



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC SUIT NO. 604 OF 2011

FLORENCE WACUKA KAMAU.....PLAINTIFF

VERSUS

JAMES MBUGUA NJOROGE &

SIMON MUNYINYI NJOROGE(*administrators of the Estate of*

***James Njoroge Kamau alias Njoroge Munando*).....1ST DEFENDANT**

TABITHA WAITHIRA MBURU.....2ND DEFENDANT

LAND REGISTRAR KIAMBU.....3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

1. On 3/11/2011 the plaintiff instituted this suit against: (i) Joseph Njoroge Kamau *alias* Njoroge Munandu (the deceased); (ii) Tabitha Waithira Mburu; (iii) Land Registrar Kiambu; and (iv) The Honourable Attorney General, through a plaint of even date. An Amended Plaint dated 8/12/2015 was filed on 17/12/2015. The 1st defendant died during pendency of the suit and was substituted with his two sons; James Mbugua Njoroge and Simon Munyinyi Njoroge, who are administrators of his estate. The plaintiff and the deceased were siblings born to Kamau and Esther Wambui Munando, both deceased.

2. The dispute in the suit brings to the fore the unending judicial discourse on the place of customary trusts in Kenya's land laws. The dispute relates to Land Parcel Number Kabete/Nyathuna/221 which was in 1958 registered in the name of the deceased. It measured approximately 5.24 hectares (approximately 13 acres). In 2011, the land was parceled into two subdivisions; Parcel Number Kabete/Nyathuna/3128 measuring 5.140 hectares and Parcel Number Kabete/Nyathuna/3129 measuring 0.100 hectares. The plaintiff laid a customary land right claim to five acres out of the said land, contending that her deceased brother held the land in trust for the family.

Case of the Plaintiff

3. The case of the plaintiff was that the suit property belonged to her late mother who during demarcation in 1958 caused the land to be registered in the name of her eldest son, Joseph Njoroge Kamau *alias* Njoroge Munando, to hold it in trust for the family. Subsequently, their mother caused the land to be informally subdivided into three portions: (i) eight acres for the deceased; (ii) three acres for the plaintiff; and (iii) two acres for herself. She contended that she was given the three acres because unlike her sisters, she was not married and she had children. She further contended that prior to her demise, their mother, through a Kikuyu ceremony called *Kuhura tatha*, gave her the two acres which she had set aside for herself. She contended that she has lived on the suit property since her birth in 1942. She added that upon the death of their mother, the deceased refused to transfer to her the five acres, prompting her to lodge a dispute in the District Land Tribunal whereupon the Tribunal awarded her the five acres and the award was subsequently adopted as a decree of the court in Kikuyu SRMC Misc Application No 50 of 2001. She stated that she did not, however, enforce the decree. She added that her deceased brother clandestinely moved Kiambu Magistrate Court to vacate the caution she had lodged against the Title. She further contended that upon removal of the caution, the deceased sold $\frac{1}{4}$ acre of the suit property to the 2nd defendant.

4. Consequently, she sought the following verbatim orders:

(a) (i) a declaration that the subdivision of KABETE/NYATHUNA 221, and subsequent transfer and registration to Kabete/Nyathuna/3128 by Joseph Njoroge Kamau (deceased) to himself and further transfer of KABETE/NYATHUNA/3129 to the 2nd defendant breached the trust owed to him and was fraudulent, illegal and null and void ab initio.

(ii) a declaration that the 1st registration of Joseph Njoroge Kamau alias Joseph Munando (deceased) as proprietor of Kabete / Nyathuna 221 was in trust for himself and the whole family and that the plaintiff is a beneficiary of five (5) acres thereof held in trust.

(b) an order for cancellation of titles KABETE/ NYATHUNA/3128 and KABETE/ NYATHUNA 3129.

(c) a declaration that the plaintiff is the rightful and legal owner of five acres out of all the parcels registered as KABETE/ NYATHUNA/3128 and KABETE/ NYATHUNA/3129.

