



Muiruri (Suing as the Administrator of the Estate of Muiruri Njiri - Deceased) v Ng'ang'a & 2 others (Civil Appeal 216 of 2019) [2025] KECA 1498 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KECA 1498 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 216 OF 2019
W KARANJA, J MOHAMMED & LK KIMARU, JJA
SEPTEMBER 19, 2025**

BETWEEN

**ISAAC MURIGI MUIRURI (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF MUIRURI NJIRI - DECEASED) APPELLANT**

AND

ANDREW NG'ANG'A 1ST RESPONDENT

FRANCIS KARUME 2ND RESPONDENT

STANLEY MUTURI GATHERI 3RD RESPONDENT

*(Appeal from the judgment and decree of the ELC Court of Kenya at
Muranga (J. G. Kemei, J.) dated 25th July 2019 in ELC Case No. 438 of 2017)*

JUDGMENT

1. This is a first appeal against the judgment and decree of the Environment and Land Court (ELC) at Muranga (J. G. Kemei, J.) dated 25th July 2019 dismissing the appellant's suit and allowing the 3rd respondent's suit filed in ELC No. 304 of 2017 as consolidated with ELC Case No. 438 of 2017. In the judgment, the court ordered the appellant and any other persons claiming through him to vacate the suit land within 90 days and in default eviction to ensue. The court also ordered each party to bear the costs of the suit.
2. The facts leading to this appeal are that the appellant claiming to be the son of Muiruri Njiri, deceased, and as the administrator of his estate, filed ELC Suit No 438 of 2017 at Muranga against the respondents, jointly and severally. He sought a declaration that all that parcel of Land Known as LOC 1/Thuita/160 (the suit land) was not part of the Estate of Wanganga Wangombe (deceased) who had prior to his demise disposed the same to Muiruri Njiri (deceased) and a declaration that the said parcel belongs to the estate of Muiruri Njiri (deceased); a permanent injunction against the respondents, by themselves barring them from trespassing on, disposing, wasting, transferring, alienating, charging



- and/or selling any portion or all the suit land; and an order for revocation and/or cancellation of the registration of title deed in favour of the 3rd respondent in respect to the suit property.
3. In a joint statement of defence, the respondents averred that the suit property belonged to Wanganga Wangombe (deceased) and that the 1st and 2nd respondents were the legal administrators of his Estate having been issued a confirmed certificate of grant to the estate on 7th December 2015 and that having obtained the grant they sold and transferred the land to the 3rd respondent. They denied that the appellant had any legal right of ownership to the said land. They denied fraud and illegalities attributed to them by the appellant and the particulars thereof and prayed for the dismissal of the suit.
 4. Subsequently, Stanley Muturi Gatheri, the 3rd respondent as the registered owner of the suit land filed ELC Suit No 304 of 2017 at Muranga against one Naomi Wanjiku Muiruri(deceased), subsequently substituted by her administrator Isaac Murigi Mururi, the appellant. He sought an order that the said Naomi Wanjiku Muiruri by herself or by other persons claiming through her be evicted; for vacant possession of the suit land to be given to him and for mesne profits.
 5. In an amended statement of defence, the appellant denied the averments in the plaint and deponed that she was legally in occupation of the suit land after her deceased husband bought it from one Wanganga Wangombe (deceased) and that her occupation of the suit land was derived from her beneficial interest as the widow and beneficiary of the Estate of her husband Muiruri Njiri (deceased) and from the overriding interest acquired after her husband purchased the suit land from Wanganga Wangombe (deceased) in the year 1980.
 6. During the hearing, the appellant testified that the case related to Land Reference No. LOC 1/ Thuita/160 that was purchased by his father one Muiruri Njiri (deceased) in 1980 from Njoroge Wanganga and he produced a sale agreement dated 23rd March 1980 and 24th July 1990. He stated that he was born on the suit land in 1963 and his family occupied and resided on the said land where they were farming.
 7. He testified that he did not know the 1st respondent and that he was not party to the succession cause relating to the estate of Wanganga Wangombe (deceased). He admitted that he knew that the 3rd respondent was the registered owner of the suit land but stated that he had acquired an overriding interest over the suit property. Further, he testified that he or his family did not own Land Reference No. LOC 1/Thuita/159 as alleged by the respondents.
 8. In cross-examination he stated that the land was sold by Njoroge Wanganga, the son of the original owner of the suit land, and he was not aware if the estate of Wanganga had been distributed before Njoroge sold the said land owned by his father. He stated that he learnt that Wanganga lived elsewhere and not on the suit land. He could not confirm if the Land Control Board Consent was obtained. He confirmed that he did not apply for the revocation of the confirmed grant in respect to the estate of Wanganga Wangombe; he stated that he was not present when his father was allegedly called by the chief and ordered to vacate the suit land.
 9. The 2nd respondent testified on his own behalf and on behalf of the 1st respondent. His testimony was that he was the son of Wanganga Wangombe (deceased) while the 1st respondent was a step son of the deceased. He denied that the suit land was sold to the appellant's father. He testified that his deceased father moved away from the suit land and lived at Kibichoi where he died. He testified that he was born on the suit land in 1958 and that he had two brothers and two sisters who were all deceased. He named his deceased siblings as the late Joseph Kibugi, Njeri Wanganga and Salome Wachera Nganga. He denied knowledge of a brother by the name Njoroge Wanganga.



