



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 159 OF 2007(O.S)**

**PRISCILLA WAMAITHA KAMAU.....1<sup>ST</sup> PLAINTIFF**

**VIRGINIA WANJIRU GACHOKA.....2<sup>ND</sup> PLAINTIFF**

**TERESIA WAMBUI KARIUKI.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**FRANCIS KIARIE WAWERU.....1<sup>ST</sup> DEFENDANT**

**PRISCILLA WAMAITHA WAWERU.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

The plaintiff brought this suit by way of Originating Summons dated 6<sup>th</sup> June, 2007 which was amended on 9<sup>th</sup> June, 2009 seeking the following reliefs:

1. A declaration that the defendants' right to claim the properties known as Dagoretti/Rituta/1771-1774 previously known as Dagoretti/Riruta/116 and Dagoretti/Kangemi/115 measuring approximately 4.5 and 4.1 acres respectively is barred under the Limitation of Actions Act and title extinguished on grounds that for a period of over 30 years, the plaintiffs have openly, peacefully and as of right been in possession and occupation of the suit properties.
2. A declaration that the plaintiffs are the rightful owners of the properties known as Dagoretti/Rituta/1771-1774 previously known as Dagoretti/Riruta/116 and Dagoretti/Kangemi/115 and the developments thereon and should be registered as such in place of James Waweru Kamau (deceased).
3. That there be an injunction restraining the defendants who are the administrators of the estate of James Waweru Kamau(deceased) from interfering, selling, transferring, distributing and or alienating the properties previously known as Dagoretti/Kangemi/115, Dagoretti/Riruta/1771 and and Dagoretti/Kangemi/1774 respectively.
4. Costs of the suit and any other relief that the court may deem fit to grant.

The plaintiffs filed separate affidavits sworn on 6<sup>th</sup> June, 2007 in support of the Originating Summons. In her affidavit, the 1<sup>st</sup> plaintiff averred that she single handedly acquired L.R No. Dagoretti/Kangemi/115 and L.R No. Dagoretti/Riruta/116 (hereinafter referred to as "Plot No. 115" and "Plot No. 116") in the late 1960s. She averred that as her children became of age, she gave them various portions of her land to settle on. She averred that she gave a portion of Plot No. 115 to his deceased son, James Waweru Kamau who is the father of the defendants (hereinafter referred to only as "the deceased") to build a house. She also gave a portion of L.R Dagoretti/Riruta/1771 to the 2<sup>nd</sup> plaintiff to settle on with her family. The 1<sup>st</sup> plaintiff averred that the 2<sup>nd</sup> plaintiff built a house and buried her husband and 5 children on the said portion of land. The 1<sup>st</sup> plaintiff averred further that in 1980, she sold a portion of Plot No. 116 to one, James Kariuki Kinuthia and that in 1982, the deceased fraudulently caused her to sign transfers of the portions of the said parcel of land in his favour under the guise that the documents were intended to facilitate the transfer of the portion of land that she had sold to the said James Kariuki Kinuthia. The plaintiff averred that it was upon the death of the deceased, James Waweru Kamau that she realised that the portions of Plot No. 116 that remained after the sale aforesaid were registered in the name of the deceased. The 1<sup>st</sup> plaintiff averred that her intention was to settle her daughters and grandchildren on the suit properties which the defendants were claiming to be part of the estate of the deceased.

In her affidavit the 2<sup>nd</sup> plaintiff stated that she had lived continuously and peacefully on the suit properties for over 35 years. She stated that the suit properties originally belonged to her mother, the 1<sup>st</sup> plaintiff, who gave her and her husband portions thereof to live. The 2<sup>nd</sup> plaintiff contended that she buried her husband and children on the suit properties where she was living with her other children and grandchildren.

The 2<sup>nd</sup> plaintiff contended that she had put up rental houses on the suit properties from where she was deriving income for her upkeep. She averred that her brother, James Waweru Kamau (deceased) transferred the 1<sup>st</sup> plaintiff's properties to himself. The 2<sup>nd</sup> plaintiff urged the court to order that she be registered as the owner of the suit properties.

