



**Wambugu v Muigai (Environment & Land Case E052 of 2023)  
[2025] KEELC 4506 (KLR) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4506 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E052 OF 2023**

**MAO ODENY, J  
JUNE 17, 2025**

**BETWEEN**

**STEPHEN WAWERU WAMBUGU ..... PLAINTIFF**

**AND**

**JOYCE WANGUI MUIGAI ..... DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 21<sup>st</sup> December, 2023, the Plaintiff herein sued the Defendant seeking the following orders:
  - a. Permanent injunction restraining the Defendant by herself, her agents and or servant from entering, remaining, dealing and or interfering with Nakuru Municipality Block 27/139, Nakuru Municipality Block 27/140, Nakuru Municipality Block 2/594, ½ share of 2 ½ acres situated at Kihugiru location, Othaya, Nyeri, Nakuru Municipality Block 13/167, Nakuru Municipality Block 13/168, Nakuru Municipality Block 13/169 and ½ share in Laikipia/ Marmanet/S.Rumuruti Block 1/Salama 75.
  - b. Eviction from Nakuru Municipality Block 13/169.
  - c. Cost of this suit.

**Plaintiff's Case**

2. PW1 Stephen Waweru Wambugu adopted his witness statement dated 21<sup>st</sup> December 2023 and stated that the Defendant is his Ex-wife whom they divorced in December 2022. He produced a list of documents dated 21st December, 2023 as PExh No 1 to 4. PW1 prayed that the Defendant returns the seven titles and that she be evicted from the parcels of land. He urged the court to order that the Defendant pay the costs of the suit.



3. The Defendant was served but neither entered an appearance nor filed a defence hence the matter proceeded undefended.
4. The Defendant appeared in court on 12<sup>th</sup> February 2025 and urged the court to refer the matter to AJS as it is a family matter. The court referred the matter as requested but the parties were not able to agree hence the same was returned to court for hearing and determination. The Defendant did not seize the opportunity to file any response to defend the suit.

### **Plaintiff's Submissions**

5. Counsel for the Plaintiff filed submissions dated 5<sup>th</sup> February, 2025 and provided a brief background to the case. Counsel submitted that the parties were married until September 2022 when the said marriage was dissolved. Counsel submitted that before the said dissolution, the Plaintiff had been bequeathed by his late father Wambugu Mbora through a will the following properties: Nakuru Municipality Block 27/139, Nakuru Municipality Block 27/140, Nakuru Municipality Block 2/594 and ½ share of 2 ½ acres situated at Kihugiru location, Othaya, Nyeri.
6. Counsel further submitted that the Plaintiff was also appointed as trustee of his late father's children being Joe Wambugu Waweru and Beatrice Wothaya Waweru to hold the following assets until they attained the age of majority: Nakuru Municipality Block 13/167, Nakuru Municipality Block 13/168, Nakuru Municipality Block 13/169 and ½ share in Laikipia/Marmanet/S. Rumuruti Block 1/Salama 75.
7. Ms. Wangare submitted that the Defendant has been trespassing on the above properties and acting as though the said properties are matrimonial properties to which she is entitled. Counsel submitted that for a property to be deemed matrimonial property, the same has to have been acquired by the parties herein during the subsistence of the marriage.
8. The Plaintiff's counsel submitted that the parties did not acquire the properties in dispute during the subsistence of their marriage but rather they are properties bequeathed to the Plaintiff for his benefit and his children by his late father Wambugu Mbora.
9. Counsel relied on Sections 107 and 108 of the *Evidence Act* and Sections 2 and 6 of the *Matrimonial Property Act*. Counsel also relied on the cases of William Kabogo Gitau vs George Thuo & 2 others [2010] 1 KLR 526 and Palace Investment Ltd vs Geoffrey Kariuki Mwenda & Another (2015) eKLR and urged the court to grant the orders as prayed in the plaint.

### **Analysis And Determination**

10. The issues for determination are: whether the properties bequeathed to the Plaintiff via the will dated 19<sup>th</sup> December 2012 formed part of the matrimonial properties of the parties herein and whether the Plaintiff has proved trespass on the part of the Defendant.
11. The evidence on record is that the Plaintiff and the Defendant were husband and wife but their marriage was dissolved on 5<sup>th</sup> December 2022 vide a decree in Nakuru CM Divorce Cause No 15 of 2018. It is the Plaintiff's case that he is the beneficial owner through the will of the late Wambugu Mbora of the following properties: Nakuru Municipality Block 27/139, Nakuru Municipality Block 27/140, Nakuru Municipality Block 2/594 and ½ share of 2 ½ acres situated at Kihugiru location Othaya, Nyeri.
12. It is also the Plaintiff's case that he was appointed a trustee of his children (Joe Wambugu Waweru and Beatrice Wothaya Waweru) in the Will of the late Wambugu Mbora in respect of the following assets:



Nakuru Municipality Block 13/167, Nakuru Municipality Block 13/168, Nakuru Municipality Block 13/1169 and ½ share in Laikipia/Marmanet/S.Rumuruti Block 1/Salama 75.

13. The Plaintiff stated that the Defendant has been trespassing into the said properties, which do not form part of matrimonial property as he holds the same in trust as per the will and the Grant produced in court.
14. This suit is undefended and there is no evidence to rebut the Plaintiff's evidence. The documents evidence adduced and the documents produced establish that the Plaintiff was to hold the properties in trust for the children until they become of age.
15. According to Black's Law Dictionary, 9<sup>th</sup> Edition; a trust is defined as:

“. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”
16. The trust is in respect of beneficiaries who are minors and have a right and power to withdraw all assets from the trust upon attaining the age of 21. If the Defendant was to be allowed to interfere with the properties which are being held in trust by the Plaintiff, then when the minors become of age what will the beneficiaries get and how will the Plaintiff account for the properties.
17. I find that the Plaintiff has proved his case against the defendant on a balance of probability as the properties need to be preserved for the benefit of the beneficiaries who are minors. I therefore issue the following orders:
  - a. Permanent injunction is hereby issued restraining the Defendant by herself, her agents and or servant from entering, remaining, dealing and or interfering with Nakuru Municipality Block 27/139, Nakuru Municipality Block 27/140, Nakuru Municipality Block 2/594, ½ share of 2 ½ acres situated at Kihugiru location, Othaya, Nyeri, Nakuru Municipality Block 13/167, Nakuru Municipality Block 13/168, Nakuru Municipality Block 13/169 and ½ share in Laikipia/ Marmanet/S.Rumuruti Block 1/Salama 75.
  - b. The Defendant to give vacant possession of Nakuru Municipality Block 13/169 within 30 days failure to which eviction to issue.
  - c. Cost of this suit.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 17<sup>TH</sup> DAY OF JUNE 2025.**

**M. A. ODENY**

**JUDGE**

