



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KISII**

**CASE NO. 43 OF 2005**

**KIPKOBEL ARAP MISOI ..... PLAINTIFF**

**VERSUS**

**PROSCILA CHEPKORIR ..... DEFENDANT**

**JUDGMENT**

**Background and pleadings:**

1. The plaintiff filed the instant suit vide a plaint dated 31<sup>st</sup> December 2004 but filed in court on 22<sup>nd</sup> April 2005. The plaintiff claims that he has since 27<sup>th</sup> April 1983 been registered as owner of land parcel **LR No. Transmara/Kimintet "D"/930** and that once the area was declared an Adjudication Section under Section 5 of the **Land Adjudication Act**, Cap 284 Laws of Kenya the said land was adjudicated to him and he was issued with a title deed on 28<sup>th</sup> January 2004. The plaintiff further avers that the defendant on or about January 1997 unlawfully and without any colour of right wrongfully entered and took possession of the suit land and further without any authority from the plaintiff leased 7 acres of the suit land to one Wilson Kiprob Ruth, Johana Sararu and Lamboiyo Leitich and thereby denied the plaintiff the use and enjoyment of the land precipitating the plaintiff loss and damage.

2. The plaintiff contends the defendants actions constitute trespass for which the plaintiff claims damages. The plaintiff prays for judgment against the defendant for:-

**(i) Eviction orders and possession of the suit land.**

**(ii) Mesne profits at the rate of kshs. 29,000/= per year until possession is delivered up.**

**(iii) Costs of the suit.**

The defendant filed a statement of defence in person dated 6<sup>th</sup> May 2005 on the same date. The defendant by the defence denies the plaintiff's averments contained in the plaint and states that she is the proprietor of the suit land and that she had been in occupation and possession of the suit land for a long time. The defendant further averred in the defence that the dispute had been arbitrated by the District Commissioner Transmara in November 2003 and that the plaintiff had been directed to keep off from the suit land as it did not belong to him.

**Evidence by the parties:**

3. The suit was heard before me on 1<sup>st</sup> December 2015 and 25<sup>th</sup> February 2016. The plaintiff testified as PW1 and was the sole witness in support of the plaintiff's case. The defendant testified as DW1 and

called one Andrew W. Kiprono Ngeno, a neighbour as DW2 and the Land Registrar, Transmara Sub-county Mr. Stephen Waithaka Githinji as DW3.

4. The plaintiff in his testimony relied on the witness statement that he had made on 4<sup>th</sup> March 2014 and further relied on his bundle of documents dated 4<sup>th</sup> March 2014 which comprised:-

- 1. Title deed Transmara/Kimintet “D”/930 dated 28<sup>th</sup> January 2004 in the name of Kipkobel A. Misoi.**
- 2. Copy of certificate of official search dated 2<sup>nd</sup> June, 2011.**
- 3. Certificate of official search dated 11<sup>th</sup> April 2012.**
- 4. Letter ref. No. SS/GEN/13/19 dated 10<sup>th</sup> June 2013 to Land Registrar, Transmara applying for a copy of the register for parcel Transmara/Kimintet “D”/930.**
- 5. Copy of green card for parcel Transamara/Kimintet “D”/930.**
- 6. Copy of proceedings criminal case No. 559 of 2010**

5. The documents were admitted in evidence and marked as PEx 1-6. The plaintiff’s evidence was to the effect that he was the registered owner of the suit land having been so registered on 28<sup>th</sup> January 2004 as attested by the copy fo the title deed and the official searches tendered as evidence. The plaintiff stated that his title was a first registration and further stated that the title held by the defendant cannot be genuine as the official searches still show that he is the registered owner of the suit land. The plaintiff asserted that he obtained his title following an adjudication process and further testified that the defendant’s children were infact charged and were convicted of malicious damage of his property in the suit land. The plaintiff stated that before the intrusion onto the suit land by the defendant and her children he was carrying out subsistence farming on the suit land which he was no longer able to do and hence sought orders that the defendant be ordered to vacate the suit land and pay him damages for loss of use and trespass.