The 3<sup>rd</sup> plaintiff on her part stated in her affidavit that she was born and raised on the suit properties. She stated that in the year 1995, her mother, the 1<sup>st</sup> plaintiff, gave her a portion measuring three quarter acres of the parcel of land now known as L.R No. Dagoretti/Riruta/1771 on which she put up rental houses and also settled her son when he became an adult. She stated that she had been in peaceful and uninterrupted occupation and use of the said portion of land. The 3<sup>rd</sup> plaintiff averred that his late brother, James Waweru Kamau (deceased), had also been given a portion of the said parcel of land. She stated that the deceased eventually transferred the whole parcel of land to himself. The 3<sup>rd</sup> plaintiff urged the court to order that she be registered as the owner of the portion of the said parcel of land that she was occupying.

The defendants opposed the Originating Summons through a replying affidavit sworn by the 1<sup>st</sup> defendant on 15<sup>th</sup> April, 2013. The 1<sup>st</sup> defendant averred that the 1<sup>st</sup> plaintiff, Priscilla Waithera Kamau was his grandmother. He contended that the 1<sup>st</sup> plaintiff died of old age and was senile when she swore the affidavit in June, 2007 in support of the Originating Summons. The 1<sup>st</sup> defendant contended that the suit properties belonged to his late grandfather, Christopher Kamau Thiong'o who predeceased the 1<sup>st</sup> plaintiff and that the same were registered in the name of the 1<sup>st</sup> plaintiff because Christopher Kamau Thiong'o died earlier. The 1<sup>st</sup> defendant denied that the suit properties were fraudulently transferred by his father, James Waweru Kamau (deceased) into his name. He averred that the 1<sup>st</sup> plaintiff voluntarily transferred the suit properties to the deceased.

The 1<sup>st</sup> defendant averred that the 1<sup>st</sup> plaintiff moved into the suit properties in the year 2000 together with the 2<sup>nd</sup> plaintiff's children. The 1<sup>st</sup> defendant contended that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs never lived on the suit properties save for short visiting stints after which they would return to their respective homes. The 1<sup>st</sup> defendant contended that there were no graves on the suit properties other than that of the 1<sup>st</sup> plaintiff. He averred that the alleged rental houses put up on the suit properties by the 2<sup>nd</sup> plaintiff were temporary structures not capable of earning any useful rent. The 1<sup>st</sup> defendant contended that the 3<sup>rd</sup> plaintiff's son one, Peter Kamau only moved to the suit property in the year 2000. The 1<sup>st</sup> defendant urged the court to dismiss the plaintiffs' application which he termed as an afterthought meant to defeat the cause of justice.

By the time the hearing of the case commenced on 13<sup>th</sup> October, 2015 the 1<sup>st</sup> plaintiff and the 2<sup>nd</sup> defendant had passed on. At the trial, the 2<sup>nd</sup> plaintiff (PW1) gave evidence and called one witness. PW1 testified that the 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs were her mother and sister respectively while the 1<sup>st</sup> and 2<sup>nd</sup> defendants were her nephew and niece respectively. PW1 stated that L.R No. Dagoretti/Kangemi/115 (Plot No. 115) and L.R No. Dagoretti/Riruta/116 (Plot No. 116) belonged to her mother, the 1<sup>st</sup> plaintiff. PW1 told the court that she had no claim in respect of Plot No. 115 which was occupied by the children of her brother, James Waweru Kamau (deceased). She stated that Plot No. 116 was subdivided into L.R Dagoretti/Riruta/1771-1774 (hereinafter referred to as Plot Numbers 1771, 1772, 1773 and 1774). PW1 stated that the 1<sup>st</sup> plaintiff sold two of the plots that resulted from the subdivision of Plot No. 116 to one, Kariuki Kinuthia. She stated that she entered Plot No. 116 in 1966 and was in occupation during the subdivision thereof. She stated that she had constructed a house on Plot No. 116 where she lived with her husband until his death in 1979 as she had no land where she was married. PW1 stated that she buried her husband and 3 children on Plot No. 1771. She stated that in addition to her residential house, she also had rental houses and a farm on Plot No. 1771.

