



**REPUBLIC OF KENYA**

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

**ELC SUIT NO. 603 OF 2001**

**NEW KAMWANGI GUMBA COMPANY LIMITED..... PLAINTIFF**

**VERSUS**

**KIAMBU COFFEE GROWERS CO-OPERATIVE**

**UNION .....1<sup>ST</sup> DEFENDANT**

**KIAMBU THIKA SACCO SOCIETY LIMITED.....2<sup>ND</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR THIKA.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**The Plaintiff's Case**

The dispute herein is with respect to ownership of a land parcel known as Chania/Kanyoni/642, situated in Thika District which is hereinafter referred to as the suit property. The Plaintiff's claim is that on or about 24<sup>th</sup> February, 1959, Kamwangi Fruit Growers, Co-operative Society was duly registered as the owner of the suit property, and that on or about 11<sup>th</sup> September, 1980, the Plaintiff purchased the said property from Kamwangi Fruit Growers Co-operative Union and was duly registered as the proprietor of the same and issued with a certificate of title. The Plaintiff stated that its shareholders took immediate possession of the suit property after the aforesaid purchase, and are still in possession of the same to date.

However, that sometimes in 1982 the 1<sup>st</sup> Defendant colluded with the 3<sup>rd</sup> Defendant and was fraudulently registered as the proprietor of the suit property. Further, that on or about 20<sup>th</sup> June 1996 the 1<sup>st</sup> Defendant fraudulently transferred the suit property to the 2<sup>nd</sup> Defendant and a certificate of title was duly issued in the name of the 2<sup>nd</sup> Defendant. The Plaintiff states that the 1<sup>st</sup> Defendant's fraudulent and illegal purported transfer of the suit property to the 2<sup>nd</sup> Defendant cannot confer any legal or valid title whatsoever upon the 2<sup>nd</sup> Defendant.

That Plaintiff further stated that in view of the fact that the 2<sup>nd</sup> Defendant was registered as the proprietor of the suit property by misrepresentation and/or fraud, such transfer is/was null and void and the Certificate of Title issued in favour of the 2<sup>nd</sup> Defendant ought to be cancelled. The Plaintiff is therefore seeking the following prayers in its Plaint dated 9<sup>th</sup> April 2012:-

- a. A declaration that the Plaintiff is the rightful owner of the suit property and that the certificate of titles issued to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant are null and void.

- b. A mandatory injunction ordering the 3<sup>rd</sup> Defendant to register the Plaintiff as the true and rightful owner of the suit property.
- c. An order of permanent, injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendant their agents and/or servants from entering the suit property.
- d. Costs of this suit.
- e. Interest on (c) above at court rates.
- f. Any other or further relief that this Honourable Court may deem fit to grant.

The Plaintiff called one witness to give evidence namely Mburu Mwaura (PW1), who is its member and was a director of the Plaintiff from 1989 to 2004. The witness adopted the contents of his witness statement dated 20<sup>th</sup> January 2012 and filed on 23<sup>rd</sup> January 2012 as his evidence-in-chief. In summary he stated that Kamwangi Fruit Growers Co-operative Society Ltd was the one initially given the suit property at the time of land demarcation in Kiambu, however that the said Co-operative Society subsequently became insolvent and was wound up in 1971.

PW1 explained that the members of the dissolved Co-operative Society then decided to raise money and purchase the suit property, which money was raised through deductions made from the members coffee proceeds by Kiambu Coffee Growers Cooperative Union. He produced lists of the 140 members from six factories from whom a total amount of Kshs 9,575/= was deducted. Further, that this amount was then paid by Kiambu Coffee Growers Cooperative Union to Kamwangi Fruit Growers Co-operative Society Ltd on behalf of the members who had been deducted coffee proceeds. He stated that a receipt No. H903741 was issued to Kiambu Coffee Union Ltd on 26<sup>th</sup> October 1973. The said receipt was in the agreed bundle of documents which PW1 produced as the Plaintiff's Exhibit 1.

PW1 further stated that the persons who had contributed money for the purchase of the suit property then decided to form their own company namely the Plaintiff herein, and that the certificate of incorporation was issued on 4<sup>th</sup> May 1976. Further, that the suit property was subsequently registered in the name of the Plaintiff on 11<sup>th</sup> September 1980 at the instance and request of Kiambu Coffee Growers Cooperative Union.

