



Gichuki v Gitau (Suing as Legal Representative of the Estate of Mary Wanjiku Kahiu (Deceased)) (Environment and Land Appeal E070 of 2023) [2025] KEELC 3724 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3724 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E070 OF 2023**

JA MOGENI, J

MAY 8, 2025

BETWEEN

TARATSIO GICHUKI APPELLANT

AND

PATRICK KAHIU GITAU RESPONDENT

SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF MARY WANJIKU KAHIU (DECEASED)

JUDGMENT

1. The Appellant Taratsio Gichuki, was the Defendant in Ruiru MCELC E004 of 2021, while the Respondent was the Plaintiff in the said suit. Vide an Amended Plaintiff dated 8/02/2022, the Respondent (Plaintiff) had sought for the following orders against the Appellant (Defendant);
 - a. A declaration Thatthe Plaintiff through his deceased wife (Mary Wanjiku Kahiu) is the Bonafide proprietor owner of all Thatproperty known as land parcel No. Ruiru Kiu Block 2 (Githunguri) 3X0 denoted by ballot R/W 001376 and share certificate Number B 228 from Githunguri Constituency Ranching Co. Ltd
 - b. Thata permeant injunction be issued restraining the Defendant whether by themselves, agents, servant, employees or anybody claiming through them depositing building materials, trespassing by adversely interfering with the Plaintiff's ownership of land parcel Ruiru Kiu Block X (Githunguri) 3X0 or effecting change of user to the land
 - c. Thatthe honorable Court do issue an eviction order of the Defendant himself, assigns, relatives, employees, servants or anyone else claiming through him Ruiru Kiu Block X (Githunguri) 3X0 denoted by ballot R/W 001376 and share certificate Number B 228 from Githunguri Constituency Ranching Co. Ltd and demolition order of the illegal structures



thereon at the Defendants costs with the supervision of the area OCS or the head of provincial administration.

- d. Cost and interest of the suit
 - e. Any other further relief Thatthis Honorable Court deems fit to grant
2. On his part, the Appellant (Defendant) filed a counter-claim dated 4/10/2022 seeking a declaration Thathe is the Bonafide owner of the suit property in the alternative seeking to be registered as the owner of the suit property having been in uninterrupted occupation for 22 years as such entitled by law to be registered owner by dint of the doctrine of Adverse Possession.
 3. In his statement of Claim, the Plaintiff (Respondent) averred Thathis wife Mary Wanjiku Kahi (deceased) who was then suffering from Cancer was the absolute registered proprietor of parcel Ruiru Kiu Block 2(Githunguri)3X0 which she bought from Waruiru Chumia who held Certificate Number B 229 from Githunguri Constituency Ranching Company Limited. Thatshe purchased ¼ acre and was issued with a Share Certificate Number B228.
 4. Having paid the requisite fees at the offices of Githunguri Constituency Ranching Company Limited the Plaintiff (Respondent) was issued with a Clearance Certificate for issuance of a title deed dated 11/04/2014. Further Thatthe Plaintiff was issued with title deed dated 13/08/2019.
 5. That the noted intrusion by the Defendant in 2020 and this was reported leading to the Defendant being arraigned in Court for criminal charges. The Plaintiff also testified Thathe perused the Defendant's documents and noted Thathe claimed to have bought the suit property in 2002 yet he states Thathe acquired possession in the year 1999 before he bought the suit property.
 6. The Company asserts Thatthe Plaintiff is the owner of the suit property and Thatthe Defendant purports to have bought the suit property from people who are not known to the Company. Further Thatthe Plaintiff (Respondent) had not sold or disposed off the suit property to anyone especially the Appellant (Defendant).
 7. That the Appellant (Defendant) had illegally, fraudulently and unprocedurally invaded onto the Plaintiff's (Respondent's) land and started committing acts of waste and wanton damage by putting up a permanent house.
 8. The Plaintiff (Respondent) particularized fraud on the part of the Appellant (Defendant) as; invading, trespassing and constructing a residential house on the Plaintiff's (Respondent's) land without authority, permission or consent interfering with the Plaintiff's (Respondent's) possession or occupation of the suit land; the Appellant (Defendant) refusing/neglecting to stop or thwart the illegal construction despite having been informed by the Plaintiff.
 9. The suit was contested and the Appellant (Defendant) filed a Defence and Counter-Claim dated 4/10/2022, and denied all the allegations made in the Plaint. He contended Thatthe Plaintiff's claim is incomplete, incoherent, misconceived, offends mandatory provisions of the law, bad in law and is time-barred, suit is misconceived, bad in law and the Plaintiff has no genuine claim against him.
 10. He averred Thathe is the Bonafide purchaser for value and Thathe has occupied the suit property since 1999 and has stayed on the suit property unhindered for over 22 years and apart from being a bona fide purchaser he can also claim the suit by virtue of adverse possession.
 11. He also filed a Counter-claim and alleged fraud on the part of the Plaintiff Thatshe acquired registration of the suit property through forged/fake documents and tampering with official register with the intention of grabbing land from the original land owners. Thatthe person the Plaintiff claims



