



**Njeru (Sued as the Personal Representative of the Estate of Njeru Nduati Rugendo - Deceased) v Mbogo & another (Environment and Land Appeal E015 of 2023) [2025] KEELC 5998 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5998 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E015 OF 2023  
AK BOR, J  
SEPTEMBER 11, 2025**

**BETWEEN**

**TERESIAH WANGITHI NJERU (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF NJERU NDUATI RUGENDO - DECEASED) ..... APPELLANT**

**AND**

**FREDRICK KINYUA MBOGO ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF EMBU ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal arises out of the judgment of Hon J.A Otieno, Senior Principal Magistrate, delivered on 25/7/2023 in Embu ELC Case No. 132 of 2018)*

**JUDGMENT**

1. This appeal arises out of the judgment of Hon J.A Otieno, Senior Principal Magistrate, delivered on 25/7/2023 in Embu ELC Case No. 132 of 2018- Fredrick Kinyua Mbogo v Teresia Wangithi Njeru (Sued as the Personal Representative to the Estate of the late Njeru Nduati Rugendo and the County Government of Embu. The 1<sup>st</sup> Respondent instituted the suit in the magistrate's court vide a plaint seeking to have the Embu District Land Registrar ordered to cancel the name of the late Njeru Nduati Rugendo on the title deed over the land known as Kagaari/Weru/4392 (suit land) and for the title to be registered in his name. He also sought damages for deprivation of the use of his land for close to 10 years as well as the costs of the suit and any other relief.
2. The 1<sup>st</sup> Respondent's case was that he was allocated the suit land measuring 2 acres by the County Government of Embu on or about the year 1997, which resulted from the subdivision of Kagaari/Weru/382 that was trust land. Before he could be registered as the proprietor of the land, the late Njeru



- Nduati with or without the knowledge of the County Government of Embu, fraudulently caused the suit land to be registered in his name thereby defrauding him of his entitlement.
3. He listed particulars of fraud on the part of the late Njeru Nduati and the 2<sup>nd</sup> Respondent as colluding to take away his land and going against the original allotment; giving false information and failing to disclose to him the status of his land; committing a criminal offence as well as depriving him of the use of the land.
  4. The Appellant filed a defence and counterclaim in which she denied the particulars of fraud and averred that the 1<sup>st</sup> Respondent was not entitled to the orders sought. In the counterclaim, the Appellant averred that the 1<sup>st</sup> Respondent's claim of ownership of the suit land was unlawful since Kagaari/Weru/382 which was subdivided to create the suit land belonged to members of the Marigu Clan and Mbari ya Njeru, of which the 1<sup>st</sup> Respondent was not a member. She denied that the 1<sup>st</sup> Respondent had ever occupied parcel no. 382 or the suit land and that he could not therefore claim damages for being deprived the use of that land. She sought an order directing the 1<sup>st</sup> Respondent to remove the caution registered against land parcel 4392 or in the alternative, that the Land Registrar be ordered to remove the caution. She also sought costs of the suit and counterclaim plus interest.
  5. The 2<sup>nd</sup> Respondent did not enter appearance or file a defence. During the hearing before the trial court, the 1<sup>st</sup> Respondent, Fredrick Kinyua Mbogo testified that he sued the Njeru Nduati over the suit land, who upon his demise was substituted by his wife. He stated that the late Njeru Nduati, who was then Chairman of the Marigu clan, declined to facilitate the issuance of the title deed over the suit land despite being entitled to it. According to him, the suit land that originally belonged to the Embu County Council, was held in trust for the Marigu clan and resulted from the subdivision of Kagaari/Weru/382. He produced minutes of the Embu County Council meeting dated 5/12/1995 showing that upon termination of the trusteeship, he was allocated the suit land as allottee No. 55 while the late Njeru Nduati was listed as No. 38.
  6. Mr. Fredrick Kinyua told the court that he paid the required contributions of about Kshs 10,000/= to join the clan and that he was introduced to the Marigu clan by the late Njeru Nduati. He claimed that the late Njeru Nduati fraudulently registered himself as proprietor of his parcel despite already having his own parcel Kagaari/Weru/4375. He stated that he discovered the fraudulent registration in 2017 and filed this suit in 2018. He stated that although he had not personally used the land, his brother cultivated it until 2016 when the family of the late Njeru Nduati removed him from the land. He added that the land currently had miraa belonging to the family of the Njeru Nduati, which they planted between 2017 and 2018.
  7. During cross-examination, Fredrick Kinyua admitted he did not have evidence of payment of Kshs 10,000/=. On re-examination, he stated that his mother was from the Marigu Clan and maintained that he had paid what was required for him to join the Marigu Clan. He produced an official search for the suit land dated 9/1/2018 showing that the suit land was registered in the name of the 2<sup>nd</sup> Respondent in trust for Marigu clan; an official search dated 16/8/2018 showing the parcel registered in the name of the late Njeru Nduati; and letter dated 4/3/2010 indicating that the land belonged to him.
  8. The Appellant, Teresiah Njeru relied on her written statement and averred that her husband was an elder of the Marigu clan, House of Njeru. That he was mandated to oversee the allocation of clan land, which originally comprised Kagaari/Weru/382 to beneficiaries of the clan, including collection of contributions from non-clan members and allocating them land. She stated that the 1<sup>st</sup> Respondent was not a member of the clan, and under clan arrangements, non-clan members were required to pay Kshs. 10,000/= to be considered for allocation. She categorically denied that her late husband received any money from the 1<sup>st</sup> Respondent as payment for the land he now claimed belonged to him.



