



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 386 OF 2013

MARY MUTHONI KATHU.....PLAINTIFF

VERSUS

FAITH WAMBUI NGARI (Sued in her capacity as the legal representative of

FREDRICK KIGO MBOGO - DECEASED.....1ST DEFENDANT

KINYUA GACHOKI.....2ND DEFENDANT

JUDGMENT

By an amended Originating summons filed hereon on 31st March 2009 the plaintiff, (**MARY MUTHONI KATHU**) claiming to have acquired ownership of land parcel No. MUTIRA/KIRIMUNGE/370, now land parcels No. MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 (herein the suit land) by way of adverse possession, sought a determination of the following questions:-

1. Whether MARY MUTHONI KATHU has had quiet occupation and possession of land parcel No. MUTIRA/KIRIMUNGE/370 now partitioned into MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 since 1977 when FREDRICK KIGO MBOGO (now deceased) became the registered owner thereof and should be declared to have acquired absolute right to title and interest in the said land by operation of the law under the provisions of Section 38 of the Limitation of Actions Act Chapter 22 Laws of Kenya.

2. In the alternative, whether MARY MUTHONI KATHU who has had quiet occupation and possession of land parcel No. MUTIRA/KIRIMUNGE/370 now partitioned into MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 since July 1993 when H.C.C.C No. 25/1986 KATHU KAMENE VS FREDRICK KIGO MBOGO was resolved in FREDRICK MBOGO's favour but continued to occupy the said land un-interrupted should be declared to have acquired absolute right to title and interest in the said land by operation of the law under the provisions of Section 38 of the Limitation of Actions Act Chapter 22 Laws of Kenya.

3. Whether the said land parcel No. MUTIRA/KIRIMUNGE/370 now partitioned into MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 should be registered in the name of MARY MUTHONI KATHU who has lived there since 1977 when FREDRICK KIGO MBOGO (now deceased) became the registered owner thereof and indeed since 1993 to-date when the dispute between her late husband and the registered owner of the land FREDRICK

KIGO MBOGO was resolved.

4. Whether the 1st defendant is rightfully sued being the legal representative of FREDRICK KIGO MBOGO (deceased) the registered owner of land parcel No. MUTIRA/KIRIMUNGE/370 at the material time and now the owner of a sub-division thereof MUTIRA/KIRIMUNGE/1568.

5. Whether the plaintiff should be declared to have acquired land parcel Nos. MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 by adverse possession which are the original sub-division of land parcel No. MUTIRA/KIRIMUNGE/370 even after the said sub-division/partition.

6. Whether the plaintiff should be declared to have acquired land parcel No. MUTIRA/KIRIMUNGE/370 now MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 by adverse possession due to reasons advanced in 1, 2 and/or 3 above even in the light of 2nd defendant being registered against the title thereof by virtue of the Certificate of Confirmation of grant to the Estate of the deceased FREDRICK KIGO MBOGO.

7. Whether the whole of land parcel No. MUTIRA/KIRIMUNGE/370 now MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 belonging to the 1st and 2nd defendants respectively should be declared to have been acquired by the plaintiff by way of adverse possession inclusive of the 2nd defendant's interest of 0.40 Ha thereof.

8. Who should bear the cost of this suit.

The Originating Summons was, as required accompanied by the plaintiff's supporting affidavit to which were annexed various documents including the Green Card to land parcel No. MUTIRA/KIRIMUNGE/370.

The plaintiff's case as per the supporting affidavit is that she has lived on land parcel No. MUTIRA/KIRIMUNGE/370 since 1968 when she was married to the late **KATHU KAMENE PETER** who passed away on 1st October 2007 aged 74 years. That the said land previously belonged to **NJAANGARU GACHOMO** her late husband's father who had only one son (her late husband) and two daughters. That during the late **NJAANGARU GACHOMO's** life time, land parcel No. MUTIRA/KIRIMUNGE/370 was mysteriously transferred to her husband's nephew thus resulting in **H.C.C.C No. 25 of 1986 KATHU KAMENE PETER VS FREDRICK KIGO MBOGO** which was decided in favour of **FREDRICK KIGO MBOGO** and an appeal was filed but the plaintiff and her family have never been evicted from the land and for over four (4) decades now, she has developed the land extensively without any interruption from the registered owners. She therefore claims ownership of the suit land by way of adverse possession since 1993 when the verdict in **H.C.C.C No. 25 of 1986** was delivered and/or since 1977 when the deceased **FREDRICK KIGO MBOGO** acquired ownership of the same but never interfered with her possession. She adds that although she had placed a caution on land parcel No. MUTIRA/KIRIMUNGE/370, the 1st defendant vide Misc Application No. 2 of 2008 had the same removed without her knowledge and the same was partitioned into MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 and registered in the names of the 2nd and 1st defendant respectively.

