



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 265 OF 2017**

**FORMERLY EMBU ELC. 79 OF 2014**

**NJAGI KANAMPIU.....PLAINTIFF**

**VERSUS**

**KELLEN NCHUNGUNI RIUNGU.....1<sup>ST</sup> DEFENDANT**

**FRANCIS KINEGENI CHABARI.....2<sup>ND</sup> DEFENDANT**

**ELOSY KAGENDO STEPHEN.....3<sup>RD</sup> DEFENDANT**

**JOSEPH KATHENYA KANAMPIU.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**BACKGROUND**

1. The Plaintiff's suit was filed on 2/6/2011 supposedly on behalf of one Joseph Kathenya who was of unsound mind. However, later the said Joseph Kathenya contested that he was of unsound mind and was cited as being the 4<sup>th</sup> defendant for purposes of the proceedings. The plaintiff sought a cancellation of title deeds held by the 1<sup>st</sup> and 2<sup>nd</sup> defendants on grounds that they were fraudulently acquired from Joseph Kathenya who is of unsound mind. The said Land Parcel No.700 was in the name of the 4<sup>th</sup> defendant who subdivided it into parcels 1713 and 1714 and sold it to the 1<sup>st</sup> and 3<sup>rd</sup> defendants respectively. The 3<sup>rd</sup> defendant later sold No. 1714 to the 2<sup>nd</sup> defendant.

**THE PLAINTIFF'S CASE**

2. The Plaint is dated 2<sup>nd</sup> June 2011 and filed on 3<sup>rd</sup> June 2011. The prayers sought are:

1. That the Honourable Court be pleased to order the cancellation of the Title deeds for land parcel No. MWIMBI/KIRARO/1713 and 1714 which are in the names of the defendants and the same to revert to JOSEPH KATHENYA KANAMPIU and the Plaintiff to hold the same in trust for him.

2. Costs and interests of the suit.

3. The facts as per the Plaint are to the effect that the Plaintiff had brought the suit on behalf of Joseph Kathenya who was of unsound mind and had been defrauded of his parcel of land MWIMBI/KIRARO/700 which had been subdivided by the defendants into parcels MWIMBI/KIRARO/1713 and 1714 which were registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 2<sup>nd</sup> defendant thereafter transferred his portion to the 3<sup>rd</sup> defendant. The plaintiff also stated that he had registered a caution and was in possession of the title deed and therefore the transactions could only have taken place fraudulently. The Plaintiff filed his witness statement on 3/12/2011 while his brother Gitari Kanampiu filed his statement on 13<sup>th</sup> December 2011. The statements were to the effect that the said Joseph Kathenya is epileptic and of unsound mind and even once attacked the plaintiff's wife and cannot manage to handle payments of millions of shillings. They state that they took care of his property because he was incapable.

4. Documents filed by the Plaintiff show the 1<sup>st</sup> defendant as the registered owner of parcel 1713 while the 3<sup>rd</sup> defendant is registered owner of parcel 1714. A green card extract on the original property shows there was a caution by the plaintiff in 2009 claiming interest as a licensee but the same was removed in 2010 by the Cautioner. The title deed had been issued to his brother in 2002 and was closed in April 2010 after subdivision.

## THE DEFENDANTS CASE

5. The defendants filed more than one statement each but I shall focus on the adopted statements.

The 1<sup>st</sup> defendant's witness statement is dated 12<sup>th</sup> June 2018 and was filed on 18<sup>th</sup> June 2018. It states that she knows the other defendants as they all bought land from the 4<sup>th</sup> defendant together. Following a sale agreement dated 28/12/12, she came to own parcel number 1713 after subdivision of the original parcel 700. All through the transaction the 4<sup>th</sup> defendant was in his right mental faculties. She prayed the court to dismiss the suit with costs.

6. The 2<sup>nd</sup> defendant's witness statement adopted in court is dated 12/6/2018. He stated that he bought his land from the 3<sup>rd</sup> defendant who had been sold the land by the 4<sup>th</sup> defendant. He says that at all times Joseph Kathenya was of sound mind and executed all documents.

7. The 3<sup>rd</sup> defendant filed a witness statement dated 5/7/2011. The initial statement was to the effect that she purchased parcel 1714 from the 2<sup>nd</sup> defendant but she corrected it to show that she purchased it from the 4<sup>th</sup> defendant and sold it to the 2<sup>nd</sup> defendant. She avers that she is not aware of the allegations in the plaint and the same do not disclose a sustainable action against her.