9. She gave a history of the land and pointed out that in Civil Case No. 36 of 1991, the court confirmed that Kagaari/Weru/382 was owned by the Marigu Clan, House of Njeru. That during that case, all clan members and persons interested in purchasing the land contributed money to cater for legal fees and the finalization of the case, but the 1<sup>st</sup> Respondent neither contributed to the litigation nor showed any interest on the outcome of the case. She stated that the 1<sup>st</sup> Respondent instituted this suit when he got wind of her husband's ill health after learning that the suit land had been registered in her husband's name.
10. On being cross-examined, she told the court that she was not aware that the County Government records indicated that the 1<sup>st</sup> Respondent was the owner of the suit land. She maintained that the suit land belonged to her husband. She produced copies of the letter dated 20/11/1997 from the Embu County Council relinquishing trusteeship of parcel no. 382; court order dated 2/9/1994 in Civil Case No. 36 of 1991; and letters to the Land Registrar dated 3/5/2017 and 18/5/2018 to remove the caution over the suit land.
11. The Appellant called Antony Nduati to give evidence. He relied on his written statement and stated that the late Njeru Nduati was his elder brother and that he was a member of the Marigu clan. He stated that he acquired a parcel of land from the clan and that they each contributed Kshs. 10,000/= towards acquisition of the land. He added that the 1<sup>st</sup> Respondent was allocated land but failed to pay for it. On being cross-examined, he stated that the late Njeru Nduati was allocated the suit land because he had made substantial payment on the land. He added that the 1<sup>st</sup> Respondent's name remained in the County Council records because he promised to pay and that he was not the only one whose name appeared on the Council's list despite failing to make the requisite payment.
12. After hearing the parties, the trial court rendered its judgment and found in favour of the 1<sup>st</sup> Respondent and dismissed the Appellant's counterclaim. The court observed that the notice dated 23/9/1997 from the Embu County Council which the 1<sup>st</sup> Respondent produced, had his name as one of the 63 beneficiaries of what was previously parcel no. 382. Further, that the notice indicated that the 1<sup>st</sup> Respondent was allocated the suit land. The trial court was persuaded based on that evidence that the 1<sup>st</sup> Respondent proved that the suit land was to be registered in his name. Additionally, the court noted that the Appellant did not produce any evidence to prove how the land allocated to the 1<sup>st</sup> Respondent was later registered in the Appellant's late husband's name.
13. The court also noted the contradictions in the evidence of the Appellant and that of her witness Antony Nduati. That although the Appellant was categorical that the 1<sup>st</sup> Respondent did not make the requisite payment towards the acquisition of the suit land, Antony testified that the 1<sup>st</sup> Respondent contributed Kshs. 2,000/= through Thomas Kiura, a clan official, which established reasonable doubt as to the credibility of the Appellant's testimony. The court further noted that the Appellant did not lead any evidence to establish that the other 62 beneficiaries made payments. There was no evidence led to prove how late Njeru Nduati got the suit land registered in his name.
14. The trial court questioned how a stranger was listed by the Embu County Council as a beneficiary among clansmen and held that the Appellant failed to adduce sufficient evidence to rebut the 1<sup>st</sup> Respondent's case. The court found that the registration of the suit land in the name of late Njeru Nduati was inconsistent with the original allotment. The court further concluded that the conduct of late Njeru Nduati amounted to fraud.
15. The Appellant raised six grounds of appeal in the memorandum of appeal. She faulted the trial court for arriving at a decision which was not only manifestly unjust but also against the weight of the evidence on record. She urged that the court grossly misdirected itself by treating the evidence on



