



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Gitau & 8 others (Civil Suit 206 of 2017)
[2025] KEELC 3617 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3617 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
CIVIL SUIT 206 OF 2017
JM ONYANGO, J
MAY 6, 2025**

BETWEEN

DOMINIC NGANGA NJUGUNA PLAINTIFF

AND

EDITH WAITHIRA GITAU 1ST DEFENDANT

THIKA LAND REGISTRY 2ND DEFENDANT

CHARLES KIMANI MBURU 3RD DEFENDANT

WILLIAM WACHIRA KIHUHI 4TH DEFENDANT

JANE WAMBUI MWAI 5TH DEFENDANT

LAURA GATHONI KIRATU 6TH DEFENDANT

NJUGUNA GITHONGO 7TH DEFENDANT

MWALIMU INVESTMENT CO LTD 8TH DEFENDANT

MWALLIMU SUKARI COMPANY LIMITED 9TH DEFENDANT

RULING

1. What is before me for consideration is the Notice of Motion dated 11th October 2024 brought by the 2nd Defendant/Applicant under the provisions of Sections 1A,1B, 3 and 3A of the [Civil Procedure Act](#) and Order 51 rule 1 of the [Civil Procedure Rules](#) seeking the following orders:

1. That this honourable court be pleased to expunge from the court's records herein all pleadings filed by M/s Nyingi & Wanjiru Company Advocates allegedly on behalf of the 2nd Defendant/Applicant herein.



2. That upon prayer (a) above being granted, the 2nd Defendant/Applicant be granted leave to file a Replying Affidavit to the Originating Summons herein.
 3. That the costs of this application be in the cause.
2. The application is premised on the grounds on the face of it and supported by the affidavit of Dominic Nganga Njuguna sworn on 11th October 2024. He avers that he met the Plaintiff/Respondent in 2014 at the Criminal Investigation Department (CID) office at Kiambu, who had summoned him regarding a complaint reported over land parcel number Ruiru/Ruiru East Block 3/654. He stated that the Plaintiff/Respondent claimed that some people had tried to defraud her of land she had bought at Mwalimu Farm.
 3. He further stated that he confirmed to the Plaintiff/Respondent and the CID officer that he also had a parcel of land at Mwalimu Farm and that he could not be part of any collusion to defraud the Plaintiff/Applicant of her land. He even promised to assist her, by testifying as her witness in court. Subsequently, the Plaintiff/Respondent informed him about this suit and that she wanted him to be his witness, which he agreed to.
 4. He deposes that he later learned that it was alleged that he did not have any proprietary interest over land parcel number Ruiru/Ruiru East Block 3/659, notwithstanding that the same was registered in his name. He also learned that it was alleged that instead, he was the proprietor of Ruiru/Ruiru East Block 3/654 and that he was being represented by the firm of Nyingi Wanjiru & Company Advocates in this suit.
 5. He denies that he has ever instructed the said firm of Advocates, ever visited their offices or ever paid them legal fees for any such legal representation. He explains that he instructed his current Advocates on record to represent him, consequent upon which they wrote a letter to the firm of Nyingi Wanjiru & Co. Advocates, but they never responded. He adds that he has been informed by his current advocates that their efforts to trace the firm of Nyingi Wanjiru & Co. Advocates have been futile. He maintains that the Plaintiff/Respondent must have orchestrated the coming on record of the said firm on his behalf, with a motive to mislead the court.
 6. In conclusion, he urges this court to expunge from the court record any pleadings purportedly filed on his behalf by the firm of Nyingi Wanjiru & Co. Advocates. He also seeks leave of the court to file a replying affidavit to the originating summons. Finally, he states that no prejudice incapable of being compensated by monetary terms will be suffered by the Plaintiff/Respondent.
 7. In opposing the application, the Plaintiff/Respondent swore an undated Replying Affidavit where she deposes that she is the registered proprietor of land parcel number Ruiru/Ruiru East Block 3/659, which she acquired by virtue of being a member of Mwalimu Investment Co. Limited.
 8. She avers that in 2012, upon conducting a search on land parcel number Ruiru/Ruiru East Block 3/659, she was informed by the Land Registrar that he had issued 3 title deeds for the said property. One was issued to her, one to the 2nd Defendant/Applicant and the third one to Paul Karogo, who later transferred it to the 3rd, 4th, 5th and 6th Defendants/Respondents. She states that she contacted the 2nd Defendant/Applicant in the process of investigating the cause of issuance of the multiple titles. It is her claim that the 2nd Defendant/Applicant swore an affidavit dated 22nd January 2014 to the effect that he did not own or have any proprietary interest in land parcel number Ruiru/Ruiru East Block 3/659 and that he only owned land parcel number Ruiru/Ruiru East Block 3/654.
 9. She maintains that the 2nd Defendant/Applicant swore a replying affidavit dated 22nd July 2014 where he stated that he bought Land Parcel Number Ruiru/Ruiru East Block 3/654 and was issued



