



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 141 OF 2007 (O.S)

JOSEPH THUGO GICHUHI.....1ST APPLICANT

MICHAEL CHEGE.....2ND APPLICANT

VERSUS

TERESIAH WANJIKU NJUGUNA.....RESPONDENT

CONSOLIDATED WITH ELC SUIT NO. 24 OF 2014 (O.S)

SIMON NDUNI GICHUHI.....1ST APPLICANT

GEORGE KARIUKI GICHUHI.....2ND APPLICANT

VERSUS

TERESIAH WANJIKU NJUGUNA.....RESPONDENT

JUDGMENT

This is a consolidated judgment. The suits the subject of this judgment were consolidated through an order made on 23rd October, 2018. The applicants in the two suits claim portions of all that parcel of land known as Dagoretti/Riruta/290 (hereinafter referred to as “the suit property”) registered in the name of the respondent by adverse possession.

The case for the applicants’ in ELC Suit No. 141 of 2007.

The applicants in ELC Suit No. 141 of 2007 brought their claim by way of an Originating Summons dated 5th February, 2007 that was filed in court on 12th February, 2007. The applicants sought the determination of the following questions;

- a. Whether the applicants are the rightful owners of a portion measuring ½ acre out of all that parcel of land known Dagoretti/Riruta/290 measuring 5.7 acres in total by virtue of the principle of adverse possession.
- b. Who should pay the costs of the suit?

The application was brought on the grounds set out on the supporting affidavit of the 2nd applicant, Michael Chege sworn on 5th February, 2007. The applicants averred that the respondent was the registered owner of the suit property and that she was the 1st applicant’s mother and the 2nd applicant’s grandmother. The applicants averred that the applicants and the respondent’s two sisters namely, Asha Wambui and Teresiah Wanjiku had been living together with the respondent on the suit property since 1958 when the property was demarcated.

The applicants averred that from 1965, they occupied the suit property peacefully and had carried out developments thereon without interruption until 2006 when the respondent objected to the burial of the 1st applicant’s mother who was also the 2nd applicant’s grandmother on the suit property leading to her being buried at Langata Cemetery. The applicants averred that the respondent had also started constructing a gate at the entrance to their residence whose purpose was to interfere with their peaceful occupation of the suit property which they had enjoyed since 1965. The applicants contended further that they had learnt from those close to the respondent that the respondent intended to sell the suit property and that they had registered a caution against the title of the property to stop such move. The applicants averred that they had put up a permanent house and had also undertaken other activities on a portion of the suit property measuring ½ acre which they

were occupying.

The applicants averred that the respondent's activities complained of were illegal since they had acquired a portion of suit property measuring ½ acre by adverse possession.

The respondent's response to ELC Suit No. 141 of 2007.

The Originating Summons was opposed by the respondent through a replying affidavit sworn on 26th February, 2007 and filed in court on 28th February, 2007. The respondent averred that the application was incompetent and not properly before court because the same was not signed by the applicants as provided for under Order VI Rule 16 of the Civil Procedure Rules. The respondent averred further that the application was brought under the wrong Order of the Civil Procedure Rules and that no extract of title had been annexed to the affidavit in support thereof. The respondent averred that she inherited the suit property from her late father Githete Nduni (deceased) since she was the only surviving unmarried child of the said Githete Nduni. The respondent denied that she was the 1st applicant's mother and the 2nd applicant's grandmother. The respondent averred that the 1st applicant's mother who was also the 2nd respondent's grandmother was Teresiah Wanjiku Gichuhi who was the respondent's step sister. The respondent averred that Teresiah Wanjiku Gichuhi was a daughter of his late father's wife Wairimu. The respondent averred that the said Teresiah Wanjiku Gichuhi had a sister by the name Ruguru Juma Githigo and that both were married. The respondent averred that since her mother had died and she was the only unmarried child of their father Githete Nduni, she inherited the suit property through a certificate of succession dated 21st March, 1966 issued by Kibera African court. The respondent averred that the suit property was subsequently registered in her name on 5th May, 1966.

The respondent averred that several years after the registration of the suit property in her name, the 1st applicant's mother, Teresiah Wanjiku Gichuhi and her sister Ruguru Juma Githigo requested her to allow them to put up temporary structures on a very small portion on the suit property measuring about 1/8 acre. The respondent averred that in 1985 her said step sisters began to cut down her trees and she gave them notice to vacate the suit property. The respondent averred that after several correspondences between the advocates who were representing her said step sisters and her advocates, her said sisters who had since died realised that they had no right over the suit property. The respondent averred that her said step sisters requested her to allow them to continue in occupation of the said small portion of the suit property with a promise that as soon their then existing shelter got dilapidated, they would move out of the suit property.

