



**Ngure (Suing as the Legal Representative of Mark Thiga - Deceased) v Kimani & another
(Environment & Land Case E001 of 2018) [2025] KEELC 4890 (KLR) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E001 OF 2018**

MN GICHERU, J

JULY 1, 2025

BETWEEN

**MARY WANJIRA NGURE (SUING AS THE LEGAL REPRESENTATIVE OF
MARK THIGA - DECEASED) PLAINTIFF**

AND

DANIEL KURIA KIMANI 1ST DEFENDANT

JANE WANJIKU 2ND DEFENDANT

JUDGMENT

1. The Plaintiff seeks the following reliefs against the two Defendants both jointly and severally.
 - (a) The first Defendant be ordered to transfer L.R. No. LOC.2/Gacharage/3754 to the name of the Plaintiff.
 - (b) The 2nd Defendant to remove the caution on the suit land failing which the Land Registrar Murang'a be authorized to lift the same in order to effect the transfer to the Plaintiff.
 - (c) Alternatively, the Defendants jointly and severally be ordered to refund the consideration paid plus penalty for breach as stipulated in the contract.
 - (d) The Plaintiff be awarded costs of this suit. In the alternative to the prayers above the 1st Defendant be ordered to pay to the Plaintiff compensation for the plot based on the current market value upon valuation.
 - (e) Any other or better relief the Court may deem fit to grant.

This is as per the amended plaint dated 8/3/2024.
2. The facts of the case according to the Plaintiff are as follows. One, she is the wife of Mark Thiga who is now deceased. Before her husband died, he and the 1st Defendant entered into a sale agreement



dated 1/12/2014. The agreement was for the sale of L.R. No. LOC. 2/Gacharage/3754 suit land at a consideration of Kshs.3 Million. The deceased was the purchaser while the 1st Defendant was the seller. Two, it was a term of the agreement that the 1st Defendant would give vacant possession of the suit land to the Plaintiff upon payment of the purchase price. The purchase was of the whole parcel together with all the developments thereon. The 1st Defendant was selling the suit land because he wished to buy bigger land in Nyandarua as he has a large family because he is a polygamist married to two wives. The 1st Defendant purchased land in Nyandarua and he does not reside on the suit land. Three, to defeat the Plaintiff's claim to the suit land, the 1st and 2nd Defendant illegally connived to place and maintain a caution against the suit land thus preventing and frustrating the transfer of the suit land to the Plaintiff as per the agreement. A valuation report dated 6/3/2024 puts the value of the land and the tea growing thereon at Kshs.8,834,000/=.

3. In support of her case, the Plaintiff filed the following evidence;
 - (i) Witness statement by the Plaintiff dated 8/3/2024.
 - (ii) Copy of sale agreement dated 1/12/2014.
 - (iii) Copy of certificate of official search for the suit land dated 20/1/2015.
 - (iv) Copy of plaint in Kigumo ELC Case No.8 of 2015.
 - (v) Copy of proceedings for the dismissal of the case in (iv) above.
 - (vi) Copy of valuation report dated 6/3/2024.
 - (vii) Copy of certificate of death of Mark Thiga.
 - (viii) Copy of Limited Grant ad litem dated 14/12/2023.
4. The 1st Defendant in a defence and counterclaim dated 5/7/2024 denies the Plaintiff's claim and avers as follows. Firstly he generally denies the Plaintiff's claim. Secondly, the purported sale agreement is dated 1/12/2014 while the caution by the 2nd Defendant is dated 31/10/2012 more than two (2) years before the sale agreement. Thirdly, the value of the land is more than 6 Million. Fourthly, the 1st Defendant never sold the suit land to the Plaintiff's husband. Fifthly, the 1st Defendant never received Kshs. 3 Million from the deceased.
5. In the counterclaim, the 1st Defendant seeks the following reliefs from the Plaintiff.
 - (a) A declaration that the 1st Defendant is the owner of the suit land.
 - (b) An order of permanent injunction restraining the Plaintiff by herself, her servants, employees from entering, remaining, temporally erecting of any description and/or dealing in any way whatsoever with the suit land.
 - (c) Costs and interest thereupon as such rates and such period as the Court may deem fit.
 - (d) Any other or further reliefs that the Court may deem appropriate to avoid (sic).
6. The 1st Defendant's case in the counterclaim is as follows. Firstly, he leased the suit land to the husband of the Plaintiff in the year 2014. The leased land measured approximately 1 acre which had a fully grown tea plantation. This tea had been planted by the 1st Defendant. The 1st Defendant is currently in possession of the suit land.
7. In support of his defence and counterclaim, the 1st Defendant filed the following evidence:



