



**Muigai v Kamau (Environment and Land Appeal E010 of 2025)  
[2025] KEELC 4957 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4957 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND APPEAL E010 OF 2025**

**JM KAMAU, J**

**JULY 3, 2025**

**BETWEEN**

**GITAKA KAGERA MUIGAI ..... APPELLANT**

**AND**

**ROBERT CHEGE KAMAU ..... RESPONDENT**

**RULING**

1. On the 29/4/2025, the Honourable H. Adika, SPM in Engineer ELC No.E008 of 2021 delivered a Judgment in favour of the Respondents against the Appellant, Gitaka Kagera Muigai in which the 1<sup>st</sup> Respondent had sued the Appellant where he averred that the Appellant had entered into a Sale Agreement with the late George Stephenson Kamau Buba purchasing a 10 Acre piece of land to be excised from Nyandarua/Kitiri/337 upon which the Appellant caused a mutation of his land with 4 portions which were assigned L.R Nos. 1004, 1005, 1006, and 1007 respectively.
2. The 1<sup>st</sup> Respondent said that the Appellant did not disclose to the Deceased that the Appellant had a huge standing boundary dispute with the owner of Land Parcel No. Nyandarua/Kitiri/339 into which the Appellant had encroached and forcefully maintained a boundary into Parcel No.Nyandarua/Kitiri/339 from which boundary the portion sold to the Deceased was surveyed.
3. When in 2013 the Deceased invited a Surveyor to the land for sub-division, he discovered that Parcel No.Nyandarua/Kitiri/1004 on the ground was measuring 7.3 Acres and not the 10 Acres sold to the Deceased and that the beacon to the said Parcel of Land had been pushed into Parcel No.339 belonging to 2.7 Acres of course to make up for the deficit.
4. Consequently, the Respondent filed the aforementioned suit seeking for an order directing the pushing of the boundary beacons between Nyandarua/Kitiri/1004 and Nyandarua/Kitiri/1005 into Nyandarua/Kitiri/1005 to excise approximately 2.7 Acres adding the same into Nyandarua/



Kitiri/1004 or in the alternative payment by the Appellant to the Respondent the current market value of 2.7 Acres of land in Kitiri Scheme to the Respondent.

5. Of course the Appellant denied that the boundary dispute still existed as at the time of the sale since as he said the same had been resolved in 1982 and that the 2.7 Acres should be recovered from Land Parcel No.Nyandarua/Kitiri/339.
6. The main issue for determination was whether L.R No. Nyandarua/ Kitiri/1004 encroaches with Land Parcel No.Nyandarua/Kitiri/339. The Learned Trial Magistrate in his Judgement held that the answer to the dispute lay with the Appellant who had sold to the 1<sup>st</sup> Respondent 10 Acres but the land on the ground fell short by 2.7 Acres and that the 1<sup>st</sup> Respondent could not recover the 2.7 Acres to a third party to the Sale Agreement – owner of Nyandarua/Kitiri/339. The court therefore held that the beacons to Nyandarua/Kitiri/1004 were to be pushed into Nyandarua/Kitiri/1005 owned by the Appellant to excise the approximately 2.7 Acres adding the same to Nyandarua/Kitiri / 1004. Costs were also awarded to the 1<sup>st</sup> Respondent.
7. From the above background, the Appellant appealed against the Judgment in a Memorandum of Appeal dated 16/5/2025. Contemporaneously, the Appellant moved the court for a stay of execution seeking: -

That there be a stay of execution of the Judgment/Decree delivered on 29/4/2025 pending the hearing and determination of the Appeal.
8. The Application was based on the grounds on the face of the said Application and the undated Affidavit in support thereof by the Appellant whose grounds in a nutshell were that he has lived on the suit land with his family for over 50 years, the land (I believe 1005) has already been sub-divided and that his family is in danger of being displaced or evicted from the suit land unless there is a stay of execution. Further he stated that the Respondent would suffer no prejudice if the stay is granted.
9. On his part, the 1<sup>st</sup> Respondent swore an affidavit on 9/6/2025 where the gist of the same was that should the Appellant win an appeal nothing much would change other than a further re-adjustment of the boundaries and that the long denial of use of the 2.7 Acres to the estate of the Deceased has been unconscionable. He further held that since March 2025 the Appellant has been trying to dispose of L.R No.Nyandarua/Kitiri/1005 to avoid the execution of the Decree.
10. I invited the parties to file written submissions which did and which I have considered before retiring to write this ruling.
11. I hold the view that the stay of execution is unnecessary. The land in Question is held by members of the Appellant's family. Should the same be taken over by the Respondent, the same would be used by the said Respondent until the Appeal, if any, is finally determined. The only prejudice that would befall the Appellant is if the said portion is disposed of. I therefore order that execution do proceed but that the 2.7 Acres excised out of Nyandarua/kitiri/10005 to form part of the Respondent's parcel of land Nyandarua/kitiri/1004 should not be disposed of until the Appeal to be filed is finally heard and determined. The same should also not be leased out or wasted. It should solely be used for farming activities by the Respondent. I make no orders as to costs.

**RULING DATED AND DELIVERED AT NYANDARUA THIS 3RD DAY OF JULY 2025.**

**MUGO KAMAU**

**JUDGE**

In the presence of



Court Assistant –Samson.

Applicants' Counsel - Mr. Karanja.

1<sup>st</sup> Respondent's Counsel – Mr. Irungu.

2<sup>nd</sup> Respondent. N/A.