The respondent averred that it was also agreed between her and her said step sisters that none of their relatives would trespass on, cut down trees or be buried on the said portion of the suit property which they were occupying. The respondent averred that when the 1st applicant's said mother, Teresiah Wanjiku Gichuhi died, she was buried at Langata public cemetery. The respondent averred that Teresiah Wanjiku Gichuhi's sister, Ruguru Juma Githigo was similarly buried in a public cemetery. The respondent averred that the 1st applicant and his siblings had no right to the suit property. The respondent averred that the applicants had not made out a case for adverse possession because they were residing on the temporary structures that were constructed by the 1st applicant's deceased mother. The respondent denied that the 1st applicant or his mother had constructed a permanent house on the suit property and that the applicants were in occupation of such house.

The case for the applicants in ELC Suit No. 24 of 2014.

The applicants in this suit brought their claim through an Originating Summons dated 24th December, 2013 that was filed in court on 16th January, 2014 seeking the determination of the following questions;

- a. That the applicants be declared to have acquired by adverse possession a portion of the suit property measuring one (1) acre and that the respondents be ordered to transfer the said portion of land to the applicants with each applicant being entitled to ½ acre of the property.
- b. The costs of the proceedings be borne by the respondent.

The application was brought on the grounds set out on the face of thereof and on the joint supporting affidavit of the applicants sworn on 26th December, 2013. The applicants averred that they were sons of Teresiah Wanjiku Gichuhi, deceased, who was the respondent's step sister. They averred that the suit property was originally registered in the name of their deceased grandfather, Githete Nduni. The applicants averred that after the death of their grandfather, the respondent fraudulently registered the suit property in her name without their knowledge. The applicants averred that their deceased mother was brought up on the suit property and that they were both born on the suit property around the year 1958. The applicants averred that they were residing on the suit property and were each in possession of portions thereof measuring ½ acre on which they had constructed houses and brought up children who were now adults. The applicants stated that they had also been cultivating the said portions of the suit property in their possession.

The applicants averred that the respondent had been trying to evict them from the suit property which attempt they had resisted. The applicants averred that despite their demand upon the respondent to transfer to them the said portions of the suit property measuring one acre, the respondent had refused to do so. The applicants averred that together with their families they stood to suffer irreparable harm if the orders sought were not granted.

The respondent's response to ELC Suit No. 24 of 2014.

The Originating Summons was opposed by the respondent through a replying affidavit sworn on 4th June, 2015 and filed in court on the same day. The respondent averred that she was the registered proprietor of the suit property and that the applicants were the sons of her step sister, Teresiah Wanjiku Gichuhi who had been married and residing at Mito Andei on her own parcel of land. The respondent denied that she acquired the suit property fraudulently. The respondent averred that she was registered as the proprietor of the suit property on 5th May, 1966 having obtained a certificate of succession from Kibera African court. The respondent averred further that the applicants' mother and

her sister Ruguru Juma Gathigio were aware that the respondent had been declared by the court as the heir of their deceased father Githete Nduni since she was the only unmarried daughter of the deceased.

The respondent averred that after the suit property was registered in her name, the applicants' mother came with her husband and requested her to allow them to stay on the suit property which she accepted on condition that they put up only temporary structures on the property. The respondent averred that around 1985, the applicants' mother started misusing the suit property by cutting down trees thereon as a result of which she issued them with a notice to vacate the property. The respondent averred that in 1994, the 1st applicant moved out of the suit property and rented premises owned by the respondent which he occupied until 2012. The applicant averred that in January 2015, the 1st applicant illegally commenced construction on the portion of the suit property which he was occupying and she reported the matter to the area chief. The respondent averred that the 1st applicant undertook to desist from carrying out any construction on the suit property until the dispute was determined in court. The respondent averred that applicants placed a caution against the title of the suit property illegally claiming that they were being harassed. The respondent averred that the 2nd applicant moved out of the suit land in the 90s and that on 24th March, 2005, when the mother of the applicants died, they buried her at Langata cemetery since they knew they that they did not have any right over the suit property.

