



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERICHO**

**CIVIL SUIT NO. 69 OF 2005**

**KIPNGENY MARISIN.....PLAINTIFF**

**VERSUS**

**CHRISTOPHER SIWON.....1ST DEFENDANT**

**DAVID KIPKOECH KOSKE.....2ND DEFENDANT**

**JOSEPH KIPKEMOI KOSKE.....3RD DEFENDANT**

**PAUL KIPKEMOI ROTICH.....4TH DEFENDANT**

**DAVID KIPKOECH KORIR.....5TH DEFENDANT**

**ELIJAH KIPRONO KOECH.....6TH DEFENDANT**

**JOHANA KIBET BOSUBEN.....7TH DEFENDANT**

**DAVID KIPKOECH MUTAI.....8TH DEFENDANT**

**SAMWEL KIPKEMOI NGETICH.....9TH DEFENDANT**

**WESLEY KIPKEMOI NGETICH.....10TH DEFENDANT**

**DAVID KIPRONO YEGON.....11TH DEFENDANT**

**JOSEPH KIPKEMOI MWOLO.....12TH DEFENDANT**

**JOHNSTONE KIPKEMOI YEGON.....13TH DEFENDANT**

**REUBEN KIPKOSKEI YEGON.....14TH DEFENDANT**

**JOHANA KIPROTICH LANGAT.....15TH DEFENDANT**

**JOSEPH KIPKEMOI LANGAT.....16TH DEFENDANT**

**DAVID KIPKOECH MWOLO.....17TH DEFENDANT**

**JOSEAH CHEPKWONY.....18TH DEFENDANT**

**JOEL KIPSOI CHEBOCHOK.....19TH DEFENDANT**

**JOHN MILGO.....20TH DEFENDANT**

**DAVID KIPKURUI CHELULE.....21ST DEFENDANT**

RICHARD KIPKEMOI MUGE.....22ND DEFENDANT  
SAMWEL KIPLANGAT KETER.....23RD DEFENDANT  
SAMWEL KIPKIRUI YEGON.....24TH DEFENDANT  
SAMWEL A. LANGAT.....25TH DEFENDANT  
ALICE CHEPNGENO KOTUT.....26TH DEFENDANT  
LILY HELLEN CHEPKOSGE.....27TH DEFENDANT  
THE LAND ADJUDICATOR  
OFFICER TRANSMARA DISTRICT.....28TH DEFENDANT

## JUDGMENT

### Introduction and Summary of Pleadings

1. By a Plaint dated 8th June 2005 the Plaintiff filed suit against the defendants seeking the following reliefs:-

*(a) A declaration that the purported registration of Defendants No. 1 to 27 as owners of land parcel No. Transmara/Olosokwan/1117 is illegal and wrongful.*

*(b) The Defendant No. 28 (Land Adjudication Officer) exceeded his powers by giving the Defendants No. 1 to 27 the land and therefore the registration of the Defendant should be cancelled.*

*(c) Costs.*

*(d) Any other order be given in the interest of justice.*

2. In the said Plaint, the Plaintiff alleges that the Defendants in or about the year 2002 or thereabouts jointly and severally colluded with the Land Adjudication officer and without any colour of right curved out 40 acres from his land parcel No. 1117 Transmara District ("the Suit Land").

3. The Plaintiff denies having sold any portion of his land to the Defendants or having entered into an agreement with the Defendants. He avers that the Land Adjudication Officer exceeded his powers and had no right to take away his land while knowing that the Defendants had only been given temporary grazing rights over the suit parcel of land.

4. The 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 22nd, 24th, and 26th Defendants filed their joint statements of defence dated 18th July 2005. In the said Defence the Defendants deny the allegations of collusion and state further that if they had indeed colluded with the Land Adjudication Officer as alleged in the Plaint then the Plaintiff could not have taken 3 years to identify the same and bring an action against them.

5. The Defendants aver further that if the Plaintiff had indeed not entered into an agreement with them then he would not have allowed them to construct houses and live there permanently. They argue further that if the Plaintiff had not sold the suit land to them then they would not have been issued with title deeds upon sub division of the suit land.

