



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT NYAHURURU**

**ELC CASE NO 428 OF 2017**

**JACKSON KAMAU KANYURU.....PLAINTIFF**

**VERSUS**

**STEPHEN GITHINJI WERU.....DEFENDANT**

**JUDGEMENT**

1. Before me for determination is a matter wherein the Plaintiff filed his Plaint on the 24<sup>th</sup> May 2017 seeking for judgment against the Defendant for a declaration that the property in land parcel No. Nyandarua /Kirima /5959 measuring 0.388 hectares devolving by law to the Defendant belongs to the Plaintiff. The Plaintiff further prayed for order for specific performance requiring the Defendant herein to transfer the right, title and interest in land parcel No. Nyandarua /Kirima /5959 measuring 0.388 hectares to the Plaintiff and in default the court's executive officer do execute all the necessary transfer forms, land Control Board forms or any other relevant forms as will ensure that Plaintiff is registered as the absolute proprietor of the subject land.

2. The Plaintiff had prayed for costs of the suit plus interest thereon from the date of filing of the suit till payment in full and any other orders that the court may deem fit to grant in the circumstance.

3. That vide an application dated the 24<sup>th</sup> May 2017 the Plaintiff/Applicant sought to serve the Defendant through substituted service by way of advertisement in the daily newspaper for reasons that he has been unavailable to execute the necessary transfer by transmission instruments to effect the registration of the suit land in the Plaintiff's name and further that his whereabouts are unknown.

4. On the 20<sup>th</sup> June 2017 the application was allowed and the said advertisement was placed in the Standard newspaper dated the 4<sup>th</sup> August 2017 giving the Defendant 15 days to enter appearance. When there was yet no response the Plaintiff requested, vide an application dated the 31<sup>st</sup> August 2017, for interlocutory judgment to be entered against the Respondent. Judgment was entered against the Defendant on the 20<sup>th</sup> September 2017 and the matter fixed for formal proof for the 23<sup>rd</sup> April 2018.

**The Plaintiffs Case.**

5. It was the Plaintiff's case, and while relying on his statement that on the 8<sup>th</sup> August 2014, he had entered into an agreement with the Defendant herein for the sale of 1 acre of land at a consideration of Ksh. 400,000/= The land was to be excised from a larger parcel of land No. Nyandarua/Kirimai/77 that was registered to the Defendant's father, now deceased and whom we shall refer to as 'the deceased' for ease of reference in this case.

6. That the Plaintiff had paid the initial instalment of Ksh. 200,000/= upon signing the agreement wherein vide the subsequent agreement dated the 22<sup>nd</sup> October 2014 he had paid a further Ksh 115,000/. Parties agreed that the balance was to be paid at the end of December 2015. and that upon the payment of the balance, the Defendant would issue him with the title deed.

7. That in a subsequent agreement dated the 3<sup>rd</sup> September 2015, parties agreed that the Plaintiff pays a further sum of Ksh 33,000/= over and above the initial Ksh. 400,000/ which additional monies was to help with the speeding up of the succession cause. The Plaintiff paid up thus making a total payment of Ksh. 433,000/=

8. It was the plaintiff's evidence that the parties had agreed that he would take possession of the suit land as soon as the Defendant had finalized with the Succession Cause.

9. It was the Plaintiff's case that upon payment of the full purchase price and when he had gone to see the suit land in the year 2015, that the Defendant refused to show him where it was it took the intervention of the Defendant's brother, one Washington who pointed out to him the

suit land.

10. That subsequently the Defendant had disappeared which prompted the Plaintiff to register a caution on parcel land No. Nyandarua/Kirimai/5959 which was the Defendant's share from the subdivision of parcel no Nyandarua/Kirimai/77.

11. He testified that he knew that land parcel No. Nyandarua/Kirimai/5959 was the defendant's inheritance after the surveyor who had subdivided the deceased's land had given him a copy of the mutation form and pointed out the same to him. He produced the mutation form as an exhibit.

12. He testified that the Defendant's brother Mr. Washington Ruigiri, who was one of the Administrators of the deceased's estate had kept in touch with him (Plaintiff) and used to inform him on the proceeding in regard to the deceased's property to the effect that on the day the Defendant's family had held a meeting to share out the deceased's property, the Plaintiff had been invited to claim his share.