PW1's testimony was that the Plaintiff has since been in possession of the suit property and has rented it out to various tenants, and that in 1983 upon conducting a search of the property found that the property had been retransferred to Kamwangi Fruit Growers Co-operative Society Ltd on 10<sup>th</sup> July 1982 after the said Cooperative Society had already been wound up, and then registered in the name of Kiambu Thika SACCO Society Ltd on 20<sup>th</sup> June 1996. He stated that the Plaintiff has no connection with Kiambu Thika SACCO Society Ltd and that the Plaintiff's Directors were not contacted when the said transfers were being effected. He also stated that to-date no-one has asked the Plaintiff to surrender its original title to the suit property or possession of the property.

During cross-examination and re-examination, PW1 testified that he became a member of the Plaintiff in 1979 after paying money and not through deductions made from coffee proceeds. He also stated that he was not a member of Kamwangi Fruit Growers Co-operative Society Ltd, and that he knew of the activities of the said Co-operative society from his father who was a member. He admitted that he did not have any evidence of the directors of the Plaintiff company or that he was a director, nor of his payments to the Plaintiff company.

On the list of members who were deducted money to buy the suit property that was in Plaintiff's Exhibit 1, he stated that it showed that the members listed were from Gatukuyu Coffee Growers Cooperative Society and was prepared by the secretary of the coffee factory. He admitted that the members did not sign the lists, and that he did not have minutes of the committee meeting that authorized the deductions from members. He also stated that the heading of Gatundu Farmers Cooperative Society in the said lists was just a name used and because it was the one that was near to the members.

Upon cross examination on the receipt evidencing payment for the suit property, PW1 testified that it showed that it was Kamwangi Fruit Growers Co-operative Society Ltd and not the Plaintiff that paid the

money. He also stated that the document that they had to show that the Plaintiff bought the suit property was the transfer in the green card of the suit property. PW1 testified that he was not aware that the Chief Land Registrar had asked the Plaintiff to surrender its title after it was cancelled, and that he was also not aware of the transfer document in the Plaintiff's Exhibit 1 dated 26<sup>th</sup> August 1982 in which Kamwangi Fruit Growers Co-operative Society Ltd transferred the suit property to Kiambu Coffee Growers Cooperative Union.

### **The Defendants' Case**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a statement of defence dated 8<sup>th</sup> June 2001 and filed in court on 13<sup>th</sup> June 2001. They stated therein that although the Plaintiff was registered as proprietor of the suit property, such registration was both illegal and fraudulent, and they gave the particulars of fraud as follows:

- a. Causing to be and transferring the suit land in the name of the plaintiff whereas it knew or ought to have known that the 1<sup>st</sup> Defendant was the one who had in fact bought the suit land from Kamwangi Fruit Growers Co-operative Society on 27<sup>th</sup> October 1973.
- b. Obtaining the title to the suit property knowing too well that its shareholders took possession by changing the legal owner which had already been liquidated to New Kamwangi Gumba Company Limited.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants also denied the allegations of fraud on their part, and stated that the title of the Plaintiff was ordered to be cancelled by the Chief Land Registrar in accordance with the law, and the said property was registered in the name of the 1<sup>st</sup> Defendant on 30<sup>th</sup> August 1982.

The 3<sup>rd</sup> Defendant filed a Defence on 21<sup>st</sup> June 2001 that was dated 18<sup>th</sup> June 2001. The 3<sup>rd</sup> Defendant denied the allegations of fraud attributed to him and averred that if indeed the 1<sup>st</sup> Defendant was registered as the proprietor of the suit property, then the same was done *bona fide* and that all the legal provisions governing such transfers were complied with in the course of the transaction.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants called two witnesses to give evidence on their behalf, while the 3<sup>rd</sup> Defendant did not call any witness. DW1 was Peter Oren Murigi and he gave oral testimony in addition to adopting his witness statement dated 28<sup>th</sup> March 2012 and filed in court on 4<sup>th</sup> April 2013 as his evidence-in-chief. DW1 stated that he was elected the vice-chairman of the 1<sup>st</sup> Defendant in 2005 and is also a honorary secretary of Gatukuyu Coffee Farmers Co-operative Society and is conversant with the affairs of both societies. He stated that Gatukuyu Coffee Farmers Co-operative Society is located in Gatundu North and is different from Gatundu Farmers Cooperative Society, which is located in Gatundu South.