to have bought the land from one Waruiru Chumia does not exist in the register of Githunguri Constituency Ranching Company Ltd. He prayed for a permanent injunction to restrain the Defendant in the Counter-claim, her agents or servants from interfering with the Plaintiff's (in the Counterclaim) proprietary rights and quiet possession of the suit property.

12. The matter proceeded by way of viva voce evidence, wherein the Plaintiff (Respondent) called three witnesses and the Appellant (Defendant) called two witnesses.

Plaintiff's (Respondent's) Case.

13. PW1, Patrick Kahiu Gitau testified Thatthe deceased bought Ruiru Kiu Block X (Githunguri) 3X0 and was issued with a title deed on 13/08/2019. Thatshe purchased the suit plot on 20/02/2009 from her father who was a member of Githunguri Constituency Ranching Company. Thatshe was allocated the suit property vide ballot number 00XX76 and after the transfer she was given a Share Certificate Number 2X8 for ¼ acre plot. She supported her case through production of her List of Documents dated 15/1/2021 and her statement dated 15/1/2021.
14. PW2 - James Mwangi Kaare testified Thathe was employed by the deceased as a care-taker and Thatshe saw on her suit property. He testified to have seen the Appellant (Defendant) for the first time in 2019. Thathe placed building materials on the suit property but when PW2 consulted the deceased she confirmed not having sold her suit property. Thatwhereas the Appellant (Defendant) had said he would report the matter to DCI he disappeared and only re-appeared on 9/1/2020 and Thathe started constructing on the suit property in 2021.
15. That it is PW2 who was farming on the suit property and he lives on plot number 2419 which is 30 metres from the suit property. Thatthe Defendant refused to leave the suit property and even hired him to dig a pit latrine and paid him via mpesa.
16. PW - John Maina Mburu Chairman of Githunguri Constituency Ranching Company Limited told the Court Thatthe records of the Company show Thatthe Plaintiff is the rightful owner of Ruiru Kiu Block 2 (Githunguri)3X0 the same having been allocated to Waruiru Chumia vide ballot number 001376 and who transferred the same to Mary Wanjiku Kahiu who was issued with Clearance Certificate, and transfer forms and she processed the title deed. It was his testimony Thathe did not know John Waweru Thuo from whom the Defendant purchased the suit plot from and Thatthe Share Certificate Number 5215 is not from the Company and does not bear the genuine signature for Peter Kamunge the Secretary to the Company.
17. Further That the agreement between the Defendant and John Waweru Thuo is for 0.0526 Ha which is for an 1/8 acre land not ¼ acre land which is the size of the suit plot. He produced a List of Documents dated 26/7/2021.

Defence (Appellant's) Case.

18. DW1, Francis Maina testified Thathe had lived in the area since 1980 on plot 109 and Thathe was the care taker of the suit property and he denied knowing the deceased.
19. DW2, Taratsio Gichuki testified Thatthe suit property belonged to him Thathe purchased it in 1998-1999 and Thathe bought ¼ an acre and paid Kesh 430,000. Thathe visited Githunguri Constituency Ranching Company and confirmed Thatvendor was a Bonafide allottee of ballot number RW0001376 which he took possession of after the purchase. Thathe constructed on the suit property although the title was in the name of the Plaintiff (Respondent). Thatwhen he went to the



Company to process the title PW-3 demanded Kesh 500,000 from him and since he did not have it the Plaintiff was registered as the owner.