13. That subsequently when the Administrator of the deceased's estate had started the process of transferring to the deceased's beneficiaries their parcels of land, the Defendant was not available to execute his part on the requisite RL 7 forms in the plaintiff's favour so as to transfer the land to him.

14. The Plaintiff produced the unexecuted Transfer by representative dated the 10<sup>th</sup> May 2017 and the Letter of consent dated the 23<sup>rd</sup> September 2015 as his evidence.

15. The Plaintiff closed his case by testifying that since the Defendant had disappeared, that the court do assist him to obtain his title deed to the suit land which he had bought from the Defendant. He also prayed for costs incurred in filing the present suit to be shouldered by the Defendant.

16. The Plaintiff relied on the following documents in his evidence.

- i. An agreement dated the 8<sup>th</sup> August 2014, produced as exhibit 1
- ii. An agreement dated the 22<sup>nd</sup> October 2014, produced as exhibit 2.
- iii. An agreement dated the 3<sup>rd</sup> September 2015, produced as exhibit 3.
- iv. A Certificate of confirmation of Grant dated the 9<sup>th</sup> September 2014, Produced as exhibit 4.
- v. A copy of a Mutation form was produced as exhibit 5.
- vi. A copy of a Transfer by Representative dated the 10<sup>th</sup> May 2017 and produced as exhibit 6.
- vii. A copy of the Letter of consent dated the 23<sup>rd</sup> September 2015, produced as exhibit 7.
- viii. His statement which he produced as exhibit 8.

17. The Plaintiff filed his submission on the 31<sup>st</sup> May 2018 wherein is Counsel submitted that that they had proved their case on a balance of probability. He further relied on the exhibits they had produced as well as on the evidence adduced and framed their issues for determination as being;

- i. Whether or not the Defendant sold a portion of 1 Acre to be excised from Nyandarua/Kirimai/77 in the names of the late Edward Weru Kiriamutu (Deceased).
- ii. Whether or not the Defendant was entitled to a portion of 1 acre in Nyandarua/Kirimai/77 as a beneficiary.
- iii. Whether or not the Defendant had the legal capacity to sell a portion of 1 acre in Nyandarua/Kirimai/77 as a beneficiary.
- iv. Whether or not the Defendant put the Plaintiff into physical possession of the sold portion later earmarked as LR No. Nyandarua/Kirimai/5959 immediately upon executing the land sale agreement dated the 8<sup>th</sup> August 2014.
- v. Whether or not the Defendant falsely misrepresented to the Plaintiff on or about the 3<sup>rd</sup> September 2015 that a succession Cause for the Estate of the late Edward Weru Kiriamutu (Deceased) was pending to enable the Plaintiff to adjust /modify the agreement date the October 2014.
- vi. Whether or not the Defendant has refused, declined or failed to avail himself and execute form R.7 with regard to LR. No. Nyandarua/Kirimai/5959, to pave the way for transfer of the same to the Plaintiff.
- vii. Whether or not the Defendant's conduct has rendered performance of his part of the Agreement for the sake improbable and therefore translating into a threatened breach of agreement.

viii. Whether or not the Plaintiff is entitled to the prayers sought in the plaint.

18. I shall endeavor to summarize the plaintiff's submission based on the above captioned issues for determination.

19. It was the Plaintiff's submission that pursuant to the agreements dated the 8<sup>th</sup> August 2014, 22<sup>nd</sup> October 2014 and the 3<sup>rd</sup> September 2015 herein produced as exhibits 1-3, that indeed parties had entered into a valid agreement for the sell and purchase of 1 acre of land to be excised from Nyandarua/Kirimai/77 which land was registered in the names of Edward Weru Kiriamutu (Deceased).

20. That at the time parties were entering into the agreement, the Defendant had been listed as one of the beneficiaries of 1 acre in parcel No Nyandarua/Kirimai/77. This was evidenced vide the letter of confirmation dated the 9<sup>th</sup> September 2014 and produced as exhibit 4,

21. That the Defendant herein therefore had the legal capacity to sell the portion of 1 acre obtaining in No. Nyandarua/Kirimai/77 which was sufficiently described in clause (a) of their agreement for sale as :

‘that portion of land measuring 1 acre to be excised out of Nyandarua/Kirimai/77.’