In response to the Originating Summons dated 26th March 2009, the 1st defendant **FAITH WAMBUI NGARI** who is sued as the legal representative of her late husband **FREDRICK KIGO MBOGO** filed a replying affidavit dated 15th October 2014 in which she deponed, inter alia, that her late husband was the owner of land parcel No. MUTIRA/KIRIMUNGE/370 and the plaintiff has not explained the circumstances under which she entered the said land which is a crucial factor in determining whether her occupation thereof was adverse to the interests of the registered owner or not. That the land No. MUTIRA/KIRIMUNGE/370 belonged to **NJAANGARU GACHOMO** father to **WAMARWA** who was in turn the mother to her late husband. That in 1977 the said **NJAANGARU GACHOMO** transferred land parcel No. MUTIRA/KIRIMUNGE/370 to her late husband who belong to the same Ugaciku Clan as the plaintiff's husband and during the land demarcation process, the plaintiff's husband was working with Marshalls Company in Mombasa and refused to pay the requisite fees to enable him obtain land

from the clan and when he returned home, he requested **NJAANGARU GACHOMO** to allow him to live at his home and so he was given a granary. The plaintiff's family were therefore licensee on the suit land and when **NJAANGARU GACHOMO** died, **KATHU KAMENE** started claiming the suit land and filed **NYERI H.C.C.C No. 25 of 1986** against the 1st defendant's husband which was dismissed on 1st July 1993. The plaintiff's husband filed a notice of appeal on 23rd July 1993 which has not been withdrawn. Upon the death of her husband, the 1st defendant filed **KERUGOYA SUCCESSION CAUSE NO. 124 of 2006** in which the grant was confirmed without protest.

That the plaintiff is a vexatious litigant and it has not been able to evict her and since there is a judgment in favour of her husband, this suit should be dismissed with costs.

At time of drafting this judgment, I noticed that there was no replying affidavit by the 2nd defendant and so a letter was written to counsel for the parties to appear on 20th April 2016 to confirm the position. Mr. Kagio advocate for the defendants did appear and confirm that the 1st defendant's replying affidavit was actually also filed on behalf of the 2nd defendant and what is contained thereon is the position of the 2nd defendant and both counsel had agreed on that position. The Court is therefore guided accordingly.

The plaintiff testified and called one witness **GODFREY WANGOMBE NGARI (PW2)**. Her evidence is that her late husband **PETER KATHU KAMENE** was the son to the late **NJAANGARU GACHOMO** whose other children included **WAMARWA** who was the father to **FREDRICK KIGO** the late husband to the 1st defendant. The plaintiff added that the 2nd defendant is a stranger to her. She added that land parcel No. **MUTIRA/KIRIMUNGE/370** had been registered in the names of **NJAANGARU GACHOMO** on 29th December 1959 before being later registered in the names of the late **FREDRICK KIGO MBOGO** on 28th October 1977 as per the Green Card (Plaintiff's Exhibit 1). She confirmed that she and her late husband had seven children and they have always lived on that parcel of land since 1968 when she was married. She does not know how **FREDRICK KIGO MBOGO** was registered as the proprietor of that land but she was aware that there was **NYERI H.C.C.C No. 25 of 1986** between her late husband and the late **FREDRICK KIGO MBOGO** and she produced the decree (Plaintiff's Exhibit 3). Even after that case was determined, the plaintiff has continued living on the land and neither **FREDRICK KIGO MBOGO** nor his family have ever lived there and neither did **FREDRICK KIGO MBOGO**, during his life-time, ever ask the plaintiff to vacate. She said her husband died before pursuing the appeal in respect of **NYERI H.C.C.C No. 25 of 1986** and that she had sued the 1st defendant as administrator of the Estate of the late **FREDRICK KIGO MBOGO** as she had obtained a confirmed grant of letters of administration (Plaintiff's Exhibit 5). She added that the land is now registered in the names of the 1st and 2nd defendants as follows – **MUTIRA/KIRIMUNGE/1567** and **MUTIRA/KIRIMUNGE/1568** (the suit land) but the two defendants have never lived thereon.

