



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nderu (Suing as administrator of Estate Gacheru Kanungu – Deceased) v Babu (Environment & Land Case 270 of 2019) [2023] KEELC 18064 (KLR) (24 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 18064 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 270 OF 2019**

**JA MOGENI, J**

**MAY 24, 2023**

**BETWEEN**

**AGNES WANJA NDERU (SUING AS ADMINISTRATOR OF ESTATE  
GACHERU KANUNGU – DECEASED) ..... PLAINTIFF**

**AND**

**KIARIE BABU ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated March 2, 2012 and amended on May 20, 2019 the plaintiff sought the following reliefs against the defendant:
  - a. An order of eviction against the defendant, his family members, heirs, servants or agents from land parcel No. LR Dagoretti/Riruta/2064 with all crops and structures thereon.
  - b. An order of permanent injunction against the defendant, his family members, heirs, servants or agents barring them from entering, and/or interfering in any manner with land parcel No. LR Dagoretti/Riruta/2064
  - c. Costs of the suit.
  - d. Any other relief that this honourable court may deem fit to grant.

**Plaintiff's case**

2. The plaintiff pleaded that she is the registered owners of LR Dagortti/Riruta/2064 having inherited the same from their father Gacheru Kanungu – Deceased.
3. That on or about 1993 the defendant encroached into plaintiff's land, planted some maize, beans, banana plants, trees and build permanent building and dug a pit latrine.



4. The plaintiff has itemized the particulars of encroachment, trespass and or nuisance by the defendant as
  - a. Erecting structures on the plaintiff's land
  - b. Encroaching on the plaintiff's land
  - c. Trespassing onto the plaintiff's land without consent
  - d. Failing to keep away from plaintiff's land
  - e. Putting up structures and planting on the plaintiff's land knowingly
  - f. Attempting to grab the plaintiff's land
  - g. Destruction of plaintiff trees, shrubs and beacon.
5. There was a suit instituted as RMCC No. 3122 of 1990 between the plaintiff's father and defendant's father.

### **Defendant's Defence**

6. The defendant filed amended statement of defence dated 18/02/2022 admitting the Plaintiff's description and stated that the suit filed by the plaintiff is inept, incompetent and bad in law and is an abuse of the court process.
7. The defendant pleaded that the current suit is res-judicata since the issues in the instant suit were conclusively adjudicated in RMCC No. 3122 of 1990. He further denied the averments by the plaintiff of enforcement, trespass or nuisance.
8. He avers that his father bought a portion of the suit property from the original owner the original title being Dagoretti/Riruta/1479 one Kahihu Kinyanjui in 1965. Who he alleges to have refused to transfer the resultant sub-division after receiving the purchase price and fraudulently sold the same portion to the plaintiff's father upon the demise of the defendant's father.
9. Further, the avers that the original title Dagoretti/Riruta/1479 was further sub-divided into portions and allocated new numbers ranging from 2059 to 2065w without affecting the developments that had been erected on the parcels and the defendant continued to occupy the parcel after the sub-division with the plaintiffs being his adjacent neighbours.
10. In his further defence the defendant pleaded he has occupied the suit property since childhood for over 59 years since childhood after his father purchased it for valuable consideration from Kahihu Kinyanjui and that the plaintiff's claim was it lawful has been extinguished by adverse possession. Further that he has built permanent residential structures on his part of the parcel with knowledge of the plaintiff without any interruptions.

### **The Defendant's Counter Claim**

11. By his counterclaim, the defendant reiterated that his father bought the suit property from one Kahihu Kinyanjui in 1965 after consent was granted by the Land Control Board to facilitate transfer of the suit property to his father on 8/07/1981. That Mr. Kahihu refused to transfer the suit property the defendant's father and when he passed way Mr. Kahihu fraudulently sold it to the plaintiff's father.
12. In a bid to forcefully evict the defendant's family from the suit property the plaintiffs father filed a suit RMCC No.3122 of 1990 against the defendant's mother, Wahu Babu.



