



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**CIVIL SUIT NO. 59 OF 2005**

**PHYLIS KAMINCIA M' MIRITI.....1<sup>ST</sup> PLAINTIFF**

**REBECCA MWITI MONGORWE.....2<sup>ND</sup> PLAINTIFF**

**JULIA NCHENGE.....3<sup>RD</sup> PLAINTIFF**

**RUTH NKUENE.....4<sup>TH</sup> PLAINTIFF**

**-V-**

**M' RUNGETO MBOGORI.....1<sup>ST</sup> DEFENDANT**

**DAVID SILAS SAFARI.....2<sup>ND</sup> DEFENDANT**

**JOSEPH KITHINJI KAUGI.....<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. The plaintiffs are sisters, children of Stephen Miriti Kiaburi who died in 1971. 1<sup>st</sup> defendant's father died in 1950s and he was a brother of Stephen Miriti, hence, plaintiff and 1<sup>st</sup> defendant are cousins. Plaintiffs aver that their father owned land parcels no. ABOTHUGUCHI/GAITU/xx measuring 4.21 hectares and ABOTHUGUCHI/RUIGA/xxxx measuring 4.76 hectares. Through a succession cause, the parcels of land were taken over by the 1<sup>st</sup> defendant who then sub divided parcel no 69 into other parcels numbers 1908,1910,2389, and 2390 of which parcel 2389 was sold to 3<sup>rd</sup> defendant.

2. By an Amended plaint dated 21<sup>st</sup> August 2008, the plaintiffs instituted this suit against the defendants seeking the following reliefs;

**a) A declaration that the defendants hold L.R NO. Abothuguchi/Gaitu/xxxx, xxxx, 2389 and 2390 and L.R NO. Abothuguchi/Ruiga/xxxx in trust for the plaintiffs**

**b) The plaintiffs are entitled to 14.40 acres out of the suit lands**

**c) Costs of the suit.**

3. A statement of defence was filed on 1.8.2005 for all the defendants who denied plaintiffs' claim. By the time the trial commenced, the court was informed that 2<sup>nd</sup> defendant had died and the case against him had been withdrawn.

**Plaintiff's Case**

4. The plaintiffs' case is that together with their families, they were in possession of the whole of L.R NO. Abothuguchi/Gaitu/xx which had never been partitioned on the ground. Further, they state that defendants hold both L.R No. Abothuguchi/Gaitu/xx now subdivided into L.R No. Abothuguchi/Gaitu/xxxx, xxxx, xxxx, xxxx and L.R No. Abothuguchi/Ruiga/xxxx in trust for them.

5. **PW1 was Rebecca Mwiti.** She is the 2<sup>nd</sup> plaintiff. She adopted her witness statement dated 30<sup>th</sup> April 2012 and testified that the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs were her sisters while the 1<sup>st</sup> and 2<sup>nd</sup> defendants were her cousins and the 3<sup>rd</sup> defendant is their nephew. It was her evidence that her late father owned land parcels numbers Abothuguchi/Gaitu/xx now subdivided into L.R. ABOTHUGUCHI/GAITU/xxxx, xxxx, xxxx, xxxx and L.R. ABOTUGUCHI/GAITU/xxxx andxxxx.

6. It was her further evidence that the 1<sup>st</sup> defendant had secretly filed **Succession Cause No. 57 of 1978** and transferred the parcels of land to himself and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. It was her further evidence that she had lived on the land since 2007 and that none of the defendants have occupied parcel No. xx or the resultant parcels.

7. Consequently, she urged the court to declare that the 1<sup>st</sup> defendant holds their late father's land in trust for them. In cross examination she stated that she lived on land parcel No. xx and that the land was family land. When cross examined by the 3<sup>rd</sup> defendant, she contended that they had never participated in any succession cause and that the 1<sup>st</sup> defendant used illegal means to become the owner of the land.

8. In support of plaintiffs case, PW1 produced as exhibits the documents in their list dated 30.5.2012, 9 items as plaintiff Exhibits 1-9 respectively.