6. In cross examination by O. M Otieno Advocate for the defendant the plaintiff reiterated he had been awarded the suit land through an adjudication process and he acknowledged that the defendant objected to him being awarded the suit land but averred that the defendant’s objection was determined in his favour. The plaintiff additionally admitted he was aware the defendant appealed to the minister but he stated he did not know what the outcome of the appeal was. The plaintiff denied taking any part and giving any evidence in the appeal proceedings before the minister. However when referred to the copy of the proceedings the plaintiff stated he attended the appeal proceedings but he never gave evidence.

7. The witness (plaintiff) stated that he came to learn later that the appeal to the Minister was ruled in favour of the defendant but stated he never got any demand to surrender the title he holds. The plaintiff further stated he does not reside in the suit land but in another parcel not far from the suit land which he also obtained through adjudication in 1986. The plaintiff clarified that during the criminal proceedings at which the defendant testified and produced her title in evidence she did not produce a search to support her title but that he (plaintiff) produced a search which showed he was the registered owner of the suit land.

8. The defendant, DW1 testified that she resides on the suit land and has resided therein for many years. The defendant in her evidence relied and adopted her witness statement dated 15<sup>th</sup> December 2014 and further relied on the bundle of documents set out in the defendants bundle dated 15<sup>th</sup> December 2015. The documents were admitted in evidence and produced as DEx 1-8. These documents are as follows:-

- 1. Copy of proceedings in Kisii HCC No. 43 of 2005.**

2. Copy of letter dated 21<sup>st</sup> July 2011 from M/s Minda & Company Advocates.
3. Letter dated 20<sup>th</sup> June 2011 from Deputy Chief Land Registrar to District Land Registrar communicating the outcome of the appeal to the minister.
4. Proceedings and determination of the appeal to the minister in Appeal Case No. 302 of 2003.
5. The letter dated 8<sup>th</sup> July 2009 from the Director of Land Adjudication and Settlement to the Chief Land Registrar.
6. Certified copy of the adjudication record.
7. Certified copy of the green card in respect of the suit land.
8. Copy of the title deed issued to the defendant on 9<sup>th</sup> September 2009 upon implementation of the decision in the appeal to the minister.

9. The defendant in her evidence stated that she has built 6 houses on the suit land and that she has all along resided on the suit land. She further stated that the plaintiff found her on the land and that during the land adjudication the plaintiff was awarded the suit land by the adjudication committee which award she objected to. Her objection was disallowed and she appealed to the Minister against the decision of the adjudication officer against the dismissal of her objection and her appeal was allowed and she was awarded the suit land. The decision of the minister was implemented and she was consequently issued with a title deed to the suit land and on that account she contends she is the lawful owner of the suit land and not the plaintiff. The defendant affirmed in her evidence that she and the plaintiff participated during the hearing of the appeal before the Minister and that each of them gave evidence at the appeal hearing.

10. DW2 one Andrew Kiprono is a neighbour of the defendant and owns land parcel D928. The suit land is parcel D930. DW2 testified that he settled in the area in 1980 and that when the adjudication process started in the area in 1986 he was already a resident of the area and has remained there upto now. DW2 stated that the defendant has always occupied land parcel D930 with her family and affirmed that when he moved to the area he found her living on the plot. According to the witness the plaintiff came to the area between 1990 and 1993 when he entered and ploughed the defendants land. The witness testified the plaintiff was first adjudicated as the owner of the suit land but following an objection and appeal to the minister, the defendant was awarded the suit land and the minister's decision has been implemented and the defendant has been registered as the owner of the suit land.

11. DW3, Stephen Waithaka Githinji is the Land Registrar Transmara sub-county. He stated as the Land Registrar he is the custodian of the land register of all the titles issued by the land registry. In regard to the suit land **LR No. Transmara/Kimintet "D"/930** he stated the land is registered in the name of Priscilla Chepkorir Soi, the defendant herein though previously the land was registered in the name of Kipkobel Arap Miso. The witness explained that the defendant was registered as owner following the decision of the Minister in an appeal lodged by the defendant which overturned the award of the land to the plaintiff by the land adjudication committee. DW3 testified that the plaintiff had been registered as owner of the suit land on 7<sup>th</sup> January 2004 while the defendant was registered as owner on 9<sup>th</sup> September 2009 following the implementation of the Minister's decision on the appeal.