22. Further clause (b) of the said agreement was to the effect that;

‘the vendor had been allocate the piece of land marked in green to be carved out of Nyandarua/Kirimai/77 and had opted to sell a portion of 1 acre of the same to the purchaser which is now marked in red.’

23. That indeed one of the witnesses to the agreement dated the 3<sup>rd</sup> September 2015 was Washington Rurigi, a brother to the Defendant, and one of the administrators of the deceased's estate.

24. That notwithstanding the Letters of Confirmation herein produced as exhibit 4, the Defendant had been listed as a beneficiary of 1 acre which translated to the suit land on the mutation form herein produced as exhibit 5 and which corresponded to the description in the appendix to the party's agreement for sale dated the 8<sup>th</sup> August 2014. That by the time the Defendant sold the land, he was an equitable owner of the suit land.

25. That pursuant to the sale agreement dated the 3<sup>rd</sup> September 2015, and more so at clause (b), the agreement was to the effect that;

‘the vendor herein irrevocably guarantees the purchaser that he will deliver good title to the said parcel of land failure to which he will be liable to the purchaser for value of the property with all developments at market value...’

26. That indeed the Plaintiff had subsequently paid the second installment as was evidenced by the second agreement dated the 22<sup>nd</sup> October 2014 herein produced as exhibit 2 wherein he was put into possession of the suit land. That after the Plaintiff had cleared payment of the whole purchase price and had even paid an additional Ksh 33,000/- on the understanding that there was pending a Succession Cause and while the Administrator of the deceased's estate was in the process of executing forms RL 7 and 19 in favor of the deceased's beneficiaries, that the Plaintiff discovered that there was no Succession Cause pending as the same had already been finalized.

27. The Plaintiff further submitted that it was also during this process of execution, that he had learnt that it had been because of the Defendant's disappearance, that his representation as an administrator to the deceased's estate had been revoked in the Nyahururu Chief Magistrate's court Succession Cause No. 75 of 2013.

28. He thus concluded that since the Defendant had also cut all communication with him, that he (Defendant) would not avail himself to execute the form No R.L 7 with regard to LR. No. Nyandarua/Kirimai/5959.

29. That it was further because of the Defendant's disappearance that he had effected service upon him by way of substituted service because it had become impossible to trace him. The Plaintiff thus prayed for the orders depicted in his plaint.

### **Determination**

30. I have considered the uncontroverted evidence adduced in court, the documents produced as exhibits and the fact that the Defendant having neither entered his appearance nor filed his defence herein, as well as the Plaintiff's contention that the sale agreement herein was binding.

31. Indeed it is not doubtful that the Plaintiff and the Defendant herein had entered into a sale agreement on the 8<sup>th</sup> August 2014 in which the Defendant was to sell to the Plaintiff a portion of land measuring 1 acre to be excised out of Nyandarua/Kirimai/77 as marked in green (see clause 1(b) of the agreement dated the 8<sup>th</sup> August 2014) for a consideration of Ksh 400,000/= This was a portion that he was to inherit from his father's estate.

32. The Plaintiff paid him the first installment of Ksh. 200,000/= whereas the second installment was to be paid before the 31<sup>st</sup> December 2014. That the Parties had then agreed that the Plaintiff was to take possession of the suit land immediately after signing of the agreement.

33. That vide a supplementary agreement dated the 22<sup>nd</sup> October 2014, the Plaintiff paid a further Ksh.115,000/= of which the balance of the

purchase price was to be paid in exchange for the title deed in the name of the Plaintiff.

34. That vide an agreement dated the 3<sup>rd</sup> September 2015, the plaintiff had completed paying the purchase price of Ksh 400,000/= as well as an additional Ksh 33,000/- to help the Defendant complete the Succession Cause.

35. The validity and/or enforceability of these agreement has not been questioned.

36. What is evident however is that although the Defendant put the Plaintiff in possession of the said suit land, he has refused and/or failed to execute the transfer and registration of the said suit land into the Plaintiff name.

37. The Defendant's conduct, the court finds, was clearly inequitable if not out rightly fraudulent.

38. I also note that the Certificate of Confirmation in regard to the deceased's estate was issued on the 9<sup>th</sup> November 2014 wherein the Defendant herein was bequeathed with 1 acre of land to be excised from Nyandarua/Kirimai/77.