9. **PW2 was Phyllis Kamincia.** She is the 1<sup>st</sup> plaintiff. She adopted her witness statement dated 30<sup>th</sup> April 2012 and testified that her late father owned land parcel numbers ABOTHUGUCHI/GAITU/xx now subdivided into LR NO ABOTHUGUCHI/GAITU/xxxx, xxxx ,xxxx ,xxxx and LR ABOTHUGUCHI/GAITU/xxxx and xxxx and that she had been in occupation of the suit property since 1960's. It was her further evidence that the 1<sup>st</sup> defendant had fraudulently and secretly filed a succession cause in 1978 and caused the suit property to be registered in his name and later sold part of the suit property to the 3<sup>rd</sup> defendant without consulting them. She further testified that the defendants were not in occupation of LR ABOTHUGUCHI/GAITU/xx or the resultant parcels at any given time. In cross examination, she stated that she lived on the suit property with her sisters. When cross examined by the 3<sup>rd</sup> defendant, she testified that she was not aware of any succession cause and reiterated that the suit property belonged to her late father.

10. **PW3 was Julia Nchenge.** She is the 3<sup>rd</sup> plaintiff. She adopted her witness statement dated 30<sup>th</sup> April 2012 and corroborated PW1 and 2's evidence and stated that the suit property was owned by her late father. It was her further evidence that after her father's death, the 1<sup>st</sup> defendant secretly filed a succession suit and caused the suit property to be transferred to him to their exclusion. PW3 did not live thereon but cultivated 3 acres. In cross examination, she stated that the 1<sup>st</sup> defendant resided in parcel xxxx whereas they stayed inxxxx.

11. **PW4 Ruth Nkuene** is the 4<sup>th</sup> plaintiff. It was her evidence that the plaintiffs were her sisters and that her late father owned the suit property which the 1<sup>st</sup> defendant had secretly got registered in his name. It was her further evidence that her daughter **Ann Karimi (PW5)** lived on the land since 1960's when she was born and that she cultivated the same.

12. **PW5 Ann Karimi** while adopting her witness statement dated 11<sup>th</sup> May 2012 corroborated PW4s' evidence and testified that she was a daughter of PW4. It was her evidence that she was born in 1966 and that she had been raised on land parcel No. ABOTUGUCHI/GAITU/xx.

13. **PW6 was Silvian Mwarania.** It was his evidence that he knew the plaintiffs as his neighbours and that land parcel NO. ABOTHUGUCHI/Gaitu/xx belonged to the deceased M' Miiiriti Kiaburi and that his daughters (the plaintiffs) lived on the land which they had developed extensively and further, none of the defendants were in occupation thereof. In cross examination he reiterated that the land belonged Miriti and that the 1<sup>st</sup> defendant never lived there.

14. **PW7 was Pius Kinoti.** It was his evidence that the suit property had been allotted to Miriti Kiaburi (deceased) and that after his demise, his daughters and a son continued to live on the land and that they had extensively developed the same.

#### **Defence case**

15. By the time the trial commenced, it appeared that 3<sup>rd</sup> defendant was no longer being represented by advocate J.G.Gitonga. He was appearing in person.

#### **Case for 1<sup>st</sup> defendant**

16. **DW1 M' Rugento Mbogori (1<sup>st</sup> defendant)** while adopting his witness statement testified that the plaintiffs were his cousins since they were daughters of Miriti Kiaburi who was a brother to his deceased father. It was his further evidence that after the death of his father, the said Miriti started taking care of them. He contends that the suit property was family land as his father and Miriti Kiaburi (the plaintiff's father) used to reside in the aforesaid parcels of land and that they were brought up in the suit property which was registered in the name of the plaintiff's father to hold in trust for the rest of the family members.

17. It was his further evidence that after the death of the plaintiff's father a succession cause was filed and the suit property was transferred to him and Chabari Mbogori. He avers that at the time the succession cause was being filled all the plaintiffs were married and according to Meru customs they were not entitled to inherit their father's parcel of land. In cross examination, he stated that their ancestral land was at Kaonga and that was where his son had built. He also states that he did not file a succession cause.

18. In support of his case, 1<sup>st</sup> defendant produced as evidence documents in his list filed on 2.5.2013, item 1 & 2 as DEX 1& 2 respectively and the ones in the list dated 16.10.2018, item 1-5 as DEX 3-8 respectively.

