



REPUBLIC OF KENYA



KENYA LAW
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**Ngugi v Mwangi (Environment and Land Appeal E016 of 2024)
[2025] KEELC 4502 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4502 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E016 OF 2024
MN GICHERU, J
JUNE 16, 2025**

BETWEEN

MARUBU NGUGI APPELLANT

AND

JOSEPH MBURU MWANGI RESPONDENT

JUDGMENT

1. On 11-4-2024, the Senior Principal Magistrate Murang'a in ELC Case No. 349 of 2017 issued an order of permanent injunction restraining the Appellant from interfering with the Respondent's peaceful and quiet possession of the suit parcel known as LR. Loc.7/Gakoigo/472 and prohibition from trespassing on the said parcel of land. The Respondents was also given the costs of the suit.
2. Dissatisfied with the judgment and decree of the lower court, the Appellant filed a memorandum of appeal dated 23-4-2024 seeking the following orders.
 - a. This appeal be allowed and the title in the name of the Respondent over the suit land Loc.7/Gakoigo/472 be cancelled and the land to revert to the name of Ngugi Maringa (deceased) to enable succession proceedings to be taken over his estate.
 - b. The court grants such further or other orders as the justice of the case will merit.
 - c. The costs of the suit and the counterclaim be awarded to the Appellant.
3. The Appellant's appeal is based on six grounds which read as follows.

The learned magistrate erred in fact and in law-

 - i. in framing the issues for determination in a manner that avoided the cardinal issue in the suit which is whether the Plaintiff's title was lawfully and procedurally obtained,



- ii. in his finding that the title in the name of the Respondent was properly obtained despite there being no entry in the register signed by a land registrar for the title issuance for the suit land,
 - iii. in not finding that upon the rejection of the Respondent's transfer forms and other documents in 1977 and a letter being issued by the land registrar to that effect, no evidence of re-submission of the said documents was ever tendered,
 - iv. in not finding that because the registered owner of the land died on 7-2-1999 and there was written evidence from official searches over the suit land dated 21-5-2012 and 12-6-2012 respectively that the said land was still registered in the name of the deceased by those dates, no title could have legitimately issued earlier than that and if issued after the said dates, it could only happen after a full succession cause was filed over the estate of Ngugi Maringa and because no succession cause was filed, the Respondent's title was obtained fraudulently, through a corrupt scheme,
 - v. in finding that the evident fraud committed by the Respondent was not proved. The learned magistrate therefore gave no weight to the evidence of the said fraud which was committed after the Appellant withdrew his caution over the suit land on 31-5-2012 and disclosed in an abstract of title dated 13-7-2017 and an official search dated 12-6-2012 in the hope of carrying out a succession cause over the estate of this late father Ngugi Maringa,
 - vi. when he dismissed the counterclaim over an issue which he had overruled while dismissing a preliminary objection yet the Respondent did not appeal against the dismissal of the preliminary objection.
4. The Respondent's case is as follows. He is the registered owner of the suit land which he bought from the Appellant's father in 1977. He bought the land for Kshs. 4000/= and he was issued with a title dated 9-5-1977. He occupied the suit land and he has been tilling it since then. In November 2017 the Respondent was summoned by the Assistant County Commissioner, Maragua Division and asked to surrender the title deed for the suit land. The summons was issued at the behest of the Appellant. The Respondent was not willing to surrender the title deed. It is then that he filed this suit seeking to restrain the Appellant and those claiming through him from interfering with his quiet possession of the suit land. The lower court upheld the Respondent's claim against the Appellant.
5. The Appellant's case is as follows. The suit land belongs to his father the late Ngugi Maringa. The title deed in the name of the Respondent was obtained fraudulently for the following reasons. Firstly, the green card dated 13-7-2013 has entries that do not make sense in terms of chronology. Entry No. 4 is dated 31-5-2012 while entries numbers 5 and 6 are dated 9-5-1977. Secondly two searches dated 21-5-2012 and 12-6-2012 show that the suit land was in the name of Ngugi Maringa who died on 7-2-1999 yet an official search dated 25-5-2014 shows the Plaintiff as the registered owner since 9-5-1977. These two documents are contradicting. Thirdly, when the matter was reported to the administration and the land registrar, the Respondent has been adamant and filed this suit. Fourthly, the Respondent has been interfering with the land on and off and there is need to be stopped. In a counterclaim dated 19-12-2027, the Appellant prayed for the cancellation of the title deed and the land to revert to the name of Ngugi Maringa, the Appellant's father. The second prayer was an order of injunction restraining the Respondent from interfering with the Appellant's quiet possession of the suit land. He also prayed for costs. The trial court dismissed the Appellant's counterclaim.
6. At the trial each of the two parties testified as per their pleading. The land registrar testified and said that the transfer from Ngugi Maringa to the Appellant was not registered because of a caution by George Mburu Mwangi and secondly, the original land certificate was not submitted to the land registry. She



