



**Kangangi v Kimunye Tea Factory Limited & another; Muranguri (Interested Party) (Environment and Land Appeal E020 of 2022) [2025] KEELC 5991 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5991 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E020 OF 2022  
AK BOR, J  
SEPTEMBER 11, 2025**

**BETWEEN**

**GABRIEL NJOKA KANGANGI ..... APPELLANT**

**AND**

**KIMUNYE TEA FACTORY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DAVID WAWERU NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**SOSPETER KITHUMBU MURANGURI ..... INTERESTED PARTY**

*(Appeal arises from the judgment of Hon W. Ngumi, Principal Magistrate, delivered in Siakago MCL&E Case No. 7 of 2019 on 31/8/2022.)*

**JUDGMENT**

1. This appeal arises from the judgment of Hon W. Ngumi, Principal Magistrate, delivered in Siakago MCL&E Case No. 7 of 2019 on 31/8/2022. The Appellant, Gabriel Njoka Kangangi instituted that suit before the Magistrates court vide a plaint seeking a declaration that the land known as Mbeere/ Mbita/2092 (the suit land) belonged to him. He sought to have the 2<sup>nd</sup> Respondent's title over the suit land revoked and a permanent injunction to restrain the Respondents and their agents from taking possession, dealing with, trespassing, selling, transferring, charging or in any other way dealing with the suit land. He also sought mesne profits as well as general damages and costs of the suit.
2. The Appellant's case was that he was the legal owner of the suit land as per the decision of the Land Adjudication Committee dated 24/4/1974 in Land Adjudication Case No. 64/73. He averred that the decision was subsequently confirmed in the judgment dated 10/2/1976 in Arbitration Board Case No. 61/74, the suit having been passed down from his father Kangangi Kivinda. He asserted that his father obtained the suit land from Ikandi Clan a fact which was confirmed in the stated decisions.



3. The Appellant claimed that he was in occupation of the suit land from 1976 to the 90's and carried out various activities on the land such as cultivation, livestock farming and ran a posho mill. He averred that the land remained vacant when he moved out until 2015 when the 1<sup>st</sup> Respondent started planting trees on the land and fenced it. That on or about 31/5/2017, he learnt via the court ruling dated 31/5/2017 that the 2<sup>nd</sup> Respondent had somehow fraudulently acquired the suit land and sold it to the 1<sup>st</sup> Respondent, and that a title over the land had been issued to the 2<sup>nd</sup> Respondent on 17/11/2004.
4. He averred that investigations were conducted over the alleged fraud and a restriction was registered against the land but was removed on 20/11/2014 and a title deed issued in favour of the 1<sup>st</sup> Respondent on 10/7/2015. He asserted that there were injunctive orders issued over the suit land but the Respondents acted in contempt of court. He set out particulars of fraud against the 2<sup>nd</sup> Respondent as grabbing the suit land, selling it to the 1<sup>st</sup> Respondent and causing the land to be registered in his name.
5. The 1<sup>st</sup> Respondent filed a defence under protest and denied the Appellant's claim and specifically denied being the legal owner of the suit land. It averred that after carrying out due diligence, it purchased the suit land from the 2<sup>nd</sup> Respondent and was rightfully registered as proprietor. It urged that the Appellant's suit ought to be dismissed with costs.
6. The 2<sup>nd</sup> Respondent equally filed a defence and denied the Appellant's claim. He averred that the decision of the Land Adjudication Committee and the Arbitration Board were subjected to an appeal vide Objection Proceedings No. 532 of 1981 which was decided on 10/7/1991 and that the judgment given awarded ownership of the suit land to the 2<sup>nd</sup> Respondent. He maintained that he was lawfully registered as proprietor of the suit land.
7. He explained that a restriction was registered against the land to enable the Criminal Investigations Department (CID) to investigate the allegations of fraud attributed to it and the 1<sup>st</sup> Respondent and that no evidence of fraud or illegality was found against them with respect to the dealings with and registration of the suit land. The restriction was removed on 20/11/2014. He urged that the suit be dismissed with costs.
8. The Appellant filed a reply to the 2<sup>nd</sup> Respondent's defence and contended that the Objection Proceedings No. 532 of 1981 allegedly decided on 10/7/1991 were a sham and that the judgment arising out of it was not authentic. He argued that if at all ownership was awarded to the 2<sup>nd</sup> Respondent on 10/7/1991 then the fact that the title was registered in the 2<sup>nd</sup> Respondent's name and he was issued a title for the suit land on 17/11/2004 was suspect. He maintained that the investigations had not been concluded and that the restriction was removed fraudulently.
9. At the hearing before the trial court, the Appellant adopted his witness statement as his evidence in chief. He stated that he bought the suit land from Ikandi Clan through Kangeta and the Committee members. He stated that he did not know the 2<sup>nd</sup> Respondent nor was the 2<sup>nd</sup> Respondent in the Adjudication Committee and Arbitration cases. On cross-examination, he stated that he was not aware that the judgment dated 10/2/1976 was set aside. He conceded that his name was not on the green card for the suit land, which he argued was obtained unprocedurally.
10. The Appellant produced copies of the decision of the Land Adjudication Committee dated 24/4/1974 in Land Adjudication Case No. 64/73; judgment dated 10/2/1976 in Arbitration Case No. 61/74; notice of motion application dated 19/8/2013; orders for the maintenance of status quo dated 10/9/2013; ruling dated 31/5/2017 of Justice B.N Olao; certificate of official search dated 29/6/2017; the proceedings in Minister's Appeal Case No. 45 of 1997; proceedings in Objection No. 182/80; and the green card for the suit land.