8. The 4<sup>th</sup> defendant is Joseph Kathenya. The suit was initially brought on his behalf but he disputed that he was of unsound mind. His statement is dated 12/6/2018 and was filed on 18/6/2018. He stated that he was the registered owner of the former parcel 700 which he subdivided and sold. He denied that he is of unsound mind and incapable of protecting his interests. He stated that the plaintiff is his younger brother who tries to paint him as being insane with the intention of grabbing his land. He has never suffered from any mental illness.

## WITNESS EVIDENCE BY THE PLAINTIFF

9. The Plaintiff called 2 witnesses in support of his case.

10. **PW1** was the Plaintiff, Njagi Kanampiu. He hails from Mwimbi, Kiraro and is a farmer. He recorded a witness statement dated 5/7/2018 and adopted the same. The land in dispute is Mwibi/Kiraro/700. The land was originally his father's land and he was given custody of the title deed as his brother (4<sup>th</sup> defendant) had epilepsy. They are 3 boys and 1 girl born to their father. The 4<sup>th</sup> defendant had never asked for the title. PW1 went to conduct a search at lands registry and discovered that the land had been registered in the names of two other people. He denied that the title for the property had ever been lost. A copy of the title, search and a copy of the green card for the property in issue were produced. The witness also produced a search on Mwimbi/Kiraro/1714 which was a resultant subdivision of the original land. PW1 stated that he had placed a caution on the suit property on 21/12/2009 and he was not aware as to how the same was lifted. That action allowed the defendants to subdivide the land. The witness added that he has been cultivating the land since 2002 with his brother named Gitari. He said the 4<sup>th</sup> defendant does not have a family and he does not know where he stays. He is epileptic and was taken away by someone named Kinegeni.

11. PW1 came to court after he found out that the land had been sold. The 1<sup>st</sup> to 3<sup>rd</sup> defendants have never come to the suit land according to him. He wants the court to cancel the title deeds held by the defendants and the same revert to Joseph Kathenye Kanampiu.

In cross-exam, the witness stated that he does not know how to read. The title deed exhibit 1 shows the 4<sup>th</sup> defendant as owner while PW1's name does not appear thereon. The land belongs to the 4<sup>th</sup> defendant but he cultivates the same with his other brother.

12. He says that he was given the title to hold by the clan and it was handed to him by the 4<sup>th</sup> defendant personally. The 4<sup>th</sup> defendant had been given money to buy the land but it is not indicated as being held in trust. The plaintiff stated that he has his own land parcel no. Mwimbi/Kiraro/969. He is aware that parcel 700 has been divided into 1713 and 1714. He said that the purchasers did not consult him and his brother when they bought the land and even though the land belongs to his brother.

13. In re-exam, the witness stated that there are 3 brothers, himself, Gitari and Kathenya. He was given Kathenya's title because Kathenya was of unsound mind and was the youngest and unmarried. The said parcel 700 came from their father Kanampiu Njuri who also got it from his father. He corrected that his parcel of land is no 699 and not 969. His land neighbours the suit property. He said he has always held the title deed. The court noted that this witness was evasive.

14. **PW2** was Gitari Kanampiu. He stated that he signed a witness statement on 5/7/2018 and adopted the same. He said his father is Kanampiu Njuri.

15. In cross-exam, the witness stated that the 4<sup>th</sup> defendant Joseph Kathenya Kanampiu is his brother and so is the Plaintiff. They all have their own pieces of land. The 4<sup>th</sup> defendant's land is parcel 700 but he does not live there or cultivate on it. PW1 and PW2 cultivate on parcel 700 because they did not want it to go to waste. He is aware the land was subdivided. 1<sup>st</sup> defendant owns 1713 but he does not know who owns 1714. He does not believe that he and his brother Gitari are guilty of trespass.

In re-exam, he said that he and his brother cultivate the land so that it would not become a bush.

## WITNESS EVIDENCE BY THE DEFENDANTS

16. The defence called 4 witnesses.

17. **DW1** was Kellen Nchunguni Kiugu, a farmer, from Kiraro area of Tharaka Nithi County. She wrote a statement dated 12<sup>th</sup> June 2018 and adopted the same. She was taken to CID on allegation of a fake title. The said allegations were later determined to be false.

