



**Muturi v Mbugua (Sued in Her Capacity as the Legal Representative of the Estate of Joseph Mbugua Nganga – Now Deceased) (Environment and Land Appeal E019 of 2024) [2025] KEELC 5100 (KLR) (8 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5100 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E019 OF 2024**

**MN GICHERU, J  
JULY 8, 2025**

**BETWEEN**

**NANCY WAMBUI MUTURI ..... APPELLANT**

**AND**

**MARY NJERI MBUGUA ..... RESPONDENT**

**SUED IN HER CAPACITY AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF JOSEPH MBUGUA NGANGA – NOW DECEASED**

*(An Appeal against the Judgment of the Senior Resident Magistrate Hon. S.M. Mwangi delivered on 17/4/20224 in CMC E.L.C SUIT No.41 of 2023 – Murang'a)*

**JUDGMENT**

1. The Appellant seeks the following orders in this appeal.
  - a. The appeal be allowed.
  - b. There be an order therefore allowing the Appellant's suit filed in the lower court with costs.
  - c. The costs of this appeal and of the suit in the lower court be borne by the Respondent.
2. There are six(6) grounds of appeal in the memorandum of appeal dated 13-5-2024 for seeking to reverse the judgment and decree of the learned trial magistrate in Murang'a CMCC ELC Case No. 41B of 2023.

The learned Senior Resident Magistrate erred in law and in fact-

- i. in making a finding that the agreement signed by the Appellant and the husband of the Respondent one Joseph Mbugua Ng'ang'a was void ab initio while the converse is true,



- ii. in ruling that the agreement for sale did not meet the threshold provided for by the Law of Contract Act while the converse was true,
  - iii. by making an erroneous finding that the agreement for sale in respect of land parcel No. Loc. 7/Ichagaki/4562 offended the provisions of the Land Control Act,
  - iv. in failing to find that the agreement dated 31-5-2023 was enforceable in law and that the Appellant was entitled to a relief of specific performance and/to refund of consideration,
  - v. by failing to find that the Respondent as the legal representative of the estate of Joseph Mbugua Ng'ang'a was enjoined in law to enforce the agreement and
  - vi. in making a finding that the Appellant did not prove her case on a balance of probabilities which finding has no basis in law as the evidence adduced by the Appellant satisfied the threshold requisite in matters of this nature.
3. The facts of the case according to the Appellant are as follows. One, she purchased the suit from the Respondent's husband on 31-5-2022. The full purchase price was Kshs. 750,000/= and the size of the suit land was 0.19 hectares. In total, the Appellant paid Kshs. 527,000/=. The balance of Kshs. 223,000/= was to be paid upon transfer. Two, the husband of the Respondent put the Appellant in possession of the suit land. Three, the Respondent failed to transfer the suit land to the Appellant as a result of which he filed the lower court suit seeking for an order of specific performance, payment of Kshs. 1,054,000/= . Costs of the suit and interest.
  4. The facts of the case according to the Respondent are as follows. Firstly, she is the personal representative of the estate of Joseph Mbugua Ng'ang'a who is the registered owner of the suit land. Secondly, the suit land has been her matrimonial home for over 30 years. She is not aware that her late husband entered into a sale agreement with the Appellant and when she became aware she placed a caution over the land on 8-11-2019. The said caution is in place. Thirdly, she did not give spousal consent to her husband to sell the land. Finally, the Appellant was never granted possession of the suit land. For the above and other reasons, she prayed for the dismissal of the Appellant's suit .
  5. In her judgment of 17-4-2024, the learned trial magistrate dismissed the Appellant's suit for failure of the purchaser to comply with Section 6 of the Land Control Act rendering the sale agreement void. The purchaser did not obtain the consent of the Land Control Board.
  6. Counsel for the parties filed written submissions dated 19-3-2025 and 21-3-2025 respectively. The issues identified are as follows.
    - i. Whether the Appellant took possession of the suit land.
    - ii. Whether the Appellant was entitled to an order of specific performance .
    - iii. Whether the estate of the deceased is indebted to the Appellant.
    - iv. Whether the Appellant has any remedies available to her.
  7. I have carefully considered the appeal in its entirety including the record, the grounds, the written submissions and law cited therein. I make the following findings on the issues identified above.
  8. Regarding the 1<sup>st</sup> issue, I find that the Appellant did not adduce any evidence to prove that she occupied the suit land. Apart from her saying so in the pleadings, there is no evidence of photographs showing



any structures or crops belonging to her on the suit land. Secondly, on this point, the sale agreement provided as follows at clause 9-

“That the purchaser shall take possession of the said portion after full payment of consideration.”

Even according to the sale agreement, the Appellant could not occupy the suit land before paying the purchase price in full. It is the Appellant’s case that she never paid the full purchase of Kshs. 750,000/= . She only paid Kshs. 527,000/= . She therefore never qualified to take possession of the suit land.

9. As for the second issue of specific performance, I find that she was not entitled to the said order. As with all equitable remedies, specific performance is discretionary and will only be allowed when the Plaintiff can persuade the court that damages are not adequate in the circumstances. It will only be available where it is proved that the subject matter of the contract is rare or unique and it is the object rather than the value that the Plaintiff desires. See *Gathuthi Hotel vs Fazal Ilahi*[1957] E.A. 17 and *Patel vs. Dhana Singh* [1962] E.A. 32. The Appellant has not proved that she suit land is unique and rare.

Secondly, the Plaintiff must approach the court free from blame on her part. Thirdly, this relief will not be granted where the Plaintiff is caught up by laches or delay. Finally the court will reject the Plaintiff’s claim if it will cause undue hardship to the Defendant. In this case, the Appellant has not proved all the above conditions to exist in order to qualify for specific performance.

10. I find in regard to the 3<sup>rd</sup> issue that the estate of deceased is indebted to the Appellant. The land that the Appellant was buying from the deceased is still available. The claim is in rem and not in personam. It survives the deceased.
11. While the trial magistrate was right to find that the transaction was void for absence of the Land Control Board consent which is mandatory under Section 6 of the *Land Control Act*, she erred because under Section 7 of the same Act it is provided as follows.

“If any money other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid from the person to whom it was paid, but without prejudice to Section 22.”

12. From the foregoing, it is obvious that the Judgment and decree of the learned trial magistrate cannot be allowed to stand. Consequently, I allow the appeal by the Appellant in the following terms.
- a. Judgment and decree of the lower court in Murang’a CMC ELC Case No. 41B of 2023 is hereby set aside.
  - b. The partly paid purchase price of Kshs. 527,000/= (Five hundred and twenty seven thousand) to be refunded to the Appellant together with interest at court rates from the date of filing of the suit to the date of refund.
  - c. Costs of the suit in the lower court and in this court to the Appellant.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG’A THIS 8<sup>TH</sup> DAY OF JULY, 2025.**

**M.N. GICHERU**

**JUDGE.**



Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant’s Counsel – Mr Njoroge

Respondent’s Counsel – Absent

