



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Gitonga & another (Environment & Land Case
394 of 2011) [2025] KEELC 4790 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 394 OF 2011**

**JG KEMEI, J
JUNE 26, 2025**

BETWEEN

TERESIA NJERI NJUGUNA PLAINTIFF

AND

VERONICA WANJIRU GITONGA 1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 2ND DEFENDANT

JUDGMENT

1. Vide the Plaint dated the 28/7/2011 and subsequently amended on 5/10/2021 the Plaintiff sought the following orders;
 - a. That the Court do issue a permanent injunction restraining the Defendants their servants employees and or agents from dispossessing alienating reallocating reclaiming erecting any structures and or harassing the Plaintiff or interfering with her peaceful occupation of the parcel of land more particularly known as Plot No N-83, Ruai Embakasi Ranching Company Limited.
 - b. The 1st Defendant do remove all the structures erected on the said premises and do vacate the suit premises forthwith
 - c. General damages for trespass
 - d. The title issued on the 29/3/2019 purporting to be the certificate of title of lease for L-157 be cancelled
 - e. In the alternative there be an order directing that the certificate of lease dated 29/3/2019 be transferred to the Plaintiff being the title issued for plot No N-83
 - f. That the 1st Defendant be evicted form the suit property



2. It is the Plaintiffs case that she acquired the plot No N-83 from one George Mbugua Kago in 1999 at the costs of Kshs 150,000/-. She was shown the plot and she took possession upon paying all the requisite payments to the 2nd Defendant being transfer fees for the plot. That in 2009 she discovered that the 1st Defendant had entered the plot without her consent and started constructing a house while laying claim to its ownership. She reported the dispute to the 2nd Defendant, its surveyors, the local administration where the agents of the 2nd Defendant assured her that the plot belonged to her.
3. The 1st Defendant denied the Plaintiff's claim vide her statement of defence filed on 14/10/2011 and amended on the 6/12/2019. She contended that she purchased the plot namely L-157 in 2007 from one Teresia Wanjiku Mwangi, the original allottee. Upon purchase she was shown the beacons by the vendor and the surveyors of the 2nd Defendant, paid the requisite transfer fees and took possession and constructed a permanent house. That it is in 2010 that the Plaintiff laid claim on the plot and upon seeking assistance of the 2nd Defendant it confirmed that the Plaintiffs land was separate. That she was issued with a lease by the 2nd Defendant who signed a transfer to signify her ownership.
4. The 2nd Defendant, in its brief defence conceded that both the Plaintiff and the defendant are bonafide land owners of the 2nd Defendant having being allotted different plots.

The Evidence of the Parties.

5. PW1 – Teresia Njeri Njuguna testified the first time on the 16/3/16. She relied on her witness statement dated the 5/8/2011. In addition, she produced documents in support of her claim.
6. She narrated to the Court how she purchased her plot -N-83 from a Mr. George Mbugua Kago in 1999. Mr. Kago held two plots N-82 and N-83 which were adjacent to each other. In the year 2000 a transfer was made in her favour by the 2nd Defendant. She made several payments to the 2nd Defendant for the plot. The 2nd Defendant's surveyor showed her the beacons and was issued with a beacon certificate as well as a certificate of ownership.
7. She returned to the plot in 2009 and found that the 1st Defendant had been allocated the same plot. On visiting the offices of the 2nd Defendant she was assured that the plot belonged to her. She lodged a complaint with the Police, the Chief and the District Officers office with no avail. Finally, the 2nd Defendant advised her to file suit in Court.
8. It is her evidence that the 2nd Defendant changed her plot No from N-83 to L-157 and gave it to the 1st Defendant without her consent.
9. PW2- George Mbugua Kago stated that he owned two plots; N-82 and N-83. He sold N-83 to the Plaintiff and N-82 to Grace Muthoni Mbugua in 1999. That the two plots adjoin each other and both plots appear on map No 10 which bears the stamp of the 2nd Defendant.
10. Further hearing was stalled for a while when the 2nd Defendant severally requested for time to provide an alternative plot for either parties but none was provided hence the matter was listed for hearing.

