



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. NO. 34 OF 2011

ANN MUMBI HINGA.....PLAINTIFF

-VS-

WILLIAM MWANGI GATHUMA.....1ST DEFENDANT

JANET WANJIKU MWANGI.....2ND DEFENDANT

JUDGMENT

1. The Plaintiff is the absolute proprietor of the suit land, being a vacant plot situate in Karen Nairobi. By an agreement of sale dated the 2nd May 2003 the Plaintiff agreed to sell and the Defendant agreed to buy one acre being a portion of all that piece of land Known as L R No. 26578 situate at Karen off Ngong Road (hereinafter referred as the suit land) at a price of Kshs 3.5 Million. Kshs 350,000/- being 10% deposit was paid upon execution of the agreement. The balance of Kshs 3,150,000/- was to be paid upon completion. That the sale was subject to vacant possession on completion.

2. The Completion date was 90 days from the date of execution of the agreement or 7 days of the successful completion of subdivision scheme, approval of change of use and issuance of the deed plan for the suit land whichever was earlier; the balance of the purchase price was to be released 7 days upon successful registration of the title in the purchasers name; the vendor was to obtain all the requisite approvals for subdivision, change of user of the suit property from residential to commercial as well as all the necessary consents; the vendor was to point out the boundaries and beacons to the purchasers and replace any missing beacons at her expense.

3. The Plaintiff claims that the agreement remained unperformed and on the 24th January 2011 rescinded the contract after which the Defendants continued to wrongly enter and trespass on the property hence the genesis of this suit filed against the Defendants seeking the orders so stated;-

- a) Rescission of the agreement for sale dated the 2nd May 2003.
- b) Permanent injunction restraining the Defendants from trespassing on all that property known as L.R NO. 3994/49.
- c) Damages for trespass.
- d) Costs of the suit.

4. The Defendants in resisting the Plaintiffs claim filed a defense together with a counterclaim and urged the court for orders as follows;

- a) A declaration that the Plaintiff is not entitled to rescind the agreement dated the 2nd May 2003.
- b) An order for permanent injunction restraining the Plaintiff whether by herself, servants, employees, or anyone claiming under her howsoever from breaching the sale agreement or charging selling reentering taking possession remaining erecting or continuing to erect any building or structures upon the suit property being L.R No 18096 or 1 acre piece of land shown to and occupied by the Defendants on L.R No 3994/11 or in any way interfering with the Defendants quiet possession and enjoyment of the suit property.
- c) An order for specific performance directed at the Plaintiff to transfer L.R No. 18096 to the Defendants or in the alternative to cause to be subdivided and excised from LR No. 3994/11 and transferred to the Defendant's 1 acre piece of land shown and occupied by the Defendants and to transfer the same to the Defendants. In default thereof, the Deputy Registrar of this Court be directed to execute all necessary documents to facilitate the transfer of L.R No. 18096 to the Defendants or in the alternative sign all the necessary documents to facilitate the sub-divisions, excision and transfer thereof of 1 acre occupied by the Defendants from L.R No. 3394/11 to the Defendants.
- d) Special damages of Kshs 1,400,000/-
- e) Costs of this suit.

The Plaintiff's case

5. The Plaintiff states that due to reasons beyond her control, she was unable to obtain all the requisite approvals for subdivision (that the original subdivisions were cancelled by the Ministry of Lands) and change of user and terms the transaction as having been frustrated for ten years after execution. She concluded that it was impossible to so complete and hence through her lawyers Lumumba Mumma & Kaluma Advocates wrote a letter to the Defendants on the 24th January 2011 rescinding the contract. The part payment in the sum of Kshs. 2,815,000/- already paid by the Defendants was also refunded vide bankers Cheques No.s 053589,053590,053591 & 053592 dated 24.1.2011 and addressed to the Defendants.

6. That it was a term of the agreement that possession would only be given upon completion of the transaction. That notwithstanding the rescission, the Defendants on the 30 .1.2011, 31.12.2011 and 1.2.2011 wrongfully entered the suit land and forcibly took possession. That she never gave the Defendants possession and their continued occupation was procured unlawfully fraudulently and with the help of police and gangs with the aim of stealing a match at her in the proceedings.

7. She avers that the delay in concluding the agreement approximately 10 years after execution was inordinate despite her best efforts to have the transaction concluded and it would be grossly unjust and unfair to expect her to complete the agreement now.