- (i) Witness statements by himself and Charity Njeri Kuria.
 - (ii) Copy of title deed for the suit land dated 4/9/2012.
 - (iii) Copy of bank card for account No.1002979531, Unaitas belonging to the 1st Defendant.
8. The second Defendant filed a written statement of defence dated 5-7-2024 in which she avers as follow. Firstly, she denies all the averments in the plaint generally. Secondly, she denies the existence of any lawful sale agreement for the suit land especially because there was no spousal consent from her. Thirdly, she admits having cautioned the suit land on learning that the Plaintiff's husband wished to defraud them of the suit land. Fourthly, the suit land is family land and the 1st Defendant is a mere trustee for the 2nd Defendant and her children. Fifthly, there is a similar case which is Kigumo Magistrate's Court Case No.ELC 8/2015 which concerned the suit land where the 2nd Defendant was seeking an order of permanent injunction to restrain the Plaintiff from dealing with the suit land. Finally, the 2nd Defendant contends that the Plaintiff has no locus standi to institute this suit. For the above and other reasons, she prays for the dismissal of the Plaintiff's suit.
9. In support of her case, the 2nd Defendant filed the following evidence.
- (i) Witness statements by herself and her son Samuel Mugwe Kuria both dated 19-7-2024.
 - (ii) Copies of ID cards for the 2nd Defendant and her son.
 - (iii) Copy of certificate of official search of the suit land dated 20-1-2015 showing the caution dated 31-10-2012.
10. At the trial on 12/2/2025 and 25/3/2025, a total of six witnesses testified. They included the Plaintiff, the 1st and 2nd Defendants. Each one of them called one witness. The most remarkable thing that the Plaintiff said in her testimony is that her husband only paid Kshs.2 Million out of the 3 Million as purchase price and that there is a balance of Ksh 1 Million. Everything else that the Plaintiff said in her testimony is as per her pleadings and witness statement outlined earlier.
- The 1st Defendant denied receiving Kshs.2 Million from the Plaintiff's husband. According to him, he only received Kshs.120,000/= which was for lease of his tea bushes for a period of 3 years. Finally, his evidence is that the land in Ol Kalou was bought by his second wife Charity Njeri after she sold some other land that she owned.
- The second Defendant also testified as per her pleadings outlined above. However, there was a remarkable admission while under cross examination when the second Defendant said that the Plaintiff plucks tea in the portions belonging to the 1st Defendant and the second wife, Charity Njeri.
11. Counsel for the parties filed written submissions dated 14/4/2025, 16/4/2025 and 24/4/2025 respectively. They identified the following issues.
1. First Defendant's issues:
 1. Whether the amended plaint dated 8/3/2024 complies with Order 4 rule 2 of the Civil Procedure Rules.
 2. Whether indeed there was a sale agreement between the Plaintiff's husband and 1st Defendant over the suit land.
 3. Has the Plaintiff proved her case to the required standard.
 4. Repetition of 1 above.



5. Is the 1st Defendant entitled to the prayers sought in the counter claim.
6. Who should be condemned to the costs of the suit.
2. Second Defendant's issues
 - i. Whether the suit land is matrimonial property.
 - ii. Whether a valid sale agreement was executed on 1/12/2014 between the 1st Defendant and Mark Thiga and whether the agreement is enforceable.
 - iii. Whether terms of agreement were fulfilled by the Plaintiff.
 - iv. The legal effect of the caution placed by the 2nd Defendant on 31/10/2012.
 - v. Whether the Plaintiff is entitled to the orders sought
3. Plaintiff's issues
None identified.
12. I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents and testimony at the trial. I have also considered the written submissions by learned counsel for the parties, including the issues cited therein. I find that the issues as identified will determine the dispute.
I make the following findings on the issues identified by the counsel for the parties.
13. On the first issue, I find that the amended plaint complies with Order 4 rule 2 of the Civil Procedure Rules.
There is a verifying affidavit on record dated 13/12/2017. It is sufficient to file a verifying affidavit once.
14. I find that sale agreement dated 1/12/2014 complies with the law. Firstly, the agreement is in writing. Secondly, the agreement is signed by the seller and the buyer. Thirdly, the agreement is witnessed by an advocate and also by the wives of Mark Thiga and second wife of the 1st Defendant. It complies with Section 3(3) of the *Law of Contract Act*.
15. Regarding the 3rd issue raised by the 1st Defendant, it is my finding that the Plaintiff has proved her case to the required standard partially. She has admitted that her husband paid Kshs.2 Million to the 1st Defendant and not KShs.3 Million. I believe the Plaintiff's evidence. In his witness statement dated 22/1/2018 the 1st Defendant stated as follows in the 3rd line,

“...I sold land parcel No. LOC.2/Gacharage/3754 measuring 2.8 acres to one Mark Thiga and he paid me the agreed price. I sold this land to enable me get bigger land in Nakuru for my family...

