF CHRIST (NAMISI)** under the 2<sup>nd</sup> defendant and not **PASTOR JAMES MISIKO** as alleged in the plaint. The 1<sup>st</sup> and 2<sup>nd</sup> defendants denied all the allegations of fraud adding that by their own admission, the plaintiffs had sold their shares in the suit land and moved elsewhere. The 1<sup>st</sup> and 2<sup>nd</sup> defendants therefore urged the Court to dismiss with costs the suit as being frivolous and not disclosing any cause of action against them.

The plaintiffs filed a reply to that defence reiterating the averments in the plaint and denied having sold any land to **KENYA CHURCH OF CHRIST** under the 2<sup>nd</sup> defendant but adding that the 2<sup>nd</sup> plaintiff sold one acre of his share to **NAMISI CHURCH OF CHRIST** under **PASTOR JAMES MISIKO WALUBAYI**. They also denied that their suit is frivolous or discloses no cause of action.

In its defence, the 3<sup>rd</sup> defendant denied having colluded with the 1<sup>st</sup> and 2<sup>nd</sup> defendants as alleged in the plaint adding that the suit land was registered in the names of the 1<sup>st</sup> defendant in 2012 and a title was issued in his names and thereafter, the 1<sup>st</sup> defendant carried out sub – division thereof following the requisite procedures. With regard to the restriction placed on the land, the 3<sup>rd</sup> defendant pleaded that it had been placed vide **BUNGOMA HIGH COURT MISC APPLICATION NO. 73 OF 2013** which order was lifted on 4<sup>th</sup> October 2013 and the 3<sup>rd</sup> defendant complied with the said order. The 3<sup>rd</sup> defendant sought the dismissal of the suit against it with costs.

As already indicated at the commencement of this Judgment, by the time this suit came up for hearing on 28<sup>th</sup> May 2019, the 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs had already withdrawn their claims against the defendants leaving only the 2<sup>nd</sup> plaintiff **FRED NYONGESA LIBONDA** to prosecute this suit.

The 2<sup>nd</sup> plaintiff adopted as his evidence his witness statement dated 25<sup>th</sup> November 2013 and produced the list of documents dated 28<sup>th</sup> November 2013. He called as his witnesses **JAMES MISIKO WALUBAYI (PW 2)** and **SYLVESTER WASWA WEKOKA (PW 3)**.

In his statement, the 2<sup>nd</sup> plaintiff confirms that the 1<sup>st</sup> plaintiff is his mother and the 3<sup>rd</sup> plaintiff his brother and that following the death of his father **JACOB MASINDE LIBONDA** in 1970, the 1<sup>st</sup> plaintiff sold the family land in **LUUYA** in 1976 and bought the suit land measuring 8¼ acres where the family moved. The said land was registered in the names of the 1<sup>st</sup> defendant who was the eldest son to hold in trust for the family as he was the only one with an identity card. That the family lived peacefully on the suit land which they shared although it was still registered in the names of the 1<sup>st</sup> defendant. However, in the 1990's the 3<sup>rd</sup> plaintiff and 1<sup>st</sup> defendant started selling their shares and even gave the 2<sup>nd</sup> plaintiff authority to sell their shares and in 1995, the 2<sup>nd</sup> plaintiff also sold his share and moved to

**MABANGA** with the 1<sup>st</sup> plaintiff. In 2005, he sold his remaining one acre to **PASTOR JAMES MISIKO WALUBAYI of NAMISI CHURCH OF CHRIST** and in 2008, the 1<sup>st</sup> plaintiff's ¼ acre was sold to one **DR WEBALA'S SON**. However, all this was done without processing title deeds for the purchasers and to-date, the 1<sup>st</sup> defendant has not done so. In 2012, the 2<sup>nd</sup> plaintiff got information that the 1<sup>st</sup> defendant had secretly and without the consent of the family sub – divided the suit land into seven portions (it is infact six portions not seven) being **E. BUKUSU/S. KANDUYI/15700, 15701, 15702, 15703, 15704 and 15705** and was looking for buyers and had also sub – divided the parcel **NO. E. BUKUSU/S. KANDUYI/15704** into **E. BUKUSU/S. KANDUYI/15897 and 15898** and was preparing to sell portion **NO. E. BUKUSU/S. KANDUYI/15897** which is in the possession of **PASTOR JAMES MISIKO WALUBAYI** of the **NAMISI CHURCH OF CHRIST** to one **PASTOR FERDINAND MASOLO** of the **KENYA CHURCH OF CHRIST**. In fear that **PASTOR JAMES MISIKO WALUBAYI's** interest in portion **NO E. BUKUSU/S. KANDUYI/15897** would be transgressed, he allowed him to place a caution and restriction thereon on 19<sup>th</sup> March 2013. However, that restriction was removed and that portion was stealthily transferred to **KENYA CHURCH OF CHRIST** on 22<sup>nd</sup> October 2013. It is the 2<sup>nd</sup> plaintiff's evidence therefore that the said transfer of parcel **NO. E. BUKUSU/S. KANDUYI/15897** was fraudulent and all the sub – division of the suit land should be cancelled so that it can revert to the original parcel number.

