



Gichini & 5 others v Karanja (Sued as the Legal Administrator of the Estate of the Late Mwangi Gichini) (Environment and Land Case 23 of 2020) [2023] KEELC 16405 (KLR) (23 March 2023) (Judgment)

Neutral citation: [2023] KEELC 16405 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE 23 OF 2020
LN GACHERU, J
MARCH 23, 2023**

BETWEEN

**HENRY GITAU MUHURA (SUING AS ADMINISTRATOR OF THE ESTATE OF MUHURA GICHINI) 1ST PLAINTIFF
AGNES NJOKI MUHURA 2ND PLAINTIFF
JOSPHAT IRUNGU MUHURA 3RD PLAINTIFF
STEPHEN KARANJA MUHURA 4TH PLAINTIFF
MARY WAITHIRA MUHURA 5TH PLAINTIFF
MBOTE GICHINI 6TH PLAINTIFF**

AND

BERNARD MUTURI KARANJA (SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE MWANGI GICHINI) DEFENDANT

(The Plaintiffs filed the instant suit against the Defendant through an Amended Originating Summons dated 14th December 2021, and filed on the even date.)

JUDGMENT

1. The Plaintiffs sought for the following orders;
 - a. That Mbote Gichini and the late Mwangi Gichini be declared to jointly hold all that parcel of land measuring 1.66HA known as title No. Fort Hall Loc. 18/ Kirere/3 in trust on their own behalf and on behalf of the 1st- 5th Plaintiffs' herein.



- b. That all that parcel of land known as title No. Fort Hall Loc. 18/ Kirere/3, be surveyed and adjudicated by a Government Surveyor or such other Surveyor as the Court may appoint to demarcate and sub-divide the parcel of land into portions for each and every beneficiary of the trust
 - c. That the land register relating to the land title No. Fort Hall Loc. 18/ Kirere/3, be rectified in such a manner as will reflect the Plaintiffs herein as beneficiaries of the registered owners of the said parcel of land.
 - d. That such other questions as may be pertinent to the case be determined and appropriate directions and orders be given
 - e. That the costs of these proceedings be borne by the Defendant.
2. The Originating Summons is premised on the Supporting Affidavit of Mbote Gichini 6th Plaintiff sworn on the 14th December 2021. He deponed that the suit property was registered in his name and that of Mwangi Gichini deceased, the grandfather to the Defendant. He contends that both of them were to hold the property in trust for themselves and their brothers. Further, he contended that the Defendant intends to disinherit the Plaintiffs, who have been in occupation, use and possession of the suit property.
 3. In response to the Originating Summons, the Defendant filed his Replying Affidavit on the 10th January 2022, opposing the Plaintiffs suit. It is his case that the suit ought to have been instituted by way of a Plaint. He refuted the claim that the suit land was a trust property, and averred that the land was registered in the name of his grandfather absolutely. He contended that Gichini Gaturu had two wives, whom he shared land equally. Additionally, that the 1st Plaintiff, Muhura Gichini, and the 6th Plaintiff are children born of the same mother and step- brothers to the Defendant's grandfather, Mwangi Gichini. Therefore, that the Plaintiffs' have no claim over the property of Mwangi Gichini, but over the one held by the 6th Plaintiff herein. He urged this Court to dismiss the Plaintiffs' Originating Summons for being bad in law and for being Statutory barred.
 4. The matter was set down for hearing via viva voce evidence wherein the Plaintiffs called three witnesses so did the Defendant.

Plaintiff's Case

5. PW1 Henry Gitau Muhura, the 1st Plaintiff adopted his witness statement dated 24th March 2022, as evidence in chief and relied on the documents attached to the Originating Summons. He gave a testimony of how he was related to the other Plaintiffs and the Defendant. He added that the suit land measures 4.1 acres, and that the parties herein all live on the suit property, and they have buried some of their kinsmen thereon. That despite his father not being registered as the proprietor of the suit property, his father hold equal shares with the other brothers and the Plaintiff's must be given their share of the land thereon.
6. On cross-examination, he maintained that the suit property was registered in the name of the Mbote Gichini and Mwangi Gichini to hold it in trust for the family of his grandfather. On re-exam, he reiterated that he was in Court with the authority of his family members and they were only claiming 1/3 of the suit property.
7. PW2 Agnes Njoki Muhura 2nd Plaintiff adopted her witness statement dated 24th March 2022, as evidence in chief and told the Court that she has lived on the suit land since 1970, when she was married to Muhura Gichini.



