REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 15 OF 2015

JONAH KABUGO.....APPELLANT

VERSUS

MARTIN MBAYA.....1ST RESPONDENT

KIMATHI MURUNGI.....2ND RESPONDENT

GEORGE WESTON MURITHI.....3RD RESPONDENT

(Being an appeal from judgment and decree of Hon. D.A. Ocharo Ag. Principal Magistrate in Nkubu PMCC No. 31 of 2010 delivered on 25th day of February, 2015)

BETWEEN

JONAH KABUGO.....APPELLANT

VERSUS

MARTIN MBAYA.....1ST DEFENDANT

KIMATHI MURUNGI.....2ND DEFENDANT

GEORGE WESTON MURITHI.....3RD DEFENDANT

JUDGMENT

Introduction.

1. The Appellant filed an amended plaint dated **13/4/2012** in the ***Principal Magistrate Court in Nkubu in Civil Suit No. 31 of 2010*** against respondents herein whom he named as the respondents therein in the same order as herein above, in which suit he sought the following orders:-

a. An order that the defendants' dealings with the appellant's LR. No. NKUENE/TAITA/550 and the 3rd defendant's acquisition of LR. No. NKUENE/TAITA/2012 was fraudulent and the registration thereof should be cancelled.

b. An order directing the District Land Registrar Meru Central District to cancel the registration of LR. No. NKUENE/TAITA/2012 registered in the names of the 3rd defendant in the land register and the same be registered in the names of the plaintiff in the event of the 3rd defendant failing to do so the Executive Officer of the Court to sign all the requisite transfer documents to effect the transfer thereof in the names of the plaintiff.

c. An order of permanent injunction to restrain the 1st, 2nd and 3rd defendants, their agents, servants, assigns, employees or successors in title from interfering with the suit land LR. No. NKUENE/TAITA/2012.

d. General damages for fraud.

e. Costs and interest at court rates.

f. Any other relief this honourable court may deem necessary.

2. The appellant's claim in the trial court was that **LR. No. NKUENE/TAITA/550** was fraudulently subdivided by the 1st and 2nd respondents into several parcels including the parcel forming the suit land that is **LR. No. NKUENE/TAITA/ 2012**; that the 1st and 2nd respondents caused **LR. No. NKUENE/TAITA/2012** to be registered in the names of the 2nd and 3rd respondents and failed or refused to re-transfer the said parcel to the appellant. Various particulars of fraud were alleged including uttering false documents to the registry, failing to obtain the consent of the appellant in both the subdivision and the change of ownership, refusal to retransfer the parcel to the appellant, illegal obtainance of land control board consents, and obtaining the land without payment of consideration. It is alleged that the transfer by the 2nd to the 3rd respondent is null as the transfer was not sanctioned by the appellant and the 2nd respondent did not have good title to pass to the latter. Further particulars of fraud were specified in the amended plaint against the 1st 2nd and 3rd respondents, and the appellant further averred that the respondents did not have any legal claim to the suit land hence the orders set out at the beginning of this judgment.

3. The 1st respondent filed his defence to the amended plaint dated 4/6/2012 denying the alleged fraud and and alleging that the subdivision of the suit land was sanctioned by the appellant but adding that what happened after it was a mystery to the 1st respondent.

4. The 3rd respondent filed a defence dated 30/5/2012 in which he denied the claim and stated that the suit land is registered under his name; that he is a bona fide purchaser for value from the registered owner of the property offered for sale and he had no intent to acquire it wrongfully; that he denies being part of or contributory to the alleged fraud, and that the suit fails to disclose a reasonable cause of action against him and should be struck out *in limine.*

The Appellant's Case

5. The appellants filed a Memorandum of Appeal on **5/3/2015** in which he listed **10** grounds which grounds can be summarized as follows:

a. The learned court erred in not finding that the 2nd respondent had not filed a defence while the same was on the record;

b. The learned magistrate erred in finding that the surveyor had not been sued while the surveyor had been instructed by the appellant;

c. That the learned magistrate failed to find that there was no contract and no privity of contract between the appellant and the respondents hence leading to failure to find that the transfer was fraudulent;

d. The learned magistrate erred in failing to find that the appellant's evidence was truthful and ruled against the weight of the appellant's evidence;

e. That the learned magistrate erred in failing to find that he had jurisdiction under the law to order the cancellation of the registration of the resultant parcel in the respondents' names and re-transfer of the same to the appellant's name.

6. It is sought that the appeal be allowed and the respondents' dealings with the appellant's land be declared fraudulent, the registrations in the 3rd respondent's name be cancelled, the land be registered in the name of the appellant and also that the respondents do meet the costs of both the suit in the subordinate court and this appeal.