**JAMES MISIKO WALUBAYI (PW 2)** also adopted as his evidence his statement dated 25<sup>th</sup> November 2013 in which he has stated that he is a Pastor at the **NAMISI CHURCH OF CHRIST** and that in 2005 the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs sold him one acre out of the suit land at a cost of Kshs. 70,000/= . They told him that the suit land was registered in the names of the 1<sup>st</sup> defendant who was not present and that the one acre was the share of the 2<sup>nd</sup> plaintiff. He took possession and constructed thereon a structure which is used by the **NAMISI CHURCH OF CHRIST** but in 2011, a dispute arose among the church members some of who broke away and joined **PASTOR FERDINAND MASOLO'S KENYA CHURCH OF CHRIST**. Later, the 1<sup>st</sup> defendant informed him that he had signed for the transfer of parcel **NO. E. BUKUSU/S. KANDUYI/15897** and handed it over to the **KENYA CHURCH OF CHRIST** representative who alleged to have been sent by the witness. When he did a search, he found that the parcel **NO. E. BUKUSU/S. KANDUYI/15897** was registered in the names of **KENYA CHURCH OF CHRIST** yet on the ground, it is occupied by the **NAMISI CHURCH OF CHRIST** and he had placed a caution and restriction on the land. His attempts to get an explanation from the Land Registrar were not successful and so he reported this matter to the plaintiffs who resolved to file this suit.

**SYLVESTER WASWA WEKOKA (PW 3)** similarly adopted as his evidence his witness statement dated 25<sup>th</sup> November 2013 in which he confirmed that the suit land which originally belonged to his father **JOHN WASWA NEKOKA** was sold to the 1<sup>st</sup> plaintiff in 1976 including the one acre which the witness' grandfather had given him. And although the 1<sup>st</sup> defendant later agreed to transfer to the witness his one acre share out of the suit land and even executed an agreement to that effect, that was not done and the 1<sup>st</sup> defendant later sold his share of the suit land and migrated to Busia.

The 1<sup>st</sup> defendant **ALBERT MASINDE LIBONDA (DW 1)** adopted as his evidence his witness statement dated 24<sup>th</sup> January 2014 and produced as his documentary evidence the list of documents also dated the same day.

He confirmed that the suit land measuring 8¼ acres was family land which, with the consent of his mother (1<sup>st</sup> plaintiff) and his siblings (the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs), was sub – divided and sold to third parties so that the family could settle elsewhere. He was the trustee and the suit land was shared out as follows: -

1<sup>ST</sup> PLAINTIFF – ¼ ACRE

2<sup>ND</sup> PLAINTIFF – 3 ACRES

3<sup>RD</sup> PLAINTIFF – 3 ACRES

1<sup>ST</sup> DEFENDANT - 2 ACRES

A restriction was later placed on the parcel **NO. E BUKUSU/S. KANDUYI/15897** which had been allocated to the **KENYA CHURCH OF CHRIST** but was later removed following a Court Order. There are however, wrangles over that portion among members and non – member of the said church and this suit has been filed for ulterior motives and the orders sought therein should not be granted.

**PASTOR FERDINAND MASOLO** the 2<sup>nd</sup> defendant also adopted as his evidence his witness statement dated 24<sup>th</sup> January 2014 in which he stated that he is a pastor with the **KENYA CHURCH OF CHRIST** which purchased from the plaintiffs and the 1<sup>st</sup> defendant the portion of land parcel **NO. E. BUKUSU/S. KANDUYI/15897**. That the transaction was not done fraudulently. He produced as part of his documentary evidence a copy of the Certificate of Search in respect of the land parcel **NO. E. BUKUSU/S. KANDUYI/15897** showing that that parcel is registered in the names of the **KENYA CHURCH OF CHRIST – NAMISI**, a copy of the title deed and a copy of the Certificate of Registration of the said church.

The 3<sup>rd</sup> defendant did not adduce any evidence.

