



**Kimani & 2 others v Mbuthi (Sued as the Administratrix and Personal Representative of the Estate of Mbuthi Muru (Deceased)) (Environment & Land Case 359 of 2019) [2024] KEELC 6705 (KLR) (9 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6705 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 359 OF 2019**

**JA MOGENI, J  
OCTOBER 9, 2024**

**BETWEEN**

**NYOKABI KIMANI ..... 1<sup>ST</sup> PLAINTIFF  
NAOMI WAMBUI KINUTHIA ..... 2<sup>ND</sup> PLAINTIFF  
JOHN NJOROGE MURIMA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**EUNICE MUTHOMI MBUTHI ..... DEFENDANT  
SUED AS THE ADMINISTRATRIX AND PERSONAL REPRESENTATIVE OF  
THE ESTATE OF MBUTHI MURU (DECEASED)**

**JUDGMENT**

1. The Plaintiffs commenced the instant suit vide a plaint dated 12/11/2019 and later amended it on 21/11/2022. In the plaint, the Plaintiffs are seeking the following orders against the Defendant;
  - a. That the late Mbuthi Muru held Land Parcel Number Dagoretti/Riruta/1241 on trust for himself and the late Gathoni Muru, the late Beth Wanjiru Kamau and Nyokabi Kimani in equal shares
  - b. An order directing the Defendant to subdivide and share out Land Parcel No. Dagoretti/Riruta/1241 to:
    - i. The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs the surviving grandchildren of the late Gathoni Muru
    - ii. The Estate of Beth Wanjiru Kamau
    - iii. The 1<sup>st</sup> Plaintiff Nyokabi Kimani and Herself in equal shares



- c. Costs of this suit
- d. Such further or other relief of this Honorable Court may deem just to grant
2. The Plaintiff avers that at all material times the 2<sup>nd</sup> plaintiff and the defendant's late husband were children of the late Muru Igeria who died leaving the following children:
  - a. Gathoni Muru (now deceased) but survived by her grand children the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs herein
  - b. Mbuti Muru also deceased but survived by the Defendant herein
  - c. Beth Wanjiru Kamau (now deceased)
  - d. Nyokabi Kimani – 1<sup>st</sup> Plaintiff
  - e. Wakaba Muru also deceased but without survivors
3. That prior to his death the late Mbuti Muru caused his land parcel number Dagoretti/Riruta/1241 to be registered in the name of Mbuti Muru to hold on trust for himself and his siblings for land measuring 8 acres. That the defendant has taken out a Grant of Letters of Administration following the registered proprietor on 11/02/2009 and the grant was confirmed on 18/09/2012 and has refused to acknowledge existence of the customary law trust in respect of the suit property.
4. The Defendant denied the Plaintiffs' claim and filed a statement of defence on 13/12/19 which was amended on 30/11/2022 and further amended on 22/11/2023 to include a counter claim. The defendant denied the allegations contained in the Plaintiffs' Amended Plaint stating that the plaintiffs have never pursued the alleged rights in the suit property for over 60 years during the lifetime of the deceased, Mbuti Muru. It was her contention that the deceased was duly registered owner of the suit property and that the suit is instituted in bad faith and is an attempt by plaintiffs to disinherit the defendant from her property. That she is the widow of the deceased and a co-administrator of the estate of the late Mbuti Muru and that she prays that the plaintiffs' suit should be dismissed with costs.
5. In the counter-claim she have reiterated the contents of the defence and denied existence of a trust or customary rights and makes the following prayers:
  - a. A declaration that the deceased is the absolute proprietor of LR No. Dagoretti/Riruta/1241 and that the same is unencumbered under any Trust or customary interest or at all
  - b. A permanent injunction restraining the Defendants, whether by themselves, their agents or any one claiming under them, from invading, interfering, trespassing, evicting, disposing, charging, pledging or any manner dealing in Dagoretti/Riruta/1241
  - c. Costs of the suit and Counter-Claim
6. At the hearing, PW1- Peter Kinuthia Nyokabi Kimani testified that he was the child of Nyokabi Kimani. He produced the judgment of the court in the Succession Matter Cause No. 2392 of 2009 stating that the court decided that the property was to be divided according to the children of the deceased.
7. The Plaintiff adopted the statement that he recorded on 20/02/2024 as his evidence.
8. Upon being cross-examined by Mr. Maingi Counsel for the Defendant, the PW-1 told the court that his mother was the sister to the late Mbuti Muuru but that he was not aware whether the late Mbuti was holding the property in trust for the family. It was his testimony that his mother is alive and that



their claim is coming in after 40 years. He testified that he had produced the minutes for a meeting held in 2005 and 2008. The later minutes show that the late Mbuthi had by then died.