Submissions of the Parties

7. The appellant filed his submissions on this appeal on the **23/7/2018**. The 1st respondent filed his on the **8/8/2018** and the 3rd respondent on **19//9/2018**. I have perused the court record and I have found no submissions filed on behalf of the 2nd respondent. I have considered the filed submissions.

Determination

8. On whether a defence was filed by the 2nd respondent, I have noted that **item 10** in the appeal bundle's index reads *"2nd defendant's statement of defence "* and guides the reader to **page 27**. On **page 27** of the appeal bundle is a witness statement by the 2nd defendant. It starts thus:

"I am the 2nd defendant herein and thus make this statement in my defence."

9. In the case of **Sebei District Administration vs Gasyali & Others (1968) E.A. 300,** the Court, while dealing with the issue of setting aside judgment for failure to file defence within the prescribed time observed as follows:-

"In my view the Court should not solely concentrate on the poverty of the Applicant's excuse for not entering appearance or filing a defence within the prescribed time. The nature of the action should be considered, the defence if one has been brought to the notice of the court however irregularly should be considered, the question as to whether the Plaintiff can reasonably be compensated by costs for any delay occasioned should be considered, and finally I think it should always be remembered that to deny the subject a hearing should be the last resort of a court. It is wrong under all circumstances to shut out a defendant from being heard. A defendant should be ordered to pay costs to compensate the plaintiff for any delay occasioned by the setting aside and be permitted to defend."

10. In the instant case this court is dealing with a litigant who was acting in person and who, apparently without legal aid, filed what he may have considered to be a sufficient defence to the claim. It matters not that it does not conform to the usual format a defence takes. It is in the form of a written statement of what he believes were the correct facts. In **Mumo Matemu Vs Trusted Society of Human Rights Alliance 2013 eKLR** the court observed as follows regarding pleadings:

> ***"Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation…"***

11. It is not as though the 2nd defendant filed nothing. In my view his statement suffices as a defence.

12. I find that there was a defence of the 2nd defendant on the record before the trial magistrate. The magistrate erred in finding that there was no appearance or defence on the part of the 2nd respondent.

13. On the magistrate's finding that the surveyor had not been sued, it is clear from the face of the pleadings that that was the case. The appellant's submission is that the appellant instructed the surveyor to subdivide the land hence the surveyor committed no wrong to warrant any proceedings against him.

14. On this issue however, can the magistrate really be faulted bearing in mind that the plaintiff framed his amended plaint to reflect that the 1st and 2nd defendants subdivided the land into three parcels.

15. Evidence that is not consistent with pleadings is not allowed in our jurisdiction nor in any other that I may think of. Courts normally emphasize on the need for the evidence to abide by the facts pleaded. In **Nairobi Civil Case No. 319 Of 2013 John Kibicho Thirima Versus Emmanuel Parsmei Mkoitiko eKLR** the court observed as follows:

> **"111. The Court of Appeal in considering whether a party can rely on an unpleaded issue stated in IEBC & Another V Stephen Mutinda Mule & 3 Others [2014] e KLR as follows:**
>
> **"The decision of the Malawi Supreme Court of Appeal in Malawi Railways Ltd v Nyasulu [1998] MW SC,3 in which the learned Judges quoted with approval from an article by Jack Jacob entitled "The present importance of pleadings".**
>
> **112. The Malawi decision was published in [1960] Current Legal Problems, at page 174 whereof the author had stated:**
>
> **" As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings …… for the sake of certainty, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings.**
>
> **Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculations.**
>
> **Moreover, in such event, the parties themselves or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice…"**
>
> **"In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item: "Any other business" in the sense that points other than those specific may be raised without notice."**

16. In the instant case therefore, the appellant cannot be heard to state that the correct position is that he authorized the surveyor to subdivide the land, as this would mean that the particulars in the plaint attributing the subdivision to the 1st and 2nd defendants are not correct.

17. If the appellant's pleading expressly stated that it was not the appellant but the 1st and 2nd respondents who caused the subdivision, then it follows that whoever they employed to carry out this act that requires great expertise is a necessary party to the suit within the meaning of **Order 1 rule 10(2) of the Civil Procedure Rules.** I further note that it was permissible for the appellant to take advantage of **Order 1 Rule 7 of the Civil Procedure Rules** and enjoin the surveyor, but he never did so. The Surveyor would have shed light on who his real principal was in the exercise. Without his joinder or evidence many issues could not be resolved easily or at all.

