



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Wachira (Environment and Land Appeal 15 of 2023)
[2025] KEELC 3831 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3831 (KLR)

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

JM KAMAU, J

MAY 8, 2025

BETWEEN

JANE WANJIRU MWANGI APPELLANT

AND

CATHERINE WAIRIMU WACHIRA RESPONDENT

*(Appeal from the judgment of Hon S Mogute, Principal Magistrate
at Nyahururu in CM delivered on the 13th December 2022 in
Nyahururu Chief Magistrate's Court E L C Case No. 390 of 2018)*

JUDGMENT

1. The Respondent, Catherine Wairimu Wachira filed a suit on 3/12/2018 seeking for the following orders: -
 - a. A permanent injunction do issue restraining the defendant by herself, her servants, agents and/or employees from entering, remaining, cultivating, fencing, cutting down trees, erecting structures and/or in any other way interfering with the Plaintiff's L.R. No. Nyandarua/Kaimbaga/587.
 - b. Costs of the suit plus interest.
 - c. Any other or further reliefs that this Honourable Court may deem fit and just to grant.
2. In the Plaint dated 20/11/2018 the Respondent averred that she is the registered Proprietor of L.R. No. Nyandarua/Kaimbaga/587 having acquired the same on 20/6/2012 through a sale from Jane Gathoni Kinyua, John Kiambati Kinyua and Stephen Mwangi Kinyua for Kshs. 300,000/= and the same was duly transferred to her. The Appellant stopped the Respondent from utilizing and occupying the suit land claiming that her late husband Peter Mwangi Ndiritu had purchased the same from John Kiambati and Stephen Mwangi and a suit had even been filed in Nyahururu CMCC AS No. Civil



- Suit No. 165 of 2012 to nullify the sale. The Respondent claimed that the Suit Land was bought free from all encumbrances. She said that the suit land was valued at Kshs. 1,000,000/= as at the time of filing the suit.
3. Default Judgment was entered on 29/1/2019 in favour of the Respondent but the same was later set aside in an Application dated 15/2/2019 and the Appellant was allowed to defend the suit. She did file a statement of Defence and a counterclaim dated 13/2/2019. In the said Defence, the Appellant pleaded that though the Suit Land was registered in the name of the Respondent, the said registration was procured by way of fraud, illegality, irregularly and unlawfully and that her late husband Peter Mwangi Ndiritu had already bought the Suit land from the same people who sold the land to the Respondent and that she and her late husband had already taken possession of the same in the year 2008. In her counterclaim, the Appellant averred that she was the widow and the administratrix of the Estate of her late husband, Peter Mwangi Ndiritu who was a bona fide purchaser for value of the Suit property having purchased the same from John Kiambati Kinyua, Stephen Mwangi Kinyua and Joseph Kinyua Kiambati (all deceased at the time of filing the counter claim). The three claimed to have had beneficial interest of the suit land having inherited the same from Peter Maranga Kinyua but that the transfer was not yet effected. The Appellant together with her late husband took possession of the land immediately after purchase on 19/2/2008 with the authority of the vendors and their families and that they therefore had overriding interest over the suit land which was superior to that of the Respondent.
 4. The Appellant also claims that the Respondent colluded with John Kiambati Kinyua in order to acquire a Title Deed over the land. She gave the particulars of fraud as:
 - i. Colluding with John Kiambati Kinyua, Stephen Mwangi Kinyua (both deceased) and Jane Gathoni Kinyua to transfer the suit land to herself.
 - ii. Obtaining transfer of the suit land without ascertaining the pre-existing overriding interests therein or degrading the same.
 - iii. Colluding with John Kiambati Kinyua in purporting to obtain succession documents allegedly for the estate of Peter Maranga Kinyua while in fact the same were not related to the said Estate.
 5. The Appellant therefore asked the Court to grant her judgment for:
 - a. A declaration that the registration of the Plaintiff as the absolute owner of the suit land. L.R. No. Nyandarua/Kaimbaga/587 is null and void ab initial and dealer the same as of no consequence and a further declaration that the title and proprietary interest in the suit land herein exclusively and absolutely vests in the Defendant and the estate of Peter Mwangi Ndiritu (deceased)
 - b. An order directing the land Registrar Nyandarua/Samburu/Counties to cancel and/or rectify the register relating the L.R Nyandarua/Kaimbaga/587 and remove the name of Catherine Wairimu Wachira and replace the same with that of Peter Mwangi Ndiritu (deceased) to be administered as part of his estate.
 - c. Costs of the suit and interest.
 6. The Respondent filed a Reply to Defence and Defence to Counter-claim dated 12/3/2019 in which she repeated her averments as contained in the Plaintiff and in the Defence to the Counter-claim she denied the entire claim in the Counter-claim and put the Defendant (page to strict proof thereof.
 7. In her evidence in chief the Respondent repeated her words in the Plaintiff and testified that she was the registered owner of L.R. No. Nyandarua/Kaimbaga/587 and that she was issued with a Title Deed



