



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi v Githiri (Environmental and Land Originating Summons E011 of 2024) [2025] KEELC 3611 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3611 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANGA**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E011 OF 2024**

**MN GICHERU, J**

**MAY 5, 2025**

**BETWEEN**

**JULIA WANJIKU MWANGI ..... APPLICANT**

**AND**

**JOHN NDIRANGU GITHIRI ..... RESPONDENT**

**RULING**

1. This ruling is on the originating summons dated 30-5-2024. The summons seeks the following orders.
  - (3) A permanent injunctive order restraining the Respondent by himself, family members, servants, employees, agents or any other person acting under their instructions or interests from entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as Loc.3/Mukuria/224 measuring approximately 1.5 acres.
  - (4) That the officer commanding station (OCS) Githurai Police Station, Kandara area do provide security to ensure that the orders herein above and complied with.
  - (5) That the Respondent do pray mesne profits equivalent to rent chargeable and the continued occupation of the property from 31-8-2009 until the determination of the summons.
  - (6) That the costs of this application be provided for.
2. The summons which is brought under Article 159 of the *Constitution*, Orders 22 rule 80, 37 rule 3, 40 rule 1 of the *Civil Procedure Rules* as well as Section 99 of the *Land Act* and all other enabling provisions of the law is based on six(6) grounds and is supported by an affidavit sworn by the Applicant. There are six(6) annexures to the affidavit. In summary the Applicant states as follows. Firstly, the Applicant is the registered owner of the suit parcel which measures 1.5 acres. She inherited the land from her husband through Kandara Magistrates Succession Cause No. E014 of 2022. Secondly, the Respondent's father Daniel Ndirangu Thiongo(deceased) had trespassed on the suit land for long and



had been ordered to vacate the same in Tribunal Case No. 45 of 2009 – *David Ndirangu Njoroge v David Ndirangu Thiongo*. The Respondent’s father appealed against the decision to the Appeals committee which confirmed the decision of the tribunal in case No. 14 of 2009. There was yet another case filed by the Respondent’s father which was Murang’a Judicial Review Miscellaneous Application No. 15 of 2012 which was dismissed. In spite of this streak of losing three(3) cases, the Respondent’s family has refused to voluntarily vacate the suit land making the filing of this case necessary.

3. The summons is opposed by the Respondent whose counsel has filed four grounds of opposition as follows.
  1. The application is a sham and fatally defective.
  2. The Applicant alleges that there is in existence other suits relating to this dispute, thus the application for eviction and or execution should be filed in the trial court.
  3. That the prayer for trespass should be heard substantially vide a plaint.
  4. That prayer 5 is statute barred by *Limitation of Actions Act*.
4. Counsel for the parties filed written submissions dated 3-9-2024 and 29-10-2024 respectively.

The Respondents counsel identified the following issues for determination.

1. Is the Applicant entitled to the orders sought in the original summons?
2. Has the Applicant proved trespass?
3. Is prayer No. 5 barred by the *Limitation of Actions Act*.

On the other hand, the Applicant’s counsel identified the following issues.

- i. Whether the Applicant is the rightful owner of the suit property?
- ii. Whether the Respondent and his family/agents are justified to remain in possession and continue trespassing on the Applicant’s land.
- iii. Whether the Applicant is entitled to the orders sought in the originating summons.
- iv. Whether the Respondents grounds of opposition are merited.

5. I have carefully considered the summons in its entirety including the grounds, the supporting affidavit, the annexures, the grounds of opposition, the written submissions by learned counsel for the parties, the issues identified and the law cited in the submissions. I make the following findings on the issues raised.
6. Starting with the Respondents 3<sup>rd</sup> issue, I find that prayer 5 of the summons is not time barred because the trespass continues until now. The mesne profits are claimed from the date of 31-8-2009 until the date of determination of the summons. The summons is being determined today.

Secondly, it is only on 2-4-2024 that the Applicant became registered as the proprietor of the suit land as can be seen from the copy of the title deed for the suit land marked JWM -1. She has brought this action in her own capacity as the registered owner of the suit land. Section 4(4) of the *Limitation of Actions Act* does not apply to her. Thirdly, the current Respondent was not in occupation of the suit land when the previous suits were active. The parties in those other suits were Daniel Ndirangu Thiongo and Samuel Gicheru Ndirangu while the current Respondent is John Ndirangu Githiri. Though he had a chance to rebut the affidavit evidence filed by the Applicant, the Respondent chose to file grounds of opposition. He cannot therefore be heard to give evidence in submissions especially as it relates to time.



He should have filed an affidavit so as to give the Applicant a further opportunity to rebut any evidence by way of supplementary affidavit. As it is now, the Applicant's evidence remains uncontroverted.

7. I find trespass on the suit land proved vide paragraphs 10 and 11 of the supporting affidavit dated 8/5/2024.
8. On the Applicant's 1<sup>st</sup> issue, I find that she is rightful owner of the suit land. She has the title deed for the suit land. This ownership is not controverted by any evidence.

Section 26(1) of the [Land Registration Act](#) provides as follows.

“The certificate of title issued by the registrar upon registration...shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner..”

There is no evidence from the Respondent to rebut this presumption of law.

9. The Respondent has no justification for possessing or trespassing on the Applicant's land. Even though he had a chance to justify his entry and occupation of the land, he chose not to do so.
10. Order 37 [Civil Procedure Rules](#) provides for commencement of particular suits by way of originating summons. It is trite law that an action is commenced by way of originating summons when (1) it is required by a statute or relates to (2) a dispute, which is concerned with matters of law and is unlikely to raise any substantial dispute of fact.

In this case the Applicant's ownership of the suit land is undisputed. The Respondent's trespass is admitted. The Respondent did not dispute any of the deposition by the Applicant. This makes this case appropriate for commencement via originating summons.

11. On the final issue of whether the Applicant is entitled to the orders sought, I find that she is indeed entitled to them. Under Sections 24 and 25 of the [Land Registration Act](#), the interest conferred by registration is absolute ownership with all rights and privileges belonging or appurtenant thereto and such rights cannot be defeated except for good reason and the Respondent has not come up with any. The only difficulty that I have is in assessing the mesne profits payable to the Applicant because in her affidavit, she has not quantified what she loses per day or per month owing to the Respondent's occupation of her land. In the submissions, there is no mention of the mesne profits. It would be mere speculation for me to award any sum without the supporting evidence.
12. In conclusion and for the reasons given, I find merit in the summons dated 30-5-2024 and I allow it in terms of prayers 3 and 4. Costs to the Applicant.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 5<sup>TH</sup> DAY OF MAY, 2025.**

**M.N. GICHERU**

**JUDGE.**