The evidence by the parties:

When the court ordered consolidation of the two suits on 23rd October, 2018, the court directed further that ELC Suit No. 141 of 2007 shall be the lead file and that the applicants in ELC Suit No. 141 of 2007 shall give evidence first followed by the applicants in ELC Suit No. 24 of 2014 after which the respondent was to give evidence in her defence of the two suits.

At trial, Joseph Thogo Gichuhi (PW1), the 1st applicant in ELC Suit No. 141 of 2007 adopted his witness statement dated 3rd March, 2015 as his evidence in chief. He testified thereafter as follows. The suit property was registered in the name of the defendant. He entered the suit property in 1961. He had built a home on the suit property in which he was staying with his family. The portion of the suit property under his occupation measured about ½ acre. He never had a dispute over the suit property prior to 2006. The defendant did not give him a notice to vacate the suit property in 1985. He did not have anywhere to move to if removed from the suit property. His mother, Teresiah Wanjiku Gichuhi died in 2006 and her wish was to be buried at Langata cemetery and not on the suit property as they had wished. The suit property measured 5.7 acres and the defendant was not residing thereon. It was the defendant's sons who were staying on a portion of the suit property. His claim was in respect of a portion of the suit property measuring ½ acre. He produced as exhibit a certificate of official search dated 31st January, 2007.

The next to give evidence was the 1st applicant in ELC Suit No. 24 of 2014, Simon Nduni Gichuhi (PW2). PW2 adopted his affidavit sworn on 26th December, 2013 filed in support of the Originating Summons and his witness statement filed together with the said Originating Summons as part of his evidence in chief. He produced the documents attached to the said affidavit as exhibits. PW2 testified as follows. His claim related to the suit property which was owned by the respondent. The suit property was initially registered in the name of his grandfather, Githete Nduni. His mother was Teresia Wanjiku Gichuhi. His mother was a step sister to the respondent both being the daughters of Githete Nduni by different mothers. He was born on the suit property in 1958. He was 60 years old as at the time of giving evidence. His father did not settle at Mtito Andei as claimed by the respondent. His father had only gone to Mtito Andei for business and the family did not join him there. He lived on the suit property with his parents and siblings peacefully until 1985 when the defendant demanded that they vacate the suit property. They did not move out as demanded by the defendant. They advised the defendant go to court if she required possession. He was occupying the suit property with his two brothers. The portion of the suit property that he was occupying measured ½ acre. He had a home on that portion of the suit property and was also cultivating part of it. He had produced photographs showing his homestead. In 1994, he wanted to operate a shop and asked the respondent to lease to him one of her premises on the suit property near the road for that purpose. The shop was on the suit property and as such he did not vacate the suit property in 1994 as claimed by the respondent. His home remained on the suit property. He urged the court to grant the reliefs sought in the Originating Summons.

George Kariuki Gichuhi (PW3), the 2nd applicant in ELC Suit No. 24 of 2014 was the last to give evidence for the applicants. He testified as follows. His claim related to the suit property. The suit property belonged to his grandfather Githete Nduni. He was born on the suit property in 1960. The property was in the name of the defendant. He occupied a portion of the suit property measuring ½ acre on which he had a home. He was also cultivating part of the said ½ acre portion of land. He had planted bananas, maize and vegetables on that portion of the suit property. He did not vacate the suit property in 1990s as claimed by the respondent but was only away on business. He retained his house on the suit property part of which he rented out. The house he had on the suit property had 4 rooms one of which he occupied while the remaining three were rented out. He also rented out the farm he had on the suit property when he was not cultivating the same himself. PW3 urged court to grant him his share of the suit property.

After the close of the plaintiff's case, the respondent Teresia Wanjiku Njuguna (DW1) gave her evidence. The respondent testified as follows. She was staying at Riruta in Dagoretti. She was the owner of the suit property. The applicants were known to her. They were sons of her step sister. The applicants' mother and she were of the same father while their mothers were different. The applicants' mother had asked her to allow her to occupy a portion of the suit property before Kenya gained independence. At that time, their father had already died. She was given the suit property by their father in 1960s. The applicants' mother was not given land because she was married at Mangu. She (the respondent) was however not married because her father had no son and had asked her to remain at home so that she could inherit his land.

