



**M'Rinyuru v Mbui (Environment and Land Appeal E021 of 2022)  
[2025] KEELC 3680 (KLR) (7 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3680 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E021 OF 2022**

**BM EBOSO, J**

**MAY 7, 2025**

**BETWEEN**

**JACKSON MWITI M'RINYURU ..... APPELLANT**

**AND**

**SILAS RINYURU MBUI ..... RESPONDENT**

*(Being an appeal against the ruling of Hon J Irura, Principal Magistrate, delivered on 28/4/2022 in Nkubu Principal Magistrate Court Civil [Environment and Land] Case Number 9 of 2012)*

**JUDGMENT**

**Introduction.**

1. This appeal challenges the post-judgment ruling of the Principal Magistrate Court at Nkubu [Hon J Irura, PM] rendered on 28/4/2022 in Nkubu PMC Civil Case No 9 of 2012. Through the impugned post-judgment ruling, the trial court allowed the respondent's notice of motion dated 22/10/2021 in which the respondent sought eviction of the appellant from land parcel number Abogeta/L-Kiungone/8X9 as earlier decreed by the trial court through its Judgment dated 6/2/2019. The key question that fell for determination in the application before the trial court was whether the post-judgment closure of the land register relating to the suit land, on creation of a road of access and on subdivision of the suit land by the decree-holder, rendered the judgment and decree of the trial court unenforceable by the decree-holder against the judgment-debtor. That is the key question that falls for determination in this appeal. Before I analyse and dispose the issue, I will briefly outline a brief background to the appeal.

**Background.**

2. The appellant and the respondent are son and father respectively. Through a plaint dated 7/2/2012, the respondent [father] sued the appellant [son] in the trial court seeking an order decreeing eviction of



- the appellant from land parcel number Abogeta/L-Kiungone/8X9 (hereinafter referred to as “the suit land”). He also sought costs of the suit. The case of the respondent was that he was the owner of the suit land. He contended that the appellant had illegally entered onto the suit land and had chased away his (the respondent’s) servants who were working on the land. He added that his plea to the appellant to move to parcel number Abogeta/U-Kiringa/1XX3, which he had bequeathed to him, went unheeded.
3. The appellant filed a statement of defence dated 2/3/2012 which he subsequently amended on 21/5/2012. He contested the respondent’s claim. His case was that the suit land was family land which the respondent had inherited from his (the respondent’s) father, and therefore the respondent held the land in trust for himself and for other family members. He contended that he was born and raised on the suit land, adding that he occupied a distinct portion of the suit land.
  4. Upon conducting trial and upon receiving submissions, the trial court rendered a Judgment dated 6/2/2019 in which it granted the respondent the plea for eviction in the following verbatim terms:
    - a. It is hereby declared that parcel of land No. Abogeta/L-Kiungone/8X9 belongs to the plaintiff and not to hold it in trust for anyone.[sic]
    - b. The appellant is hereby in given 60 days to move from parcel of land No. Abogeta/L-Kiungone/8X9.
    - c. Failure to which the plaintiff shall be at liberty to evict the defendant at the defendant’s costs.
    - d. Costs are payable by the defendant
  5. Dissatisfied with the Judgment of the trial court, the appellant lodged Meru ELC Appeal Case No. 47 of 2019. The said appeal was heard and disposed by this court [Mbugua J] through a Judgment dated 29/1/2020. This court dismissed the appeal for lack of merit. The appellant subsequently filed a second appeal in the Court of Appeal, to wit, Nyeri Court of Appeal Civil Appeal No. 50 of 2020. The respondent contends that upon the Court of Appeal dismissing the appellant’s appeal, he (the respondent) filed in the trial court an application dated 22/10/2021 seeking enforcement of the Judgment and Decree of the trial court. The trial court heard and allowed the application through a post-judgment ruling dated 28/4/2022. The said ruling is the subject of this appeal. The gist of the ruling was that, it allowed enforcement of the judgment and decree of the trial court against the judgment-debtor. Put differently, it allowed enforcement of the decree of the trial court by way of eviction of the appellant as decreed in the Judgment of the trial court.

