



Gitere v Gitere Kahura Investments Limited & 3 others (Environment and Land Case Civil Suit E049 of 2022) [2025] KEELC 3551 (KLR) (6 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E049 OF 2022**

AY KOROSS, J

MAY 6, 2025

BETWEEN

SAMUEL MBURU GITERE PLAINTIFF

AND

GITERE KAHURA INVESTMENTS LIMITED 1ST DEFENDANT

DAVID WAKANGU GITERE 2ND DEFENDANT

KENNETH KIMARI GITERE 3RD DEFENDANT

LUKAS WAITHAKA GITERE 4TH DEFENDANT

JUDGMENT

Background of the case

1. As will emerge later in this decision, it is paramount to contextualise the relationship between the parties, the relationship of relevant previous cases to this case and also identify the parcels of land that are the subject of this court's determination.
2. The plaintiff and the 2nd – 4th defendants are siblings and are all children of Gitere Kahura and Mary Nyokabi who are all deceased (they shall jointly be referred as “deceased parents”).
3. During their lifetime, the deceased parents were blessed with 12 children, one of whom is deceased-Peter Kahura Gitere.
4. These deceased parents accumulated a vast estate, some of which was registered in their personal names or the 1st defendant's name. But of particular interest to this suit is the stake the deceased parents had in the 1st defendant, which is a family company.
5. With foresight, the deceased parents incorporated the 1st defendant on 19/07/1977 and consolidated some of their investments in it, with each one of them owning a share.



6. Upon their demise, their vast estate was the subject of probate proceedings, with that of the deceased father Gitere Kahura being Nairobi High Court Succession Cause No. 265 of 2009 and of the deceased mother Mary Kahura being Nairobi High Court Succession Cause No. 373 of 2016.
7. In the course of the probate proceedings on the deceased's father's estate, the beneficiaries of the estates of the deceased parents reached a settlement, and the consent letter dated 16/09/2014 was adopted by Justice W. Musyoka on 24/09/2014 as an order of the court.
8. The grants of the deceased parents were all confirmed on 20/09/2018. Importantly, the administrators of these estates were the plaintiff, the 3rd defendant and their sister Anne Wanjiru Gitere (Anne).
9. Although these administrators are referred to in the consent order as directors of the 1st defendant, it appears this has not been effected, and it arises that the 1st defendant's directors, as per the CR12 of 26/09/2014, are the 2nd-4th defendants.
10. According to the grants, each of the 12 children including the deceased son who was now represented by his widow Rebecca Wambui Kahura, were each to hold an equal share in the 1st defendant.
11. At this point, this court is unsure if the shareholding was effected by the registrar of companies since the CR12 presented to the court only reflects the estates of the deceased parents as shareholders.
12. To bring into fruition the consent order and confirmed grants, the 1st defendant held a meeting on 24/10/2018 with the 12 children attending physically or by nomination, except the plaintiff and Anne.
13. Of significance, one of the agendas of this meeting was to divide the properties of the 1st defendant's agricultural and urban properties amongst the 12 children as per the consent order.
14. As evident from the minutes, the consent order was approved and adopted by a resolution of directors and/or shareholders.
15. From the minutes that emanated from this meeting, it was agreed that agricultural land would be surveyed and subdivided among the 12 by balloting and that these lands and commercial apartments would be transferred to each of the 12 according to the consent order.
16. It appears the subdivision of certain agricultural parcels of land that allegedly belong to the 1st defendant took place, and the plaintiff is dissatisfied with how they were divided.
17. Before this court proceeds with summarising each of the parties' cases, it must be mentioned that the defendants had earlier on questioned this court's jurisdiction, and, in a ruling rendered on 19/10/2023, this court declined this quest. This decision has not been reviewed and or set aside.
18. Further, in the decision of *Gitere & another (Both Suing on behalf of Gitere Kahura Investments Limited) v Gitere & 5 others* [2023] KEHC 2318 (KLR) that involved some of the parties herein, the court in a ruling of 5/02/2021, declined to grant the plaintiff and Anne permission to proceed with the suit as a derivative case.