DW1 was shown the document with the list of names of farmers and their contributions in the bundle of agreed documents, and he stated that the names are of farmers of Gatukuyu Coffee Farmers Co-operative Society. However, that the said documents were not on the letterhead of Gatukuyu Coffee Farmers Co-operative Society and did not originate from the said society. He also stated that that no contributions were collected from the farmers of Gatukuyu Coffee Farmers Co-operative Society, and that the said Society never bought the suit property.

Upon cross-examination DW1 stated that he has been a member of Gatukuyu Coffee Farmers Co-operative Society since 1972 although he was elected to office in 2004. He also stated that he was a member of Kiambu Coffee Growers Cooperative Union through Gatukuyu Coffee Farmers Co-operative Society which is affiliated to it. He admitted that in 1976 he was not an official of the society and could not have known what the then officials decided upon. However, he insisted that he was aware of the dispute herein and that there were letterheads of Gatukuyu Coffee Farmers Co-operative Society in existence in 1973. He stated upon re-examination that he had been able to learn about the dispute from the records of the society by virtue of being an office-holder of Gatukuyu Coffee Farmers Co-operative Society.

DW2 was Raymond Gitau Wanyugi who also gave oral testimony in addition to adopting his witness statement dated 28<sup>th</sup> March 2012 and filed in court on 4<sup>th</sup> April 2013 as his evidence-in-chief. DW2 stated that he was elected the chairman of the 1<sup>st</sup> Defendant in 2003 to date, and that he was aware of the dispute from the records of the 1<sup>st</sup> Defendant, and having been briefed by the 1<sup>st</sup> Defendant's deceased general manager who was in office at the time of the commencement of the dispute. He gave a detailed history of the dispute in his witness statement.

In summary he stated that the dispute herein as its origins from the liquidation of Kamwangi Fruit growers Co-operative Society on 17<sup>th</sup> September 1965, when the Commissioner of Co-operatives cancelled the registration of Kamwangi Fruit Growers Co-operative Society and appointed a liquidator thereof. Further, that in 1973 the Kiambu District Cooperative Officer while discharging his duties as liquidator of the society sold the suit property to the 1<sup>st</sup> Defendant. However, that some members of the deregistered society formed a new company namely New Kamwangi Gumba Company Limited and served a notice of change of name on the Kiambu Land Registrar for purposes of changing the proprietorship section of the register of the suit property, and such a change was effected on 11<sup>th</sup> September 1980.

DW2 stated that the registration of the suit property in the name of New Kamwangi Gumba Company Limited was illegal as the suit property had been purchased by the 1<sup>st</sup> Defendant on 27<sup>th</sup> October 1973 from Kamwangi Fruit Growers Cooperative Society at a price of Kshs 9,000/=, and a receipt No H903741 issued to it, and the society by that time had been deregistered and liquidated. In any event, the 1<sup>st</sup> Defendant was subsequently registered as owner of the suit property on 30<sup>th</sup> August 1982 and is the legal owner. DW2 in his oral testimony explained that the reason why it took long to transfer the suit property to the 1<sup>st</sup> Defendant in 1982 after it had been purchased in 1973 was because of internal disputes within the 1<sup>st</sup> Defendant, which resulted in it being run by a Commission appointed by the Government between 1974 and 1980 when a new management board was elected by the members.

DW2 also stated that a resolution of a society must be made first before any of the deductions or contributions by members as shown by the lists produced in evidence is made. Further, that such deductions are made by the executive committee of the management board and not by a junior clerk as shown in the said lists. He stated that he is a member and the chairman of Ndumberi Coffee Growers Cooperative Society having been so elected in 2003.

On the receipt number H903741 that showed that money was received from Kamwangi Fruit Growers Society Ltd, DW2 stated that he had the original documents to show that Kiambu Coffee Growers Cooperative Society paid the money to the Ministry of Cooperative Development for the suit property. He confirmed that the Plaintiff is the one occupying the suit property, and testified that the 1<sup>st</sup> Defendant had instituted a case being HCCC 442 of 1993 seeking to have the Plaintiff vacate the suit premises.

Upon cross-examination, DW2 stated that the resolution for members to be deducted any money is provided in the Co-operative Societies Act, and was also the practice in 1972. He stated that he did not produce any documents in support of his statement, and that he did not have the minutes or resolution of Kiambu Coffee Growers Union agreeing to buy suit property. He also stated that he had seen the certificate of incorporation of the New Kamwangi Growers Company in the agreed bundle of documents, and that it is a limited Company incorporated under the Companies Act.