12. The witness stated that the certificate of official search dated 2<sup>nd</sup> June, 2011 by his office showing the plaintiff was still the registered owner was issued erroneously relying on the original green card in respect of the property which had not been amended following the issue of the title to the defendant in compliance with the decision of the Minister. The witness stated that upon his office discovering the certificate of official search was issued in error, the office wrote to the plaintiff's advocates the letter dated 18<sup>th</sup> December, 2013 produced in evidence as "DEX9" clarifying the position. By the letter the land registrar referring to the plaintiff's advocates letter dated 10<sup>th</sup> June 2013 (produced as PEx4) the land

registrar stated in the letter thus:-

**“On receipt of your above quoted letter, I gave you a copy of the only document available (the green card) showing Kipkobel A. Misoi as a registered owner, title deed issued and a caution by Priscillah Chepkorir Soi claiming beneficiary interest.**

**As we continued with the arrangement of the office, the following documents were traced:-**

- (a) Green card showing Kipkobel A. Misoi, Priscillah Soi Chepkorir of P. O Box 10, Ndanai as a registered owner vide implementation of appeal to Minister and title issued.**
- (b) A caution registered on 6<sup>th</sup> December 2006 in favour of Priscillah Chepkorir Soi.**
- (c) Photocopies of appeal to Minister proceedings.**
- (d) Adjudication record.**

**In view of the above, it is evident that Transmara/Kimintet “D”/930 is registered in the name of Priscillah Chepkorir Soi not Kipkobel A. Misoi. The certified photocopy of the first green card be treated as cancelled.**

**The adjudication records also show that Priscillah C. Soi had one time registered an objection which was dismissed. This prompted her to appeal to the Minister and the decision to register her as owner of parcel No. 930 was arrived at.**

**Photocopies of documents supporting the registration of Priscillah C. Soi are hereby enclosed for your action.**

**Signed**

**For District Land Registrar**

**Transmara District**

13. In cross examination by Mr. Sigira Advocate DW3 admitted he was the one who signed the official search dated 11<sup>th</sup> April 2012 (PEX.3) which showed the plaintiff to be the registered owner of the suit land. The witness however maintained that the official searches were given in error on the basis of the original register which ought to have been cancelled after the decision on the appeal to the minister was implemented. The witness further stated the decision of the appeal to the minister was received in July 2009 and that the Deputy Chief Land registrar vide his letter of 20<sup>th</sup> June, 2011 (DEX.3) forwarded to the District Land Registrar, Kilgoris a copy of the Minister’s decision and a copy of the letter from the Director of Land Adjudication and Settlement dated 8<sup>th</sup> July 2009 (DEX.5) that had communicated the Minister’s decision to the Chief Land Registrar for implementation. The witness attributed the failure to have the records in the registry rectified to the chaotic filing in the registry where documents were for a long period in disarray and strewn all over without any proper filing.

#### **Analysis and review of evidence and the law:**

14. The parties advocates after the close of the hearing filed their final written submissions articulating their respective clients positions in regard to the evidence as adduced and the applicable law. The plaintiff’s written submissions dated 24<sup>th</sup> March 2016 were filed on 13<sup>th</sup> April 2016 while the defendant’s submissions dated 29<sup>th</sup> April 2016 were filed on 3<sup>rd</sup> May 2016.

15. Having reviewed the pleadings, the evidence by the parties and the written submissions by counsel for the parties the issues that arise for determination are as follows:-

**(i) Whether the provisions of the Land Adjudication Act, cap 284 Laws of Kenya were complied with in issuing title in respect of LR No. Transmara/Kimintet “D”/930 to the plaintiff.**

**(ii) Whether the title issued to and held by the plaintiff is valid.**

**(iii) Whether the defendant made an appeal to the minister against the award of the suit land to the plaintiff and if so whether the decision by the Minister was in favour of the defendant.**

**(iv) Whether the decision of the appeal to the Minister was implemented by the land registrar.**

**(v) Who between the plaintiff and the defendant is the lawful owner of the suit land?**

**(vi) By whom are the costs of the suit payable.**

16. It is admitted that **Transmara/Kimintet Block “D”** was declared an adjudication area pursuant to the provisions of Section 5 of the Land Adjudication Act, cap 284 Laws of Kenya in 1986 and that following the close of the adjudication process the plaintiff was awarded land parcel **Transmara/Kimintet “D”/930** which award the defendant objected to the adjudication officer who dismissed her objection whereupon the defendant preferred an appeal to the Minister against the dismissal of her objection.