8. On cross-exam, she testified that the family had agreed to have the land registered between the two brothers for the interest of the other family members. She produced no evidence though. She further testified that she never sued the 6th Plaintiff as he was willing to have the land shared equally.
9. PW3 Mbote Gichini, 6th Plaintiff adopted his witness statement dated 21st March 2022, as evidence in chief adding that his father Gichini Gaturu had two wives Nyathira and Wangechi. That the former had one child, Mwangi Gichini, while the latter had two sons; - Muhura Gichini and Mbote Gichini. He told the Court that the suit land belonged to his deceased father Gichini Gaturu, and the family inherited the said land from Gichini Gaturu. That the said land was registered in the name of Mbote Gichini and Mwangi Gichini to hold in trust for the whole family. He reiterated that the land should be shared among the three brothers and/or their beneficiaries. He testified on cross-exam that his father had stated that the land be divided among his children and not the wives. He was consistent in his testimony that the suit land ought to be divided equally among the three brothers. This marked the close of the Plaintiffs' case.

Defence Case

10. DW1 Benard Muturi Karanja the Defendant herein, adopted his Witness Statement dated 12th April 2022, as evidence in chief and relied on the documents contained in his Replying Affidavit filed on 13th October 2020. He testified that he is a grandson to Mwangi Gichini. It was his further testimony that the suit land was shared equally between his grandfather's two wives. He maintained that the 1st-5th Plaintiffs should seek land from the 6th Plaintiff and not claim from him, who inherited the land through his grandfather Mwangi Gichini, who belonged to another house.
11. On cross-examination, he informed the Court that there are two families on the suit land being the families of Wangechi and Nyathira. He also confirmed that there are family members who have been buried on the suit property. He also added that even though the land is not demarcated, each family members knows their distinct portions that they cultivate. It was his further testimony that he was born in this kind of set up and has lived so to date.
12. DW2 John Karanja Mwangi adopted his witness statement dated 12th April 2022, as evidence in chief. He also added that he is a neighbor to the Defendant. He informed the Court that the suit land was divided into two portions.
13. On cross-exam, he testified that he is related to the Defendant, and also confirmed that each family is living and cultivating on their distinct parcels of land.
14. DW3 Chege Muthugu, adopted his Witness Statement dated 12th April 2022, as evidence in chief. He reiterated that the land was shared between the wives of Gichini Gaturu and not his sons, who were three in number.
15. After close of the *viva voce* evidence, parties filed their respective written submissions.
16. The Plaintiffs filed their submissions on the 25th October 2022, through the Law Firm of Chiuri & Chiuri Co. Advocates and raised five issues for determination by this Court.
17. The Plaintiffs submitted that they have established a case for customary trust and have demonstrated the elements laid out in the case of *Isack M'Inanga Kiebia vs Isaaya Theuri & Another* {2018}eKLR. It was their further submissions that the registration of the two – Mwangi Gachini & Mbote Gichini as proprietors did not preclude them from holding the land in trust. They relied on the case of *Ngugi vs Kamau & Another*{2022}KEELC 2261(KLR).