PW1 Further Testimony on 21/1/25

11. After a period of 9 years, PW1 was recalled to testify on the 21/1/25. She informed the Court that she had testified in 2016. She relied on her amended plaint dated 5/10/2021 the further witness statement dated 14/3/22 as her evidence in chief and produced documents marked as PEX No 1-3a.



12. She stated that vide a letter dated the 14/11/2019 the 2nd Defendant confirmed that she is the owner of plot No N-83. That the reason she does not hold a title is because the titles were issued later. That N-83 has been registered as Parcel No 8843.
13. With that the Plaintiff closed her case
14. DW1 – Veronica Wanjiku Gitonga testified and relied on her witness statement dated the 1/3/22 in chief and produced documents marked as DEX No 1-12.
15. She led evidence that her plot is No L-157 which she acquired from Teresia Wanjiru Mwangi in 2007.
16. In cross she stated that she visited the offices of the 2nd Defendant and effected the transfer of the land, visited the land and confirmed it was vacant and was allocated plot No L-157.
17. When further cross examined by Mr. Mbaabu, Counsel for the Plaintiff, the witness informed the Court that she did not enter into any agreement with the said vendor, Teresia Wanjiru; she did not produce the share certificate of Wanjiru either.
18. When shown the transfer form, she stated that the name of the transferor is Mwangi Muchuno – death certificate No 191007. She stated that she did not buy the plot from Mwangi but from Teresia Wanjiru Mwangi since Mwangi Muchuno was deceased by then. She stated that she did not pay for the bonus share nor was she allocated any. Though the witness informed the Court that she held a beacon certificate she did not produce it before Court. Under intense questioning she conceded that the ownership certificate on page 6 of her supporting documents was not endorsed/countersigned by the surveyor as was the practice of the 2nd Defendant. That though she paid Kshs 20,000/- for the site visit she did not produce a receipt.
19. In her further testimony she stated that she obtained the letter dated 23/6/2016 from the 2nd Defendant after PW1 and her witness had testified. That she had earlier obtained another letter dated the 14/1/2014 from the 2nd Defendant. Without tendering any evidence, she stated that she holds a title that she obtained while the case was subsisting in Court. She stated that she has no lease document. She stated that though the Plaintiffs documents were earlier in time she heard that the Plaintiff's land is located elsewhere. She further informed the Court that she got the map in 2014 although she has not presented it in Court. She stated that Teresia sold the land to her before petitioning for succession in the estate of Mwangi Muchuno. Contrary to the practice of the 2nd Defendant and save for executing the transfer, she stated that she was not given any introductory letter addressed to the Lands Office for title preparation.
20. DW2 – Duncan Kimani Kanyuku stated that he was present during the transaction between the 1st Defendant and Teresia Mwangi. That Mwangi was dead by then. He did not know Teresia well. He saw the share certificate in the name of Mwangi, deceased. He also accompanied the 1st Defendant to visit the Plot.
21. DW3- Jack Kamau Wachira stated that he is a Surveyor employed by the 2nd Defendant and has worked for over 22 years with the 2nd Defendant. He relied on his witness statement dated the 10/7/24 and produced documents marked as DEX No 13-16
22. He stated that he knows the plots in dispute. He stated that though he has access to all the maps of the 2nd Defendant, he does not know where plot N-83 is located. That if the Plaintiff had visited his office, he would have shown her where the plot is. That Plot N-83 and L-157 are located on separate places. The plot numbers are issued by the 2nd Defendant on first come first served basis after the area has been surveyed. That the 2nd Defendant relies on his services before issuing titles to the land owners. He gave



the Court details on how plots are identified by the company surveyors, plot numbers issued and all the processes to titling as follows; claimant is taken to site by a Surveyor; plot number is given internally; plot Number is identified and matched with the plot Nos. on the map and the ground; claimant shown the beacons on the ground; claimant pays for the services including beacon certification; endorsement is made by the surveyor at the back of the ownership document to denote that the claimant has been shown the land on the ground and the ground has been ascertained; beacon certificates are issued with an endorsement on the back of the document.