### **Appeal.**

6. Dissatisfied with the post-judgment ruling of the trial court, the appellant brought this appeal, advancing the following six grounds of appeal:
  1. The Learned trial Magistrate erred in law by failing to find that the suit land No. Abogeta/Kiungone/8X9 does not exist as the same had already been subdivided long ago and therefore the respondent’s application was improperly before the court.
  2. The Learned trial Magistrate erred in law by failing to find that the respondent was not the registered proprietor of the suit land as the same had already been subdivided and transferred to third parties who were not enjoined in this suit.
  3. The Learned Trial Magistrate erred in law and fact by finding in favor of the respondent when their application had already been overtaken by events.



4. The Learned trial Magistrate erred in law and fact by issuing orders against the appellant herein when the same are incapable of being executed.
5. The Learned trial Magistrate erred in law and fact in that she disregarded the evidence which was tendered by the appellant including the current search for the suit land which was tendered before the court thereby arriving at the wrong conclusion.
6. The decision of the Learned trial Magistrate is against the weight of evidence and the same is bad in law.
7. The appellant urged this court to: (i) allow the appeal; (ii) set aside the impugned ruling and order dated 28/4/2022; (iii) issue a temporary order of stay of execution against the ruling dated 28/4/2022 pending the hearing and determination of this appeal and; (iv) condemn the respondent to bear costs of the appeal.

### **Appellant's Submissions.**

8. The appeal was canvassed through written submissions dated 28/1/2025, filed by M/s Kiogora Arithi & Associates. Counsel for the appellant submitted that it was not in dispute that land parcel number Abogeta/U-Kiungone/8X9 was ancestral land and the same was registered in the respondent's name. Counsel argued that the respondent was born on the suit land and had been occupying a distinct portion peacefully without any interruption from the respondent.
9. Counsel submitted that L.R. Abogeta/U-Kiungone/1643 emanated from the subdivision of land parcel number Abogeta/L-Kiugone/8X9, which no longer existed, and therefore the application by the respondent and the ruling by the lower court had been overtaken by events. Counsel argued that the appellant's occupation and possession was protected by the concept of intergenerational equity and therefore the respondent was estopped from evicting him from the family land.
10. Counsel submitted that the respondent pleaded in the lower court that he acquired the land from his late father, and he was holding the same in trust for himself and other family members, and as such, the land was not his sole property. Counsel relied on the case of *Kiebia v M'Lintari & another* (Petition 10 of 2015). Counsel argued that the appeal is highly merited and urged the court to allow it.

### **Respondent's Submissions.**

11. The respondent filed written submissions dated 22/1/2025 through Maitai Rimita & Company Advocates. Counsel submitted that the Judgment of the trial court was rendered on 6/2/2019 and the appellant was granted 60 days to vacate the suit land or he be evicted. Counsel added that the appellant appealed against the said Judgment in Meru ELC Appeal No 47 of 2019, which was dismissed with costs. Counsel further submitted that the appellant was still dissatisfied and he filed a further appeal to the Court of Appeal sitting in Nyeri, to wit, Nyeri Civil Appeal No.50 of 2020, and the same was dismissed. Counsel added that upon dismissal of the appeal in the Court of Appeal at Nyeri, the respondent applied to the trial court seeking enforcement of the Judgment and decree of the trial court and the trial magistrate delivered the impugned ruling on 28/4/2022. Counsel argued that the decision of the trial court was sound, correct, and well anchored in law and urged the court to uphold it.

### **Analysis and Determination.**

12. The court has read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions in the appeal. The court has also considered the relevant legal frameworks and jurisprudence. It is important to observe at this point



that, the trial court rendered the impugned ruling in exercise of its limited post-judgment jurisdiction relating to enforcement proceedings. The trial court was functus officio with regard to the substantive issues that fell for determination in the main suit. Consequently, the trial court did not have the liberty to revisit some of the issues which the appellant raised his response to the application. Similarly, this court [Mbugua J] having made a determination on the substantive issues that arose for determination in the appeal that challenged the judgment and the decree of the trial court, I do not have the liberty to revisit some of the issues that the appellant raised in this appeal. The jurisdiction of this court at this point is restricted to the relevant issue that arose for determination in the post-judgment application that culminated in the impugned ruling.