GODFREY WANGOMBE NGARI (PW2) testified that he knows the plaintiff was married to the late **PETER KATHU KAMENE** in 1968 and has lived on the suit land since then. He said he doesn't know the defendants and that the land was given to **NJAANGARU GACHOMO** during the demarcation period and was registered in his names though he doesn't know how it was registered in the names of **FREDRICK KIGO MBOGO**. He added that in the 1970's, **NJAANGARU GACHOMO** was living with **PETER KATHU KAMENE** in Mikindani Mombasa but later he (**PETER KATHU KAMENE**) said he was coming for his title from **FREDRICK KIGO MBOGO** but before he could get it, he died. The witness added that his land is not far from the suit land and that since 1968, the plaintiff has been living thereon and the defendants have not lived on the same and neither do they have any homes there as they have been living in Mombasa.

The 1st defendant testified on behalf of the defendants.

She confirmed that the late **FREDRICK KIGO MBOGO** was her husband and died on 19th December 1998 and that she lives in Magongo Changamwe Mombasa where she does business of selling vegetables. She added that land parcel No. **MUTIRA/KIRIMUNGE/370** belonged to her late husband's grandfather **NJAANGARU GACHOMO** and other than being from the same Unjiru Clan, she and her husband had no relationship with the plaintiff and her husband who lived in Mombasa during the period of land demarcation. The plaintiff's husband was not given any land during the demarcation period as he only

came back to Kirinyaga after the demarcation process and so he was given a granary to live in by **NJAANGARU GACHOMO**. In 1977, the land No. MUTIRA/KIRIMUNGE/370 was transferred to her late husband and in 1986, he started telling the plaintiff's husband to vacate the land but he refused and instead he filed **NYERI H.C.C.C No. 25 of 1986** which was dismissed. 1st defendant produced the decree (Defence Exhibit 1) as well as the Notice of Appeal that the plaintiff's husband filed but did not prosecute (Defence Exhibit 2).

After her husband died, the 1st defendant filed Succession Cause No. 124 of 2006 and later the land was given to her and the 2nd defendant who had helped her file for succession as she had no money.

In 1995, her late husband tried to evict the plaintiff's husband who filed grounds of opposition arguing that there was a pending appeal. The plaintiff's husband was permitted by the late **NJAANGARU GACHOMO** to live on the land as he looked for his own. She added that she lived on the land subject of this suit when she was married in 1980 but in 1986, her husband moved her to Mombasa as she was being threatened and during her absence, the plaintiff's family destroyed her house. She produced the ruling of **KASANGO J.** in **NYERI H.C.C.C No. 25 of 1986** (Defence Exhibit 4) and asked that this Court dismisses the plaintiff's suit.

Submissions were thereafter filed by both Mr. Maina Kagio Advocate for the defendants and Ms Wangechi Munene Advocate for the plaintiff.

I have considered the oral evidence by both parties together with their documentary exhibits and submissions by counsel.

This is a claim for adverse possession of the suit land which is L.R No. MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568. The following facts are not in dispute:-

- 1. The suit land is a sub-division of land parcel No. MUTIRA/KIRIMUNGE/370 which belonged to the late NJAANGARU GACHOMO.***
- 2. The plaintiff is the wife to the late PETER KATHU KAMENE.***
- 3. The 1st defendant is the wife to the late FREDRICK KIGO MBOGO and is sued in her capacity as the legal representative of his Estate.***
- 4. That land parcel No. MUTIRA/KIRIMUNGE/1567 is registered in the names of the 2nd defendant while parcel No. MUTIRA/KIRIMUNGE/1568 is registered in the names of the 1st defendant.***
- 5. That land parcel No. MUTIRA/KIRIMUNGE/370 which was originally registered in the names of the late NJAANGARU GACHOMO on 29th December 1959 was on 27th October 1977 registered in the names of FREDRICK KIGO MBOGO the husband to 1st defendant.***

The plaintiff's claim is that she has been living on land parcel No. MUTIRA/KIRIMUNGE/370 and thereafter on the resultant sub-divisions which are the suit land since her marriage to the late **PETER KATHU KAMENE** in 1968 when the late **NJAANGARU GACHOMO** was still alive. Her claim for adverse possession of the suit land is two pronged i.e.:-

- a. Either from 1977 when the late FREDRICK KIGO MBOGO was registered owner thereof, or***
- b. From 15th July 1993 when NYERI H.C.C.C No. 25 of 1986 was resolved in favour of the 1st defendant's late husband.***

All this time, she has enjoyed quiet possession and occupation of the suit land.