PW1 averred that the defendants' father who was also her brother, James Waweru Kamau (deceased), deceived the 1<sup>st</sup> plaintiff to sign some papers under the pretense that they related to the sale of portions of Plot No. 116. PW1 averred that after the subdivision of Plot No. 116, the deceased gave her the titles for Plot No. 1771 and Plot No. 1774 that resulted from the subdivision of Plot No. 116 for safe keeping. PW1 stated that she had all along thought that the two parcels of land were registered in the name of the 1<sup>st</sup> plaintiff. She stated that it was at the time when the deceased called for the said titles to show to a prospective buyer that she realised that the deceased had transferred the two parcels of land to his name.

PW1 stated that Plot No. 1771 and Plot No. 1774 (hereinafter referred to as "the suit properties" where the context so permits) were still registered in the name of the deceased at the time of his death. She stated that the defendants were claiming that the suit properties belonged to the deceased. PW1 produced copies of the registers for Plot Numbers 116, 115, 1771 and 1774 as Plaintiffs' exhibits 1, 2, 3 and 4 respectively.

PW1 stated that she moved out of Plot No. 1771 out of fear because the children of the deceased and other relatives had become unfriendly to her. She stated that she moved to a rental house at Ruiru. PW1 stated that her house on Plot No. 1771 was being occupied by her daughter and sons and that she was still collecting rent from her rental houses on the suit properties. She stated that she had about 10 rental houses on Plot No. 1771 some which belonged to her sons while on Plot No. 1774 she had one rental house. She averred that she was about 70 years old and had lived on Plot No. 1771 for 50 years without being asked at any time to vacate the same. She urged the court to allow her to continue occupying the suit properties and that the same be registered in her name as the owner thereof. She stated that the children of the 3<sup>rd</sup> plaintiff also had houses on the suit properties as such the 3<sup>rd</sup> plaintiff should also be given her share of the said parcels of land. PW3 denied entering the suit properties upon the death of the deceased, James Waweru Kamau and reiterated that she had buried her husband, children and mother on the disputed plots.

In cross-examination, PW1 stated that her late husband was buried on Plot No. 1771 where she was staying with her children. She averred that Plot No. 1771 was given to her by the 1<sup>st</sup> plaintiff in 1969. She contended that the deceased, James Waweru Kamau registered Plot No. 1771 in his name without the 1<sup>st</sup> plaintiff's knowledge. PW1 contended that after the death of the deceased, the 1<sup>st</sup> plaintiff and she applied for a grant of letters of administration to administer his estate so that the 1<sup>st</sup> plaintiff could distribute the suit properties amongst her children but that the defendants refused to allow the 1<sup>st</sup> plaintiff to do so.

PW1 stated further that she had 8 houses on Plot No. 1771 while her children had 10 houses on the same piece of land. She stated that the houses on Plot No. 1771 were made of iron sheets save for one which was made of timber. PW1 stated that she had another house on Plot No. 1774 which she built in 1971.

The 2<sup>nd</sup> plaintiff's witness, Francis Nga'nga' Mwaura (PW2) was the 2<sup>nd</sup> plaintiff's brother in law. PW2 testified that the 2<sup>nd</sup> plaintiff was the wife of his late brother, John Gachoka who passed away in 1979. He stated that his brother's family lived at Dagoretti Corner in a parcel of land which belonged to the 2<sup>nd</sup> plaintiff's mother where his (PW2) brother was buried. He stated that his deceased brother had no land in their home at Kangemi and that his father consented to his burial at his in-laws. He stated that his late brother's children were also buried at Dagoretti Corner on the land they were occupying. He produced a funeral announcement for one of the 2<sup>nd</sup> plaintiff and his late brother's children and a receipt for the payment he made in respect thereof on 16<sup>th</sup> July, 1993 as Plaintiffs' exhibits 5 and 6 respectively.

In cross-examination, PW2 reiterated that his brother used to live on the land given to his wife by his mother in law. He stated that the land was given to them after their wedding which was celebrated in the 1960s. He stated that the 2<sup>nd</sup> plaintiff was still living on the same land where she had put up houses made of iron sheets.

In his testimony, the 1<sup>st</sup> defendant (DW1) told the court that the 2<sup>nd</sup> defendant was his sister and that she was deceased. He admitted that the 1<sup>st</sup> plaintiff was his paternal grandmother while the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were his aunts. DW1 stated that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs filed a succession cause in respect of the estate of his late father, James Waweru Kamau (deceased) who died in 1995. He stated that a grant of letters of administration in respect of the deceased's estate was issued in the names of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, the 2<sup>nd</sup> defendant and him. DW1 told the court that subsequently, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs sought to remove his name and that of the 2<sup>nd</sup> defendant from the said grant which they contested. He stated that the plaintiffs abandoned the succession cause and filed the present suit. He stated that the succession cause was stayed pending the outcome of this suit.

