



**Muiruri v Willy & 4 others (Environment and Land Appeal  
E115 of 2021) [2025] KEELC 4044 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4044 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E115 OF 2021**

**JA MOGENI, J**

**MAY 27, 2025**

**BETWEEN**

**VERONICA NGITHI MUIRURI ..... APPELLANT**

**AND**

**HANNAH WANGARI WILLY ..... 1<sup>ST</sup> RESPONDENT**

**GORRET WAIRIMU WILLY ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH MUCHIRI WAIHARO ..... 3<sup>RD</sup> RESPONDENT**

**JAMES KINUTHIA WAIHARO ..... 4<sup>TH</sup> RESPONDENT**

**THE LAND REGISTRAR, THIKA ..... 5<sup>TH</sup> RESPONDENT**

*(Being an appeal arising from the Judgment of the SENIOR PRINCIPAL  
MAGISTRATES COURT by Honorable C.K KISLANGANI delivered  
on the 2nd December, 2021 in Ruiru MCL & E CASE NO, 103 OF 2019)*

**JUDGMENT**

1. Vide a Memorandum of Appeal dated 22/1/2021 the Appellant herein instituted this Appeal challenging the trial Court Judgment delivered on 2/12/2021. It detailed 13 Grounds of Appeal, the Appellant faults the trial Court decision allowing the Respondents' suit and dismissing the Appellant's suit instituted by Plaintiff dated 18/07/2017.
2. The gist of the Appeal inter alia is that the Learned Magistrate delivered an irreparable Judgment that sprung from flawed proceedings; by insisting to on proceeding with the hearing of the matter despite ample evidence that the DCIO Ruiru had withheld crucial evidence that would have been of assistance to the Court, that the Trial Magistrate misdirected herself by refusing to consider staying proceedings before it to await the outcome of the ELC Petition E004 of 2021; erroneously affirmed the fact that the Share Certificate that was owned by the Respondent's deceased father was capable of being transmitted



to the 1<sup>st</sup> to 4<sup>th</sup> Respondents without compliance to Probate and Administration processes; by entering Judgment in favour of the Respondents yet the Appellant's copy of the Green Card and Certificates of Official Search duly issued by the 5<sup>th</sup> Respondent asserted she was the registered proprietor was never contested; failing to consider the evidence in totality and thus arriving at a wrong conclusion.

3. Consequently, the Appellant sought the following orders:
  - i. That the Judgment and orders of the trial Court delivered by the trial Court on the 2<sup>nd</sup> of December, 2021 be set aside in their totality.
  - ii. That Judgment of the lower Court and the consequential orders in Ruiru MCL&E Case No. 103 of 2019 be set aside and Judgment be entered in favour of the Appellant.
  - iii. That in lieu of prayer (ii) above, appropriate orders in regard to the production of the police investigation file in respect to the suit property be issued as against the DCIO Ruiru, appropriate safeguards be made to ensure compliance with stated orders and then this matter be referred back to Ruiru Senior Principal Magistrates Court for fresh hearing by any other Magistrate other than the Hon. C.K Kisiangani.
4. On 24/10/2024, my predecessor Kemei J issued directions that the Appeal be canvassed by way of written submissions. Both parties filed their respective submissions together with authorities which I have taken into consideration in arriving at my decision.

#### Appellant's Submissions

5. The Appellant submitted despite the trial Court noting that the Sub-County Investigating Officer Ruiru did not honor the Summons to attend Court it did not cite him for contempt. Further despite having ELC Petition E004 of 2021 not concluded and the trial Court being aware the Magistrate refused to stay the proceedings thus affecting the right to fair trial for the Appellant as contained in Article 50 (2) (K) of *the Constitution* which is a non-derogable right.
6. The Appellant also submitted on the root of title and relied on the case of Hubert L. Martin & Others vs Margaret J. Kamar & 5 Others [2016] eKLR. The Appellant in relying on this case submitted that the Appellant is the indefeasible proprietor of the property, Ruiru/Ruiru East Block 1/1407 and that the Respondents fraudulently undermined the legitimate proprietary rights of the Appellant.
7. The Appellant further submits that the Share Certificate issued to the father of the Respondents in 1968 was cancelled in 2011 and issued to the Defendant/Respondent by the Githunguri Ranching Company Chairman. Further that the Respondents did not produce a Death Certificate or Confirmation of Grant to attest to Succession proceedings.
8. Further that the 5<sup>th</sup> Respondent opened the Register of parcel Number Ruiru/Ruri East Block 1/1407 on 2/2016 whereas the Clearance Certificate of title was issued on 2/06/2016. It was the Appellant's submission that since the Clearance Certificate was issued on 18/03/2016 to the 1<sup>st</sup> to 4<sup>th</sup> Respondents then why did the 5<sup>th</sup> Respondent issue title to Githunguri Ranching Company and not to the 1<sup>st</sup> to 4<sup>th</sup> Respondents. The Appellant relied on the case of In Re Estate of Samuel Kavila Katinda (Deceased) [2019]eKLR and the case of Nirmal Singh Dhanjal vs Jogindaer Singh Dhanjal & 4Others [2018]eKLR to emphasize the fact that one cannot deal with the property of a deceased person without Grant of Letters of Administration for this is meddling which is outlawed under Section 45 of the Succession Act.