10. He testified that in 2008 he found Muiruri Njiri on the suit land, a matter he reported to the chief and that once Muiruri was summoned by the chief he failed to show any documents to support his occupation or ownership of the suit land and was asked to vacate the suit land. He testified that Muiruri lived on Land Reference No. LOC 1/Thuita/159. He stated that the suit land was left in the care of Ngure Muiruri a brother of Muiruri. He stated that they sold the suit land in 2014 and it was when Muiruri's children occupied it.
11. DW 2 - Stanley Muturi, the 3rd respondent testified that he bought the suit land from the 1st and 2nd respondents as the administrators of the estate of Wanganga Wangombe, he stated that he had no sale agreement in respect of the suit land. He stated that after the suit property was registered in his name, he demanded that the appellant and his family vacate the suit land. He testified that the sale agreement relied on by the appellant was not signed by Wanganga Wangombe as by then he was deceased.
12. He told the court that he visited the suit land in 2004 where he met the appellant's mother who was only cultivating the suit land and that there were no houses or graves thereon and that the houses there were built later. He stated that Land Reference No. LOC 1/Thuita/159 belonged to the appellant and he knew that because he came from the same area. He testified that the suit land and Land Reference No. LOC 1/Thuita/159 belonging to the appellants are separated by a road. He testified that the appellant's family had grabbed the suit land.
13. After reviewing the evidence on record, the rival submissions by counsel, and the relevant judicial authorities cited, the learned Judge framed issues for determination as being whether: the appellant had proved fraud on the part of the respondents; was the suit land part of the estate of Wanganga Wangombe; whether the suit land was to be excluded from the estate of Wanganga and whether the appellant is entitled to the orders sought.
14. The learned Judge determined that after reviewing the two agreements dated 23rd March 1980 and 24th July 1990 she noted the contradictions therein as pleaded by the appellant that his father bought the land from Wanganga Wangombe in 1980; the learned Judge noted that Wangombe was long dead by 1980 and that the appellant was not present nor was he a witness to the two agreements and that he neither called the said Njoroge to attest the same or as a witness in his case. The learned Judge noted that the 1st agreement named the 1st respondent as a witness but he was not called as a witness. The Judge further noted that the agreement of 1980 did not define the land being sold in Gatanga, Kandara Division. The learned Judge stated that no evidence had been presented to link the suit land to that land in the agreement. The learned Judge further stated that though the agreement of 1980 provided for consideration the one of 1990 stated that consideration was in kind which was to say that Njoroge transferred the land to Muiruri in return for taking care of the land. The court was of the view that the appellant did not prove a right of ownership in respect to the suit land.
15. The learned Judge found that the appellant had also not proved any overriding interest over the suit land for the reasons that he had not disclosed which overriding interest he was claiming in his favour and how that interest had affected the interests of the previous owner. Further, the learned Judge found that no fraud was proved against the 3rd respondent in his acquisition of the suit property. Similarly, that no collusion between the two respondents and the 3rd respondents was established and that, therefore, the 3rd respondent acquired the suit land legally and procedurally and was, therefore, an innocent purchaser for value without notice. The consequence of the above holdings was the dismissal of the appellant's suit.
16. In regard to the 3rd respondent's suit against the appellant, the court held that the 3rd respondent had informed the court that he purchased the suit property from the 1st and 2nd respondents and obtained a