It is not true that I have refused to transfer the land to Mark Thiga. If he can pay the transfer fees, I will transfer the land to him. My family has no problem in having the land transferred to him...”

The first Defendant cannot run away from this admission. I find no truth whatsoever in his denial of having sold the suit land to the Plaintiff's husband. His latter witness statement and evidence is an afterthought and false.



Section 120 of the *Evidence Act* provides as follows;

“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither him nor his representative shall be allowed, in any suit or proceedings between him and such person or his representative, to deny the truth of that thing”.

The first Defendant cannot be allowed to blow hot and cold. Having previously accepted that he received the purchase price, he cannot be allowed to deny what he said on 22/1/2018, not verbally, but in writing. It bears his signature and his identity card number.

16. There is evidence from the 2nd Defendant that the Plaintiff is in occupation of part of the suit land. This occupation is with the Consent of the 1st Defendant who has also admitted that he received the purchase price. It is my finding by putting the Plaintiff in possession of part of the suit land, the 1st Defendant created a constructive trust over the suit in favour of the Plaintiff. In the case of Willy Kimutai Kitilit vs Michael Kibet, Eldoret Civil Appeal No.51 of 2015 where the seller had put the buyer in occupation of the suit land, the Court of appeal said in part at paragraph 27 of the judgement.

“Tuning to the present appeal, the learned Judge made the findings of fact in terms of paragraph 3 above and also made a finding of law that the Appellant created a constructive trust in favour of the Respondent. It was not in dispute that the Appellant sold a 2 acre portion of his land comprising 2.440 Hectares to the respondent in 2008 ... it would be unjust and inequitable to allow the Appellant to retain the 2 acres that he had sold to the respondent in the circumstances of the case...”

17. As for the 5th issue raised by the 1st Defendant, I find that he is not entitled to the prayers sought in the counterclaim because he has admitted receiving the purchase price from Mark Thiga. He cannot therefore keep Mark Thiga’s money and his land.
18. I am persuaded that the suit land is matrimonial property within the meaning of Section 6 of the *Matrimonial Property Act*. Be that as it may, it is not contended that the 1st Defendant and his second wife have a new matrimonial home in Ol Kalou. It is also not contended that their tea on the suit land is being plucked by the Plaintiff.
19. I have already held in paragraph 14 above that the sale agreement dated 1/12/2014 complies with the law. In answer to the 2nd issue by the 2nd Defendant, it follows that the said sale agreement is enforceable against the Defendants. In the same vein, I find that the Plaintiff partly complied with his sale agreement by paying Kshs.2 Million leaving a balance of Kshs.1 Million.
20. The legal effect of a caution is to prohibit any dealing with the cautioned land until the cautioner has been heard on why he/she has cautioned his land.
21. From the foregoing, I find that the Plaintiff is entitled to a half of the suit land having paid more than half of the purchase price. Since the doctrines of constructive trust and proprietary estoppel apply to this case, the consent of the Land Control Board is not necessary because as per the case of Willy Kimutai Kitilit(supra) at paragraphs 23,24,and 25, equity, being are of the national values in Article 10 of *the Constitution* supersedes the *Land Control Act*.

In the alternative, I find that the Plaintiff is entitled to a half of the current market value of the suit land which is 8,834,000/= divide by 2 equals Kshs.4,417,000/= i.e four million, four hundred and seventeen thousand.



22. In conclusion therefore I enter judgement for the Plaintiff against the two Defendants as follows:

- (a) a) The Plaintiff is entitled to a half of the suit land through the doctrines of constructive trust and proprietary estoppel.
- (b) In the alternative, she is entitled to a half of the value of the suit which is Kshs.4,417,000/=.
- (c) If the Plaintiff exercises option (a) above, the Deputy Registrar to execute all the necessary instruments to transfer half of the suit land to the Plaintiff.
- (d) The 1st Defendant's counterclaim is dismissed.
- (e) Costs of the suit to the Plaintiff as against the 1st Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 1ST DAY OF JULY, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr. Kirubi

1st Defendant's Counsel – Miss Karanja holding brief

2nd Defendant's Counsel – Mr. Ngure