- on 21/6/2012. This was after Francis Wamugunda had informed her that the land was available for sale. Before purchasing it, the Respondent had made a search from the Land's office on 18/6/2012 and that the names of the Vendors viz. John Kiambati Kinyua, Stephen Mwangi Kinyua and Jane Gathoni Kinyua appeared on the Title Deed. She bought the suit land for Kshs.450,000/= which she
8. paid by two (2) instalments of Kshs. 300,000/=and Kshs. 150,000/= on the date the sale agreement was executed. She said that she was unable to utilize the land because the area Chief restrained her, on the ground that there was a dispute as to the ownership of the land. She then produced the following documents to buttress her claim.
 1. A copy of the official search certificate dated 18/6/2012 showing the ownership of the land to be John Kiambati Kinyua, Stephen Mwangi Kinyua and Jane Gathoni Kinyua.
 2. Copies of sale agreements dated 1/7/2012 and 20/6/2012 with the above and herself as the parties to the same referring to the purchase price over L.R. No. Nyandarua/ Kaimbaga/587.measuring approximately 0.4575 Hectares as Kshs. 450,000/=
 3. Title deed in respect of the Suit Property indicating that the Suit Property has been in her name since 21/6/2012.
 4. A copy of the Title deed showing the property section with her name on the Proprietor.
 - 9 She further testified that the land was being owned by Jane Gathoni Kinyua and who had promised to vacate the land once she harvested her crop that year 2012. She said that she was not aware that the land had been sold to the late Peter Mwangi, husband to the Appellant.
 10. When cross -examined by Mr. Kairu for the Appellant, Catherine said she had done due diligence and found that the land belonged to the sellers and that she could not tell when the Appellant and her late husband got into the land and in re-examination, the Respondent said that the Appellant never showed her any sale agreement and that it was not necessary to find out the history of the land for the official search was conclusive on the issue of ownership.
 11. A witness, Catherine Wagaki Gitonga commenced her evidence in Chief on 17/6/2021. She introduced herself as one working in the High Court Family Division in Nakuru in charge of the Registry. She did produce in Court, the court file in respect of High Court Succession Cause No. 191 of 2007, in the matter of the Estate of Zipporah Wambui Kago with a Grant and Certificate of Confirmation showing Jack Mburu Kago which was issued on 16/7/2001 as the Administrator. There were 2 Certificates of Confirmation -8/11/2010 and 8/6/2011 respectively the latter being a rectified Grant. In the file the names of John Kiambati Kinyua, Stephen Mwangi Kinyua and Jane Gathoni Kinyua and also Catherine Wairimu Wachira were missing.
 12. DW 2 Jane Wanjiru Mwangi, the Appellant testified that she first saw the Respondent on the Suit land in 2012 and when she asked her what she was doing, the Respondent said she was checking on the land. By then she had planted potatoes, maize, beans and peas on the suit land. She told the Respondent that she had no Title Deed for the land. She testified that her husband bought the suit land on 19/2/2008 from John Kiambati and Stephen Mwangi Kinyua. It is 1 ½ Acres and they bought it at Kshs. 180,000/= where they paid Kshs. 170,000/= and the balance was to be paid when the Title Deed was issued to them. A sale agreement was executed. Out of the three (3) only Jane Gathoni Kinyua was alive at the time of her testimony. She then took immediate possession and started cultivating the land. She and her husband could not get a Title Deed because the sellers were wanting to file a Succession Cause in respect to the registered owner i.e. Peter Maranga. The Green Card showed the land moved from Peter Maranga Kinyua to the three (3) on 30/4/2009 vide Succession Cause No. 191 of 2021 (transmissions). She then produced the following documents in support of her case;



