



Ngugi & 2 others (Suing in their capacity as administrators of the Estate of Harrison Ngugi Nduati) v Wanjiru & another; Muthama (Interested Party) (Environmental and Land Originating Summons E012 of 2022) [2025] KEELC 5115 (KLR) (8 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5115 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2022
MN GICHERU, J
JULY 8, 2025**

BETWEEN

**MARTIN MUGO NGUGI 1ST APPLICANT
GRACE WAMBAIRE NGUGI 2ND APPLICANT
JOSEPH NDUATI NGUGI 3RD APPLICANT
SUING IN THEIR CAPACITY AS ADMINISTRATORS OF THE ESTATE OF
HARRISON NGUGI NDUATI**

AND

**JANE WANJIRU 1ST RESPONDENT
BERNARD MUTE MI 2ND RESPONDENT**

AND

ALFORCE M MUTHAMA INTERESTED PARTY

JUDGMENT

1. The Applicants seek the following reliefs against the Respondents.
 3. Leave to enter and possess L.R. No. Kakuzi/Kirimiri Block 9/1322 situated in Matunda village, Kirimiri Location, Kakuzi Division in Murang'a County.
 3. Eviction of the Respondents from the suit property.
 8. The OCS Kirimiri Police Station to provide security during the eviction.
 9. Costs of this suit.



This is as per the originating summons dated 3-8-2022.

2. The Applicants' case is as follows. One, they are the dependants of the estate of Harrison Ngugi Nduati who owned L.R. No. Kakuzi/Kirimiri Block 9/1322 which measures 0.77 hectares. Two, the Respondents and one Dennis Muilu Sila have erected structures on the suit land and they claim ownership thereof. Three, the Respondents and Dennis Muilu Sila were summoned to the Chief's offices at Kakuzi on 26-11-2016 but they refused to attend. Four, on 15-12-2016, the Respondents and Dennis were invited for a meeting of Dillions Hotel so that they could prove their ownership of the suit land. At the meeting, it was established that only Dennis Mwilu Sila could prove that he had bought part of the suit land property from the deceased. The Respondents did not provide any evidence of ownership. Five, when the Respondents failed to provide the required evidence, they were served with notices of vacation dated 3-10-2027 but they refused to accept service. Since then, the Respondents have refused to vacate the suit land making the filing of this suit necessary.
3. In support of their claim, the Applicants filed the following evidence.
 - i. Supporting affidavit by Martin Mugo Ngigi dated 3-8-2022.
 - ii. Copy of authority to act duly signed by Grace Wambaire and Joseph Nduati.
 - iii. Copy of grant in Nairobi Succession Cause No. 2026 of 2015 dated 30-11-2015.
 - iv. Copy of certificate of confirmation of grant dated 18-7-2016.
 - v. Copy of title deed for the suit land dated 10-2-2000.
 - vi. Copy of notice of meeting at Dillions Hotel dated 10-12-2016.
 - vii. Copy of notice to vacate dated 3-10-2017.
4. The Respondent and the interested party filed a response to the summons as follows. Firstly, Alfonse M. Mutuma was an agent of the deceased who is the father of the Applicants. The deceased was in the business of buying and selling land. Secondly, on 19-4-2004, the deceased appointed the interested party as his agent to sell L.R. No. Gatwanyaga/Ngoliba/Block 2/535 measuring approximately 0.41 hectares. It was situated at Thika where he was Chairman of KENTAFU. The land was purchased from Samuel Ngugi Kiarie. The deceased received the full purchase price of the land which was Kshs. 60,000/= . He gave Kshs. 20,000/= to Florence Njeri who was an agent. He remained with Kshs. 40,000/=. Thirdly, on 24/9/2004, the deceased obtained a friendly loan of Kshs 50,000/= from the interested party. He required the money for mediation. He was advanced the money by the interested party. His health deteriorated and he requested the interested party to sell the suit land so that he could refund the loan to the interested party. The interested party sold one acre out of the suit land to Dennis. This was in the year 2004. Dennis paid the purchase price of Kshs. 60,000/= directly to the deceased. Fourthly, the interested party sold the remaining one acre to the Respondents. He gave the whole amount of Kshs. 50,000/= to Florence Njeri Mugeka in the presence of an advocate called Kangiri. The third party put the Respondents in possession of the suit land. Finally, the whole family of the deceased knows that the Respondents bought the suit land where they have built permanent homes and they have been living there since the year 2004. He prays that the suit land be transferred to the Respondents.
5. In support of their case, the Respondents and the intended party filed the following evidence.
 - i. Affidavits by the Respondents and the interested party dated 24-4-2023 and 3-7-2023.
 - ii. Copies of sale agreements dated 21-11-2004 and 19-4-2004.



- iii. Copies of acknowledgment of receipt of Kshs 50,000/= by the deceased dated 24-9-2004.
 - iv. Witness statements by the interested party and the 2nd Respondent both dated 18-10-2023.
6. At the trial on 23-4-2024 and 26-3-2025, only the 1st Applicant and the interested party testified. The interested party while under cross-examination said that in 2017, he promised to give the family of the deceased 1 acre of land. He was doing this to pay them for the land that he sold at Kakuzi. The rest of the evidence at the trial was in accordance with the pleadings and evidence filed by the parties.
 7. The only submissions that I see on record and those filed by the counsel for the interested party and the Respondents. They are dated 8-4-2025. No submissions have been filed by the Applicants counsel. The main issue raised in submissions is whether the Respondents have acquired the suit land by way of overriding interest as per Section 28(h) of the Land Registration Act.
 8. I have carefully considered all the evidence adduced on this case by both sides including the affidavits, the witness statements, the documents and testimony of the trial. I have also considered the written submissions by the learned counsel for the Respondent.

Regarding the issue raised by counsel for the Respondents and the interested parties, I find the first issue to deal with is whether the Applicants have proved their claim against the Respondents and the interested party on a balance of probabilities.

9. The only eye witness to the transactions relating to the suit land is the interested party. The only other witness who testified in this case is Martin Mugo and his evidence is not direct at all. It relates mainly to what happened when the interested party admitted that he would give them one acre of land at Kakuzi. In his testimony in Court on 26-3-2025 the interested party stated as follows at page 45 of the hand written record.

“There was a meeting at the DO’s office in 2017. I promised that I would give land to the family. I have not given out the land. I was paying them for the land that I had sold at Kakuzi.”

The interested party would not have offered to give the Applicants one acre of land if had not taken their father’s land without paying for it. I find his admission to be proof of nonpayment of the purchase for the one acre to the deceased.

10. Finally on the issue of the overriding interest in favour of the Respondents, there is no admissible evidence about it. Even though one Respondent recorded a witness statement which is on record, he refused to come and testify and prove it. On 26/3/2025 we were told by their own counsel that they were saying that the case is concluded. They missed a chance to appear and prove their so called overriding interest. This was not the only date on which they failed to attend court. They had earlier failed to appear on 18-12-2025.
11. In conclusion and for the reasons already given I enter judgment in favour of the Applicants against the Respondents and the interested party for the one acre agreed between them in 2017. In case the Respondents and the interested party do not comply within 90 days, prayers 3, 4, 8 and 9 of the originating summons dated 3-8-2022 to kick in.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 8TH DAY OF JULY, 2025.

M.N. GICHERU JUDGE.



Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicants’ Counsel – Mr. Munene

Respondents’ Counsel

Mr. T.M. Njoroge

Interested Party’s Counsel