20. It was his contention Thathis Clearance Certificate is RW000XXX76 and Thatthe size of land in the Clearance Certificate is 0.1 ha, but in the agreement for sale it is 0.0562 ha and Thathe did not know where the error came from because he was purchasing a ¼ acre land.

21. After the viva voce evidence, the parties filed their written submissions, the trial Court entered Judgment in favour of the Plaintiff (Respondent) plus costs and stated as follows;

“I have considered the evidence on record and I find Thatthe evidence of PW1 supported by Thatof PW2 and PW3 confirmed Thatthe suit property belongs to the Plaintiff. In the counter claim the Defendant had questioned the Plaintiff’s title and when a proprietor’s title is in question, it is not enough to dangle the certificate of title. The proprietor must go ahead and prove how he acquired the said title. ... It was therefore incumbent upon the Plaintiff to provide evidence to prove Thathis title was lawful and I find Thathe has succeeded in proving Thatthe title is genuine and was obtained lawfully.”

22. The Appellant (Defendant) was aggrieved by the above determination of the Court and Decree thereon and he has sought to challenge the said Judgment through the Memorandum of Appeal filed on 30/11/2023. The Appellant sought for Orders that;

- a. That the Judgment and Decree issued on 22nd November 2023 be set aside and consequently Substitued with a Decree allowing the Counter Claim and a further Declaration Thatthe Appellant is the Bonafide owner of all Thatparcel of land known as Ruiru/Kiu Bloc 2 (Githunguri) 3X0 by dint of Ballot Number 000XX76 and original share certificate 5XX1 and later BXX9
- b. That an order do issue directing the Lands Registrar Ruiru to Rectify and amend the Land Register and all records relating to parcel number Ruiru Ruiru/KIU Block 2 (Githunguri)3X0 by specifically Canceling entries Number 2 and 3 on the register and replacing the same with entries in favour of the Appellant as the bona fide registered owner.
- c. That costs of this Appeal to be awarded to the Appellant.

23. The grounds upon which the Appellant sought for the Appeal to be allowed are;

1. That the Trial Magistrate erred by finding Thatthe Plaintiffs had proved on a balance of probabilities Thatthe Respondent was the rightful owner of Ballot certificate Number RW 001376 thus the bonafide owner of all Thatproperty known as Ruiru Kiu Block X (Githunguri) 3X0.
2. That the Trial Magistrate erred by upholding the Defendant’s impugned title over Ruiru Kiu Block X (Githunguri) 3X0 in the absence of a valid Share Certificates, Ballot certificate and any other conclusive proof of ownership.
3. That the Trial Magistrate erred by failing to find and hold Thatthe Appellant was the bonafide owner of all Thatparcel of land known as Ruiru Kiu Block 2 (Githunguri)3X0 .
4. That the Trial Magistrate erred by failing to objectively investigate the root of the Respondent’s title before making the impugned declaration of ownership.
5. That the Trial Magistrate failed to consider undisputed evidence clearly showing ThatShare Certificate No XC8 and Share Certificate No. 2X9 were indeed fraudulent having been issued



on the same date 20th February 2009 and such fraudulent documents could not have bestowed a proper title to the Respondent.

