



REPUBLIC OF KENYA



KENYA LAW
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**Njue v Amos & 2 others (Environment and Land Appeal E012 of 2024)
[2025] KEELC 6007 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6007 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E012 OF 2024**

AK BOR, J

SEPTEMBER 11, 2025

BETWEEN

ELIAS MUCHIRI NJUE APPELLANT

AND

EDITH MUTHONI AMOS 1ST RESPONDENT

BEATRICE NJERI AMOS 2ND RESPONDENT

IRENE KARIMI AMOS 3RD RESPONDENT

JUDGMENT

1. The Appellant lodged this appeal against the decision of Hon. J. Otieno, Senior Resident Magistrate, delivered on 12/3/2024 in Embu Chief Magistrate's Civil Case No. E011 of 2021. In the memorandum of appeal dated 11/4/2024, the Appellant raised four main grounds of appeal. Firstly, that the court erred in finding that it was the parties' mother Eunice Ikamba who subdivided the land known as Gaturi/Nembure/1680 and transferred the resultant subdivisions to her children yet it was the Appellant, who through the power of attorney dated 23/1/2009 was granted power to transfer the land and attended the Land Control Board (LCB). Secondly, that the Learned Magistrate failed to appreciate the fact that the Appellant effected the transfers pursuant to the power of attorney.
2. The third ground is that the trial court arrived at a wrong conclusion and overlooked the issues raised in the plaint including who transferred the parcels of land; what was the effect of the power of attorney given to the Appellant; and did the Appellant pay Kshs. 240,000/= which was the balance from the cost of subdivision and processing of the title deeds. Lastly, whether the Appellant was entitled to ½ an acre out of the Respondents' land. The Learned Magistrate was also faulted for concluding that the Appellant was not entitled to a ½ an acre of land yet this was supported by the minutes of the family meeting.



3. The appeal was canvassed through written submissions. The Appellant submitted that the Learned Magistrate erred when she failed to appreciate that he executed the land transfers under a valid power of attorney. The Appellant submitted that a power of attorney was a legally recognised instrument under Kenyan law and relied on Section 44 of the [Land Registration Act](#) on this point. He went further to urge that the power of attorney granted him authority to transfer the land and attend the LCB making the transactions legally binding. He invited the court to acknowledge the power of attorney as a valid instrument and ensure the rightful land distribution.
4. It was the Appellant's case that the trial court ignored the fact that all the parties had agreed that the Appellant would retain ½ an acre and that the court disregarded the parties' agreement regarding the land distribution. He relied on Section 3(3) of the [Law of Contract Act](#) while contending that the agreement was in writing through the various minutes of the meetings held by the parties, tendered in evidence during the trial. He maintained that the agreement was discussed in multiple meetings demonstrating consensus that he would retain ½ acre of the disputed land. He urged that the trial court contradicted established legal principles on contractual obligations and fairness when it ignored the agreement of the parties regarding his entitlement to the land.
5. The Appellant urged the court to set aside the judgment and recognise his rightful share by issuing an order for the rectification of land records to reflect the agreed mode of distribution of the land.
6. The Respondents submitted that the matter in issue before the trial court was not to ascertain who effected the transfer Gaturi/Nembure/11570 to the Respondents nor was it to determine the effect of the power of attorney issued to the Appellant but rather, the issue was why the Appellant refused to process a title in respect of Gaturi/Nembure/11570 in favour of the Respondents despite numerous verbal demands resting with the intervention of the chief who was called as the plaintiffs third witness.
7. The Respondents submitted that with the intention to defraud, the Appellant fraudulently transferred their share of the land, that is, Gaturi/Nembure/11570 to himself and had it registered in his name on 28/4/2010 and obtained a title deed on 3/5/2010 as could be discerned from the green card tendered in evidence. They added that entry number 2 on the green card showed that they had been registered as joint proprietors of Gaturi/Nembure/11570 after subdivision of Gaturi/Nembure/1680 by the Appellant who had been given the power of attorney to execute all the requisite documents and attend the LCB on behalf of their mother.
8. The Respondents submitted that the title deeds for the four resultant parcels of land were produced except the one for parcel number 11570, which had been registered in their names. They contended that the Appellant went ahead and transferred parcel number 11570 to his name without their consent and participation, and that they did not execute transfer documents in favour of the Appellant nor did they apply for LCB consent.
9. The Respondents submitted that the Learned Magistrate addressed the issue of fraud and found that their claim to the effect that the Appellant effected a transfer of their land to his name without their consent was not challenged. They urged that the burden of proof shifted to the Appellant to explain how the registration of Gaturi/Nembure/11570 changed from the Respondents' names to himself. They added that the Appellant did not produce documents executed by the Respondents to transfer the suit land to his name.
10. The Respondents maintained that the issue as to whether they should transfer the suit land to the Appellant but retain ½ an acre was addressed sufficiently by the Learned Magistrate based on the series of minutes of meetings held between the parties and their family. They submitted that the resolution emanating from the meeting held on 9/5/2011 was a declaration by the family that they had sold to the



