



**Kivuana & 2 others v Njagi & another; Joseph & 6 others (Interested Parties) (Environment and Land Appeal 6A of 2017) [2025] KEELC 3721 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3721 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL 6A OF 2017**

**AK BOR, J  
APRIL 30, 2025**

**BETWEEN**

**NJUE MUNYI KIVUANA & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS ..... APPELLANT**

**AND**

**GILBERT NJERU NJAGI ..... 1<sup>ST</sup> RESPONDENT  
PATRICK NTHIA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GABRIEL NJUE JOSEPH & 6 OTHERS & 6 OTHERS & 6 OTHERS  
& 6 OTHERS & 6 OTHERS & 6 OTHERS & 6 OTHERS & 6 OTHERS ..... INTERESTED PARTY**

**RULING**

1. There are two applications for determination. The first one was filed by the 1<sup>st</sup> Respondent on 30/1/2024 and the other was filed by the 2<sup>nd</sup> Respondent on his behalf and on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> interested parties on 20/3/2024. In the application dated 30/1/2024, the 1<sup>st</sup> Respondent seeks to amend the orders issued on 29/11/2023 by this court which directed the Registrar of Titles, Siakago to include parcels numbers Evurore/Nguthi/4563 to 4584 during registration, as the resultant parcels from the subdivision of Evurore/Nguthi/1964. The application was made on the grounds that on 20/2/2020 this court issued a decree to the effect that the 1<sup>st</sup> Respondent was mandated to supervise subdivision of land parcel Evurore/Nguthi/1964. On 29/11/2023, the court issued orders to the effect that his name Gilbert Njeru Njagi be rectified to include alias Njeru Njagi.
2. The 1<sup>st</sup> Respondent stated that on presenting the orders at Siakago lands office, he was advised to get a detailed court order citing the mutated land parcels that were to be transferred to the respective beneficiaries. He averred that after the subdivision of Evurore/Nguthi/1964, the resultant parcels were



- Evurore/Nguthi/4563 to 4584. He urged the court to issue the orders sought to facilitate the process of registration. He contended that in order to achieve the letter and spirit of the decree issued on 20/2/2020, it was imperative that the orders sought be granted. The 1<sup>st</sup> Respondent swore the affidavit in support of the application and annexed copies of the decree and orders referred to.
3. The application dated 30/1/2024 was opposed by the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Interested Party and the 5<sup>th</sup> Interested Party vide their respective affidavits. They all took the position that even though the 1<sup>st</sup> Respondent was mandated to supervise the distribution of the resultant subdivisions of the suit land to the respective beneficiaries, he was not to subdivide the land as if it were his own because the suit land is clan land and each member ought to be involved. That from the mutation form of the suit land, the 1<sup>st</sup> Respondent caused the land to be subdivided into 22 portions which are not equal in size without any basis for the unequal portions neither did he disclose the names of the beneficiaries and their respective portions.
  4. They stated that they were not really opposed to the 1<sup>st</sup> Respondent's application but were asking the court to order the 1<sup>st</sup> Respondent to disclose which portions had been allocated to which beneficiary and explain why the resultant portions varied in size. In the alternative, they sought to have the court order that the District Surveyor and the Registrar Mbeere North be involved to ascertain the area each member is occupying before the mutation could be drawn. They annexed a copy of the list of beneficiaries of the suit land and a copy of the mutation for the suit land.
  5. In the application dated 20/3/2024, the 2<sup>nd</sup> Respondent seeks to have this court issue an order for stay of transfer, the intended transfer or interference with parcels numbers Evurore/Nguthi/4563 to 4584 by the 1<sup>st</sup> Respondent, his agents or anybody claiming through him pending the hearing and determination of this application *inter partes*. He also sought an order directing the 1<sup>st</sup> Respondent to produce and disclose the names of all the persons he intends to transfer to parcel numbers Evurore/Nguthi/4563 to 4584 and the basis and sizes of the portions indicated on the mutation. Further, he sought an order for the County Surveyor and the Land Registrar, Mbeere North, to ascertain on the ground the acreage of the original land being Evurore/Nguthi/1964 and also ascertain the acreage each member occupies on the ground and for each party to be at liberty to have their surveyors in attendance. He also sought to have the mutation of land parcel Evurore/Nguthi/1964 amended to allow each member to get the portion he or she occupied and was utilising prior to subdivision of Evurore/Nguthi/1964. The application was made on the grounds that the 1<sup>st</sup> Respondent subdivided the original land parcel Evurore/Nguthi/1964 resulting into 22 portions being parcels no. Evurore/Nguthi/4563 to 4584. It was contended that the 1<sup>st</sup> Respondent had already registered the mutation. Pursuant to a ruling delivered by this court on 28/11/2023, the 1<sup>st</sup> Respondent was allowed to amend his name to facilitate the transfer of the resultant portions to persons whose names he has never disclosed or the basis of the acreages of the said portions indicated in the mutation. It was contended that the 1<sup>st</sup> Respondent would have transferred the said resultant subdivisions to undisclosed persons were it not for the fact that the Land Registrar, Siakago asked him for a court order detailing the mutated lands as per the mutation.
  6. He contended that together with the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, they were among the 22 beneficiaries who know the areas on the ground which they occupy and have developed. The other ground was that the area of the land registered as Evurore/Nguthi/1964 was 20 hectares which was the area subdivided on the mutation and that area was smaller than the actual ground the beneficiaries currently occupied. Further, he contended that the subdivision of parcel number 1964 by the 1<sup>st</sup> Respondent as per the mutation dated 10/8/2020 failed to take into account the current sizes of land currently occupied by beneficiaries on the ground and the subsisting boundaries, and that unless the acreage of the suit



land was ascertained on the ground, the current subdivision on the land as registered would negatively impact on the beneficiaries as the areas are too small.

