**IN THE COURT OF APPEAL**

**AT NYERI**

**(CORAM: WAKI, NAMBUYE & KIAGE, JJ.A)**

**CIVIL APPEAL NO. 11 OF 2014**

**BETWEEN**

**NGARI WANYAGA.................................................................................1ST APPELLANT**

**JANE NGITHI KOMBO........................................................................2ND APPELLANT**

**JOYCE MUTIO KOMBO.....................................................................3RD APPELLANT**

**JOYCE MUTIO MWANGE..................................................................4TH APPELLANT**

**MULI MUNYASYA...............................................................................5TH APPELLANT**

**JOHN PAUL NJERU KIVARA............................................................6TH APPELLANT**

**KYAI MUNYASIYA..............................................................................7TH APPELLANT**

**STEPHEN NJERU KOMBO.................................................................8TH APPELLANT**

**PATRICK NGARI..................................................................................9TH APPELLANT**

**JOSEPH NJERU KOMBO.................................................................10TH APPELLANT**

**SIMON KITHU NYAGA....................................................................11TH APPELLANT**

**NGUKU KOMBO MUNYIRI...........................................................12TH APPELLANT**

**JERVASIO KINYUA NGARI...........................................................13TH APPELLANT**

**AND**

**MUTOKAA NTHAUTHO..................................................................1ST RESPONDENT**

**NATHAN MUREITHI MAGANJO as the Legal representative**

**of the estate of MAGANJO KATHUTWA – Deceased..................2ND RESPONDENT**

**DANSON NJIRU MUBUNJIA.........................................................3RD RESPONDENT**

**STEPHEN NJIRU KARUGA...........................................................4TH RESPONDENT**

**MUNGOLI NDII.............................................................................5TH RESPONDENT**

**JULIUS NGIRICHI MBOGO......................................................6TH RESPONDENT**

**DUNCAN KATHUMBI..................................................................7TH RESPONDENT**

**TERESIA MUTHONI MAKINDU as the Legal representative**

**of the estate of SAMUEL MAKINDU NJUKI.............................8TH RESPONDENT**

**EUNICE NYAGUTHI KARANI..................................................9TH RESPONDENT**

**MWANIKI MUNYI.....................................................................10TH RESPONDENT**

**MUGO MWANIKI.......................................................................11TH RESPONDENT**

**JOSPEH NDUKU NJUKI as Legal representative of the estate**

**of PHARIS NJUKI KAMOTHO – Deceased............................12TH RESPONDENT**

**NYAKI MAGONDU....................................................................13TH RESPONDENT**

**KITHU MAGONDU....................................................................14TH RESPONDENT**

**STEPHEN NJIRU MUNYI.........................................................15TH RESPONDENT**

**ESTON KIURA KATHANGU....................................................16TH RESPONDENT**

**JEREMIAH MWANI GACHIBIRI as the Legal representative**

**of DUNCAN GACHIBIRI MATUMO – Deceased...................17TH RESPONDENT**

***(An appeal from the Judgment/Decree of the High Court of Kenya at Embu (H. I. Ongudi, J) dated 19th December, 2012 in Civil Case No. 97 of 2005)***

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**JUDGMENT OF THE COURT**

1. The **Mbandi clan** and the **Muruga clan** of Embu are at loggerheads over land. The source of their dispute is alleged transgression by the District Land Adjudication Officer **(LAO)** in Mbeere and the District Land Registrar **(DLR)**, Embu, who are said to have messed up the land registration process. The High Court in Embu, **(Ongudi, J.)** delivered a judgment on 19th December, 2012 hoping to resolve the dispute once and for all, but it is still with us.