### Case for 3<sup>rd</sup> defendant

19. DW2 Joseph Kithinji is the 3<sup>rd</sup> defendant. It was his evidence that he had gone to the lands offices and found that the land was in the name of the 1<sup>st</sup> defendant who had a title whereupon they proceeded to draw an agreement. In cross examination, he stated that he knew the plaintiff who was her neighbor and that he would not have known that the land belongs to her father and that he did not know who owned the land prior to the 1<sup>st</sup> defendant.

### Submissions

20. Briefly it was submitted for the plaintiffs that Miriti Kiaburi (their deceased father) was the legal proprietor of the suit land namely; L.R NO. ABOTHUGUCHI/GAITU/xx which was within Gaitu scheme and upon his death in 1971, his late wife, son and daughters continued to live on the said parcel of land and made extensive developments. It was submitted that the 1<sup>st</sup> defendant illegally and secretly caused the suit property to be transferred in his name and that of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. On this point, the plaintiffs relied on the case of **Elija Makeri Nyangwara vs. Stephen Mungai Njuguna Eldoret ELC No. 609B of 2012.**

21. It was further submitted that 1<sup>st</sup> defendant was not in possession/occupation of the suit property or the resultant parcels, and that plaintiffs are entitled to the suit land in accordance with customary land rights. On this point, plaintiffs relied on the case of **Mukangu vs. Mbui (2004)2KLR.**

22. Consequently, the plaintiffs urged the court to find that the land was being held in trust for them by the 1<sup>st</sup> defendant.

23. On the other hand, it was submitted for the defendants that the suit property was family land belonging to the family of the 1<sup>st</sup> defendant's father and that the 1<sup>st</sup> defendant's father died before registration of the aforesaid parcels of land whereupon they were registered in the name of Miriti Kiaburi (the plaintiffs father) to hold in trust for the rest of the family. It was further submitted that the 1<sup>st</sup> defendant and his brother Chabari Mbogori were given the suit property pursuant to a succession cause No. 57 of 1978 and that the law which was applicable to succession then was Kimeru customary law and since the plaintiffs were married at the time, they were not entitled to a share of the estate.

### Determination

24. I have carefully considered and evaluated the evidence on record and the rival submissions by the parties. The four sisters (plaintiffs) have given a consistent account of their claim to the suit land. Their late father owned Land Parcel Number Abothuguchi/Gaitu/xx, now subdivided into LR No. Abothuguchi/Gaitu/xxxx, xxxx, xxxx xxxx and Abothuchuchi/Gaitu/xxxx and xxxx. It has also emerged that plaintiffs occupy what used to be parcel no. 69, while 1<sup>st</sup> defendant occupies parcel no xxxxx. The evidence touching on parcel no 1718 is rather scanty.

25. PW6 and 7 who were independent witnesses (not related to the plaintiffs in this case) testified and confirmed that indeed the suit property belonged to the plaintiffs' father (deceased), that plaintiffs are the ones who have always occupied parcel no. 69 which they have developed extensively and that defendants have never lived on this land. The evidence of these two witnesses remained unchallenged throughout the trial. More particularly so this court was able to observe the demeanor of the witnesses and in particular PW2 who the court noted was quite old and appeared to be telling the truth. She struck me as a very honest witness. From the evidence tendered by the plaintiffs' witnesses, it is my considered opinion that what plaintiffs call home is parcel no xx.

26. On the other hand, 1<sup>st</sup> defendant's evidence is that the suit property was registered in the name of the plaintiff's father to hold in trust for the rest of the other family members. DW1's evidence is that the suit property was transferred to him pursuant to a succession cause filed in respect of the estate of the plaintiffs' father because the plaintiffs were married. DW2 on the other hand stated that he would not have known that the suit property belonged to the plaintiffs' father and that he did know who owned the land prior to the 1<sup>st</sup> defendant.

27. There is no doubts that the father of the plaintiffs was the registered owner of land parcel no. ABOTHUGUCHI/GAITU/xx measuring 4.21 acres, where the said Miriti became the registered owner on 30.3.1967. This land went into the hands of 1<sup>st</sup> defendant and one Chabari Mbogori on 14.6.1979. These details are captured in the green card produced as plaintiff Ex.5. And in another green card which is part of Plaintiff Ex.9, it shows that Miriti Kaburi, father of plaintiffs became the registered owner of parcel ABOTHUGUCHI/RUIGA/xxxx measuring 4.76 in 1965. Like the other parcel, this land was taken over by 1<sup>st</sup> defendant and Chabari Mbogori in 1978. Apparently, the transfer of the land into 1<sup>st</sup> defendants name occurred through succession which plaintiffs claim was fraudulent.