Appellant ½ acre equivalent to Kshs. 240,000/= and that the court noted that the Appellant and the 3 other brothers shared among themselves the balance of Kshs. 97,545/= after the tabulated expenses of Kshs. 142,455/=.

11. According to the Respondents, the meeting did not offer any clarity as to the identity of the parcel from which the ½ acre was to be derived. Further, there was no clarity as to where the sums shared by the brothers originated from. Based on this, the trial court could not be faulted for not making assumptions that the ½ acre was to emanate from parcel number Gaturi/Nembure/11570. The Respondents urged that the Appellant did not offer any reasons as to why he continued to hold in his possession what belonged to them being parcel number 11570 which was the portion intended for the Respondents from their late mother's estate.
12. The issue for determination is whether the court should allow the appeal and set aside the judgment of the Learned Magistrate. The genesis of these dispute pitting the three sisters against their brother is a plaint filed in court on 19/2/2021 in which the sisters who are the Respondents in this appeal, sought a declaration that they were the lawful owners of Gaturi/Nembure/11570 and that the registration and transfer of this land to the Appellant was fraudulent and unlawful. They sought cancellation of the registration and for the title over that land to revert to their names. The Respondents pleaded that sometime in 2009, their mother subdivided Gaturi/Nembure/1680 which she had inherited from her husband, the late Amos Njue Zakayo and transferred the subdivided portions to her children.
13. In his defence filed on 24/5/2024 the Appellant denied the averments in the plaint and averred that on 24/1/2003, their late mother directed him to be responsible for the subdivision and transfer of the family land to his brothers and sisters. He added that their mother directed that he and his three brothers Robert Njue, Kariuki Njue and Njeru Njue would each get 1 ½ acres. That the balance of 2 acres would be left in their mother's name and upon her demise, it would be divided by the girls sharing 1 acre while the sons shared the other acre.
14. The Appellant averred that a power of attorney was executed in his favour and he subdivided the land to his family as directed by their late mother. That after the demise of their mother, the entire family agreed that he would meet all the survey and transfer expenses and in turn would get ½ out of the remaining land with the balance being transferred to their sisters. That based on that arrangement, he proceeded to register parcel number 11570 in his name and 1 ½ acres for his sisters as agreed and directed by the family. The Appellant averred in the defence that he had been ready and willing to transfer to the Respondents 1 ½ acres as directed and agreed by all the parties.
15. The hearing proceeded before the trial court when the 2nd Respondent, their brother Robert Ndwiga Amos and Francis Kariuki Julius, a retired Senior Chief gave evidence. Robert Ndwiga Amos told the court that their mother subdivided land to her children and that the brothers got titles while the sisters did not. He maintained that the land was divided during their mother's lifetime and that there was no agreement for the Appellant to get ½ an acre from the Respondents' parcel of land.
16. Francis Kariuki Julius told the court that the Respondents went to his office to complain that the Appellant had refused to process their title. He summoned the Appellant who a week later returned with the titles for his brothers' land only. Upon inquiry, the Appellant informed him that the land register was unavailable. The retired Senior Chief stated that fraud was evident in the Appellant's act of registering his name on his sisters' title.
17. The Appellant gave evidence and stated that he acquired ½ an acre from the Respondents' portion. He stated that he spent his own money on the survey of the land for the titles to be released. That they had a meeting and agreed that the cost of Kshs. 240,000/= was for the ½ acre. He refunded his brothers the balance. He maintained that the Respondents were to get one acre and that he was ready to give



