



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 670 OF 2013

GITARI KARIUKI.....1ST PLAINTIFF

BENARD MUCHIRI SUBSTITUTED FOR SAMSON NDEGE.....2ND PLAINTIFF

VERSUS

DAVID MWANGI KATHENDU.....DEFENDANT

JUDGMENT

The plaintiff instituted this suit by a plaint filed in Court on 23rd December 1996 and sought the following orders:

- 1. That the defendant to be ordered by this Honourable Court to transfer land parcel No. KABARE/GACHIGI/719 and 720 to the plaintiff.**
- 2. That the Executive officer of this Court to be ordered to sign all the necessary documents.**
- 3. Costs of this suit.**
- 4. Interest at Court rate.**

The defendant filed a written statement of defence dated 28th January 1997 and amended on 5th December 2012.

PLAINTIFFS CASE

The 1st plaintiff filed two statement dated 8th January 2016 and a further statement dated 20th August 2016. He also filed a list of documents dated 24th July 2013 and a further list dated 17th August 2014. According to the 1st plaintiff Gitari Kariuki, the defendant is a son to Kathendu Kagwa who originally was registered on land parcel No. KABARE/GACHIGI/357 measuring 4 acres. The said Kathendu Kagwa held that land in trust for himself and their family (Kariuki's family). He stated that he has all along lived on this parcel of land. He stated that the late Kathendu Kagwa sold the two acres meant for him and the two remaining acres are meant for the plaintiffs being land parcel No. KABARE/GICHIGI/719 and 720. He stated that he should get KABARE/GACHIGI/719 while the family of the late Samson Ndege should get KABARE/GACHIGI/720. The 1st plaintiff further stated that at the time of land consolidation and demarcation, his father Kariuki Kagwa was working in Nairobi with the then County Council of Nairobi while his brother Kathendu Kagwa was living in Kirinyaga. By then, their father Kagwa Ngai had passed on. According to Kikuyu Customary Law, where the father of a homestead is not there, the land could be given to the first born son to hold in trust for the family. But due to work related commitments, Kariuki Kagwe proposed that his youngest brother Kathendu Kagwa be registered as a trustee. He further stated that they were given land parcel No. KABARE/NGIROCHE127 measuring 4 acres and was registered in the name of Kathendu Kagwa. However, they did not settle on that land but settled on land parcel No. KABARE/GACIGI/357 measuring 4 acres belonging to one Jackson Njuki. The plaintiff further stated that it was therefore agreed that an exchange of the two parcels be done and that was done in August 1976. He stated that Kathendu Kagwa was entitled to 2 acres out of land parcel No. KABARE/GACIGI/357 while his father Kariuki Kagwa was entitled to get 2 acres out of land parcel No. KABARE/GACIGI/357.

He stated that in 1989, the land was sub-divided into 4 portions of one acre each being parcel Numbers KABARE/GACIGI/717, 718, 719 and 720. By that time, Kathendu was not married. He used to live alone. For the sub-division to be done, they contributed money whereby he and his step-brother Samson Ndege and father to Bernard Muchiri paid Ksh. 2,500/=. He said that Ksh. 1,800/= was for survey work and Ksh. 700/= for a he-goat which was given to Kathendu Kagwa. He stated that the reason for the 4 portions is that he was to get one portion. He said that his father Simon Ndege got another portion while the remaining 2 portions were for Kathendu Kagwa. He stated that in 1993, Kathendu Kagwa started cohabiting with kathare Kathendu. He said that it was their surprise when they learnt that a son of Kathare by

name David Mwangi Kathendu had been given land in 1990, a person who was not known to them. He testified that the parcel of land given to him was number KABARE/GACIGI/718. He said that the said parcel of land was sold by him in 1995 to one Johnson Francis Njagi Githinji while Kathendu Kagwa sold parcel Number KABARE/GACIGI/717 to the same person Johnson Francis Njagi Githinji and his wife Ann Wanjiru Njagi in 2001.