28. I do not doubt that there were succession proceedings. The documents produced by 1<sup>st</sup> defendant particularly reveal that the succession cause was heard by a district magistrate in the 70s (year not clear). Zipporah Miriti who is the mother of the plaintiffs appear to have lost the case and she appealed in **SRM's case no 59/1978** which case was apparently dismissed. She then went to **Meru High Court in Civil Appeal No. 25 of 1981**. Again she lost the case. The dispute spilled over to the land tribunal, See plaintiff Ex1, **tribunal case no.78 of 2004**. This time round, it's the plaintiffs who had taken over from their mother. The plaintiffs won the case. But as fate would dictate, 1<sup>st</sup> defendant filed a **Judicial review suit no.13 of 2005** seeking orders to quash the tribunal award on the basis that the tribunal had no jurisdiction to deal with the matter, See Defence Exhibit 6. This suit appears to have been allowed by consent on 18.10.2006, See Defence Ex. 7. By then perhaps the plaintiffs had opted to explore more options hence the filing of this case on 5.7.2005.

29. It is quite apparent that the succession cause is the one which triggered all the subsequent litigation. 1<sup>st</sup> defendant avers that he got the land because the children of Miriti were all married.

30. I will not comment on the merits of the succession proceedings or demerits thereof for want of Jurisdiction. However, I must point out that as I embarked on writing this judgment, I happened to stumble upon a **MERU ELC file Appeal NO. 66 of 2018, Francis Mukunja (Suing as the legal representative of the estate of Miriti Kiaburi alias M'Miriti Kiabure alias Stephen Miriti (Deceased)- Appellant vs. M'Rugendo Mbogori and Joseph Kithinji Kaugi –Respondents**. The Appeal is in respect of a case before the **CM' Court Meru No. 49 of 2013**, where appellant plaintiff was seeking for the cancellation of all sub divisions arising from parcels nos. ABOTHUGUCHI/GAITU/xx (parcels 1908, 1910, 2389, 2390) and ABOTHUGUCHI/RUIGA/xxxx (Parcels xxxx, xxxx andxxxx ). The claimant before the magistrate's court wanted the aforementioned titles to revert back to the original owner, Miriti Kiaburi. This suit was dismissed hence the appeal.

31. What I can say is that nowhere in all the aforementioned litigation was the issue of trust dealt with. Thus even if 1<sup>st</sup> defendant acquired title to the land of Miriti, the court will still determine whether he holds the same in trust for the plaintiffs.

32. In the case of **Isack M' Inanga Kiebia V Isaaya Theuri M' Lintari & Another [2018] eKLR**, the Supreme Court of Kenya stated as follows;

**“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.**

**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”.**

33. From the circumstances of this case it is quite evident that the plaintiffs have lived on one of the suit properties no. 69 on the basis that the suit property was family land and that they belonged to such family.

34. Of the four sisters, PW3, Julia Nchenge appears to have given a concise sneak preview of the family history. She stated thus;

**“Father of M'Rugendo died many years ago when M' Rugendo was a child. My father then raised M'Rugendo, then he followed his mother, then he later came back to father's place. He was raised on that land xxxx. Brother of M'Rugendo was called Chabari Mbogori but he was not raised on 1012. M'Rugendo stays on the Ruiga land xxxx. We stay on land no.xxxx.”**

35. This evidence is more or less of what 1<sup>st</sup> defendant has stated, that his father died in 1950, and there after he was taken care of by Miriti Kiaburi, father of plaintiffs. 1<sup>st</sup> defendant further stated that both parcels no.xx and xxxx were family land, where they were raised. He also stated that Miriti was registered as the proprietor of both parcels in trust for the other family members. If that be the case, why is it that when 1<sup>st</sup> defendant took over the family land, he did not embrace this principle.