8. At the hearing, she confirmed that the agreement of sale identified the suit land as 1.0 acre excisable from L.R No 26578 (total acreage of this land was 2.147 ha). That she pointed out the suit land on the ground to the Defendants and it was sketched red on the plan which was attached to the agreement for sale. That the suit land had a road frontage. That the family owned the larger parcel- L.R No 3994/5 measuring about 23 acres originally. That in 1992/93 her late husband carried out subdivisions of the property, then L.R No. 3994/11 which subdivisions are captured in FR 325/97 with 20 sub-plots namely L.R No 18079-18096. It is her evidence that later in 1998 for planning purposes she attempted to consolidate the above sub-plots in a proposed amendment to an approved subdivision of LR No.s 26578,27589,24080, 26581 & 18095. It must be noted that these plots emanated from the said L.R No 3994/11. That these proposed sub-plots are contained in the proposed amendment to the approved subdivision of L.R No. 3994/11. The focus of this case is L.R No 26578 which contained the one acre the subject of the agreement of sale between the parties. She denied that L.R No. 18096 did not exist at the signing of the agreement of sale and even now. She also confirmed that possession and occupation of the

land is in the hands of the Defendants albeit it having been procured by force by the Defendants and without her consent after she had repudiated the agreement.

9. The Plaintiff called one witness Mr. Leonard Abeka Ababu who testified that he was the Plaintiff's employee. In his short testimony, he confirmed that the suit land is in possession of the Defendants who have duly fenced the same. He however stated that he was unaware whether the Defendants and others i.e. Oleshwa Association who purchased land from the Plaintiff have been given titles for their parcels.

10. In her submissions, the Plaintiff reiterated the contents of her witness statement and urged this Court to find in her favour. She stated that the parcel which had been allocated by the Directors of Survey L.R No 18096 -Deed plan No 200172 and contained in survey plan FR/No. 235/97 dated the 19.3.93 was not registered nor issued with a title. That the said L.R NO. 18096 was non-existent at the time of signing the agreement for sale. That the plot which was forcibly taken over by the Defendants is not the same as the one that she pointed out to the Defendants at the site. Further she explained that before 2012, her land is to be found in survey plan No FR 468/191 of 12.6.2007 and is identified as L.R No. 3994/49 and delineated in the deed plan No 281419.

The Defendant's case

11. The Defendants are husband and wife. The 1st Defendant gave evidence on his behalf and that of the 2nd Defendant. He stated that at all material times the Plaintiff was the registered owner of all that parcel of land known as L.R No 3994/11 situated in Karen. The said land was subdivided in 1993 into 19 plots to wit; L.R No. 18079-18096 and L.R No.3994/11/19. That the Plaintiff in 1998 attempted to consolidate the above sub divisions and subdivide thus creating several subplots, one of which was L.R No 26578 measuring 2.147 acres and out of which the Plaintiff entered into an agreement for sale to sell a portion of one acre to the Defendants.

12. That on the 2nd May 2003, the parties entered into an agreement of sale for one acre portion of land to be excised out of L.R No 26578 at the price of Kshs 3.5 million. That between the 2nd May 2003 and July 2005, the Defendants had paid a total of Kshs 2,815,000/- to the Plaintiffs as part payment of the purchase price. That the Plaintiff pointed out the beacons of the said one acre parcel that was to be hived out of the proposed L.R No. 26578 to the Defendants. That the one acre showed on the bigger plot of proposed L.R No 26578 is the same one acre in 1993 approved subdivisions where it is delineated as L.R No. 18096. This has been captured in the amended defense and counterclaim filed on 4th December 2013.

13. That upon payment of the deposit of Kshs 350,000/- on the 2nd May 2003, the Defendants took possession of the one acre plot as shown and pointed out by the Plaintiff on the ground with the full blessings and consent of the Plaintiff. That they carried out various developments on the suit land such as erection of the fence, planting trees, construction of underground water reservoir and structures in preparation for constructing a residential house once the transaction was completed.

14. That though the agreement of sale described the suit land as a portion of one acre out of L.R No 26578, they later established that the proposed subdivision that would have created L.R No. 26578 was cancelled by the Director of Survey and that the property sold to them and identified on the ground and beacons showed to them by the Plaintiff had been surveyed and was L.R No 18096. The same is in the name of the Plaintiff and is available for transfer to them and there was no need for subdivision.