9. The Appellant concluded that the title for the 1<sup>st</sup> to 4<sup>th</sup> Respondents cannot stand the test of time and that it was obtained by fraud. She asked for the Appeal to be allowed as it raises substantial points of law and fact and the Judgment of the trial Court be set aside.
10. The submissions for the 1<sup>st</sup> to 4<sup>th</sup> Respondents are dated 14/10/2022 and they identified three issues for determination, being stability of evidence adduced; whether there was inordinate delay on the part of the Appellant in prosecuting the case; and whether the proceedings were bad in law.
11. On the first issue the Respondents submitted and relied on the case of Hubert L. Martin & Others vs Margaret J. Kamar & 5 Others [Supra] and submitted that they held a valid title as per Section 26 of the Land Registration Act. That the witness of the Plaintiff who testified as PW1 clearly stated that the Appellant did not have a Sale Agreement between herself and Githunguri Constituency Ranching Company.
12. Further it is the Respondent's submission that they have stayed on the suit property since 1983 yet the Appellant's claim of ownership since 2002 is not supported with evidence of her whereabouts from the time she became the alleged registered proprietor in 2002. That the authenticity of her title document is denied by DW3 the Chairman of Githunguri Ranching who told the Court that the Appellant was not a Shareholder with Company. He also informed the Court that he has never seen her at the Company complaining about fraud over her suit property. Further it was DW3's testimony that the Appellant's title deed is dated 2002 yet her Share Certificate is dated 2008 which situation is not possible because the Share Certificate comes before title.
13. The testimony of DW 4 and DW5 did not support the title of the Appellant for example DW5 told the Court that the title issued in 2002 had an imprint of February 2003 meaning the title was issued before it was printed. Thus the Respondents submitted that all the documents tabled by the Appellant were contested. Thus the Respondents called for expunging of the said documents from the Court record in line with Article 35 of the Constitution and Section 80 of the Law of Evidence Act.
14. Further the Respondents submitted that despite the Appellant alluding to investigations by the DCIO Ruiru no documents were availed in Court to show this. Even the OB report or number was never presented in Court to lend credence to the assertion. Also there were documents not presented to support the claim such as the Sale Agreement between the Appellant and Githunguri Ranching Co. Ltd, no ballot from Githunguri, no payment receipts, and no Clearance Certificate.
15. On the part of the Respondents they submitted that the late Willy Waiharo Muchiri bought ballot number 680 from Githunguri and he was allotted 1¼ acres which he gave to his two sons namely the 4<sup>th</sup> Respondent and Peter Nguiru. Upon the husband's death she applied for the plot to be registered in the names of the 1<sup>st</sup> to 4<sup>th</sup> Respondents. On why the suit property was registered in the name of Githunguri Ranching the Respondents submitted that the selling Company are the original owners of the suit land and once a register is freshly opened it is done in their name first and then transferred once they present a Clearance Certificate. This process was confirmed when DW4 a representative of the 5<sup>th</sup> Respondent testified.
16. The Respondents also submitted that while relying on Argan Wekesa Okumu vs Dima College Limited & 2 Others [2015] eKLR. The Respondents submitted that the Appellant dilly dallied a lot during trial and even the so called investigation of DCIO there was nothing to show for it. Instead this was an excuse to stay the proceedings which would be injurious to the Respondents.



