



REPUBLIC OF KENYA



**Mwangi v Mwangi (Environment and Land Appeal E026 of 2023)  
[2025] KEELC 4872 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4872 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E026 OF 2023  
MN GICHERU, J  
JUNE 30, 2025**

**BETWEEN**

**HUMPHREY GIKONYO MWANGI ..... APPELLANT**

**AND**

**EUNICE NJERI MWANGI ..... RESPONDENT**

*(Being an Appeal against the Ruling of Hon. E.M. Nyaga(Senior Principal Magistrate)  
in the Chief Magistrates Court at Murang'a, ELC Civil Case No. E022 of 2023  
delivered on the 16 th November 2023 at the Chief Magistrate Court at Murang'a.)*

**JUDGMENT**

1. The Appellant seeks the following orders in this appeal.
  - a. The appeal be allowed.
  - b. The ruling of Hon. E.M. Nyagah-SPM which was delivered on 16-11-2023 be set aside.
  - c. Costs of this appeal be borne by the Respondent.This is as per the memorandum of appeal dated 5-12-2023.
2. The appeal is based on the following four(4) grounds.

That the learned trial magistrate erred in law/fact by-

  - i. dismissing the Appellant's application by failing to consider all the evidence placed before the Court,
  - ii. dismissing the Appellant's application and thereby issuing a mandatory injunction at an interlocutory stage. Consequently, purporting to finally determine the whole suit at an interlocutory stage,



- iii. denying the Appellant to be heard on merit and thereby dislodging the Appellant from the seat of justice by issuing a mandatory eviction from the suit land and
    - iv. disregarding the Appellant's objection on the issue of jurisdiction of the Court and thereby conferring jurisdiction which the Court was not seized of.
3. The undisputed facts of the case are as follows. On 1-10-2022, the Appellant and Francis Wanyoike Mwangi entered into a lease agreement whereby the Appellant leased one acre of land parcel No. Loc.11/Maragi/1147 for the purpose of excavation of stones. The consideration was Kshs. 1.5 Million. Secondly, the Appellant would pay Francis Wanyoike Mwangi Kshs. 4/= for every special building stone, Kshs 3/= for every reject stone and Kshs 3/= for every beam stone. Thirdly, after the excavation was over, the Appellant would backfill the excavated area with soil and the lease would be extended to cover the rest of the land. On 12-4-2023, the Respondent filed ELC case No. E022/2023 at the Chief Magistrate's Court at Murang'a seeking to have the Appellant restrained from the suit land on the grounds that she has no proprietary interest over the suit land which is registered in the name of Mwangi Njoroge, deceased and she is the legal representative of the estate. In his written statement of defence dated 4-7-2023, the Appellant challenges the Respondent to prove that she is the administratrix of the estate of the deceased and avers that she had no locus standi to institute the lower Court suit. He filed a notice of preliminary objection dated 4-7-2023 to that effect.
4. In its ruling dated 29-8-2023, the lower Court dismissed the preliminary objection and issued an order of injunction restraining the Appellant from the suit land pending the hearing and determination of the suit. The reason for issuing the order was that the deceased had died on 24-8-2009 and the lease agreement is dated 1-10-2022. The notice of motion seeking the orders of injunction is dated 12-4-2023.
5. The Appellant filed a motion dated 11-9-2023 seeking review of the order that dismissed his preliminary objection. The lower Court dismissed the motion by the Appellant on the ground that the Respondent did not receive any money from Appellant towards the lease of the suit land and secondly, the estate of the deceased stood to suffer a greater loss than the Appellant. It is this dismissal of the motion for review that precipitated this appeal.
6. Only the Appellant's counsel filed written submissions dated 4-11-2024 in which the four grounds of appeal were treated as the issues for determination. No submissions were filed by the Respondents counsel.
7. I have carefully considered the appeal in its entirety including the record, the issues for determination and the case law cited in the written submissions. I will make a finding on each of the four grounds of appeal.
8. On the first ground of appeal, I do not find any error on the part of the trial magistrate. The suit is not yet concluded. All that the trial magistrate did was to stop the excavation of rocks on the suit land because the lessor of the land did not have capacity to lease land that was registered in the name of a deceased person yet he was not the personal representative of the estate of the deceased. By raising the preliminary objection, it was in fact the Appellant who sought to have the suit concluded without the parties being heard. The Respondent was ready to have the suit heard to conclusion.
9. As for the second ground, I find no error on the part of the trial magistrate. There is no law that says that the Court should not issue an order of injunction at a preliminary stage if the final prayer is also for an order of permanent injunction. The status quo had to be maintained before the case could be heard so that the Appellant did not continue to excavate on the disputed land. It does not mean that he will not be able to go back to the land and excavate at the conclusion of the case. The case is still



pending in the lower Court. It has not been concluded. The Appellant can still amend his pleadings and counterclaim against Francis Wanyoike Mwangi who leased the land to him.

10. It is not correct to say that the Appellant was denied a chance to be heard on merit. The suit in the lower Court is still pending.
11. It is my finding that the lower Court suit is at its infancy and the pleadings could be reopened for the parties to file fresh evidence such as the grant of letters of administration. The Appellant had not yet filed any grant issued to Francis Wanyoike Mwangi to enable him lease the suit land to the Appellant. The Appellant cannot argue that the Plaintiff had no grant of representation when the person who leased the suit land to him has not exhibited any grant either.
12. For the above stated reasons, I find no merit in the appeal dated 5-12-2023 and I dismiss it with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Mr Mbugua

Respondent's Counsel - Absent