1. Rectified Grant for Succession Cause No. 191 of 2001 (produced by DW1) and the original.
 2. Nyahururu Succession Cause No. 175 of 2017 documents.
 3. Sale Agreement dated 19/2/2008 between the three (3) sellers and the Appellant's husband
 4. Letter from the Area Chief dated 6/10/2008.
 5. Green Card
 6. A further sale Agreement of 23/10/2008.
 7. Another sale agreement dated 14/7/2011.
 8. Agreement of sale dated 6/10/2008
13. On cross-examination Jane said they paid Kshs. 70,000/= on the execution of the Agreement and were left with a balance of Kshs. 110,000/= which was to be paid on 31/10/2008 but which the sellers refused to come for. There was no Consent from the Land Control Board because of the ensuing dispute. She said she was not aware the Title Deed was issued to the Respondent. She said she was not aware that her husband's purchase price had been refunded after he failed to pay up the balance. She could not sue Jane Gathoni because she had no dispute with her. She said the Respondent was issued with a Title Deed on 21/6/2012. On re-examination she said that her late husband had sued Kiambati and the Respondent herein in Nyahururu CMCC 165 of 2012.
14. DW 3 Naomi Chonde, a Court Administrator in Family Division appeared in court to produced the file relating to Nairobi High Court Succession Cause No. 191 of 2001 in the Estate of George Omondi Omogi where the Administrators were Selemanya Ouma Omogi and Robert Kasera Omogi. She said that the name of the Appellant does not appear anywhere as a beneficiary or an administratrix. Same for Peter Maranga Kinyua. Then the Judgment of the Court followed as follows: -

"When the plaintiff entered into the land sale transactions with the sellers, she conducted a search and she was satisfied that the subject parcel of land did not have any encumbrances that is when she decided to pay the consideration for the same and subsequently the land was transferred to her.

he challenge which the plaintiff faced herein was when she went to occupy/make use of the land after she purchased was that the area chief informed her that the land had a dispute without disclosing the details. The plaintiff made further inquiries and came to learn that there were allegations that the defendant's husband had bought the suit land from the sellers. It is my view that the plaintiff did all that which was required (due diligence) before she paid the consideration for the suit land. I do not think that she could have gone ahead to pay money for the land sale transaction if she had information that the land had been sold.

From the evidence tendered the Court is satisfied that the plaintiff has proved her case on a balance of probabilities.

Whether the defendant proved her counterclaim to the required standards to warrant the orders sought.

The court was taken through succession matters in various courts. I do not think that the same is relevant herein. The court is unable to enforce that transaction which the defendant's husband Peter Mwangi entered into with the sellers because during the hearing of this case it became evident that the consideration was not fully paid to the sellers. If the



defendant has any claim, it should be directed to those who allegedly sold the land to her late husband or their estate.

It is the finding of the court that the defendant failed to prove the particulars of fraud as pleaded at paragraph 16 of the defence and counterclaim. The plaintiff's counsel asked the court to award Kshs. 50,000 .00 as general damages for trespass but that prayer was not pleaded in the plaint.

RELIEFS The plaintiff having proved her claim as held herein above I hereby enter judgment in her favour against the defendant as prayed in her plaint dated 20/11/2018 in terms of prayer (a) the counterclaim is dismissed with costs. The plaintiff is also awarded the costs of the suit.

Right of appeal 30 days is explained.”

