



**Kiragu v Waraki & another (Environment and Land Appeal
15 of 2023) [2025] KEELC 3613 (KLR) (7 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3613 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL 15 OF 2023**

LN MBUGUA, J

MAY 7, 2025

BETWEEN

NANCY WAMBUI KIRAGU APPELLANT

AND

JOHNSON KINGORI WARAKI 1ST RESPONDENT

MATANYA ESTATE LTD 2ND RESPONDENT

*(Being an appeal from the judgement of Hon B. Mararo (SPM)
delivered on 17.10.2023 in Nanyuki CMELC No. 64 of 2018)*

JUDGMENT

1. The suit before the trial court was instituted by John Kingori Waraki as the plaintiff against two defendants namely; Nancy Wambui Kiragu and Matanya Estate Ltd vide a plaint dated 20.7.2017 . The plaintiff claimed that he was a member of the 2nd defendant which was a land buying company where he was allocated plot no. 934. That he was issued with a clearance certificate on 12.5.1998 to await processing of a title. However the title to the said land was issued to the 1st defendant (now the appellant).
2. The plaintiff sought the following orders;
 - “ a) A declaration that the plaintiff is/was the rightful allottee of LR. Laikipia/ Nanyuki West Timau Block 2/934 (Marura) by the 2nd defendant
 - b) An order that the registration of the 1st defendant as the proprietor of LR Laikipia/Nanyuki West Timau Block 2/934 (Marura) and subsequent issuance of title deed was made by error or mistake.



- c) An order that the register be rectified by the Land Registrar Laikipia County and the plaintiff be registered as the proprietor.
 - d) That costs be awarded to the plaintiff.
 - e) Any other or better relief.”
3. The 1st defendant, now the appellant opposed the suit through a statement of defence and counterclaim dated 11.7.2018 where she denied the allegations levelled against her. In her counterclaim, she also claimed entitlement to the suit property by virtue of her father having been a member of the 2nd defendant and she therefore prayed for judgment in the following terms;
- “ 1. The plaintiff’s suit be dismissed.
 - 2. The 1st defendant’s counterclaim be awarded as prayed.
 - 3. A declaration that the suit property, land parcel Laikipia/Nanyuki/West Timau Block 2/934 (Matanya Marura) was legally and duly registered to the 1st defendant.
 - 4. A declaration that the Land Registrar wrongly and without due process placed a restriction on the suit property and further acted ultra vires by placing a gazette notice stating that the suit property was erroneously issued to the 1st defendant.
 - 5. An order for the Land Registrar to remove the restriction placed on the suit property, land parcel Laikipia/Nanyuki/West Timau Block 2/934 (Matanya Marura).
 - 6. Costs to be awarded in favour of the 1st defendant.”
4. The 2nd defendant , now the 2nd respondent also opposed the suit vide its statement of defence dated 26.10.2017 where it denied plaintiffs claim contending that the suit parcel was allocated to the 1st defendant.
5. In a judgment delivered on 17.10.2023, the trial court dismissed the counterclaim of the 1st defendant while allowing the claim of the plaintiff in the following terms;
- a) That the 1st defendant’s counterclaim against the plaintiff is hereby dismissed with costs.
 - b) That a declaration is hereby issued that the plaintiff is/was the rightful allottee of LR. Laikipia/ Nanyuki West Timau Block 2/934 (Maruru) by the 2nd defendant.
 - c) That an order is hereby issued that the registration of the 1st defendant as the proprietor of LR Laikipia/Nanyuki West Timau Block 2/934 (Marura) and subsequent issuance of title deed was made by error or mistake.
 - d) That an order is hereby issued that the register be rectified by the Land Registrar Laikipia County and that the plaintiff be registered as the proprietor of LR. Laikipia/Nanyuki West Timau Block 2/934.
 - e) That the plaintiff shall have the costs of the suit together with interests at court’s rates from the date of this judgment”.