DW1 stated further that he was an adult when the deceased died. He averred that the deceased had three parcels of land namely, Plot No.115, Plot No. 1771 and Plot No. 1774. He stated that the deceased and the 1<sup>st</sup> plaintiff used to live on Plot No. 115 and that the deceased had put up rental houses on Plot No. 1774. He stated that they were in charge of collecting rent from the said houses which they had shared amongst the beneficiaries of the deceased estate. DW1 stated that he owned about 20 semi-permanent houses built with iron sheets and timber on Plot No. 1774.

DW1 stated further that after the death of the deceased, the 2<sup>nd</sup> plaintiff moved the 1<sup>st</sup> plaintiff to Plot No. 1771 in 1997. He contended that prior to 1997, Plot No. 1771 was unoccupied and that the 2<sup>nd</sup> plaintiff lived at Kangemi on land belonging to her in-laws. DW1 stated that it was after the 1<sup>st</sup> plaintiff was moved to Plot No. 1771 that the 2<sup>nd</sup> plaintiff started moving her children to stay with the 1<sup>st</sup> plaintiff on the said plot. He stated that the 2<sup>nd</sup> plaintiff's sons started putting up houses on Plot No. 1771 and thereafter, the 2<sup>nd</sup> plaintiff joined them. DW1 stated that the children of the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were in occupation of Plot No. 1771.

DW1 denied that the suit properties were given to the 2<sup>nd</sup> plaintiff by the 1<sup>st</sup> plaintiff. He stated that the 1<sup>st</sup> plaintiff could not give to the 2<sup>nd</sup> plaintiff land which belonged to the deceased. DW1 contended that he was young when the 2<sup>nd</sup> plaintiff's husband died and as such he did not know where he was buried although he was told that he was buried on Plot No. 1771. He stated that he was aware that one of the 2<sup>nd</sup> plaintiff's children was buried on Plot No. 1771.

In cross-examination, DW1 admitted that Plot No. 116 and Plot No. 115 were initially registered in the 1<sup>st</sup> plaintiff's name. He stated that Plot No. 116 was subdivided and portions thereof transferred to James Edward Kariuki Kinuthia. He reiterated that Plot No. 1771 and Plot No. 1774 which are portions of Plot No. 116 were registered in the name of his deceased father. He stated further that he had put up 5 houses on Plot No. 1774 from where he was collecting rent amounting to 16,000/- per month. He stated that he was living on Plot No. 115 while 1<sup>st</sup> plaintiff was living on Plot No. 1771 where the children and husband of the 2<sup>nd</sup> plaintiff were buried during his father's lifetime. DW1 stated that he was not prepared to transfer the suit properties to the plaintiffs. He stated that by the year 1987, the 2<sup>nd</sup> plaintiff had put up 3 rooms on Plot No. 1774 and that in 1990, she moved from Plot No. 1771 to stay with her children at Kangemi and returned in 1997 after the death of the deceased. DW1 told the court that he did not know how Plot No. 115 and Plot No. 116 changed hands from the 1<sup>st</sup> plaintiff to his deceased father.

The defendants' witness was Joseph Ngethe Dedan Kamau (DW2). He stated that the late James Waweru Kamau who was the defendants' father was his friend. He stated that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were sisters of James Waweru Kamau, deceased. He stated that he knew the 2<sup>nd</sup> plaintiff when she was staying at Kangemi with her husband. He could not tell however when the 2<sup>nd</sup> plaintiff's husband died or where he was buried. In cross-examination, DW2 stated that he did not know the 2<sup>nd</sup> plaintiff but knew her late husband who was known as Gachoka. He stated that he was not around when the 2<sup>nd</sup> plaintiff's husband died.