15. Having been dissatisfied with the Court's Decision, the Appellant appealed to this Court on the following grounds -:

1. The Learned trial Magistrate erred in both law and in fact in finding that the Respondent herein had proved her claim on a balance of probabilities while there was no sufficient evidence adduced to support such a finding.
2. That the learned trial magistrate erred in both law and in fact in upholding the Respondents title to parcel No. Nyandarua/Kaimbaga/587 when there was sufficient evidence adduced in court to show that the said title was obtained illegally and/or improperly.
3. That the learned trial Magistrate misdirected himself on the law and fact and fell into grave error in finding that no sufficient evidence of fraud was adduced as to impeach the Respondent's title when there was overwhelming evidence to show that the process to its acquisition was marred by forgeries, illegalities and pure fraud.
4. That the learned trial Magistrate erred in law and occasioned a grave miscarriage of justice to the Appellant by finding that the Respondent could obtain a good title from a person whose title was defective and a mere illegality.
5. That the learned trial Magistrate erred in law and fact and occasioned a grave miscarriage of justice to the Appellant by making a declaration that the Appellant's late husband had not completed paying the purchase price while there was sufficient evidence that he had fully complied with the terms of the sale agreement in question. ■
6. That the learned trial Magistrate erred in law and occasioned a grave miscarriage of justice to the Appellant in finding that the Appellant was not entitled to the orders sought in her counterclaim and for subsequently dismissing her claim.
7. That the learned trial Magistrate erred in law and facts and manifested immense bias in completely disregarding the Appellant's evidence and placing undue emphasis on the Respondent's testimony which was not supported by any factual basis.
8. That the learned trial Magistrate fell into grave error and occasioned great injustice to the Appellant in considering irrelevant matters and disregarding material evidence in making his determination.
9. That the trial Magistrate's judgement in this matter was unjust, oppressive and not founded

16 She then prayed for the following: -



- a. The judgment delivered on the 13/12/2022 be quashed, varied and/or set aside for being unlawful and of no purpose.
 - b) A declaration that the registration of the Respondent as the absolute owner of the suit Land L.R. No. Nyandarua/ Kaimbaga/ 587 is null and void ab initio and declare the same as of no consequence and a further declaration that the title and proprietary interest in the suit land herein exclusively and absolutely vests in the Appellant and the estate of Peter Mwangi Ndiritu (Deceased) and an order directed at the Land Registrar, Nyandarua/Samburu Counties to rectify the register accordingly.
 - c. In the alternative, a declaration that the registration of the Respondent as the absolute owner of the suit Land L.R. No. Nyandarua/ Kaimbaga/ 587 is null and void ab initio and declare the same as of no consequence and a further declaration that the title and proprietary interest in the suit land herein exclusively and absolutely vests in the estate of Peter Maranga Kinyua (Deceased) and an order directed at the Land Registrar, Nyandarua/Samburu Counties to rectify the register accordingly.
 - d. A permanent injunction against the Respondent, her agents, servants and/or employees and/or anybody claiming under her or acting pursuant to her instructions from trespassing/ entering, remaining, occupying, constructing, cultivating and/or interfering with the Appellant's use, enjoyment and ownership of Nyandarua/Kaimbaga/587 in perpetuity.
 - e. That the costs of this appeal and of the proceedings in lower court be ordered to be borne by the respondent.
- 17 As was held by the Court of Appeal in the case of Ongera & 14 Others – versus- Makwane (Civil Appeal E246 of 2022 (2025) KECA 535, at page 6

We appreciate the reasoning behind this is to ensure that the Appellate Court provides a fair and just review of the trial Court's Decision. By analyzing the evidence afresh in order to identify any error or misrepresentations made by the Trial Court and correct them. this process helps maintain the integrity of the judicial system and ensures that justice is best served”.

18. It is the Respondent's case that she bought the suit property from the three (3) initial owners i.e. John Kiambati Kinyua, Stephen Mwangi Kinyua and Jane Gathoni Kinyua and had the Property transferred to her by way of transmission. She was able to produce a copy of the Certificate of Official Search showing that Parcel of Land known as L.R. No. Nyandarua/Kaimbaga/587 belonged to John Kiambati Kinyua, Stephen Mwangi Kinyua and Jane Gathoni Kinyua. She also produced a copy of sale agreement dated 1/7/2012 and another one dated 20/6/2012 as proof that the suit land was sold to her by the three (3) above who did acknowledge receipt of Kshs. 45,000/= for the 0.4575 Hectares and that she did pay the entire sum in total. A copy of the Title Deed issued on 21/6/2012 in her name.
19. On the other hand, the Appellant's case as adduced in court is that she is the Administratrix of the Estate of the later Peter Mwangi Nderitu. She attached the pleadings in Nyahururu ELC case No. 345 of 2017 between her later husband and the Defendant and the Respondent in this case which never took off. The prayers were similar to the ones in the case from which this Appeal arises. There is also a case between John Kiambati Kinyua (Plaintiff) against Peter Mwangi Ndiritu (Nyahururu SPMCC No. 165 of 2012.). In the latter case one Joseph Kinyua Kiambati owned up to selling the Suit Land to the late Peter Mwangi Ndiritu the land having been his late son's, Peter Maranga Kinyua who had died in December 2000. He admitted that his son had received from Peter Mwangi Ndiritu Kshs. 70,000