6. Aggrieved by the aforesaid decision, the 1st defendant/ appellant filed her memorandum of appeal dated 6.11.2023 raising seven (7) grounds of appeal enumerated as follows;

- “ 1. The Learned trial Magistrate failed to address his mind to the pleadings on record and evidence by the appellant.
2. The Learned trial Magistrate erred in law and fact by failing to consider and evaluate the entire evidence as well as supporting documents presented by the appellant’s and or their counsel on record.
3. The Learned trial Magistrate erred in law and facts by failing to consider the evidence of the 2nd defendant on record which confirmed the appellant as the lawful owner of the suit land in question.
4. The Learned trial Magistrate erred in law and fact in failing to consider the weight of the evidence by the appellants and ended up with a wrong finding.
5. The Learned trial Magistrate erred in law and fact by failing to find that the appellant had proved to the required standards that she had obtained the title deed the subject of the suit through rightful way and that her title was valid.
6. The Learned Magistrate erred in law and fact by failing to appreciate the weight of the evidence presented by the appellant and thus ending up with wrong findings of dismissing appellant’s counterclaim.
7. The decision of the trial court was against the weight of evidence”.

7. The appellant therefore prays for judgment in the following terms;

1. That the entire judgment and decree of the honourable B. Mararo Senior Principal Magistrate Nanyuki delivered on 17th October, 2023 in Nanyuki MCLE 64 OF 2018 be set aside and substituted with the reliefs sought in the counter claim.
 2. That the costs of this appeal and of the suit be awarded to the appellant”.
8. The appeal was heard via written submissions, of which, the submissions of the appellant are dated 17.2.2025. She contends that she is the lawfully registered owner of the suit property and that the allegations of fraud levelled against her were not proved. It was further submitted that the actions of the Land Registrar Laikipia of cancelling her title suo-moto even before the suit was filed was *utrivires*.
9. The appellant argued that the onus was upon the 1st respondent to prove his case, but he did not discharge the burden of proof, adding that the allocating authority, the 2nd respondent denied allocating the suit parcel to the 1st respondent.
10. In support of her case, the appellant relied on the cases of; *Munyu Maina v Hiram Gathiba Civil Appeal No. 239 of 2009*, Evans Nyakwana vs Cleophas Bwana Ongaro (2015) eklr, and Kisumu Misc. No. 80 of 2008 Republic v Kisumu District Lands Officer & Another (2010) eklr.
11. The submissions of the 1st respondent are dated 7.3.2025 where he reiterated the evidence tendered before the trial court adding that the appellant did not adduce sufficient evidence like a share certificate to prove her case. In support of his case, the 1st respondent relied on the case of Teresia Wangari Mbugua vs. Jane Njeri Nduati & Another (2020) eklr.



Analysis and Determination

12. The duty of the 1st appellate court was explained in the case of *Selle and Another Versus Associated Motor Boat Company Ltd & Others* [1968] Ea 123, where it was observed thus:-

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusion. Though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
13. During the hearing before the trial court, PW1 Jakson Kingori Waruki (Plaintiff/n^{ow} 1st respondent) testified as the sole witness for his case. He adopted his witness statement dated 20.7.2017 as his evidence. He also produced documents in his list dated 20.7.2017 as his exhibits 1-13. In the said statement, Pw1 stated that he had 32 shares in the company (now 2nd respondent) and was entitled to a parcel of land like all other members.
14. That in order to ascertain the parcel of land for a member, balloting was done where members were issued with a members card of which his ballot card was no. 2313 for parcel 934. He paid all the necessary charges on 12.5.1998 and he was issued with a clearance certificate awaiting issuance of title.
15. However, when he presented his documents at lands office, he found that a title had been issued to the appellant. He contends that he is the one in occupation of the suit land, having been shown the land after balloting, adding that the 1st defendant never used the suit land.
16. In his oral evidence, Pw1 stated that Nancy is his niece. He reiterated that they were shown the land after balloting on 7.2.1989 and they were then shown the beacons. He stated that the dispute was tabled before the land Registrar where the 2nd defendant was summoned but it refused to turn up. Thus the land registrar stated that the title was erroneously issued to the 1st defendant.
17. In cross-examination, Pw1 stated that Nancy is in occupation of the suit land. He mentioned two dates as the dates of issuance of the ballot card, that is, 8.8.1996 and 7.2.1994. He stated that the clearance certificate was issued on 12.5.1998. He contends that he was evicted by police.
18. In re-examination, pw1 stated that he used to utilize the land, not anymore as he was evicted.
19. Similarly, DW1 Nancy Wambui Kiragu (now the appellant) was the sole witness for her case. She adopted her witness statement dated 11.7.2018 as her evidence. In the said statement, she contends that her father, Kiragu bought 4 shares in the 2nd defendant's company in her name for ksh 640. That in 1989, the 2nd defendant had bought land in Matanya for its members, thus ballot cards were issued of which her father got no.2312 in her name indicating the plot number. In 1996, her father was issued with a clearance certificate still in her name culminating in the issuance of her title.
20. That she had fenced the land and was cultivating the same.
21. That in year 2012, she set out to subdivide her land into plots, that is when the plaintiff emerged claiming the land.
22. That in March 2015, she was summoned by the land Registrar and was told to carry her title deed of which she complied. Her title was scrutinized and she was told that her title was okay. Months later, she decided to do a search on her land, but the lands officials declined to issue her with the same. So she engaged an advocate who requested for a search and copied the letter to other agencies like the Criminal



