



Njeru v Muchai and Muigai (Sued as Personal Representatives of Frank Bob Muigai - Deceased) & another (Environment and Land Case 152 of 2013) [2025] KEELC 6139 (KLR) (22 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6139 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 152 OF 2013
CA OCHIENG, J
SEPTEMBER 22, 2025**

BETWEEN

BONIFACE GIKUYA NJERU PLAINTIFF

AND

GRACE WAKONYO MUCHAI AND ESTHER NYOKABI MUIGAI (SUED AS PERSONAL REPRESENTATIVES OF FRANK BOB MUIGAI - DECEASED) 1ST DEFENDANT

ALICE WANJIRU 2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a plaint dated 10th January 2013 and amended on 5th July 2024. He claims that on 24th June 2011, he entered into a sale agreement with late Frank Bob Muigai who sold to him the parcel of land known as P9496 but he did not get vacant possession as the 2nd Defendant is in occupation thereon, and has refused to vacate, occasioning him loss. He seeks judgment against the Defendants jointly and severally for:
 - a. That the 2nd Defendant do hand over vacant possession and remove the structures therein.
 - b. Costs.
 - c. Interest at court rates.
 - d. A declaration be and is hereby issued that the Plaintiff is entitled to ownership and exclusive use, occupation and vacant possession of plot known as P9496 to the exclusion of the Defendants.



- e. An order of eviction be issued in favour of the Plaintiff against the 2nd Defendant, her servants, agents and any person claiming through her under the supervision of the officer commanding station Ruai Police Station.
 - f. A permanent injunction do issue restraining the 2nd Defendant, her servants, agents and any person claiming through her from entering, remaining upon, using, dealing with or otherwise transacting, or interfering with the Plaintiff's quiet possession of the property known as P949.
 - g. Mesne profits.
 - h. The 1st Defendant (Grace Wakonyo Muchai & Esther Nyokabi Muigai) be directed to sign the relevant transfer forms to have the suit property transferred and registered in the name of the Plaintiff failure to which the Deputy Registrar of this court do sign the same.
 - i. Any further or other relief as this Honourable court may deem fit to grant.
2. Despite being served with summons to enter appearance and pleadings herein, the Defendants failed to file their respective statements of defence. However, the record indicates that the 2nd Defendant entered appearance vide a Notice of Appointment of Advocates dated 15th May 2017, as an intended third party.

Evidence

3. At the hearing of the suit, the Plaintiff testified as PW1. He adopted his witness statement and his further witness statement as his evidence in chief. He produced his list and bundle of documents dated 10th January 2013, as Plaintiff's Exhibits No. 1-8.
4. He testified that on 24th June 2011, Frank Bob Muigai (deceased), sold to him the suit plot located in Ruai. He explained that he purchased the suit plot after confirming with Embakasi Ranching Company Limited that it belonged to the said Frank Bob Muigai and after he paid the full purchase price of Kshs.1,200,000/=, Mr. Muigai made arrangements to transfer his Share Certificate in Embakasi Ranching Company to him. He confirmed that he was issued with a non-member Certificate of plot ownership no.024627 for the suit plot. Further, after the transfer, Mr. Muigai moved out of the suit plot but left a third party (the 2nd Defendant) occupying the said plot, was has adamantly refused to vacate.
5. He pointed out that this Court had earlier on issued a Decree to evict the 2nd Defendant but it was set aside on the basis that she had not been made a party in the suit. Further, that the Decree had been issued following a consent judgment recorded herein on 27th February 2014 between the Plaintiff and Mr. Muigai.
6. The Defendants never testified in this suit.

Submissions

7. In his submissions, the Plaintiff submitted that he had established an unbroken chain of events and documentary evidence demonstrating how he purchased the suit plot from Frank Bob Muigai. Further, that Mr. Muigai filed a witness statement dated 17th November 2021 affirming that he had been paid the full purchase price. He contended that no evidence was produced to show that the 2nd Defendant has any legal rights over the suit plot, thus she is a trespasser. To buttress his averments, the Plaintiff relied on the following decision: Josphat Kuria Gathoni v James Maina Njoroge & 3 Others [2019] eKLR; Mwangi v Embakasi Ranching Company Limited & Another (Environment & Land



Case 1486 of 2014) [2025] KEELC 107 (KLR); Mbuthi v Osman & Another (Environments & Land Case E004 OF 2022) [2024] KEELC 387 (KLR) (1 FEBRUARY 2024) (Judgement) and Kitela v Shenga & 2 Others (Environment & Land Case E453 of 2021) [2024] KEELC 3526 (KLR) (4 APRIL 2024) (Judgment).