Plaintiff's case

19. In a plaint dated 10/02/2022 filed by the law firm of Ms. Gacheru Ng'ang'a & Co. Advocates, the plaintiff contended the following properties were registered in the 1st defendant's names: -
 - I. LR. No. 5980/4 (Windsor farm), which is 60 acres in size and is located in Nairobi County.
 - II. LR No.8943/7 and LR No. 9946 (Midas farm), which is 664 acres and is located in Nakuru County.



- III. LR No.4872/1 and LR No. 4872/2 (Ruiru farms), which are both 224 acres and are located in Kiambu County.
- IV. Njeneni Farm, which is 71 acres and is located in Nakuru County.
- Jointly, these properties shall be referred to as the “suit properties” but separately, they shall be respectively referred to as “Windsor”, “Midas”, “Ruiru” and “Njeneni” farms.
20. The plaintiff did not challenge the resolutions of the company by its directors and shareholders; nevertheless, he averred that these resolutions contemplated an equal and fair subdivision of the suit properties in value and size. He admitted he did not participate in the balloting process,
21. Concerning the subdivision of Windsor farm, he stated he did not have qualms with it, save that the title document for his portion, which was LR. No. 5980/66 should unconditionally be released to him, and the defendants should account for the 1 acre that was hived out of it.
- 2.2 As for Midas farm, he stated portions allocated to him in it were 31750/2 and 31750/3, which measured approximately 40 acres. His contest with the subdivisions was that it created 17 portions instead of 12.
23. Additionally, they were unfairly subdivided in terms of value and size, as some touched the tarmac and others did not. Of interest to his portions, he stated they were inaccessible and sat on a riparian area. He wanted the subdivisions thereof to be cancelled, and a fresh one conducted and carried out in accordance with the resolution.
24. Turning to Ruiru farms, he stated the defendants had commenced subdivision but had failed to show him his portion. Similar to Midas farm, he sought for the subdivision to be cancelled, and a fresh one conducted in accordance with the resolution of shareholders.
25. Lastly, on Njeneni farm, he stated despite the company's resolution on its subdivision, it was still in the exclusive control of the 3rd defendant and he sought for its immediate subdivision.
26. Ultimately, he sought the following reliefs from the court: -
- a. An order that the defendants herein do forthwith and unconditionally issue to him, the title document for LR No. 5980/66, a subdivision of LR No. 5980/4-Windsor.
 - b. An order that the defendants do account for the extra parcel in the subdivision of LR No. 5980/4, being LR No. 5980/60.
 - c. An order does issue cancelling all the subdivisions and resultant deed plans/maps on LR No. 8943/7 and LR No. 9946 (Midas farm), and LR No. 4872/1 & LR No. 47872/2 (Ruiru Farms).
 - d. An order that the costs occasioned by cancellations of the subdivisions and resultant deed plans/maps on LR No. 209739 (Midas farm) and LR No. 4872/1 & LR No. 47872/2 (Ruiru Farms) be borne by the 2nd to 4th defendants.
 - e. An order that the said LR No. 8943/7 and LR No. 9946 (Midas farm), LR No. 4872/1 & LR No. 4872/2 (Ruiru Farms) and Njeneni farm be subdivided afresh equally into 12 equal portions, so as to give effect to equal value and size to each shareholder.
 - f. Any other or further relief this honourable court may deem fit to grant in the interest of justice.



2.7 It is worth noting that against the assertions made in the defendants' defence, the plaintiff filed a reply to the defence dated 24/03/2022.