15. That the completion date for the transaction was 90 days from the 2nd May 2003, that is to say the 2nd August 2003. That the Plaintiff had not performed her part of the agreement despite having paid Kshs. 2,815,000/- to the Plaintiff. That letters were sent to her through their joint advocate, Messrs Muthoni Gichohi & Co demanding completion on the part of the Plaintiff. That she pleaded for more time and as a show of good faith released a deed plan for L.R No 18095 together with a duly executed transfer in favour of the Defendants to the joint advocate on record to hold as security for and pending performance of her obligations of under the contract.

16. Vide a letter dated 19th January 2005, the Defendants wrote to the Plaintiff giving 30 days' notice to complete the transaction and in default would file suit for specific performance or breach of contract. The Plaintiff responded seeking for more time. That on 21st July 2005, in a meeting attended by all the parties and their joint advocate, the Defendants at the request of the Plaintiff agreed to pay Kshs 25,000/- to the surveyor to facilitate the sub division of the suit land. In 2009, the Plaintiff through her new Advocate Masore Nyangau & Co Advocates wrote to the Defendants Advocate Ms Muthoni Gichohi advising her that the process of resolving the long standing matter was at advanced stage and were at the stage of processing new deed plans for individual plots, that of the Defendants included.

17. That on the 24th May 2011, the Defendant out of the blues sent a letter through her then Advocates Messrs. Lumumba Mumma & Kaluma advocates purporting to rescind the agreement for sale dated the 1st May 2003 and attaching various Cheques totaling Kshs 2,815,000/-. That on the 30th January 2011 the Plaintiff through a gang of young men invaded the suit land and pulled down the fence, workers houses and toilet and destroyed mature bananas, trees and food crops occasioning the Defendants loss in the sum of Kshs 1.4 million for which a claim has been preferred in the counterclaim.

18. That sometime back the Cheques went missing and on 24th July 2014 he inquired from Equity Bank Limited on the status of the Cheques and on 17th September 2014 the bank responded confirming that the Cheques have not been presented for payment and that the money is held in its head office creditor's suspense account. The bank gave procedures which the person who requisitioned the bankers Cheques would follow to claim the money.

19. Ms. Muthoni Gichohi confirmed that she was the joint Advocate for the parties and that she drew the agreement of sale. She stated that the plot being sold was described as a portion of 1.0 acre out of L.R No 26578 and was edged red on a sketch plan which was annexed to the agreement for sale. That at that time the Plaintiff had informed her that there were subdivisions ongoing on L.R No. 26578, out of which 1.0 acre being sold to the Defendants would be hived out of. That later she learnt from the Plaintiff that the proposed subdivision for 3994/11 was rejected thereby making the L.R No. 26578 moot. That the plot reverted to L.R No 18096. That possession was given to the Defendants upon payment of deposit and with the consent of the Plaintiff.

20. That though the agreement had a 90 day completion, the parties continued to accommodate each other and was made aware that the Defendants were ready and willing to complete the transaction. That the Plaintiff gave the reasons for failure to complete as the delay in getting the survey done and many times requested the Defendants for more time to allow her to complete which the Defendants mostly obliged.

21. Stephen Nduati Maina, testified that he was employed by the Defendants as a gardener at the suit land since 2004 till 2013. That on the land was a two-roomed house made of timber, toilet, fence, crops such as bananas, trees and vegetables. He testified that he witnessed the invasion by a group of about 30 people armed with machetes who forcefully entered the suit land on 30th January 2011 and destroyed the crops and timber house and fence. That he reported the matter to Langata police station and recorded a statement.

22. Ms Ann Wanjiku Mwangi who testified on behalf of the Director of Survey pursuant to Court order issued to the Director of Survey on 21st January 2015 where the Court directed him to furnish the court with survey plans and subdivisions approvals and or proposals relating to L.R No 3994/11. She stated that the subdivision approval for L.R No 3994/11 was approved on the 9th March 1993 vide FR 235/97. The resultant plots were L.R No.s 18079-18096 (3994/11/1-20). She produced a copy of the said survey plan No. FR 235/97 and pointed out the subplots. She stated that the survey plan referred to as the proposed amendment to an approved subdivision of L.R Nos 18095,24080, 26589 26581 and 26578 does not exist in their records and on scrutiny stated that the same is a proposal which has not been approved by the Director of Survey. She also stated that the deed plan for 3994/49 does not exist in the records with the Director of Survey. She stated that the proposed amalgamation and subdivision of plots on FR 235/97 was cancelled on the 23rd April 2012 and a note endorsed on FR 235/97 as such. The survey plans that were subject of cancellation in that respect were FR No.s 285/3, 418/41 & 468/191. Effectively that

