



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kirobon Farmers Company Limited v Mwangi (Environment & Land  
Case E019 of 2024) [2025] KEELC 3678 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3678 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E019 OF 2024**

**A OMBWAYO, J  
MAY 9, 2025**

**BETWEEN**

**KIROBON FARMERS COMPANY LIMITED ..... PLAINTIFF**

**AND**

**MARY WANJIRU MWANGI ..... DEFENDANT**

**JUDGMENT**

**Introduction.**

1. The Plaintiff commenced this suit vide a Plaint dated 6th March, 2024 against the Defendant seeking the following orders:
  - a) An order of permanent injunction restraining the defendant, her servant, employees and or authorized agents from trespassing upon, entering, farming, leasing subdividing, processing title deeds, transferring to herself and or interfering with the Plaintiff's peaceful possession and use of its land parcel L.R No. Njoro/Ngata Block 2/X5.
  - b) Costs of the suit and interests.
  - c) Any other order and or further relief as the Honourable Court may deem fit and just to grant. The Defendant entered appearance and filed her statement of defence and counterclaim dated 11th April, 2024 where she denied the allegations in the plaint. She sought for the following orders in her counterclaim:
  - d) An order of permanent injunction restraining the defendants by themselves, agents, assigns, successors, employees and anyone else claiming through them, from interfering with the plaintiff's possession, occupation, use and development of Land Parcel No. Njoro/Ngata Block 2/X5.



- e. A declaration that the registration of the 1st defendant as the proprietor of Land Parcel No. Njoro/Ngata Block 2/X5 purportedly made on 17th June 1986 was fraudulent, null and void and conferred no proprietary rights over the suit land to the 1st defendant.
  - c. A declaration that the Plaintiff is the lawful proprietor of Land Parcel No. Njoro/Ngata Block 2/X5 to the exclusion of the 1st defendant and all those claiming under it.
  - d. An order directing the 2nd defendant to expunge all registry records in respect of the 1st defendant's illegal and fraudulent title to Land Parcel No. Njoro/Ngata Block 2/X5 and cancellation of the title issued in its favour.
  - e. An order against the 2nd defendant to reinstate and restore the plaintiff, Mary Wanjirumwangi as the registered proprietor of the suit Land Parcel No. Njoro/Ngata Block 2/X5 (Kirobon).
  - f) Costs of the suit.
  - g) Any other or further order this Honourable court may deem fit in the circumstances of this case. On 5th February, 2025, the Plaintiff's case was dismissed with costs for non-attendance and the Defendant's counterclaim proceeded for hearing.
2. Consequently, the 1st Defendant did not file defence to the counterclaim.
  3. The 2nd and 3rd Defendants filed a joint statement of defence dated 2nd May, 2024.

#### **Plaintiffs' Case.**

4. Mary Wanjiru Mwangi testified as PW1 where her statement dated 11th April, 2024 and supplementary statement dated 11th November, 2024 was adopted as her evidence in chief. It was her testimony that the Plaintiff (now Defendant) Kirobon wanted to take her land Njoro/Ngata/Block 2/X5. She testified that the land belonged to her having obtained the same from the Defendant. She further testified that it was given to her by mzee her late husband. She testified that she had a list of documents filed on 11th November, 2024. She produced the documents as PEX 1-PEX 2, PEX 3-PEX 28. It was her testimony that she has lived on the land where she paid rent. She testified that she owned the land and had its title.
5. Upon cross examination by Rotich, she confirmed that she did a search which showed her name. She further confirmed that she was in possession of the suit land.
6. Donald Shikuku Injenga testified as PW2 where his statement dated 30th October, 2024 was adopted as his evidence in chief. It was his testimony that the Defendant (now Plaintiff) was the owner of the suit land. He testified that he was the Plaintiff's neighbor. He went on to testify that he farmed on the land. He also testified that the Plaintiff gave her the land in 2012.
7. Mary Chepkoech Injenga testified as PW3 where her statement dated 29th October, 2024 was adopted as her evidence in chief. It was her testimony that she was the owner of the suit land. She further testified that the court did a site visit. PW3 testified that she planted on the suit land since 2012.
8. That marked the close of the Plaintiff's case.