2. The appellants are 13 members of the Muruga clan. Before us they were represented by learned counsel, **Ms. Njiru**, instructed by M/s Duncan Muyodi & Company Advocates. The 17 respondents are members of the Mbandi clan, but learned counsel **Mr. Sospeter Opondo Aming'a** instructed by the Firms of M/s Gichure Ribathi & Company and M/s Simiyu, Opondo, Kiranga & Company Advocates, appeared for respondents 1, 2, 6, 8, 10 and 17; while learned counsel **Mr. Ombogi** instructed by M/s Gori, Ombongi & Company Advocates appeared for respondents 3, 4, 5, 7, 9, 11 to 16. Learned counsel **Mr. Victor Andande** appeared for several persons who were identified and certified to be affected by the outcome of the appeal but did not take part in the proceedings before the High Court. The original defendant in the High Court was the Attorney General **(AG)** sued on behalf of the Mbeere District Land Adjudication Officer and the Embu District Land Registrar. The AG never filed any appearance or defence and a belated attempt to do so was thwarted by **Khaminwa, J.** who dismissed their application to set aside the interlocutory judgment entered against them on 16th June, 2009. Formal proof followed. They took no further part in the proceedings and that explains why they are not cited in this appeal.

3. It is important to focus on the dispute taken before the High Court since it is apparent that there have been numerous sideshows along the way -- including questions on the number, representation and existence of parties, identity of disputed parcels and procedural infractions -- all of which have only served to obfuscate the issues at hand. The original suit was filed on **5th September, 2005** by 20 individuals describing themselves as members of the Mbandi Clan. Seventeen of them are still listed as respondents in the appeal. They sued the AG claiming that in July 1976 they were separately registered under the Registered Land Act **(RLA)** as the absolute proprietors of the following parcels of land for which they held Title Deeds:

> **Mbeti/Gachuriri/242, 243, 244, 246, 249, 250, 252, 253, 254, 255, 258, 259, 272, 273, 274, 276, 277, 280, 256 (the disputed parcels).**

4.As the first registered owners, they averred, they enjoyed the protection of ***sections 27*** and ***28*** of the RLA. However, in September 1999 contrary to the law, and specifically ***sections 142*** and ***143*** of the RLA, the DLR deleted their names from the register and substituted them

with others without their knowledge or consent. They explained the source of their entitlement to the land as the decision in **Objection No 3 of 1973** in which the Mbandi clan succeeded against the Muruga clan. That decision was challenged twice through Appeals to the Minister, one of which was nullified by the High Court, but the Objection decision was upheld in the end, thus opening up the parcels of land for registration under the RLA as aforesaid. According to them, the DLR was misled by the LAO who forwarded a list of names of members of the Muruga Clan for registration, contrary to the decision in Objection No 3/73. They sought an order for cancellation of the entries made in the Land Register and reinstatement of their names.

5. The plaint was subsequently amended on 15th September, 2005 to enjoin as interested parties, the twenty members of the Muruga clan who were substituted in the Land register, 13 of whom are now the appellants before us. It was further amended on 17th May, 2012 to correct a few names and parcel numbers.

6. In their statement of defence dated 3rd November, 2005 (amended 30th July, 2012), ten of the appellants before us denied the averments in the plaint and averred that the disputed parcels of land were given to the Muruga clan during the land adjudication process. They denied that Objection 3/73 or any appeals to the Minister gave the respondents or any of them the parcels of land they claimed. To their knowledge, Objection 3/73 gave the respondents, as Mbandi clan, the following land parcels:

> **Mbeti/Gachiri/89, 90, 123, 124, 125, 126, 127, 166 and 167 (the undisputed parcels).**

They defended the LAO and DLR against any alleged wrong doing.

7. Curiously, in another defence dated 14th March, 2008 by all the appellants, they conceded that the respondents had been registered as the proprietors of the disputed parcels but contended that the registration was made by mistake. According to them the disputed parcels were within Gachuiri land adjudication section which was occupied by the Muruga clan and were rightfully adjudicated in their names. In Objection 3/73 made by the Mbandi clan, they contended, only the undisputed parcels were involved. The disputed parcels, which they always occupied, got mixed up with the undisputed ones during implementation of the Minister's decision. They called for the dismissal of the suit.

8. As stated earlier, the AG did not defend the claim made by the Mbandi clan and therefore the clan now has an unchallenged judgment in their favour declaring that the LAO and the DLR acted 'illegally, unlawfully and without any colour of right' in deleting the names of the clan members from the land register and that their names should be reinstated. They gave oral evidence through three witnesses while the Muruga clan testified through one witness. Curiously, they did not choose to summon as witnesses any officer from the Land Adjudication Department or the District Land Registry to testify on the contentious entries in the register. Be that as it may, after evaluating the available oral and documentary evidence, including previous litigation between the parties, **Ongundi, J.** found for the respondents and dismissed the claims made by the appellants.