17. On the last issue the Respondents submitted that the Appellant did not prove in Court that she obtained her title deed after following the laid down procedure and her title is under challenge since she failed to prove her claim on a balance of probabilities.
18. The 1<sup>st</sup> to 4<sup>th</sup> Respondents urged the Court to dismiss the Appeal in its entirety.

### **5<sup>th</sup> Respondent's Submissions**

19. The 5<sup>th</sup> Respondent did not participate in the Appeal and so they filed no submissions.

### **Analysis and Determination**

20. I have looked at the Memorandum of Appeal, the Record of Appeal and the rival submissions in totality; I find that the main issue arising for determination is whether this Court should interfere with the exercise of discretion by the trial Court and set aside its Judgment issued on 2/12/2021.
21. This Court's jurisdiction as a first Appellate Court is to reappraise the evidence or issues which were before the trial Court and make its own conclusion but does not entail taking on board matters which were never brought to the trial Court's attention or which were not subject of the said Court's consideration. See the Court of Appeal decision in *OI Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR.
22. In *Selle v Associated Motor Boat Co* [1968] EA 123) the Court held as follows:-

“This Court must consider the evidence, evaluate it itself and draw its own conclusions though in doing so it should always bear in mind that it neither heard the witnesses and should make due allowance in this respect. However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or of the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
23. The main issue before the trial Court was on the ownership and/or proprietorship of the suit property No Ruiru/Ruiru East Block 1/1407. It was the Plaintiff's contention that she is the registered owner of the suit parcel and she further averred that the 1<sup>st</sup> to 4<sup>th</sup> Defendants obtained a title to the suit property fraudulently.
24. I will now proceed to re-evaluate and re-assess each of the party's claim from the trial Court record and the Judgment; in order to determine whether the Trial magistrate rightly exercised his discretion in holding in favour of the Plaintiff/ Respondent.
25. The Appellant's Appeal is premised on the 7 grounds in her Memorandum of Appeal upon which she sought to challenge the Judgment of the learned Trial Magistrate. The said grounds can be summarized into issues of ownership of the suit land, the evidence presented in support of the respective claims by both parties in the trial Court and evaluation of the testimony and exhibits, issues of fraud in the acquisition and registration of Respondents as the legal owners of the suit land and whether the Appellant is entitled to the suit property by virtue of holding a Title Deed as a registered proprietor.
26. The 1<sup>st</sup> to 4<sup>th</sup> Respondents on the other hand have maintained that they are the rightful owners of the suit parcel having followed the due process in having the same registered in their names by virtue of transmission. They urged the Court to dismiss the claims by the Appellant.