39. I have also considered the fact that vide a mutation form dated the 28<sup>th</sup> October 2015 the said parcel of land had been sub divided resulting into many pieces of land amongst them land parcel No. Nyandarua/Kirimai/5959 herein marked as 'g' which corresponded to the draft map on the sale agreement dated the 8<sup>th</sup> Aught 2014, the parcel of land the Defendant had sold to the Plaintiff.

40. Lastly, I have also taken into consideration that by the time the parties had entered into the sale agreement, on the 8<sup>th</sup> August 2014, the letters of Administration had already been taken out wherein the Defendant had been listed as one of the Administrators to the deceased's estate. These letters of Administration had subsequently given rise to the issuance of the certificate of Confirmation of Grant dated the 9<sup>th</sup> September 2014 one month after the signing of the agreement.

41. That the subsequent agreements dated the 22<sup>nd</sup> October 2014 and 3<sup>rd</sup> September 2015 were signed upon the confirmation of grant.

42. I find the issues for determination as being;

- i. Whether or not there was a land sale agreement between the Defendant and the Plaintiff herein, if so its terms.
- ii. Whether the Plaintiff acquired any defined rights over the suit land under the agreement.
- iii. Whether the Plaintiff had performed all his obligations under the agreement and if so, whether specific performance as a remedy was available to him.
- iv. Which party shall pay the costs of the suit.

43. From the evidence presented by the Plaintiff, as well as the exhibits produced in evidence, it is obvious that there was an agreement of sale of land between the Plaintiff and the Defendant on the 8<sup>th</sup> August 2014 wherein the plaintiff made a part payment of Ksh 200,000/= which was followed by subsequent Agreements dated the 22<sup>nd</sup> October 2014, in which the Plaintiff paid a further Ksh. 115,000/= and the balance was paid vide the agreement dated the 3<sup>rd</sup> September 2015 in which the plaintiff had completed paying the purchase price of Ksh 400,000/= and had paid an extra Ksh 33,000/= to help the Defendant apparently complete the process of the Succession Cause

44. The law of contract is application in the instant case. Section 3(3) of the Act is clear to the effect that:

No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

45. A look at the party's agreement dated the 8<sup>th</sup> August 2014, the same is clear to the effect that clause 1 gives a description of the property that was being sold to the Plaintiff as;

'.....that portion of land measuring 1 acre to be excised out of Nyandarua/Kirimai/77 registered in the name of Edward Weru Kiriamutu.....'

46. Clause 3.6 was to the effect that'

The vendor shall at his own expense ensure the succession cause is prosecuted to the end and all cause the said subdivisions/mutations of the

aforesaid property to be registered and shall pay for all the processes (surveyor's fees and any other necessary fees) and shall on or before the completion date exchange with the purchaser the following the completion documents with the balance of the purchase price:

- a. Duly executed Transfer in favour of the purchaser's or his nominee,
- b. Three (3) passport size photographs of the Vendor,
- c. A copy of the Vendors National Identity Cards,
- d. P.I.N certificates,
- e. Spousal consent,
- f. Land Control Board consent to transfer.

47. Clause 3.7 was to the effect that;

'The vendor do herein irrevocably guarantee the purchaser that he shall deliver a good title to the said parcel of land failure to which.....

48 By the time the agreement dated 8<sup>th</sup> August 2014 was drawn, the suit land known as parcel No. Nyandarua/Kirimai/5959, did not exist.

49. There is however no doubt that the suit land came to being after the subdivision of parcel No. Nyandarua/Kirimai/77, which had been described in the mutation forms of 28<sup>th</sup> October 2015 as parcel No. Nyandarua/Kirimai/77. The court finds that parcel is the same one described in the sale agreement dated 8<sup>th</sup> August 2014 and which the Plaintiff registered a caution over the title, on the 15<sup>th</sup> July 2016, claiming purchaser for valuable consideration

50. That even though in law, the Defendant could not have had capacity to sell his share of his fathers' estate before the grant was confirmed or the estate had been distributed and a specific portion registered in his names, yet it was a term in the Agreement for Sale that the completion date for the sale shall be on 31<sup>st</sup> December 2014 upon which all the purchase price would have been paid in full subject to the terms of clause 3.6 of the Agreement that required for the Defendant to execute all documents for the transfer of the suit land.