Defendants' case

28. By the law firm of Ms. AGN Kamau, the defendants filed a defence dated 15/03/2022 in which they admitted that Windsor and Midas farms belonged to the 1st defendant.
29. However, it was averred that Ruiru and Njeneni farms were not owned by the 1st defendant as the former belonged to Kenya Box Body Builders, a liability limited company and the latter by the 4th defendant and one of the siblings, David Itibi Gitere.
30. They admitted the subdivisions, except for that of Njeneni farm and LR No. 4872/2, which is one of the parcels under Ruiru farm, were conducted per the resolution of the majority of the 1st defendant's shareholders and directors which they argued, was anchored on fairness and equity.
31. It was averred that furthermore, LR No. 4872/2 is the subject of a live court case, to wit Gitere Kahura Investments Limited & another v Kenya Planters Co-operative Union Limited & another [2017] KEELC 2918 (KLR) and thus encumbered.
32. As for the 1 acre hived out of Windsor farm and retention of the plaintiff's title document, it was asserted by resolution of shareholders, this 1 acre was sold to meet various liabilities owed by the 1st defendant to Kenya Revenue Authority (KRA) and National Bank of Kenya (NBK).
33. It was asserted further that each of the shareholders was required to remit to the 1st defendant kshs. 10,000,000/- to cover related costs for planning, survey, conveyancing and attendant costs.

Issues for determination

34. Having considered the pleadings and evidence of the parties during the hearing, the following issues commend themselves for determination: -
 - a. Whether Njeneni farm is properly described in the plaint and capable of subdivision.
 - b. Whether Midas and Ruiru farms were the subject of the consent order and the 1st defendant's resolutions.
 - c. If (b) is in the positive, should the subdivisions thereof be cancelled?
 - d. Whether the defendants should account for the 1 acre hived off from Windsor farm being LR No. 5980/60.
 - e. Whether the title for LR No. 5980/66 should be released to the plaintiff.
 - f. What appropriate orders should be granted, including an order as to costs?

Plaintiff's case

35. The plaintiff testified as PW1 and in support of his case, placed reliance on his witness statements and documentary evidence, which were marked and produced as PEX1-24.
36. It was his testimony that amongst the siblings, the 3rd defendant was the longest-serving director of the 1st defendant because, upon the demise of their mother, he (3rd defendant) was appointed as co-director by their deceased father.



37. He maintained that amongst all the shareholders of the 1st defendant, he was the only one who had sued and that his properties had never been attached to defray any expenses, and as a minority shareholder, he could sue as he had done.
38. When questioned why he approached the court without resolving his grievances with the defendants internally, he stated he called for a meeting verbally, but his siblings were unresponsive.
39. He agreed that as family members, they should endeavour to resolve their differences internally instead of rushing to court. He further testified he was not aware of the subdivision process and that he only learnt of it from other persons.
40. But when he was questioned further, he refuted this testimony and admitted he was aware of the balloting process but refused to attend it. He stated he was in possession of LR No. 5980/66.
41. As for the process of subdivision of Windsor farm, he stated that a change of user was made over it from agricultural land to commercial, approvals were conducted for subdivision, a surveyor visited the farm, and payments were made towards settlement of land rates, planning and other statutory requirements.
42. Nevertheless, he admitted he never made a single payment towards these processes and if he was asked to settle the requisite sums of kshs. 10,000,000/- as expenses towards such acquisition, then, he would settle this account. Moreover, he testified he had never requested the defendants to release the title of LR No. 5980/66 to himself.
43. In regard to the 1 acre in Windsor farm, he stated he was aware it had been sold by the defendants and that he had called for a meeting of directors and shareholders over it, but there was a no-show.
44. When he was questioned whether he was aware of the 1st defendant's loan and outstanding land rates and rent, he stated he was indeed privy to them.
45. On the issue of the loans, he denied knowledge of them but when he was pointed to PEX.22 which was an affidavit of the 2nd defendant elaborating on the 1st defendant's loans, he stated that even if the 1 acre was utilised towards the settlement of debts, then at least, a meeting on such a resolution should have been held.
46. As for Midas farm, he stated he was not aware 20 acres was hived off for a coffee factory, homestead, reserves and roads. According to him, only 17 acres had been hived off.
47. He argued he was not present during the distribution of portions of Midas farm, but he stated his portions were far off removed from the tarmac, unlike that of the others and conceded he did not even have a subdivision scheme with him.
48. As for Ruiru farm, he agreed they belonged to Kenya Box Body Builders, which was owned by their deceased father and a Mr. Mbugua and he agreed it was encumbered and could not be subjected to subdivision.
49. In respect of the ownership of Njeneni farm, he maintained it was owned by the 1st defendant but he did not tender any documents demonstrating this.