9. In making that decision, Ongundi, J. found that the dispute emanated from the implementation of the Minister's decision in Objection 3/73 which stated as follows:

> ***"1.The ten parcels in dispute (No. 89, 90, 123, 124, 125, 126, 127, 166, and 167) to be handed over to remain the property of Mbandi clan.***
>
> ***2.All the other parcels not in dispute but implemented under the strength of objection 3/73 should be reversed to their original owners as per the Gachuriri Land Adjudication register."***

10. It was common ground that the undisputed parcels were given to the Mbandi clan. The issue was on the disputed parcels which, according to the Minister's decision should have reverted to the original owners in accordance with the Land adjudication register. The Muruga clan attempted to show that those parcels belonged to them but they did so by producing an unauthenticated document which the trial court rejected. The court instead relied on the Land Adjudication record which confirmed that the Mbandi clan members had been registered as the original owners of the disputed parcels but the names had been deleted and substituted with the Muruga clan members.

11. The learned Judge reasoned as follows:

> ***"I have however before me an Adjudication record produced by the Interested Parties (DEXB 2). It clearly shows the cancellation of various names and insertion of others on 30/7/2002. The cancelled names are those of the Plaintiffs and the inserted ones are those of the Interested Parties. The cancellation and insertions were done on 30/7/2002 by the Director of Land Adjudication and Settlement. This is all found in (DEXB 2) – in documents serialized as Numbers 121257, 121243, 121244, 121246, 121254, 121256, 121259, 121260, 121272, 121273, 121276, 121277.***
>
> ***These cancellations and insertions are not supported by any decisions and/or orders. The matter concerning these lands was finalized by the decisions in the Minister's appeals No.55/79 and 274/79 which were decided on 27/5/1999. The Order therein was that these other lands which are lands now before Court were to be reverted back to the original owners. Who are the original owners? PEXB 1-4 are the green cards for these parcels of land being claimed by the Plaintiffs. The green cards show the original registered owners as follows;***
>
> ***Maganjo Kathutwa - Land No. Mbeti/Gachuriri/242***
>
> ***Danson Njiru Mubunjia -Land No. Mbeti/Gachuriri/243***

*Stephen Njiru Karuga -Land No. Mbeti/Gachuriri/244*

*Mutokaa Nthautho -Land No. Mbeti/Gachuriri/249*

*Julius Ngirichi Mbogo - Land No. Mbeti/Gachuriri/252*

*Duncan Kathumbi S/o Kimoo - Land No. Mbeti/Gachuriri/253*

*Samuel Makundu Njuki - Land No. Mbeti/Gachuriri/254*

*Julius Macharia- Land No. Mbeti/Gachuriri/255*

*Mwaniki Munyi- Land No. Mbeti/Gachuriri/259*

*Njuki Kamotho- Land No. Mbeti/Gachuriri/272*

*Magondu Muchethiu- Land No. Mbeti/Gachuriri/273*

*Stephenson Gachucha - Land No. Mbeti/Gachuriri/276*

*Eston Kiura Kithangu - Land No. Mbeti/Gachuriri/277*

*Kachiburi Matumo- Land No. Mbeti/Gachuriri/280*

***The title deed for Eston Kiura Kithangu Mbeti/Gachuriri/277 was issued on 15/11/1988 (PEXB 12) while that of Stevanson Njiru Gachucha Mbeti/Gachuriri/276 was issued on 21/6/01. These titles were issued under the now repealed Registered Land Act (Cap. 300) Laws of Kenya. The proprietorship under section 27 and 28 was absolute. When such titles are arbitrarily cancelled and others inserted there must be an explanation. And this explanation cannot be given by a beneficiary of the said cancellations."***

12. The court further found that the alterations were made by the LAO and the DLR and that there was no explanation for issuing Title deeds to the Mbandi clan only to delete them from the register and issue others to the Muruga clan without recourse to the original owners. In the process, the mess created the existence of two sets of Title Deeds over the same parcels of land. In the trial court's view, once the land adjudication process was completed and Title Deeds were issued, ***section 143*** of the RLA kicked in to prohibit the rectification of the register, even for fraud or mistake. At all events, the court held, the LAO and the DLR did not defend their actions which was the only base on which the case of the Muruga clan could stand. Once that base collapsed, the Muruga clan case collapsed with it.