The defendants' case, as I can glean from the replying affidavit of the 1st defendant, is that the plaintiff's

family were only licensees who have not explained how they got into the suit land which was transferred to the 1st defendant's late husband in 1977. Further, that the plaintiff's late husband who was living in Mombasa at the time of demarcation was not given land and his attempt to acquire the suit land was thwarted when he lost **NYERI H.C.C.C No. 25 of 1986** and there have been numerous attempts to evict the plaintiff's family.

In a claim for adverse possession of land registered in another person's names, the plaintiff has to 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 discontinuation of possession by the owner on his own volition" - see **KASUVE VS MWAANI INVESTMENT & FOUR OTHERS 2004 1 K.L.R. 184.**

Such possession must be open, without force, without secrecy and without the permission of the land owner with the intention of dispossessing the registered owner thus the Latin phrase "***nec vi, nec clam, nec precario***" – see **SAMUEL KIHAMBA VS MARY MBAISI C.A CIVIL APPEAL NO. 27 of 2013 (KISUMU)**. It is now clear that the effects of the provisions of **Sections 7, 13 and 17 of the Limitation of Actions Act** is to extinguish the titles of the proprietor of land in favour of an adverse possessor of the same at the expiry of 12 years of that possession. Similarly, **Section 28 of the new Land Registration Act 2012** recognizes some of the overriding interests in land as those acquired or in the process of being acquired by virtue of any written law relating to the law of prescription. It is also provided under **Section 7 of the Land Act 2012** as follows:-

"Title to land may be acquired through:-

a.

d.

c.

d. prescription"

The plaintiff's occupation and possession of the suit land is not really controverted. Indeed it is admitted by the defendants. In paragraph 5 of her replying affidavit, the 1st defendant depones as follows:-

"That the plaintiff has not explained the circumstances under which she entered into our land, which is a crucial factor for this Court to make a determination as to whether the occupation was adverse to the interest of the registered owner or not"

And in cross-examination by counsel for the plaintiff, the 1st defendant said:-

"I don't know how many children the plaintiff has. She lives on the land subject of this suit. I don't know who else lives there"

In her evidence in chief, the 1st defendant testified as follows:-

"During land demarcation, the plaintiff's husband was not given any land because he did not go home. He only came back to Kirinyaga after demarcation and was allowed by my late husband's grandfather to live in the granary since his brothers did not allow him"

The defendants' evidence therefore basically confirms the plaintiff's evidence as supported by that of her witness (PW2) which is that she has lived on the original land parcel No. MUTIRA/KIRIMUNGE/370 and thereafter the suit land since her marriage to the late **PETER KATHU KAMENE** in 1968. The legal issue raised by the defendants is that in fact the plaintiff's late husband **PETER KATHU KAMENE**

