



**Njoroge v Mwema & another (Environment and Land Appeal
E011 of 2024) [2025] KEELC 3608 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3608 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E011 OF 2024**

MN GICHERU, J

MAY 6, 2025

BETWEEN

JAMES MBURU NJOROGE APPELLANT

AND

PETER KAMAU MWEMA 1ST RESPONDENT

PETER NJOROGE MWEMA 2ND RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the learned Principal Magistrate *Kandara in Case No. MCELC No. 21 of 2020*. In that Judgment the Court made the following orders;
 - i. Plaintiffs are the registered owners of Land Parcel No. Loc.4/Gakarara/26 and their registration was obtained legally and procedurally.
 - ii. I dismiss the Defendant's counter claim with costs to the Plaintiffs.
 - iii. An order of permanent injunction is hereby issued restraining the Defendant whether by himself or his servants or agents or otherwise whatsoever from remaining on or continuing in occupation of all that land described as Loc.4/Gakarara/26.
 - iv. The defendant or his servants or agents shall vacate land parcel No. 4/Gakara/26 within 60 days from the date of this judgment and in default plaintiffs are at liberty to initiate eviction of defendant or his agents or her servants as laid down in law.
 - v. I award plaintiffs general damages of Kshs.100,000/= for trespass.
 - vi. Plaintiffs shall have the costs of this suit.
2. Dissatisfied with the judgment and decree of the Court, the Appellant filed a memorandum of appeal dated 20/3/2024 seeking the following nine (9) orders;-



- i. The appeal herein be allowed.
 - ii. The judgment and orders issued on 20/2/2024 in *Case No. 21 of 2020, Kandara* be vacated and/or set aside.
 - iii. The Appellant be declared the registered legal and beneficial owner of the suit land.
 - iv. That the Land Registrar, Murang'a be hereby ordered to cancel the title issued to Peter Kamau Mwema on 21/7/2015 over the suit property and the antecedent -entry in the register of the suit land being entry No. 3 made on 15/5/2003. In the alternative to the above prayer sought this Court does;-
 - v. Be pleased to make a declaration that Mr. Nyangweso advocate was an unqualified person as at the time of taking instructions from the Appellant, filing Court documents and during the whole lower Court proceedings up to the delivery of the judgment thereof.
 - vi. The Court be pleased to order that the documents filed by Mr. Nyangweso Elijah Momanyi in representing the Appellant in the Lower Court matter are invalid and of the legal effect on the principle that Courts would not condone or perpetuate illegalities, and the same be struck off the record and proceedings of the Lower Court matter.
 - vii. Upon issuance of (Vi) above, the Court be pleased to order that *case No. 21 of 2020 Kandara* be heard de novo by a different Court and/or magistrate with the requisite jurisdiction.
 - viii. The Court be pleased to make any further and/or other orders in the interest of fairness and justice.
 - ix. Cost of this appeal be borne by the Respondents.
3. There are sixteen grounds of appeal. They are as follows. The learned trial Magistrate erred in law and in fact –
- i. by delivering a Judgment that was inconsistent with the law and facts and thus leading to an erroneous conclusion and occasioning a serious misinterpretation of the law and thus causing grave injustices,
 - ii. by entertaining documents prepared by an unqualified person – Mr. Nyangweso Elijah Momanyi,
 - iii. by making a finding that the suit land measuring 1.8 acres was sold to the late Muchendu Machina, and further that the sale was proved despite no sale agreement nor payment having been presented to Court by the 1st and 2nd Respondent,
 - iv. by failing to take into account the evidence of one Patrick Nyoike Machina the grandson to the late Wanyoike Machina who confirmed that the land was sold to the late Wanyoike Machina was Kigio 5 number 26 and not the suit land,
 - v. by arriving at the finding that the Respondent's father took possession of the suit property upon purchase the Appellant has been in possession since 1963 and remains in possession having built his permanent home thereon and tilled the suit property all through to-date with his family,
 - vi. failing to visit the suit property to determine its true state of occupation and/or possession despite the Appellant having requested the same and possession having been an issue in the lower Court matter,