6. The Defendants aver that they are entitled to possession and occupation of the 40 acres of land parcel number Transmara/Olosokwan/1117. They contend further that the Plaintiff has no cause of action to warrant the cancellation of titles issued to them.

7. The suit was set down for hearing on 5<sup>th</sup> December, 2017 when the Plaintiff testified as PW1 and did not call any witnesses. The only defence witness was John Kipkemoi Koskei who testified as DW1.

### Plaintiff's evidence

8. In his testimony, PW1 Kipngeny Marisin denied selling the suit land to the Defendants. He also denied having signed any agreement for sale of the suit land or any document showing that he had received any money from them. In cross examination, PW1 stated that he did not put his thumb print to any sale agreement and particularly the one dated 5<sup>th</sup> September, 1997 and dismisses the said agreement as fake. The Plaintiff however did not stop at that but chose to interrogate the validity of the agreement dated 5<sup>th</sup> September, 1997.

### Defendants' evidence

9. DW1 produced an agreement marked as Defence Exhibit 1 dated 5th September 1997. I have carefully perused the said agreement for sale. In the said agreement it is stated that the plaintiff has already received the sum of Kshs. 250,000/- as consideration. The agreement is

thumbprinted by the plaintiff Kipngeny Marisin as the Vendor and Samuel Kipkirui Byegon as the purchaser. The Agreement is also witnessed by 6 other individuals whose thumbprint is visible.

10. The addendum to the Agreement marked as Defence Exhibit 2 dated 5/9/1997 states that the Plaintiff Kipngeny Marisin gave 40 acres from his plot No. 1117 out of his 165 acres and that he would no longer have a right to enter the said 40 acre parcel. The agreement lists the names of 19 individuals who allegedly purchased the suit land as a block. It is noted that one David Rotich did not witness the said addendum to the agreement.

11. The defendant produced Defence Exhibit 4 which is a letter from the Assistant Chief to the District Land Adjudication Officer. The letter states that there was a baraza held on 26<sup>th</sup> July, 2002 where 69 elders resolved that there was an agreement between Mr. Kipngeny Marisin for the purchase of 40 acres. It is noted that the minutes of the said baraza were not attached or produced as evidence. Again it is noted that this evidence is inconsistent with the other evidence produced by the Defendants. The addendum lists the names of 19 individuals who allegedly purchased the suit land.

12. The defendant also produced Defence Exhibit 6 which is a letter from the District Land Adjudication & Settlement Officer. In the said letter it is stated that the investigations on the complaint had revealed that Kipngeny Marisin had sold 40 acres and entered into an agreement for the sale of the said land. The letter further states that the transaction that was done on 8th September 1997 and witnessed by the Assistant Chief of the area.

13. In his cross examination, DW1 stated that the Assistant Chief was present when they paid the money to the Plaintiff and that the agreement was prepared on 5th September 1997. He states that the Assistant Chief signed the agreement on 8th September 1997. He states that it was the Plaintiff who took them to the Assistant Chief.

14. At the close of the case, both counsels filed submissions.

### **Plaintiff's Submissions**

15. Learned counsel Mr. Rono filed his submissions on behalf of the Plaintiff dated 16th May 2018. In the said submissions, Mr. Rono frames the following issues for determination:-

*(a) Is the Plaintiff the registered owner of the land parcel No. Transmara/Olosakwana/1117?*

*(b) Were the Defendants allowed temporary grazing rights by the Plaintiff over a portion of 40 acres or thereabout being part of plot No. Transmara/Olosakwana/1117?*

*(c) Did the Plaintiff enter into an agreement to sell the land to the defendants collectively or individually?*

*(d) Did the defendants subsequently obtain subdivision and titles to the 40 acres or thereabout without the knowledge or consent of the Plaintiff?*

*(e) Did the Defendant No. 22 exceed his powers by curving out subdividing and allocating the 40 acres from the plaintiff's land parcel No. Transmara/Olosakwana/1117*

*(f) Are the respective titles in possession of the Defendant obtained legally?*

*(g) Is the Plaintiff entitled to the prayers sought?*

*(h) Who is to pay costs?*

16. Mr. Rono submits on the 1st issue that the Plaintiff produced a letter of confirmation from the Land Adjudication Officer proving ownership of the suit land.