13. That the defendant's family had already settled on the suit property by the time the plaintiff's father purchased the suit property. That the plaintiff's father fraudulently and unlawfully obtained the title document in respect of LR No. Dagoretti/Riruta/2064 by instructing a surveyor to establish beacons without factoring in the defendant's parcel and without acknowledging that the defendant's family has been residing on the land for close to 59 years. In the circumstances through the counter claim the defendant claims for adverse possession of the suit.
14. The defendant counter-claims against the plaintiffs and prays for:
  - a. An order that the defendant has been entitled by way of adverse possession to all that piece of land comprising Land Parcel No. Dagoretti/Riruta/2064 registered in the name of the Plaintiffs because the Defendant has been in possession and occupation for more than 12 years immediately preceding the presentation of the suit
  - b. An order that the plaintiff's title to Land Parcel No. Dagoretti/ Riruta/2064 measuring 0.10 ha has been extinguished in favour of the defendant under section 37 and 38 Limitation of Action Acts.
  - c. An order that the plaintiff's do transfer to the Defendant the suit property being Land Parcel No. Dagoretti/Riruta/2064 free from any encumbrances.
  - d. A declaration that the plaintiff illegally obtained the title in respect to Land Parcel No. Dagoretti/Riruta/2064 hence the said title is invalid and void,
  - e. An order that the title with respect to Land Parcel No. Dagoretti/ Riruta/2064 should be expunged from the Land Registry.
  - f. An order directing the regional surveyor to conduct this survey afresh and subdivide the parcel and ensure it is practically possible that the defendant retains his respective ground portion.
  - g. An order directing the plaintiff to refund the defendant the costs of the constructed permanent residential premises at the current market value.
  - h. Costs of this suit.

### **Reply to defence to counter-claim**

15. By a "reply to counterclaim" dated 21/03/2022 the plaintiff reiterated the contents of the plaint and states that the consent letter referred to does not relate to the suit property but to parcel number Dagoretti/Riruta/177 which is a different piece of land and there is no mention in the consent for the defendant's father's land.
16. Further that there is no copy of judgment which has been produced to prove what decision was made by the court and the court file for the said case has been missing.
17. In the reply the plaintiff concludes that the defense of adverse possession is not available to the defendant and he prays that the defence and the counter claim be struck out and judgment be entered for the plaintiff as prayed in the plaint.

### **The Plaintiff's evidence**

18. The plaintiff testified at the trial as the sole witness. She adopted her witness statement as her evidence in chief and produced her bundle of documents as exhibits marked as PW1Exhibit 1-8. The gist of her case was that the suit property belonged to Agnes Wanja Nderu, George Kehia (deceased), Alice Njeri



- Kariuki, Micheal Waweru Gacheru and Peter Kariuki Gacheru. She testified that she had filed this case on behalf of the late David Gacheru Kanungu and that she was an administrator she produced the grant on page 7. That the suit property was an inheritance from the deceased who was their father.
19. She testified and produced the memorandum of registration of transfer of lands which was presented on 24/01/1988 from one Kahihu Kinyanjui to Gacheru Kanungu of LR Dagoretti/Riruta/2064. It was her testimony that one Kiarie Babu who is the defendant was staying on the suit property and he had built rental houses which were put up in 1993. Further an earlier matter RMCC Civil Cause No. 3122 of 1990 had been instituted but the plaintiff was not able to get the court file despite writing to the court. A letter from the court on page 13 of the plaintiff's bundle state that the court cannot trace the record. It was her testimony that after the court decision the plaintiff notified the defendant to vacate the suit property and they also sent to the defendant a demand letter (see page 14) a copy is produced in the plaintiff's trial bundle. The plaintiff seeks to have the defendant removed from their land.
  20. In cross-examination she stated that she had produced the title deed her father was issued with though she did not have the sale agreement. She testified that she stays on the suit property with her siblings and that the defendant also stays on one portion of the suit property. She testified that her father was issued with the title to the suit property after paying for it slowly till 1988. Further that she brought to court the title that is now in their names which she was given by the Registrar after the confirmation of grant.
  21. She further stated that the father tried to remove the defendant's father from the suit property but he died in 1993. It was her prayer that the defendant is evicted from her suit property.
  22. In re-examination she confirmed what she had stated in her statement especially that the court file for RMCC Civil Cause No. 3122 of 1990 could not be traced and so the court order evicting the defendant's father could not be produced in court. At this point the plaintiff closed her case.