13. It is those findings and decision that is challenged in this appeal on 16 listed grounds of appeal. The grounds appear on their face to be prolix and argumentative and it is no wonder that counsel for the appellants reduced them into three grounds by combining grounds1, 2, 3, 4 and 11; grounds 6, 7, 10, 13, 15 and 16; and ground 5 on its own. It is important for parties and counsel to heed ***Rule 86 (1)*** of the Rules of this Court which emphatically directs that a memorandum of appeal shall *'set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points alleged to have been wrongly decided ..'.* A memorandum which runs foul of that provision runs the risk of striking out.

14.The first broad ground of appeal objected to the finding that the respondents were the registered owners of the disputed parcels before their names were deleted. Learned counsel Ms. Njiru, in written and oral submissions, asserted that the respondents were never registered as absolute proprietors of the disputed parcels but only as provisional owners pending determination of any objections filed in the land adjudication process. She relied on ***sections 28*** and ***29*** of the Land Adjudication Act for that submission. According to counsel, the Mbandi clan only succeeded in securing the 10 undisputed parcels in Objection 3/73. Somehow, observed counsel, when the matter went on appeal to the Minister, as **55 of 1979** and **274 of 1979**, 31 other parcels which were not part of the Mbandi clan claim were added. That is why the Land Adjudication Department in implementing the Minister's decision erroneously included the disputed plots which were not part of the original claim. Upon the matter being re-heard by another Minister, the 31 parcels were returned to the Muruga clan members who were the original owners, hence the changes made in the Land Adjudication Register under ***section 29 (3) (b)*** of the Land Adjudication Act. According to counsel, the register of lands cannot be final until all cases are finalized before the land adjudication process and that is why a restriction is registered against the title under ***section 28***. That process, according to counsel, officially ended on 27th May, 1999 when the decision in the two appeals to the Minister were made.

15.In response to those submissions, learned counsel Mr. Aming'a, pointed out that the original registered owners of the disputed parcels according to the Land register as at 12th July, 1976 were the respondents who had even received their title deeds by then. When the two appeals which went to the Minister involving 41 parcels was completed on 27th May, 1999, the respondents were successful in having the disputed parcels revert to them as the original owners as per the Gachuriri Land Adjudication register. That was the end of the land adjudication process and the courts have no power to overturn the Minister's decision. He cited the case of ***Nicholas Njeru vs Attorney General & 8 Others*** ***[2013] eKLR*** for that proposition. According to counsel, it was only on 30th July, 2002 that the LAO and the DLR, without any lawful cause, altered the registers and substituted the names of the Mbandi clan members with the Muruga clan members. In his submission, this was an obvious case in which the LAO and the DLR had no defence and the trial court was right in entering summary judgment for the respondents as against them which was never challenged on appeal.

16. In further response to the appellants' submissions on the first issue, learned counsel Mr. Ombogi observed that the dispute was between

two clans which had fought through their representatives before the 1970s and in all the stages of the land adjudication process, up to the Minister, since declaration of Gachuriri location of Mbeere Division in Embu District as a land adjudication section on 12th July, 1971. In Objection 3/73, the Mbandi clan was successful and were given the right to subdivide and share the land amongst clan members as they wished. Ultimately, the challenges made to the Minister after orders made by the High Court for rehearing, did not alter that decision. The register was thus completed by confirming the registration of Mbandi clan members as the absolute proprietors of the disputed parcels. All that was done in accordance with the law until the LAO and the DLR made unlawful alterations which they could not defend.