17. On the 2nd issue Mr. Rono submits that the Defendants were allowed to graze their animals on the parcel of land No. Transmara/Olosakwana/1117 measuring 40 acres in 1995 and refers to the evidence of Joseph Koske in his testimony.

18. On the 3rd issue, Mr. Rono submits that the Sale Agreement dated 5th September 1997 does not meet the requirements of a valid contract. He submits that the Plaintiff denied selling the 40 acres of land to the Defendants or ever thumb printing the agreement. In the circumstances it is Mr. Rono's submission that there was no offer and acceptance.

19. Mr. Rono also submits that the Plaintiff denied having received Kshs. 250,000/- from the Defendants or at all. In the circumstances he argues that the alleged agreement dated 5th September 1997 is not valid or enforceable as it lacks some of the basic ingredients of a valid contract.

20. On issue No. 4, learned counsel Mr. Rono denied the assertion that the Plaintiff consented to subdivision of the Suit Land. Mr. Rono makes reference to the evidence of Joseph Koske who admitted that the Defendants subdivided the land and obtained individual titles in 1997.

21. On issue No. 5, Mr. Rono submits that the work of the Land Adjudication Officer had been completed on the suit land as the Plaintiff had already been given land parcel No. 1117 and boundaries fixed thereon. He submits that that the Defendant No. 22 in collusion with the other Defendants hived off 40 acres from the Plaintiffs land and gave it different numbers as though the same was under adjudication. He submits that the actions of the Defendants amounted to fraud and that the same interfered with the shape and boundary of the land by reducing its acreage.

22. On issue No. 6 Mr. Rono submits that the titles issued to the Defendants are illegal null and void as they did not follow the due process of the law and should therefore be cancelled. Mr. Rono submits that that the Plaintiff has proved and established that the Defendants did not buy the land from the Plaintiff and the action taken by the Land Adjudication Officer of removing 40 acres from the Plaintiff's land without his knowledge and consent was fraudulent, illegal null and void.

### **The Defendant's Submissions**

23. Mr. Mutai learned counsel for the 1st -26th Defendants filed his submissions before this Honourable Court on 8th June 2018. Mr. Mutai submits that it is suspect that the Plaintiff lodged a case against the Defendants 8 years after selling the land He submits further that the Defendants have been cultivating the land, grazing their livestock, building and that some have even gone ahead to sell their respective parcels. He dismisses the Plaintiff's allegations as malicious and avers that he intends to use the court to regain land he had already disposed off.

24. On the issue of validity of the sale agreement, Mr. Mutai avers that the contract for sale of land entered into between the Plaintiff and the Defendants is valid as it meets the threshold in section 3 (3) of the Law of Contract Act, Cap 23 of the Laws of Kenya. He submits that the said contract was signed by the seller and the buyer and was witnessed by 6 witnesses. In the circumstances he argues that the contract has met all the conditions of a valid contract.

25. Counsel submits that the Plaintiff made an offer to the Defendants who accepted it. He refers to the evidence of DW1 one Joseph Koske who stated that the Plaintiff had offered 40 acres of his land for sale.

26. He submits that the Plaintiff had waived his right to repudiate the contract by allowing the Defendants to enjoy quiet possession for more than 8 years. He cites the case of **Lickiss v Milestone Motor Policies at Lloyd's (1996) 2 All ER 972** for the proposition that where a party by his conduct leads another to believe that the strict rights arising under a contract will not be insisted on then he will not afterwards be allowed to insist on the strict rights when it would be inequitable for him to do so.

27. Mr. Mutai submits further that the Plaintiff is not entitled to the remedy of rescission for the following reasons:-

(a) Delay

(b) Third party rights

28. On the point of delay, Mr. Mutai submits that a contract cannot be rescinded if a party has slept on his rights for too long and cites the maxim of equity "delay defeats equity". He argues that the Plaintiff slept on his rights. He cites the case of **Leaf v International Galleries** for the proposition that the remedy of rescission is not available on account of delay.