In cross-exam, the witness stated; she is not related to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. She has known the 4<sup>th</sup> defendant for many years before their transaction and they remain neighbors to date. The 4<sup>th</sup> defendant did the subdivision and the 2<sup>nd</sup> defendant who is a surveyor assisted. She bought the property from Kathenya for 1million shillings after selling her cattle and also borrowing from her children. She held the money for 1 week in her house. They wrote a sale agreement dated 28/9/2009. The statement indicating 2012 is an error. The 2<sup>nd</sup> defendant was a witness to the agreement which was signed in the advocates office in Chuka. The court noted it was made in Meru. She became unsure as to whether she signed the agreement in the advocates office stating that she was new but she says she was taken to a room by the 2<sup>nd</sup> defendant which she believed to be her advocate's office. She studied up to class 4. She is 70 years old. The parties attended LCB for the consent though she did not have a copy.

18. DW1 told the court that Kathenya was present but his family members were not present. The buyers went to the land but were chased away by the Plaintiff. By then, they had already cultivated it. Gitari was aware of the sale and said he did not have a problem with her buying the land.

19. Counsel for the Defendants was absent during the entire testimony of the 1<sup>st</sup> and part of the testimony of the 2<sup>nd</sup> defence witnesses.

20. **PW2** was Francis Kinegeni, the 2<sup>nd</sup> defendant, a businessman in Chuka. He stated that on 12/7/2018, he recorded a witness statement and adopted the same.

In cross-exam, he said that he has a hotel, shop, butchery and houses for rent. He stated that he is not a surveyor. He was working with a surveyor, Joseph Kanga, who subdivided the land but he did not participate in the subdivision. He witnessed the sale agreement drawn by counsel for the defendants. He could not vouch for the Advocate's signature but agreed that the signature on the agreement and other documents differ but did not know why Advocate Majau signed so differently. The 3<sup>rd</sup> defendant is not related to him. He has a copy of the consent but it is not in the court file. He knew the 4<sup>th</sup> defendant from the time the transaction began.

21. DW2 told the court that on 31/7/2018, he sold LR No. Karingani/Ndagani/8229 to the 4<sup>th</sup> defendant and he was paid 1.4 million in cash in the office of Advocate Majau. He said he was present when the surveyor conducted the survey on parcel No. 700 but does not recall the date. Mr. Kathenya had the title deed. He did not guide Kathenya to swear an affidavit that the title was lost. The plaintiff did not resist his inspection of the land. At the material time, the 4<sup>th</sup> defendant had told him that he was selling the land because his brothers had chased his wife away and stopped him from cultivating thereon, therefore, he felt unsafe.

22. He told the court that Kathenya's brothers started problems immediately the land was subdivided. Elosy Kagendo bought the land on 18/7/2010 and he himself purchased on 16/9/2010. Mr Kathenya was selling it and it was not cautioned. He does not know how any previous caution was lifted.

23. In re-exam, he stated that he did not move into Mwimbi/Kiraro/1714 after purchasing it due to the threats from the plaintiff. He asked the court not to cancel the title deeds.

24. DW3 was Elosy Kagendo, the 3<sup>rd</sup> defendant, a businesswoman from Njaina. She told the court that she knows the 2<sup>nd</sup> defendant as he sold him a piece of land on 16/5/2010 through an agreement. The land was Mwimbi/Kiraro/1714. She produced the sale agreement. She told the court that she also knows the 4<sup>th</sup> defendant as he is the one who sold her the said land via an agreement dated 18/5/2010. She produced the agreement. She denied defrauding the 4<sup>th</sup> defendant of his land and stated that she had always known him, to be a person of sound mind. She asked the court to dismiss the plaintiff's claim and pay her costs.