The respondent stated further that, the applicants' mother came back home to the suit property with her husband and asked her for a portion of the suit property to build a house. The applicants were not born on the suit property but came with their mother. The applicants' mother had a sister by the name Ruguru. Ruguru had a son by the name Ngorongo Juma. When she gave notice to the applicants' mother and her sister Ruguru to vacate the suit property, Ngorongo Juma vacated. She gave the said notice to vacate on 11th March, 1985 through Kamonde Advocate. After that notice, the applicants' mother vacated the suit property and moved to Mtito Andei. The 2nd applicant in ELC Suit No. 24 of 2014 also vacated. The 1st applicant in ELC Suit No. 24 of 2014 and the 1st applicant in ELC Suit No. 141 of 2007 however remained on the suit property. The 2nd plaintiff in ELC Suit No. 141 of 2007 was the son of the 1st applicant in ELC Suit No. 141 of 2007.

The respondent stated further that, the applicants' brought this suit after the death of their mother who knew that the suit property was given to her by their father and never sued the respondent over the suit property. She stated that her father gave her the suit property openly. She was 26 years old when she was given the suit property. The suit property was registered in her name pursuant to the orders that were given in succession proceedings in which her step sisters participated and gave their consent to the property being transferred to her. She stated further that, the applicants were staying together and that it was not true that each occupied a portion of the suit property measuring ½ acre. She stated that the applicants had put up mud houses and not permanent houses on the suit property. She denied that she had lived peacefully with the applicants on the suit property. She stated that the applicants had been threatening her. She stated that she wanted the applicants to vacate the suit property. She told the court that she was forced to move out of the suit property to go and live with one of her sons because of the harassment by the applicants. The respondent stated that it was one of his sons who was living on the suit property. She produced the documents attached to her list of documents dated 13th March, 2015 as exhibit D-Exh1. She urged the court to remove the caution registered by the applicants against the title of the suit property.

The respondent called one witness, Juma Yusuf (DW2). DW2 testified as follows. He used to stay at Kangemi but moved to Ruiru. The respondent was known to him for many years as she used to be his neighbour. The applicants on the other hand were not well known to him. DW2 told the court that the applicants were not entitled to get any land from the respondent. He corroborated the evidence of the respondent that she was given the suit property by her father because she was not married. He also corroborated the evidence of the respondent that the applicants' mother came back to the suit property with her husband and were given a portion of the suit property to reside on. He stated that when the applicants' parents died they were all buried at Langata. DW2 told the court that he could not remember when the applicants' mother came back to the suit property. He stated that the applicants' were supposed to go and claim land from their fathers' clan. He told the court that the respondent and her father belonged to Aithirandu clan while the applicants belonged to Acera clan. He stated that land could not pass from Aithirandu clan to Acera clan.

Determination of the issues arising.

After the close of evidence, the parties made closing submissions in writing. The applicants in ELC Suit No. 141 of 2007 filed their submissions on 15th January, 2019 while the applicants in ELC Suit No. 24 of 2014 filed their submissions on 18th June, 2019. The respondent on the other hand filed her submissions on 14th June, 2019. I have considered the Originating Summons filed in the two suits together with the affidavits filed in support thereof. I have also considered the replying affidavits that were filed by the respondent in opposition to the same. Finally, I have considered the evidence that was tendered by the parties and the submissions by their advocates. In my view, the main issue that arises for determination in the consolidated suits is whether the applicants have acquired portions of the suit property claimed by them by adverse possession, and whether they should be registered as the proprietors thereof. The respondent had raised a few issues of technical nature with regard to the form of the Originating Summons filed in ELC Suit No. 141 of 2007 which I will deal with before considering the merit of the application.

In Kasuve v Mwaani Investment Ltd & 4 Others, [2004] 1 KLR 184 the court stated as follows:

“.....in order to be entitled to the land by adverse possession the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by the discontinuation of possession by the owner on his own volition.”

In Kimani Ruchine & Another v Swift, Rutherford Co. Ltd. & another (1977) KLR 10 Kneller J. stated as follows at page 16:

“The Plaintiffs have to prove that they have used this land which they claim as of right, necvi, nec clam, nec plecario (no force, no secrecy, no evasion).....The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”

In Wambugu v Njuguna [1983] KLR 173, it was held among others that:

“In order to acquire by the statute of Limitations title to land which has a known owner that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it.”

In Githu v Ndeete [1984] KLR 776 it was held that:

1. “Time ceases to run under the Limitation of Actions Act either when the owner takes or asserts his rights or when his right is admitted by adverse possessor. Assertion occurs when the owner takes legal proceedings or makes an effective entry into land. Giving notice to quit cannot be effective assertion of right for the purpose of stopping the running of time under the Limitation of Actions Act.

2. A title by adverse possession can be acquired under the Limitation of Actions Act to a part of the parcel of land which the owner holds title.”