17. As for the interested/affected parties, they lamented through learned counsel Mr. Andande, that they were enjoined in these proceedings outside the provisions of ***Rule 77 (1)*** of the Court of Appeal Rules **(CAR)** which requires that an intended appellant shall, within seven days after lodging the notice of appeal, serve copies thereof on all persons directly affected by the appeal. The appellants did not comply with that rule or obtain leave of court to comply and therefore, in counsel's view, the rights of the affected parties should not be affected since the notice of appeal as well as the record of appeal were rendered incompetent as against them. He cited the case of ***Kericho Technical Institute vs Finmax Community Based Group & 3 Others*** ***[2016] eKLR*** to support that submission. Counsel further submitted that the interested parties acquired their interests in the disputed parcels after carrying out due diligence and confirming through official searches that they were registered in the names of the respondents and they paid for them before seeking the consents of the relevant Land Control Board and obtaining Title Deeds. They were not aware of any pending appeal, or any orders for stay obtained, if any, and it would be inequitable and most prejudicial, in those circumstances, to interfere with their interests. At all events, submitted counsel, there was no evidential basis for interfering with the decision of the High Court which found that the respondents' Titles had been arbitrarily interfered with and that an explanation for that could not be given by a beneficiary of such mischief. In their view, the appellants should have summoned the LAO and the DLR as their witnesses if they were keen to prove their case, but did not. Mr. Andande associated himself with the submissions of the respondents.

18. We have considered the first broad ground of appeal which in our view is the mainstay of the appeal. We have examined it by way of a retrial, respecting the findings of fact made by the trial court which had the advantage of seeing and hearing the witnesses, but aware that we are entitled to interfere with those findings where it is clear that they were based on no evidence at all or were otherwise wrong in principle. See ***Mwangi vs Wambugu*** ***[1984] KLR 453.***

19. It is common ground that the dispute is centered in an area that was declared a land adjudication section and therefore the procedures enumerated under the Land Adjudication Act, Part III (ASCERTAINMENT OF INTERESTS IN LAND) and Part IV (PREPARATION OF THE ADJUDICATION REGISTER) are all applicable. Indeed the record shows that the two clans through their representatives fought out their interests before the Land Adjudication Committee in case **No.2/1971**; the Arbitration Board in case **No.3/1971**; Objection case **No.3/1973**; and in Appeals to the Minister **Nos.55/1979** and **274/1979** which were determined on 27th May, 1999, thus completing the Land Adjudication process.

20. The appellants' case is that the disputed parcels of land became mixed up and were awarded to the respondents in error by the Land Adjudication Officer and the District Land Registrar during the process of hearing and determining those cases. But that claim rings hollow when the two officers, who were sued for acting unlawfully in deleting the respondents' names and substituting them with the appellants' names long after the completion of the land adjudication process, did not defend that claim and judgment was obtained against them. It would have been prudent for the appellants to summon them as witnesses to attend court and at least explain themselves on the claims made in the suit, but the appellants did not do so. That state of affairs left intact the claim by the respondents who held Title Deeds and exhibited the 'Green Cards' from the Land Registry showing that they were the first registered owners of the disputed parcels way back in 1976. Those exhibits were supportive of their claim that the final determination of the appeals to the Minister confirmed the registration which was the original one in the Gachuriri Land Adjudication register. We have examined the analysis of the evidence made by the trial court and it is fairly accurate. We have no reason, therefore, to disturb the findings as there was evidential basis for them, and indeed agree with the summation that the appellants' case was on quick sand when the case of the LAO and DLR collapsed.

21. As for the complaints raised by the interested parties, we think with respect, that there is a proper basis for them. ***Rule 77 (1) CAR*** was examined by this Court in the ***Kericho Technical Institute case*** ***(supra)*** and the effect of non-compliance summarized as follows:-

> "***While we are mindful of Article 159 (1) (d) of the Constitution that justice should be administered without undue regard to procedural technicalities, we reiterate this Court’s view that the requirement for service of a notice of appeal is not a mere technicality...... The object of rule 76 (1) (today Rule 77 (1)) of the Court of Appeal Rules in obliging an appellant to serve copies of the notice of appeal on the parties directly affected by it is that the rights of a party likely to be directly affected by the result of the appeal should not be affected without the party being provided an opportunity of being heard. In M.S vs N.K Civil Appeal No. 277/2005 (Unreported) decided on 12th February, 2010 the Court of Appeal made the following emphasis:***
>
> ***“It follows that although Rule 76 (read 77) is a procedural rule based on the Appellate Jurisdiction Act, it has deeper roots in the Constitution so as to safeguard due process. Indeed, in the hierarchy of fundamental rights, the right of hearing ranks very high. For this reason we think that failure to serve the notice of appeal renders a notice of appeal incompetent including the record of appeal itself. This is because Rule 76 (1) is a mandatory requirement and provides that all persons directly affected by the appeal must be served with a notice of appeal ….”***

The appellants made no effort to comply with that rule, and indeed made no effort to safeguard their interests by seeking orders for stay of execution, and therefore it would be difficult to interfere with the interests of the affected parties in the disputed parcels.