- record superficially and coming to a wrong conclusion. That the trial court erred in not considering the evidence presented before it in its totality and in particular, the evidence presented on behalf of the Appellant. She added that the analysis of the evidence by the trial court in its judgment was extremely wanting in material respects. That the trial court misapprehended the evidence on record to a material degree resulting in a wrong conclusion. She also faulted the court for failing to evaluate the evidence and the exhibits tendered and for arriving at a decision that was unsustainable in law.
16. The court directed parties to file and exchange written submissions on the appeal. The Appellant submitted that she was an innocent purchaser for value of the suit land from the County Government of Embu without notice of the 1<sup>st</sup> Respondent's claim to the suit land. She invited the court to review the evidence adduced before the lower court and satisfy itself that the lower court's decision was well founded. She cited relevant authorities to her case.
  17. The 1<sup>st</sup> Respondent submitted that the trial court's judgment was sound in law, and that the Appellant did not demonstrate any basis for its reversal. The 1<sup>st</sup> Respondent cited Section 80(1) of the [Land Registration Act](#), which empowers the court to order rectification of the land register by cancellation or amendment of any registration shown to have been obtained, made, or omitted through fraud or mistake. He argued that the Appellant did not explain why the late Njeru Nduati was granted the suit land alone to the exclusion of the other 63 clan members. He expressed the view that the record and documents from the Embu County Council show that the suit land belongs to him and therefore the late Njeru Nduati could only have been registered as proprietor through a fraudulent scheme.
  18. He contended that the Appellant, who had already been allocated parcel No. 4375, could only have procured registration of parcel 4392 through fraudulent means. The 1<sup>st</sup> Respondent further submitted that the Appellant failed to satisfy the elements of a bona fide purchaser for value as outlined in *Weston Gitonga & Others v Peter Rugu Gikanga & Another (2017) eKLR*. He urged that the appeal lacked merit and should be dismissed with costs.
  19. The issue for determination is whether the appeal has merit. Having considered the record of appeal, the rival submissions, and the evidence before the court, this court is not persuaded that the learned trial magistrate erred in either fact or law. The Appellant produced a certificate of official search dated 9/1/2018 which shows that land parcel 4392 was registered in the name of Embu County Council, to hold in trust for Marigu clan. He also produced a notice dated 23/9/1997 from the Embu County Council relinquishing the trusteeship over parcel no. 382, and indicating that parcel no. 4392 was allocated to Fredrick Kinyua Mitaro the 1<sup>st</sup> Respondent. In the same notice, Njeru Nduati was allocated parcel no. 4375. The Appellant did not lead any notice to challenge that notice.
  20. The Appellant argued that the 1<sup>st</sup> Respondent was not entitled to the suit land not being a member of the Marigu clan and not having made the requisite payment. The Appellant did not place any credible evidence before the court to demonstrate how, despite the 1<sup>st</sup> Respondent being expressly allocated parcel 4392 by the Embu County Council, the land was subsequently registered in the name of the late Njeru Nduati. The Appellant only produced a letter from the Embu County Council relinquishing its trusteeship. That letter did not address or confer ownership of the suit land, and was therefore of little value in establishing late Njeru Nduati's entitlement to parcel no. 4392. On the contrary, the documents produced by the 1<sup>st</sup> Respondent consistently point to him as the rightful allottee.
  21. Section 80(1) of the [Land Registration Act](#) empowers the court to order rectification of the register where registration was obtained through fraud or mistake. The trial court correctly applied this provision when it found that the registration of parcel no. 4392 in favour of the late Njeru Nduati was tainted by fraud, given that the late Njeru Nduati was allocated land parcel no. 4375. The Appellant



cannot argue at this point that her late husband was a bona fide purchaser for value yet when the matter was before the trial court she maintained that the late Njeru Nduati was allocated the suit land after the 1<sup>st</sup> Respondent failed to pay the requisite amount to acquire the suit land.

22. This court therefore finds no basis to fault the reasoning and conclusion of the Learned Magistrate. The evidence adduced supports the finding that the 1<sup>st</sup> Respondent was the lawful allottee of parcel no. 4392, and that the subsequent registration of the suit land in the late Njeru Nduati's name was irregular and unlawful.

23. The appeal lacks merit and is dismissed with costs to the 1<sup>st</sup> Respondent.

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

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Lawrence Njage for the Appellant

No appearance for the Respondent