29. On the point of third party rights, Mr. Mutai submits that a contract cannot be rescinded where 3rd party rights have arisen under it as this would interfere with the rights of a person who was not privy to the original contract. He argues that providing the remedy of rescission would be an affront to the rights accruing to 3rd parties who have purchased parcels of land and were not privy to the original contract.

30. He submits that mere denial cannot form the basis for denial of a contract. He argues further that the Plaintiff has not shown any ground that would lead to the contract in dispute being vitiated.

31. Counsel submits further that having bought the land from the Plaintiff legally and obtained titles, the Defendants are the legal and absolute proprietors of the land which is currently in their possession. He submits that under section 26 of the Land Registration Act a certificate of title shall be taken by all courts as prima facie evidence that the person named as the proprietor is the absolute and indefeasible owner.

32. Mr. Mutai cites the case of **Pauline Wambui Ngari v John Kairu & Another [1997] eKLR** for the assertion that the Defendants have an overriding interest as they are rightfully registered as owners of the suit land. He also cited the case of **Obiero v Opiyo [1972] EA 227** for the proposition that even where another party has rights the same are extinguished by the plaintiff becoming the registered proprietor of the land.

33. Mr. Mutai submits that the suit is purely malicious and that the Plaintiff seeks to unfairly benefit through the court. In the circumstances, he prays that the suit be dismissed with costs.

### **Issues for Determination:**

34. Having considered the respective pleadings, evidence and rival submissions, I have summarized the following issues for determination:-

(a) Whether there was a valid Contract between the Plaintiff and the Defendants.

(b) Whether the Plaintiff is entitled to the Reliefs sought.

## **ANALYSIS AND DETERMINATION**

### **Whether there was a Valid Contract between the Plaintiff and Defendants**

35. It is not in dispute that the Plaintiff was the registered owner of all that parcel of land known as Transmara/Olosakwana/1117. It is the Plaintiff's case that he has never entered into an agreement for the sale of 40 acres excised from the said parcel or at all. He therefore avers that the Defendants colluded to carve out 40 acres from the said parcel of land without his knowledge and/or consent.

36. The Defendants on their part aver that there was a valid contract dated 5th September 1997 between themselves and the Plaintiff. In his evidence, DW1 Joseph Koskei states that Samuel Kipkirui Yegon signed the agreement on behalf of the purchasers. In his submissions, Mr Mutai argued that the Agreement was valid as it met all the requisite conditions for a valid contract. He also argued that the contract met the threshold set in section 3(3) of the Law of Contract Act.

37. Section 3(3) of the Law of Contract Act provides that no suit shall be brought on a contract for a disposition in an interest in land unless the contract upon which the suit is founded is;

- **In writing**
- **Signed by all the parties thereto**
- **The signature of each party signing has been attested by a witness who was present when the contract was signed by such party.**

38. The Court of Appeal in the case of **Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR** considered the applicability of section 3 of the Law of Contract Act and stated as follows:-

*Section 3(3) of the Law of Contract Act provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is writing, executed by the parties and attested. 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. Section 3(3) of the Law of Contract Act, came into effect on 1<sup>st</sup> June, 2003. The trial court found that the sale agreement between the parties was an oral agreement made in 1964 between the appellant and the plaintiff. Prior to the amendment of Section 3(3) of the Law of Contract Act in 2003, the subsection 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. '*

*...It is our view that Section 3 (7) of the Law of Contract Act makes exception to oral contracts for sale of land coupled with part performance. We find that Section 3 (3) of the Law of Contract Act came into effect in 2003 and does not apply to oral contracts for sale of land concluded before Section 3 (3) of the Act came into force. The proviso to Section 3 (3) of the Law of Contract Act applies in this case and we hold that the sale agreement between the appellant and the plaintiff did not violate or offend the provisions of the Law of Contract Act."*

39. From the evidence on record I note that the Agreement was signed and stamped by the Assistant Chief on 8th September 1997. I find this evidence to be quite suspect if indeed the Agreement was prepared and executed on 5th September, I find no reason why the Assistant Chief did not sign the said agreement on the same day as the other parties if at all he was present.

