



REPUBLIC OF KENYA



**KENYA LAW**  
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**Munyao & another v Gitahi (Environment & Land Case  
E015 of 2025) [2025] KEELC 4264 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4264 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND CASE E015 OF 2025**

**JM KAMAU, J**

**MAY 29, 2025**

**BETWEEN**

**TABITHA WAMBUI MUNYAO ..... 1<sup>ST</sup> PLAINTIFF**

**GEOFFEREY KANIA MUNYAO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MICHAEL NGOTHO GITAHU ..... DEFENDANT**

**RULING**

1. This suit was commenced by way of a Plaint dated 23/4/2025. The Plaintiff sought for: -
  - a. A permanent injunction to be issued restraining the Defendant from carrying out further removal of soil, stones and destruction of properties on parcel of land Nyandarua/Ol-Kalou South/173.
  - b. Restraint from encroaching, trespassing, constructing, digging and/or any other way interfering with the aforesaid parcel of land.
  - c. A declaration that the said parcel of land forms part of the estate of Stephen Kakunia Munyao.
  - d. General damages.
  - e. Costs and interest.
  - f. Any other ruling the Court may deem fit to grant.
2. According to the Plaintiffs, they are the legal representatives of the Estate of the late Stephen Munyao the registered proprietor of the parcel of land Nyandarua/Ol-Kalou South/173 where they have been in possession for more than 65 years. The Plaintiffs aver that on 15/4/2023 the Defendant trespassed and encroached onto the suit land and commenced removal of soil, stones and destroyed property therein unlawfully and illegally.



3. In an Application filed contemporaneously with the Plaint, the Plaintiff requested the Court to grant the same prayers in the Plaint albeit temporarily. They also claim to have put up permanent and temporary structures on the suit land and that the Plaintiffs fear for their lives because of goons sent by the Defendant to harass the Plaintiff. The Plaintiffs pray that they be spared the digging, removal of the soil and stones and cutting trees on the land. The Defendant is said to also claim ownership of the suit land. These are the grounds on the face of the Notice of Motion and which are also repeated in the Supporting Affidavit of Tabitha Wambui Munyao sworn with the authority of her co-Plaintiff, Geoffrey Kania Munya sworn on even date.
4. The Defendant swore a Replying Affidavit on the 6/5/2025 and which is said to have been filed in court 2 months earlier on 5/3/2025 long before the suit itself was filed, which is strange but I want to believe it must have been inadvertently stamped with the wrong date by the court personnel. The Respondent depones that the issue of LR Nyandarua.Ol-Kalou South/173 was a subject of Nyandarua J.R No. E005 of 2022. A copy of the judgement in the said case is annexed to the Replying Affidavit but with different parties from the ex parte Applicant in the judicial review case. To show the nexus both the ex parte Applicant Elizabeth Wangari Ngugi uses the same email address with the Plaintiff herein i.e. [particulars withheld]gmail.com.
5. He further depones that LR Nyandarua/Ol-Kalou/90 was allocated by the Settlement Fund Trustee to one Munyao Kakunia who sold a portion of the 30 acres to the Defendant together with one Samwel Njungi Mundia for Kshs 67,500/= vide sale agreement of 29/12/1977 after the said vendor had sought all the necessary approvals for sub-division into Nyandarua/Ol-Kalou South/173 and 174 respectively and that the Defendant took immediate possession of Nyandarua/Ol-Kalou South/173 which he has occupied exclusively.
6. The said Munyao also executed transfer forms which were registered on 28/7/1979 in the joint names of Samwel Njungi Mundia and the Defendant was issued with a Title Deed before the said Mundia transferred his interest to the Defendant on 29/2/1996. The Defendant finally says that he has confined himself to Nyandarua/Ol-Kalou South/173 measuring 13.34 Hectares.
7. In the aforesaid Nyandarua ELC 208 Miscellaneous case No. 9 of 2023 the learned Judge Y.M. Angima held that the deceased, Munyao Kakunia was holding one half of Plot No. 90 in trust for the father of the Respondents viz. Peter Ngugi Kainamia, John Muraya Kainamia Peter Munga Kainamia and Michael Ngotho Kainamia. There was also Nyandarua ELCC ELC No. 99 of 2023 where the issue of ownership of the suit property seems to have been considered.
8. In view of the fact that this matter has been litigated upon previously, the Plaintiff would fail in the first parameter in *Giella v Cassman Brown* case. That of a prima facie case with a probability of success. Since this issue will be interrogated further at a later stage I wish not to say more than I have done. I will therefore disallow the Plaintiff's/ Applicant's Application and reserve the issue of costs.

**RULING DATED AND SIGNED AT NYANDARUA THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**HON MUGO KAMAU**

**JUDGE**

In the presence of:-

Court Assistant - Samson.

Mr. Komu for the Plaintiffs.

N/A for the Defendant.