- vii. by failing to take into account the fact, in evidence that the names Nyoike Muchina and Wanyoike Muchina refer to one and the same person who is the Appellant herein and not Wanyoike Machina,
 - viii. failing to take into account that at the time the suit property was adjudicated upon by the colonial government it was given to Nyoike Muchina who is the Appellant, the same having been received on his behalf by the late mother Wanjiku Muchina as indicated in the adjudicator register of 8th May, 1963,
 - ix. holding that as per the baptism card produced as defence exhibit 18, the Appellants late mother was known as Wanjiku Metho, where the baptism card contains the name of the Appellant's father and the name of the mother to the Appellant's father.
 - x. by failing to appreciate the fact that the Appellant was neither a party to the succession matter by the Respondents nor the various other matters which he came to learn of during the pendency of the lower Court suit,
 - xi. by failing to distinguish between the names Wanyoike Muchina (Nyoike Muchina) the name the Appellant went by, and Wanyoike Machina (Nyoike Machina) – the name of the person alleged to have sold the suit property,
 - xii. by failing to take into account the fact that prior to the issuance of the title deed to the suit property to the Respondents on 21/7/2015 the Appellant had lodged a claim with the land Registrar that he had lost his title and sought to apply for a new title in its place and that a gazette over the claim done on 10/1/2003. Therefore, it was within the said period that the fraudulent transaction and transfer over the suit property was done,
 - xiii. by concluding that the Respondent's registration over the suit property was obtained legally and procedurally, despite the glaring evidence to the contrary as supplied by the Appellant,
 - xiv. by speaking on behalf of the Registrar on how the land Registrar perceived the application over the lost title despite the said registrar not having testified or presented evidence in Court,
 - xv. holding that there was trespass by the Appellant and ordering nominal damages of Kshs.100,000/= despite the Respondent not particularizing the alleged trespass, and
 - xvi. the entire judgment was totally flawed and/or erroneous.
4. I have carefully considered the record of appeal, the grounds of appeal, the judgment of the learned trial magistrate and the reasons thereof. I find no fault with the judgment. I also find no truth in grounds 1, 2, 3, 4, 5, 6, 7, 8, 13 and 16. It was the duty of the Appellant to plead his case clearly, hire a qualified advocate, prove his case to the standard in *Ndolo Vs Ndolo* Civil Appeal No. 128 of 1995 that is to say, proof beyond a balance of probabilities, prove to the Court who he inherited the land from, prove his occupation of the suit land by calling his neighbours or filing pictures of his home and the graves on the land, make a request for a visit to the locus in quo and so forth. In the memorandum of appeal all the above failures are visited upon the trial magistrate. If the Appellant hired Mr. Nyangweso Elijah Momanyi who was an unqualified person to represent the Appellant how is the learned trial magistrate to blame for this. If the Appellant did not file even a single photograph of a house or a grave on the suit land, how is the learned trial magistrate to blame? If the trial magistrate did not visit the locus in quo, how is she to blame if there was no application made by the Appellant or his representative? Yet this is what is contained in most of his grounds of appeal.



5. The only reason why I will set aside the judgment of the lower Court is the alleged but not proved occupation of the suit land by the Appellant since 1963. If this were to be proved, then it could probably be an overriding interest in terms of Section 30(g) of the Registered Land Act and 28 (c) and (h) of the Land Registration Act (Act No. 3 of 2012).

The admission by the Appellant that he hired an unqualified person to represent him is the sole reason that I have been persuaded to allow the appeal. The Appellant will however pay the costs of Respondents in this Court and the Court below.

6. In conclusion and for the reason already given I order as follows;
- a. The judgment of the learned trial magistrate in *Kandara MCELC No. 21 of 2020* is hereby set aside together with all consequential orders.
 - b. Suit to be re-heard by the same magistrate or any other magistrate at Kandara so long as they are duly appointed to deal with ELC matters.
 - c. Parties have a window of 60 days to re-open their pleadings.
 - d. Cost of this appeal and those in case No. *MCELC 21 of 2020*, Kandara to be borne by the Appellant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 6TH MAY, 2025.

M. N. GICHERU

JUDGE

Delivered online in the presence of:-

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Mr. Wamae holding brief

Respondent's Counsel – Weyimi holding brief