was given a license to live on the suit land in which case her possession and occupation thereof cannot be adverse to the interests of the registered owners who are the defendants therein. It is trite law that a party in occupation of land with the consent of the registered owner cannot sustain a claim in adverse possession. In **WAMBUGU VS NJUGUNA 1983 K.L.R 172**, the Court of Appeal citing **HUGHES VS GRIFFIN 1969 1 W.L.R 23** held that one who occupies land as a licensee cannot claim it by adverse possession. The defendants' case is that the plaintiff's late husband was a licensee of the late **NJAANGARU GACHOMO**. In that case, the plaintiff could not mount a claim for adverse possession against the said **NJAANGARU GACHOMO** and this claim is not against him. This claim is against the 1st defendant's husband who was registered as owner of the original land parcel No. MUTIRA/KIRIMUNGE/370 in 1977 before it was sub-divided to give rise to the suit land. Mr. Kagio counsel for the defendants has submitted that since the plaintiff's late husband filed a suit against the 1st defendant's husband in 1986 and since the 1st defendant's husband had been registered as the owner of the land in 1977, that period is roughly 9 years and therefore the plaintiff cannot claim that the 12 years limitation period had lapsed in order to entitle her to orders in adverse possession. It is of course not in dispute that the original land parcel No. MUTIRA/KIRIMUNGE/370 was registered in the names of the late **NJAANGARU GACHOMO** in 1959 before it was transferred to the 1st defendant's late husband in 1977. However, as was held in the case of **GITHU VS NDEETE 1984 K.L.R 776**, the mere change of ownership of land which is occupied by another person does not interrupt such person's adverse possession. Basically, therefore, even as the 1st defendant's late husband was being registered as the owner of the land parcel No. MUTIRA/KIRIMUNGE/370, the plaintiff and her late husband were in the course of acquiring rights under **Section 7 of the Limitation of Actions Act** and by virtue of **Section 30(f) of the repealed Registered Land Act** under which the land was registered, (**Section 28(h) of the new Land Registration Act 2012**), those rights were overriding rights. Therefore both the 1st defendant's husband (as the registered owner thereof) or the 2nd defendant (as a purchaser for value or a beneficiary of a gift of the same), could never be in a better position than **NJAANGARU GACHOMO** the original registered owner thereof and could only acquire the land subject to the rights of the plaintiff and her family who were in occupation. However, since **NYERI H.C.C.C No. 25 of 1986** was filed, this Court up-holds the submissions by the defendant's counsel Mr. Kagio that time stopped running in 1986 by which time the plaintiff had only been in adverse possession of the suit land for some nine (9) years because, prior to the registration of the suit land in the names of the 1st defendant's late husband **FREDRICK KIGO MBOGO**, her occupation was as a licensee of the late **NJAANGARU GACHOMO**.

The other limb of the plaintiff's claim, however, is that, even after the determination of **NYERI H.C.C.C No. 25 of 1986** which was finalized in 1993, she and her family continued living on the suit land and no attempt was made to evict them. Indeed apart from the decree in the said case and the notice of appeal also lodged in 1993, there is no evidence placed before me showing that any other suit was subsequently filed by the defendants or an application made for their eviction. In her evidence in chief, the plaintiff testified as follows:-

“Fredrick Kigo died on a date that I cannot remember. At no time during his life time had he asked me to vacate the land. I know that my husband filed an appeal against the decision in NYERI H.C.C.C. No. 25 of 1986. This is the notice of appeal but he died before pursuing the appeal:

Plaintiff's Exhibit No. 4 – Notice of Appeal

I have remained on the suit land since then”.

Therefore, from 1993 to-date, the plaintiff and her family have remained on the suit land. The 1st defendant by her own admission appears to have given up on retaining any possession of the suit land and moved to Mombasa. In her evidence in chief, she admitted that she moved to Mombasa in 1986 and so from 1993 to 21st May 2008 when the original suit was filed before its subsequent amendment on 31st March 2009, the plaintiff had been living on the suit land for 15 years. Time which had stopped running in 1986 with the filing of **NYERI H.C.C.C No. 25 of 1986** started running again in 1993 when that suit was determined in favour of the 1st defendant's late husband **FREDRICK KIGO MBOGO**. However,

the defendants took no further action to regain entry into the suit land by evicting the plaintiffs. They therefore remained dispossessed of the same. Although the 1st defendant filed **NAIROBI HIGH COURT SUCCESSION CAUSE NO. 124 of 2006** and had the suit land registered in her names and that of the 2nd defendant after obtaining a confirmation of grant in respect of the Estate of her late husband, all this did not interrupt the plaintiff's adverse possession of the same. It is clear from the evidence before me therefore that from 1993, the plaintiff has been in exclusive, un-interrupted and open possession of the suit land and with the knowledge of the defendants with the intention of dispossessing them of the same.