18. On whether the land was sub-divided into the number of houses, the Plaintiffs submitted that none of the wives were ever registered as the land owners. They relied on the case of *Re Estate of Ngamini Kirira(deceased)* 2016 eKLR, where the Court reiterated on the need for equal distribution of property, where customs are applied. It was their submissions that as Plaintiffs, there was corroborated evidence on how they all occupy the land, and even though no Sketch Plan was provided, proving trust does not require actual possession and occupation as was found by the Court in the case of *Isack M’Inanga Kiebia vs Isaaya Theuri & Another*, supra. In the end, the Plaintiffs submitted that they are entitled to a share of the suit property.
19. The Defendant through the Law Firm of T.M Njoroge Advocates filed his submissions on the 4th November 2022. It is his submissions that the suit is statutory barred as it is brought 12 years after the cause of action arose. That the 2nd- 5th Plaintiffs did not obtain a grant ad litem and a suit by them cannot be sustained. He faulted the Plaintiffs for filing the instant suit having had their protest dismissed in the succession cause at Kigumo Law Courts. He urged this Court to dismiss the suit with costs.
20. Having considered the available evidence and the written submissions, it is clear from the pleadings and the testimonies that the Plaintiffs and the Defendant are related. While the 1st- 5th Plaintiffs are children and wife of Muhura Gichini, the Defendant is a grandson of Mwangi Gichini. Both Muhura Gichini and Mwangi Gichini, deceased were brothers to the 6th Plaintiff. It is undisputed that the suit land belonged to Gichini Gaturu, who had two wives Wangechi and Nyathira whom they bore three sons Mbote Gichini, Muhura Gichini and Mwangi Gichini.
21. As per the copy of Green Card, the land was first registered in the name of Gichini Gaturu on 4th March 1964. On 18th August 1977, the land was registered in the names of Mwangi Gichini and Mbote Gichini vide a succession cause, which land they were each to get ½ shares. It is not in dispute that one of the sons, Muhura Gichini, was not registered as at the time of succession. It is not clear to this Court whether he participated in the proceedings or not. It is equally correct to conclude that all the parties to the suit herein live on the suit property. The Plaintiffs now want the land to be shared equally among the three brothers, claiming the two registered proprietors were to hold the land suit in trust for the three brothers and their beneficiaries.
22. The Defendant raised an issue that the suit is time barred, having been filed 12 years, after the cause of action accrued. It is thus necessary to determine whether the suit is statutory barred or not. The suit is based on trust. Section 20 of the *Limitation of Actions Act* makes provisions for action concerning trust property, it provides:
 - (1) None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action—
 - (a) in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or
 - (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.
 - (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust (not being an action for which a period of limitation is prescribed by any other provision of this Act) may not be brought after the end of six years from the date on which the right of action accrued:



Provided that the right of action does not accrue to a beneficiary entitled to a future interest in the trust property, until the interest falls into possession.

- (3) A beneficiary against whom there would be a good defence under this Act may not derive a greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

23. The Defendant did not address this Court adequately on this issue. Section 20(1) is clear that the Limitation of Actions Act is not applicable to claims by beneficiaries of trust land to claim trust land from trustees. The Court in *Macharia Kihari v Ngigi Kihari* [1994] eKLR, when considering whether Section 20(1) of the Limitation of Actions Act was applicable in the case held:

"Under customary law, the land even after the right of action has accrued, is held in trust even for decades before any step is contemplated for a formal transfer or division. Limitation does not apply in customary law. We reject this ground of appeal."

24. This position was adopted by the Court in the case of *Stephens & 6 others v Stephens & another* [1987] eKLR. Thus this Court is well guided and proceed to find that the instant suit is not statutory barred.
25. The Defendant also raised the issue of locus as against the 2nd- 6th Plaintiffs and he submitted that they ought to have first filed for Grant ad litem. The 1st- 5th Plaintiffs are all beneficiaries of Muhura Gichini, whom they are claiming trust through. This Court has not seen any copy of grant over the estate of Muhura Gichini. What was filed along the Summons was an authority to act. However, on 24th March 2022, the Plaintiffs filed Documents including a Grant ad Litem. The Grant was issued to the 1st Plaintiff on 17th March, 2021. What gives a party standing in Court is a grant, which can either be a limited one or a full grant.
26. It is well settled in *Civ Appeal No. 119 of 2015(Migori)Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased)* [2016] eKLR that:

The issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of Court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person, since in most cases the estate involves several other beneficiaries or interested parties.

27. Without locus therefore, a party cannot be entertained. Be that as it may, it is relevant to note that there is an undisputed fact that the 1st-5th Plaintiffs are beneficiaries of Muhura Gichini and are claiming land for their interests as beneficiaries. They moved this Court in light of the succession proceedings by the Defendant, which may have the ripple effect of their occupation of the suit property, which they say they have lived thereon since forever. This Court appreciates the pronouncement in *re-Estate of Benson Maingi Mulwa (Deceased)* [2021] eKLR, where the Court held:

In my view since intermeddling can be committed even by administrators, any person interested in the state of a deceased person as a beneficiary or otherwise is properly entitled to move the Court and seek orders intended to preserve the estate. It is therefore not mandatory



that such an application be made by the administrators or with consent or authority of the other beneficiaries since a beneficiary is entitled to protect his or her interest in the estate.”