He said that what remained was parcel Number KABARE/GACIGI/719 meant for Gitari Kariuki and KABARE/GACHIGI 720 meant for Samson Ndege. The plaintiff stated that he came to learn that David Mwangi's father is Gachura Gakuru from Mutigi Sub-location who had married Kathare Kathendu. He stated that they were brought up in the parent title number KABARE/GACHIGI/357 where he lives with his family to-date. He stated that the family of his step-brother Samson Ndege also live on that land. He stated that land parcel No. GICHUGU/SETTLEMENT/SCHEME/621 is not a clan/ancestral land but that his father Kariuki Kagwa bought the same and therefore no other family clan can lay claim over the same. The plaintiff confirmed that there was a case being SPMCC No. 29 OF 1990 (Embu) and that the same was struck out with costs on 18th September 1996 for the simple reason that by then parcel No. KABARE/GACIGI/357 was non-existent and they then filed the instant suit. On cross-examination by Mr. Magee Advocate, the 1st plaintiff stated that he wants a share on his grandfather's land. He said that he knew that this was not a succession cause. He said he did not have letters of administration. He said that the original defendant Kathendu Kagwa (deceased) is his father's brother and his father was Kariuki Kagwa. He stated that the original plaintiff Samson Ndege is his brother and Samson Muchiri is his son. He said that his father had 13 children. He said that he is asking the suit land for himself and his brother in the pleadings. He stated that it is for the family though he never said so in the pleadings. The plaintiff further stated that land parcel No. KABARE/NGIROCHE/127 was given to original defendant Kathendu Kagwa. The plaintiff further stated that in 1958, he was about 7 years. He said that according to Kikuyu customs; it is the elder son who was given land to hold in trust for others. He stated that he knew people given land by one clan who paid various fees and were given land after paying. He said he did not see the receipts of Kathendu of 10/12/1958. He said he did not have receipt of his father. He said his father was working in Nairobi. He admitted that he purchased his land parcel No. GICHUGU/SETTLEMENT/SCHEME/621 in 1973. He said that he knows the defendant exchanged his parcel No. KABARE/NGIROCHE/127 with land parcel No. KABARE/GACHIGI/357 in 1976. He said that his father did not oppose the exchange. He said that his father settled in GICHUGU/SETTLEMENT in 1973 and not 1976. He said his father had two (2) wives namely:

1. Grace Wakaribo
2. Janet Njoki.

He stated that his mother was living in Gichugu Settlement. The plaintiff stated that Janet and his father settled in Gichugu Settlement. He stated that it is not true that the two wives were not agreeing and that his first wife was asked to stay with the defendant. He also denied that Grace was given 1/8 of the land. He said he has one acre and Samson has one acre. He said that the defendants do not use the land they sold. He stated that they knew when parcel No. 357 was partitioned to 4 portions. He said that they were at Land Control Board. He said that his father raised objection but they ruled it was not written anywhere. He said that the Kikuyu bury in the ancestral land. He stated that his father was buried in Mwea. He stated that his father said he would be buried in the suit land. He said that his wife was buried in the suit land. The plaintiff also stated that Janet was buried in Mwea and that the land at Mwea is 7½ acres. He stated that they did succession. He stated that the suit land was 4 acres and was not subject to the succession.

PW2 was Benard who is the 2nd plaintiff. He testified on oath and stated that his father is Samson Ndege Kariuki and that Samson Ndege and Gitari Kariuki are brothers same father but different mothers. He stated that Kathendu Kagwa was his grandfather and a brother to Kariuki. The plaintiff also stated that the defendant is a wife to Kathendu Kagwa, who originally owned land parcel No. KABARE/GACHIGI/357 measuring 4 acres. He said that the said Kathendu Kagwa held the land in trust for himself and their family (family of Kariuki). He stated that he has all along lived on that parcel of land. He stated that Kathendu Kagwa sold the two (2) acres meant for him and that the remaining two (2) acres are meant for them as plaintiffs being land parcel No. KABARE/GACHIGI/719 and 720. He stated that Gitari Kariuki should get KABARE/GACHIGI/719 while he himself should get KABARE/GACHIGI/720 in trust for the family of his late father Samson Ndege Kariuki. He stated that they have never destroyed any properties belonging to the family of Kathendu Kagwa.