6. That the Trial Magistrate erred by failing to interrogate, examine and ascertain legality, proprietary of the Respondent's Share Certificates No.2X9 and 2X8 and all the impugned documents used to clear the Respondent prior to the issuance of a certificate of title.
 7. That the Trial Magistrate erred by declaring ownership in favor of the Respondent without an accompanying Ballot Certificate and inexplicably ignored Appellant's Ballot Certificate .
 8. That the Trial Magistrate erred by ignoring uncontroverted evidence of PW2 admitting all the Appellant's documents lawfully emanated from Githunguri Company Ranching Limited and were signed and issued by the same director who allegedly issued the Respondent's share certificate.
 9. That the Trial Magistrate erred by failing to consider the documents issued earlier in time and further erred by terming the Appellants documents as forgeries without conclusive evidence to support such findings.
 10. That the Magistrate erred by ignoring PW1 admission he did not possess a Share Certificate for the quarter Y4 acre of land That was a prerequisite for processing of title in Respondent's favor.
 11. That the Trial Magistrate was bias and engaged in acts of open favoritism.
24. The Appeal was canvassed by way of written submissions and the Appellant through the Law Firm of Masaviru & Ketoo & Company Advocates filed his written submissions dated 30/09/2024, and submitted That from the evidence adduced, the trial Court failed to consider his evidence and misapplied it against the law. It was submitted That the root of the Respondent's title was questionable, yet the Court ruled she was the bonafide owner. That the Respondent's documents were falsified after PW3 testified That the register of the Company was lost at one point.
 25. That the name of the person the Appellant bought the land from one Waweru Thuo was in the register although PW 3 testified That the said records were fraudulent but did not produce the proof of the allegations.
 26. The Respondent through the Law Firm of Kanyi Kiruchi & Co Advocates filed his written submissions dated 16/10/2024, and submitted That Appellant did not offer any credible evidence in the lower Court to necessitate a finding in his favour. He relied on the cases of James Njoroge Gitau vs Lucy Chepkurui Kimutai [2018] eKLR, Munyu Maina vs Hiram Gathitha Maina (2013) eKLR and Paul Macharia Waganya vs Mwangi Macharia Wagunya & Another [2015] eKLR.
 27. He submitted That the Appellant has to prove his documents are from the Githunguri Company and That the root of title must be proved since it is not enough to just wave a title. That the Respondent's evidence has negated averments. That the documentary evidence the Appellant tendered and relied on offered little support to his claim as the authenticity of the documents were doubted and the alleged source disowned them. The Court was urged to dismiss the Appeal.
 28. The Court has carefully read and considered the written submissions, the Memorandum of Appeal and the relevant provisions of law and renders itself as follows;
 29. The Court has also carefully considered the findings of the trial Court, the rival written submissions by the Counsels and finds as follows:-



30. In making a determination of this Appeal, the Court recognizes Thatit neither saw nor heard the witnesses, and must therefore give allowance to that.
31. As this is a first Appeal, it is the Court’s duty to analyze and re-assess the evidence on record and reach its own independent decision in the matter as provided by Section 78 of the Civil Procedure Act. See the case of *Selle Vs. Associated Motor Boat Co.* [1968] EA 123 where the Court held that;
- “An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are Thatthis Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind Thatit has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either Thathe has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (*Abdul Hameed Saif vs. Ali Mohamed Sholan*(1955), 22 E. A. C. A. 270).”
32. Further as the Court determines this Appeal, it takes into account Thatit will only interfere with the discretion of the trial Court where it is shown Thatthe said discretion was exercised contrary to the law or Thatthe Trial Magistrate misapprehended the applicable law and failed to take into account a relevant factor or took into account an irrelevant factor or Thaton the facts and law as known, the decision is plainly wrong. See the case of *Mbogo vs Shah* (1968) EA at Page 93 where the Court held that:-
- “I think it is well settled Thatthis Court will not interfere with the exercise of its discretion by an inferior Court unless it is satisfied Thatits decision is clearly wrong because it has misdirected itself or because it has acted on matters on which it should not have acted on because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
33. Whereas the Appellant has laid various grounds of appeal amongst them faulting the trial Court for failing to take into account various issues, failing to find Thatthe Appellant was the proprietor of the suit property and making a finding Thatthe Appellant has failed to prove his case.
34. In his Counter-claim, the Appellant had laid claim to the suit property. It was his contention Thathe had bought the suit property from one Waweru Thuo, and they entered into a Sale Agreement. He contended Thatthe Respondent was issued with a title without due regard to the proper legal procedure and Thatin any case he is even entitled to the suit property by virtue of adverse possession. He further submitted Thatthis is a case of double allocation and Thatthis title was the first in time. Thus he called for cancellation of the Respondent’s title.
35. On the other hand, the Respondent denied the claims Thathe was wrongfully on the suit property and testified Thathis wife bought the suit property from Waruiru Chumia vide a Sale Agreement dated 20/02/2009 and Thatshe had a title deed for the suit property issued on 13/08/2019. Infact she submitted Thatdue to the fact Thatthe title to the suit property was issued only in 2019 then the claim by the Appellant for adverse possession fails because the suit was instituted in 2021 and therefore 12 years had not elapsed.
36. The Respondent submitted Thatthe deceased Mary Wanjiku Kahiu thus acquired a good title. His contention was further supported by PW3, who averred Thataccording to their Register, the Respondent was the owner of the suit property. PW3 also testified and denied Thatall the



documentations held by the Appellant emanated from it. It was therefore the Respondents' contention Thatthe documents held by the Appellant were a forgery.