40. Another question that arises is whether the agreement was validly executed. DW1 in cross examination stated that he and the other defendants purchased the suit property as a block. He states further that Samuel Yegon signed the agreement for sale as the agent of the buyers. It is not clear why all the purchasers could not execute the Sale Agreement.

41. The Defendants did not produce a Power of Attorney to show that they had given him authority to sign the agreement on their behalf. While appreciating that a Power of Attorney is only but one of the ways in which a principal agent relationship can be created, it is evident that the Defendants did not lead any evidence to show how such a relationship came about in this case.

42. It is noted that the Defendants did not make any mention of the Land Control Board consent to transfer the land to the Plaintiffs although the land in question is agricultural land. Section 6 of the Land Control Act Cap 302 expressly provides that for any transaction /dealing in respect of land designated for agricultural use, consent must be obtained from the local Land Control Board. Further, it states that in case of a sale, the same must be done within six months of execution of the sale agreement for sale. Failure to obtain the consent would render such transaction invalid and void for all purposes.

43. The Court of Appeal in the case of **Rose Wakanyi Karanja & 3 others v Geoffrey Chege Kirundi & another [2016] eKLR** stated as follows:-

*“However, this is not to say we are unsympathetic to the respondents but this being a Court of Law, our sympathies have no place. Suffice is to state that the provisions of the Land Control Act are harsh, but regrettably equity cannot be of any help. In Karuri v Gituru (Supra), this Court held that:*

*“The provisions of the Land Control Board Act are of an imperative nature, there is no room for the application of any doctrine of equity to soften its harshness.”*

44. The Court of Appeal in the case of **Rose Wakanyi Karanja & 3 others v Geoffrey Chege Kirundi & another [2016] eKLR** also considered the effect of lack of consent from the Land Control Board and stated as follows:-

*“There is a long line of authorities on the effect of lack of consent of the Land Control Board. Initially, one had to obtain the consent within three months but this period was later enlarged to six months. In Hirani Ngaithe Githire v Wanjiku Munge [1979] KLR 50, Chesoni, J (as he then was) stated at page 52:*

*“Section 6 of the Land Control Act is an express provision of a statute. It is a mandatory provision, and no principle of equity can soften or change it. The court cannot do that; for it is not for us to legislate but to interpret what Parliament has legislated. So in this case that agreement between the parties having been entered in June 1969 became void for all purposes (including the purpose of specific performance) at the expiration of three months from the date of making it; and since no consent had been obtained within that time, nothing can revise or resurrect such an agreement. Failure to obtain the necessary Land Control Board consent automatically vitiates an agreement to be a party to a controlled transaction. Section 6 prohibits any dealing with agricultural land in a land control area unless the consent of the Land Control Board for the area is first obtained and any such dealing is not only illegal but absolutely void for all purposes.”*

45. Similar sentiments were expressed in **Onyango & Another v Luwayi [1986] KLR 513 at page 516 Nyarangi, J stated:**

*“The appellants admitted that no consent for the proposed transaction concerning agricultural land had been given by the Divisional Land Control Board. The transaction was therefore void for all purposes under Section 6(1) of the Land Control Act, Cap 302 because the transaction was not excluded by Section 6(3). An application for consent in respect of the proposed sale of the material parcel of land had to be made to the appropriate Land Control Board within six months of the making of the agreement ... No such application was made. That agreement therefore is of no effect and no question of specific performance can lawfully arise.”*

46. The Plaintiff stated that he did not receive the sum of Kshs. 250,000 or indeed any sum of money as consideration for the suit land. The Defendants did not produce any evidence to prove that they indeed paid the said sum to the Plaintiff.

47. DW1 in cross examination stated that the Assistant chief was present when they paid the money to the Plaintiff but signed the agreement on 8th September 1997. It is suspicious why he did not sign the agreement on 5th September 1997 if indeed he was present. It is a clear rule of evidence that he who alleges must prove. The court cannot act on the basis of conjecture but can only act on the basis of evidence. It would have done the Defendants' case a lot of good if they had produced receipts as evidence to back up the allegation that they paid the sum of Kshs. 250,000/- to the Plaintiff.