18. I have examined the judgment and I find that the magistrate analyzed the evidence of **PW1** (the appellant) properly. He found that the appellant had testified that he had authorized the subdivision of the land into two parcels but the surveyor came up with three, two of which were registered in his name and one, the suit land which was registered in the 2nd respondent's name without the appellant's consent. In my view the surveyor required to be made a party to the suit for going against the express wishes of his principal if any fraud was to be proved in respect of the subdivision.

19. However as I sum up on this issue it is necessary for me to observe here that the decision as to who to enjoin in proceedings may not oft times lie with a litigant but with his counsel, the legal advisor and expert on whom the litigant may, depending on his level of enlightenment, entirely trust and whose actions he may approbate without any in-depth understanding of their ramifications.

20. In the light of the above observation, though the magistrate was right in finding that the surveyor had not been joined as a defendant, he was not necessarily correct to base his conclusion as to the truthfulness of the appellant's evidence on this non-joinder.

21. Wherever the blame for the omission lay, the learned magistrate was correct in the light of the contents of the plaint in holding for the purposes of his decision, that the surveyor had not been enjoined as a defendant in the suit.

22. As to whether the learned magistrate failed to find that there was no contract and no privity of contract between the appellant and the respondents thus leading to failure to find that the transfer was fraudulent, evidence of the parties should be examined.

23. The magistrate analyzed the evidence and found that PW2 the Land Registrar, Meru Central Land Registry said that the suit land was regularly transferred from the 2nd to the 3rd defendant but that there were no details of the transfer from the plaintiff to the 2nd defendant, and he could not tell if the transfer from the plaintiff to the 2nd defendant was regular or not.

24. The learned magistrate found that the 1st respondent was a nephew to the plaintiff and his evidence was that the plaintiff had voluntarily surrendered his documents for parcel number 550 to facilitate subdivision and subsequent transfer of one parcel to the 2nd defendant. The magistrate further observed that the evidence of the 2nd defendant is that he had purchased the parcel of land from the 1st defendant in 2004 at Ksh 240,000/= and sold it to the 3rd defendant in 2012. The magistrate observed that the appellant admitted that he gave the subdivision task to the surveyor in 2004.

25. From that point, this court directly resorts to the evidence of the parties on the record.

26. The appellant acknowledged that the 1st respondent was his nephew. He did not know the 3rd respondent. He averred that he never made any agreement with the 2nd defendant and that the 2nd defendant did not pay him any money; nor did he attend any land board meeting for a consent to transfer. He checked the records at the lands office when he learned of the transaction; that there the land registrar was of no assistance and the appellant reported to the police; finally the police escorted him to the land registry and he was able to get a green card which showed the names of the 1st and 2nd respondents; he was given a letter summoning the 1st and 2nd defendant to deliver to them but later learnt that they had gone to the police a day before the summons; though the police promised to arrest the 1st and 2nd respondents that never happened. He was advised to file a suit. He never signed any sale agreement with any of the respondents. He never signed any transfer of land to the 2nd defendant. The signature on the documents does not belong to him. He never sold any land to any of the defendants. He never instructed the surveyor to sell his land. He has never had the intention to give the 1st defendant land; he gave the surveyor the documents to facilitate the subdivision but instead of two, the surveyor created three subdivisions. He learnt of the sale in the year 2006. He never signed any mutation forms;

27. The main player in the transfer narrative is DW1. His version is that his uncle Kiruja, the appellant's younger brother informed him that the appellant held two acres of land he held on behalf of Kiruja; that they entered into some transaction over the land measuring half an acre; that DW1 had doubts when Kiruja said he would sell a quarter acre of the land to DW1 as DW1 knew the land was registered in the appellant's name; that DW1 asked Kiruja to ask for the title from the appellant; that the appellant asked for a goat in an attempt to deal with the matter in a traditional way; that the goat was slaughtered; that the appellant asked what Kiruja wanted; that Kiruja said he wanted to give DW1 a quarter of an acre from the two acres registered in the appellant's name; that the appellant asked that a surveyor be sought to excise the quarter acre from the land; that the appellant agreed to give DW1 a quarter of an acre; that the surveyor gave the appellant subdivision papers in the presence of Kiruja; that the appellant signed the subdivision papers voluntarily; that DW1 then met the 2nd respondent who bought the quarter acre DW 1 had been given. Under cross examination DW1 stated that the agreement for the transfer of the land between him and the appellant was oral. However he conceded that no land has ever been excised and given to Kiruja by the appellant. He admitted to not having attended any land board meeting for a consent; he admitted to selling the land to the 2nd respondent.