9. In his re-examination he stated that the green card at pages 18-20 which they got after doing a search show names of persons written onto the title with shares which were sold to them by Mr Mbuthi and it also shows that the acreage is 2.0134 hectares but according to him the shamba was 8 acres. He further testified that at the 2<sup>nd</sup> meeting on 10/05/2008 the family representatives claiming the land were children of Gathoni Muuru and Nyokabi Muuru. He stated that his parents did not go to court because they did not know that the land was being sold since they did not live on the suit property.
10. There were two other witnesses Florence Wambui Kamau PW-2 and Naomi Wambui Kinuthia PW-3 as witnesses for the plaintiffs. The two gave evidence in support of the Plaintiffs' case. Briefly, Florence's (PW2) evidence was that she was the daughter of Beth Wanjiru Kamau who is since deceased and that she was a sister to the late Mbuthia. That they took 30 years before staking their claim because the families were involved in discussions. She adopted the minutes produced by PW1. She stated that the Succession Case allowed them to be considered although an appeal has been preferred. She also stated that Gathoni's son stayed on the suit property although he was chased by Mr Mbuthia.
11. PW-3's evidence was that he is the son of Gathoni and he adopted his witness statement but Counsel for the defendant moved to have paragraph 3 of his statement struck out to which the Counsel for the plaintiffs obliged. He testified and stated that his evidence was based on what his parents and aunts told him. That they never constructed on the suit property. With this the Counsel for the plaintiffs moved to close their case.

### **Defendant's Case**

12. The defendant called two witness DW-1 – Joseph Waititu Ng'ang'a and DW2 – Esther Wanjiru Ngethe. DW-1 testified that he was one of the buyers of the suit property and he adopted his witness statement dated 12/03/2024. He stated that he bought two plots of the suit property from the deceased in 1992 and therefore his name is in the green card. He stated that he did not produce any sale agreement but that he has been on the suit property for over 20 years. In cross-examination he stated that he did not have a title but the late Mbuthi Muuru had a joint title together with one Esther Wanjiru Ngethe plus Francis Karani Ngethe although the records at page 20 of the defendant's bundle do not show the name of Mzee Ngethe.
13. He also testified that although he had stated that he owned two plots entry number 6 of the document do not show 2/20 as stated since he bought the share of 1/20 on 14/07/1993 and 4 years later he bought another share. That Esther Wanjiru Ngethe and Francis Ngethe have 1/20 shares.
14. In re-examination he stated that Mr Mbuthi sold 3 people the plots and they have joint title thus Mr Mbuthi remained with 17/20 of title and that whereas he bought 2 shares he had only produced copy of one sale agreement.
15. The defendant testified after DW1 since on the day she was to testify there was no Kikuyu translator. Eunice Muthoni Mbuthi the defendant adopted her witness statement and produced her list of documents and bundle for trial as her exhibits. She stated that she did not know that the suit property belonged to the plaintiffs' grandparents and that she found her husband and her brother living on the suit property when she got married. That the sister of her husband had not built on the suit property since they were married. Further that at no time did any chief visit the suit property to allege that the property belonged to her husband's siblings and that she was not aware of any meetings between her husband's siblings and elders.



16. On cross-examination she stated that she got married 50 years ago and that she never saw the graves of the late Mbuthi Muuru and she never asked for them since she was not aware when they died. It was her testimony that her late husband had one brother who drank so much and could not take care of himself and was not married so he stayed with them and they cared for him. This was not because the land belonged to him but that Mr Mbuthi was helping him as his brother. That she stayed with him for 20 years
17. She testified that when her late husband's brother, Wakaba died he was buried on the suit property. As for his sister inlaws she stated they never lived on the suit property. Further that her husband sold the suit property and no one ever asked him. That when her husband died and she filed for letters of administration her sister inlaws sought to be enjoined to the Succession Cause No. 2392 of 2009 where the court appointed herself and Karanja as co-administrators a decision that she has appealed against and awaits a decision from the Court of Appeal.
18. She told the court that her husband had sold part of the suit property although she did not know the original size. That the two purchasers have not been given their titles since the husband could not transact the transfers he was sick. It was his testimony that he did not know that his sisters in law has an interest in the land. That in 2005 the plaintiffs placed a caution on the land but he never asked them why they put the caution.
19. According to the defendant, her sister inlaws are married and so they should go to their homes. In re-examination, she stated that she never saw her parent inlaws' graves and that she never informed her sisters inlaw about taking out letters of administration since she saw no need for this. She testified that the title shows that the purchasers are joint owners.
20. DW2- Esther Wanjiru Ngethe adopted her witness statement and testified that having bought a portion of the suit property as per the sale agreement at pages 39 of the defendant's trial bundle, her husband' name appears as a joint owner although he died in 1980 but had not gotten a title. She stated that whereas her husband's name appears on the green card, there was no sub-division. She testified that she has never pursued title to date after her husband passed on. It was her testimony that she felt overwhelmed to pursue title since lands of this nature are usually problematic. With this the defendant's counsel closed the defendant's case.