An order that a resurvey be done respecting the existing boundaries and marks as set up by the elders and the parties and the deputy registrar do sign the transfer and any necessary documents to effect the conveyance and issue a title to the plaintiff or her assigns.

(d) An order to the Chief Land Registrar Kiambu District County to cancel and rectify title KABETE/ NYATHUNA/3128 and KABETE/NYATHUNA/3129 and that the same be issued in the names of the plaintiff and issue fresh titles for the parties.

The 2nd defendant be ordered to claim from the 1st defendant's share of the suit land if at all and never interfere with the boundaries as set up in particular the plaintiff's possession of her 5 acres in the suit land.

(e) A permanent injunction do issue against the 1st and 2nd defendants whether by itself, themselves, their servants themselves, its servants, families, successors or assigns howsoever from entering, encroaching, trespassing, fencing, alienation and disposal by way of sale all that parcel in possession of the plaintiff of land comprising five (5) acres now situate on land registered known as Kabete/Nyathuna/3128 and Kabete/Nyathuna/3129.

(f) Costs of this suit together with interests.

(g) Any or such further relief that this Honourable Court may deem fit to grant in favour of the plaintiff against the defendants.

I have reproduced the prayers verbatim because that is how they were haphazardly drawn.

5. The 1st defendant filed a defence on 24/5/2016. They stated that their father was the sole proprietor of Land Parcel Number Kabete/Nyathuna/221 which he purchased before the process of land demarcation and consolidation in the 1950s. They further stated that the plaintiff did not settle on the suit property until late 1990s when she requested the deceased for a small piece of land on which to build and cultivate, which request was granted. They contended that the plaintiff was given one acre for her use on condition that she would look for her own land on which to settle. They denied that the plaintiff occupied 5 acres of the land and averred that she occupied only 3 acres of the land which was inclusive of the 2 acres which belonged to the plaintiff's mother. They added that the Kikuyu customary ceremony alleged by the plaintiff was never performed. They averred that their grandmother could not subdivide the suit property or give directions on how the same would be subdivided because she had no proprietary interest in the suit property. They admitted that there was a dispute before the District Land Tribunal but contended that they were not aware of any award delivered. They stated that the decree entered in Kikuyu RMC Misc Application No 50 of 2001 was illegal and irregular because their father was not informed about the award and the same was adopted as a judgment of the court before the period of lodging an appeal had expired. They further contended that the caution lodged by the plaintiff was procedurally and lawfully removed after the plaintiff failed to appear in court and the matter proceeded ex parte. The particulars of breach, the particulars of fraud, illegality and mistake pleaded by the plaintiff were denied.

6. The 2nd defendant filed her defence on 28/1/2013 and filed an amended defence on 6/4/2016, denying the plaintiff's claim. She contended that she bought the $\frac{1}{4}$ piece of land for value from the deceased who was the registered owner. She denied the particulars of fraud alleged by the plaintiff.

7. The 3rd and 4th defendants filed their defence on 13/4/2012. They denied the particulars of fraud itemized by the plaintiff. They contended that the transfer and registration of Parcel Numbers **Kabete/ Nyathuna/3128** and **Kabete/Nyathuna/3129** in the name of the 1st and 2nd defendants was based on the documents presented before the Land Registrar. They stated that notice to sue was not issued to them.

Evidence

8. Hearing commenced on 20/2/2017. The plaintiff testified as PW1. She adopted her witness statement dated 8/12/2015 and stated that the suit property belonged to her parents and that the deceased held the land in trust for the family. She stated that their late mother subdivided the land into three portions: (i) three (3) acres for the plaintiff; (ii) two (2) acres for herself; and (iii) eight (8) acres for the 1st defendant. She further testified that her mother gave her the 2 acres which she had set aside for herself, making a total of 5 acres for her. She added that the deceased subsequently refused to transfer to her the 5 acres. She stated that she lodged a complaint at the Land Tribunal in Kikuyu and an award of 5 acres was made in her name. Subsequently, a decree was issued by the court in Kikuyu SRMC Misc Application No. 50 of 2001. She stated that she had lived on the suit property since 1942. She further stated that the 2nd defendant came into the suit property in 2011 claiming to have purchased $\frac{1}{4}$ of an acre out of the suit property from the deceased.