28. However, the 1st Plaintiff was granted authority to act for and on behalf of the other Plaintiffs and also a Limited Grant was issued to him. Their presence in the suit does not have much relevance. This Court agrees with the Defendant only in respect of the 2nd-5th Plaintiffs and proceeds to find that they lack the requisite locus to sustain this suit.
29. Having read through the pleadings and annexures thereto, and having analyzed the testimonies and guided by the submissions and the authorities thereto, the Court finds the issues for determination are
 - i. Whether there was trust?
 - ii. Whether the Plaintiffs are entitled to the prayers sought?
 - iii. Who should pay costs?

Whether there was trust?

30. Trust is an overriding interest registerable on land and thus it is one of the ways of acquiring land. Section 7 of the [Land Act](#) provides for the ways that title may be acquired, it provides;

Title to land may be acquired through-

- (a) Allocation;
.....
 - (d) Prescription
 - (g) Transfers;
 - (i) any other manner prescribed in an Act of Parliament.”
31. Additionally, the [Land Registration Act](#) recognizes trust as one of the overriding interest. Section 28 provides:

Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

 - a.
 - b. Trusts including customary trusts;
 - c.
 32. It is safely right to conclude that trust is one of the means that can take away the indefeasibility of title. In the case of *Njenga Chogera vs Maria Wanjira Kimanui & 2 Others*{2005}eKLR which quoted with approval the holding in the case of *Muthuita –vs- Muthuita* [1982 – 88] 1 KLR 42, the Court of Appeal held that customary trust is proved by leading evidence. Trust is a question of fact, which must be proved by whoever is claiming a right under customary trust. A trust can never be implied by the



Court, unless there was intention to create a trust in the first place. In *Peter Ndungu Njenga vs Sophia Watiri Ndungu*{2000} eKLR, the Court held:

"The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the Court may presume a trust. But such presumption is not to be arrived at easily. The Courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust is implied."

33. Further, in *Juletabi African Adventure Limited & Another vs. Christopher Michael Lockley*{2017}eKLR, the Court also held that:-

"It is settled that the onus lies on a party relying on the existence of a trust to prove it through evidence. That is because:-"The law never implies, the Court never presumes, a trust, but in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied."

34. Registration happened under the old regime of land laws. Section 30 of the Registered *Land Act*, CAP 300, (now repealed) made provisions for overriding interest. A reading of the section does not make express provisions for trusts, but Courts have overtime interpreted the intent of Section 30(g) of the Act to include customary trusts. The journey towards accepting the foregoing was well elaborated by the Supreme Court in *Isack M'inanga Kiebia vs Isaaya Theuri M'lintari & another* [2018] eKLR, when it also arrived at the conclusion that customary trust was recognized under Section 30(g) of the said Act (repealed).

35. The Court went ahead to elaborate more on how trust could be deciphered. It held:

"Under this legal regime, (now repealed), the content of such a trust can take several forms. For example, it may emerge through evidence, that part of the land, now registered, was always reserved for family or clan uses, such as burials, and other traditional rites. It could also be that other parts of the land, depending on the specific group or family setting, were reserved for various future uses, such as construction of houses and other amenities by youths graduating into manhood. The categories of a customary trust are therefore not closed. It is for the Court to make a determination, on the basis of evidence, as to which category of such a trust subsists as to bind the registered proprietor."

36. The Court went ahead and stated that each case ought to be treated differently by looking at the nature of the holding and the intention of the parties. Such holding should be for the interest of other members of the family. The Court enumerated five elements for consideration that a party must crave to draw a conclusion that there was trust. They include:

- i. The land in question was before registration, family, clan or group land
- ii. The claimant belongs to such family, clan, or group
- iii. The relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous.
- iv. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances.



- v. The claim is directed against the registered proprietor who is a member of the family, clan or group.

