



**Mwangi v Mutwe (Environmental and Land Originating Summons
E002 of 2025) [2025] KEELC 3398 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3398 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2025
MN GICHERU, J
APRIL 29, 2025
IN THE MATTER OF CLAIM OVER LAND BY ADVERSE POSSESSION
IN THE MATTER OF LAND TITLE NO. LOC.2/GACHARAGE/337**

BETWEEN

JERUSHA WANGARI MWANGI APPLICANT

AND

NJAGIRU MUTWE RESPONDENT

RULING

1. This ruling is on the notice of motion dated 4-4-2025. The motion which is brought under Order 5 rule 17 Civil Procedure Rules and all other enabling provisions of Law seeks one order as follows.
 - (1) That the Respondent be served with the pleadings herein through an advertisement in one of the local daily newspapers or as the court may order.
2. The motion is based on three(3) grounds and is supported by an affidavit sworn by the Applicant dated 4-4-2025. The gist of the grounds and the affidavit is as follows. Firstly, the Respondent cannot be served personally as he relocated to Maela, Rift valley, in 1997. Secondly, he cannot now be traced. Finally, all attempts to trace him have faded. For the above reasons the only way to serve him is through a publication in a local daily.
3. I have carefully considered the motion in its entirety and I find that it has no merit for the following reasons.

Firstly, there is no evidence that the Respondent Njagiru Mutwe is alive. In 1977, it was his sons Kuria Mutwe and Rofi Mutwe who received the purchase price for the suit land from the late Ayub Mwangi Rofi, if he was alive in 1977, he would have been the one receiving the purchase price and not his sons. If Njagiru Mutwe was not alive in 1977, he cannot be alive today to benefit from seeing his case



published in a local daily newspaper. Secondly, the families of the buyer, Ayub Mwangi Rofi, and the registered owner of the land, Njagiru Mutwe seem to be related if the witness statement of Stephen Karuga W. Thiga is anything to go by. This means that it is not impossible to trace both Kuria Mutwe and Rofi Mutwe at Maela.

Thirdly, it is not proper to sue a dead man. Let the legal representatives of his estate be sued and be served physically at Maela through the area chief.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29TH DAY OF APRIL , 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel – Miss Nyariki

Respondents' Counsel – Mr. Wachira

