



REPUBLIC OF KENYA



**Muriithi v Njoroge & another (Environment & Land Case
E135 of 2022) [2025] KEELC 3607 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3607 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E135 OF 2022**

JA MOGENI, J

MAY 6, 2025

BETWEEN

PAUL MUCHIRI MURIITHI PLAINTIFF

AND

WALTER KINYANJUI NJOROGE 1ST DEFENDANT

LAND REGISTRAR, RUIRU 2ND DEFENDANT

JUDGMENT

1. The dispute in this suit relates to a parcel of land situated in Ruiru. According to title documents presented by the Plaintiff, the parcel of land measures 0.4042 hectares and is registered as Ruiru/Ruiru East Block 2/5172 on registry map sheet number 1&4. The title was issued to one Paul Muchiri Muriithi on 1/03/1995 the parcel file/register having been opened on 10/05/1988. According to the title documents held by the 1st Defendant/Respondent, the parcel of land is registered as Ruiru/Ruiru East Block 2/5172 on registry map sheet 1. The said title was issued to one Teresia Ndinu Njoroge on 15/11/1994. The parcel file/register having been opened on 15/11/1994.
2. The key issue in the suit is the question as to who between the Plaintiff and the 1st Defendant is the legitimate proprietor of the said parcel of land.

Plaintiff's Case

3. The Plaintiff's Case was contained in the Plaint dated 14/11/2022 in which he averred that Ruiru/Ruiru East Block 2/5172 was registered in the name of Esther Wangirichu Muriithi (deceased) who passed on 26/08/1988. The deceased was his mother and that on 1/03/1995 the suit property was transferred to him as a gift. The land register having been opened on 10/05/1988.



4. He avers that through clandestine events another land register was opened on 15/11/1994 and the suit property was registered in the name of the mother of the 1st Defendant Teresia Ndinu Njoroge (deceased) on 15/11/1994 and she later donate it to the 1st Defendant as a gift.
5. That due to the mix up in registration the matter was taken to the Land Registrar Mr Ngechu who determined the rightful owner of the suit property in 2004 as being the Plaintiff. At the same time the Chief Land Registrar ascertained on 17/11/2004 that the Plaintiff is the rightful owner of the suit property. Further that on 25/06/2021 Nyakinyua Investments Limited the vendor of the land clarified the anomaly and ascertained that the suit property belongs to the Plaintiff.
6. It is the contention that despite the clarification and ascertainment by various parties the 1st Defendant has refused to surrender the title for cancellation. It is the refusal by the 1st Defendant to surrender the title for cancellation that has necessitated the filing of this suit.
7. Consequently, the Plaintiff has sought the following verbatim orders against the Defendants:
 - i. This Honourable Court be pleased to give an order of permanent injunction restraining the Defendants by their agents, servants or any of them howsoever from transferring, alienating charging, leasing, disposing or in any way whatsoever dealing with Ruiru/Ruiru East Block 2/5172
 - ii. An order of cancellation of the title deed issued in favour of the Teresia Ndimu Njoroge (deceased) by the 2nd Defendant who the first Defendant has inherited from
 - iii. A mandatory injunction to issue to compel the 1st Defendant to remove all the structures and placards erected on land parcel known as Ruiru/Ruiru East Block 2/5172 and in default the Plaintiff to demolish the same at the Defendants' costs with the supervision of OCS Ruiru Police Station
 - iv. An order directing the 2nd Defendant to cancel the title issue to the late Teresia Ndinu Njoroge as property Ruiru/Ruiru East Block 2/5172 which was inherited by the 1st Defendant
 - v. A declaration that the Plaintiff is the lawful owner of Ruiru/Ruiru East Block 2/5172 and the green card reflecting the proprietorship of the property in the name of the Plaintiff is the lawful one
 - vi. General damages to the Plaintiff for trespass
 - vii. That the cost of this suit be borne by the Defendants

1st Defendant's Case

8. The case of the 1st Defendant was contained in his statement dated 26/04/2023. He averred at paragraph 4 and 5 that his mother Teresia Ndinu Njoroge (deceased) is the bona fide owner of the suit property the title having been in his mother's name and that it could not be transferred to the Plaintiff and so the purported transfer and issuance of the second title deed were illegal.
9. The 1st Defendant denies being aware of any investigations having been undertaken by DCI but that sometime in 2022 the 1st Defendant reported this matter to the DCI complaining that somebody was holding another title deed for the same land and after investigation they confirmed that the late Teresia Ndinu Njoroge was the genuine owner of the suit property. That the 1st Defendant was given copies of the green cards for Ruiru/Ruiru East Block 2/5172.