### **Analysis and Determination**

21. Having read and analysed the evidence, as set out in the pleadings and given on trial, together, with written submissions, the following issues are set down for determination by the Court;
  - i. Whether the plaintiffs have proved customary trust?
  - ii. Whether the defendant is the absolute owner of the suit land?
  - iii. Who meets the cost of this suit?

### **Whether the plaintiffs have proved customary trust?**

22. Customary trust is one of the overriding interest hinged on the land that is currently recognized in the [Land Registration Act](#), 2012. The suit property was registered under Registered [Land Act](#) Cap 300. The provisions of Section 27 & 28 of Registered [Land Act](#) state that the rights of a registered proprietor of registered land under the Act are absolute and indefeasible and only subject to rights and encumbrances noted on the register or overriding interests which are set out under section 30 of the Act. The provisions of 27 & 28 are similar to the provisions set out in section 24,25 26 & 28 of



the *Land Registration Act*, 2012. Section 107 of the Land Registered Act (now repealed) provides for transitional clauses and is quoted for specifics as follows;

1. “Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.”
  2. “Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary must be presumed to be the case, where any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.”
  3. It is now accepted by the Courts in this country that Section 30(g) of Registered *Land Act* provided for customary trust. Section 28 (b) of the *Land Registration Act*, 2012 specifically provide for overriding interests as may subsist on the land and affect it without it being noted on the register such as customary trusts.
23. In this case the plaintiffs have pleaded customary trust in the suit land. The defendant’s case however is that the deceased Mbuthi Muru was duly registered as sole proprietor and enjoyed rights donated thereto by the then operative legislation Section 28 of the Registered *Land Act* Cap 300 (now repealed). She asserts that she is the widow of the deceased and a co-administrator of the Estate of the Late Mbuthi Muru and denies that the late Mbuthi Muru registered himself as the registered owner of the land parcel Dagoretti/Riruta/1241 as a trustee.
24. The defendant does not tell the court how the late Mbuthi Muru came into ownership of the suit property and why therefore it cannot be a customary trust. The court has however noted that from the evidence placed before the court the suit property initially belonged to the father in law of the defendant Muuru Igiria who predeceased the defendant. Apart of denying that he was not a trustee but a registered proprietor she stops short of providing evidence on acquisition of the suit property which would close out the claim of the plaintiffs.
25. Infact the evidence before the court showed that whereas James Kinuthia Karanja had obtained a grant of letters of administration through Succession Cause No. 1774 of 2008 and the grant was issued on 1/12/2009 the defendant also petitioned and was issued with a grant on 13/08/2010. The defendant did not tell the court why she decided to obtain another grant yet there was one in existence. This led the Learned Judge Abida Aaroni (as she then was) to issue a judgment dated 1/10/2020 appointing the two as co-administrations and directing them to apply for confirmation of the grant within 60 days of judgment. No evidence was presented before the court to show that the two did what the court directed.
26. The defendant comes across as a schemer who is bent on denying the children of the sisters of the deceased Mbuthi Muuru from rightfully inheriting their parents share of the suit property which indeed is inferred from the customary trust which I have found to have been implied in the action of registering the deceased Mbuthi Muuru son of the deceased Muuru Igiria on behalf of his siblings.
27. On their part, the plaintiffs have produced minutes of two meetings held by elders dated 10.05.2002 and 11.8.2005 where it is recorded that the late Mbuthi stated that he could offer the three siblings a single plot each measuring 100 x 100 to which the elders did not agree but they decided that Mbuthi was to give  $\frac{3}{4}$  of an acre to each which is a plot measuring 100 x 100 ft each. The elders also instructed that the sisters namely Beth Wanjiru Gathoni and her sister Nyokabi Muuru were to give the late



Mbuthi Muuru a ngoima and kihembe of honey. However, whereas the late Mbuthi Muuru asked the elders to give him two months from 11/08/2005 he never went back to the elders till his demise.