11. The Appellant called Elias Njeru Njagi, the Chairman of the Ikandi clan who came in as an interested party. He confirmed that the 2<sup>nd</sup> Respondent was not a party in the proceedings before the Adjudication Committee and the Arbitration Board as the cases were between the Appellant and Nyaga Konji who was representing the Nditi Clan that was claiming the suit land belonged to them. He testified that the land was sold to the Appellant's family by the Ikandi Clan who gave them ownership and that they did not recognize any other buyer. He stated that upon the land being sold, that fact was recorded in the Land Adjudication Register.
12. The 1<sup>st</sup> Respondent called Benson Maina, the Factory Manager as a witness. He adopted his witness statement as his evidence in chief. He stated that they did a search before purchasing the suit land, which showed David Njoroge Waweru as the owner of the land. They entered into a sale agreement vide which they bought the suit land at Kshs. 355,000/= per acre. On cross examination, he stated that due diligence was carried out before the land was bought and they did not know that there was any issue surrounding the land as there was no caution or restriction registered against the land. They learned that there was an issue when they were brought to court. He averred that they followed due process in acquiring the suit land.
13. The 1<sup>st</sup> Respondent's witness produced a Board Resolution dated 27/1/2015 to purchase the suit land, sale agreement date 11/5/2015, certificate of official search dated 10/7/2015 and a title deed in its name. The 2<sup>nd</sup> Respondent did not call any witnesses.
14. In its judgment dated 31/8/2022, the Learned Magistrate found that the 2<sup>nd</sup> Respondent failed to prove that he was legally and procedurally registered as the proprietor of the suit land hence the sanctity of his title could not be protected. The court observed that the 2<sup>nd</sup> Respondent filed his pleadings and documents and even participated in the proceedings by cross examination but did not give his evidence on how he acquired the title to the suit land despite the title being challenged on grounds of fraud. The court found that the Appellant proved that the land belonged to him through his evidence and his witnesses' testimony. The court issued a declaration that the suit land belonged to the Appellant but was sold to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent.
15. In addition, the court found that the 1<sup>st</sup> Respondent was a bona fide purchaser for value without notice. The court's reasoning was that having found that the 1<sup>st</sup> Respondent was an innocent purchaser for value and that the 2<sup>nd</sup> Respondent had not settled or occupied the suit land, they could not be condemned to pay mesne profits. Further, the court found that the Appellant was entitled to general damages and awarded him the sum of Kshs. 5,000,000/= for the wrongful deprivation of the suit land which was to be paid by the 2<sup>nd</sup> Respondent against whom the judgment was entered. The 2<sup>nd</sup> Respondent was to bear the costs of the suit.
16. The Appellant filed a memorandum of appeal and raised three grounds of appeal. He faulted the trial court for finding that registration of the 2<sup>nd</sup> Respondent as proprietor was fraudulent but failed to order compensation to him. He faulted the court for finding that he was not entitled to mesne profits as sought in the plaint. He further faulted the court for ordering damages only without mesne profits and compensation to him. The court was asked to allow the appeal and the Appellant be declared to have succeeded fully by granting him compensation for wrongful deprivation of the suit land. He sought costs of the appeal and any other orders deemed fit to grant.
17. Parties filed and exchanged written submissions, which the court has considered. The Appellant submitted that, the trial court found that he had proved ownership of the suit land but nonetheless upheld the 1<sup>st</sup> Respondent's title as a bona fide purchaser for value. That in so doing, the court recognized that the Appellant had been dispossessed of his land. He submitted that the forceful taking