DW3 was Elphas Njera Gachoki who stated on oath that he is a member of Unjiru Mbare ya Githuari Clan. He said that he knew one Kathendu Kagwa (deceased) who was the defendant in this case. He stated that the said Kathendu Kagwa had a brother known as Kariuki Kagwa and that their father was Kagwa. He stated that their father Kagwa died before the time of land demarcation. He said that the eldest was Kariuki and the youngest one was Kathendu. Both are now deceased. He stated that he comes from the same clan. The witness stated that during the land demarcation and consolidation in 1958 or thereabouts, he was a Clan Elder and one of the Land Consolidation Committee Members. He stated that in the families where they found the father had died, they used to give the land to the eldest son as the trustee for the entire family. In the case of the family of Kagwa, he stated that they chose Kariuki who was the eldest son. He testified that by then, Kariuki was working in Nairobi with the City Council and because he could not be available all the time he was required, he consented that his brother Kathendu be registered as a trustee. He stated that they then registered the said Kathendu Kagwa in respect of the parcel of land measuring 4 acres on the understanding that each brother was to get 2 acres. He stated that the two acres meant for the family of Kathendu Kagwa were sold by that family and that what now remains is the two acres meant for the family of Kariuki which are land parcels No. KABARE/GACHIGI/719 measuring one acre and KABARE/GACHIGI/720 measuring one acre. He testified that the two parcels of land should go to the family of Kariuki who also live on the suit land. On cross-examination, the witness reiterated that he was involved in land demarcation and that he does not have records since the records were kept in the Lands office. He stated that the suit land was to be held by Kariuki in trust of the family. He stated that land demarcation started in 1958 and that Kariuki who was working for Nairobi City Council could not be allowed to come by his employer and communicated through his wife orally. The witness stated that women were not allowed to be registered as proprietors of land and that it is only the eldest son who would hold land for the family. He said that there was no monetary contribution that was required to be given. He stated that the young ones were not given land if the older ones were alive. He stated that land was allocated to be held in trust. He stated that Kariuki was buried in another land which he bought. He said that Kariuki had two (2) wives.

DEFENDANT'S CASE

The defendant namely David Mwangi Kathendu testified on oath and stated that the original defendant Kathendu Kagwa was his father. He said that his mother is Kathare Kathendu. His mother died on 9th October 2013 and thereafter applied and was issued with Letters of Administration intestate on 8th June 2015 and was granted leave to substitute his late father. The defendant stated that his father was given land by the clan during the land demarcation in 1958 being L.R. No. KABARE/NGIROCHE/127 measuring 4 acres. The defendant further stated that his father had only one brother older than him namely Kariuki Njagi. He stated that his mother Kathare Kathendu (deceased) recorded her statement where she explained that when his father was given the suit land, his brother Kariuki Njagi (deceased) was away in Nairobi and that he refused to come so that he could be given the land. He stated that his uncle Kariuki Njagi was older than his father Kathendu and could not therefore be made a trustee for his older brother and that his uncle's family have never utilized the suit land. The defendant further stated that his uncle was working with Nairobi City Council and lived there with his family until he bought land parcel No. GICHUGU/SETTLEMENT/SCHEME/621 in 1973. He also stated that when his uncle died in 1978, he was buried in the said land. The defendant also stated that his uncle had two wives namely Janet Njoki and Grace Wakariko. He said that his first wife had been settled in Mwea on land parcel No. GICHUGU/SETTLEMENT/SCHEME/621 and when he retired and brought his 2nd wife in Mwea, his first wife was not ready to accommodate the 2nd wife. He stated that his uncle approached his father Kathendu Kagwa to host his 2nd wife and he settled their differences with his 1st wife. He stated that his uncle's 2nd wife was given a homestead on humanitarian grounds. He stated that his uncle Kariuki died in 1978 before he could settle her 2nd wife in Mwea or anywhere else and she adamantly refused to relocate to Mwea. The defendant further stated that his uncle's two wives and some of their children sued his father Kathendu Kagwa in SRMCC No. 29 of 1990 (Embu) claiming sub-division of land parcel No. KABARE/GACHIGI/357 into three equal parts and that the said suit was dismissed with costs on 18th September 1996. The defendant also stated that his father Kathendu Kagwa exchanged the clan land parcel No. KABARE/NGIROCHE/127 with land parcel No. KABARE/NGIROCHE/357 in 1976. He stated that the plaintiffs mother Grace Wakariko was given somewhere to stay in land parcel No. KABARE/GACHIGI/357 which is not a clan land.