On the whole we would reject the first broad ground of appeal.

22. The second broad ground is based on the submission that a number of appellants and respondents were dead, some even before the suit was filed. In those circumstances, according to Ms. Njiru, no lawful orders can be issued to affect deceased persons without substitution with their legal representatives, and where there was no substitution, the claims would abate. Counsel went on at length to enumerate various parcels and persons who were deceased to emphasize the point.

23. The issue is belatedly raised before us as it was not argued before the High Court or a decision made on it. But the basic proposition of law is correct as it is based on ***Order 24*** of the Civil Procedure Rules which states:

> ***"1.The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.***
>
> ***2.Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.***
>
> ***4(1)Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.***
>
> ***(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.***
>
> ***(3)Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.***
>
> ***7(1)Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.***
>
> ***(2)The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit."***

24.There are thus elaborate procedures for dealing with deceased parties and the consequence of abatement where there is no substitution by a legal representative are, of course, dire. We think, however, that the submission is based on a fundamental misconception of the special circumstances of this case. It is this: except for the interested parties, none of the individuals named as appellants or respondents has any leg to stand on their own without the Muruga and Mbandi clans, respectively. As stated at the opening paragraph of this judgment, the fight is, and has been since the 1970s, between the two clans. Before land adjudication set in, they were each represented by one chosen individual and that trend continued in all the cases placed before various organs during land adjudication. The fact that there were several clan members included in the litigation on either side did not give the individuals any right to claims which have no genesis from the clans. The clans knew their members. Several must have died and others born during the lengthy litigation between the clans spanning over 47 years up to date. In our view, such natural progression need not prejudice the rights of any member of the respective clans to any property of the clan. That is why we posited that the fronting of the issue of deaths was a sideshow serving only to muddy the waters. We reject that ground of appeal also.

25. Finally, it is claimed in ground 5 that one of the Mbandi clan members who had filed the suit in the High Court -- **David D. G. Nduhiu** -- had applied to withdraw from the suit and his name was struck out. By the time he applied to do so, the clan had given him parcel No.250 but in the final orders made by the trial court, the plot was included as part of the judgment. In counsel's view, it was wrong for the court to include the plot in the final judgment.

26. The response by Mr. Aming'a to that submission is that this was a group action and the decision of one person to withdraw could not affect the rights of the group or the claim made by all. The group or clan wanted illegal cancellations made in the register reversed in respect of all the disputed parcels, including 250, and the trial court did nothing wrong in granting the order. In accordance with the judgment, the original name registered in the Green Card remained.

27. We think there is a straight answer to this issue. The chamber summons filed by David D. G. Nduhiu on 1st November, 2005 sought one substantive order:-

> ***"That his name be removed from the list of names of people whom Mutokaa Nthautho claims to represent as stated in his affidavit sworn on 11th October, 2005."***

The only reason given for seeking that order was that *'the relationship between Nduhiu and Mutokaa has been very poor for many years and this has made the applicant suspicious that Mutokaa's motive is hostile and ill meant.'* Nduhiu swore that he was not aware of the suit filed on behalf of the clan but only saw his name listed without his knowledge.

28. The application was not opposed and in a short ruling made by Khaminwa, J., the order was granted as prayed. All that it meant was that David Nduhiu's name would be expunged from the suit and he would cease to represent the Mbandi clan. The order was inconsequential and did nothing to affect the interests pursued by the clan in respect of the disputed parcels of land. As stated earlier, none of the main parties in the suit was pursuing any individual right. The orders made in the final Judgment would, of course, exclude David D. G. Nduhiu. This ground of appeal also fails.

29.In sum, this appeal has no merit and we order that it be and is hereby dismissed with costs.

**Dated and delivered at Nakuru this 22nd day of November, 2017.**

**P. N. WAKI**

**…………………...………..**

**JUDGE OF APPEAL**

**R. N. NAMBUYE**

**……………………………**

**JUDGE OF APPEAL**

**P. O. KIAGE**

**…………...…………….**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**