### **The Defendant's evidence**

23. DW1- John Kiarie Githeru - The defendant called two witnesses at the trial. He adopted his witness statement as his evidence-in-chief. He also produced the documents in his list of documents dated 7/10/19 as exhibits Dw Exh 1-10. The gist of his evidence was that his father bought the suit property from one Kahihu Kinyanjui in 1965 and he stated that he had attached a copy at page 37 of the bundle of documents. He stated that he had lived on the suit property since 1965 and that he was born there but that his father was not buried on the suit property.
24. He testified that he had filed the defence that he filed in RMCC Civil Cause No. 3122 of 1990 but that he did not attach the court decision. He stated that he had also produced the consent of the Land Control Board dated 8/7/1981. He stated that he would like the court to order a surveyor to demarcate the ownership as per the beacons.
25. In cross-examination he stated that the land his father was sold is part of Dagoretti/Riruta/177 measuring 100 x 50 feet and that it is in Dagoretti/Riruta/2064. Further that the Land Control Board at page 14 of his documents refer to Dagoretti/Riruta/177 but since there was a matter in court RMCC Cause No. 3122 of 1990 they sought Land Control Board in 1981.
26. He stated that he wanted the court to bring a surveyor to separate the defendant and the plaintiff's parcels of land.
27. In re-examination he stated that Dagoretti/Riruta/2064 was borne out of the subdivision of LR Dagoretti/Riruta/177.



28. DW2 – Patrick Munene Kabubi – a registered and practicing valuer testified and was not able to produce his identity card when asked by the court to. He stated that on the suit property the defendant had made development on two single plots and a semi-permanent house and that he lived on the said portion that is developed. He stated that the defendant resided on 0.13 acres whose total market value was Ksh 13 million. He produced his report as DW- Exh. 9.
29. In cross-examination he stated that the registered owner from the documents he was given by the defendant to undertake a valuation is the plaintiff. He stated that the defendant is claiming a purchaser's interest and the parcel of land for Dagoretti/Riruta/177. He stated that the mutation form that he attached at page 142 refers to LR No. Dagoretti/Riruta 1479 which gave birth to LR 2064 but he stated also that there is a relationship between Dagoretti/Riruta 1479 to 177 but he stated that he had not brought this evidence to court. He stated that he carried out an official search but that he did not produce it in court.
30. It was his testimony that he was a director at Pioneer Valuers but he did not produce CR 12 to prove that he is a director from said Pioneer.
31. At this point the defence closed its case.

### Submissions

32. Upon conclusion of the trial on 05/12/2022 the plaintiff was granted 21 days to file and serve their written submissions whereas the defendant was granted 21 days upon the lapse of the plaintiff's period to file theirs. However, the record shows that both the plaintiff and the defendant filed their respective submissions on May 5, 2020.
33. The defendant in his submissions referred to the agreement that was entered into by his father in 1965 with the original owner of the land. He submits that the plaintiff moved into the land adjacent to theirs in 1980. Further he submits that by virtue of sections 13(1) and section 38 he is entitled to the suit property by virtue of adverse possession. He has relied on the case of *Samuel Kibamba vs Mary Mbaisi* [2015] eKLR, CA 27 of 2013.
34. The plaintiff in her submissions has referred to RMCC No. 3122 of 1990 which was filed seeking vacant possession and which he alleged was ruled in favour of her father. The ruling was not provided since the plaintiff states that the file is missing since the officer in charge of archives wrote a letter dated 25/03/2019 stating that they were unable to trace the file.
35. The plaintiff submits that the defendant claims 0.10 hectares in its amended defence and counter-claim but in the valuation report he claims for 0.0526 hectares. Further that the sale agreement produced by the defendant was for the parcel Dagoretti/Riruta/177 including the Land Control Consent which referred to the same parcel.
36. The plaintiff identified four issues for determination
  - a. Whether the plaintiff is the absolute owner of the suit property Dagoretti/Riruta/2064
  - b. Whether the defendants purchased the suit property Dagoretti/Riruta/2064. He referred to the case of *Kiplagat Kotut vs Rose Jebor Kipngok* [2014] eKLR
  - c. Whether the defendants are entitled to the suit property by virtue of adverse possession. He referred to the case of *Gabriel Mbui vs Mukindia Maranga* [1993] eKLR, *William Gatubi Murathe vs Gakuru Gathimbi* [1998] eKLR, *Haro Younda Juaje vs Sadaka Dzengo Mbauro & Kenya Commercial Bank* (2014) eKLR,



d. Whether the court should grant the relief sought.