After the close of evidence, the parties were directed to make closing submissions in writing. The 2<sup>nd</sup> plaintiff filed her submissions on 4<sup>th</sup> April, 2018. The 2<sup>nd</sup> plaintiff reiterated the evidence on record and cited the cases of Mbugua Njuguna v Elijah Wanyoike & another CA No. 27 of 2002, Joseph Kimari Mucheru & 3 others v Sammy Kiyo Macharia & 4 others[2014]eKLR and Peter Mbiru Michuki v Samuel Mugo Michuki[2014]eKLR for the principles to be applied by the court when considering an adverse possession claim. The 2<sup>nd</sup> plaintiff submitted that she had been in continuous, open and uninterrupted possession of the suit properties and as such was entitled to the orders sought in the amended Originating Summons.

The 1<sup>st</sup> defendant filed his submissions on 9<sup>th</sup> May, 2018. The 1<sup>st</sup> defendant reiterated the evidence on record and submitted that the plaintiffs' suit was an afterthought the same having been brought after the plaintiffs' unsuccessful attempt to disinherit them in Succession Cause No. 246 of 1996 following the demise of their father.

Determination:

I have considered the pleadings, the evidence on record and the submissions. The issues arising for determination in this suit are, whether the plaintiffs have acquired titles to Plot No. 115, Plot No. 1771 and Plot No. 1774 by way of adverse possession.

The law on adverse possession is now well settled. Under section 7 of the Limitation of Actions Act, Chapter 22 Laws of Kenya, an action to recover land may not be brought after the end of twelve years from the date on which the right of action accrued. Section 38(1) of the Act allows a person who claims to have become entitled to land by adverse possession to apply to the High Court for an order that he be registered as the proprietor of the land in place of the person then registered as proprietor thereof. This is the section on which the plaintiffs' claim is based although the plaintiffs cited section 35 of the Act in their Originating Summons.

In order to succeed in a claim for adverse possession, a claimant must show that he has been in continuous and uninterrupted possession of the land for 12 years or more. The possession must be open, uninterrupted and within the knowledge of the owner. In addition, the claimant must show that the occupation was adverse by demonstrating that it was inconsistent with the rights of the registered owner. In the case of Samuel Kihamba v Mary Mbaisi (2015)eKLR the court stated as follows:

**“Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, nec vi, nec clam, nec precario. The additional requirement is that of animus possidendi, or intention to have the land. See Eliva Nyongesa Lusena & Anor v Nathan Wekesa Omacha, Kisumu Civil Appeal No. 134 of 1993 (ur). These prerequisites are required of any claimant, irrespective of whether the claimant and the respondent are related or whether the claim relates to family/ancestral land.”**

In Kasuve v Mwaani Investments Ltd. & 4 Others (2004) KLR 184 the court stated as follows:-

**“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of land openly and as of right and without interruption for a period of 12 years, either after dispossessing the owner or by discontinuation of possession by the owner on his own volition. See Wanje v. Saikwa [1984] KLR 284.”**

The plaintiffs' case was not properly pleaded. Although the reliefs sought are with respect to “Dagoretti/Rituta/1771-1774 previously known as Dagoretti/Riruta/116 and Dagoretti/Kangemi/115” it is clear from the evidence adduced by the 2<sup>nd</sup> plaintiff that the plaintiffs' claim was limited only to two parcels of land namely, Dagoretti/Rituta/1771 (Plot No. 1771) and Dagoretti/Riruta/1774 which are the portions of Dagoretti/Riruta/116 that remained after the sale of Dagoretti/Riruta/1772 and Dagoretti/Rituta/1773 to a third party. The 2<sup>nd</sup> plaintiff told the court that she had no interest in Dagoretti/Kangemi/115 and did not lead any evidence touching on that parcel of land save for stating that the same was also initially registered in the name of the 1<sup>st</sup> plaintiff and that the same was occupied by the children of her deceased brother.