SUBMISSIONS BY THE PLAINTIFFS

The plaintiffs through the firm of Maina Kagio & Co. Advocates submitted that Kathendu Kagwa held the land in trust for the family of Kagwa and the succeeding generations. He submitted that this third generation did not get any portion from the land which belonged to Kagwa's family. He urged that it was proper for them to demand this share of land either in their own right or through Kariuki's Kagwa who incidentally had died. He argued that it was not therefore mandatory for them to get Letters of Administration for the Estate of Kariuki Kagwa for them to demand land out of parcel No. KABARE/GACHIGI/357 now sub-divided. He cited the case of *Mbui Mukangu Vs Gerald Mutwiri Mbui Nyeri Court of Appeal No. 281 of 2000*. The counsel also cited the case of *Zacharia Orwa Ondoro Vs South Nyanza Sugar Co. Ltd (2018) e K.L.R, Independent Electoral and Boundaries Commission & another Vs Stephen Mutinda Mule & 3 others (2014) e K.L.R*. The plaintiff also submitted that none of the properties in dispute is registered in the name of Kathare Kathendu. He stated that David Mwangi Kathendu never obtained any letters of administration in respect of the Estate of Kathendu Kagwa. He submitted that the defendant cannot therefore seek to protect the Estate of Kathendu Kagwa by way of a counter-claim after his mother died and that the counter-claim should fail. In conclusion, the counsel submitted that the plaintiffs are entitled to get land parcel Numbers KABARE/GACHIGI/719 and 720. He argued that land parcel No. KABARE/KACIGI/719 is occupied by the family of Gitari Kariuki and that the 1st plaintiff should be registered as the owner of that land while the 2nd plaintiff Bernard Muchiri should get land parcel No. KABARE/GACIGI/720 on behalf of the family of Samson Ndege as they occupy that portion.

DEFENDANT'S SUBMISSIONS

The counsel for the defendant M/S Magee Wa Magee submitted on behalf of the defendant on the following three issues:

- a. Whether the defendant was allocated L.R. No. KABARE/GACHIGI/357 by Unjiru Clan in 1958?
- b. Whether the defendant hold L.R. KABARE/GACHIGI/357 in trust for the plaintiffs?
- c. Should the suit land be transferred to the plaintiffs as prayed in the plaint or should they be evicted therefrom as prayed in the counter-claim?

On the first issue, counsel submitted that from the green card for L.R. KABARE/GACHIGI/357, it shows that the same was first registered in the names of JACTON NJUKI as entry No. 1 dated 5th September 1958 and entry No. 2 dated 4th March 1976 shows that the land was succeeded by one JOHNSTONE MIANO M. NJUKI. The green card further shows that the defendant Kathendu Kagwa acquired the land through exchange on 31st August 1976 vide entry No. 4. He therefore submitted that the averments by the plaintiff that the suit property is a clan land should fail. On the 2nd issue, the counsel submitted that from the evidence by the plaintiff and their witnesses, they brought this suit in their personal capacity and not as the legal representatives of their father, Kariuki Njagi and the suit must therefore fail. The counsel also submitted that under customary trust, it is an elder brother who hold land in favour of his younger brother and not the other way round. He stated that in the instant case, the defendant was the younger son and there is no way he would have held land in trust for his elder brother.

The defendant's counsel also submitted that the defendant's father was buried on his land in 1978 and that if the suit land was his ancestral land, he would have been buried there. The counsel for the defendant further contends that the plaintiff's father land parcel No. GICHUGU/SETTLEMENT/SCHEME/621 was shared out between his two wives and that when the defendant partitioned his land L.R. No. KABARE/GACHIGI/357 in 1989, there was no objection. The defendant's counsel also submitted that the plaintiff's father never made any claim against the defendant in his lifetime. He further submitted that the mothers and siblings of the plaintiffs have not made any claim against the defendant and that the plaintiffs were not born in 1958 when they allege a trust was made meaning that they were not beneficiaries of the same. As regards the 3rd issue, the counsel submitted that since the plaintiffs have failed to prove the existence of trust, their case ought to be dismissed with costs. He cited *Section 24 and 25 of the Land Registration Act No. 3 of 2012*. They also relied in the case of *Prisila Jesondin Chumo Vs Nelly Jebor (2018) e K.L.R*.