36. In **Eugene Cotran Restatement of African Law (2)**, it is stated that ;

**“There are two ways in which a man may become head of family (Mukuru Mwene Njaa).**

**By Will – A person would always nominate in his will who should succeed him as head of the family.**

**On intestacy – there is no formal appointment of a Mukuru Mwene Njaa when a person dies intestate, since the eldest son of his senior wife (irigithathi) – not necessarily the eldest son of age – automatically becomes the head of the family. If the eldest son of the senior wife is still a minor, the eldest married son, or failing him, the deceased's eldest brother, acts in this capacity until the Irigithati marries.**

**The Mukuru Mwene Njaa has three principal functions:-**

- i. To be the head of the family and, as such, to represent the family for all legal purposes;**
- ii. To be the guardian of the widow and children of the deceased in certain cases; and**
- iii. To act as administrator of the deceased's estate”.**

37. Thus a “Mukuru Mwene Njaa” in Meru Customary Law bore the cloak of trusteeship, to look after deceased family. I encountered a similar scenario in the case of **Charles Muriuki M’Mwari vs. M’Mbogori M’Abutu Meru ELC No.12 of 2011**, where the estate of the deceased person (M’Mwari Kabutu) was taken over by his nephew M’Mbogori M’Abutu through a succession cause filed in 1971. The wife of deceased, one Rebecca and her son Charles Muriuki spent a record 46 years (up to 6th December 2017 when I delivered the judgment) in the corridors of justice trying to get their land from the “**Mukuru Mwene Njaa**”! In that case, I made the following observation;

**“It is clear that inheritance was intertwined with heading a family. It appears that PW3’s (Rebecca) family was left headless and their inheritance was taken away because defendant herein did not act like the head of deceased’s**

**(Read Rebecca’s) family.”**

38. Isn’t this exactly what has befallen the immediate family of Stephen Miriti (Deceased), where by his wife, one Zipporah M’Miriti (mother of plaintiffs herein) tried in vain to pursue her rights over her husband’s land for decades as from 1970s until her death!.

39. What is clear in this case is that 1<sup>st</sup> defendant caused the subdivision of the land no.xx into nos. xxxx, xxxx, xxxx and 2390. For parcel no.xxxx, it was subdivided in a manner that one cannot fathom from the evidence adduced. However, it can be discerned that one of those resultant parcels is No.xxxx. It is crystal clear that 1<sup>st</sup> defendant was alienating the suit parcels to ensure they were out of reach of the plaintiffs.

40. In **Halsbury’s Laws of England**, 4th ed., Vol. 48 at para.585, it is stated as follows;

**“A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property”.**

41. In the **Court of Appeal decision, Mumo v. Makau [2002] 1 E.A. 170**, it was stated as follows;

**“Trust was a question of fact to be proved by evidence...There was ample evidence showing that Makau had owned the original parcel of land and lived there with his entire family. Upon its demarcation and registration, the appellants’ mother was to hold the suit land in trust for the entire family and in trying to deny the other house of its natural inheritance, she had acted fraudulently.”**

42. This is a court of law as well as a court of equity see –**Karuntimi Raiji vs. M’Makinya M’Itunga (2013) eKLR** where it was held that **“It is inconceivable that a court of equity can leave a party with a genuine claim without a remedy. A court of equity ought to intervene in fairness to ensure that an applicant’s possible interests are not vitiated”.**

43. I find that 1<sup>st</sup> defendant who was raised by Miriti (Deceased) has displayed unmitigated greed and utter selfishness by turning against the wife and children of Miriti for decades all because according to him, these children were married or were supposed to be married!

44. **Article 27 of the Constitution** provides that ;

**“Every person is equal before the law and has the right to equal protection of the law and equal benefit of the law. Equality includes the full and equal enjoyment of all rights and fundamental freedoms. Women and men have the right to equal treatment.....”.**

45. I must point out that 1<sup>st</sup> defendant has failed to disclose material facts that are very pertinent to this case. Had it not been for the fact that the Meru ELC APPEAL NO.66 of 2018 has a date for ruling falling on 25.4.2019 when this matter is due for delivery of judgment, I may not have seen this file. Though the full particulars of the matter are not before me since the appeal is at the infancy stage, still it reveals how the suit parcels have been alienated. I am also left wondering how many other persons out there are claiming the suit properties. And who is this Francis Mukunja?