13. Taking the foregoing into account, the key issue that falls for determination in this appeal is whether the post-judgment closure of the land register relating to Abogeta/L-Kiungone/8X9 and the subsequent subdivision of the said land by the decree-holder rendered the subsisting judgment and decree of the trial court unenforceable by the decree-holder against the judgment-debtor. I will be brief in my analysis.
14. The judgment that the respondent sought to enforce was rendered by the trial court on 6/2/2019. In his replying affidavit on the application that culminated in the ruling that is the subject of this appeal, the appellant contended that the land register relating to Abogeta/L-Kiungone/8X9 was closed on 28/11/2019 following the creation of a road of access. The appellant further contended that the land had subsequently been subdivided to create other titles, among them, title number Abogeta/L-Kiungone/1XX4 [see annexure “JMM 2b” to the appellant’s replying affidavit]. The appellant contended in his replying affidavit that Abogeta/L-Kiungone/809 had ceased to exist, hence the respondent was seeking to evict him from a parcel of land that did not exist.
15. In his submissions before this court, the appellant introduced a new title number, to wit, Abogeta/U-Kiungone/1XX3, and contended that this is the portion of the suit land which he occupies. He contended that Abogeta/U-Kiungone/1XX3 emanated from the subdivisions of Abogeta/L-Kiungone/ 8X9 which no longer exists and therefore the application by the respondent and the impugned ruling of the lower court had already been overtaken by events.
16. The court has considered the arguments advanced by the appellant on the tenor and import of the post-judgment closure of the land register relating to the suit land on creation of a road of access and on subdivision of the suit land by the decree holder. According to the official search [ see exhibit “JMM2b”] which the appellant exhibited as evidence of non-existence of the suit land, the land register relating to the suit land was closed on 28/11/2019 on creation of a road of access. Did this render the subsisting judgment and the subsisting decree unenforceable by the decree-holder against the judgment-debtor? I do not think so.
17. First, land is physical and static in nature. Change in registration details of land does not alter the physical location or physical character of land. Secondly, the trial court affirmed the respondent’s ownership of the suit land and decreed the appellant to vacate the suit land within 60 days because he was a trespasser. The respondent, as a decree- holder, was entitled to create the road of access and subdivide his land as approved by relevant physical and land use planning authorities. Creation of the road of access and any subsequent subdivision of the suit land did not change the physical location and the static character of the suit land. It did not legitimize the appellant’s trespass on the land. It did not invalidate the subsisting decree.
18. This is, more so, because the appellant conceded that he was physically still on the static suit land and that the physical portion of the suit land which he still occupies is part of the physical land that he was decreed to vacate.



19. Put differently, the appellant is a party who has been decreed to vacate the suit land. He cannot invoke the legitimate post-judgment subdivision carried out by the decree-holder as a basis for defeating the decree. So long as the appellant is carrying out enforcement in relation to the land that was the subject matter of the Judgment and the Decree of the trial court, he is entitled to do so, notwithstanding the creation of the road of access and the subdivision.
20. It is not lost to the court that if the respondent entered into a sale contract and transferred a subdivision of the suit land, he would be expected to give vacant possession of the sold subdivision. This is part of the rationale why he is entitled to enforce the decree by evicting the appellant.
21. It is also not lost to the court that through submissions, the appellant has introduced a new block number, U-Kiungone [with the pre-fix “U” and not “L”]. In the trial court, the block number for the suit land and the block number for the title that resulted from the creation of the road of access was L-Kiungone [with prefix “L”]. The new block number which the appellant alluded to in his written submissions in the appeal [U-Kiungone] never featured in the application that gave rise to the impugned ruling.
22. For the above reasons, I have not found merit in this appeal. The appeal is rejected and dismissed for lack of merit.
23. On costs, it is clear from the record that the appellant is taking the respondent through a second round of litigation. There are no special circumstances to justify a departure from the general principle in Section 27 of the *Civil Procedure Act*- that costs follow the event. The appellant shall bear costs of the appeal.

**DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF MAY 2025**

**B M EBOSO [MR]**

**JUDGE**

Mr. Tupet – Court Assistant