- or fraudulent dispossession of land must be condemned and under the circumstances, he should have been adequately compensated for the lost property. However, the trial court only awarded him Kshs. 5,000,000/= as general damages without making any compensatory award or mesne profits, which amounted to an injustice given that the land measures approximately 25 acres.
18. The Appellant submitted that compensation is deemed adequate where it is fair, full and prompt as envisaged under Article 40(3) of *the Constitution* and Sections 107 to 113 of the *Land Act*. He submitted that the agreement for sale between the Respondents valued the land at Kshs. 8,875,000/= in 2013 and that the court ought to be guided by that value while bearing in mind the appreciation in land value. He urged that the value should be brought up to date with the current market value in determining what would amount to adequate compensation.
  19. He submitted that courts have the discretion to adjust compensation where damages awarded are manifestly low or based on wrong principles, and relied on *Gitobu Imanyara & 2 Others v AG (2016) KECA 557 (KLR)* and *Musembi and 13 others v Moi Educational Centre Co. Limited & 3 others (2021) KESC 50 KLR*.
  20. The 1<sup>st</sup> Respondent gave the definition of mesne profits under Section 2 of the *Civil Procedure Act* and submitted that courts have established that mesne profits are in the nature of special damages which must be specifically pleaded and strictly proven which was not the case here. It urged that the Appellant did not produce any document or valuation report to substantiate the claim for mesne profits. Further, that once the trial court awarded general damages for wrongful deprivation, an additional award of mesne profits could not be sustained, as it would amount to double compensation. It relied on *Christine Nyanchama Oanda v Catholic Diocese of Homabay Registered Trustees (2020) eKLR* to support that argument.
  21. The 1<sup>st</sup> Respondent observed that the trial court awarded Kshs. 5,000,000/= as general damages for the wrongful deprivation of the suit land. It argued that the Appellant's contention that compensation should be based on the current market value amounted to a claim for special damages, which was neither pleaded nor proved. It relied on the decision of the Supreme Court in *Attorney General v Zinj Limited (Petition 1 of 2020) (2021) KESC 23 (KLR)* where the court held that the main basis upon which special damages can be granted for the deprivation of property is the market value of the said property, while general damages depend on the court's discretion. That given the lack of proof of the market value of the suit land, the trial court properly exercised its discretion when it awarded general damages. In the 1<sup>st</sup> Respondent's view, the award of Kshs. 5,000,000/=: payable by the 2<sup>nd</sup> Respondent, was sufficient in the circumstances.
  22. The issue for determination is whether the appeal has merit. The Appellant's main grievance is that having found that he was the rightful owner of the suit land, the trial court ought to have awarded him mesne profits and compensation at market value, rather than general damages of Kshs. 5,000,000/=: A claim for mesne profits is in the nature of special damages, which must be specifically pleaded and strictly proved. The Appellant neither pleaded nor adduced any evidence to support that claim. There is therefore no basis for this court to interfere with the trial court's failure to grant that relief.
  23. The Appellant urged that compensation should have been assessed at the prevailing market value of the land, and invited the court to be guided by the consideration in the sale agreement which was made in 2013 between the Respondents of Kshs. 8,875,000/=:, and to take into account the appreciation of land value over time. Besides citing that figure, the Appellant did not tender a valuation report or other evidence establishing the current market price of the suit land. In the absence of such proof, there would be no basis upon which to interfere with the trial court's assessment and award of Kshs. 5,000,000/=:.



24. The appeal lacks merit and is dismissed. Each party will bear its costs for the appeal.

**DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Kamunda Andrew for the Appellant

Ms. Susan Rigaga for the 1<sup>st</sup> Respondent

No appearance for the 2<sup>nd</sup> Respondent & Interested Party