Submissions were filed both by **MR IKAPEL ADVOCATE** for the plaintiffs and **MR OTSIULA ADVOCATE** for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

From the above summary of the evidence by all the parties herein, it is difficult to understand what interest the plaintiffs have in the suit land and the resultant sub – divisions. It is also difficult to comprehend the nature of their grievances against the defendants. There is no doubt in my mind that the suit land was originally registered in the names of the 1<sup>st</sup> defendant to hold in trust for his family which includes the

plaintiffs herein. However, I do not see any evidence to suggest that the 1<sup>st</sup> defendant abused that trust. If anything, the evidence by both parties clearly shows that the suit land was amicably shared out among the family with each member selling his or her portion to 3<sup>rd</sup> parties before moving elsewhere. In his own statement dated 25<sup>th</sup> November 2013, the 2<sup>nd</sup> plaintiff, who is the only plaintiff remaining after the 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs withdrew their claim against the defendants, states as follows in paragraphs three (3) and four (4): -

**3: “In 1976 I was 12 years old. Our mother sold the land at LUUYA and bought another 8 ¼ acre piece of land at BUEMA NAMISI from JOHN WASWA WEKOKA. She moved the family from LUUYA to BUEMA. At that time our elder brother ALBERT MASINDE was a Form II student at Alliance High School Kikuyu. Since ALBERT was the only one with a National Identity Card, our mother caused him to be registered as the proprietor of the land to hold in trust for the family.”**

**4: “We lived peacefully at BUEMA NAMISI and even shared the land amicably among three brothers in 1990. ALBERT MASINDE (1<sup>st</sup> defendant) who had benefited from the two acres sold at LUUYA got 2 acres. BRAMWEL (3<sup>rd</sup> plaintiff) and I got 3 acres each. ¼ acre was reserved for our mother. The land still remained registered in the name of ALBERT MASINDE (1<sup>st</sup> defendant).”**

The 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs of course did not testify but their statements are part of the record and they supported the above averments.

The 1<sup>st</sup> defendant states as follows in paragraphs two (2) and three (3) of his witness statement dated 24<sup>th</sup> January 2014: -

**“As a family and being the trustee of the said land, we shared as follows: -**

- (a) ALBERT MASINDE LIBONDA – 2 acres**
- (b) FRED NYONGESA LIBONDA – 3 acres**
- (c) BRAMWEL MASINDE LIBONDA – 3 acres**
- (d) CEREMENTINA NAMAKWA LUBONDA – ¼ acre**

**Each of the family members sold his or her share to other third parties.”**

When he was cross – examined by MR KWEYU counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants, this is what the 2<sup>nd</sup> plaintiff said: -

**“Each of us including our mother who was the 1<sup>st</sup> plaintiff sold their share and moved elsewhere where we bought other land.”**

He said the same when cross – examined by the Court. The general duties of a trustee include safe guarding the trust property and distributing it among the beneficiaries at the appropriate time. A trustee shall therefore not use any trust property as his own personal property. In light of the above common ground that the suit land was shared among the family in the ration stated above after which each member sold his or her land and moved elsewhere, I do not see on what basis the plaintiffs could plead, as they have done in paragraph 9 of their plaint, that:-

**“In 2012 the 1<sup>st</sup> defendant without the consent of other family members stealthily and fraudulently caused the family land, which he still held subject to the rights and interests of the family, to be subdivided into seven portions viz E. BUKUSU/S. KANDUYI/ 15700, 15701, 15702, 15703, 15704, 15705 in a manner adverse to the interests and wishes of the plaintiffs with parcel NO 15704 further being subdivided into E.BUKUSU/S. KANDUYI/15897 and 15898.”**

The conduct of the 1<sup>st</sup> defendant in the manner in which he dealt with the suit land can hardly be described as **“stealthily and fraudulently.”** It was open, transparent and with the consent of all the beneficiaries including the 2<sup>nd</sup> plaintiff who is the only one pursuing what is clearly a lost cause.

The 2<sup>nd</sup> plaintiff is also estopped from re – opening the issue regarding the suit land because he and his co – plaintiffs voluntarily relinquished their rights therein. This is estoppel by conduct which was considered in the case of **D & C BUILDERS .V. SIDNEY RES [1966] 2 QB** where Lord DENNING M. R stated:

**“It is the first principle upon which all Courts of equity proceed, that if parties, who have entered into definite and distinct terms involving certain legal results, afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or be kept in suspense, or held in any event, the person who otherwise might have enforced those rights will not be allowed to enforce them when it would be inequitable having regard to the dealings which have taken place between the parties.”**

When the plaintiffs and the 1<sup>st</sup> defendant distributed the suit land among themselves and sold their respective shares to third parties, the 1<sup>st</sup> defendant’s duty as a trustee effectively came to an end. The 2<sup>nd</sup> plaintiff, by his own conduct, made it clear that he no longer had any interest in the suit land or any resultant sub – divisions. Indeed, subject to the right of the purchasers, nothing would have stopped the 1<sup>st</sup> defendant from transferring the suit land to himself. It is therefore erroneous for counsel for the 2<sup>nd</sup> plaintiff **MR IKAPEL** to submit as he has done on page four (4) of his submission that: -

***“Here the 1<sup>st</sup> defendant failed the test. He subdivided the land subject of trust and started selling the subdivisions to third parties against his mandate and against the interest of the beneficiaries. Nowhere in his statement of defence or witness statement does the 1<sup>st</sup> defendant aver that his mandate as a trustee extended to disposition of the land under his trust to persons other than the direct beneficiaries.”***

That may be so. However, the disposition of the plaintiffs’ rights and interests in the suit land was done by the parties themselves including the 2<sup>nd</sup> plaintiff. They could not retain any rights in what they had voluntarily disposed off.