Analysis and Determination

8. Upon consideration of the Plaintiff, testimony of the witness, exhibits and submissions, the only issue for determination is whether the Plaintiff has proved ownership of the suit plot (p9496) and if he is entitled to the Orders as sought in the Plaintiff.
9. The Plaintiff claims that despite purchasing the parcel of land known as P9496 (suit plot) from the 1st Defendant, he has never taken possession as it is occupied by the 2nd Defendant. Even though the 1st Defendant did not file a response, the record indicates that he had made an admission to receiving the entire purchase price from the Plaintiff and they had even recorded a consent to evict the 2nd Defendant from the suit plot but the Decree was later set aside on the basis that the 2nd Defendant was not a party to the suit. The Plaintiff then amended his defence to include the 2nd Defendant as a party, to this suit.
10. While the 2nd Defendant did not file a defence, she appears to be challenging the Plaintiff's right to exclusive possession since she has never allowed him to occupy the suit plot, from the time he purchased it from the 1st Defendant.
11. While the suit is unopposed, the Plaintiff still had the burden to prove his case. In *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the court stated as follows:

“It is not automatic that in instances where the evidence is not controverted, the claimant’s claim shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest”.
12. Since it is the Plaintiffs ownership that is under challenge, he had the burden of demonstrating how he acquired the suit land. Even though the suit plot is not titled, the Plaintiff was still required to establish his right to the plot. In *Beatrice Wambui Maina v Embakasi Ranching Company Ltd & Another* [2022] eKLR, this Court (Angote J) stated thus;

“The court is alive to the fact that there are circumstances where a property in dispute has no title. This does not however mean that no rights can accrue therefrom. In such circumstances the court will set out to establish whether the documentary evidence establishes an unbroken chain leading to the root of the title as persuasively stated by Onguto J in the case of *Caroline Awinja Ochieng & Another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR.”
13. Further, the Court of Appeal held as follows in the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR;

“We state that when a registered proprietor root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”



14. In this instance the Plaintiff claims to have purchased the suit plot from the 1st Defendant which fact has not been opposed. The 1st Defendant had even filed a witness statement confirming this position. The Plaintiff was later issued with a Share Certificate from Embakasi Ranching Company Limited where the suit plot emanated from. The 2nd Defendant has declined to grant vacant possession of the suit plot but did not file any response to the suit to demonstrate why she is occupying the said plot.
15. Looking at the documents presented by the Plaintiff as exhibits, I note he has demonstrated the root of his title by furnishing a copy of the Sale Agreement, Acknowledgment of payment of purchase price, Share Certificate from Embakasi Ranching Company Limited, Non Member Plot Ownership Certificate and various correspondence requesting the 2nd Defendant to vacate the suit plot. As for the 2nd Defendant, she could only challenge the Plaintiff's ownership under the grounds stated at section 26 of the [Land Registration Act](#) but she failed to participate in the suit. Section 26 of the [Land Registration Act](#) provides that:

“Certificate of title to be held as conclusive evidence of proprietorship.

1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except
 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
16. In the circumstances, I find that the Plaintiff is indeed the proprietor of the suit plot. The Plaintiff has sought mesne profits and explained that since he purchased the suit plot, he has not been able to take possession due to the 2nd Defendant's defiance as she has declined to grant him vacant possession. I wish to refer to Section 2 of the [Civil Procedure Act](#) Cap 21 which defines mesne profits as follows:
- “mesne profits”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;”
17. On mesne profits, the court stated as follows in *Rajan Shah T/A Rajan S. Shah & Partners v Bipin P. Shah* [2016] eKLR;
- “As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits...”
18. From the evidence tendered in court, I find that the Plaintiff provided proof of the basis for his demand of mesne profits as the 2nd Defendant has declined to grant him vacant possession of the suit plot. The Plaintiff however did not quantify the mesne profits he is seeking but in my view he is only entitled to be compensated for mesne profits from the time he purchased the suit plot until payment in full, which



I opine can be the tune of Kshs. 500,000. In the foregoing, I find that the Plaintiff is hence entitled to the orders as sought in the Plaintiff.

19. In the circumstance, I find that the Plaintiff has proved his case on a balance of probability as against the Defendants and will proceed to enter Judgment in his favour and make the following final Orders:
- i. A declaration be and is hereby issued that the Plaintiff is entitled to ownership and exclusive use, occupation and vacant possession of plot known as P9496 to the exclusion of the Defendants.
 - ii. That the 2nd Defendant be and is hereby ordered to hand over vacant possession and remove the structures from the plot No. P9496, after ninety (90) days from the date hereof.
 - iii. An order of eviction be and is hereby issued against the 2nd Defendant, her servants, agents and any person claiming through her, from Plot P9496 after ninety (90) day from the date hereof, under the supervision of the officer commanding station Ruai Police Station.
 - iv. A permanent injunction be and is hereby issued restraining the 2nd Defendant, her servants, agents and any person claiming through her from entering, remaining upon, using, dealing with or otherwise transacting, or interfering with the Plaintiff's quiet possession of the property known as P9496.
 - v. Mesne profits awarded at Kshs. 500,000/=.
 - vi. The 1st Defendant (Grace Wakonyo Muchai & Esther Nyokabi Muigai) be and are hereby directed to sign the relevant transfer forms to have the suit property transferred and registered in the name of the Plaintiff failure to which the Deputy Registrar of this court do sign the same.
 - vii. The Costs of this suit is awarded to the Plaintiff to be borne by the 2nd Defendant.
 - viii. Interest on costs and (v) above to be borne by the 2nd Defendant until payment in full.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Kamotho for Plaintiff

Court Assistant: Joan