He referred to the case of *Simon Muthika Kamu vs Harrison Musyimi Kakundi & another* [2021] e KLR.

### **Analysis and Determination**

37. The court has noted that the parties did not file an agreed statement of issues for determination. Whereas the Plaintiff listed 4 issues in their submissions for determination, the Defendant did not list any issues. In the premises the court shall frame the issues for determination as provided for in law. Under order 15 rule 2 of the *Civil Procedure Rules*, the court may frame issues from any of the following:
- a. The allegations contained in the pleadings.
  - b. The contents of documents produced by the parties
  - c. The statements made on oath by or on behalf of the parties.
38. The court has considered the pleadings, documents and evidence on record in this matter. The court is of the opinion that the following issues arise for determination in this suit:
- i. Whether the plaintiff is the legal owner and proprietor of land parcel number Dagoretti/Riruta/2064
  - ii. Whether the defendant has acquired rights to the land parcel number Dagoretti/Riruta/2064 by adverse possession
  - iii. Whether the plaintiff/applicant is entitled to the reliefs sought
  - iv. Who shall bear costs of the suit.
39. The court has considered the evidence, documents and submissions on record on this issue. There is no doubt that the plaintiff sued as the administrator of the estate of Gacheru Kanungu deceased to recover the suit property from the defendant. there is no doubt from the defendant claims that his father bought the suit property from its original owner in 1965 and that the Land Control Board gave consent to transfer the property in 1981. The defendant contended in his evidence that the Kahihu Kinyanjui refused to transfer the suit property to the defendant's father and he fraudulently sold the suit property to the plaintiff's father. I will now deal with the issues identified one by one.
40. With regards to the first issue whether the plaintiff is the legal owner and proprietor of land parcel Dagoretti/Riruta/2064. section 24 of the *Land Registration Act* provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. The plaintiff has produced a copy of the title deed for the Suit Parcel in her name and that of her siblings obtained on the 10/07/2018 and the encumbrance section show that there is no encumbrance.
41. The defendant on the other hand relies on the defence of having acquired the land by way of adverse possession but also states that the father bought the same suit property in 1965. There is no proof of title presented by the defendant and therefore I will consider the adverse possession claim.



42. The Court of Appeal in the case of *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia* [2020] eKLR while dismissing the appeal held that:

“In the instant appeal, the respondent currently holds the certificate of title to the suit land and is in actual possession having acquired the same on 10<sup>th</sup> November, 2014 upon transfer and registration. It is therefore prima facie evidence that he is the absolute and indefeasible owner as provided for under section 26 of the *Land Registration Act*. His title is also shielded from being defeated by section 25 unless proved otherwise. The respondent further led evidence to the effect that he purchased the suit land in good faith, having executed the sale agreement and paid the purchase price as was stipulated in the sale agreement without any notice of fraud. The appellants did not tender any evidence to show that indeed the respondent had any notice of an illegality or fraud.”