28. This evidence was not opposed or controverted by the defendant in her defence nor in the counter-claim. There was a subsequent meeting on 10/05/2008 where the elders it is recorded anonymously agreed that the 8 acres of land should be divided between Mbuthi and his siblings and it was resolved that the late Mbuthi Muru was to retain 4 acres and the other siblings to share the remaining 4 acres.
29. It is also telling that the defendant chose to file for another grant knowing very well that the court already confirmed the grant to Kinuthia who is a nephew of the late Mbuthi and despite the court's order that they file for a co-administrator's grant.
30. The defendant's counter-claim did not raise any new issues but simply reiterated the denials contained in the defence.
31. The provisions of Section 28 of the Registered Land Act Cap 300 (now repealed) referred to hereinabove are to the effect that the overriding interest such as customary trust need not be noted on the Register of the suit land. It therefore follows that registration of a person as a proprietor of land does not preclude him from holding an interest in trust for another. Customary trust is an encumbrance on land. These are non registrable rights which run with the land. They are overriding. They subsist on the land.
32. In the case of Kanyi vs Muthiora (1984) KLR 712 the Court stated that;

“The registration of the land in the name of the appellant under the Registered Land Act (Cap 300) did not extinguish the respondents rights under Kikuyu Customary Law and neither did it relieve the appellant of her duties or obligations under section 28 as trustee.....The trustees referred to in section 28 of the Act could not be fairly interpreted and applied to exclude a trustee under Customary law, if the Act had intended to exclude Customary law rights it would have been clearly so stated.”

33. This issue was also discussed in the case of Joseph Githinji Gathiba v Charles Kingori Gathiba [2001] eKLR where Justice Khamoni J stated:

“The position as I see it is therefore as follows: Correctly and properly, the registration of land under the Registered Land Act extinguishes customary land rights and rights under customary law are not overriding interest under section 30 of the Registered Land Act. But since the same registration recognizes trusts in general terms as is done in the proviso to section 28 and section 126 (1) of the Registered Land Act without specifically excluding trusts originating from customary law and since African Customary Laws in Kenya, generally, have the concept or notion of a trust inherent in them where a person holding a piece of land in a fiduciary capacity under any of the customary laws has the piece of land registered in his name under the Registered Land Act with the relevant instrument of an acquisition, either describing him or not describing him by the fiduciary capacity, that registration signifies recognition, by the Registered Land Act of the consequent trust with the legal effect of transforming the trust from customary law to the provisions of the Registered Land Act because, according to the proviso to section 28 of the Registered Land Act such registration does not “relieve a proprietor from any duty or obligation to which he is subject as a trustee”.



34. The court of Appeal in adopting this statement by Khamoni, J. in the case of Mukangu –vs- Mbui, KLR (E&L)1,622 stated as follows:-

“We have also examined other authorities and we think it cannot be argued too strongly that the proper view of the qualification or proviso to Section 28 is that trusts arising from customary law claims are not excluded in the proviso. Such claims may stem from the possession and occupation of part of the Registered land which although strictly it may not be an overriding interest under Section 30(g), it nevertheless gives rise to a trust which is capable of protection under the Act”.

35. In the above referenced case the court held that a trust arose in favour of a son from the son’s possession and occupation of his father’s land which trust was protected under Sections 28 and 30(g) of the Registered Land Act, Cap. 300 (now repealed).

36. It is thus clear that Customary trust was recognized as part of the trusts stated under the repealed Land Registration Act section 27, 28 and 30(g) under which the suit land was registered. The fact that the word trust was not denoted on the title does not relieve the registered owner from any obligation as a trustee under Kikuyu custom to which the parties subscribe to.

37. The Court of Appeal in the case of Salesio M’Itonga Vs M’Ithara & 3 Others (2015) eKLR, stated that trust is a question of fact and has to be proved by evidence. In this case the Plaintiffs led evidence which was not countered by the defendant that indeed the late Mbuthi Muuru inherited the suit property from his father and therefore it would follow that the suit land was both ancestral and trust land.

38. The Supreme Court in its judgment dated the 5<sup>th</sup> Day of October, 2018, in the case of Isack M’inanga Kiebia v Isaaya Theuri M’litari & another [2018] eKLR held as follows:

“we now declare that a customary trust, as long as the same can be proved to subsist, upon a first registration, is one of the trusts to which a registered proprietor, is subject under the proviso to Section 28 of the Registered Land Act. 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.

Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. In this regard, we agree with the High Court in Kiarie v. Kinuthia, that what is essential is the nature of the holding of the land and intention of the parties. If the said holding is for the benefit of other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land. Some of the elements that would qualify a claimant as a trustee are:

1. The land in question was before registration, family, clan or group land
2. The claimant belongs to such family, clan, or group



3. 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.
  4. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances.
  5. The claim is directed against the registered proprietor who is a member of the family, clan or group.
  6. 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.
  7. 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](#).
  8. 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.....
  9. 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
39. The plaintiffs' claim is based on the fact that the late Mbuthi held the land in trust for his siblings having inherited it from his father. Whereas the defendant and DW2 testify that her husband purchased part of the suit property and that their names were in the green card, she was not able to lay before the court the processes that lead to ownership of the suit property such as searches, transfer, sub-division and obtaining of title. The evidence therefore was of no probative value. One wonders how they came into a joint ownership of land that was not purchased by themselves and the deceased Mbuthi. This argument fails.



40. The Free Dictionary defines the word ancestral to mean:-  
“of, inherited from, or derived from ancestors or of relating to, or evolved from an ancestor or ancestors; Derived from ancestors;
41. Whereas the Law Dictionary defines the same word as;  
“relating to ancestors, or to what has been done by them.”
42. The plaintiffs in their evidence showed that the suitland was ancestral. The evidence of the defendant on the other hand seemed to suggest that her late husband just acquired the land somehow and lived with his brother Wakaba as a sign of good will and even upon his brother’s death he buried him on his land. Whereas this may be indeed a sign of good will and brotherly love but the question of how the late Mbuthia acquired the suit land has not been responded to by the defendant. That the elders at one time made a decision on sharing of the suit land points me to just one conclusion – the suit property is ancestral land and if this be the case then the late Mbuthia held it in trust for his siblings.
43. I will not bother to address the issue raised by the defendant that the sister of the late Mbuthia are girls and they have their homes since this is an issue that should be canvassed in a different court. Yet if I were to give my personal advise I would ask the defendant to read keenly the law of succession it may help to enlighten her obscured viewpoint of inheritance by girls or women for that matter.
44. Let me conclude my analysis by sharing what the Supreme Court said in the case of Isaac M’Inanga Kiebia vs. Isaya Theuri M’Lintari & Another [2015] eKLR paragraph 35, by stating that;  
“Is there a state of uncertainty in the law, arising from contradictory precedents, and warranting this court’s resolution of the doubt” While the question of customary, or generational trust has been determined from time to time, the resulting body of precedent is not clear on the singular question, whether a claimant of a trust in customary law needs to prove actual physical possession, or occupation. Despite an overhaul of the previous land laws, and the enactment of a new [Land Registration Act](#) (2012), to consolidate and rationalize the registration of titles, the manner of resolution of the said question will affect pending matters, as well as matters to be heard in the future (pursuant to Section 28(b) of the [Land Registration Act](#)). The issue, therefore, will continually engage the workings of judicial organs.”
45. Now whereas the in this was the ruling of the Supreme Court in the aforementioned case. In its final decision through its judgement over the same suit delivered on 05<sup>th</sup> October, 2018, the Supreme Court had this to say at paragraph 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 of 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 parcel existed, we see no reason to interfere with their conclusions.”

46. It is clear that the issue of being in occupation as was alluded to by the defendant has already been determined by the highest court in the land. Thus, the highest court has affirmed that one need not be in actual physical possession and occupation of land in order to prove a trust in land.
47. Given the foregoing I do find that the Plaintiffs herein have established a valid claim to the suit property based on customary trust and are entitled to the remedies sought. Judgment is entered for the Plaintiffs in the following terms:
- i. That the late Mbuthi Muru held Land Parcel Number Dagoretti/Riruta/1241 in trust for himself and the late Gathoni Muru, the late Beth Wanjiru Kamau and Nyokabi Kimani in equal shares
  - ii. The counter claim is dismissed
  - iii. The Defendant is directed to subdivide and share out Land Parcel No. Dagoretti/Riruta/1241 to:
    - a. The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs the surviving grandchildren of the late GATHONI MURU
    - b. The Estate of Beth Wanjiru Kamau
    - c. The 1<sup>st</sup> Plaintiff Nyokabi Kimani and Herself in equal shares
  - iv. Parties being related, I make no orders as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2024.**

.....

**MOGENI J  
JUDGE**

In the Virtual presence of: -

Mr. Ongoto for Plaintiff/Applicant

E. Omondi - Defendant

Caroline Sagina - Court Assistant

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**MOGENI J  
JUDGE**