37. In this case, the land was first registered in the name of Gichini Gaturu, the father to the 6th Plaintiff and two other brothers vide a registration of 4th March, 1964. Subsequently the land was registered in the name of two sons, Mbote Gichini and Mwangi Gichini, by way of transmission as is evident in the Green Card. None of the parties availed to this Court the proceedings in the Succession Cause. PW3, who is one of the registered owners of the suit property told this Court that the land was a family land and was registered in their names with the exclusion of Muhura Gichini, who was at that time in Mombasa. However, he added that the two registered brothers were to hold the land in trust for themselves and the said Muhura Gichini, who was not available but was living in Mombasa.
38. The Defendant objected to this analogy and contended that if there was any trust, then the 6th Plaintiff was holding the land in trust for Muhura Gichini. It was his further testimony that his great grandfather had two wives and he sub-divided the land equally according to the houses and not the sons. The net end of this was that his grandfather was eligible to half share of the suit land while Mbote Gichini and Mwangi Gichini were eligible to the other.
39. The dead cannot speak and what the Court can only do is determine the intention of the parties, based on evidence adduced and take into considerations the law on trust. There was uncontroverted evidence that all the parties herein live on the suit property and all gave the impression that they were born thereon. There was uncontroverted testimony that they have buried their immediate family members thereon including the 1st Plaintiff's father and the Defendant's grandfather.
40. PW3 told this Court that the suit land belonged to his father Gichini Gaturu, and PW 3 & his brothers Mwangi Gichini & Muhura Gichini inherited from their father the suit land. His assertion that Muhura Gichini could not be registered as he was away in Mombasa was corroborated by PW2. He testified on cross-examination that he was present when his father expressed his intention to have the land shared between his children and not the wives. Even though he did not produce any documentation on the foregoing, this Court had no reason to doubt his evidence. He told the Court that he is 85 years old, and he appeared well versed in knowledge about the history of the suit land. The Defendant and his witness testified that they were not present when the above events took place, and are thus not aware of what resulted in the registration in the name of Mbote Gichini and Mwangi Gichini.
41. What is clear to this Court is that this was a family land evidentially and it was first registered in the name of Gichini Gaturu, who was a father of the three, Mbote Gichini, Mwangi Gichini and Muhura Gichini. Sadly, only Mbote Gichini is the only surviving son and who now has told the Court that the land was to be shared equally among the three sons. This does not mean the age of the Defendant and his witness makes them not aware of the facts founding the transfer of the land. There was no evidence that attempted to shake the credibility of the testimony of PW3. In his statement, he stated that he was willing to give his share so that the land can be shared equally, a fact he repeated this in his testimony.
42. The Defendant contends that the 6th Plaintiff being the blood brother of Muhura Gichini should give his share to the Plaintiffs. Interestingly, despite there being no Map to demonstrate how parties are living, it was common evidence that all the parties live and cultivate on the suit land distinctly. This helps the Court to draw a conclusion that there was intention among all the brothers that Mbote Gichini, Mwangi Gichini and Muhura Gichini should share in the property as per their father's instructions. Admittedly, there was never a suit between the 6th Plaintiff and his two brothers as to occupation and use of the suit land.



43. Further, there was no evidence placed before this Court to show when the two wives of Gichini Gaturu, the 1st registered owner, died. This would have been relevant in informing this Court why the land was not registered in their names in 1977, when the land was registered in the names of Mbote Gichini and Mwangi Gichini. The Defendant had testified that the land was shared as per houses and he should have shown this Court why the same was not noted in the register by encrypting the names of the wives in place of the sons. This lends credence to the testimony of PW3 that their father had the intention of having the land shared among the three brothers and not the wives. Both PW2 and PW3 testified before this Court that Muhura Gichini could not be registered as one of the proprietors of the suit land as he was away in Mombasa. Even though there was no evidence of how it was difficult to procure his attendance, this Court grants the Plaintiffs the benefit of doubt that Muhura Gichini could not be registered as he was not present then to facilitate the process of transfer.
44. This Court is alive to the admission that all the parties live on the suit property and all the deceased brothers have been buried thereof. There is no evidence that Muhura Mwangi had an alternative land or had been given any land by his father. There is also undisputed evidence of peaceful co-existence among the brothers as to want to disinherit one of them. They were all children of Gichini Gaturu and were all eligible to inherit what belonged to their father or what was considered family property.
45. The Defendant is not the registered owner, but he seeks to benefit from one of the registered owner, Mwangi Gichini his grandfather by dint of being a beneficiary and administrator. The Plaintiffs were right thus in seeking orders against him. He has been sued as an administrator of the Estate of Mwangi Gichini.
46. The eventuality of the foregoing analysis is that the Plaintiffs have aptly satisfied the elements laid out in the case of *Isack M'inanga Kiebia v Isaaya Theuri M'lintari & another*, supra. Thus, this Court finds and holds that Mbote Gichini and Mwangi Gichini(deceased), were holding the land in trust for themselves and Muhura Gichini(deceased) and/or their beneficiaries.