48. The Court in the case of **Purple Rose Trading Company Limited v Bhanoo Shashikant Jai [2014] eKLR** stated as follows:-

*“It is trite law that a contract which is tainted with illegality is unenforceable at the instance of either party. Where a contract is ex facie illegal, the Court will not enforce it whether the illegality is pleaded or not. This is due to the fact that once illegality is brought to the court, then the court must investigate it whether it was pleaded in the statement of defence or not since the Court, as the custodian of law cannot shut its eyes to an allegation of illegality simply on grounds that it was not pleaded. Once illegality is brought to the attention of the Court it overrides all questions of pleadings including admissions made therein. The Court will not condone an illegality and base a decision on it. It has been held that it is unacceptable that a Court should allow itself to be a party to unlawful act by ignoring it and make an order to the benefit of the wrong doer or those claiming through him. See Napier vs. National Business Agency Ltd (1951) 2 ALL ER 264, Standard Chartered Bank Kenya Limited vs. Intercom Services Limited & 4 Others Civil Appeal No. 37 of 2003 [2004] 2 KLR 183, Ethiopian Airlines vs. Motunrola [2005] 2 EA 57, Allan Njuguna T/A Mwireri Mbaos Stores vs. Veronica Nyambura Karuga & 2 Others Civil Appeal No. 165 of 1993”*

49. Based on the foregoing, it is my finding that there was no valid contract between the Plaintiff and the 1<sup>st</sup> – 27<sup>th</sup> Defendants.

50. I also find that the Land Adjudication and Settlement Officer exceeded his power by giving defendants No. 1 – 27 40 acres of the suit land without any legal basis. The said titles are therefore illegal. In arriving at this decision I am guided by the case of **Elijah Makeri Nyangw'ra -vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that:

*“ the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. Hon Justice Munyao Sila in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-*

*“The law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.*

*For the first limb, it appears to me that the title of the 1<sup>st</sup> defendant was obtained by fraud or misrepresentation. However, there is no evidence that the 1<sup>st</sup> defendant was a party to the fraud or misrepresentation. Indeed, to me the 1<sup>st</sup> defendant was an innocent purchaser for value. He was probably conned of his money by the 2<sup>nd</sup> Defendant and that is why he is the complainant in the first count of the criminal charges facing the 2<sup>nd</sup> Defendant. I am not of the view that he was a party to the fraud or misrepresentation that conveyed the land to him. He was a victim of the scheme employed by the 2<sup>nd</sup> defendant. I cannot therefore impeach the title by virtue of the provisions of section 26 (1) (a).*

*Is the title impeachable by virtue of section 26(1) (b)? First, it needs to be appreciated that for section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26(1) (b) is to remove protection from an innocent purchaser of innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26(1)(b) in my view is to protect the real title holders from being deprived of the titles by subsequent transactions”.*

*The situation that Munyao, Judge faced in the above referred to case is some what similar as in the present case before me. I am in agreement with his interpretation and application of section 26 1(a) & (b) of the Land Registration Act.”*

51. The Plaintiff has therefore proved his case on a balance of probabilities and he is entitled to the reliefs sought.

52. Accordingly, I enter judgment for the Plaintiff and make the following final orders:

- a) A declaration is hereby issued that the purported registration of defendants no. 1 to 27 as owners of land parcel no. TRNSMARA/OLOSAKWANA/1117 is illegal and wrongful.
- b) The Land Adjudication Officer (defendant No. 28) exceeded his powers by giving the defendants no.1-27 the suit land and the said registration is hereby cancelled. The suit property shall revert to the name of the Plaintiff.
- c) A copy of this judgment should be served on the Land Registrar under whose jurisdiction the suit land falls to effect the necessary changes and restore the register of land parcel no. TRANSMARA/OLOSAKWAN/1117 in the name of the Plaintiff.
- d) The costs of this suit shall be borne by the defendants jointly and severally.

**Dated, signed and delivered at Kericho this 20<sup>th</sup> day of June 2018**

**J.M ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Bii for J.K.Rono for the Plaintiff
2. Mr. Chelule Adams for the Defendant
3. Court Assistant - Rotich