51. The issuance of the certificate of Confirmation of Grant was on the 9<sup>th</sup> September 2014, following which there were two subsequent agreements signed and the full purchase price of Ksh 400,000/= was received by the Defendant on the 3<sup>rd</sup> September 2015. I therefore find that there was a valid agreement between the Plaintiff and the Defendant.

52. The terms of the Agreement to sale are clear to the effect that **there was common intention between the Plaintiff and the Defendant in relation to suit property. The Plaintiff had acquired rights over the suit land under the agreement as the transaction had created a constructive trust in favor of the Plaintiff herein when he paid the full amount of the purchase price as per their agreement. This trust was enforceable.**

53. At clause 3.7 of the agreement, the Defendant guaranteed the Plaintiff that he shall deliver good title to the suit land failure to which he would be liable to him (plaintiff) for the value of the property with all the developments at a market value and plus an interest of 10% a month of the purchase price up to the date of such payment.

54. That after the signing of the first agreement, the Defendant had put the Plaintiff in possession of the portion of land he had bought which was subsequently registered as the suit land. There is therefore no doubt that the Plaintiff herein expected the Defendant to perform his part of the agreement and transfer the land to him after he had completed paying the whole purchase price. This was not the case as the defendant disappeared and did not fulfil his end of the bargain. I therefore find that the Plaintiff had performed all his obligations under the agreement and an order for specific performance as a remedy is available to him.

55. The court has already found that the Defendant had breached the agreement by failing to transfer the suit land to the Plaintiff. The Court of Appeal in the case of *Gurdev Singh Birdi & Anor –vs- Abubakar Madhbuti C.A. No.165 of 1996 held as follows;*

**“It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been under all the obtaining circumstances in the particular case, it is just and equitable to do with a view to doing more perfect and complete justice. Indeed, as is set out in paragraph 487 of volume 44 of Halsbury's Laws of England., Fourth Edition, a Plaintiff seeking the equitable remedy of specific performance of a contract:**

**“ must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action. However, this rule only applies to terms which are essential and considerable. The court does not bar a claim on the ground that the Plaintiff has failed in literal performance, or is in default in some non- essential or unimportant term, although in such cases it may grant compensation. Where a condition or essential term ought to have been performed by the Plaintiff at the date of the writ, the court does not accept his undertaking to perform in lieu of performance but dismisses the claim.”**

56. A party cannot run away from the terms of its agreement. It has often been stated that the Court's function is to enforce contracts that the parties enter into. The court cannot rewrite the party's agreements.

57. In the case of **Shah -vs- Guilders International Bank Ltd [2003]KLR** the Court in considering the terms of the parties contract stated that:-

“The parties executed the same willingly and they are therefore bound by it.”

58. In **Aiman vs Muchoki (1984) KLR. 353** the Court of Appeal held;

“In the field of the civil law, it is of utmost importance that the courts uphold the rights of parties to commercial transaction. It is the firm tradition of common law court to do so and if the tradition is departed from the nation will suffer”.

59. Section 6 (2) of the Land Control Act provides:

“For avoidance of doubt, it is declared that the declaration of trust of agricultural land situated within a Land Control Board area is a dealing in land for purposes of subsection (1)”.

60. Section 8 (1) requires that an application for consent should be made in the prescribed form within six months of the making of the agreement but the proviso thereto gives the High Court power to extend the period if it considers that there are sufficient reasons to do so upon such conditions, if any, as it may think fit.

61. Under Section 7 of the Land Control Act, consideration paid for a transaction which becomes void is recoverable as a debt subject to Section 22 which provides:

Where a controlled transaction; or an agreement to be a party to a controlled transaction, is avoided by Section 6 and any person –

(a) pays or receives any money; or

(b) enters into or remains in possession of the land, in such circumstances as to give rise to a reasonable presumption that the person pays or receives the money or enters into or remains in possession in *furtherance of the avoided transaction or agreement, that person shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.*”

62. A party cannot run away from the terms of its agreement. It has often been stated that the Court's function is to enforce contracts that the parties enter into. The court cannot rewrite the party's agreements.