27. I will now seek to determine the issues arising from the Appeal as hereunder. I have critically looked at the record, the testimony of the various witnesses and exhibits produced by the parties in support of their respective cases; I do note that the testimony of the Defence, DW1 and DW2 was mainly centered on the issue of being a beneficiary of the estate of their deceased father and the Confirmed Grant issued in Succession Cause in 2004 in the estate of Waiharo Muchiri. The Plaintiff/Appellant did not produce any exhibit in support of the claims of fraud on the part of the 1<sup>st</sup> to the 4<sup>th</sup> Defendant/Respondents as alleged.
28. During trial the Plaintiff/Appellant I have noted with concern laced heavy reliance on the fact that she is the owner of the suit property. Despite not having documents to support this claim of her ownership and purchase of the suit property from Githunguri Ranching Company. It was her testimony that she purchased the suit property from Githunguri Constituency Ranching Company and was issued with Share Certificate number B0278 and was then issued with a title deed on 5/05/02 but later discovered that the 1<sup>st</sup> to 4<sup>th</sup> Defendants had sub-divided the suit parcel fraudulently. She produced, the Power of Attorney, Green Card, Copy of Title Deed, Copy of Search, Witness Statement for PC Timon Melly, Witness statement for PC Goretti Wairimu, Receipt of Search and Share Certificate.
29. Despite some of these documents being said that they were obtained from the Land Registry, the Defence witness, DW5 John Ondigo who works at the Government Printers testified that he did not have a copy of the Green Card produced by PW1 as PWexh. 1 in their records. He also told the Court that the title deed in the name of the Plaintiff/Appellant, Veronica Ngithi Muiruri was found by the Government Printer to be not genuine as they did not originate from their office.
30. DW5 told the Court that the Plaintiff's document was allegedly issued on 7/05/2002 was not procedural because the imprint on it is dated February 2003. Meaning the document was issued before it was printed. Further that the Plaintiff's title deed has 5 digits as its serial number yet the ones printed by the Government Printer has 6 digits. On his part DW4 produce a Green Card for Ruiru/Ruiru East Block 1/1407 which show that the land was registered in the names of the 1<sup>st</sup> to 4<sup>th</sup> Defendants on 2/6/2016.
31. On the other hand Respondents produced a total of eleven documents including a copy of the title deed Ruiru/Ruiru East Block 1/1407 for the 1<sup>st</sup> to 4<sup>th</sup> Defendants and another copy of the title deed Ruiru/Ruiru East Block 1/6088 in the name of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. All of the eleven documents proved the process of registration of the suit land in the Respondents' names, which in my view was a legal process. The said exhibits produced were not challenged and thus remain uncontroverted. Section 26 of the *Land Registration Act*, provides that a Certificate of Title shall be held as the prima facie evidence of ownership. It further provides the 2 instances where a title can be cancelled; the Appellant has not satisfactorily demonstrated why the said title should be cancelled. In the absence of proof, I agree with the trial Court's finding that the Respondents are the registered proprietors of the suit parcel.
32. From the statement of Gorett Wairimu Willy which she recorded at CID Ruiru on 12/06/2014 she stated that in the year 2004 they filed the Succession Cause before Kiambu Chief Magistrate and she with her step mother Mary Murungi Waiharo, Hannah Wangare Willy became the administrators of the estate of the late Willy Waiharo Muchiri who was her father and was deceased in 1993. This fact is not disputed nor controverted although the Grant was not part of the documents produced in Court.
33. On their part the 1<sup>st</sup> to 4<sup>th</sup> Defendants presented in evidence the following documents; Share Certificate number 3392 dated 17/5/2011, copy of the Share Certificate number 1778 dated 18/3/2011; Clearance Certificate, copy of receipt dated 18/3/2016, Chief's letter dated 13/05/2011, receipt dated



17/05/15, receipt dated 14/8/2015, receipt, copy of title deed for Ruiru/Ruiru East Block 1/1407 for 1<sup>st</sup> - 4<sup>th</sup> Defendants, copy of title deed Ruiru/Ruiru East Block 1/16088 in the name of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants; copy of clearance from Githunguri Ranching Company.

34. Infact DW2 the 4<sup>th</sup> Defendant has been living on the suit land since 1983 with his brother Peter Mbiru beneficiary of the estate of his deceased grandfather Remjius Olare Onditi and the allegations of fraud in obtaining the Confirmed Grant of Letters of Representation. I wish to restate that the jurisdiction of this Court is limited to matters involving the environment and use, occupation and title to land as aptly stated under Article 162 (2) (b) of *the Constitution* as read with Section 13 of the *Environment and Land Court Act*. This Court is therefore not vested with the requisite jurisdiction to entertain and/or determine who are the beneficiaries and dependants in the estate of a deceased person. To this end I am unable to determine grounds 1, 3, 5 and 6 of the Memorandum of Appeal.
35. It is trite law that he who alleges must prove. Section 107(i) of the *Evidence Act* provides that:-
- “Whoever desires any Court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
36. The Respondent produced ownership documents to the suit title. Section 25 and 26 of the *Land Registration Act* is clear as to what amounts to conclusive evidence of ownership and the rights and privileges accruing to the registered proprietor thereto. In the absence of any proof to the contrary, I find that the documents produced by the Respondents are sufficient proof of ownership. Section 24 of the *Land Registration Act* states that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.
37. In view of the foregoing, I find that the Learned Trial Magistrate exercised his discretion properly in dismissing the Plaintiff’s claim. The analysis and subsequent decision took into account the evidence on record and the facts of the case.
38. Given the foregoing, I accordingly find that the Memorandum of Appeal dated December 22, 2021 is not merited and is hereby dismissed with costs to the Respondents. It is so ordered.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 27<sup>TH</sup> DAY OF MAY 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J**

**JUDGE**

In the presence of:

Mr. Kinyua for the Appellant

Mr. Kamonjo for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents

5<sup>th</sup> Respondent – Absent

Mr. Melita – Court Assistant

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**MOGENI J**



**\*\*JUDGE\***