28. The 2nd respondent's evidence was that he bought the land from the 1st respondent. He only produced a copy of a sale agreement and a copy of the green card. In his written statement he stated that he had entered into a sale agreement with the 1st respondent with the approval of the appellant. However he paid the consideration to the 1st respondent, but the transfer was effected directly into his name by the appellant as had been allegedly agreed to save time and costs. According to him the plaintiff used to see him in occupation of the land for 7 years yet he never raised any complaint. He believes that the plaintiff wants to defraud him since he has become aware that prices of land in the area have exponentially risen.

29. The evidence of Kiruja, **DW3** did not help the defendants' matters in this suit as he was not the registered owner of the land. He did not have any dispute registered between him and the appellant in court or elsewhere. Further he admitted that the appellant was the first registered owner of the land. He averred that he agreed to give a quarter acre to the 2nd defendant. That it was not a sale; that he could not sell as he had no title. Under cross examination by Mr. Gikunda he stated that he never knew whether the 1st respondent ever took money for the land. He was not aware of the three subdivisions; he believes that the appellant sold the land in secret.

30. The evidence of the 3rd respondent is not of any help in the matter of the dispute between the appellant and the first two respondents, for he only states that he was a bona fide purchaser for value of the land offered for sale by a registered owner.

31. The register shows that the subdivision was effected in the year 2004. The only application for consent and letter of consent of the land board produced by the 2nd respondent is that obtained between the 2nd respondent and the 3rd respondent. There were no documents

produced to show that the appellant transferred the land to either the 1st or the 2nd respondent.

32. Though the 2nd respondent was purportedly registered as the proprietor of a portion hired off from the main parcel on 17/11/04, he never demonstrated that this was done after a regular subdivision exercise that involved the appellant.

33. The submission of the 1st respondent at the trial was that the appellant transferred the land parcel to him. This is not borne out by the documentation in this case. By this very allegation that is unsupported by evidence the 1st respondent who would have otherwise escaped blame has put himself into the centre of the controversy, for by it he seems to claim title, which he failed to prove at the trial court. If the 1st respondent had not informed the 2nd respondent that he had been given land the 2nd respondent would not have entered into the transaction.

34. In the same submission the 1st respondent accuses the 2nd respondent of transferring the land to himself and later to the 3rd defendant without his knowledge or the knowledge of the appellant. This lends credence to part of the appellant's narrative concerning the transaction. If the appellant never transferred the land to the 1st respondent, how then could the 1st and the 2nd respondent be able to sell the land?

35. It is credible that the appellant did not execute any documents. None were produced by the defendants. The agreement between the 1st and 2nd respondents did not involve the appellant yet the land was registered in his name. The agreement seems to state at its clause (a) that the 1st respondent is the absolute owner of **Nkuene/Taita/550** which is not the case. The 1st respondent was also to receive the consideration, not expressed to be on behalf of the appellant but on his own behalf. He was to apply for the consent of the land board.

36. With the above in mind, it is in doubt that the 2nd respondent ever conducted a due diligence exercise to ascertain the root of title claimed by the 1st respondent. **In Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others[2016] eKLR,** the court stated as follows:

> **"A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. *No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.* With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld." [Emphasis mine].**

37. In summary, the 1st and 2nd respondents appear to have taken control of the appellant's land without his consent, caused subdivision thereof beyond the scope envisaged by the appellant, and also caused the transfer of the land to the 2nd respondent.

38. I therefore find that learned magistrate failed to find that there was no evidence of contract and no therefore no privity of contract between the appellant and the respondents. If she had found as much, the sequel to that would have been a finding that the transfer of the land to the 2nd respondent was fraudulent and thus the transfer to the 3rd respondent was invalid to grant him a clean title.

39. It is inconceivable that land can be dealt with by non-owners in the manner in which the 1st and 2nd respondents did, that is, in total disregard of the registered owner, and lead to clean title on the part of those strangers.

40. Regarding the issue whether the learned magistrate erred in failing to find that the appellant's evidence was truthful and ruled against the weight of the appellant's evidence, I find that the truthfulness of the appellant was evidenced by his admission of painful things which a shrewd man in his strange predicament would have preferred to sweep under the carpet. This included the admission that the plaintiff had authorized the subdivision of the land. In my view the burden of proof fell upon the defendants to demonstrate that the subdivision of the land into 3 parcels and the transfer of the suit land was conducted upon the sanction of or with the involvement of the plaintiff or pursuant to the plaintiff's instructions. This they failed to do.

41. I therefore find that the learned magistrate ruled against the weight of the evidence on the record on that issue.

42. The last question is whether the learned magistrate erred in failing to find that he had jurisdiction under the law to order the cancellation of the registration of the resultant parcel in the respondents' names and re-transfer of the same to the appellant's name.