23. Shown map No 10, he admitted that Plot No N-83 was allocated by a Surveyor called Mahinda and that he signed the documents on 8/6/2010. In the said document he gave an appointment to the Plaintiff to go to his office on 17/6/2010 to resolve the problem. He states that he cannot remember what the problem was. He stated that the parcel Numbers were issued in 2014.
24. Shown the receipt issued to the Plaintiff dated 26/3/2009, he confirmed that it was for plot No N-83 for the site visit. He confirmed that the Plaintiff paid Kshs 13,000/- for the site visit and she obtained the beacon certificate on 7/2/2011 for allocation of Plot No N-83 on Map No 10. That the documents were signed by James Mwangi, a director of the 2nd Defendant. He added that he knows Map 10 and its location on the ground but he has not identified plot No N -83.
25. Lastly, he confirmed that both the plaintiff and the 1st Defendant are landowners in the 2nd Defendants land.

The Written Submissions

26. Parties filed written submissions as follows; the Plaintiffs are dated the 25/3/25, 1st Defendants on 4/5/25 and the 2nd Defendant are dated the 7/4/25. I have read and considered and wish to thank counsel for their industry and highlights.

Analysis and Determination

27. The issues for determination are;
 - a. Whether plot No N-83 and L-157 are one and the same on the ground
 - b. Who between the Plaintiff and the 1st Defendant is the legitimate owner of the suit land
 - c. Whether the Plaintiff is entitled to orders of eviction of the 1st Defendant
 - d. General damages for trespass
 - e. What orders should the Court issue
 - f. Who meets the costs of the suit?
28. The Plaintiffs case is that in 1999 she acquired Plot No N-83 by way of purchase from one Mbugua Kago who owned Plot Nos N-82 and N-83. She was shown the site by Kago and later the company surveyors, paid for the transfer and beacon certificate and took possession of the land. That in 2009 she returned to the land and found the 1st Defendant had without her consent and authority trespassed onto her land and constructed a permanent house thereon.
29. The 1st Defendant on the other hand insists that her land is plot No L-157 which she duly acquired from the widow of the original owner one Teresia Wanjiru Mwangi and took possession and built a house. She claims that plot N-83 and L-157 are distinct and separate plots and the Plaintiff ought to cooperate with the 2nd Defendant to be showed the location of her plot.



30. The 2nd Defendant admits that both the Plaintiff and the 1st Defendant are land owners in the 2nd Defendants expansive ranch. It supports the position that the 1st Defendant is the owner of plot No L-157 and that the Plaintiff has failed to engage the 2nd Defendant for identification and verification of her plot on the ground by organizing a site visit to be shown the physical location of the plot on the ground which in its opinion is located

a. Whether Plot No N-83 And L-157 Are One and the Same

31. Evidence was led by PW1 that she purchased the plot N-83 from George Mbugua Kago in 1999. PW2 – Kago admitted that he held two plots in Embakasi; plots Nos. N-82 and N-83 which plots are adjoining one another and shown on Map No 10 adduced by PW1. He confirmed that plot No N-83 is the one that the 1st Defendant has occupied albeit illegally. That the 1st Defendant is occupying the Plaintiffs plot. I have perused this map and clearly Plot No N -83 is placed above Plot No N-82.

32. DW1 also adduced Map No 10 duly certified by the 2nd Defendant in which plot No L-157 is positioned above Plot No N-82. My perusal of this map shows that L-157 is positioned exactly where plot No N-83 was in the earlier Map.

33. It is the case of the 1st and 2nd Defendants that plot No N-83 is located is distinctly and separately located elsewhere. DW3, the 2nd Defendants long time Surveyor informed the Court that he has access to all the company survey maps and that the company relies on his services to show the beacons to the allottees for purposes issuance of beacon certificates, taking possession and issuance of titles. Asked where the Plaintiffs land is DW3 responded as follows;

“.. I have access to Map No 10. I do not know where N -83 is. I have not gone through all the maps to confirm where it is. This matter was adjourned to enable me trace N-83.”