46. In **Meru High Court Succession Cause no. 720 of 2013, Priscilla Ndubi and Another vs. Gerishon Gatobu, Gikonyo J.** had this to say on matters non-disclosure;

**“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”.**

47. The 1<sup>st</sup> defendant is well aware of the litigation history in this matter, but during the trial, he was mute on matters of subdivisions of the suit land as well as claims by other parties.

48. As for the claim of the 3<sup>rd</sup> defendant, he avers that when he bought part of the suit land from 1<sup>st</sup> defendant, the land was not occupied, and that the same belonged to 1<sup>st</sup> defendant. However, I have seen the proceedings in land dispute case no 78 of 2004, where 3<sup>rd</sup> defendant

has been mentioned. The two acres he had allegedly bought from 1<sup>st</sup> defendant were to be returned to the plaintiffs. Even if these proceedings were nullified, the fact remains that 3<sup>rd</sup> defendant was aware of plaintiffs claim in respect of the land parcel no. xx where the plaintiffs reside.

### **Conclusion**

49. 1<sup>st</sup> defendant claims entitlement to the suit land because it was family land. On the same breath, the plaintiffs should also have corresponding rights to this family land. I find it commendable for the plaintiffs to have gallantly soldiered on for decades in their quest for justice. Their litigation odyssey hopefully has come to an end through the pronouncement in this Judgment.

### **50. Final Orders;**

- 1. A declaration is hereby issued that the defendants hold L.R NO. Abothuguchi/Gaitu/xxxx, xxxx, xxxx, 2390 and L.T NO. Abothuguchi/Ruiga/ xxxx (or its subdivisions) in trust for the plaintiffs and for 1<sup>st</sup> defendant and other family members.**
- 2. An order is hereby issued to the effect that plaintiffs are entitled to the land which was parcel no ABOTHUGUCHI/GAITU/xx (now subdivided into parcelxxxx,xxxx ,xxxx ,xxxx).**
- 3. The 1<sup>st</sup> defendant is to remain with parcel no ABOTHUGUCHI/RUIGA/xxxx (or the subdivisions thereof), which land he holds in trust for any other family members and third party claimants.**
- 4. The plaintiffs are to share the land which was originally no. Abothuguchi/Gaitu/xx into 4 equal portions which means that each of them will have 2.6 acres (4.21 hectares multiply by 2.471 acres=10.4 acres).**
- 5. An order is hereby issued for the cancellation of all titles resulting from title no. Abothuguci/Gaitu/xx and instead the land is to be divided into 4 equal portions as per order 4 above.**
- 6. The land Registrar is to dispense with the production of original titles to parcel no.xxxx, xxxx, xxxx and xxxx in the implementation of this Judgment.**
- 7. The Deputy Registrar of this court is hereby authorized to sign all requisite documents to give effect to the implementation of this judgment.**
- 9. The consent of land control board is hereby dispensed with in the implementation of this judgment.**
- 9. The Land Registrar is to keep a copy of the decree herein in the parcel files of the new titles generated pursuant to clause 4 & 5 above.**
- 10. Any orders of inhibition, injunction, caution or restriction that may be subsisting in respect of parcels no.xxxx , xxxx , xxxx and xxxx are hereby discharged in order to give effect to the implementation of this Judgment.**
- 11. The 3<sup>rd</sup> defendant, third party claimants and other family members are at liberty to pursue their claims against the 1<sup>st</sup> defendant in respect of the original parcel no ABOTHUGUCHI/RUIGA/xxxx.**
- 12. With regard to costs, it is trite law that costs follow the event. It is not in dispute that the plaintiffs herein and the 1<sup>st</sup> and 2<sup>nd</sup> defendants are close family members. It is not lost on this court that courts are normally reluctant to award costs in disputes involving close family members. However, in light of the 1<sup>st</sup> defendant's conduct in this matter, the costs of this suit shall personally be borne by the 1<sup>st</sup> defendant and the same are awarded to plaintiffs.**
- 13. The land registrar and the surveyor are to act accordingly to ensure compliance with orders herein.**
- 14. The DR of this court is instructed to place a copy of the decree herein in the appeal file no.66 of 2018 Meru ELC and in file no. CMCC 49 of 2013.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 25<sup>TH</sup> DAY OF APRIL, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Miss Munga for plaintiff

Gitonga for 1<sup>st</sup> defendant

Plaintiffs

1<sup>st</sup> defendant

3<sup>rd</sup> defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**