Investigating officer and the Ethics and Anti-Corruption Commission. She was given an official search indicating that she was the owner of the land but there was a restriction placed on the said land with no details as to why the restriction was placed on the land. She reported the matter to the DCIO Lamuria requesting for investigations on the land fraud.

23. Then on 13.3.2018, she received the suit papers from the 2nd defendant. That is when she learnt that there was a gazette notice issued by the land Registrar for cancellation of her title on allegation that it was erroneously issued.
24. In her oral evidence, Dw1 stated that her ballot card was issued on 14.1.1989 when she was below 20 years, reiterating that the shares were bought in her name by her father and she was later issued with a clearance certificate.
25. In cross-examination, Dw1 stated that she does not have a share certificate, she only has the clearance certificate.
26. I have considered the evidence on record as well as the submissions of the parties. It is apparent that there were two competing claims before the trial court whereby the 1st respondent and the appellant were tracing their claims to being members of the land buying company which is the 2nd respondent. The 1st respondent has no title, while the search he availed before the trial court indicates that the appellant is the registered owner of the suit land.
27. In the case of *Danson Kimani Gacina & another v Embakasi Ranching Company Ltd* [2014] eKLR, the court stated thus;

“The law on unregistered land, unlike on registered land, is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property”.
28. The 1st respondent availed a document dated 13.11.1968 tracing his membership with Matanya Farmers Society. The second document shows that he had 32 shares in Matanya Estate as at 2.9.1975, then he paid survey fees as per a receipt dated 20.8.1979 and he got s ballot card no. 2313 on 7.2.1989 which was aligned to no 934. He then acquired a clearance certificate on 12.5.1998.
29. On the other hand, the documents availed by the appellant to buttress her claim were a ballot card dated 24.1.1989, receipts for various payments dated year 1980s, clearance certificate dated 24.9.1996, and another dated 18.3.2010, then the title deed issued on 26.5.2010.
30. A scrutiny of the documents availed by the two protagonists reveals that the claim of the 1st respondent can be traced to membership of the 2nd respondent of which, 1st defendant had shares in the aforementioned entity way back in the 1970s. On the other hand, the appellants claim commenced by way of a ballot. There is no evidence to indicate that she was a member of the 2nd respondent. Thus the claim of the 1st respondent is more deeply rooted into the 2nd respondent than the claim of the appellant.



31. In addition the claim of the 1st respondent was the earlier one in time. To this end, I make reference to the Court of Appeal case of Naftali Ruthi Kinyua v Patrick Thuita Gachure & another [2015] eKLR, where the court stated that;

“When the appellant’s documents are compared with those of the 1st respondent, what is apparent is that the appellant’s attempts to secure proprietorship of the suit property were earlier in time than that of the 1st respondent.”

32. In the case of Betha Nduba M’Itwaruchiu v Wachira Wambugu [2018] eKLR, the court (Mbugua J) had this to say in relation to land claims emanating from land buying companies;

“What is apparent in disputes of this nature is that the land buying companies acquire large parcels of land, subdivide the same and allot to various members through a process of balloting”.

33. This far, it is apparent that proof of membership in a land buying company is a defining factor in a claim on land. And in the case at hand, the party who was able to proof membership in the entity known as the 2nd respondent is the 1st respondent.

34. I therefore find that the trial court determined the case properly when he questioned the membership number that was being used by the appellant’s father to pave way for the balloting. Further, I am in agreement with the trial court finding that the registration of the suit land in favour of the appellant was fraudulent.

35. It appears that the land registrar’s office did attempt to cancel the title of the appellant, but there is no evidence of such cancellation. Thus the holding by the trial court for cancellation of the title of the appellant was proper.

36. In the end, I find that this appeal is not merited, the same is hereby dismissed with costs to the 1st respondent.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 7TH DAY OF MAY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Ms. Mwangi for 1st Respondent

Appellant – Absent

2nd Respondent – Absent

Nancy Mwangi – Court Assistant