Defendants' evidence

50. The defendants' testimony was composed of that of the 3rd defendant, who testified as DW1. In support of their case, he relied on his witness statement and documentary evidence, which were marked and produced as DEX1-8.



51. It was his testimony that the plaintiff and Anne were yet to be co-opted as the 1st defendant's directors.
52. According to him, the 1st defendant usually calls for meetings every Friday and the plaintiff is typically invited but unfortunately, he (the plaintiff) absconds.
53. He admitted several properties of the 1st defendant were encumbered and that the consent order was expressive on how the distribution of various properties, including that of the 1st defendant, was to be conducted, and the consent was arrived at after negotiations were steered by his counsel on record and SC. Mr. Kuria.
54. He asserted the probate court merely distributed the shares of the company and left it to the shareholders and directors to deal with the assets of the 1st defendant.
55. With respect to Windsor farm, he stated by company resolutions, the 1 acre was sold for ksh.100,000,000/- to cater for loans and KRA demands but failed to produce these resolutions to the court or evidence of such outgoings. He also conceded the plaintiff was entitled to this amount.
56. As for the 10,000,000/- demanded from the plaintiff as expenses before the release of title no. LR No. 5980/66 to him, he stated this was contained in the 1st defendant's resolution yet again, he equally failed to table evidence of such outlays.
57. As for Midas farm, he stated the extra portions were in tandem with the consent order, as 20-25 acres had been set aside for a coffee factory, a homestead, a borehole and 2 dams, and additionally, 2 title documents over it belonged to the plaintiff. Moreover, he maintained that all siblings had been apportioned 40 acres each.
58. Regarding the balloting process, whose subdivision plan was prepared by a planner, he stated that at the instigation of their counsels, parties were invited to the process, with the plaintiff being represented by SC. Mr. Kuria.
59. He testified that it emerged during the balloting process that his property was close to the tarmac, others close to the river and the plaintiff's portion, which had not been balloted for, was off the tarmac.

Parties' submissions

60. After the conclusion of the hearing and as directed by the court, all parties filed written submissions.
61. The plaintiff's counsel's written submissions dated 17/01/2025 identified the following issues for determination; whether this court has jurisdiction, whether the sub-division and allocation of Windsor, Midas, and Ruiru farms had been done equally and fairly as per the resolution of the shareholders and lastly, whether Njeneni farm should be subdivided as per the resolution of the shareholders.
62. The defendant's counsel's written submissions dated 25/02/2025 and identified the following issues for determination; can the plaintiff as director and shareholder of the 1st defendant sue his company and co-shareholders and directors by way of a plaint, does this court have jurisdiction to entertain such a claim, has the plaintiff proved his case on a balance of preponderance and lastly, who should bear costs of the case.
63. Upon identifying and considering the issues for determination, this court will, in its analysis and determination, consider the respective counsels' arguments on the particular issue and also consider provisions of law and authorities they relied upon to advance their arguments as contained in their submissions.



Analysis and Determination

64. The issues that were earlier identified as arising for determination shall be handled shortly, separately and simultaneously.

a. Whether Njeneni farm is properly described in the plaint and capable of subdivision

65. In the evidence, it emerged this farm was immovable property, and unfortunately and in agreement with the defendants' counsel, the title document of this property or a certificate of official search was never availed to this court.

66. As required by Order 4 Rule 3 of the Civil Procedure Rules (CPR), the plaint was required to adequately describe this property in a manner that is capable of identification, such as by its LR or IR No. This provision states:

“Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it.”

67. Pointedly, the closest this court deciphered its registration details (if all), is through the consent of the Bahati Land Control Board (LCB) by Njeneni Estates Ltd over LR No. 24161/4 to David Gitere (one of the siblings) and 4th defendant.