title. The learned Judge held that section 26 of the *Land Registration Act* protects the title of a registered owner unless challenged under section 26(a) and (b). The learned Judge held that the appellant had not mounted any successful challenge to the 3rd respondent's title to the suit land. The learned Judge noted that the appellant had admitted that he and his family were in occupation of the suit land and based on that, the learned Judge found that the appellant was in trespass of the 3rd respondent's title and she thus ordered the appellant to vacate the suit land within 90 days and in default he be evicted.

17. Aggrieved by the judgment and decree, the appellant lodged the present appeal citing seven grounds, namely that the learned Judge of the ELC erred in law and in fact: By framing her own version of issues which were not borne out of the pleadings before her, and proceeding to pronounce judgment on them, thereby reaching an erroneous conclusion of law and occasioning a serious miscarriage of justice to the appellant; by failing to order and conduct a site visit to the suit land, which was most relevant in the circumstances of the case, and proceeding to pronounce judgment without the benefit of such visit, thereby reaching an erroneous conclusion of law and occasioning a miscarriage of justice to the appellant; by failing to accord due weight, credence and relevance to uncontested and uncontroverted evidence tendered before her by the appellant, and thereby reaching an erroneous conclusion in law, occasioning a miscarriage of justice; anchoring and basing her decision on legal technicalities while ignoring clear and uncontroverted evidence, thus arriving at a flawed conclusion in law and occasioning a miscarriage of justice to the appellant; by holding that the appellant had not proved his claim to the required standard, while indeed, on the evidence and materials placed before the court, the appellant had proved his case to the requisite standard, thereby occasioning a miscarriage of justice; by disregarding the appellant's evidence and written submissions without assigning any reasons, thereby occasioning a miscarriage of justice to the appellant; by rendering a ruling whose entire reasoning was fundamentally flawed, unsupported by the applicable law, and whose conclusion and final orders were plainly wrong.
18. On the basis of the foregoing grounds, the appellant prays that this Honourable Court be pleased to grant the following orders:
 - a. That the appeal be allowed;
 - b. That the judgment and decree of J.G. Kemei, J. dated 25th July 2019 in ELC Case No. 438 of 2017 be vacated and set aside;
 - c. That the said judgment be substituted with an order allowing the appellant's claim as set out in the plaint;
 - d. In the alternative to prayers (a), (b) and (c) above, that this Court be pleased to order a re-trial of the matter and direct that a site visit to the suit land be undertaken; and
 - e. That the costs of this appeal be borne by the respondents in any event.
19. The appeal was heard by way of written submissions on 29th July 2024 with limited oral highlights. The appellant, through Mr. Maina Kagura, learned counsel, submitted that it was not in dispute that the appellant with his siblings have been in occupation of the suit land and that they have cultivated on the said land and also buried their loved ones on the land. The appellant, further submitted that he had produced the sale agreement before the ELC demonstrating that indeed his deceased father had purchased the land although the same had not been transferred and registered in his favour. Reliance was made to section 80 of the *Land Registration Act* and *Alice Chemutai Too -vs- Nickson Kipkurui Korir & 2 others* [2015] eKLR