Whether the Plaintiffs are entitled to the prayers sought?

47. The Plaintiffs have sought orders that the land register be rectified and suit land be adjudicated and surveyed. As has been established hereinabove, the land is not demarcated. Parties have distinct occupation and use of the suit land. There was an application for consent by Kigumo Land Control Board. However, it is not clear whether the same was acted on for the reason that no title deed was adduced before this Court.
48. Having found that there was registerable trust in favor of Muhura Gichini, it then follows that his family is legible to benefit from the suit land and to safeguard their interest, his name should be included in the register, since no administration of his Estate has been determined.
49. Rectification of title by this Court is provided for under Section 80 of the [Land Registration Act](#), which also acknowledges that cancellation can issue. It provides:

80.

- (1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.



- (2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

50. Rectification by Court involves cancellation or amendments of title, the circumstances of which are provided above. This Court will concur with the sentiments of the Court in Kisumu Misc No. 80 of 2008 Republic V Kisumu District Lands Officer & another [2010] eKLR where the Court held:-

“it is clear that it is only the Court that can cancel or amend if where the Court is of the view that registration has been obtained, made or omitted through fraud or mistake and only where it is not a first registration”.

51. Similarly, the Court of Appeal in Mombasa Appeal No. 98 of 2016 Super Nova Properties Limited & another v District Land Registrar Mombasa & 2 others; Kenya Anti-Corruption Commission & 2 others (Interested Parties) [2018] eKLR agreed with the trial Court that

“The only institution with mandate to cancel a title to land on the basis of fraud or illegality is a Court of law”.

52. Therefore, this Court shall exercise the said discretion and direct that the Land Registrar Murang’a shall cancel title if any issued in the name of Mbote Gichini and Mwangi Gichini and to a greater extent cancel entry No. 2 in the Green Card.

53. The process of survey is well detailed in the *Survey Act* which is not the jurisdiction of this Court. What the Court can only do is to issue directions. Since no Surveyor has been proposed to this Court by parties, this Court shall direct that the Government Surveyor to undertake the requisite process to ensure that land parcel No Fort Hall Loc. 18/Kirere/3, is surveyed. The Surveyor should take into account the current occupation and use of the suit land by the parties to this suit. In so doing, Mbote Gichini, Mwangi Gichini and Muhura Gichini are each eligible to $\frac{1}{3}$ of the total acreage of the suit property. The Plaintiffs are thus entitled to the orders sought.

54. Ultimately the Court makes the following orders;

- a. The 6th Plaintiff, Mbote Gichini and Mwangi Gichini(deceased) hold title to the parcel of Land known as Fort Hall Loc. 18/Kirere/3 in trust for themselves and Muhura Gichini(deceased), and/or their beneficiaries.
- b. That trust is determined and the land parcel No. Fort Hall Loc. 18/Kirere/3 shall be shared equally among the children of Gichini Gaturu(deceased).
- c. The Land Registrar be and is hereby ordered to cancel entry No 2, in the Green Card for Fort Hall Loc. 18/Kirere/3 and any subsequent titles emanating thereof.
- d. A Government Land Surveyor be and is hereby directed to survey the land and undertake the requisite steps to ensure that the land is surveyed as per the judgment of this Court within 30 Days of this judgment.



- e. The 6th Plaintiff (Mbote Gichini) and the Defendant shall execute all the relevant documents to facilitate the sub – division of the title to land parcel No. Fort Hall Loc. 18/Kirere/3 in terms of the order in (b) above within 30 days of completion of the survey.
- f. In default of (e) above, the Deputy Registrar shall execute the said documents.
- g. This being a family each party to bear their own costs.

55. Therefore, the existing trust is thus dissolved and the suit land should be shared as above.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 23RD DAY OF MARCH, 2023.

L. GACHERU

JUDGE