68. The consent order and 1st defendant all refer to Njeneni farm and if indeed it is the same property as the subject matter herein, then, its title document has to be perfected in the 1st defendant's name. It is only after this, that it can be the subject of a subdivision process by the 1st defendant.

69. Hence, for reasons of inadequate description of the Njeneni property in the plaint, and the plaintiff did not prove this property is registered in the 1st defendant's name, this court finds the plaintiff's claim fails in respect of this property.

b. Whether Midas and Ruiru farms were the subject of the consent order and 1st defendant's resolutions.

70. None of the counsels addressed the court on this issue, but as demonstrated by the pleadings and evidence, the basis of the plaintiff's claim on properties that allegedly accrued to him was grounded on the consent order of 24/09/2014 and the 1st defendant's resolution of 24/10/2018.

71. Notwithstanding the plaintiff argued it was based on these documents that he was entitled to portions of these parcels of land, which he particularised as LR No. 8943/7 and LR No. 9946 (Midas farm) and LR Nos. 4872/1 & LR No. 47872/2 (Ruiru Farms), these properties do not exist in the consent order and resolution.

72. On scrutiny and as evidenced by the consent order and resolution of 24/10/2018, the properties that have been captioned as Midas farm are referenced as LR. Nos. 8943/10 and 9946/2 and Ruiru farm as 4871/1 and 4871/2.

73. It was also observed the title documents availed to this court on Midas farm were that of LR No. 8943/7 and LR No. 9946. Therefore, it is uncertain if there was an error in the resolution and consent order.

74. It must be noted the title documents of Ruiru farm, which were in the form of indentures over LR Nos. 4872/1 & LR No. 4872/2 were ineligible and appeared incomplete; hence, this court was constrained from establishing the interests of Kenya Box Body Builders over them.



75. Be that as it may, in the absence of a court order and/or a resolution by the 1st defendant on the subdivision Ruiru and Midas farm as specifically defined in the plaint as LR Nos. 4872/1, 4872/2, 8943/7 and 9946, this court finds that the claims over these particular suit properties were premature. Thus, a determination of issue (c) falls by the wayside.

(c) Whether the defendants should account for the 1 acre hived off from Windsor farm being LR No. 5980/60.

76. Section 3 of the *Evidence Act* defines evidence as:

“evidence” denotes the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved; and, without prejudice to the foregoing generality, includes statements by accused persons, admissions, and observation by the court in its judicial capacity”

77. Concerning this denotation of evidence, the plaintiff bore the burden to prove or disprove the facts as envisaged in Sections 107, 108 and 109 of the *Evidence Act*. These provisions provide as follows: -

“107. Burden of proof.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

78. In regard to the dealings on the 1 acre and as proof of allegations against the defendants, the plaintiff presented the consent order and resolution of 24/10/2018 which all showed Windsor farm was to be divided amongst the 12 shareholders.

79. In verbatim, the resolution at minute 5 (f) reflected the consent order in the following words: -

“Muiruthi farm LR. No. 5980/4. This will be divided equally and fairly among the twelve children of the deceased and Mrs Mary Nyokabi Gitere.”

80. When faced with this evidence, the DW1 refuted this resolution by asserting there was another resolution that was ratified by the directors that rescinded this resolution.

81. Still, such an effort was unsuccessful as he failed to prove the existence of any other resolution apart from this one, and this court is satisfied the plaintiff proved his claim on this.