#### **Defence case**

9. Emma Siteinei the Land Registrar Nakuru testified as DW1. It was her testimony that they filed documents on 7th February, 2025. She produced the letter dated 7th February, 2025 as her witness statement which was adopted as her evidence in chief. She also produced documents as DEX 1- DEX 4. It was her testimony that by the time she had filed the documents, she was unable to locate the green



card. She testified that she had called for the parcel file and found the documents. She went on to testify that the documents in the parcel file showed that the owner of the land was Mary Wanjiru Mwangi, the Plaintiff as in the transfer form.

10. She testified that the original title of David Kamau Mwangi had been surrendered. She also testified that the title for Njoro Ngata was Block 1/105. She added that there was an issue of title. She testified that she was unable to get documents of the Defendant. She further testified that title in the Defendant's name was not in the records. She testified that it was not authentic. She also testified that she was unable to locate the green card. Upon cross examination by Mbutia, she confirmed that she had the title in the Plaintiff's name. She admitted that she did not have any title or document that supported the ownership by the Defendant.
11. That marked the close of the Defence case.

### Submissions

12. Counsel for the Defendant (now Plaintiff) filed his submissions dated 24th March, 2025 where he gave a summary of the evidence and identified three issues for determination. The first issue was whether the Plaintiff is the legal and bonafide owner of the suit land. It was his submission that from the evidence, the Plaintiff demonstrated that she had inherited the suit property from her deceased husband who had acquired the same by virtue of being a member of the Plaintiff (now Defendant) company. He submits that she produced a copy of the title and search document which confirmed that she was the registered proprietor of the suit land. Counsel submits that there was evidence that the land rates records by the County government of Nakuru bore her deceased's husband's name. He added that the Plaintiff was in possession of the suit land and that her evidence was never challenged. It was his submission that the 2nd Defendant, Land Registrar, Nakuru admitted that the suit land belonged to the Plaintiff. He relied on the cases of *Azina Said Chepkemboi V Noah Martim Too & 2 Others* 2015 KEELC 8 (KLR) and *Waira (Suing as a donee of power of attorney of Wilson Njau Waira V Mburu & Another (Environment and Land Case E076 of 2022) 2024 KEELC 13564(KLR))*. He submits that the Plaintiff proved her case on a balance of probabilities that she is the legal and bonafide owner of Parcel No. Njoro/Ngata Block 2/X5 (Kirobon).
13. The second issue was whether the Plaintiff was entitled to the reliefs sought. He relied on Section 3(1) of the *Trespass Act* and Section 24 and 25 of the *Land Registration Act*. It was his submission that the Plaintiff was entitled to an order of injunction having proved that the 1st Defendant trespassed onto her land. He also submits that the registration of the 1st Defendant as the proprietor of the suit land on 17th June, 1968 was fraudulent and conferred no property rights over it. He further submits that DW1 confessed that the green card for the suit land was missing and therefore the court was denied an opportunity to examine the abstract. He submits that the inability to avail the green card made the Plaintiff's evidence more credible. He relied on Section 119 of the *Evidence Act*. He also submits that DW1's testimony contradicted her pleadings. He relied on Section 9 of the *Land Registration Act* and submits that DW1 breached the mandatory provision to ensure availability and maintenance of the green card. He cited the case of *Kiniti V Marijoi & 2 Others (Environment and Land Case 935 of 2017) 2022 KEELC 118 (KLR)*. Counsel further relied on Section 26(1) and Section 80 of the *Land Registration Act* and submits that the 1st Defendant's title should therefore be cancelled. He submits that the Plaintiff is entitled to the orders sought. On the final issue of costs, counsel relied on Section 27 of the *Civil Procedure Act* and urged the court to award the Plaintiff costs of the suit.



## Analysis and Determination

14. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Who between the Plaintiff and 1st Defendant is the lawful owner of the suit property?
  - b. Whether the Plaintiff is entitled to the orders sought in her counterclaim.
  - c. Who should bear the costs of the suit.