DW2 further stated that when the 1<sup>st</sup> Defendant realized that the property was registered in the Plaintiff's name, apart from filing a court case, they asked the Registrar of Lands to deregister the property and that the Plaintiff was asked by the District Commissioner, District Officer and Chief to surrender the land. He stated that he had not seen any degazettement of the Plaintiff's title, and that the only title he knows of the suit property is held by the 2<sup>nd</sup> Defendant.

DW2 further testified that he had produced the receipt for the money they paid in the agreed bundle of documents and had the original receipt which he showed to the Court. He also confirmed that the transfer

of the suit property was in the agreed bundle of documents, and that the District Cooperative Officers as liquidator was the transferor. He referred to the gazettelement of the liquidator in the agreed bundle of documents and stated that another liquidator was later appointed in 1971 who was the District Cooperative Officer and who transferred the suit property to them. Further, that the 1<sup>st</sup> Defendant was issued with a title as a result of the transfer, which title has never been recalled.

Lastly, DW2 testified that the title documents in the agreed bundle of documents showed that the title issued to the Plaintiff was cancelled for suspected fraud in change of name, and that he was not aware of any case filed to challenge the cancellation. He further stated that the suit property was registered in the name of Kiambu Coffee Growers Union and then registered in the name of the 2<sup>nd</sup> Defendant who was issued with the title and who is the current registered owner of the property. He stated that the 2<sup>nd</sup> Defendant is a number of the 1<sup>st</sup> Defendant and he is its Chairman.

### **The Submissions**

The parties were directed to file written submissions. The Plaintiff did not file any written submissions. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Advocate filed written submissions dated 18<sup>th</sup> June 2014, while the Litigation Counsel at the Attorney General's Office who was appearing for the 3<sup>rd</sup> Defendant filed submissions on 6<sup>th</sup> June 2014.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants argued that the Plaintiff's statement of claim is found in paragraph 9 of the plaint which reads that "sometimes in 1982, the 1<sup>st</sup> Defendant colluded with the 3<sup>rd</sup> Defendant who fraudulently registered the 1<sup>st</sup> Defendant as the proprietor of the suit land". Further, that it is therefore clear that the cause of action herein arose in the year 1982, and that section 7 of the Limitation of Actions Act, provides that an action may not be brought by any person recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom the claims, to that persons. It is the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' submission that the plaint herein was filed on 12<sup>th</sup> April 2001, which is was after a period of over 18 years from the end of 1982, and that the suit herein is therefore bad in law and should be struck out on the face of Section 7 of the Limitation of Actions Act.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants further submitted that it is the Plaintiff's claim that it bought the suit property from the liquidator of Kamwangi Fruit Growers Co-operative Society, and that the cancellation of its registration as the owner was a culmination of fraud and collusion between the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. However that the entry that inserted the Plaintiff's names in the green card is itself fraudulent and it was indicated that the entry that was recorded was a name change of the registered owner from Kamwangi Fruit Growers Co-operative Society to New Kamwangi Gumba Co-operative Limited. Further, that a registration of a name change is not the same as a transfer and cannot be equated to a purchase of the suit property.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants contended that the Plaintiff was under a duty to explain to the Court how this entry came about but did not do so, and that the 3<sup>rd</sup> Defendant was well within his powers as granted under Section 142 (1) (a) of the repealed Registered Land Act (repealed) to correct the said entry which was tainted with fraud.

Reliance was placed on the Court of Appeal decision in **Richard Akwesera Onditi – vrs- Kenya Commercial Finance Company Limited, (2010) eKLR** that fraud and collusion are serious accusations and require a very high standard of proof, certainly above mere balance of probability and bare allegations do not therefore avail. Therefore that it was incumbent upon the Plaintiff to lead or adduce cogent evidence to establish fraud and collusion between the Defendants as alleged in the plaint, which it did not do. It was the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' argument that on the contrary, it is the Plaintiff's conduct that can be termed as fraudulent, as it is purporting to be the successor in title of the defunct Kamwangi Fruit Growers to Co-operative Society.

Lastly, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's submitted that there is nothing on record to suggest that the 1<sup>st</sup> Defendant bought the suit property for and on behalf of the Plaintiff as posited by the Plaintiff's witnesses. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants argued that the receipt no H903741 showed at the top that the suit property was sold to Kiambu Coffee Growers Co-operative Union, and although it is claimed that the funds were deducted from members of Gatundu Farmers Co-operative Society, Kamwangi Branch, there is no nexus that has been created between these persons and the Plaintiff.

