



Muchungu & 12 others v Nhiiri & 16 others; Mungania Tea Factory Company Limited & another (Applicant) (Environment and Land Case 224 of 2015) [2025] KEELC 5988 (KLR) (11 September 2025) (Ruling)

Neutral citation: [2025] KEELC 5988 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 224 OF 2015
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

NTHUMBI MUCHUNGU & 12 OOTHERS PLAINTIFF

AND

HERBERT NHIIRI & 16 OTHERS & 16 OTHERS DEFENDANT

AND

MUNGANIA TEA FACTORY COMPANY LIMITED APPLICANT

RUKURIRI TEA FACTORY COMPANY LIMITED APPLICANT

RULING

1. The Applicants filed the application dated 24/4/2024 seeking to be joined in the suit as interested parties. They also sought an order to inhibit the Plaintiffs or their agents from registering any transfer of lease, charge, transmission, disposition, or any registrable instrument under the [Land Registration Act](#) or any other dealings over the land known as Mbeti/Gachururi/172 pending the hearing and determination of the application.
2. They also sought to have the case reopened and an order to the effect that the orders issued by this court vide the judgment and decree dated 5/4/2018 will only apply to the Defendants in the suit but not to the Applicants in accordance with paragraph 25 of the judgment dated 5/8/2018. They sought an order that entry no. 10 in the proprietorship section of the register for Mbeti/Gachururi/172 be amended so that it does not to apply to parcel numbers Mbeti/Gachururi/428,429 and 528 belonging to the 1st Applicant and parcel numbers Mbeti/Gachururi/483, 496, 513 and 514 belonging to the 2nd Applicant. They also sought to have parcel numbers Mbeti/Gachururi/428, 429 and 528 belonging to the 1st Applicant and Mbeti/Gachururi/483, 496, 513 and 514 belonging to the 2nd Applicant (the suit properties) revert to them.



3. The application was made on the grounds that the Applicants are the registered proprietors of parcel numbers 428, 429, 528, 483,496, 513 and 514, which were excised from Mbeti/Gachururi/172 on 5/5/1989. They claimed that before purchasing the suit properties, they conducted due diligence and obtained official searches for each of the parcels and that they followed due process in acquiring the properties. They averred their titles were cancelled following a judgment given by this court on 5/4/2018. They contended that paragraph 25 of the judgment should not be binding on them.

Paragraph 25 states as follows:

“It was submitted by the Defendants that some of the purchasers of the sub divisions of the suit property were not joined in these proceedings. However, their identities and the parcel numbers were not disclosed. The court will only issue orders against persons who have been joined as parties to the proceedings that is, the 17 Defendants who were sued.

4. The Applicants averred that despite the above judgment, the Land Registrar cancelled the titles to the suit land. The Applicants instituted Embu ELC Petition No. 7 of 2018 in a bid to reopen the case but it was struck out on the grounds that the issues raised in it were determined with finality in this suit. They contended that they were not party to this suit and it was against the rules of natural justice for them to be condemned unheard through their titles over the suit properties being cancelled. They averred that no prejudice will be suffered by the Plaintiffs if the suit is reopened whereas they will suffer irreparable damage unless the application is allowed.
5. Benson Ngugi, and Franklin Kinoti, the officials of the 1st and 2nd Applicants respectively swore the affidavits in support of the application. They attached copies of the register for land parcel 172, official searches, title deeds for the suit properties, surveyors’ reports and environmental impact assessment reports for the suit properties. They also exhibited copies of sale agreements of the suit properties, transfer and other completion documents. They also attached copies of the judgment dated 5/4/2018 and the ruling in Embu ELC Petition No. 7 of 2018.
6. Njue Njagi, the 7th Plaintiff, swore the replying affidavit in opposition to the application. He deponed that the application was res judicata in that the Applicants raise issues that are similar to the issues raised in this case and that the court already pronounced itself that title no. 172 belonged to Gekara Clan and all the subdivisions and transfers of the suit properties to the Defendants who include the Applicants herein were null and void. He averred that it was more than six years since the judgment and decree were issued and the court became functus officio. He urged that the application was an afterthought and the Applicants were guilty of laches and indolence and were not deserving of the orders sought. He contended that the application was brought in bad faith and urged that it be dismissed with costs. He attached a copy of the judgment dated 5/4/2018.
7. The court directed parties to file and exchange written submissions, which it has considered. The Applicants gave a background to the application and submitted that the application was premised on paragraph 25 of the judgment delivered on 5/4/2018 in this suit. They reiterated that the Land Registrar cancelled the titles over their suit properties and not having been part of this suit, they were condemned unheard contrary to the rules of natural justice. They relied on Kariuki (Suing as the Administratrix of the Estate of Samuel Kariuki Waithiani (Deceased) v Gichoni & 3 others (2023) KEELC 22172 (KLR) and Japheth v Homeland Express Ltd & 6 others (Civil Suit 51 of 2019) (2024)KEELC 6163 (KLR) to demonstrate circumstances when a court can reopen a case. It was the Applicants’ submission that the reopening of the suit will not embarrass or prejudice the Plaintiffs. They implored the court to be guided by Article 159(2(d) of the Constitution and do justice to them for being condemned unheard.