In her response to the Originating Summons filed in ELC Suit No. 141 of 2007, the respondent had contended that the same was defective on account of the fact that the Originating Summons was not signed by the applicants as required under Order VI Rule 16 of the old Civil Procedure Rules and secondly, that the extract of title of the suit property was not annexed to the affidavit in support of the Originating Summons as required under Order XXXIX Rule 3D (2) of the old Civil Procedure Rules. The first limb of the objection was raised before the hearing of the suit and was heard and dismissed by the court in a ruling delivered on 18th April, 2013.

In my view, the second limb of the objection raised by the respondent also has no merit. I have noted that in their affidavit in support of the

Originating Summons, the applicants annexed a copy of a certificate of official search on the title of the suit property. This certificate of official search in my view should suffice for the purposes of Order XXXIX Rule 3D (2) of the old Civil Procedure Rules. In the circumstances, the two preliminary objections that were raised by the respondent to the Originating Summons filed in ELC Suit No. 141 of 2007 are overruled. This paves the way for consideration of the applicants' claims on merit.

What emerged from the evidence tendered in court is that all the parties in the consolidated suits are related and that the suit property was ancestral land. The suit property was registered in the name of the respondent's father, Githete Nduni as the first registered owner on 6th November, 1958 before the same was transferred to the respondent on 5th May, 1966. The evidence adduced by the respondent shows that the respondent inherited the suit property from her father after obtaining certificate of succession from Kibera African Court on 21st March, 1966 in Succession Case No. 63 of 1966. It came out in evidence that the 1st applicant in ELC Suit No. 141 of 2007 and the applicants in ELC Suit No. 24 of 2014 are brothers and that the 2nd applicant in ELC Suit No. 141 of 2007 is the son of the 1st applicant in that case. The 1st applicant in ELC No. 141 of 2007 and the applicants in ELC No. 24 of 2014 (hereinafter together referred to as "the applicants" for ease of reference where the context so permits) are sons of Teresiah Wanjiku Gichuhi.

From the evidence on record, Teresiah Wanjiku Gichuhi (hereinafter referred to as "Wanjiku" where the context so permits) was a step sister to the respondent. It was not disputed that all the applicants came to be on the suit property by virtue of Wanjiku's relationship with the respondent. Whereas the applicants claimed that they were born on the suit property, the respondent claimed that the applicants came to the suit property with their mother Wanjiku who had requested the respondent to allow her and her husband to occupy a portion of the suit property temporarily.

The parties did not place before the court clear evidence as to when the applicants entered the suit property. The applicants who claimed to have been born on the suit property placed no evidence before the court showing that they were actually born on the suit property. The respondent who claimed on the other hand that the applicants came to the suit property with their parents did not tell the court when this happened. In her evidence, the respondent stated that the request by the applicants' mother to be allowed to occupy the suit property temporarily was made before Kenya gained independence. In her witness statement dated 13th March, 2015, the respondent stated that the request by the applicants' mother was made several years after the suit property was registered in the respondent's name on 5th May, 1966.

There is however undisputed evidence that as at 11th March, 1985, the applicants were occupying the suit property with their parents. The respondent placed in evidence an eviction notice that was given to the applicants' parents by the respondent through G. Kamonde Advocate on 11th March, 1985. There was no dispute that as at that date, the applicants were in occupation of the suit property. Assuming that for the purposes of Limitation of Action Act, Chapter 22 Laws of Kenya, time was supposed to start running as against the respondent as at this date, the question that the court needs to answer is whether the applicants proved that they had occupied the portions of the suit property which they have claimed openly and as of right without interruption for a period of 12 years from that date so as to satisfy the threshold for adverse possession.

I have carefully analysed the evidence given by the parties on this issue. I am persuaded by the evidence given by the applicants that they had occupied portions of the suit property claimed by them openly and without interruption for over 12 years from 1985 as at the time they came to court. The applicants placed before the court as evidence of their occupation, photographs showing the houses that they have on the suit property. From the photographs, it does not appear that the houses were put up recently. In her evidence, the respondent did not dispute that the houses on the said photographs were on the suit property and that they belonged to the applicants. In fact, she was able to identify each of the houses and the owners thereof. In her evidence, the respondent had claimed that when she gave the applicants' parents notice to vacate the suit property on 11th March, 1985, the 2nd applicant in ELC Suit No. 24 of 2014 vacated the suit property. The respondent stated however that the other applicants remained in occupation of the suit property and that she took no action to evict them from the property.