Further, that no list of members of the Plaintiff or an extract thereof from the Registrar of Companies has been shown to Court to show that these are the persons who comprise the membership of the Plaintiff. It was also contended that doubts had been cast on the authenticity of the said lists as they are neither on any letterhead nor are they signed. Furthermore, that even if the deductions were made as claimed, there is nothing to prove that the money was deposited with the 1<sup>st</sup> Defendant and that the same were applied towards the purchase of the suit property.

The 3<sup>rd</sup> Defendant on its part submitted that the 2<sup>nd</sup> Defendant are the *bona fide* owners of the parcel of land Chania/Kanyoni/642 on the grounds that firstly, the disposal of the property of Kamwangi Fruit Growers Co-operative Society which was in liquidation by the Kiambu District Cooperative Officer who was appointed as the liquidator of vide gazette Notice No. 1978 of 23/7/1971 was not challenged by the Plaintiff.

Secondly, that the Kiambu Coffee Growers Co-operative Society Union Ltd legally upon a valid consideration bought the assets of Kamwangi Fruit Growers Co-operative Society from the Kiambu District Co-operative Officer being the liquidator at consideration of Kshs.9,000/=, and were issued with a receipt number H 903741 which showed the purchaser as the 1<sup>st</sup> Defendant. Further that during cross-examination, DWI produced the original receipt of the purchase of the assets of Kamwangi Fruit Growers Co-operative Society which showed them as the true and *bona fide* owner. It was further revealed that the same was for the liquidation account, a fact which was not disputed.

Lastly, that the memorandum of transfer dated 26<sup>th</sup> August, 1982 showed that the transfer of the parcel of land in dispute was from Kamwangi Fruit Growers Co-operative Society to Kiambu Coffee Grower's Co-operative Union, and that there is nothing on the record produced by the Plaintiff to show that there was any transfer from the Kamwangi Fruit Growers Co-operative Society in liquidation to New Kamwangi Gumba Company Limited.

### **The Issues and Determination**

From the evidence given in court, It is not disputed that the suit property was first registered in the name of Kamwangi Fruit Growers Co-operative Society. It is also not disputed that Kamwangi Fruit Growers Co-operative Society was placed in liquidation in 1965. What is in dispute is the subsequent registration of the suit property in New Kamwangi Gumba Company Ltd. and later in the name of Kiambu Coffee Growers Co-operative Union. There are thus two main issues for determination namely:

1. Who is the legal and rightful owner of the suit property?
2. Whether the Plaintiff is entitled to the remedies sought.

#### ***Who is the legal and rightful owner of the suit property?***

The answer to this issue revolves around a determination of the question of who the *bona fide* purchaser of the suit property from Kamwangi Fruit Growers Cooperative Society is. According to the proprietorship section of the title to the suit property that was produced in evidence, the registration of a name change to the Plaintiff's name as owner of the land was effected on 11<sup>th</sup> September 1980, and it was subsequently issued with a title on the same date under the repealed Registered Land Act. These entries were cancelled on 10<sup>th</sup> July 1982 pursuant to section 142(1)(a) of the repealed Registered Land Act which provided for rectification of a register by the Registrar. The 1<sup>st</sup> Defendant was subsequently registered as absolute proprietor of the suit property on 30<sup>th</sup> August 1982, and the 2<sup>nd</sup> Defendant thereafter similarly

registered on 20<sup>th</sup> June 1996. Evidence of the titles issued to this effect was also produced.

I have perused the letter dated 1<sup>st</sup> July 1982 from the then Chief Land Registrar addressed to the then Land Registrar Kiambu that gave rise to the cancellation of the title in the Plaintiff's name, and the reason for the said action is explained therein as follows:

**“...The registration of change of name from Kamwangi Fruit Growers Co-operative Society to New Kamwangi Gumba Co. Ltd was erroneous. The formalities required in changing from a co-operative to a limited liability company were never followed and neither did the Commissioner of Co-operatives give consent for change of name. The change of name was therefore illegal and may be fraudulent...”**

I agree with the sentiments expressed by the Chief Land Registrar, for the reason that evidence was provided of the gazette notice 3656 dated 17<sup>th</sup> September 1965 cancelling the registration of Kamwangi Fruit Growers Co-operative Society and appointing a liquidator to run the affairs of the said co-operative society as required by the Co-operative Societies Act. The position in law then was that upon deregistration a cooperative ceased to exist as corporate body, and therefore lacked the privileges and attributes that attached to it as a corporate body to hold movable and immovable property, enter into contracts, and/or to sue and be sued in its name. It was so provided in section 67 of the then Co-Operative Societies Act, Act No 19 of 1966 (since repealed) which was the applicable law at the time of the various transactions and registrations described herein concerning the suit property. Under the said section where the registration of a co-operative society was cancelled, the society ceased to exist as a corporate body upon the order taking effect.