cancellation also cancelled deed plan No. 3994/49 which was under FR 468/191. Deed plan 3994/49 stood cancelled. That from their records survey plan FR 235/97 and sub plots L.R Nos. L.R No.s 18079-18096 (3994/11/1-20) are valid. She stated that the suit land is L.R No. 18096 on the ground and the same is delineated on survey plan FR 235/97 and not a portion of L.R No. 126578.

23. She also produced in Court a report pursuant to the Court order dated 24.6.2015 which required the Provincial surveyor to visit the site occupied by the Defendant and ascertain the details of the land in relation to FR 235/97 and prepare a report detailing the particulars thereof. The report states as follows;

“RE; ELC NO. 34 of 2011.

The disputed site was visited on the 23rd July 2015 with the view of identifying the actual position of the site occupied by the Defendant. The boundary beacons existing because define the subject plot were picked using total station. The picked data was later computed in the office and they correspond to the beacons named as J7, J3, K8a and J8 on FR No. 235/97.

Observations;

It is worth noting that within that parcel of land there is a metallic container, a water tank and shades of timber. The relevant positions of the above described are shown on the sketch attached. Enclosed please find the relevant survey plan FR 235/97”.

24. It was her evidence that the parcel occupied by the Defendant is L.R No. 18096. That the deed plan for L.R No 18096 is valid except she was not aware whether it had been collected by the owner from the office of the Director of Survey.

Issues and analysis

25. From the evidence placed before the Court there are several undisputed facts; the parties entered into a sale agreement for the sale of 1 acre of land to be subdivided and excised from L.R No. 26578 situate in Karen; the price was Kshs 3.5 million; the Defendants paid Kshs 2,815,000/- to the Plaintiff and the balance of Kshs 685,000/- paid to Court pursuant to this Court’s orders issued on 5.4.2011 to be held in trust for the Plaintiff pending the determination of this case; completion of the agreement was within 90 days of execution or 7 days of receipt of approvals for subdivision and change of user whichever is earlier; the parties continued accommodating each other long after the expiry of the completion date into 8 years down the road; the Defendants are in possession of the suit land; the Plaintiffs have not transferred the suit land to them; the parties initially instructed a joint advocate to act for both.

26. It is the Plaintiff’s case that she has not been able to perform the agreement because of failure to obtain the relevant consents for subdivisions, approvals for change of user of the suit land which comprises the land occupied by the Defendants and transfer it to them. In her plea, although the letter was for repudiation, she claims that she has been frustrated to complete the transaction for the above reasons.

27. It is on record that the Defendants had filed a case in court HCCC No. 40 of 2011 against the Plaintiffs seeking specific performance and when the Plaintiff filed this case, they withdrew theirs and filed a counterclaim. In their counterclaim, they are saying that the Plaintiff is not entitled to rescind the contract and that she should perform the contract specifically by transferring the suit land to them.

28. The Defendants have asserted that they are entitled to the suit land being transferred to them because they have paid the full purchase price to with Kshs 2, 815,000/- paid to the Plaintiff and Kshs 685,000/- deposited in Court as ordered by the court in April 2011.

29. Parties drew a total of 13 issues separately for determination which issues I have collapsed them to 6 issues as thus;-

Whether the Plaintiff is entitled to rescind the agreement for sale.

Whether the Defendants trespassed on to the suit premises.

Whether the suit land is L.R No. 18096 or a portion of L.R No 26578.

Whether the Plaintiff is entitled to the remedies she is asking.

30. On the 30th January 2011 the Plaintiff instructed her lawyers Ms Lumumba, Mumma & Kaluma advocates to write to the Defendants and purport to repudiate the agreement as follows;

“AGREEMENT FOR SALE.

We represent Ann Mumbi Hinga the vendor hereof.