10. The 1st Defendant avers that the suit property is developed with permanent rented houses from which the Plaintiff is illegally taking rent. That there are two titles to the suit property and that the title for Teresia Ndinu Njoroge was issued first. Further the 1st Defendant denies the contention of the Plaintiff in paragraph 6 of the Plaint. He avers that the Plaintiff found the 1st Defendant on the land after his late parent relocated to the village having previously lived on the suit property.
11. It is the contention of the 1st Defendant that the Plaintiff will not suffer any financial loss or mental anguish as the land in question belongs to the 1st Defendant. He thus prays for dismissal of the Plaint with cost.

Case for the 2nd Defendant

12. The 2nd Defendant filed their Statement of Defence dated 20th March 2023 and maintains no wrongdoing on the part of the Land Registrar.

Plaintiff's Evidence

13. Hearing commenced on 10/02/2025. The Plaintiff Paul Muchiri Mureithi testified as PW1. He adopted his written statement dated 14/11/202 as part of his evidence-in-chief. He produced the 7 documents in his bundle as Plaintiff Exhibits 1 to 7. In summary, his evidence was that he is in Court because the suit property has two titles with the second title being in the name of Teresia Ndinu Njoroge (deceased). He testified that he investigated about the estate of the deceased but that he had no papers to show who the administrator of Teresia (deceased) is.
14. He stated that he had sued the 1st Defendant but that he had no title. That the reason he sued him is because he claims to be the owner of the suit property and he reported the Plaintiff to the DCI at Juja. He further stated that he had brought the matter in Court because the deceased has sons and daughters and that he had filed documents that emanate from Nyakinyua although they are not parties to the instant suit.
15. Upon re-examination, he stated that he had not sued Nyakinyua but that the Company Secretary of Nyankinyua wrote a letter for him. With this the Plaintiff closed his case.

1st Defendant's Evidence

16. The 1st Defendant Walter Kinyanjui Njoroge testified as DW1. He adopted his witness statement dated 11/11/2024 as part of his sworn evidence-in-chief. He produced the 6 documents in his bundle as 1st Defendant's Exhibits 1 to 6. In summary, his evidence was that he did not have any title in his name. That Teresia Ndinu Njoroge (deceased) is his mother in whose name the suit property is registered in. That the estate of his mother has not been sued and therefore it will not be fair for his mother's title to be cancelled yet her estate has not been sued. Thus he prays that the case be dismissed.
17. Upon cross-examination he stated that he is the 3rd born of the deceased Teresia Ndinu Njoroge. That he reported this matter to DCI in 2021 and that he had produced a copy of the green card which shows that suit register was opened in 1988. That the second entry show the name of Esther Wangirichu Muriithi. The second green card shows the register was opened in November 1994 and the proprietor is Teresia Ndinu Njoroge. On re-examination he stated that he went to the DCI to report about his mum's shamba but that he is not the administrator. With that he closed his case.
18. After the close of the viva voce evidence, parties filed their respective written submissions through their Advocates except for the 2nd Defendant.



Analysis and Determination

19. I have carefully analysed and considered the pleadings, the evidence tendered and the written submissions filed by all the parties together with the authorities cited and I am of considered view that the issues for determination by this Court are as listed by below:
 - i. Whether the Plaintiff is entitled to the prayers sought in the Plaintiff.
 - ii. Who is to bear costs.
20. On the first issue, it was the Plaintiff's case that he is the registered proprietor of Land Parcel No. LR Ruiru/Ruiru East Block 2/5172, which was registered in the name of his mother Esther Wangirichu Muriithi (deceased) who died on 26/08/1988 and that on 1/03/1995 the suit property was transferred to him as a gift and the land register opened.
21. The Plaintiff never produced in Court any Letters of Administration to show who the administrator was who was in charge of ensuring that he received a gift of the suit property from his deceased mother. It is not possible that it is the Land Registrar who gifted the suit property to him even though the Plaintiff states the land register for the suit property was opened on 10/05/1988. That be as it may how then did the Plaintiff get the suit property as a gift after the demise of this mother Esther Wangirichu Muriithi.
22. At the same time the Plaintiff sued the 1st Defendant who he alleges has title to the suit property in the name of his deceased mother Teresia Ndinu Njoroge who was demised on 5/05/2009. Again the Plaintiff did not sue the administrator of the estate of the late Teresia but he sued one Walter Kinyanjui Njoroge, the 1st Defendant.
23. Not to forget the fact that the title of the suit property is not in the name of the 1st Defendant therefore there is actually no claim before me against the said 1st Defendant nor the estate of the late Teresia Ndinu Njoroge.
24. Infact there is no legal dispute before this Court to resolve. I note with sadness that whereas the Plaintiff is claiming proprietorship he has not presented any documents before the Court that would support this claim. The person he purports to have received the suit property as a gift from was long dead before the gifting. There is no document in Court to show that there was any one who gifted him the suit property. So the only claim to the proprietorship is the copy of the title deed issued on 1/03/1995.
25. The question however that lingers is how did he get this title? Well he says he was gifted and the entry on the green card on 1/03/1995 shows the word gift, but by whom and where is the proof of the gifting from his mother or the administrator because by 1/03/1995 the owner Esther Wangirichi Muriithi was long dead.
26. Section 107 of the Evidence Act, provides:
 - “ 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.”



