



**Kiruru substituted with David Mwangi Munjuga v Githinji (Environment and Land Case 613 of 2014) [2025] KEELC 6071 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6071 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND CASE 613 OF 2014  
JO OLOLA, J  
SEPTEMBER 19, 2025  
(FORMERLY HCCC 95 OF 2011)**

**BETWEEN**

**JOHN MUNJUGA KIRURU SUBSTITUTED WITH DAVID MWANGI  
MUNJUGA ..... PLAINTIFF**

**AND**

**FENACIO MUGO GITHINJI ..... DEFENDANT**

**JUDGMENT**

**Background**

1. This suit was initially instituted in the High Court at Nyeri as HCCC No. 95 of 2011. It was transferred to this court and was given its current reference on 26<sup>th</sup> November, 2014.
2. By a Plaint dated 22<sup>nd</sup> July, 2011, John Munjuga Kiruru (the Original Plaintiff) prays for judgment against the Defendant for:
  - a. A declaratory order that the Plaintiff is the sole proprietor of the land (parcel) number Nyeri/Waraza/16 exclusive of the Defendant and (that) the caution lodged by the Defendant against the Suitland be removed; and
  - b. General damages for the unlawful caution.
3. Those prayers arise from the Plaintiff's contention that he is the registered proprietor of the said LR. No. Nyeri/Waraza/16. He avers that on 14<sup>th</sup> June, 2011, the Defendant unlawfully placed a caution over the Suitland and urges the court to direct that the caution be removed.
4. In his Statement of Defence and Counterclaim dated 30<sup>th</sup> August, 2011, Fenazio Mugo Githinji (the Defendant) avers that on the Plaintiff's land lies a cattle dip known as Mere Cattle Dip measuring



approximately 1 acre and that the same has been used as a public utility ever since the land was demarcated. The Defendant avers that the caution was validly and legally placed by him in his capacity as the chairperson of the Mere Cattle Dip Committee.

5. By way of the Counterclaim, the Defendant avers that the membership of Mere Cattle Dip has acquired by way of adverse possession all that land measuring approximately 1 acre. Accordingly, the Defendant prays for judgment as follows:
  - a. That the Plaintiff's suit be dismissed with costs;
  - b. A declaration that Mere Cattle Dip membership has acquired by way of adverse possession one (1) acre out of Nyeri/Waraza/16 which portion should be excised and be registered into the names of Mere Cattle Dip and noted as a public utility plot;
  - c. Costs of the suit and counterclaim; and
  - d. Interest

### **The Plaintiff's Case**

6. John Munjuga Kiruru (the original Plaintiff) testified as the sole witness in the trial which commenced on 15<sup>th</sup> May, 2013. He told the court that he had acquired the suit land from the Settlement Fund Trustees (SFT) and that there was a cattle dip on a portion of the land. The Plaintiff further told the court that the Government did not demolish the cattle dip before the land was allocated to himself. The Plaintiff further testified that he was at one time a member of the Committee that managed the cattle dip and that the Defendant herein was the Chairman of the Committee.

### **The Defendant's Case**

7. The Defence called 3 witnesses at the trial.
8. DW1- Fenazio Mugo Githinji told the court that the cattle dip was built on the suit land prior to the Plaintiff's acquisition thereof. DW1 testified that the Plaintiff was once a member of the Committee that managed the cattle dip and that he had registered the caution on the land after the Plaintiff started claiming that the cattle dip belonged to the Plaintiff.
9. DW2 – James Wachira was the Land Adjudication and Settlement Officer Nyeri County. He told the court that the public utility is supposed to be noted in every scheme but the item allocating the land to the Plaintiff did not mention the cattle dip. It was his testimony that the cattle dip was supposed to be run by Warazo Farmers Society.
10. DW3 Dr. David Maina Ndung'u was the Chief Veterinary Officer at the County Government of Nyeri. He told the court that the cattle dips are owned by the Government and that the concerned area was under the management of the Ministry of Agriculture.

### **Analysis and Determination**

11. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced by the parties. I have similarly perused and considered the submissions filed herein by the Learned Counsel for the Plaintiff. I was unable to find any submissions filed by the Defendant.
12. The Plaintiff has sought for a declaratory order that he is the sole proprietor of the parcel of land known as Nyeri/Waraza/16. He urges the court to find that the Defendant herein wrongfully lodged



- an unlawful caution on the said parcel of land and that the Defendant should therefore pay him general damages for the unlawful caution.
13. It was the Plaintiff's case that he was registered as the proprietor of the suit property after he purchased the same from the Settlement Fund Trustees (SFT). He accused the Defendant of wrongfully proceeding on 14<sup>th</sup> June 2011 to lodge a caution on the land thereby interfering with his use thereof.
  14. The Defendant did not deny lodging the caution on the land. He told the court that he had lodged the caution not in his personal capacity but as the Chairperson of the Mere Cattle Dip Committee. According to the Defendant, within the Plaintiff's parcel of land lay a public cattle dip known as Mere Cattle Dip which had been used by the community around the area from time immemorial. It was the Defendant's case that they had validly and legally placed the caution on the land after the Plaintiff started claiming that the cattle dip was his personal property.
  15. As it turned out, the Plaintiff was aware of the existence of the cattle dip prior to his acquisition of the land. At the trial herein, he admitted that he not only knew that the Defendant was the Chairman of the Committee that managed the cattle dip but that he had also served in the Committee at some point in time. The Plaintiff told the court the local community had used the cattle dip to control ticks on their animals.
  16. From the evidence of the Chief Veterinary Officer – Nyeri Dr. David Maina Ndungu (DW3), it was clear that the cattle dip was a public utility owned by the Government of the Republic of Kenya and that the same was run by the Mere Cattle Dip Self Help Group that had been registered with the Ministry of Gender and Children on 13<sup>th</sup> June 1991. DW3 produced a letter dated 16<sup>th</sup> November 2010 from the Ministry of Livestock Development confirming that the cattle dip was a public utility constructed by the Government between 1975 and 1977.
  17. Arising from the foregoing, it was apparent that the title deed issued to the Plaintiff on 7<sup>th</sup> April 2011 that purported to comprise the portion where the public cattle dip was situated was erroneously issued. It was clear even from the Plaintiff's own testimony that the public had over the years used the dip for veterinary purposes.
  18. It was also evident that the Defendant had only registered the caution on the land as the chair of the committee running the cattle dip when the Plaintiff started laying claim to the cattle dip. While the Defendant has urged the court to declare that the Mere Cattle Dip Membership had acquired the section comprising of the cattle dip by adverse possession, it was clear that this court cannot make such a declaration. Having conceded that the portion comprised of public land, it was evident that under Section 41 of the [Limitation of Actions Act](#), such land could not be acquired by way of adverse possession.
  19. In the premises, it follows that I did not find merit either in the Plaintiff's suit and/or in the Defendant's Counterclaim.
  20. Accordingly, I proceed to make orders as follows:
    - i. The Plaintiff's suit is dismissed with costs to the Defendant
    - ii. The Defendant's counterclaim is dismissed with no order as to costs.
    - iii. A declaration is hereby issued that the area covered by the cattle dip be surveyed by the Nyeri County Surveyor and that the same be carved out of the parcel of land known as Nyeri/Waraza/16.
  21. Orders accordingly.



**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT  
MOMBASA THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Plaintiff
- c. Mr. Karweru Advocate for the Defendant