25. In cross-exam, she said that her relationship to DW4 was only that he sold her land no 1714. The agreements were prepared in advocate Majau's office in Chuka near Messaco building and she witnessed the advocate attest the same. She felt the signature by Majau on the amended defence appeared somewhat similar to the one in the sale agreement dated 16/9/2010. The 4<sup>th</sup> defendant is the one who approached her while she was at her business in Chuka and told her he was selling land. She paid him 1 million shillings in cash. She had cultivated the land but she was not allowed to harvest by Kathenya's brothers. She sold it 5 months later. She said she did not know there was a dispute when she sold the land to Kinegeni. She did not have evidence of where she withdrew the 1 million. She said that she had it ready at hand as she had many businesses and she does not usually bank her money. She said she attended the LCB with Kathenya and the transaction was approved and the consent is with her advocate. She denied that Kinegeni convened a special meeting of the LCB.

26. In re-exam, she told the court that she had cultivated parcel 1740 but was chased away with pangas by the brothers to Kathenya. The Court was given LCB consent to observe and it is noted that there is a transfer dated 7<sup>th</sup> October, 2010 which has photographs of the parties.

27. DW4 was Joseph Kathenya from Kiraro/Gakue. He stated that the plaintiff is his younger brother. He identified the 1<sup>st</sup> defendant as his neighbour to whom he sold land. He also knows the 3<sup>rd</sup> defendant who is a businesswoman in Chuka to whom he sold land. He adopted his witness statement signed on 12/6/2018 as his evidence. He denied ever giving his title to the plaintiff for safe keeping. He told the court that he sold parcel 714 to the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

28. In cross-exam, he stated that he did not know his age. He told the court that his brothers chased away his wife a long time ago although he does not recall the year. He testified that he used to work for a union and he lives near Chuka General Hospital on land belonging to Kinegeni , the 2<sup>nd</sup> defendant. The land is not his but he takes care of it. He confirmed that he sold a portion of land to the 1<sup>st</sup> defendant on 28/12/2009 and was paid 1 million in cash and he bought another property from Kinegeni on 31/7/2010. He could not explain as required

where he kept the money for the 8 months between the transactions.

29. DW4 was categorical that no one told him what to say in court and he is the one who decided to sell the land. He told the court that he did not remember who the surveyor was but it was not Kinegeni. He confirmed that he sold the land for 2.4 million shillings. He bought Kinegeni's land for 1 million shillings but did not answer as to where he put the balance save to say it was his money and he could throw it in a latrine if he saw it fit to do so. He recalls going to the LCB meetings twice. He sold his land at Kshs. 1million and not 75,000 as indicated in the transfer. His advocate Majau prepared a title deed because his title deed was lost. He knew that the title deed was lost because when he asked his brothers, they all denied knowing its whereabouts. He told the court that he did not know how the caution registered by the plaintiff was removed. He was categorical that he never gave his brothers the title deed to keep for him. He denied knowledge of Njagi, the plaintiff, being in custody of his title.

30. In re-examination, DW4 told the court that he did not hold the title for the suit land in trust for his brothers.

#### **WRITTEN SUBMISSIONS BY THE PLAINTIFF**

31. The plaintiff's submissions were filed on 13/11/2018. They submit that they have proven the entire transactions between the defendants were fraudulent. They state that the 4<sup>th</sup> defendant swore a false affidavit that his title deed was lost knowing it to be in the custody of the plaintiff. They also submit that the defendants did not show how they transacted the monies they mentioned and did not provide transfer documents or LCB consents. They submit that the 2<sup>nd</sup> defendant falsely purported to be a surveyor and he also duped the 4<sup>th</sup> defendant into all the transactions. They said the 4<sup>th</sup> defendant likely did not receive any money as he could not account for the same during cross-examination.

32. In the plaintiff's submissions he says that the signature of the advocate in the sale agreements and in the court documents are totally different and he has no office in Chuka. They claim the plaintiff has locus in this suit because he was custodian of the title deed which was from inherited land and the same could not have been disposed of without consulting him.

#### **WRITTEN SUBMISSIONS BY THE DEFENDANTS**

33. The defendant filed their submissions on 13/11/2018. They state that a registered owner cannot engage in acts of fraud against his own land. The plaintiff has completely failed to prove fraud and has no evidence at all on the claim of insanity of the 4<sup>th</sup> defendant. The plaintiff has also not tendered any document to show that a trust existed and such a claim should have been proceedings by way of OS. They state that the documents filed by the plaintiff work in their favour as they prove the existence of documented transactions between the defendants and proof of ownership of the parcels of land in issue.