The agreement herein remains unperformed and incomplete 8 years after execution. This is well beyond the agreed completion date. On the instructions of our client, we now write to rescind/repudiate this agreement. Enclosed please find 4 bankers Cheques in the total sum of Kshs 2,815,000/- being the refund of the payment you made to our client towards the purchase price”.

31. The Court of Appeal in **Njamunyu Vs Nyaga (1983) KLR 282** held that where completion has not taken place as intended by the parties the issue between them is when thereafter. Before the agreement is rescinded the party in default should be notified of the default and given reasonable time within which to rectify.

32. Rescission arises where one party in a contract is in default. The party which is not in default gives notice to the party in default to perform the contract. On the failure to so perform the contract is then rescinded. In this case for the Plaintiff to rescind this contract she must show that the Defendant was in default. Secondly, that she gave notice of default and the Defendants were unable to remedy the default by performing their part of their contract. The letter aforesaid does not give notice to the Defendants nor fault them for being in default. In the contract the Defendants’ obligation was to pay the purchase price. The Plaintiff did not place any evidence on record that the Defendants defaulted in that obligation. If anything the evidence is that the Defendants paid the Plaintiffs the full purchase price. There is therefore no evidence on record to show that there is a valid ground for rescission of the contract.

33. That notwithstanding the Plaintiff in her evidence has given 4 dimensional reasons as to why she variously has not completed the transaction; that her contract has been frustrated by amongst others the Director of Survey, Department of Physical Planning and the Nairobi City Council (as it was then) by failing to give approvals for subdivision; that she had repudiated the contract and therefore there was nothing left for her to perform and that the land that was sold to the Defendants is not identifiable on the whole land on the ground for purposes of transferring it to the Defendants; that her family has changed its mind and are no longer interested in selling the suit land.

34. She led evidence that the contract was frustrated because she was unable to obtain change of user and approvals of subdivisions. She told the Court that the suit land is contained in Deed plan L.R No. 3994/49 and FR 468/191 which Deed plan and survey plan had been canceled and this was in her knowledge. The witness who testified on behalf of the Directors of Survey stated that the land sold to the Plaintiff is identifiable on the ground and in their records as L.R NO.18096 which land is available and can be transferred to the Defendants as it is. The Plaintiff did not lead evidence to controvert the evidence given by the Director of Survey. It is therefore not open for the Plaintiff to say that the land sold to the Defendants is not identifiable and incapable of being transferred to the Defendants.

35. Change of user is ideally supposed to be obtained from the City Council of Nairobi (as it then was). There is no evidence on record that the Plaintiff sought and was denied approval to transfer L.R No 18096 to the Defendants or approval for change of user was applied for and denied by the local authority. In that case she cannot rely on frustration as a basis for rescinding the contract.

36. The grounds for rescission as stated by the Plaintiff were in my view meant to obfuscate the

transaction and I find and hold that the Plaintiff is not entitled to rescind the agreement.

Whether the Defendants trespassed on to the suit premises

37. **Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition at page 923** defines trespass has been defined as any unjustifiable intrusion by one person upon land in possession of another.

38. The Plaintiff claims that the Defendants entered the suit land on 30th January 2011 and in the process cut down trees and harvested her food crops. There is no evidence that has been led by the Defendant that she reported the alleged trespass to the police neither is there any claim for compensation that has been raised by the Plaintiff. There is evidence on record led by the Defendants and the caretaker that it is indeed the Plaintiff (through third parties) who invaded the land after the supposed rescission to drive the Defendants out of the suit land. The evidence led by the Defendants, the joint lawyer of both the Plaintiff and the Defendants and the caretaker is that the Defendants took possession of the suit land since in 2003 with the consent authority and knowledge of the Plaintiff. The evidence is believable. The Defendants and the caretaker led evidence that there are developments on the land such as a fence, trees, crops, bananas, timber structures, water tank reservoir, toilets. This was confirmed by the site report given by the Director of Survey.

39. In view of the reasons given above the claim for trespass must fail. I hold and find that the Defendants did not trespass onto the suit premises.