In his evidence, the 2nd applicant in ELC Suit No. 24 of 2014 who gave evidence as PW3 denied that he had vacated the suit property. He testified that he left his residence on the property to go and carry out business elsewhere but retained his house on the property. The respondent did not challenge the 2nd applicant's evidence that he retained his house on the suit property which he was renting out to tenants and also occupying while he was on the property.

I am satisfied from the evidence before the court that all the applicants have proved on a balance of probabilities that they have acquired the portions of the suit property in their occupation by adverse possession. The applicants have demonstrated that as at the time they brought the two suits, they had occupied portions of the suit property openly and continuously for a period of over 12 years. The applicants have also proved that while in occupation of the suit property they carried out activities that were inconsistent with the respondent's proprietary interest in the suit property and that the respondent did not take legal action to evict them from the property even after serving a notice to vacate against their parents.

The respondent had contended that the structures that the applicants had on the suit property were temporary in nature and as such did not entitle them to claim the portions of land that they were occupying by adverse possession. I am of the view that the nature of a structure occupied by a person claiming land by adverse possession is irrelevant. What matters is the act of occupation without permission and the continuity of that occupation for the prescribed period of 12 years.

The applicants in ELC Suit No. 141 of 2007 claimed a portion of the suit property measuring $\frac{1}{2}$ acre while the applicants in ELC Suit No. 24 of 2014 had each claimed portions of the suit property measuring $\frac{1}{2}$ acre. The applicants did not tell the court how they arrived at the measurements of the portions of the suit property that they were claiming. The respondent on her part testified that the applicants were all staying together and that they were not entitled to land measuring $\frac{1}{2}$ acre each. I am in agreement with the respondent that from the photographs that were produced in evidence, the applicants' houses have been put up close to each other. However, there was evidence that the applicants were also doing cultivation on the suit property. I am of the view that the mere fact that a claimant of land by adverse possession has not tendered evidence of the exact size of the land claimed should disentitle him to a relief. I am of the view that in a case such as the one before me where the claim has been proved but the precise sizes of the portions of land occupied by each of the applicants have not been ascertained, the court has power to make appropriate orders for the ascertainment of the sizes of each applicant's land.

In conclusion, I hereby enter judgment for the applicants against the respondent on the following terms;

- 1. I declare that the applicants in ELC Suit No. 141 of 2007 have acquired a portion of all that parcel of land known as Dagoretti/Riruta/290 which they are occupying by adverse possession.**
- 2. I declare that the applicants in ELC Suit No. 24 of 2014 have acquired portions of all that parcel of land known as Dagoretti/Riruta/290 which they are occupying by adverse possession.**
- 3. The respondent shall cause a survey and subdivision to be carried out by a Government Surveyor at the cost of the applicants for the purposes of demarcating the portions of all that parcel of land known as Dagoretti/Riruta/290 occupied and used by the applicants in ELC Suit No. 141 of 2007 and the applicants in ELC Suit No. 24 of 2014 and shall thereafter transfer the said portions of Dagoretti/Riruta/290 to each of them save that the portion occupied by the applicants in ELC Suit No. 141 of 2007 shall be registered in their names jointly as tenants in common.**
- 4. The portions of Dagoretti/Riruta/290 to be transferred to the applicants in ELC Suit No. 141 of 2007 shall not exceed ½ acre and the portions to be transferred to the applicants in ELC Suit No. 24 of 2014 shall not exceed 1 acre for both of them.**
- 5. In the event that the respondent fails to comply with the terms of the order given in paragraph 3 above, without prejudice to any remedy the applicants may have against the respondent, the Deputy Registrar of this court shall be authorised to execute any document or instrument necessary for the purposes of enforcing that order.**
- 6. The applicants shall meet the statutory charges and other costs payable on the transfer of the said portions of the suit property to their names.**
- 7. Either party shall be at liberty to apply limited only to the issues that may arise in the course of the subdivision of Dagoretti/Riruta/290 pursuant to the orders issued herein.**
- 8. Since the dispute involved family members, each party shall be bear his own costs of the suit.**

Dated and delivered at Nairobi this 5th Day of March, 2020

S. OKONG'O

JUDGE

Judgment read in open court in the presence of;

Mr. Gachuhi for the Applicants in ELC No. 24 of 2014

Ms. Njoroge h/b for Mr.Mutiso for Applicants in ELC No. 141 of 2007

Ms. Muigai for the Respondent

Ms. C. Nyokabi-Court Assistant