with a title. She adds that the said replying affidavit does not indicate who drew it, however, it was filed in court on 17th April 2014.

10. The Plaintiff/Respondent claims that the 2nd Defendant/Respondent appointed the firm of Nyingi & Wanjiru Company Advocates, who filed a Notice of Appointment of advocates on 12th June 2024, after he had already filed the replying affidavit. She adds that in the said replying affidavit, the 2nd Defendant/Applicant reiterated that he had no proprietary interest in land parcel number Ruiru/Ruiru East Block 3/659 and that the entries in the green card related to the said parcel were forged.
11. She states that the 2nd Defendant/Applicant was represented by M/s Nyingi & Wanjiru Company Advocates until 15th September 2023 when he changed Advocates to Waithera Mwangi & Co. Advocates.
12. She further states that during the period the 2nd Defendant/Applicant was represented by M/s Nyingi & Wanjiru Company Advocates, he never raised any complaint or objection on the said representation therefore, this application is a scheme to mislead the court and to affect the hearing of the suit.
13. She deposes that there is nothing material to be expunged from the court record given that M/s Nyingi & Wanjiru Company Advocates only filed a Notice of Appointment and the 2nd Defendant/Applicant's witness statement, which is a replica of his replying affidavit. She faults the 2nd Defendant/Applicant for seeking leave to file a replying affidavit while she had already filed one in 2014. She avers that the 2nd Defendant/Applicant is estopped from claiming that he has any interest in Land Parcel number Ruiru/Ruiru Block 3/659 because claiming the same would amount to perjury.
14. She denies having involvement in M/s Nyingi & Wanjiru Company Advocates coming on record for the 2nd Defendant/Applicant. In conclusion, she stated that this application is frivolous, vexatious and an abuse of court process. She urged this court to dismiss the application.

Submissions

15. The application was canvassed by way of written submissions. The 2nd Defendant/Applicant filed his submissions dated 3rd March 2025, while the Plaintiff/Respondent filed hers dated 4th March 2025.

Analysis and Determination

16. Having considered the issues raised in the application, the replying affidavit and the rival submissions, the main issue for determination is whether the application is merited.
17. A perusal of the court file shows that this suit was initially filed at the Milimani ELC Court under case number *ELC Civil Suit No. 661 of 2014*. The suit was later transferred to Thika ELC court on 9th December 2017. The court takes note that the firm of M/s Nyingi Wanjiru & Company Advocates, have not responded to the allegations made in the application despite being served with the same on 14th October 2021 via the email address "nyingiwanjirulaw@gmail.com". An affidavit of service of an even date sworn by the Applicant's current advocate was filed to that effect. The Applicant contends that his current advocates on record were unable to trace the physical location of the M/s Nyingi Wanjiru & Company Advocates.
18. In light of the foregoing and of the Applicant's constitutional right to choose an advocate of preference, I find that the application is merited, hence it is allowed as prayed. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT THIKA THIS 6TH DAY OF MAY 2025.

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J. M ONYANGO



JUDGE

In the presence of:

1. Ms Waithera Mwangi for the Applicant
2. Ms Mwaura for the Respondent

Court Assistant: Hinga