9. In cross examination, PW1 stated that the suit property was informally subdivided in 1983 by the elders according to her mother's wishes and a goat was slaughtered in accordance with Kikuyu customs. She stated that she lodged a caution against the titles when she realized that the 2nd defendant had purchased part of the suit property. She stated that she sued the 3rd defendant because they issued title to the 2nd defendant.

10. Ayub Githieyo Kiora testified as PW2. He adopted his written statement dated 8/12/2015. He stated that he knew the plaintiff in 1956

during land demarcation in Kiambu. His evidence was that the suit property was registered under the deceased as a trustee. He added that he was 16 years old then and his father was the chairman of the demarcation board. He testified that the deceased was registered as owner of the suit property because women could not own property then. It was his testimony that the 1st defendant did not pay any consideration for the land. He testified that the plaintiff was 16 years old then and used to cook for the demarcation committee. He stated that the land was subdivided by Mr. Githu. He further stated that he did not testify in the tribunal and that he was contracted by the plaintiff to build a house for her on the suit property. In re-examination, he stated that he attended the tribunal proceedings where the plaintiff was awarded 5 acres of land. He also stated that the suit property belonged to the plaintiff's parents before it was registered in the 1st defendant's name.

11. Eunice Wanjiku Wacuka testified as PW3. She adopted her witness statement dated 8/12/2015. She testified that she was a daughter to the plaintiff. She stated that her grandmother subdivided the suit property in 1983 and gave her mother (PW1) three (3) acres of land. She stated that the houses in the photos produced as exhibits belonged to her mother and they were built after the subdivision of the suit property. In cross-examination, she stated that the deceased organized for the meeting where 3 acres were given to PW1 and 2 acres given to her grandmother. She testified that no title was produced during the meeting and that subdivision was done on the ground because there was a surveyor. She stated that the suit property was ancestral land and the deceased was a trustee.

12. Mary Ngendo Ngugi testified as PW4. She stated that she was a sister to the deceased and the plaintiff. She adopted her written statement dated 8/12/2015. She testified that the suit property belonged to their deceased parents. She added that they all grew up on the suit property. She further stated that demarcation was done in 1956 when she was young. She added that their late mother called a meeting to distribute the family land in 1983 and the plaintiff was given 3 acres of land; the deceased was given 8 acres and their late mother retained two acres. She further testified that their mother surrendered her 2 acres to the plaintiff on the same day. In cross-examination, she stated that they were all present before the tribunal which awarded the plaintiff 5 acres of out of the suit property.

13. The defendants called four witnesses. Lucy Njeri Njoroge testified as DW1. She stated that she was the wife of the deceased. She adopted her witness statement dated 20/5/2016. She testified that the deceased was given the suit property before she got married to him in 1958. She stated that demarcation was done in 1957 and the plaintiff moved into the suit property when her mother passed away. DW 1 stated that she did not recall any meeting subdividing the suit property. She further stated that she did not recall the plaintiff having any dispute with her late husband at the District Land Tribunal. In cross-examination, PW1 stated that the suit property had flats erected on it. She also stated that she was not present when her mother in law distributed the suit property. She maintained that her mother-in-law and her children were living on the suit property which was not demarcated then.

