



REPUBLIC OF KENYA



**KENYA LAW**  
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**Githui v Njeri & another (Environment & Land Case E003 of 2025)  
[2025] KEELC 4970 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4970 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND CASE E003 OF 2025**

**JM KAMAU, J**

**JULY 3, 2025**

**BETWEEN**

**BENSON KIMARU GITHUI ..... PLAINTIFF**

**AND**

**LUCY NJERI ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. This undefended suit was filed vide a Plaint dated 19/2/2025 on the even date when the plaintiff sought against the Defendant herein for:-
  - a. A declaration that the 1<sup>st</sup> Defendant has no lawful interest or claim over Land Parcel Number Nyandarua/Passenga/14.
  - b. An order directing the 2<sup>nd</sup> directing the 2<sup>nd</sup> Defendant to remove the restriction lodged against Land Parcel Number Nyandarua/Passenga/14 on 5<sup>th</sup> June 2024 and facilitate the full transmission of the property to the Plaintiff as per the Certificate of Confirmation of Grant.
  - c. A permanent injunction restraining the 1<sup>st</sup> Defendant, her agents, servants, or anyone acting on her behalf from lodging any further restriction or claim over the suit property.
  - d. Costs of this suit
  - e. Any other relief this Honourable court deems fit and just to grant.
7. The Plaintiff averred that he was the rightful beneficiary of the suit property measuring 13.4 hectares which was registered under the name of his late father, Leonard Githui Mathenge whose date of death is not given and which was issued on 8/10/2024 in Karatina Magistrate's Court Succession Cause No.224 of 2023 pursuant to Section 71 (1) of the Law of Succession Act. He claims that the 1<sup>st</sup> Defendant



is a past cohabitee of his, but who has been living separately from him for more than 10 years. He claims that the 1<sup>st</sup> Defendant lodged a restriction against the suit property on 5/6/2024 claiming an interest against the suit property as a spouse under the pretext that the property is matrimonial and that therefore the restriction is unlawful, illegal and prejudicial to the Plaintiff preventing him from enjoying full proprietary rights and the same is an abuse of legal process and an infringement of the Plaintiff's proprietary rights.

8. Finally, the Plaintiff's claim is that the 1<sup>st</sup> Defendant has failed to heed to his demand to remove the said restriction.
9. In his evidence, adduced in court on 15/10/2025, the Plaintiff repeated his averments contained in the aforementioned Plaint, and adopted his written statement of 19/2/2025 adding that the 1<sup>st</sup> Defendant neither developed nor contributed to any improvements in the suit property. She also never objected to the Succession Cause in Karatina Magistrate's Court Succession Cause No. E224 of 2023.
10. While answering questions from the court, the Plaintiff said that he had sired 7 children with the 1<sup>st</sup> Defendant who left for her mother's place in Limuru and that he has no other wife nor is he staying with any other woman and that he intends to sub-divide the land among his 2 sons each getting 5 Acres which they have developed, plus 7 Acres to himself and the remaining 4.5 Acres to his 5 daughters. That ended his case.
11. Whereas this looks like a simple and straightforward matter, but this is not the case. In the first place the Plaintiff has not attached a copy of the Certificate of Death of his father, Leonard Githui Mathenge nor does he say when the father died if at all. I have gone through the entire documents and the date of death is not indicated. Not even in the so called Certificate of Confirmation of Grant. Secondly, in the document referred to as the Certificate of Confirmation of Grant (Form P & A 54) something seems not to be adding up and I have a feeling that this is a cooked-up document. The same is headed as follows –

Republic of Kenya

In the Magistrate Court of Kenya at Nyeri

Court Name: Karatina Law Courts”

12. We do not have a Court in the Republic of Kenya with such a name. It is either a Chief Magistrate's, Senior Principal Magistrate's, Principal Magistrate's, Senior Resident Magistrates or Resident Magistrate's Court but not simply Magistrate's Court. Secondly, Karatina Law Court though within Nyeri County is not referred to as
13. Magistrate Court of Kenya at Nyeri. And thirdly, the Grant is not signed. I therefore am not convinced that the document is authentic. I am however not ignorant of the law under Section 84 of the [Evidence Act](#) Cap 80 Laws of Kenya which provides that: -

“.....whenever any document is produced before any court, purporting to be a record or memorandum of any evidence given in a judicial proceeding or before any officer authorized by law to take such evidence, and purporting to be signed by a Judge or Magistrate or any such officer as aforesaid, the court shall presume -

- a. That the document is genuine
- b. -----



c. That such evidence was duly taken..”

14. The aforesaid Certificate of Confirmation of Grant is not signed and the title is erroneous and the presumption (which is rebuttable) cannot be in favour of the Plaintiff. In view of the above this suit is hereby dismissed and since the Defendant never participated in the case, I will make no orders as to costs.

**DATED AND DELIVERED AT NYANDARUA THIS 3<sup>RD</sup> DAY OF JULY 2025.**

**HON. MUGO KAMAU**

**JUDGE.**

In the presence of: -

Court Assistant –Samson.

Applicants’ Counsel - Plaintiff in person.

Respondent’s Counsel – N/A.