34. It is to be appreciated that the hearing of this matter was delayed for over 9 years when the 2nd Defendant asked the Court for time to get an alternative plot for the Plaintiff. If indeed the plot was located distinctly and separately what was so difficult for the 2nd Defendant to point out the plot to the Plaintiff. If indeed this plot existed elsewhere it would not be necessary to seek an alternative plot as the easiest thing to do was to point out the physical location of N-83 to the Plaintiff.

35. DW1 did allude more than once during the evidence that had the Plaintiff engaged him and sought for beacon identification services he would have shown her the plot. This to my mind is a serious contradiction by a professional surveyor who informed the Court that he has interacted with the company survey maps for over 22 years. It is further intriguing more so because he admits that the suit was adjourned severally to enable him locate the plot/alternative plot.

36. When shown the Plot ownership documents issued by the 2nd Defendant to the Plaintiff, the witness admitted that the site visit receipt in the sum of Kshs 2000/- issued on 26/3/2009. That the Plaintiff further paid Kshs 13,000/- for site visit and beacon certificate which was issued to her on 7/2/2011 for allocation on map No 10 of the plot No N-83. That James Mwangi , a director of the 2nd Defendant signed the document . He confirmed that he signed at the back of the plot ownership certificate.

37. DW3 failed to explain to the Court at what point survey map No 10 was amended to remove Plot No N-83 and substitute it with L-157. DW3 explained that the plot numbers being internal were issued to the land owners on first come basis. Aside from being uncooperative with respect to the survey map, he did not produce any other evidence in form of a survey plan pointing out the physical location of Plot N- 83 and or whether the same was located elsewhere.



38. Having analyzed the above evidence, the Court concludes that Plot No I-157 and N-83 are located on the same ground.
- b. Who Between the Plaintiff and the 1st Defendant is the Legitimate Owner of the Plot?
39. Having settled the ground position of the plots, it is clear that the Court is dealing with a case of double allocation of plots. This has been made more clearer by the 2nd Defendant when it undoubtedly confirmed that both parties own land in Embakasi Ranching.
40. To answer this issue, the Court will closely examine the documentary evidence produced by the parties alongside the evidence adduced at the hearing.
41. PW2 led unchallenged evidence that he was the owner of plots Nos N-82 and N83 both adjoining each other. He sold N83 to the Plaintiff and sold the other to a third party who proceeded and obtained title. This evidence is supported by the shareholder certificate No 1986 dated 7/4/99 produced by the Plaintiff and confirmed by PW2.
42. In 2000 the Plaintiff was issued with a non-member certificate of plot ownership dated the 27/10/2000 No 004464 showing receipts of payments made by the Plaintiff. On its reverse side it is stated in capital letters ALLOCATED N-83 and signed by one Mr. Mahinda and countersigned by DW3 with words “come to Ruai office on 17/6/10”. This document was not challenged by DW3. On 1/2/2011 the Plaintiff was issued with a receipt in the sum of Kshs 13,000/- being the payment for site visit and beacon certificate for Plot N-83, thus removing any doubt as to the ownership of the plot in favour of the Plaintiff. What followed as an allocation receipt No 9686 dated the 8/2/2011 in the name of PW1 for plot no N-83 on map No 10 signed by PW1, Mr. Mahinda and DW3. The document was witnessed by a Mr. J Mwangi on behalf of the 2nd Defendant.
43. PW1 also produced a letter by the 2nd Defendant addressed to the Director Land Administration confirming that PW1 is the owner of N83- Parcel No 136/8843. It was the Plaintiffs evidence that she paid for the title since the plot was already in the lands system.
44. DW1 led evidence and stated that she acquired the land from Teresia Wanjiku Mwangi although the same was owned by Mwangi Muchuno deceased. That no succession had been petitioned in the estate of the deceased.
45. She did not produce any sale agreement between her and the said Teresia Wanjiku; no share certificate in the name of Teresia Wanjiku or Mwangi Muchuno; she did not pay for any bonus share neither was she allocated any; no beacon certificate to show the physical position of the land on the ground; no documents to evidence that she was shown the land and an endorsement made on the reverse of the documents; she admitted that she obtained the letter dated the 23/6/2016 confirming that she is the owner of the land way after PW1 had testified ; though she obtained a lease while the matter was ongoing in Court, she did not produce any before the Court.
46. In the case *Hubert L Martin & 2 others Vs Margaret J Kamau & 5 others* (2016) eKLR the Court held as follows;

“A Court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld This investigation must start at the root of the title and follow all processes and procedures that & might forth the two titles at hand It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its mot without li break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they



need to demonstrate how they got their title starting with its mot. No party should take it for granted that simply because they have a tide deed or Certificate of lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold Every party must show that their title has a good foundation and passed properly to the current tide holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as fib the only way I can determine which of the two titles should be upheld."