I am satisfied from the evidence on record that the 2<sup>nd</sup> plaintiff has established her adverse possession claim in respect of portions of Plot No. 1771 and Plot No. 1774. The evidence that was given by the 2<sup>nd</sup> plaintiff that she started occupying Dagoretti/Riruta/116 (Plot No. 116) in 1966 before it was subdivided to give rise to among others, Plot No. 1771 and Plot No. 1774 was not challenged in any material respect by the 1<sup>st</sup> defendant. Plot No. 116 initially belonged to the 1<sup>st</sup> plaintiff until the title was closed on 17<sup>th</sup> April, 1980 upon subdivision which gave rise to Dagoretti/Rituta/1771-1774. It was common ground that Dagoretti/Rituta/1772 and 1773 were sold to a third party. This left Dagoretti/Rituta/1771 and 1774 in the name of the 1<sup>st</sup> plaintiff. From the evidence on record, Plot No. 1771 and Plot No. 1774 were transferred to the defendant's father, James Waweru Kamau, deceased in respect of whose estate they are also administrators on 25<sup>th</sup> October, 1982. The evidence on record shows that when Plot No. 1771 and Plot No. 1774 were transferred to the deceased, the 2<sup>nd</sup> plaintiff was in possession thereof and had developed the same. The 2<sup>nd</sup> plaintiff led evidence that her husband who died in 1979 was buried on these parcels of land. This evidence was not controverted. The 2<sup>nd</sup> plaintiff also buried her 3 children who died between 1990 and 1998 on the said parcels of land. The evidence led by the 2<sup>nd</sup> plaintiff that her children and she had developed the two parcels of land with individual residential houses and rental houses was not challenged. The 1<sup>st</sup> defendant's allegation that the 2<sup>nd</sup> plaintiff entered Plot No. 1771 after 1997 following the death of his father was not substantiated.

I am satisfied that when she came to court, the 2<sup>nd</sup> plaintiff had been in uninterrupted and continuous occupation of portions of Plot No. 1771 and Plot No. 1774 for a period of over 12 years and that her occupation had been adverse to the interest of the defendant's deceased father in the said parcels of land. The 2<sup>nd</sup> plaintiff had therefore acquired by adverse possession title not to the entire land comprised in titles Dagoretti/Rituta/1771 and Dagoretti/Rituta/1774 but to the portions of the said parcels of land in her occupation. The 3<sup>rd</sup> plaintiff did not give evidence. I find her claim not proved.

In conclusion, it is my finding that the 2<sup>nd</sup> plaintiff has proved her claim in respect to the portions of Plot No. 1771 and Plot No. 1774 which are in her occupation and I hereby enter judgment in her favour on the following terms:

1. I declare that the 1<sup>st</sup> defendant's right as administrator of the estate of James Waweru Kamau to claim the portions of all those parcels of land known as Dagoretti/Riruta/1771 and Dagoretti/Riruta/1774 occupied by the 2<sup>nd</sup> plaintiff and her family is barred under the Limitation of Actions Act, Chapter 22 Laws of Kenya.
2. I declare that the 2<sup>nd</sup> plaintiff is the lawful owner of the portions of all those parcels of land known as Dagoretti/Riruta/1771 and Dagoretti/Riruta/1774 occupied by the 2<sup>nd</sup> plaintiff and her family together with the developments thereon.

3. The 1<sup>st</sup> defendant in his capacity as the administrator of the estate of James Waweru Kamau should cause a survey to be done by a Government Surveyor at the cost of the 2<sup>nd</sup> plaintiff for the purposes of demarcating the portion/s of all those parcels of land known as Dagoretti/Riruta/1771 and Dagoretti/Riruta/1774 occupied by the 2<sup>nd</sup> plaintiff and her family and transferring the same to the 2<sup>nd</sup> plaintiff.

4. In the event that the 1<sup>st</sup> defendant fails to comply with the terms of the order given in paragraph 3 above, without prejudice to any remedy the 2<sup>nd</sup> plaintiff may have against him, the Deputy Registrar of this court shall be authorised to execute any document or instrument necessary for the purposes of enforcing the order.

5. A permanent injunction is issued restraining the 1<sup>st</sup> defendant as the administrator of the estate of James Waweru Kamau from interfering with, selling, transferring or in any other manner alienating the portions of all those parcels of land known as Dagoretti/Riruta/1771 and Dagoretti/Riruta/1774 occupied by the 2<sup>nd</sup> plaintiff and her family.

6. This being a family dispute, each party shall bear its own costs.

**Delivered and Dated at Nairobi this 24<sup>th</sup> day of January 2019**

**S. OKONG'O**

**JUDGE**

**Judgment read in open court in the presence of:**

Ms. Maina h/b for Ms. Ngugi for the 2<sup>nd</sup> Plaintiff

Mr. Mulanga h/b for Mr. Onchogu for the 1<sup>st</sup> Defendant

Catherine-Court Assistant