40. As to whether the suit land is L.R No. 18096 or a portion of L.R No 26578, evidence was led by the Director of survey to show that the previous proposed subdivisions which contained L.R No 26578 were not approved by the Director of Survey. L.R No 3994/49 and survey plan FR 468/191 which the Plaintiff urged the Court to hold that the suit land is delineated therein was cancelled on the 23rd April 2012. The original subdivisions carried out in 1993 and contained in FR 235/97 were confirmed to be valid and is the current and present position of the suit land in the records of the Director of Survey. The Director of survey indicated that based on the records and the site visit report the suit land is L.R No. 18096 on the ground. Evidence led in Court on the developments on the land agrees with the site report given by the Director of Survey. This evidence was not controverted by the Plaintiff. It is believable and I find and hold that the suit land has been adequately described and identified and is L.R NO. 18096.

Whether the Plaintiff is entitled to the remedies sought.

41. The Plaintiff has pleaded for rescission of agreement, permanent injunction and damages for trespass. In view of my findings above these prayers are declined.

As to whether the Defendants are entitled to the prayers in the counterclaim, in view of my findings on rescission, the Defendants claim in a) and b) are granted.

42. Specific performance is granted in the following circumstances; if the party has performed his part of the contract; an award of damages is not sufficient to ameliorate the loss; the order does not cause hardship in its performance; the subject matter is special in its nature.

43. I will examine them in turn. The Defendants have performed their part of the contract by paying the full purchase price. An award of damages in respect to the Defendant for the suit land would require compensation for the value of the land, developments and affection in respect to the suit land. The Defendants having been attached to the suit land I do not find that there will be sufficient compensation to the suit premises. This finding is buttressed by my finding that the Plaintiff has not shown by way of evidence any conduct geared towards performance of her part of the contract. If any finding were to be given that the Defendants only be compensated, such actions would be tantamount to encouraging the Plaintiff to breach her contract with the Defendants willingly and take advantage of her ability to compensate them at will as she considers it appropriate. Such circumstances would defeat the essence of equity and must be discouraged.

44. The land sold to the Defendants is identifiable and recorded in official Director of Survey records. It is the land which in the agreement of sale was delineated and edged red. It is the land that the Plaintiff pointed out the site as well as the beacons on the ground to the Defendants. It is recorded as L.R No. 18096. It is the land L.R 18096 that was identified by the Director of Survey as agreeing with the land records in their possession. In view of my findings I consider the suit land to be special by way of attachment to the Defendants.

45. On the issue of special damages, no evidence has been led in Court to proof the claim. The claim is based on the destruction of plants crops and trees. The claim of Kshs 1.4 million as particularized in the pleadings may be genuine but no evidence was led by the Defendants to show the costs of the same. He who alleges must proof. The claim is declined.

46. On the issue of costs, costs are at the discretion of the Court but ordinarily follow the event. The Plaintiff has lost her claim and the Defendants have succeeded in their claim and in the circumstances, I find no reason to deny the Defendants the award of costs.

47. Having dealt with the issues for determination I now make the following final orders;

a) The claim for the Plaintiff is dismissed with costs.

b) The Plaintiff is not entitled to rescind the agreement dated 2nd May 2003.

c) The Plaintiff is hereby ordered to transfer L.R No 18096 to the 1st and 2nd Defendants and sign and handover all the appropriate and necessary documents to effect the transfer to the 1st and 2nd Defendant or in the alternative to cause the suit land to be sub-divided and excised from L.R No. 3994/11 and transfer to the 1st and 2nd Defendants 1 acre piece of land shown and occupied by the 1st and 2nd Defendants forthwith.

d) In default of No 3 above, the Deputy Registrar is hereby directed to so execute all the appropriate and necessary documents to effect transfer of L.R No. 18096 to the Defendant or in the alternative directed to sign all necessary and appropriate documents to facilitate the sub-division and excision from L.R No. 3994/11 and transferred to the 1st and 2nd Defendants 1 acre piece of land shown and occupied by them.

e) A permanent injunction restraining the Plaintiff whether by herself, her servant's agents representatives and or employees or anyone claiming under her howsoever from breaching the sale agreement or charging selling reentering taking possession remaining erecting or continuing to erect any buildings or structures upon the suit property being L.R No 18096 or any way interfering with the Defendants quiet possession and enjoyment of the suit property.

f) The 1st and 2nd Defendants claim for special damages is declined.

g) The Plaintiff shall pay costs of the suit and the counterclaim to the 1st and 2nd Defendants.

It is so ordered

DATED SIGNED AND DELIVERED IN NAIROBI THIS 22ND SEPTEMBER 2017

J G KEMEI

JUDGE