27. Therefore in the absence of documents supporting the Plaintiff's claim of ownership, I am not persuaded that the Plaintiff is the lawful owner of the suit land. In the case of *Munyu Maina versus Hiram Gathiha Maina*, Civil Appeal No.239 of 2009, the Appeal Court held that:
- “We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”(with emphasis)
28. The Plaintiff filed his written submissions dated 24/02/2025, through Messrs Caroline Mwangi & Associates Advocates and submitted that the Plaintiff has proved his case on the required standard and urged the Court to enter Judgement in his favour against the Defendants. The Counsel for the Plaintiff further submitted that the Court in considering whether the 1st Defendant was wrongly enjoined due to the fact that the suit property is not registered in his name, should not overly focus on technicality. That Article 159(2)(d) require that we focus on substantive justice and not technicalities.
29. The Plaintiff's Counsel therefore concluded by submitting that the Plaintiff owns the suit property and that the documents show that the Plaintiff acquired the suit property as a gift from his deceased mother, Esther Wangirichu Muriithi. That this can be seen from his statement dated 14th November 2022 and a list of documents of even date, Exhibits PMM-1- PMM-7 as part of evidence in chief and his testimony that the suit land is his property.
30. In conclusion he stated that Defendants have failed to defend themselves on the real issues. The Plaintiff implored the Honourable Court to look and find in his favour since he has proven his case by placing evidence before the Court, which according to him was corroborated by the 1st Defendant in his exhibits produced and marked "WKN-3".
31. The 1st Defendant through the Law Firm of Messrs Gaita & Co. Advocates, filed his submissions dated 14/03/2025 and submitted that the case is fatally defective since the title the Plaintiff seeks to have cancelled is registered in the name of one Teresia Ndinu Njoroge who is deceased yet the estate was not joined in the proceedings. That since the land is not registered in the name of the 1st Defendant, there is no cause of action against the 1st Defendant.
32. That infact the administrator of the deceased's estate should have been sued and those who allotted the plots being Nyakinyua. Thus he urged for dismissal of the suit.
33. In my examining the documents submitted by both parties, I note that there are two title deeds for the same suit property being LR Ruiru/Ruiru East Block 2/5172. But owing to the fact that the suit has been brought against someone who has no beneficial proprietary ownership in the suit property, I am persuaded by the 1st Defendant's submission that suit is fatally defective.
34. Consequently, the Court finds that in answer to issue No. 1, that the suit by the Plaintiff is fatally defective and the Court cannot address the issues raised touching on ownership.
35. On costs as provided by Section 27 of the Civil Procedure Act, costs are granted at the discretion of the Court. However, it is also trite that costs do follow the event and is awarded to the successful litigants. The Plaintiff's case is fatally defective for bringing an action against a party which has no interest in the instant suit. For bothering the 1st Defendant and enjoining him to a suit where he has no claim, then the 1st Defendant is entitled to costs of this suit.



36. Consequently, the Plaintiff's case is dismissed entirely with costs to the 1st Defendant herein.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 6TH DAY OF MAY 2025 VIA MICROSOFT TEAMS.

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**MOGENI J
JUDGE**

In the presence of:

Ms. Mwangi for the Plaintiff
1st and 2nd Defendants – Absent
Mr. Melita – Court Assistant

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**MOGENI J
JUDGE**