14. Simon Munyinyi Njoroge testified as DW2. He stated that the deceased was his father. He adopted his witness statement dated 20/5/2016. He testified that the 2nd defendant bought part of the suit property from his father. He stated that demarcation took place in 1958 before he was born. He confirmed that his grandparents lived on the suit property. He stated that the plaintiff came to the suit property in 1984 after the death of their grandmother. He further stated that his late father asked for permission from his family members before selling part of the suit property to the 2nd defendant for a consideration of Kshs.1,000,000/=. In cross-examination, he stated that he did not have a copy of the sale agreement between the 2nd defendant and their late father. He stated that he did not attend any meeting convened by his grandmother. He also stated that he was not aware that his late father testified at the Land Disputes Tribunal.

15. The 2nd defendant testified as DW 3. She adopted her written statement dated 1/4/2016. She testified that she bought a portion of the suit property from the deceased. She stated that one of the sisters of the deceased was utilizing part of the suit property then. She testified that she was summoned by the Area Chief who referred them to the D.O. In re-examination, she stated that the sale agreement was signed on 26/8/2011.

16. John Matheka testified as DW 4. He adopted his written statement dated 30/1/2018. He stated that he was the Land Registrar, Kiambu. He testified that Kabete/ Nyathuna/221 was partitioned into Kabete/Nyathuna/3128 and 3129. He further testified that before registering a transfer, they require: a duly executed application for consent, consent, transfers form duly executed, copies of ID card and copies of PIN of the transferee and transferor and original title. He stated that all the said documents were availed to the Registry before transfer to the 2nd defendant was effected. He stated that the 2nd defendant was the registered owner of Kabete/Nyathuna/3129. In cross-examination, he stated that the 1st defendant appeared in the lands registry on 1/9/2011 to register a change of name which was registered as entry no.7. He stated that he did not have the document which was used to effect the change of name. He contended that survey comes before a title is issued. He further stated that once mutation is done, it is registered and thereafter, the registrar issues a title. In re-examination, he stated that change of names(s) was made under the Registered Land Act.

Submissions

17. The plaintiff filed written submissions dated 3/10/2018 in which she argued that the award made by the Land Disputes Tribunal was binding. She contended that the Tribunal had jurisdiction to deal with the dispute. Reliance was placed on **Florence Nyaboke Macheloni v Mogere Amosi Ombui & 2 others, Civil Appeal No.184 of 2011** where it was held that a party who submitted himself to the process of the tribunal and gave evidence before it should not claim that the tribunal did not have jurisdiction if he never sought an appeal or review against the tribunal's decision. She further submitted that the suit property was held in trust and the deceased did not produce evidence of sale to the 2nd defendant. She added that the 2nd defendant should move from the plaintiff's land to the defendant's portion. Finally, she submitted that the deceased held the ancestral land in trust. She relied on the case of **Kanyi Muthiora v Maritha Nyokabi Muthiora [1984] eKLR** where it was held that registration of land in the name of a proprietor under the Registered Land Act did not extinguish rights under customary law. She further submitted that the trustee referred to in Section 28 of the repealed Act included a trustee under customary law.

18. The 1st defendant through counsel filed submissions dated 28/11/2018. They submitted that the deceased was issued with a certificate of ownership under the Native Land Tenure Rules (1956) on 17/3/1958. It was argued that there was no evidence that the land was to be held in trust nor was there an indication that the land was inherited from their father. It was further argued that the plaintiff had failed to convince the court that she was entitled to a portion of Land Parcel Number Kabete/Nyathuna/221. It was submitted that the plaintiff gave contradictory evidence because in her plaint she stated that she had been on the land since 1950s but in her evidence in court, she stated that the land was subdivided in 1983 and that is the time she came into the suit property. It was further submitted that the 2nd defendant was an innocent purchaser as she was not aware of the plaintiff's claim when she bought the suit property. Reliance was placed on **Lawrence Mukiri v**

Attorney General & 4 others(2013)eKLR where it was held that a bonafide purchaser must prove that he purchased the suit property in good faith; he had no knowledge of any fraud; the vendor had apparent valid title; he purchased without notice of any fraud; and he was not party to the fraud.