In addition, section 69 of the said Act provided as follows:

**Where the registration of a co-operative society is cancelled under section 65 or 66 of this Act, the Commissioner may appoint one or more persons to be liquidator or liquidators of that society , hereinafter referred to as the liquidator, and all the property of such society shall vest in the liquidator upon the order of cancellation taking effect.”**

Similar provisions are also found in sections 63 and 65 of the current Co-operative Societies Act.

Therefore it is the position in law that it is only the liquidator who has capacity to deal with the property of a de-registered co-operative society and among his or her powers in this respect as provided by the then and current Co-Operative Societies Act is the power to sell the movable and immovable property and rights of action of the society, and to carry on the business of the society as far as may be necessary for the proper liquidation of the affairs of the society.

No evidence was brought by the Plaintiff in this regard of the approvals by the liquidator of changing the name or of transfer of the suit property to it, and the registration of the suit property in its name was therefore illegal and erroneous. In any event the evidence that was produced of the application for change of ownership dated 26<sup>th</sup> November 1973 was made by the 1<sup>st</sup> Defendant and not the Plaintiff, which was not even legally in existence at the time.

As regards the evidence relied upon by the Plaintiff to show its purchase of the suit property, this Court notes that the evidence of contribution by members of various coffee farmers' cooperative societies was in a language other than English and/or Kiswahili and was not translated as required by law. In addition it is not stated in the said documents that the list of contributors were members of the Plaintiff, and no evidence in this regard was provided by the Plaintiff. In addition there was no evidence produced of the receipts issued to the persons listed as contributors evidencing actual payments made or of any other acknowledgement of any payments they made.

The Plaintiff also relied on receipt H903741 dated 27<sup>th</sup> October 1973 of Kshs 9,000/= and claimed that the payment was made on its behalf by the 1<sup>st</sup> Defendant. The same receipt was also relied upon by the

witness for the 1<sup>st</sup> Defendant as evidence of their payment for the suit property, and he produced the original receipt in court. This Court is in this regard of the opinion that the 1<sup>st</sup> Defendant is the *bona fide* purchaser of the suit property for various reasons. Firstly it is clearly indicated on the face of the said receipt that the suit property was being sold to the Kiambu Coffee Union Ltd, and there is nowhere thereon that the existence or participation of the Plaintiff is acknowledged.

Secondly, the Plaintiff claims that the 1<sup>st</sup> Defendant was making the payment on its behalf, yet a perusal of the receipt shows that the payment was made on 27<sup>th</sup> October 1973, and the Plaintiff did not come into existence until 4<sup>th</sup> May 1976 when it was incorporated. In addition, the original receipt is still in the custody of the 1<sup>st</sup> Defendant. No evidence was also provided by the Plaintiff showing that it had given any money to the 1<sup>st</sup> Defendant for purchase of the suit property.

Lastly, the 1<sup>st</sup> Defendant produced an executed transfer of land in its favour with respect to the suit property dated 26<sup>th</sup> August 1982, and that was duly executed by the District Cooperative Officer Kiambu as liquidator of Kamwangi Fruit Growers Co-operative Society as required by law. No evidence of such a transfer was provided by the Plaintiff. It is thus my finding that the 1<sup>st</sup> Defendant as *bona fide* purchaser of the suit property was validly registered as legal owner of the suit property and could deal with the same as absolute proprietor of the same under section 27(a) of the repealed Registered Land Act including transferring it to the 2<sup>nd</sup> Defendant.

***Whether the Plaintiff is entitled to the remedies sought.***

Arising from the foregoing reasons and findings, this Court further finds that the Plaintiff has not proved its case on the balance of probabilities, and is thereby not entitled to the reliefs sought in its Plaint. The Plaintiff's suit filed herein is accordingly dismissed, and as the law under section 27 (1) of the Civil Procedure Act provides that costs largely follow the event, the Plaintiff shall bear the costs of this suit.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this \_\_\_\_27<sup>th</sup>\_\_\_\_ day of

\_\_\_\_January\_\_\_\_, 2015.

**P. NYAMWEYA**

**JUDGE**