43. The Defendant has not provided this Court with any evidence to disqualify the Plaintiff as the proprietor of the Suit Parcel as provided under section 26 of the *Land Registration Act*. DW1 admitted and even attached a copy of the court case RMCC Cause No. 3122 of 1990 which he claimed that the plaintiff's father lost. He conveniently avoided attaching the final orders and therefore he has not rebutted the claim by the plaintiff that the court awarded eviction orders to the plaintiff's father who however was not able to execute it because the defendant's father passed on. He states that his family has been living on the suit property since 1980 and even after the determination of RMCC No. 3122 of 1990.
44. The defendant's failure to prove ownership of the suit property should suffice as proof that title passed on to the Plaintiff by the deceased Gacheru Kanungu was good title and without evidence to the contrary it is only fair to hold that the Plaintiff's title is good title and it deserves protection as provided under section 24 of the *Land Registration Act*. A similar position was taken in the cases of *Kiplangat Shelisheli Mutarakwa v Joseph Rotich Kones* [2018] eKLR and *Margaret Njeri Wachira v Eliud Waweru Njenga* [2018] eKLR.
45. With regards to the second issue, the Defendant in his defence has pleaded adverse possession in paragraph 10 of his amended defence and counter-claim. He submits that he has been on the suit parcel for more than twenty-eight years. However, during the hearing he alleged that the suit property came about as a result of subdivision of Dagoretti/Riruta/2064 from Dagoretti/Riruta/177 and that since the resolution of RMCC 3122 the defendant states that his family has settled, cultivated and erected permanent residential structures on the suit property, without interruptions from the plaintiffs.
46. My reading of the Memorandum of Registration of Transfer of Lands, show that the parcel Dagorreti/Riruta/2064 was subdivided from the original title Dagorreti/Riruta/1479. The Defendant was therefore obligated to demonstrate that time ran against the previous owner before subdivision.
47. For a claim of adverse possession to be successful time must have continuously run for 12 years. Section 7 of the *Limitation of Actions Act*, cap 22 Laws of Kenya, which provides that: an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”
48. In the case of *Mbira -vs- Gachui* (2002) IEALR 137 in considering what constitutes adverse possession held thus:

“-----a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period, must prove non permissive or non-consensual actual, open,



notorious, exclusive and adverse use by him or those under whom he claims for the statutory prescribed period without interruption”.

49. Section 17 of the *Limitations Act* extinguishes the rights of a registered owner where there is a successful claim for adverse possession. Section 38 on the other hand provides;

“(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land.”

50. The Court of Appeal in Kisumu Civ App. No. 110 of 2016 *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR stated that a person claiming adverse possession must establish the following:-

- a. On what date he came into possession.
- b. What was the nature of his possession?
- c. Whether the fact of his possession was known to the other party.
- d. For how long his possession has continued and
- e. That the possession was open and undisturbed for the requisite 12 years.

51. The defendant contends that his family has been on the suit property since 1965 and further that despite the institution of RMCC 3122 of 1990 that his family has occupied the land uninterrupted since determination of the suit and demise of his father in 1993.

52. To determine the nature of possession, this Court is guided by the decision in Kisumu Civil Appeal No. 27 of 2013 *Samuel Kihamba v Mary Mbaisi* [2015] e KLR where the court held:

“Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, nec vi, nec clam, nec precario. The additional requirement is that of animus possidendi, or intention to have the land”.

53. The defendant in his documents produced a Notice of Registration of a caution which was against Dagoretti/Riruta/1479, a demand letter written from the advocate of this father written on 7/10/1987 to Mr Kahihu Kinyanjui (deceased) the father of the plaintiff herein and its reference is for parcel number Dagoretti/Riruta/1479, a copy of the Proprietor Section for Partition Number 1479. Which shows that there was a restriction placed on the land parcel number Dagoretti/ Riruta/1479 on 26-8-88 which prohibited registration of dealings until a sub-division certificate is obtained from the director of city planning. Further there was a caution placed on the property by one Jeremiah Kioi on 18/05/1994 claiming purchaser’s interest. It has been held in various cases that a suit or act to regain possession of the land can stop time. Evidently, there was an order of restriction and a caution attached to the land, facts of it not known to this Court. Prohibitory orders take the nature of injunction and bar interested parties from any dealings. Therefore, it would be right to conclude that there was an order stopping parties from dealing with the suit property and computation of time for an adverse possession to accrue was stopped.