63. In the case of **Shah -vs- Guilders International Bank Ltd [2003]KLR** the Court in considering the terms of the parties contract stated that:-

“The parties executed the same willingly and they are therefore bound by it.”

64. In **Aiman vs Muchoki (1984) KLR. 353** the Court of Appeal held;

“In the field of the civil law, it is of utmost importance that the courts uphold the rights of parties to commercial transaction. It is the firm tradition of common law court to do so and if the tradition is departed from the nation will suffer”.

65. A look at the terms of the party's agreement, the same is clear that the land in issue related to a controlled transaction in agricultural land which transaction is governed under Section 6(1) of the Land Control Act and which stipulates that such a transaction:

“is void for all purposes unless the Land Control Board for the land control board area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.”

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68. Under Section 7 of the Land Control Act, consideration paid for a transaction which becomes void is recoverable as a debt subject to Section 22 which provides:

Where a controlled transaction; or an agreement to be a party to a controlled transaction, is avoided by Section 6 and any person –

(a) pays or receives any money; or

(b) enters into or remains in possession of the land, in such circumstances as to give rise to a reasonable presumption that the person pays or receives the money or enters into or remains in possession in *furtherance of the avoided transaction or agreement, that person shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.*”

69. In the case of **Willy Kimutai vs Michael Kibet [2018] eKLR** held as follows:

The Land Control Act does not, unlike **Section 3 (3)** of the Law of Contract Act and **Section 38 (2)** of the Land Act save the operation of the doctrines of constructive trust or proprietary estoppel nor expressly provide that they are not applicable to controlled land transactions. Although the purpose of the two statutes are apparently different, they both limit the freedom of contract by making the contract void and enforceable. Since the doctrines of constructive trust and proprietary estoppel apply to oral contracts which are void and enforceable, in our view, and by analogy, they equally apply to contracts which are void and enforceable for lack of consent of the Land Control Board especially where the parties in breach of the Land Control Act have unreasonably delayed in performing the contract. However, whether the court will apply the doctrines of constructive and proprietary estoppel to a contract rendered void by lack of the consent of Land Control Board will largely depend on the circumstances of each particular case.

There is another stronger reason for applying the doctrines of constructive trust and proprietary estoppel to the Land Control Act. By **Article 10(2) (b)** of the Constitution of Kenya, **equity** is one of the national values (**emphasis supplied**) which binds the courts in interpreting any law (Article 10(1) (b)). *Further, by Article 159(2) (e), the courts in exercising judicial authority are required to protect and promote the purpose and principles of the Constitution. Moreover, as stated before, by virtue of clause 7 of the Transitional and Consequential Provisions in the Sixth Schedule to the Constitution, the Land Control Act should be construed with the alterations, adaptations, and exceptions necessary to bring it into conformity with the Constitution.....*

.....Thus, since the current Constitution has by virtue of **Article 10(2) (b)** elevated equity as a principle of justice to a constitutional principle and requires the courts in exercising judicial authority to protect and promote that principle, amongst others, it follows that the equitable doctrines of constructive trust and proprietary estoppel are applicable to and supersede the Land Control Act where a transaction relating to an interest in land is void and enforceable for lack of consent of the Land Control Board.

70. It is clear from the above captioned case that the court held that the lack of the consent of Land Control Board did not preclude the court from giving effect to equitable principles, in particular the doctrine of constructive trust.

71. For reasons stated hereinabove, I find that the Plaintiff is has proved his case on a balance of probability and is entitled to the remedies sought and Judgment is entered for the Plaintiff in the following terms.

i. That it is herein declared that the property in land parcel No. Nyandarua /Kirima /5959 measuring 0.388 hectares devolving by law to the Defendant belongs to the Plaintiff.

ii. That the Defendant is herein directed to perform within 30 days of this judgment, the transfer the right, title and interest in land parcel No. Nyandarua /Kirima /5959 measuring 0.388 hectares to the Plaintiff and in default the court’s executive officer do execute all the necessary transfer forms, land Control Board forms or any other relevant forms as will ensure that Plaintiff is registered as the absolute proprietor of the subject land.

iii. The Plaintiff is also awarded costs of the suit plus interest thereon from the date of filing of the suit till payment in full.

It is so ordered.

**Dated and delivered at Nyahururu this 3<sup>rd</sup> day of July 2018.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**