43. The suit before the magistrate was filed in the year **2010**. The governing law applicable to the suit land then was the **Registered Land Act Cap 300** (now repealed).

44. Section 143 of the **Registered Land Act** (now repealed) provided as follows:

> **(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.**
>
> **(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence**

of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

45. Section 159 of the Registered Land Act provides as follows:-

> **"Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court or where dispute comes within the provisions of section 3(1) of the Land Disputes Tribunal Act in accordance with that Act."**

46. In **Nyeri High Court Civil Appeal 32 of 2007 Job Muriithi Waweru Versus Patrick Mbatia** ***(Appeal from original Judgment and Orders of the Chief Magistrate's Court at Nyeri in Civil Case No. 654 of 2006 dated 13th April 2007 by K. Sambu – R.M.)*** the court reversed order of cancellation of title issued by a magistrate's court. The court observed as follows:

> ***"Reading through the above provisions of the law (sections 143 and 159 of the RLA, [now repealed])it is quite clear that the learned magistrate had no jurisdiction to make the impugned order, pecuniary or otherwise."***

47. The above decision was held to be merely persuasive in the case of **Kerugoya High Court Probate and Administration Succession Cause No. 642 Of 2014 In The Estate of Mutugi Mbutii-(deceased) Bernard Muchiri Mutugi vs Stephen Muchiri** where it was stated as follows:

> **"The appellant further submits that no evidence was adduced through hearing to prove that the title was acquired illegally. That no provision under the Law of Succession Act confers jurisdiction on the court the necessary powers to cancel titles. That it is only the High Court which could cancel title deeds under Section 159 of the Registered Land Act. (Repealed)However the provision gave jurisdiction to the High court and Resident Magistrate's court depending on the value of the subject matter. The provision relates to Civil suits. What is before this court is a Succession Cause.**
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> **He relied on John Muriithi Waweru –V- Patrick Mbathia, Nyeri H.C.C.A No. 32/2007. The decision is persuasive. The facts are distinguishable as it was a civil case based on contract. This court is dealing with a succession matter and must consider the Law of Succession Act in determining the matter. In any case the court cited Section 143 of the Registered Land Act(Repealed) which gives court jurisdiction for rectification of register by directing that any registration be cancelled or amended if it is satisfied that the registration was by mistake or fraud. The provisions gave Magistrate's Court jurisdiction where it had pecuniary jurisdiction. I have held above that the court had the pecuniary jurisdiction based on the stated value of the estate. Section 143 of the Registered Land Act (Repealed) is stating that rectification may involve cancellation or amendment of the title deed. So even under the Registered Land Act, the Magistrate could cancel the title deed."**

48. In **Kakamega ELC Appeal No. 23 Of 2017 Aggrey Khajira Indeche Versus Jonah Andanje Muchilimani** while considering the provisions of section 159 of the Registered Land Act (now repealed) the court observed as follows:

> **"On ground 9 of the appeal; the appellant alleges that the learned trial magistrate lacked jurisdiction to hear and determine the case. The suit before the lower court was filed on 15th September, 2005. This was done when the Registered Land Act Cap 300 Laws of Kenya (now repealed) was the applicable law. Section 159 of the Act vested jurisdiction to hear disputes relating to land in the High Court and the subordinate court presided over by a Senior Resident Magistrate. This was the then express provision of the law that was applicable before the Act was repealed. It is therefore, not true that the subordinate court which was presided over by a Principal Magistrate who is senior to a Senior Resident Magistrate lacked jurisdiction to hear and determine the case."**

49. I am persuaded by the last two decisions which are in any event more recent. I find that the magistrate had jurisdiction to cancel the title. Subsequently an order of re-transfer of the title into the appellant's name would have been the only sequela.

50. Consequently, I find that the appellant's appeal is merited. I hereby allow the appeal and issue the following orders:

(a) A declaration that the respondents' dealings with the appellant's land LR Nkuene/Taita/550 was fraudulent;

(b) An order that the registration of title to Nkuene/Taita/2012 in the name of the 3rd respondent is hereby cancelled;

(c) An order that after the cancellation of registration of the title in the name of the 3rd respondent the land shall be registered in the name of the appellant;

(d) An order that the respondents shall jointly and severally pay the costs of this appeal and the costs of the suit in the trial court below.

51. It is so ordered.

Dated and signed and Delivered at Meru this 20th day of December, 2018.

MWANGI NJOROGE

JUDGE

ENVIRONMENT AND LAND COURT.