82. It arose from the evidence that the plaintiff has made peace with the sale of this 1 acre by the defendants to an undisclosed 3rd party. Consequently, and as rightfully pleaded, as a minority shareholder, the plaintiff is entitled to an account of the proceeds of the sale LR No. 5980/60.
83. Undoubtedly, as directors of the 1st defendant, the 2nd to 4th defendants were called upon to conduct their mandate conscionably and equitably and this court draws guidance on their role from the Supreme Court of Kenya decision of Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) which stated:-

“Directors have continuing powers and duties. Their statutory duties include: the preparation of annual accounts; the auditing of those accounts; calling the statutory meetings of shareholders; maintaining the share register and lodging returns. (see Hawkesbury Development Co Ltd v Landmark Finance Pty Ltd (1969) 2 NSW 782.”
84. The defendant’s counsel argued that, though as admitted by DW1, the 1st defendant received the sum of kshs. 100,000,000/- from the sale of LR No. 5980/60, sufficient evidence had been presented on how these sums were expended.
85. With a contrarian argument from the plaintiff’s counsel, which this court firmly agrees with, DW1 did not present an iota of evidence to substantiate his allegations.
86. In this court’s humble opinion, since DW1 asserted the consideration that arose from the sale were utilized towards payment of loans and KRA which are ordinarily accompanied by documents such as bank statements, cheques, invoices, receipts and the like, he was expected to present these documents to court which he did not.
87. Thus, and in considering the totality of the evidence on this issue, this court finds the plaintiff proved his claim on this issue to the required standards and this court finds he is entitled to an account for the sale LR No. 5980/60.

d. Whether the title for LR No. 5980/66 should be released to the plaintiff.

88. All parties agreed that Windsor farm was the subject of the consent order of 24/09/2024 and the 1st defendant’s resolution of 24/10/2018.
89. It was undisputed that the title document of this particular property is available for collection from the 1st defendant and that statutory and professional services and expenses were incurred towards hiving off LR No. 5980/66 from Windsor farm.
90. The only hindrance to such a release of the title by the 1st defendant thereof was the refund of incidentals by the plaintiff which the defendants pegged at 10,000,000/-.
91. In agreement with the plaintiff’s counsel, it is, without doubt, no shred of evidence was presented on how this figure was arrived at, and this court agrees with counsel that in the absence of invoices and receipts of payment, this figure was unsubstantiated.
92. Nevertheless, in such transactions as the case herein, some expenses are usually incurred towards a change of user, payment of land rent and rates, survey and registration fees amongst others. The plaintiff was alive of these expenses, and he stated he was willing and ready to settle the account.
93. Accordingly, this court finds that the plaintiff proved his claim under this head and is entitled to the release of the title for LR No. 5980/66 and further finds that he should reimburse the 1st defendant for expenses incurred during the subdivision of Windsor farm.



(e) What orders should this court issue including an order as to costs?

94. In the end, and for reasons and findings stated above, this court finds the plaintiff was partly successful in his claim. It is trite law that costs follow the event. Bearing in mind the familial and shareholding relationship of the parties in the 1st defendant, which is a family company, each party shall bear their respective costs of the suit.
95. Ultimately, this court hereby issues the following final disposal orders: -
- a. That within 60 days of this judgment, the defendants shall deliver to the plaintiff a detailed, complete and accurate statement of account for the proceeds of the sale of LR No. 5980/60 and any funds found unaccounted for, shall within 30 days of remission of the statement of account to the plaintiff, be deposited in the 1st defendant's bank account.
 - b. That within 60 days of this judgment, the defendants shall deliver to the plaintiff an invoice of expenses that the 1st defendant incurred as overheads towards hiving off of LR No. 5980/66 from LR. No. 5980/4.
 - c. That for the avoidance of doubt, the statement of account and invoice respectively mentioned in clauses (a) and (b) above shall be accompanied by supporting documents that include an agreement for sale, bank statements, receipts and invoices amongst others.
 - d. That upon full compliance with orders (b) and (c) above, the plaintiff shall, within 60 days of receipt of the supported invoice, pay in full the sum due and owing to the 1st defendant.
 - e. That upon compliance with order (c) above by the plaintiff, the defendants shall, within 14 days thereafter, unconditionally release the title document of LR No. 5980/66 to the plaintiff.
 - f. That each party shall bear their respective costs of the suit.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 6TH DAY OF MAY, 2025.

HON. A. Y. KOROSS

JUDGE

06.05.2025

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

N/A for parties

Ms Kanja- Court Assistant