19. The 2nd defendant filed her submissions on 2/11/2019. She submitted that she was a purchaser for value who was protected by the law. Reliance was placed on **Charles Karathe Kiarie & 2 others v Administrators of the Estate of John Wallace Mathare (deceased) C.A No. 12 of 2013** where it was held that a title in the absence of fraud is absolute and indefeasible. Reliance was further placed on **David Peterson Kiengo & 2 others v Kariuki Thuo [2012] eKLR** where it was held that a defrauder who had acquired title fraudulently could pass a good title to a bonafide purchaser. Reliance was also placed on **Lawrence P.Mukiri Mungai & Another v The Attorney General and others C.A No. 146 of 2014** where the court held that the respondent's title over the suit property was valid, notwithstanding the fact that the 2nd respondent who sold and transferred title to him had acquired the suit property fraudulently.

20. The 3rd and 4th defendants filed their submissions on 4/10/2018. They submitted that the deceased misrepresented himself as the sole proprietor of the suit property and caused the 3rd defendant to subdivide the property. The 3rd and 4th defendants argued that it was upon the plaintiff to lodge a copy of the order awarding her 5 acres of land with the 3rd defendant for her to be registered as proprietor of the 5 acres but she failed to do so. It was further argued that the subdivision was registered without notice of the trustship.

21. It was further submitted that the deceased duly made an application to the Land Registrar, Kiambu, to correct the name on the register and produced requisite papers. Lastly, it was submitted that the 3rd and 4th defendants acted procedurally and within the law in registering the 2nd defendant as the proprietor of the ¼ of an acre and therefore, the plaintiff's claim against the 3rd defendant ought to fail.

Determination

22. I have considered the parties' respective pleadings, evidence and submissions. I have also considered the relevant statutory framework and jurisprudence. Two key issues fall for determination in this suit. The first issue is whether the late Joseph Njoroge Kamau also known as Njoroge Munando held a portion of Land Parcel Number Kabete/Nyathurna/221 (now parceled into Kabete/Nyathuna/3128 and 3129 respectively) in trust for the plaintiff. The second issue is whether the sale of ¼ of the suit property to the 2nd defendant was fraudulent. I will make some general observations before I focus on the two issues.

23. This suit was filed in 2011 before the current land laws came into force. The plaint was subsequently amended in December 2015 after the current land laws had come into force. Pronouncements on the key issues will therefore be guided by the two sets of statutes in force in 2011 and 2015. It is also noted that the dispute in this suit largely revolves around the subject of customary trust in relation to a first registration under the repealed Registered Land Act.

24. Secondly, it emerges from the evidence presented before this court that the plaintiff instituted a land dispute in the local Land Disputes Tribunal, obtained an award which was adopted as a judgment of the Senior Resident Magistrate Court but never enforced the decree against the deceased. The deceased did not challenge the award and decree. It is however apparent that the decree is now more than 12 years old and may not be available for enforcement by the plaintiff.

25. It is equally noted that nine years after the Tribunal made an award in favour of the plaintiff, the deceased filed a miscellaneous application in the magistrate court and obtained an ex parte order lifting the caution which the plaintiff had lodged against the parcel register of Parcel Number 221. There is no evidence that the ex-parte order was challenged and/or vacated. Having made the above observations, I now turn to the two key issues falling for determination in this suit.

26. The first issue is whether the deceased (Joseph Njoroge Kamau alias Njoronge Munando) held a portion of the suit property in trust for the plaintiff. The deceased was registered as proprietor of the suit property in 1958. The deceased and the plaintiff were siblings. The deceased was the eldest child and only son in the family. All her other siblings were girls. Their parents lived on the suit property and were buried there. The deceased and all his sisters lived and grew up on the suit property. The plaintiff still lives there with her grown up children. She is not married. She is aged about 77 years. Her two sisters are married and have not laid any claim to the suit property. One of them, Mary Ngendo Ngungi, testified as PW 4 and confirmed that the suit property was family land belonging to their parents and was registered in the name of the deceased as the eldest son in the family to hold it for himself and for the other members of the family.