Mr. Kagio counsel for the defendants has submitted that during cross-examination, the plaintiff stated that she had filed this suit on behalf of the Estate of her late husband yet she had not taken out a grant of letters of administration and therefore she lacks the locus standi and her case must collapse as it is incompetent and bad in law. It is however clear from the pleadings herein that the plaintiff filed this suit in her own names seeking orders in her favour and not as a representative of the Estate of her late husband. In paragraph 3 of her supporting affidavit, she makes it clear that the basis of this suit is that she has;

"... lived, cultivated and utilized land parcel No. MUTIRA/KIRIMUNGE/370 since 1968 when she got married to KATHU KAMENE PETER".

And in paragraph 17, she ends by stating that:-

"No one has interfered with my possession of the now two parcels of land and I seek the Court to rule that I have acquired ownership of the two parcels of land by adverse possession"

Plaintiff is therefore seeking the orders in her own right as the person now in occupation and possession of the suit land. That submission cannot therefore be correct.

Counsel for the defendants has also submitted that since the Notice of Appeal filed by the plaintiff's husband is yet to be withdrawn, the appeal is still pending. Even if that is the position, there is no order staying the execution of the judgment in **NYERI H.C.C.C No. 25 of 1986** and so there is no reason why the defendants did not seek to execute it by evicting the plaintiff.

I am therefore satisfied that the plaintiff has proved her case against the defendants as required in law.

Ultimately therefore, I would answer the issues raised for my determination by the plaintiff in her amended Originating Summons filed herein on 31st March 2009 as follows:-

1. The plaintiff MARY MUTHONI KATHU has not had quiet occupation and possession of land parcel No. MUTIRA/KIRIMUNGE/370 now partitioned into MUTIRA/KIRIMUNGE/1567 and MUTIRAD/KIRIMUNGE/1568 since 1977 when FREDRICK KIGO MBOGO (now deceased) became the registered owner therefore and should not therefore be declared to have acquired absolute right and interest in the said land by operation of the law under the provisions of Section 38 of the Limitation of Actions Act Chapter 22 Laws of Kenya.

2. Instead, the plaintiff MARY MUTHONI KATHU who has had quiet occupation and possession of land parcel No. MUTIRA/KIRIMUNGE/370 now partitioned into MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 since 15th July 1993 when NYERI H.C.C.C No. 25 of 1986 KATHU KAMENE PETER VS FREDRICK KIGO MBOGO was resolved in FREDRICK MBOGO's favour but continued to occupy the said land un-interrupted is declared to have acquired absolute right to title and interests in the said land by operation of the land under the provisions of Section 38 of the Limitation of Actions Act Chapter 22 Laws of Kenya.

3. Land parcel No. MUTIRA/KIRIMUNGE/370 now partitioned into MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 should be registered in the

names of MARY MUTHONI KATHU who has lived there since 1993 when the dispute between her late husband and the registered owner FREDRICK KIGO MBOGO was resolved.

4. The 1st defendant is rightly sued being the legal representative of FREDRICK KIGO MBOGO (deceased) the registered owner of land parcel No. MUTIRA/KIRIMUNGE/370 at the material time and now the owner of a sub-division thereof MUTIRA/KIRIMUNGE/1568.

5. The plaintiff MARY MUTHONI KATHU is declared to have acquired land parcel No. MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 by adverse possession which are original sub-divisions of land parcel No. MUTIRA/KIRIMUNGE/370 after the said sub-division/ partition.

6. The plaintiff MARY MUTHONI KATHU is declared to have acquired land parcel No. MUTIRA/KIRIMUNGE/370 now MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 by adverse possession due to reasons advanced in 2 and 3 above even in the light of the 2nd defendant being registered against the title thereof by virtue of the Certificate of Confirmation of grant to the Estate of the deceased FREDRICK KIGO MBOGO.

7. The whole of land parcel No. MUTIRA/KIRIMUNGE/370 now MUTIRA/KIRIMUNGE/1567 and MUTIRA/KIRIMUNGE/1568 belonging to the 1st and 2nd defendants respectively is declared to have been acquired by the plaintiff by way of adverse possession including the 2nd defendant's interest of 0.40 Ha. thereof.

8. Each party shall meet their own costs of this suit.

B.N. OLAO

JUDGE

22ND APRIL, 2016

Judgment dated, delivered and signed in open Court this 22nd day of April, 2016

Mr. Ndungu for Ms Munene for Plaintiff present

Mr. Macharia for Mr. Kagio for Defendants present

Right of appeal explained.

B.N. OLAO

JUDGE

22ND APRIL, 2016