The 2<sup>nd</sup> plaintiff appears to me to be pursuing the interests of **PASTOR JAMES MISIKO WALUBAYI’S NAMISI CHURCH OF CHRIST** in parcel **NO. E. BUKUSU/S. KANDUYI/15897**. Indeed, that is what comes out clearly in the said Pastor’s witness statement at paragraph nine (9) when the states that: -

***“At the end of October 2013, I heard a rumour that the KENYA CHURCH OF CHRIST had received a title deed for plot NO. 15897. On 30/10/2013 I visited the Land Office and carried out another search which revealed that indeed plot NO 15897 had been registered in the name of KENYA CHURCH OF CHRIST on 22/10/2013 I did not know what became of the caution and restriction I had registered. My attempts to reach the District Land Registrar for an explanation were not successful. I therefore reported the matter to the plaintiffs who resolved to file this suit.”***

And in paragraph ten (10) of his witness statement, the 2<sup>nd</sup> plaintiff says: -

***“We feared that PASTOR JAMES MISIKO WALUBAYI’S rights and interest over portion of land registered as E. BUKUSU/S. KANDUYI/15897 would be transgressed. We allowed him to file a caution and restriction with the District Land Registrar (3<sup>rd</sup> defendant) to forbid any disposition or prevent any improper dealings thereof. The caution was lodged with the 3<sup>rd</sup> defendant on 12/3/2013 and the restriction was lodged on 19/3/2013. The 3<sup>rd</sup> defendant has not communicated to us since.”***

**PASTOR JAMES MISIKO WALUBAYI** and the **NAMISI CHURCH OF CHRIST** are capable of pursuing their interests, if any, in the land parcel **NO E. BUKUSU/S. KANDUYI/15897**. They need not hide behind the plaintiffs in this case. If they have a legitimate claim in that parcel of land, the easiest thing would have been for them to be enjoined in these proceedings. Further, no adverse orders can be made against the **KENYA CHURCH OF CHRIST** who hold the title deed to the land parcel **NO E. BUKUSU/S. KANDUYI/15897** since it is not party in these proceedings.

Finally, the claim that the restriction and caution placed on the land parcel **NO. E. BUKUSU/S. KANDUYI/15897** was removed fraudulently is not supported by an evidence. Among the documents filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants is an order issued by **HON. A. OMOLLO J** in **BUNGOMA ELC MISC APPLCIATION NO 73 OF 2013** involving the 1<sup>st</sup> defendant (as Applicant) and **JAMES MISIKO** (as Respondent) in which the said restriction was lifted. The order reads: -

***1: “That the restriction placed by the Respondent upon land parcel number E. BUKUSU/S. KANDUYI/15897 on the 12<sup>th</sup> day of March 2012 be and is hereby lifted.”***

If any of the parties herein was aggrieved by that order, they ought to have filed an appeal. The 2<sup>nd</sup> plaintiff cannot now be heard to claim that the said restriction was fraudulently removed.

It must be clear by now that the 2<sup>nd</sup> plaintiff’s claim against the defendants is devoid of any merits and, I stated at the commencement of this Judgment, it is frivolous, vexatious and only meant to harass the defendants. It is for dismissal.

Ultimately therefore and having considered the evidence by the parties herein, I make the following orders: -

- 1. This suit is dismissed.**
- 2. The 2<sup>nd</sup> plaintiff shall meet the defendants’ costs.**

**Boaz N. Olao.**

**JUDGE**

**14<sup>th</sup> November 2019.**

**Judgment dated, delivered and signed in Open Court this 14<sup>th</sup> day of November 2019 at Bungoma.**

Mr Were for Mr Ikapel for 2<sup>nd</sup> plaintiff present

Mr Kweyu for 1<sup>st</sup> and 2<sup>nd</sup> defendant present

1<sup>st</sup> plaintiff deceased

2<sup>nd</sup> plaintiff present

3<sup>rd</sup> plaintiff absent

1<sup>st</sup> defendant present

2<sup>nd</sup> defendant present

Joy – Court Assistant

Right of Appeal explained.

**Boaz N. Olao.**

**JUDGE**

**14<sup>th</sup> November 2019.**