20. In regard to denial of the appellant's prayer/application for a site visit, it was submitted that the ELC's direction that the site visit was not necessary has caused the appellant to suffer injustice because had the court visited the site, it could have collected all the evidence on the ground and be able to reach a decision on occupation of the land.
21. On their part, the respondents, submitted, through their counsel that the submission by the appellant that the ELC declined to order a site visit was an issue that was never pleaded and that no substantial application was made to the court and that no evidence was tendered on the same. Reliance was placed on *Beatrice Ngonyo Ndungu & Anor v Samuel K. Kanyoro & 2 others* [2017] eKLR. In conclusion it was submitted that the issue of site visit was introduction of a new issue on appeal and that the ELC was right to dismiss the appellant's case and uphold the counter-claim of the 3rd respondent. We were urged to dismiss the appeal with costs to the respondents.
22. This is a first appeal, and our duty is to reconsider the evidence, re-evaluate it, and draw our own conclusions in deciding whether the judgment of the trial court should be upheld - see *Selle -vs- Associated Motor Boat Co.* [1968] EA 123. But at the same time, we need to exercise caution and respect the trial court's findings on the demeanor of witnesses, especially since it had the advantage of seeing and hearing the witnesses. See *Peters -vs- Sunday Post Ltd.* [1958] EA.
23. The issues for determination in this appeal are in our view, whether the appellant's deceased father had purchased the suit land from the 1st and 2nd respondent's deceased's father; was there any fraud, misrepresentation, or illegality and collusion between the 1st and 2nd respondents and 3rd respondent in facilitating the transaction; and, whether the 3rd respondent acquired the title to the suit property legally and procedurally.
24. On the first issue, it was common ground that Wanganga Wangombe (deceased), the 1st and 2nd respondents' father, was the registered proprietor of the suit property. According to the 1st and 2nd respondents, they were the only surviving beneficiaries of the estate of the deceased, which solely consisted of the suit property. That upon obtaining the grant of letters of administration on 6th November 2015 and a certificate of confirmation on 10th June 2016 they legally transferred the said parcel of land to the 3rd respondent.
25. According to the appellant, his contention was that Muiruri Njiri (deceased), his father, had prior to his death purchased the suit property from Wanganga Wangombe (deceased) but that he had not transferred it. It was hence the appellant's submission that the 1st and 2nd respondents had without any colour of right, his permission, or consent fraudulently caused the suit property to be transferred to the 3rd respondent whereupon their deceased father, Wanganga Wangombe (deceased) had sold it to Muiruri Njiri (deceased), and hence that by virtue of that sale it belonged to the estate of Muiruri Njiri and not that of Wanganga Wangombe (deceased). Believing that the whole process leading to the acquisition of the suit property by the 3rd respondent was illegal and fraudulent, the appellant sought to have the court revoke the title.
26. It is clear from the evidence before the ELC that the sale agreements produced by the appellant dated 23rd March 1980 and 24th July 1990 showed that the parties in those agreements were Njoroge S/O Wanganga and Muiruri Njiri. The said Muiruri Njiri (deceased) did not purchase the suit property from Wanganga Wangombe (deceased) who was the registered proprietor of the suit property but from Njoroge S/O Wanganga. However, Njoroge S/O Wanganga was never a party to the suit. How would the respondents' alleged fraud, illegalities and other malfeasance in the acquisition of the suit property be proved in the absence of Njoroge S/O Wanganga in the suit? The importance of establishing a nexus



between the parties in a suit, and in particular in matters of land, was reiterated in the case of Mohamed -vs- Duba & Another (2022) KECA 442 thus:

“The nexus between the parties and the resulting transfer of the property is crucial in determining the legitimacy of the transactions. Failure to establish this connection can hinder the court’s ability to make a just determination.”

27. Indeed, the nexus between the parties and the resulting transfer from Wanganga Wangombe (deceased) to the 1st and 2nd respondents and then to the 3rd respondents was crucial. The record and documents produced by the respondents indicated that Wanganga Wangombe (deceased) became the registered proprietor of the suit property on 4th October 1965 while the 3rd respondent became the registered proprietor of the suit property on 9th August 2016. As already stated, the appellant did not join Njoroge S/O Wanganga in the suit despite the two sale agreements produced in evidence by the appellant indicating that it was he that allegedly sold the suit property to Muiruri Njiri (deceased), the trial court indicated the same in its judgment to the effect that this failure was fatal to the appellant’s case. The appellant could not, therefore, establish a prima facie case against the respondents. This aspect continued to haunt the appellant to the end of his case for the reason that the 1st and 2nd respondents confirmed to the ELC that they had no brother named Njoroge. We are satisfied that the joinder of the said party would have helped in establishing the nexus regarding the transfer and changes in the ownership of the suit property up to and including the 3rd respondent. This omission, in our view, and as correctly observed by the ELC, was fatal to the appellant’s case.
28. The appellant alleged that the 1st and 2nd respondents fraudulently transferred the suit property to the 3rd respondent for the reason that Muiruri Njiri his deceased father had purchased the suit property from Njoroge S/O Wanganga as per the two agreements he produced in evidence. Our view is that this could not be so as the 1st and 2nd respondents had obtained a confirmed certificate of grant of letters of administration from the Chief Magistrates Court at Thika on 10th June 2016 which gave them the legal authority to administer and deal with the suit property by selling the same and transferring it to the 3rd respondent as they did unlike the said Njoroge S/O Wanganga who was unknown and who also lacked any legal capacity and/or authority to have sold the suit property to Muiruri Njiri (deceased) as alleged by the appellant.
29. This Court in the case of Wambui vs. Mwangi & 3 Others [2021] KECA 144 (KLR) emphasized:

“The transfer of property without obtaining the necessary letters of administration is considered fraudulent and invalid. The proper legal procedures must be followed to ensure the legitimacy of the transactions.”
30. This transfer in our view was legally sanctioned by law and as such the 3rd respondent’s title is valid.
31. Further, we note that the confirmed grant held by the 1st and 2nd respondents was not contested by the appellant as a forgery. It is also noteworthy that the appellant never sought the revocation of the said grant on that basis but his main argument is that Muiruri Njiri (deceased) had purchased the suit property from Njoroge S/O Wanganga whom we have noted earlier was not joined in the suit as a party and who was denounced as a stranger by the 1st and 2nd respondents, who said he was unknown to them.
32. The Supreme Court in the case of Kagai -vs- Wanjohi (Civil Appeal 92 of 2019) [2023] KEHC 24820 (KLR) emphasized the importance of following proper legal procedures and the necessity of reporting and investigating claims of forgery or fraudulent activities to ensure the legitimacy of property transactions. It would appear that this was not done in the circumstances of this case thereby



rendering the unsubstantiated claims of forgery and fraud by the appellant against the respondents' ring hollow.

33. We also note that the appellant prayed that the ELC revokes the title issued to the 3rd respondent. We note that section 93(1) of the *Law of Succession Act* provides that a transfer by a person with a grant of representation is valid despite subsequent revocation or variation of the grant. So, pursuant to this provision, the title of the 3rd respondent cannot be impugned since all subsequent transactions involving the suit property were pursuant to the grant issued to the 1st and 2nd respondents, has not been revoked to date. In the end, we are not persuaded that the 1st and 2nd respondents acted fraudulently when they transferred the suit land to the 3rd respondent.
34. It is common ground that the 3rd respondent is the registered proprietor of the suit property. Section 26 of the *Land Registration Act*, 2012 provides:
- “(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 where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
35. A registered proprietor of land, thus, enjoys full protection of the law, save in the circumstances outlined above when such title can be impeached. The appellant sought to impugn the 3rd respondent's title on account of fraud, misrepresentation, or illegality, but as we have already demonstrated, he never met the tall order of proof of the allegations as required.
36. Finally, there is the issue that the ELC failed to visit the site. The appellant submitted that the ELC should have visited the site. On the other hand, the respondents submitted that the issue was not raised at the ELC and the court could thus not be expected to consider the same in the absence of an appropriate application being made. In *Sarah Jelangat Siele -vs- Attorney General & 3 others* [2018] eKLR, the Court stated that parties are bound by their pleadings and the issues for determination generally flow from those pleadings. It was, therefore, not open to the court to go outside the pleadings to grant reliefs when there were no prayers to that effect. We would also wish to point out that the trial court determines whether or not to visit the site depending on the circumstances surrounding the case and the evidence placed before it. If the court forms the opinion that a site visit will not have any impact on its decision, then such a visit would not be necessary. That is purely at the discretion of the trial court. In any event, the crux of the suit was whether the 3rd respondent's title was obtained illegally, fraudulently or unprocedurally. A site visit would not have altered the learned Judge's findings on that issue.
37. Ultimately, our conclusion is that this appeal has no merit and it must fail in its entirety. We dismiss it with costs to the respondents.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF SEPTEMBER, 2025.

W. KARANJA

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**JUDGE OF APPEAL
JAMILA MOHAMMED**

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**JUDGE OF APPEAL
L. KIMARU**

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