7. Further, he expressed the view that it was in the interest of justice for the acreage of Evurore/ Nguthi/1964 on the ground and the acreage each member occupies on the ground to be ascertained by the County Surveyor and Land Registrar Mbeere North and each party be at liberty to have their surveyors in attendance. He averred that the beneficiaries of the suit land stood to suffer irreparably unless the orders sought were granted. The 2<sup>nd</sup> Respondent swore the affidavit in support of the application and annexed a copy of the authority by the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, the list of beneficiaries and a copy of the mutation for the suit land.
8. The application dated 20/3/2024 was opposed by the 1<sup>st</sup> Respondent vide the replying affidavit in which he averred that the list produced by the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> Interested Party was a fraud which they jointly drafted. He contended that the suit land was not clan land but belonged to specific individual families and that the four original trustees held the land on their behalf and not as equal shares. He invited the court to dismiss their claim for the legitimate owners of the suit land to be issued with title deeds.
9. The court directed parties to file and exchange written submissions which it has considered. The 1<sup>st</sup> Respondent submitted that the Interested Parties had nothing to claim from him as they were not on his side. He asked to be paid the costs he had incurred since 2010 in respect of the suit by the 1<sup>st</sup> Interested Party.
10. The 2<sup>nd</sup> Respondent and the 1<sup>st</sup> Interested Party submitted that if granted, the prayers sought would not prejudice the 1<sup>st</sup> Respondent because he would still play his role of supervising the subdivision and distribution of the suit land only that now it would be done openly involving all the parties. He added that in his replying affidavit, the 1<sup>st</sup> Respondent admitted that the defendants in Embu SRMCC No, 105 of 1990 held the suit land on behalf of individual families and not in equal shares and that is why they requested that the County Surveyor ascertain what the families occupy on the ground for it to be the basis of the subdivision.
11. They submitted that the 1<sup>st</sup> Respondent failed to disclose the intended beneficiaries prompting their opposition. They contended that allowing the amendment of the orders of 29/11/2023 to include land parcels Evurore/Nguthi/4563 to 4584 could result in the allocation of land to individuals who were not parties to Embu SRMCC No. 105 of 1990. They averred that to ensure fairness, the subdivisions should be canceled and the land should revert to its original number, with the County Surveyor and Land Registrar Mbeere being involved to ascertain the acreage and come up with the mutation showing how the land was to be distributed to the rightful beneficiaries.
12. The issue for determination is the appropriate orders the court should grant with respect to the two applications before it. With respect to the application dated 30/1/2024, the court notes that the 1<sup>st</sup> Respondent and the respective beneficiaries already obtained a judgement in their favour that entitles them to the suit land. The court's role in adjudicating the dispute therefore was concluded and it cannot still be called upon to supervise execution of the judgment further. Parties are at liberty to seek any further advice that they may require from the office of the Attorney General who under Article 156(4)(a) of *the Constitution* is the principal legal advisor to the government.
13. The court declines to grant the orders sought in the application dated 30/1/2024.
14. Regarding the application dated 20/3/2024, the court makes the following orders:
  1. The 2<sup>nd</sup> Respondent's application dated 20/3/2024 is allowed to the extent that:



- a. The County Surveyor and Land Registrar, Mbeere North, are directed to visit the suit land Evurore/Nguthi/1964 within 60 days of the date of this ruling and ascertain:
  - i. The actual acreage on the ground of the entire suit land.
  - ii. The portions currently occupied by each beneficiary.
  - iii. Whether the subdivision and allocation of land parcels Evurore/Nguthi/4563-4584 to the beneficiaries aligns with the portions that they currently occupy.
  - iv. The mutation for land parcel Evurore/Nguthi/1964 be amended to allow each member to get the portion he or she occupied and utilized prior to the subdivision of parcel Evurore/Nguthi/1964.
  - v. Each party will be at liberty to have their own surveyors in attendance during the exercise.
- b. An order of stay is issued restraining the 1<sup>st</sup> Respondent from transferring or interfering with the land known as Evurore/Nguthi/4563-4584 pending the finalization of the above exercise.

2. Each party shall bear their own costs for the application.

**DELIVERED VIRTUALLY AT EMBU THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Gilbert Njeru Njagi- 1<sup>st</sup> Respondent acting in person

Mr. B. Njeru holding brief for Ms. F. Wanjiku for the 2<sup>nd</sup> Respondent and  
the 1<sup>st</sup> Interested Party

Ms. N. Mwinja holding brief for Mr. N. Ithiga for the 3<sup>rd</sup> to 7<sup>th</sup> Interested Parties

Court Assistant- Diana Kemboi

No appearance for the Appellants