and that he was paid the balance of Kshs. 110,000 save 8,000/= which was payable on transfer, after succession cause was concluded. A copy of the sale Agreement dated 14/7/2011 was exhibited as well as correspondences from Peter Mwangi Ndiritu's lawyers. In the case, the late Peter Mwangi Ndiritu states that he discovered that before the land was transferred to him, John Kiambati Kinyua intended to sell the same land to a third party for a higher price after which he secured a bank loan but the seller said he was not ready to deal with him anymore but was in fact willing to refund to him the deposit of Kshs 70,000/=. In his Defence and counter-claim, the said Peter Mwangi Ndiritu denied the entire claim. Jane Wanjiru Mwangi and John Ndiritu Mwangi in a certificate of confirmation of Grant signed by the Chief Magistrate's court, Nyahururu on 25/9/2018 took the place of Peter Mwangi Ndiritu.

220. This is a case where the three (3) vendors, in my view, sell land to the Appellant. They allow the Appellant to stay on the land and cultivate it but then they get so disillusioned and disappointed that the Appellant is taking too long to complete his part of the contract. Unfortunately, they are in need of money. They get another buyer in the process who is ready and willing to pay a higher premium for the same land and they offer the land to him. They ask the appellant to take the refund of the deposit of the purchase price but the latter declines. The sellers proceed to sell the land to the new buyer. This is the scenario which I believe must likely have taken place due to the passage of time between the first sale in 2008 and the second sale in 2012- a period of 4 years. As for the Respondent, there is no evidence that she defrauded the Appellant in any way. None of the particulars of fraud attributed to her has been substantiated nor proved. It is not clear why sellers or their Estates (after the demise of the first 2) and /or the third vendor Jane Wanjiru Mwangi were/was not made a party in this suit because if there had been any fraud, which I doubt, then it was attributable to them. The Respondent just found a piece of land that was being sold and offered to buy it. The Appellant was unable to complete the sale. She would not have been given all the time yet the Respondent wanted to dispose of the same to not only a willing buyer but also to a ready buyer. By the time the Appellant applied for a Bank Loan, the Respondent had already made her offer and proceeded with the purchase of the suit land. Equity aids the vigilant and not the indolent. There is no iota of evidence of any illegality or unlawfulness on the part of the Respondent in the transaction and I find no good reason or at all to impeach her Title Deed.
21. But the court is not blind to the bad culture of land owners selling land today and before the completion date, they get a better deal, cancel the earlier contract and sell the land to the new buyer. This is what the Appellant would want this Court and the Lower Court to believe. But unfortunately for her, there is no evidence in support of the same. She had at least four years to complete the contract. She only rushed to acquire a loan when she heard that somebody else was now buying or had already bought the land. Ordinarily Contracts of Sale of land are normally given ninety (90) days to complete with an option to extend the time for a month or two (2). But four (4) years is too long for one to wait for the purchaser to organize himself to pay up. If the Appellant was to take a loan, she should have organized for the same as soon as she paid the deposit which would have taken at most two to three (2-3) months. But four (4) years is unacceptable. I am therefore unable to impeach the Respondent's Title and this Appeal is therefore dismissed. I will spare the Appellant the costs of the same.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 8TH DAY OF MAY, 2025.

MUGO KAMAU

JUDGE

In the Presence of: -

Samson.....C/A

Mr. Ojare.....for the Appellant.



Mr. Gakenia H/B for Mr. Waichungo..... for the Defendant

