



Gikonyo (Suing on his behalf and as a Legal Representative of the Estate of Meschack Gikonyo Mahinda) v Kurema (Sued on his behalf and as the Legal Representative Of The Estate of Charles Kurema Wambugu) (Environment and Land Appeal E001 of 2024) [2025] KEELC 6072 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6072 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E001 OF 2024**

**JO OLOLA, J
SEPTEMBER 19, 2025**

BETWEEN

**WILSON MAHINDA GIKONYO (SUING ON HIS BEHALF AND AS A
LEGAL REPRESENTATIVE OF THE ESTATE OF MESCHACK GIKONYO
MAHINDA) APPELLANT**

AND

**STANLEY MWANGI KUREMA (SUED ON HIS BEHALF AND AS THE
LEGAL REPRESENTATIVE OF THE ESTATE OF CHARLES KUREMA
WAMBUGU) RESPONDENT**

JUDGMENT

Background

1. This is an Appeal arising from the judgment of Hon. R. Kefa – PM, delivered on 13th September, 2021 in Nyeri CMCC No. 53 of 2016. The Appeal was first filed in the Nyeri High Court as Civil Appeal No. E060 of 2021 before it was transferred to this court pursuant to an order issued on 10th June 2024.
2. By a Complaint dated 12th February 2016, Wilson Mahinda Gikonyo suing on his own behalf and on behalf of the Estate of Meshack Gikonyo Mahinda (hereinafter “the Appellant”) had sought judgement against Charles Kurema Wambugu (the Respondent) for:
 - a. A declaration that the Plaintiff has exclusive right of possession and use of Plot No. 7 Kahigaini;
 - b. A perpetual injunction restraining the Defendant, his agents and/or servants from interfering with the Plaintiff’s from interfering with the Plaintiff’s possession and use of Plot No. 7 Kahigaini; and



- c. Costs of the suit.
3. The basis of those prayers was the Appellant's contention that the said Meshack Gikonyo Mahinda was confirmed as the allottee of Plot No. 7 Kahigaini having been allotted the same by the County Council of Nyeri vide a meeting held on 11th December 2012. It was the Appellant's case that prior to the allotment, the said Meshack Gikonyo Mahinda had been in exclusive possession and use of the suit property.
 4. In his Statement of Defence as filed on 25th March 2019 before the Trial Court, the Respondent denied that the said Meshack had been confirmed as the allottee of Plot No. 7 Kahigaini and/or that he had been in exclusive possession of the Suitland. Instead, it was the Respondent's case that he was the proprietor of the Suitland having purchased it from one Mary Nyambura Muthoga on 23rd September, 1998. The Respondents denied having allowed the Appellant to use or take possession of the Suitland.
 5. Having heard the parties and by the judgment delivered on 13th September 2021, the Learned Trial Magistrate dismissed the Appellant's claim with costs to the Respondent.
 6. Aggrieved by the said determination, the Appellant who was the Plaintiff in the Lower Court moved to this court vide a Memorandum of Appeal dated 28th September 2021 and filed herein on 2nd October, 2021 urging this court to set aside the judgment on some four (4) grounds listed as follows:
 1. The Learned Trial Magistrate erred in law and fact in dismissing the Appellant's case without consideration of the evidence provided;
 2. The Learned Trial Magistrate erred in law and fact by failing to appreciate the evidence that Plot No. 7 Kahigaini was allocated to the Appellant by the County Government of Nyeri;
 3. The Learned Trial Magistrate erred in law and fact for completely misapprehending the issues before her and thus arriving at the wrong conclusion thereby causing gross injustice to the Appellant herein; and
 4. The Learned Trial Magistrate erred in law and in fact for completely ignoring the Appellant's evidence before her and therefore arriving at the wrong conclusion of facts. A gross injustice was thereby occasioned against the Appellant herein.

Analysis and Determination

7. It is now settled law that the duty of this court as the first appellate court is re-evaluate the evidence which was adduced in the trial court and to thereafter arrive at its own conclusion bearing in mind that this court did not have the opportunity of seeing and hearing the witnesses first hand [see *Selle & Another –vs- Associated Motor Boat Co. Ltd and Others* (1968) EA 123].
8. I have accordingly carefully perused and considered both the Record of Appeal as well as the judgment giving rise to this Appeal. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
9. In his claim as filed before the Lower Court, the Appellant had sought for a declaration that he had the exclusive right of possession and use of Plot No. 7, Kahigaini. In addition, the Appellant had sought an order of permanent injunction restraining the Respondent from interfering with his possession and use of the said plot No. 7 Kahigaini.