ANALYSIS AND DECISIONS

I have considered the testimony of the plaintiffs and their witnesses and that of the defendant. I have also looked at the documents produced by the parties in support of their claim and the defence herein. The plaintiffs claim is hinged on customary trust. In determining the existence of a customary trust, the Court in the case of *PETER GITONGA VS FRANCIS MAINGI M'IKIARA HCCC No. 146 of 2000 (Meru) unreported*) observed as follows:

“A “trust” can be created under customary law and the circumstances surrounding registration must be looked at to determine the purpose of the registration. This was what led Muli J. to say this:-

“Registration of titles are a creation of law and one must look onto the considerations surrounding the registration of titles to determine whether a trust was envisaged”.

Again in the case of *MBUI MUKANGI VS GERALD MUTWIRI MBUI C.A No. 281 of 2000*, the Court stated:-

“That for one to establish a claim in customary trust, one had to prove that they are in actual physical possession or occupation of the parcel of land”.

From the observations made by the Court in the above stated decisions, it is clear that for one to establish the existence of customary trust is not one that can be discerned from the title deed or the register but a matter of evidence. The burden of prove therefore lies upon he who wishes the Court to give judgment in his favour. The plaintiffs case, is that the original defendant (Kathendu Kagwa's) father was known as Kagwa Alias Njagi who had passed on at the time of land demarcation and consolidation. It is the plaintiff's case that the said Kagwa Alias Njagi had a family and two sons namely Kariuki Kagwa and Kathendu Kagwa. Kariuki Kagwa was the eldest son who was the father to the original plaintiff Gitari Kariuki and Samson Ndege Kariuki. It was the plaintiffs' case that in the cause of the proceedings, Samson Ndege died and was substituted by Kathare Kathendu who also passed on. David Mwangi took out Limited grant ad litem in respect of the Estate of his deceased mother, Kathare Kathendu and became the present defendant. It is further stated that during the land demarcation and consolidation, the elders of Unjiru Clan gave land to Kathendu Kagwa to hold in trust for the family of Kagwa. According to the plaintiff, they settled on land parcel No. KABARE/GACHIGI/357 although the original defendant Kathendu Kagwa was registered as owner in respect of land parcel No. KABARE/NGIROCHE/127. The witness explained that it was therefore found necessary to exchange the two parcels of land whereby Jackton Njuki who was occupying land parcel No. KABARE/NGIROCHE/127 but registered as proprietor of land parcel No. KABARE/GACHIGI/357, became the registered owner of land parcel No. KABARE/NGIROCHE/127 where he was occupying while Kathendu Kagwa became the registered owner of land parcel No. KABARE/GACHIGI/357 where the original defendant and the family of the plaintiffs were residing. The plaintiffs also stated that the suit property was later sub-divided by Kathendu Kagwa into 4 portions namely KABARE/GACHIGI/717, 718, 719 and 720 measuring one acre each. It is the plaintiffs evidence that the original defendant Kathendu Kagwa sold land parcels number KABARE/GACHIGI/717 and transferred parcel No. KABARE/GACHIGI/718 to David Mwangi Kathendu while the original defendant Kathendu Kagwa remained with land parcels number KABARE/GACHIGI/719 and 720 and which is occupied by the plaintiffs. The plaintiffs called one witness namely Elphas Njera Gachoki who testified that he was the secretary to the Unjiru Clan Committee and confirmed that Kathendu Kagwa was given the suit land as a trustee on behalf of the family of Kagwa Njagi. The witness also confirmed that Kariuki Kagwa was the eldest son of the Kagwa family and that at the time of land demarcation and consolidation, he was working in Nairobi with the Municipal Council of Nairobi and since he could not be given permission to attend the clan meeting, he proposed that his younger brother Kathendu Kagwa be registered as proprietor and to hold it the same way he could have held as the elder brother, in trust for the entire Kagwa's family. I find the evidence by the plaintiffs and corroborated by Elphas Njera Gachoki (PW3) credible and consistent. The evidence was not also challenged in cross-examination. Elphas Njera Gachoki testified that he was the secretary of Unjiru Clan Allocation Committee during the land demarcation and consolidation period. He was candid in his testimony.