34. According to them, the plaintiff and his witness admitted cultivating illegally on land that was not theirs. The 4<sup>th</sup> defendant in fact sold the land to get away from his brothers. The plaintiff has failed to prove his case on a balance of probabilities. They request the suit to be dismissed with costs and previous orders on record for injunction and inhibition issued in 2012 be vacated.

#### **ISSUES FOR DETERMINATION**

##### **35. Issue 1: is the 4<sup>th</sup> defendant of unsound mind?**

The plaintiff brought this suit claiming to be protecting the 4<sup>th</sup> defendant's interests as the 4<sup>th</sup> defendant is of unsound mind.

36. **Section 2 of the Mental Health Act** defines a person suffering from a mental disorder as "a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and a person suffering from mental impairment due to alcohol or substance abuse."

37. In **NAIROBI HCC 113 OF 1999 JOHN PATRICK MACHIRA v PATRICK KAHIRU MUTURI [2002] eKLR KULOBA J opined as follows:**

**"The law presumes that every person is mentally sound, unless and until he is proved mentally disordered. And, even where one person is shown to be of unsound mind one must always bear in mind that the degrees of mental disorder are widely variable, and in competency to do any legal act or inability to protect one's own interests, must not be inferred from a mere name assigned to the malady from which a person may be suffering. The validity of ordinary contracts entered into by persons of unsound mind depends mainly on the circumstances which accompany the act. If there is nothing unreasonable in the conduct of the person of unsound mind and the party with whom he contracts has no knowledge or suspicion of his mental disorder, the contract will be binding on the person of unsound mind and his representatives.**

**A contract with a person of unsound mind is valid and enforceable against him if at the time when the agreement was made he was not of unsound mind; and soundness of mind may be presumed if it appears that the negotiation of the agreement was conducted by him with apparent prudence, sanity, and judgment, although in fact he was insane both before and after the transaction. The general rule is that when a person of apparently sound intellect enters into an ordinary contract, and the parties cannot be restored to their former condition, the mere fact that one of them was at the time *non compos mentis* is no ground for setting aside the contract. But contracts of a person who is *non compos mentis* may be avoided when there is proof that his condition was known to the other party. There is no right to avoid a contract made with a person of unsound mind unless it is proved that the other party either knew that he was of unsound mind or knew such facts about him that the other party must be taken to have been aware that he was of unsound mind. Moreover, supervening mental disorder does**

**not release a person from his obligations under a contract unless the nature of the mental disorder renders the performance of the contract impossible.**

**Questioning one's mental health is a serious thing. He who questions another's mental well-being must demonstrate the basis of the question. Everybody is presumed to be of sound mind unless and until the contrary is shown on credible evidence. That is why there are stringent provisions in the Mental Health Act (Cap 248) setting out a laborious process by which a conclusion is to be reached concerning a person's state of mind. That process has not been embarked upon in the instant case, and no medical evidence has been furnished to the court to support any allegation putting the mental health of the defendant in doubt and to rebut the initial presumption of sanity. The *prima facie* material has not established anything on which the court at this stage at least can hold that there is a viable defence that the defendant, through disease affecting his mind, was incapable of knowing at the time of entering into any deal with the plaintiff what he was doing, or he was incapable of understanding what he was doing or of knowing that he ought not to do what he did."**

38. It is my finding that the Plaintiff failed to prove that the 4<sup>th</sup> defendant is a person of unsound mind. There were no documents filed by any medical officer showing the same despite the contention that it had been a long standing medical issue which had even caused him to attack his brother's wife. No evidence of a complaint from the alleged attack is provided either. Additionally, the 4<sup>th</sup> defendant testified in court and was a person who largely seemed to understand the nature of proceedings and his personal dealings, save that some questions may only have been lost in translation. In any event, any mental issue would have had to be shown as hampering judgment during the specific transactions to invalidate the same. I find that this ground was not proven.

### **Issue 2: Should the Court order the cancellation of the title deeds held by the 1<sup>st</sup> and 3<sup>rd</sup> defendants?**

39. It is not in doubt that a title deed is a document showing the registered proprietor of a property. By its very essence, he acquires rights to deal with the property.