### Who is the lawful owner of the suit property?

15. It was the Plaintiff's case that she was the lawful owner of the suit property by virtue of her late husband's David Kamau Mwangi shareholding with Kirobon Farmers Company Limited, a land buying company. The Plaintiff claimed that the 1st Defendant colluded with the 2nd Defendant and had the suit land fraudulently registered in its name instead of the deceased's name. The Plaintiff argued that her late husband paid the land rates since 1992 as evidenced from the receipts produced (PEX 17 a&b). She claimed that the Land Registrar in her testimony confirmed that the suit land belonged to the Plaintiff.
16. The 1st Defendant did not testify while the 2nd Defendant stated that from their records, she could not locate the green card. She added that the Plaintiff was the rightful owner of the suit property and that the 1st Defendant's title was not authentic.
17. It is noteworthy that the Plaintiff case remained uncontroverted. It is this court's view that in as much as her case was not challenged, she ought to prove the root of her title.
18. In the case of *Arthi Highway Developers Limited V West End Butchery Limited & 6 others* [2015] KECA 816 (KLR) the court held as follows:
- “It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt...”
19. It is this court's view that it was the Plaintiff's duty to prove that the 1st Defendant's title was fraudulently acquired which duty she successfully achieved by virtue of DW1's evidence who testified that the 1st Defendant's title was not authentic. Furthermore the 1st Defendant failed to challenge the Plaintiff's evidence. It is not in contention that the Plaintiff produced documentary evidence of how she acquired the suit property by virtue of her late husband's being a member of the 1st Defendant company. This was exhibited by her late husband's member's register PEX 1, approval letter dated 26th May, 1985 PEX 2, copy of the transmission forms PEX 14 a&b all the way to the Certificate of title in issued in her name (PEX 15)
20. Section 26(1) of the *Land Registration Act* further provides that:
- “...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
  - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corruptscheme.”
21. It is not in dispute that there are two titles for the suit property. One registered in the Plaintiff’s name issued on 13th July, 2021 and another one in the 1st Defendant’s name issued on 17th June, 1986. In normal scenarios, where there are two titles issued for one land, other than evidence led at the trial, recourse is usually made to the land register to determine the true owner. The register is basically held by the Land Registrar as the legal custodian. In the present case, it is a fact that DW1, the Land Registrar, Nakuru after being summoned, testified that she could not avail the green card as it was missing. She confirmed that the register had issues with titles and that the Plaintiff was the registered owner of the suit property. She further confirmed that the original title in the Plaintiff’s late husband, David Kamau Mwangi had been surrendered and that there were no records that the 1st Defendant was the owner. She basically confirmed that the suit property belonged to the Plaintiff.
22. In the circumstance, this court therefore finds that the Plaintiff is the lawful owner of the suit property.

**Whether the Plaintiff is entitled to the orders sought.**

23. Having established that the Plaintiff is the lawful owner of the suit property, she is therefore entitled to the orders sought in her Counterclaim dated 11th April, 2024. The upshot of the foregoing is that the Plaintiff proved her case on a balance of probabilities. Consequently, judgment is hereby entered in favour of the Plaintiff as against the Defendants in the following terms:
- a. The Defendant (now Plaintiff) be and is hereby declared the registered legal owner of L.R No.Njoro/Ngata Block 2/X5.
  - b. An order of permanent injunction is issued restraining the Plaintiffs (now Defendants) bythemselves, servants or lawful agents from trespassing upon, entering, remaining, dealing in or otherwise in any other manner whatsoever from interfering with L.R No. Njoro/Ngata Block 2/X5.
  - c) An order is hereby issued directing the 2nd Defendant to recall and cancel the title held by the Plaintiff (now Defendant) in respect to L.R No. Njoro/Ngata Block 2/X5.
  - d) The Defendants shall bear the costs of the suit. Orders accordingly.

**HON. JUSTICE ANTONY O. OMBWAYO**

**DATE: 2025-05-09 12:48:29**

