



**Kiratu & another (Suing as Legal Representatives of the Estate of Catherine Waigumo Kiratu) & another v Wambugu (Environment & Land Case 93 of 2014) [2025] KEELC 3106 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3106 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 93 OF 2014**

**JO OLOLA, J  
APRIL 3, 2025**

**BETWEEN**

**EDWARD MAINA KIRATU & JANE NYAMBURA KIUNGE (SUING AS  
LEGAL REPRESENTATIVES OF THE ESTATE OF CATHERINE WAIGUMO  
KIRATU) ..... 1<sup>ST</sup> PLAINTIFF**

**LUCY MUMBI WARUI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**EPHRAIM KARIUKI WAMBUGU ..... DEFENDANT**

**JUDGMENT**

**Background**

1. By a Plaint dated 29<sup>th</sup> April, 2014 as amended on 25<sup>th</sup> July, 2014 and further re-amended on 30<sup>th</sup> October 2023, the Plaintiffs pray for judgement against the Defendant for orders framed as follows:
  - a. An order that any survey and/or participating and/or subdividing the said Aguthi/Gatitu/3446 without taking into consideration or first excising the 1<sup>st</sup> Plaintiff each 5 acres awarded in Award Case No. 2 of 2005 in Chief Magistrate’s Court Nyeri in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff respectively is unlawful and illegal and an order for a permanent injunction restraining the Defendant his agents, servants and/or anyone claiming under him from surveying with a view of portioning and/or sub-dividing the said Aguthi/Gatitu/3446 without considering or taking into account each of the Plaintiffs 5 acres awarded.
  - b. An order that the Defendant does excise from the said Aguthi/Gatitu/3446 each of Plaintiffs 5 acres awarded in Award Case No. 1 of 2005 and Award No. 2 of 2005 in Chief Magistrate’s Court Nyeri in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff respectively.



- (bb) In the alternative, an order that the 1<sup>st</sup> Plaintiff do excise from a place of their choice within the said Aguthi/Gatitu/3446 each of their 5 acres awarded in Award Case No. 1 of 2005 and Award Case No. 2 of 2005 in Chief Magistrate’s Court Nyeri in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff respectively;
  - (bbb) A declaration that the sub-division of Aguthi/Gatitu/3446 was unlawful and illegal in view of the subsisting Court Order and the Plaintiffs claim each 5 acres from the remainder of Aguthi/Gatitu/3446 following the unlawful subdivision and/or in the alternative 5 each from any resultant parcel of Aguthi/Gatitu/3446 registered in the name of the Defendant;
  - c. An order compelling the Defendant to execute all documents and do all acts for purposes of transferring 5 acres out of land parcel number Aguthi/Gatitu/3446 to the 1<sup>st</sup> Plaintiff
  - d. Any other or better relief that this Honorable Court may deem fit to grant; and
  - e. Costs of the suit land and interest at court rates from date of filing this suit
2. Those prayers arise from the Plaintiffs’ contention that the two Plaintiffs are beneficial owners of 10 acres of the land forming part of LR. No. Aguthi/Gatitu/3446 arising from Court Orders issued in the Chief Magistrates’ Court at Nyeri. It is the plaintiffs’ case that the Defendant is registered as the proprietor of the suit property as a trustee for 27 other beneficial owners. The Plaintiffs accused the Defendant of commencing and undertaking a survey of the suit property without taking their interest in their respective 5 acres into consideration.
  3. Ephraim Kariuki Wambugu (the Defendant) denies the Plaintiffs’ claim. In his statement of Defence as further Further Amended on 23<sup>rd</sup> March, 2021 the Defendant avers that he was not a party in the matter before the Provincial Land Disputes Tribunal and that the subsequent deliberations in the Chief Magistrate’s Court at Nyeri were legally flawed and defective. The Defendant asserts that those proceedings were incapable of conferring 5 acres of registered private land to the Plaintiffs. It is further the Defendant’s case that LR. No. Aguthi/Gatitu/3446 was not in existence as at 23<sup>rd</sup> December, 2015 when the Plaintiffs instituted the suit.
  4. At the trial herein, the Plaintiffs called two witnesses in support of their case. The Defendant on the other hand called one witness who testified in support of his case.

### **Analysis and Determination**

5. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses and the evidence adduced herein. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
6. The suit herein was initially instituted by Catherine Waigumo Kiratu (the 1<sup>st</sup> Plaintiff) and Lucy Mumbi Warui (the 2<sup>nd</sup> Plaintiff). Following the subsequent death on 26<sup>th</sup> August, 2020 of Catherine Waigumo Kiratu, Edward Maina Kiratu and Jane Nyambura Kirunge substituted her as the 1<sup>st</sup> Plaintiff.
7. By their suit as filed herein, the Plaintiffs seek to restrain the Defendant Ephraim Kariuki Wambugu from surveying, partitioning and/or sub-dividing the parcel of land known as Aguthi/Gatitu/3446 without taking into consideration or first excising the 10 acres awarded to each of them in Nyeri CMCC Land Award Cases No. 1 and 2 of 2005 respectively.
8. The Plaintiffs assert that each of them are beneficial owners of 5 acres awarded to them in the said cases. It is their case that they have since come to learn that the Defendant who holds the suit property as a trustee for 27 other persons is in the process of commencing or undertaking survey and partitioning of