The court finds that the Plaintiff has failed to prove fraud in the subdivision of parcel 700 and transfer of parcels 1713 and 1714. The 4<sup>th</sup> defendant was confirmed as the registered owner of parcel 700 and therefore his locus to deal with the property is not in doubt. The 4<sup>th</sup> defendant, upon the courts observation appears to be of sound mind and he testified that he himself without coercion sold the properties to people he knows. He even stated as to where and how he met the 1<sup>st</sup> and 2<sup>nd</sup> defendants and how they attended the LCB and how much consideration was exchanged in the transactions.

40. On the issue of a caution being wrongly lifted, it is indicated on the green card for parcel 700 that it was lifted by the Cautioner, the plaintiff himself. No persons were called from the Lands Registry to dispute this fact.

41. The documents filed by the parties include the title deed issued on 13/2/2002 to the 4<sup>th</sup> defendant, the title deed to 1713 issued to 1<sup>st</sup> defendant on 1/4/2010, the title deed for 1714 issued to 2<sup>nd</sup> defendant on 17/10/2010, sale agreements between 1<sup>st</sup> and 4<sup>th</sup> defendant dated 28/12/2009 before subdivision, between 3<sup>rd</sup> and 4<sup>th</sup> defendant dated 18/5/2010 for 1714, sale agreement between 2<sup>nd</sup> and 4<sup>th</sup> defendant dated 31/10/2010 for Ndagani/8289 and sale agreement between 2<sup>nd</sup> and 3<sup>rd</sup> defendant for 1714 dated 16/9/2010. It is clear that the 4<sup>th</sup> defendant contracted with 1<sup>st</sup> defendant before the subdivision of parcel 700 and the same was later registered to her as parcel 1713. The 4<sup>th</sup> defendant (Kathanya) then sold 1714 to the 3<sup>rd</sup> defendant (Elosy) who sold it onwards to the 2<sup>nd</sup> defendant (Francis). All these were attested to by Advocate Majau who could have been the best witness for the plaintiff if he was claiming fraud.

42. On the issue of existence of two title deeds, the situation seems to have come about because the 4<sup>th</sup> defendant's brothers hid away his title deed and pretended not to know its whereabouts when asked. This led the 4<sup>th</sup> defendant to report it as lost and hence another title deed must have been issued which must have facilitated the subdivision and sale of the suit property. Therefore, the notion that the 1<sup>st</sup>-3<sup>rd</sup> defendants fraudulently acquired title deeds from the parent property, seems not to hold water.

43. The failure to prove where the cash for the transactions came from does not mean there was no transaction. The court is aware that people are allowed to transact in cash and failure to have bank documents does not mean that there was no sale or that no money was exchanged between the parties.

44. Lastly, the court observes that ours is an adversarial process. For the court to consider there to be a dispute, it has to have a complainant. The 4<sup>th</sup> defendant had proprietary rights to the initial property LR MWIMBI/KIRARO/700. If there is someone who can complain that his land has been fraudulently transferred, then it is him. Also, the advocate who attested to all the sale agreements is the only one who can complain if his signature was forged and if he did not witness such parties sign the documents. In this case, when the issue of unsound mind failed, the claim also failed. There is no complainant for the court to protect in terms of the prayers sought.

### **Issue 3: what order should be granted as to costs?**

45. I note that the parties have litigated for a total of 7 years due to the Plaintiff's claim which I find has no merit. Costs, will therefore follow the event and will be borne by the plaintiff.

### **CONCLUSION**

46. This suit was brought on the premise that the interests of a mentally unsound person required protection. There was only the mention of him being epileptic but that does not equate him to being of unsound mind. The 4<sup>th</sup> defendant, Joseph Kathanya Kanampiu, was always present. I observed the demeanor of the 4<sup>th</sup> defendant in court when this matter was being heard orally and find that he was mentally sound

as he understood most of the proceedings, even if not all. The 4<sup>th</sup> defendant was coherent in terms of knowing who he sold the land to, when and for what consideration. He also explained clearly as to how he swore an affidavit believing the title to be lost. The plaintiff's suit lacks merit and should be dismissed with costs to the defendant.

47. Judgment is entered for the defendants in the following terms:

(i) This suit is hereby dismissed

(ii) Costs are awarded to the defendants.

48. Orders accordingly.

**Delivered in open Court at Chuka this 11<sup>th</sup> day of December, 2018**

in the presence of:

CA: Ndegwa

Majau present for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants

Miss Ngige h/b Mugambi Njeru for the plaintiff

**P.M. NJORGE**

**JUDGE**