Section 26 of the Adjudication Act provides:-

**26 (1) Any person, named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.**

**(2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection**

17. The land adjudication officer is under section 26A of the Act required to forward to the Director of land adjudication a final adjudication register in regard to all parcels that have no objections for transmission to the chief land registrar for purposes of registration. Under the provisions of section 27 of the Act the adjudication officer is mandated to alter the adjudication register from time to time to conform with any determinations of objections under section 26 of the Act and the Director of Adjudication is required to forward the adjudication register together with a list of appeals lodged under section 29 of the Act to the Chief Land Registrar. The Chief Land Registrar under section 28 of the Act is required to give effect to the adjudication register through registration whereof individual titles are issued in terms thereof save in respect of parcels where an appeal has been preferred to the Minister where a restriction is required to be placed.

Section 28 provides thus:-

**28. Upon receiving the adjudication register under section 27 of this Act, the Chief Land Registrar shall cause registration to be effected in accordance with the adjudication register.**

**Provided that, where the land is affected by an appeal under section 29 of this Act, a restriction shall be made and registered in respect of that land expressed to endure until the determination of the appeal, and on such determination the register shall if necessary be altered in accordance with the determination.**

18. The net effect of sections 26, 27 and 28 is that where an appeal has been preferred to the Minister in

respect of any particular land such land cannot be registered until the appeal to the Minister is determined. In the instant suit the defendant has demonstrated that she lodged an appeal to the Minister in regard to the suit land and having exercised her right of appeal under the Act, the land the subject of the suit ought not to have been registered in favour of the plaintiff and a title issued to him before her appeal was determined. Section 29 of the **Land Adjudication Act** clearly sets out the process and procedure that appeals before the Minister should take and provides thus:-

**29.(1) Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within sixty days after the date of determination, appeal against the determination to the minister by:-**

- a) Delivering to the minister an appeal in writing specifying the grounds of appeal; and**
- b) Sending a copy of the appeal to the Director of Land Adjudication, and the minister shall determine the appeal and make such order thereto as he thinks just and the order shall be final.**

**(2) The Minister shall cause copies of the order to be sent to the Director of Adjudication and the Chief Land Registrar.**

**(3) When the appeals have been determined, the Director of Land Adjudication shall:-**

- a) Alter the duplicate adjudication register to conform with the determination; and**
- b) Certify on the duplicate adjudication register that it has become final in all aspects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar who shall alter the adjudication register accordingly. (my emphasis).**

19. A certificate of finality issued under section 27 of the Act is in terms of Section 28 of the Act subject to any appeals and the Chief Land Registrar is obligated that while effecting the registration of the adjudication register he must take cognizance of the pending appeals to the minister by registering a restriction against any title which is subject to appeal and hence alteration to the register will depend solely on the outcome of the appeal. In the instant case the plaintiff was not only aware of the appeal before the Minister but also participated in the said appeal and acknowledged the fact that the outcome of the appeal to the Minister favoured the defendant. The appeal having been determined in favour of the defendant the Act provides that the decision of the Minister is final and the only way to challenge the Minister's decision is by way of judicial review.

20. In my view, the title issued to the plaintiff was issued irregularly and illegally without following due process as set out under the Act which required that the appeal before the minister be determined before title could be issued in respect of the land that was affected by the appeal and that is why the Act provides for alternations to the register after the outcome of the appeal. The plaintiff has strongly argued that being the first registered owner his title is absolute and indefeasible. The plaintiff has further argued that the defendant may infact not have filed any objection to the adjudication process as the plaintiff could not have been registered and issued with a title if she had filed an objection. The latter argument cannot hold because as per the adjudication record produced by the defendant as DEx.6 the record form shows that objection No. 72 of 1996 was dismissed on 13<sup>th</sup> January 1997 and the same form shows that appeal No. 302 of 2003 submitted by the defendant was allowed and the restriction on parcel No. 930 was to be removed and the defendant registered as the owner. The form is duly certified by the Director of Land Adjudication as required under Section 29 (3) (b) of the Act.