8. The Plaintiffs reiterated that the application was res judicata in view of the court's pronouncement in its judgment that Mbeti/Gachururi/172 belonged to the Gekara Clan and that all the subdivisions and transfers were null and void. They argued that the Applicants ought to have pursued other avenues rather than seeking to reopen this case. They pointed out that the Court of Appeal sitting in Nyeri in Civil Appeal No. 210 of 2019 upheld this court's finding that land parcel 172 rightfully belonged to Gekara Clan and not to Gekara Group. They attached the judgment of the Court of Appeal to their submissions and implored the court to consider paragraph 26 of the judgment. It reads:

“Our position is that once the root title of land is challenged, the defence of innocent purchasers ceases to hold any weight. It matters not how 3rd parties subsequently acquired the land. Consequently, we uphold the trial court finding that the suit property originally belonged to Gekara clan and not Gekara Group Ranch and the registration thereof under Gekara Group Ranch amounted to fraudulent acquisition of the clan land to a few individuals.”

9. The Plaintiffs contended that the Applicants acquired land from members of an illegal entity known as Gekara Group Ranch and that their titles are illegal and were part of land parcel 172. They asked the court to recognize the hardships they suffered in litigating this case against the Defendants and urged that the application should be dismissed with costs to them.

10. The issues for determination are whether the suit should be reopened for purposes of granting orders that the judgment dated 5/4/2018 does not apply to the Applicants; whether the Applicants should be joined in the suit as interested parties; and whether an order of inhibition should be issued over parcel no. 172 pending hearing and determination of the application.

11. On the first issue, the court notes that the judgment delivered on 5/4/2018 determined the issue of ownership of Mbeti/Gachururi/172. The Applicants' grievance is anchored on paragraph 25 of the said judgment, which limited the effect of the court orders to the 17 named Defendants in the suit. The Applicants claim that despite that finding, the Land Registrar proceeded to cancel their titles, prompting the present application. They contend that that was done without affording them an opportunity to be heard which violates their right to a fair hearing and the rules of natural justice.

12. Although the court clarified at paragraph 25 of the judgment delivered on 5/4/2018 that it would not issue orders against persons who were not joined in the suit, the Applicants who were not among the 17 Defendants in the suit were affected by the decision as it cancelled their titles. In essence, the Applicants were condemned unheard. Their titles were cancelled pursuant to a judgment that, by its own terms, should not have affected their titles, which were created from the subdivision of Mbeti/Gachururi/172, the subject of the Plaintiffs' suit.

13. In as much as reopening the matter at this stage would prejudice the Plaintiffs who have already expended considerable time and resources in litigation, it is meet and just to reopen the case for purposes of clarifying the extent to which the decree issued pursuant to the judgment of this court can be enforced without affecting other registered owners who were not parties to this suit. Ordinarily, there would be no basis for joining Applicants as interested parties in a suit that has already been concluded but the peculiar circumstances of this case warrant a departure from that well-trodden path.

14. Once the court found that the registration of Gekara Group Ranch as the proprietor of Mbeti/Gachururi/172 was fraudulent and that all subdivisions and transfers of the suit land to the 17 Defendants was null and void, it automatically followed that the parcels known as Mbeti/Gachururi/426 to 4490 which were created from the subdivision of Mbeti/Gachururi/172 stood cancelled irrespective of whether or not the registered owners had participated in the suit.



15. While this outcome is without doubt unfair and unjust and cannot have been the intention of the court when it determined the dispute against only the 17 Defendants who were before it, this was the undesired effect of the cancellation of all the subdivisions out of Mbeti/Gachuriri/172.
16. This court notes that it would not have been possible to only cancel some of the resultant subdivisions created from Mbeti/Gachuriri/172 and leave other parcels untouched. Cancellation of the subdivision of Mbeti/Gachuriri/172 naturally affected all the parcels created from the subdivision of Mbeti/Gachuriri/172 cumulatively with the land reverting back to how it existed as Mbeti/Gachuriri/172 prior to the subdivision.
17. The Plaintiffs are to be faulted for this state of affairs for they should only have sought cancellation of Mbeti/Gachuriri /456, 446, 426, 427, 428, 429, 435, 438, 439, 443, 462, 440 and 445 registered in the names of the 17 Defendants and not cancellation of all the parcels created from the subdivision of Mbeti/Gachuriri/172 as this was bound to affect parcels of land held by persons who were not parties to that suit. That is the unfortunate situation that the Applicants and other innocent parties find themselves in that their titles were cancelled through no wrongful doing on their part.
18. The order that commends itself to this court to make is that the decree arising from the judgment delivered on 5/4/2018 is amended to restrict its application to the parcels of land owned by the Defendants, that is Mbeti/Gachuriri /456, 446, 426, 427, 428, 429, 435, 438, 439, 443, 462, 440 and 445;
19. The Land Registrar is directed to amend entry no. 10 in the proprietorship section of the register for Mbeti/Gachuriri/172 to reflect the position that the cancellation of titles pursuant to the decree of the court only applies to Mbeti/Gachuriri /456, 446, 426, 427, 428, 429, 435, 438, 439, 443, 462, 440 and 445.

Each party will bear its costs of the application.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF SEPTEMBER 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Euphemia Abobo for the Applicants

Mr. C. Njage & Mr. E. Mutuma for the Plaintiffs

No appearance for the Defendants