The defendant testified alone and called no witness to corroborate his testimony. The testimony he gave relate to the year 1958 during the land demarcation period. The defendant in his testimony stated that he was born in 1958. It was the same year the suit land was registered. His evidence on how his father acquired the suit land can only be hearsay which is not admissible and therefore wanting in credibility. It is not surprising that at paragraph 6 of his witness statement, the defendant stated as follows:

“I was born in 1958. I have my mother's statement recorded in the matter and filed on 4th October 2012. Her statement clearly explains that when my father was given land parcel No. KABARE/NGIROCHE/127, his brother Kariuki was away in Nairobi. He refused to come so that he can be given the land”.

There is no doubt therefore that the source of the defendant's testimony is contained in her mother's statement which has no evidentiary value since the same was not tested by cross-examination. Again at paragraph 7, the defendant stated as follows:

“Kariuki was older than my father. He could not therefore be made as trustee for his younger brother. His family has never utilized the suit land”.

According to the defendant, customary trust was only created where land was given by the clan to the first born son(s). Elphas Njera Gachoki (PW3) who was the secretary to the Unjiru Clan Allocation Committee explained why Kariuki Kagwa who was the elder son could not be registered as proprietor of the suit land. The defendant has not given any authority which relieves any other male sibling other than the elder son registered as proprietor of a clan land from any duty or obligation to which he is subject as trustee. The same position was taken by the Court in the case of *KANYI VS MUTHIIRA (1984) K.L.R 712* where it was observed as follows:

“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 obligation 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”.

Justice Khimoni was also faced with the same question of trust and stated as follows:

“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 recognizes trust 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 law 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 trustee”.

I agree entirely with the decision by the learned Judges. From the evidence adduced by the plaintiffs and their witnesses, I am satisfied that Kathendu Kagwa who is the registered proprietor of the three disputed parcels of land L.R. No. KABARE/GACHIGI/717, 719 and 720 holds them in trust for himself and his family represented by the defendant and the family of his elder brother Kariuki Kagwa also represented by the plaintiffs herein. From my analysis of the evidence, three resultant parcels from the sub-division of the original land parcel No. KABARE/GACHIGI/357 are now remaining being L.R. No. KABARE/GACHIGI/717, 719 AND 720. Land parcel No. KABARE/GACHIGI/718 was transferred to one Johnson Francis Njagi Githinji on 3/1/1995. Having held that the original land parcel No. KABARE/GACHIGI/357 is a trust land, I find that the plaintiffs claim partially succeeds. Suffice to add that the defendant who was the only defence witness did not lay basis for his counter-claim or even call any witness in support of the same. The defendant did not also make any reference to the list of documents in his undated witness statement filed in Court on 29th April 2016. I also find the authorities cited by counsel for the defendant distinguishable.

In the upshot, I enter judgment for the plaintiff as follows:

- 1. The suit land parcels No. KABARE/GACHIGI/719 to be registered in the name of Kariuki Kagwa (deceased) currently under the occupation of the plaintiffs.**
- 2. The suit land parcels No. KABARE/GACHIGI/717 and 720 to remain in the name of Kathendu Kagwa (deceased).**
- 3. The defendant’s counter-claim is hereby dismissed.**
- 4. In view of the close family relationship, I order each party to bear his own costs.**

READ, DELIVERED and SIGNED in open Court at Kerugoya this 29th day of May, 2020.

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E.C. CHERONO

ELC JUDGE

In the presence of:

1. Ms Wambui holding brief for Mr. Maina Kagio
2. Mr. Asimwe holding brief for Mr. Magee
3. Mbogo – Court clerk