54. The caution withdrawn on 9/12/2005. As already stated all these are in relation to parcel number Dagoretti/Riruta/1479. It therefore seems to me that at the time that the Respondent and his family acquired ownership, the Applicant was in occupation of the suit property which is Dagoretti/Riruta/2064 and not the parcel being claimed or whose information the defendant has tendered in court. The defendant has not tendered any information to show the connection between the three parcels Dagoretti /Riruta/177, Dagoretti/ Riruta/1479 and Dagoretti/ Riruta/ 2064 that this court would rely on to address the claim for the defendant for the suit property
55. Further, the defendant might have been in an open and exclusive occupation of the land, but as the registered owner through his father of a portion which he claims from which the suit property was divided from. He has not presented any sub-division plans that would convince this court that the suit property is the same. Adverse possession accrues on land and not title. While the Respondent's father might have acquired title, he did not acquire possession therefore there was no right that accrued.
56. Be that as it may, as I have stated here-above, it is not enough for the defendant to simply state that he has been in open, continuous and uninterrupted occupation. He ought to prove the said allegation. I do concur with the sentiments of Justice Kuloba J, (as he then was,) in Nairobi Civ No. 283 of 1990 *Gabriel Mbuvi v Mukindia Maranya* [1993] e KLR, where the Court held:
- “The adverse character of the possession must be established as a fact. It cannot be assumed as a matter of law from mere exclusive possession even if the mere possession has been for twelve or more years. In addition, there must be facts showing a clear intention to hold adversely, and under a claim of right. De facto use, and de facto occupation must be shown”.
57. The defendant also stated that his father bought the land in 1965 and was granted the Consent by the Land Control Board to facilitate transfer of the suit property in 1981. Consequently, even if the sale agreement was valid, it became null, void and unenforceable by virtue of section 6 of the *Land Control Act* (cap. 302) upon the lapse of 6 months from the date of the agreement. Further the defendant has produced documents including the valuers report referring to parcel number Dagoretti/Riruta/177 as being the one that they obtained LCB consent for in 1981.
58. The official search produced by the plaintiff show that the owners of the property are George Kihia Gacheru and Agnes Wanja Nderu who are holding the title in trust for themselves and for the other beneficiaries namely Alice, Njeri Kariuki, Michael Waweru Gacheru, Peter Kariuki Kahero and this is also reflected on the copy of the Title Deed submitted.
59. There is no doubt from the material on record that the plaintiff is the registered proprietor (alongside her siblings) of the suit property all material times. Accordingly, the 2<sup>nd</sup> issue is answered in the negative. Invariably, the armies of defences raised by the defendant must accept defeat.
60. Further, the defendant had also pleaded fraud against the plaintiff's father in the acquisition of the suit property. Having pleaded fraud and illegality on the part of the Plaintiff's suit property in the manner in which they obtained the title document, the onus was on the Defendant to prove those allegations. Fraud is a serious matter which must be proved to the required standard. In *R.G Patel vs Lalji Makanji* 1957 E.A 314, the Court of Appeal stated as follows:
- “Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.



61. I find that the undisputed facts of this case being that the Plaintiff herein in compliance with the law, applied for Letters of Administration in Succession Cause No. 486 of 2016 where she together with George Kihia Gacheru (deceased) had subsequently received the confirmed Grant procedurally and the suit parcels of land were registered to her name together with George Kihia Gacheru (deceased) to hold in trust for themselves and other beneficiaries by virtue of transmission. The defendant did not raise any objection as is provided for in the *Law of Succession Act*. This ground must therefore fail.
62. On the third issue on whether the plaintiff is entitled to the reliefs sought in the amended plaint, the court has already found and held that the plaintiff is the rightful owner of the suit property being duly registered. It would, therefore, follow that the Plaintiff is entitled to the reliefs sought in the amended plaint.
63. Final issue of costs of the suit, although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to section 27 of the *Civil Procedure Act* (cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohammed & Sons vs Twentsche Overseas Trading Co. Ltd* [1967] EA 287. There is no good reason why the successful party herein should not be awarded costs of the suit. Accordingly, the plaintiff shall be awarded costs of the suit and the counterclaim.

### **Disposal Orders**

64. The court's summary of findings on the issues for determination is as follows:
  - i. The net result is that I find and hold the plaintiff's suit against the defendant has been proved on a balance of probabilities. I accordingly issue an order of eviction against the defendant and his family members, heirs, servants or agents from land parcel No. LR Dagoretti/Riruta/2064 with all crops and structures thereon within the next 90 days from the date of this judgment.
  - ii. An order of permanent injunction is issued against the defendant, his family members, heirs, servants or agents barring them from entering, and/or interfering in any manner with land parcel No. LR Dagoretti/Riruta/2064.
  - iii. I also award the costs of this suit to the plaintiff.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF MAY 2023**

**MOGENI J**

**JUDGE**

In the virtual presence of:-

Njuguna for Plaintiff/Applicant

Ms Chemutai for Defendant/Respondent