10. It was the Appellant's case that together with his father Meshack Gikonyo Mahinda who passed away on 4th May, 2008, they had always had exclusive possession of the suit property and that the defunct County Council of Nyeri had confirmed his father as the proper allottee of the suit property.
11. The Respondent was opposed to the Appellant's claim. He denied that the Appellant had been confirmed as the allottee of Plot No. 7 Kahigaini and/or that they had had exclusive possession thereof. It was the Respondent's case that he is the proprietor of the Suitland having purchased the same from one Mary Nyambura Muthoga on 23rd September 1998.
12. Having heard the parties, the Learned Trial Magistrate concluded as follows at paragraph 10 to 12 of the judgement:

“ 10. The Defendant provided a letter dated 12th March 1997 from the District Commissioner addressed to the clerk Nyeri County Council to the effect that Francis Ndegwa Wambugu – deceased was the proprietor of Plot No. 7 Kahigaini Market recommending the same to be transferred to Mary Nyambura Muthoga as the beneficiary. A duly executed sale agreement was also produced showing that the said Mary Nyambura Muthoga sold the land to the Defendant herein on 23rd September, 1998 and a search certificate dated 30th December 2009 shows he is the registered proprietor of the suit property and has been paying land rates accordingly;

11. In as much as the minutes from the defunct Municipal Council indicates that they resolved to allocate the Defendant an alternative parcel of land this was not done and amounted to depriving the Defendant ownership of the plot which is an infringement on his constitutional right to own property; and

12. The Plaintiff has failed to produce documents to prove how he acquired ownership of the suit property and I therefore find that he has failed to prove his case on a balance of probability.”

13. As it were, it was the Appellant's case that together with his father Meshack Gikonyo Mahinda who passed away on 4th May 2008, they had had exclusive possession of the suit property and that the defunct County Council of Nyeri had confirmed his father as the proper allottee of the suit property.
14. On his part, the Respondent denied that the Appellant had had exclusive possession of the property and/or that the Appellant's father had been confirmed by the County Council as the proper allottee of the property.
15. In support of their case, the Appellant called one Ceasar Thinwa Kibue (PW2) who had worked as a Market Superintendent with the County Council of Nyeri between 1989 and 2018 when he retired. PW2 told the court he was aware of the dispute involving Plot No. 7 Kahigaini Trading Centre. In his written statement as captured at Page 13 of the Record, PW2 told the court in part as follows:

“ That the Defendant herein was initially allocated Plot No. 7 Kahigaini trading centre where we had a colonial village.

That the then County Council of Nyeri was giving out plots within the trading centre and where there were no plots in the trading centre they would be allocated the vacant plot within the colonial village.



That in this particular matter the defendant was allocated a plot within the trading centre and not the colonial village.

That the defendant insisted that he should be shown his allocated plot within Kahigaini.

As a team from the department of land we went on the ground and found where the defendant was claiming to have been allocated was already occupied by Misheck Gikonyo Mahinda or the Gikonyo's family.

The Gikonyo's family claimed they had been in occupation since independence.

We advised the defendant that he would be given an alternative plot now that there was another occupant in the parcel he claimed to be his.

The Defendant still insisted that the plot where the Plaintiff was in occupation was his and after a sub-committee meeting it was agreed that the current occupant would not be moved.

That vide a meeting held on 27th December, 2012 which meeting I was in attendance it was deliberated vide minute No. CNN/WTPMC/36/2012 that the squatter being Mr. Gikonyo to stay in occupation of the Suitland and the other one claiming it who is the defendant be given an alternative place.”

16. In support of that position PW2 produced an extract of the minutes of the Works, Town Planning and Markets Committees of 11th December 2012 (pages 10 and 11 of the Record). A perusal of those minutes reveals that PW2 was in attendance in his position as the Market Superintendent and that under the said Minute No. 36 of 2012 titled “Application for Revocation of Allocation/Transfers,” it was resolved as follows:

“C. Plot dispute on Plot No. 7 Kahigaini..... The squatter who is still in ground to stay and the other be given an alternative place at Kahigaini village.”

17. By that resolution, it was clear to me that the County Council which was the body allocating the plots had endorsed the Appellant's occupation of the property in question in view of their long possession thereof. While the trial court came to the conclusion that such an endorsement and the subsequent failure by the County Council to allocate another plot to the Respondent amounted to depriving the Respondent of his constitutional right to own property, it was clear to me that if any such rights had been created, the Respondent could only pursue the same against the County Council of Nyeri and not as against the Appellant.
18. While the Respondent claims that his father Charles Kurema Wambugu had bought the suit property on 26th April 1994 and that his father was registered as the owner of the plot in the year 2007, he conceded under cross-examination that their family have never been in occupation of the Plot or utilized the same ever since it was bought as the Appellant's family were in occupation.
19. That being the case it was clear to me that even where one was to assume that the County Council had not allocated the property to the Appellant, the Appellant and his father had clearly dispossessed the Respondent of the said property for a period in excess of twelve (12) years and the Respondent's entitlement thereto had been extinguished under the doctrine of adverse possession.
20. In the premises, I am persuaded that the Learned Trial Magistrate fell in error in dismissing the Appellant's case. Accordingly, I find merit in this Appeal. I allow the same and set aside the judgment of the Trial Court delivered on 13th September 2021. The said judgment is hereby substituted with an



order allowing the Appellant's claim as set out in prayer (a) and (b) of the Plaintiff dated 12th February 2016.

21. Each party shall bear their own costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Appellant
- c. No Appearance for the Respondents