27. The case of the estate of the deceased is that the suit property is not family land and wholly belonged to the deceased. They contend that the deceased purchased the suit property before demarcation in the 1950s.

28. I have carefully examined the deceased's testimony before the Land Disputes Tribunal. The verbatim testimony is as follows:-

Question: Do you have a title for the land in dispute?

Answer: Not actually but have a native land tenure rules 1956 No 221 of 17/3/58 certificate.

Question: Did you pay for this land.

Answer: No. the land is ancestral but if it was not for my effort in casing with the family/clan it would not be there.

Question: Being your only sister at home are you willing to give her a portion of the land?

Answer: Not exactly but could set aside an acre for her

use.

Question: *Had you set aside a portion of the land for your late mother's use?*

Answer: *No.*

Question: *What about if you had a brother?*

Answer: *Not if he did not contribute towards the cases with the family/clan.*

Question: *Supposing you are to die today. To whom would you leave your land?*

Answer: *My children.*

Question: *Why if your wife was alive.*

Answer: *Mute.*

29. From the above verbatim testimony by the deceased, it is clear that the suit property was ancestral land; the deceased did not purchase it as contended by the estate. Secondly, it is clear from the evidence on record that the family of Kamau and Esther Wambui Munando (parents of both the deceased and the plaintiff) lived on the suit property prior to demarcation and continued to live on the land even after it was registered in the name of the deceased. The plaintiff lives on the land and has no other place to call home.

30. Late last year, the Supreme Court of Kenya addressed the subject of customary trust in the context of both the repealed and current land laws. It held as follows in **Isack M'inanga Kiebia Isaaya vs Theuri M'lintari & another (2018) eKLR**.

[53] We also declare that, rights of a person in possession or actual occupation under Section 30(g) of the Registered Land Act, are customary rights. This statement of legal principle, therefore reverses the age old pronouncements to the contrary in Obiero v. Opiyo and Esiroyo v. Esiroyo. Once it is concluded, that such rights subsist, a court need not fall back upon a customary trust to accord them legal sanctity, since they are already recognized by statute as overriding interests.

[54] In the foregoing premises, it follows that we agree with the Court of Appeal's assertion that "to prove a trust in land; one need not be in actual physical possession and occupation of the land." A customary trust falls within the ambit of the proviso to Section 28 of the Registered Land Act, while the rights of a person in possession or actual occupation,, are overriding interests and fall within the ambit of Section 30(g) of the Registered Land Act.

Although the Respondents herein were not in possession or actual occupation of Parcel No. Njia/Kiegoi Scheme 70, both the High Court and Court of Appeal were entitled to enquire into the circumstances of registration, to establish whether a trust was envisaged. Since the two superior courts were satisfied that indeed elements of a customary trust in favour of the Respondents pertaining to the parcel existed, we see no reason to interfere with their conclusions.

[55].....

[5].....

[57] With the repeal of the Registered Land Act (Cap 300), Parliament enacted the Land Registration Act No. 3 of 2012. The provisions of Section 28 of the former, including the proviso thereto, were re-enacted as Section 25 of the latter; while the provisions of Section 30 of Cap 300 were re-enacted as Section 28 of the Land Registration Act. However, Parliament introduced two new categories of overriding interests, the first category is what are now called "spousal rights over matrimonial property"; while the second category is what are, rather curiously called "trusts including customary trusts". Even more curious, is the fact that "the rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation," as earlier provided for under Section 30 (g) of the Registered Land Act, are no longer on the list of overriding interests under Section 28 of the Land Registration Act.