- them the acre. He told the court that their mother died in 2009 and that prior to her death she had visited the LCB. He confirmed that he did not visit the LCB with the Respondents before the suit land was transferred to his name as entry number 3. He maintained that they agreed that ½ an acre of the Respondents' land would cater for the cost of processing the titles.
18. The power of attorney which the Appellant relied on, which was donated by their mother, empowered him to execute all instruments and do what was necessary including attending the LCB. The green card for parcel number 11570 shows that it was opened on 14/7/2009 and registered in the name of Eunice Ikamba. Entry number 2 dated 28/7/2009 reflects the names of the Respondents as proprietors of that land. There is no indication that a title deed was issued to the Respondents and instead entry number 3 dated 28/4/2010 shows that the Appellant was registered as the proprietor of the land.
 19. Entry number 4 indicates that a title deed was issued to the Appellant on 3/5/2010. No explanation was given by the Appellant as to how the suit land came to be registered in his name yet the sisters' names had already been entered on the register. The Appellant failed to explain this before the trial court and even on appeal. The green card for parcel number 11574 shows that the register was opened on 14/7/2009 and Eunice Ikamba was registered as its proprietor. Entry number 2 shows that the Appellant was registered as proprietor of the land on 28/7/2009 and entry number 3 shows that a title deed was issued in his name on 3/8/2009.
 20. The Appellant made heavy weather of the minutes of the family meeting, which according to him was an agreement on how the land would be shared out after their mother's demise. It is helpful to summarise the contents of those minutes. The minutes of the meeting held on 4/7/2009 authorized the Appellant to process the title deeds for Gaturi/Nembure/1680. The minutes of the meeting held on 21/7/2009, which were signed on 21/7/2011, do not show what resolution was reached as the Appellant and the Respondents were mandated to visit the lands office. The minutes of 24/2/2011 show that the brothers attended the meeting which addressed their securing their title deeds and was witnessed by the Chief.
 21. The minutes of the meeting held on 9/5/2011 show that 1st and 2nd Respondents attended the meeting when a breakdown of the costs was given amounting to Kshs. 142,445/=. The minutes were not signed. It would seem that another meeting was held on 7/1/2021 and that during that meeting it was noted that the land issue had been finalized and titles issued to the four brothers. The meeting was informed that the fifth title deed was held in trust by the Appellant as the family trustee as agreed in the meetings held on 4/7/2009, 21/7/2009, 24/2/2011 and 9/5/2011. At that meeting, it was stated that the parties' mother had directed that her daughters would be given 1 acre and the ½ acre would cater for the cost of subdivision. It was emphasized that the Appellant catered for the land subdivision costs, which translated, to the ½ acre. It was noted that the Appellant had agreed to transfer the 1 acre to his sisters.
 22. In its judgment, the trial court found that there was no clarity from the minutes as to where the ½ was to emanate and where the monies shared by the brothers originated. The court found that the Appellant failed to provide any credible reason as to why he continued to hold in his possession what was meant for the Respondents. The court found that the Appellant did not challenge the Respondent's claim that he effected the transfer of the suit land to his own name without their consent.
 23. The court is not satisfied that the appeal has merit owing to the fact that the parcels of land must have been subdivided prior to 2009 because the registers for Gaturi/Nembure/11570 to 11574 could not have been opened before Gaturi/Nembure/1680 was subdivided and the register closed. The Appellant oversaw the subdivision of the land and the processing of the titles pursuant to the power of attorney. He processed his own title and his brothers' titles. The Appellant did not file a counterclaim



against the Respondents and he failed to prove that the transfer of parcel number 11570 from the names of the Respondents to his own name on 28/4/2010 was done procedurally and lawfully.

24. The registration of the Respondents as proprietors reflected as entry number 2 on the land register conferred on the Respondents rights, which is corroborated by the fact that they were entitled to a share of the land that previously belonged to their mother and their father before that. That parcel of land measured 0.61 ha and was to go to the three sisters after their brothers had each received their share of 1 ½ acres each.
25. The minutes of the meetings do not constitute a contract under Section 3(3) of the *Law of Contract Act* as the Appellant argued. There is no evidence that a trust was created and the Appellant was to hold the suit land in trust for his sisters. The Appellant's statement at the meeting held on 7/1/2021 that he held the fifth title deed in trust as the family trustee as agreed in the meetings held on 4/7/2009, 21/7/2009, 24/2/2011 and 9/5/2011 could not have been farther from the truth. No details were provided on how the trust was created and when it was created. The Appellant gave conflicting versions of the size of land which his sisters were to get.
26. The court sees no basis for interfering with the findings and decision of the Learned Magistrate. The appeal fails. This being a family dispute, each party will bear its costs.

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

K. BOR

JUDGE

In the presence of: -

Ms. Cynthia Wanjiku for the Appellant

Ms. N. Mwinja holding brief for Mr. N. Ithigah for the Respondents