- the suit property without taking into account their interest therein. It is their case that if the Defendants were allowed to proceed as planned, the same would amount to an infringement of their right to property and an affront on the orders granted by the Court.
9. On his part however, the Defendant contends that the processes through which the Plaintiffs gained the said interests over the suit property were legally flawed and that as such the same were incapable of conferring any legally enforceable rights to the Plaintiffs. The Defendant further asserts that as a mere trustee of the suit land, he has no power or control over the same more so given the fact that the other beneficiaries are not parties herein.
  10. In support of their cases, the Plaintiffs told the court that they had sued the Defendant together with four other people who were the registered trustees of the suit property in Nyeri District Land Dispute Tribunal Case No. 1 and 2 of 2003 wherein both the original 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff sought to be awarded 5 acres each out of the Suitland. It was the Plaintiff's case that on 1<sup>st</sup> October, 2004, the tribunal made an award wherein each of the claimants was awarded 5 acres of the land as they had sought.
  11. The Plaintiffs told the Court that they subsequently filed the awards at the Chief Magistrates Court at Nyeri and that on 3<sup>rd</sup> February, 2014, the said award was adopted as an order of the Court which court directed the Defendant together with the other 4 trustees to transfer the 10 acres to the Plaintiffs. It was their case that subsequent to the adoption of the award, the Defendant proceeded to illegally subdivide the suit property without excising and transferring their portions of the land as directed.
  12. From the material placed before the court, it was not in dispute that the suit property was initially registered in the name of the Defendant's father Wambugu Mathangani as LR. No. Aguthi/Gatitu/454. The said Wambugu Mathangani who was also the father of the original 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff is said to have passed away sometime in the year 1959.
  13. It was also apparent that following a Succession Cause lodged at the Ruring'u District Magistrates Court in 1972, the estate of Wambugu Mathangani including the suit property measuring 205 acres or thereabout was distributed to his heirs. In his testimony before the court Edward Maina Kiratu (PW1) confirmed that in 1972, the land belonging to his grandfather Wambugu Mathangani had been distributed and everyone had his or her own parcel of land.
  14. It was also apparent that the original suit property was at some point in time compulsorily acquired by the Government of the Republic of Kenya. When the Government gave back part of the land to the family of Wambugu Mathangani in the year 1999, the original property was sub-divided into two parcels resulting in LR. Nos. Aguthi/Gatitu/3446 and 3447. The family retained the parcel No. 3446. From a copy of the Green Card produced by the parties herein, the said parcel No. 3446 was on 7<sup>th</sup> December, 1999 registered in the name of the Defendant herein together with four others being Kariuki M. Wambugu, Ephraim G. Kabungo, George Mathangani Wambugu and Peter W. Maina to hold for themselves and in trust for 27 other unnamed heirs.
  15. It would appear that the two Plaintiffs were not part of the 32 heirs in whose name LR. No. Aguthi/Gatitu/3446 was registered. That would explain their reasons for proceeding in the year 2003 to lodge their respective cases before the Nyeri District Land Disputes Tribunal. While the Tribunal proceeded to make its determination awarding each of the Plaintiffs 5 acres out of the suit property, it was clear to me that the Tribunal had acted outside its mandate and without considering all aspects of the dispute before them.
  16. Under Section 3(1) of the now repealed Land Disputes Tribunal Act, the Tribunal could only deal with cases of a civil nature involving disputes as to:



- a. The division of, or the determination of boundaries to land, including land held in common;
  - b. A claim to occupy or work land; or
  - c. Trespass to land.
17. The Tribunal had no jurisdiction to award or allocate registered land to any person in the manner it did and the adoption of the award by the court was in my view a nullity and could not be relied upon by any party to lay the basis of a claim such as the one before this court.
18. Even if that were not the case, it was apparent, that the Plaintiffs were alive to the fact that the Defendant was registered as a trustee together with four others whom they had previously sued to hold the property in trust for 27 other heirs. That being the case, I was unable to discern why the Plaintiffs singled out the Defendant herein as the person who had failed to excise and transfer the awarded 10 acres to themselves. The Plaintiffs did not also explain where the Defendant was to get the land to transfer to them when by their own admission all the heirs of Wambugu Mathangani had settled on their respective portions by the year 1972.
19. In the premises herein, I was not persuaded that the Plaintiffs' case had any merit. The same is dismissed with no order as to costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 3<sup>RD</sup> DAY OF APRIL, 2025**

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**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Maina Advocate for the 1<sup>st</sup> Plaintiff
- c. Ms. Lucy Mumbi Warui - 2<sup>nd</sup> Plaintiff in person
- d. No appearance for the Defendants