21. The proceedings of Appeal No. 302 of 2003 produced as DEx.3 show both the defendant and the plaintiff as appellant and respondent respectively attended the hearing of the appeal and gave evidence. The decision was delivered on 28<sup>th</sup> October 2003 and the copy of the decision was as per the record certified by the Director of Land Adjudication on 9<sup>th</sup> May 2005. The letter of 8<sup>th</sup> July 2009 (DEx.5) communicated the Minister's decision to the Chief Land Registrar for implementation under Section 29

(3) of the Land Adjudication Act.

22. On the basis of the evidence and the material tendered by the parties I am satisfied that indeed the defendant had lodged an objection to the adjudication officer in regard to the award of the suit land to the plaintiff and further lodged an appeal to the Minister after her objection was dismissed. I am equally satisfied that the defendant's appeal to the Minister was determined in her favour. During the pendency of the appeal before the Minister the suit land ought not to have been registered in favour of the plaintiff. A restriction should have been placed and maintained against the land until the appeal was determined by the Minister.

23. To the extent that the plaintiff was irregularly registered and issued with a title to the land the title held by the plaintiff is liable to challenge under the provisions of Section 26 (1) (b) of the **Land Registration Act, 2012**. Section 26 (1) provides thus:-

**(1) The certificate of title issued by the registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate and the title of that proprietor shall not be subject to challenge, except –**

**(a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**(b) Where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.**

In the present case the process and procedure outlined in the Land Adjudication Act was not followed in issuing the title to the plaintiff with the result that the title was not validly issued and the same is therefore null and void as the law was not complied with in the issuance of the same.

24. There is ample judicial authority that an act that is made without jurisdiction and/or authority is null and void and cannot confer any rights and/or interest. In the English case of **Macfoy –vs- United Africa Co. Ltd [1961] TALL ER 1169, Lord Denning** put succinctly as concerns an act which is a nullity when he stated thus:

**“If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado though sometimes convenient to have the court to declare it to be so. And every proceedings which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there it will collapse.”**

25. In our Kenyan context the court of appeal has had occasion to express itself in a situation where property was held to have been unlawfully acquired in the case of **Henry Muthee Kathurima –vs- Commissioner of Land s & Another [2015] eKLR** where they stated as follows:

**“Article 40 (6) of the Constitution clearly stipulates that the right to property does not extend to property that has been found to have been unlawfully acquired. The appellant relied on the doctrine of estoppels urging that the commissioner of lands is estopped from denying that he had good title. It is our view that estoppels cannot be used as shield to protect unlawfully acquired property, estoppels cannot be used to circumvent constitutional provisions and estoppels cannot over ride express statutory procedures; there can be no estoppels against a statute.....”**

26. The **Land Adjudication Act**, Cap 284 of the Laws of Kenya as I have illustrated and demonstrated in the foregoing analysis sets out an elaborate process that is all inclusive. The process does not permit any omission of any procedural step. The adjudication process under the Act is completed when appeals

before the Minister have been determined and the Director of Land Adjudication certifies the duplicate adjudication register that it has become final and sends the certified copy incorporating any alternations in conformity with the Minister's decision to the Chief land Registrar, who then alters the adjudication register accordingly. Where this process is not adhered to, the adjudication process is flawed and any registration of title on the basis of the flawed process in my view would be liable to be annulled. The plaintiff's title to the suit property was a product of a flawed process as he clearly got registered when the defendant's appeal was pending before the Minister. The land registrar under the Adjudication Act can only register the adjudication register and issue titles after the process of adjudication is finalized in regard to any affected parcels. The process of objection and any resultant appeal must be allowed to take its full course and determinations made. Otherwise the process which is so meticulously set out in the **Adjudication Act** would be rendered superfluous. The procedure must be honoured.