47. It was the evidence of the 2nd Defendant that the process of allocation of land is that the allottee would take the interested party to the land for viewing after which both would visit the 2nd Defendants to transfer the plot; a Surveyor and Director of the 2nd Defendant confirms the land on the ground in the presence of the parties at a fee; after which the transfer is processed at a fee and fees are paid by the purchaser to the 2nd Defendant.
48. From the above analysis the Court makes the following conclusions; the Plaintiff has persuaded the Court by producing unbroken chain of documentation on the root of her title. It is also clear that the plot was first in time in 1999 and therefore takes precedence over that of the 1st Defendant. The 1st Defendant has failed to provide cogent documents to show the root of her plot.
49. Section 26 of the [Land Registration Act](#) provides ways in which a title is impeached as follows;
 - “(1) 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; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
 - (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original”.
50. Having held that the lease/title of the 1st Defendant was illegally superimposed on the Plaintiffs plot, the Court finds that the said lease/plot is impeachable by Section 26 (b) of the [Land Registration Act](#).
51. Mandated by the Provisions of Section 80 therefore this Court do and hereby cancels the lease and or title in the name of the 1st Defendant and orders the 2nd Defendant in conjunction with the Land Registrar to issue title in the name of the Plaintiff.
52. With respect to trespass, the Court has found that the 1st Defendant has unlawfully trespassed onto the Plaintiffs land without any justifiable cause.
53. On general damages for trespass, the Court has found that 1st Defendant has been in occupation of the suit land since 2009, a period of over 17 years. Considering the length of time, the Plaintiff has



been deprived of the enjoyment of her plot the Court finds the sum of Kshs 2.5 Million reasonable for general damages in favour of the Plaintiff.

54. All in all, the Court finds that the Plaintiff has proven her claim and I proceed to enter judgement in her favour

55. Final Orders for Disposal

- a. Plot No. N83 belongs to the Plaintiff.
- b. Plot No L-157 has been superimposed on the Plaintiff's plot No. N-183.
- c. That the Court do issue a permanent injunction restraining the Defendants their servants' employees and or agents from dispossessing alienating reallocating reclaiming erecting any structures and or harassing the plaintiff or interfering with her peaceful occupation of the parcel of land more particularly known as Plot No N-83, Ruai Embakasi Ranching Company Limited.
- d. Having found that Plot N-83 and Plot L-157 are situate on the same ground which originally was N-83, the 2nd Defendant is hereby ordered to rectify its records including members register and the map to reflect the Plaintiffs plot N-83 on its original ground as at 1999 and issue the necessary documents to the Plaintiff to facilitate the processing of title.
- e. For avoidance of doubt, the Land Registrar be and is hereby ordered to cancel the lease, mutation and or title for Nairobi Block 136/8843 purportedly issued on the 29/3/2019 for plot L-157 in the name of the 1st Defendant and issue the said title in the name of the Plaintiff for plot No N-83.
- f. The 1st Defendant be and is hereby ordered to remove all the structures erected on the said premises and do vacate the suit premises within a period of 90 days. In default eviction shall ensure in accordance to the provisions of the law.
- g. The 1st Defendant is ordered to pay general damages for trespass in the sum of Two Million Five Hundred Thousand Only (Kshs 2,500,000/.
- h. Costs shall be in favour of the Plaintiff.

56. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF JUNE, 2025
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered Online in the Presence of;

1. Mr. Mbaabu for the Plaintiff
2. Mr. Gachuhi for the 1st Defendant
3. Ms. Irungu HB for Kangata Kamau for the 2nd Defendant
4. C/A – Ms. Yvette Njoroge