[58] What are we to make of these changes? Several interpretations are plausible. It is now clear that customary trusts, as well as all other trusts, are overriding interests. These trusts, being overriding interests, are not required to be noted in the register. However, by retaining the proviso to Section 28 of the Registered Land Act (now repealed), in Section 25 of the Land Registration Act, it can be logically assumed that certain trusts can still be noted in the register. Once so noted, such trusts, not being overriding interests, would bind the registered proprietor in terms noted on the register. The rights of a person in possession or actual occupation of land, as previously envisaged under Section 30 (g) of the Registered Land Act, have now been subsumed in the "customary trusts" under Section 25 (b) of the Land Registration Act. Thus under the latter Section, a person can prove the existence of a specific category of a customary trust, one of which can arise, although not exclusively, from the fact of rightful possession or actual occupation of the land.

31. Guided by the above jurisprudence and based on the evidence before this court, I am satisfied that the plaintiff has proved existence of a customary trust in relation to the three acres which she has occupied over the years.

32. I am not, however, convinced the plaintiff has proved her claim to the additional two acres which she claims became hers after the demise of her mother. The claim over the two acres may only be ventilated and subjected to proof by the estate of the late Esther Wambui Munando, not by the plaintiff in her personal capacity. For this reason, I reject that limb of the claim.

33. The second issue is whether the transfer of ¼ acre of the suit property to the 2nd defendant was fraudulent. The plaintiff's evidence was that the deceased was entitled to 8 acres out of the suit property. There is evidence that the caution which the plaintiff had lodged against the title was removed through a court process. The plaintiff did not challenge that court process. The court order shows that the plaintiff had been served with relevant papers.

34. In light of the fact that the deceased sold to the 2nd defendant only ¼ out of the 8 acres which according to the plaintiff the deceased was entitled to, I see no basis for inferring fraud in the circumstances of this case. I will therefore not interfere with the sale of the ¼ of an acre to the 2nd defendant. Similarly, the Land Registrar acted on the papers presented to him. There is no evidence of fraud on his part.

35. Having come to the above findings, I am of the view that this judgment can be properly enforced against the estate of the deceased and against one of the existing parcel registers without annulling the two existing titles. Only ¼ of an acre was parceled out of the original parcel. I will therefore direct that the three acres in respect of which the plaintiff has proved a claim of customary trust be parceled out of Land Parcel Number Kabete/Nyathuna/3128. The parceling should in as much as is practical cover the land where the plaintiff has her key developments.

Disposal Orders

36. In light of the above findings, and in tandem with the prayers set out in the plaint, I issue the following disposal orders:-

- (a) The plaintiff, Florence Wacuka Kamau, is entitled to Three (3) Acres out of Land Parcel Number Kabete/Nyathuna/3128 which she currently occupies.*
- (b) The Land Registrar, Kiambu County, shall cause the said three (3) acres to be parceled out of Parcel Number Kabete/Nyathuna/3128 and registered in the name of the plaintiff.*
- (c) The administrators of the estate of Joseph Njoroge Kamau alias Njoroge Munando shall execute all requisite papers to facilitate the subdivision within 60 days. In default, the Deputy Registrar of this court shall execute the papers.*
- (d) The plaintiff shall bear the subdivision costs payable to the surveyor and the Lands Registry.*
- (e) Because of the blood relation between the key protagonists in this dispute, parties to the suit shall bear their respective costs of the suit.*

SIGNED AND DATED AT NAIROBI ON THIS 20TH DAY OF MARCH 2019.

.....

B M EBOSO

JUDGE

READ ON BEHALF OF THE TRIAL JUDGE AT NAIROBI ON 20TH DAY OF MARCH 2019.

.....

E OBAGA

JUDGE

In the presence of:

Mr Okemwa advocate for the plaintiff

Mr Gikonyo advocate for the 1st defendant

Mr Mwenesi advocate for the 2nd defendant

Court Assistant – June Nafula