### **Determination of the issues:**

27. Having analyzed the evidence and the applicable law I now turn to consider how I should answer the issues identified. On the 1<sup>st</sup> issue whether or not the provisions of the **Land Adjudication Act**, Cap 284 Laws of Kenya were adhered to in issuing the title to the suit property to the plaintiff, it is apparent that the plaintiff was issued a title when the decision of the Minister on the appeal preferred by the defendant was still pending. The law provided that any parcel affected by an objection or appeal could not be registered before the process of appeal was completed. It was wrong for the land registrar to register the plaintiff as owner of the suit land before the appeal by the defendant was determined by the Minister and accordingly it is my holding and finding that the provisions of the **Land Adjudication Act** were not complied with in issuing title to the plaintiff.

28. Having answered the first issue in the negative it follows, the title issued to the plaintiff could not be valid as the law was not followed in issuing the same. The land registrar lacked any authority to issue the title to the plaintiff when the decision of the Minister on the appeal by the defendant was pending. The land registrar acted in excess of his authority and the title he issued to the plaintiff was null and void.

29. In regard to issue number three whether or not the defendant made an appeal to the Minister and whether the determination was in her favour, the answer is in the affirmative. Evidence has established there was an objection by the defendant to the adjudication officer which was dismissed and she appealed to the Minister. The proceedings of the hearing before the Minister at which both the defendant and plaintiff took part have been tendered in evidence and quite clearly the Minister's decision was in favour of the defendant. The decision by the Minister was not to revoke the title issued to the plaintiff as counsel for the plaintiff has argued in his submissions but rather to determine who between the plaintiff and the defendant was entitled to be awarded the suit land through the process of adjudication. He determined it was the defendant and this decision was communicated to the Director of Land Adjudication who in turn communicated to the Chief land Registrar to implement the decision. The Chief Land Registrar and by extension the Land Registrar did not have an option but to implement the decision. The decision of the Minister is final in regard to determination of entitlements under the **Land Adjudication Act** in as far as the process of adjudication is concerned.

30. As relates to issue number four whether the Minister's decision on appeal was implemented, the answer is in the affirmative as the Director of Adjudication forwarded the decision together with the certificate of alteration of the adjudication register for implementation. DW3, the land registrar in his evidence confirmed the Minister's decision was implemented and the defendant was issued with a title to the suit land. The witness further affirmed the title to the plaintiff was issued in error and should have been cancelled. He blamed the duplicity of records at the lands office on the chaotic filing system in their registry. The plaintiff has argued that the land registrar or indeed the Minister could not have had any power to revoke or cancel a title that had been issued to the plaintiff. My view is that to the extent that the plaintiff was registered as owner of the suit land before the adjudication process was finalized the land registrar was entitled to correct and rectify the register upon receipt from the Director of Land Adjudication the certificate of finality under section 29 (3) of the Land Adjudication Act. It must be noted that the land registrar's role under the Land Adjudication Act is that of implementer and he is not required to make any decisions and/or determinations in as far as the adjudication process is concerned.

**Conclusion and decision:**

31. From the answers to issues 1 to 4 above it follows that the answer to issue number (5) as to who between the plaintiff and the defendant is the lawful owner of the suit land is quite obvious that it is the defendant who is the lawful owner of the suit land. The defendant was awarded the land through a valid process of the adjudication under the **Land Adjudication Act** and there can be no basis to hold that she is not the lawful owner of the suit land. The adjudication process under the **Adjudication Act** determines and settles all claims and interests of persons affected in regard to land that has been subjected to adjudication under the Act. There is no other provision for settling claims in regard to land that has been subjected to adjudication. It is this process that awarded the suit land to the defendant and from the available evidence both the plaintiff and the defendant participated in the process. This court will respect that process.

32. The upshot is that I find and hold that the plaintiff has not proved his case against the defendant on a balance of probabilities and I accordingly order his suit dismissed with costs to the defendant. As I have further held the title to the suit land that the plaintiff holds is null and void, I direct that the land registrar effect the cancellation of the same forthwith in the land register of land parcel **Transmara/Kimintet "D"/930** for all purposes.

**Judgment dated, signed and delivered at Kisii this 22<sup>nd</sup> day of July, 2016.**

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

M/s Nyandika for Sigira      for the plaintiff

M/s Shilwatso for Otieno      for the defendant

Mr. Ngare                              Court Assistant

**J. M. MUTUNGI**

**JUDGE**