37. The Court made its determination and held Thatthe Appellant had failed to prove his case and allowed the suit in favour of the Respondent with costs. The Appellant being aggrieved has appealed to this Court. The Court having carefully evaluated the evidence in the Subordinate Court finds Thatit is not in doubt Thatthe Respondent holds a title to the suit property. The Appellant called into question the title held by the Respondent and it then became imperative for the Respondent to prove the root of his title. See the case of Munyu Maina Vs. Hiram Gathiha Maina [2013] eKLR, held as follows:

“We state Thatwhen a registered proprietor's 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 Thatis in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show Thatthe acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

38. To be able therefore to determine whether this Appeal is merited, it is the Court's considered view Thatit will evaluate who between the Appellant and the Respondent had satisfactorily proved their root of title.
39. The Appellant also was to prove the root of his title. The trial Court in its Judgment held Thatthe Appellant had failed to prove his case based on the fact Thatthe documents he sought to rely on for ownership of the suit property are lacking in credibility due to the alterations and failure to be signed by the authorized signatories. The Appellant herein has not satisfied the Court why the documents Thathe produced in Court had either not been signed or had alterations Thatcould not be explained.
40. The Court has gone through the Appellant's documents produced in evidence and notes Thathe had produced receipts Thatwere undated and unsigned. Further the receipts bear the name of a Company other than Githunguri Constituency Ranching Company Limited.
41. The Company he purports to have gotten the documents produced from had its Secretary deny to have issued the documents produced in Court. Based on the documentations produced in evidence and the evidence from PW3, there are no records from their offices Thatshow Thatthe Appellant was the owner of the suit property nor Thatthe alleged Waweru Thuo was a member of the Githunguri Constituency Ranching Company Limited. Neither is the name of Waweru listed in the Company Register which is the document Thatattest to who a member is. Thus the Court finds and holds Thatthe Appellant did not show the root of his title
42. The Appellant having filed a Counter-claim had the onus of proving his case on the required standard of balance of probability. The Plaintiff in the Counter-claim sought to rely on documents Thathad alterations and not properly executed, without any justifiable reason, and therefore, the Appellant failed to prove his case on the required standard at the trial Court.
43. The Respondent testified Thatthe deceased bought the suit property from one Waruiru Chumia. It was the evidence of PW3 who represented Githunguri Constituency Ranching Company Limited Thatfor one to be a shareholder, the person must have a Share Certificate and a ballot as a Share Certificate is only indicative of membership and not ownership of land. Further Thatthe names of the shareholders are entered into the register. PW1, the Respondent herein produced in evidence a Share Certificate Thatthe Plaintiff had gotten from the said Waruiru Chumia.



44. He further produced a Share Certificate in his name evidencing Thathe is the owner of parcel Ruiru Kiu Block X (Githunguri) 3X0 and further produced receipts for payment. Further PW3 who was the Chairman of the Company which was the initial owner of the suit property also testified Thatas per their records, the Respondent was the owner of the suit property and Thather name is in the register. The Court is thus satisfied Thatthe Respondent was able to show how the deceased acquired proprietorship of the suit property and therefore has shown the root of her title.
45. As the Respondent was able to show the root of his title, the Court is thus satisfied Thatthe deceased holds a valid title and there is no basis upon which to impugn the said title since it was procedurally acquired.
46. In conclusion, having now carefully re-evaluated and re-assessed the available evidence before the trial Court and the Memorandum of Appeal together with the written submissions, the Court finds Thatthe Trial Magistrate did not err and arrived at a proper determination.
47. The upshot of the foregoing is Thatthe Appellant's Appeal herein is not merited and consequently the said Appeal is dismissed with costs to the Respondents and the Judgment and Decree of the trial Court is hereby upheld.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS ON THIS 8TH DAY OF MAY 2025.

MOGENI J

JUDGE