confirmed that all the requisite documents were presented to the land registry and the lawful owner of the suit land is Joseph Mburu Mwangi.

7. Counsel for the parties filed written submissions dated 4-4-2025 and 5-4-2025 respectively. The submissions do not bring out clear cut issues for determination. I will therefore treat the six(6) grounds of appeal as the issues for determination.
8. I have carefully considered the appeal in its entirety including the record, the submissions and the issues raised therein. I make the following findings on the grounds of appeal. On the 1st ground, I find that the learned trial magistrate did not err and he did not avoid the cardinal issue in dispute. In the final submissions in the lower court the Appellant's counsel identified only one issue for determination namely, the legitimacy of the Plaintiff's title to the suit land. In the issues that the learned trial magistrate identified, the first one was whether the Plaintiff is the registered owner of the suit land. The other two (2) issues were whether the Defendant has a counterclaim and whether the Plaintiff is entitled to the orders sought. I find that the legitimacy of the Plaintiffs title to the suit land is well captured in the three issues identified by the learned trial magistrate.
9. Regarding the second ground of appeal, I find that the trial magistrate did not err in finding that the title in the name of the Respondent was properly obtained. The land registrar in her testimony said that the Respondent is the lawfully registered owner of the suit land and all the necessary documents were presented at the registry. In the counterclaim, the Appellant did not particularise the alleged fraud of the Respondent and the land registrar. This is contrary to Order 2 rule 10(1) (a) of the Civil Procedure Rules which provides as follows.

“subject to subrule(2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including , without prejudice to the generality of the foregoing-

- a. Particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies..”

It was incumbent upon the Appellant to plead the particulars of fraud as required by the law and then prove them to the standard set in many cases including Ndolo vs. Ndolo Civil Appeal No. 128 of 1995. It was held as follows.

“We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that lay squarely on him. Since the Respondent was making a serious charge of fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; that the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

This finding covers the third issue because if there was a problem at the land registry, it had nothing with the Respondent. There is no allegation in the counterclaim that the Respondent did not buy the suit land for the Appellant's father. In any event, the Land Registrar said in her testimony that the registration was in order.

10. The fourth ground should have been pleaded in the counterclaim and the registrar should have been made a party to the lower suit. It should have been pleaded specifically as per Order 2 rule 10(1) (a) of



the Civil Procedure Rules. The Attorney General should have been made a party to the Counterclaim. This is as per Section 12(1) of the [Government Proceedings Act](#) which provides as follows.

“Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney General as the case may be.”

Failure by the Appellant to join the Attorney General and the Land Registrar in the Counterclaim means that these two parties did not get a chance to respond to the Appellant’s counterclaim and give a comprehensive answer to the averments therein. It was upon the Appellant to sue the right parties and make the anomalies referred to in the grounds trial issues. He failed to do so. He cannot abruptly raise them on appeal. After all, the Land Registrar said in her testimony that the registration of the Respondent as the owner of the suit land was proper.

11. As per my finding in paragraph (10) of this judgment , the trial magistrate did not err in finding that fraud was not proved to the required standard. Again, joining the Land Registrar as a party would have helped cover the issue raised in the fifth ground.
12. The counterclaim was simply not proved and the trial magistrate cannot be faulted for dismissing it. The foregoing paragraphs have given reasons as to why the Appellant’s case could not succeed as it was presented.
13. For the above stated reasons, I find no merit in the appeal. I dismiss it with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 16TH DAY OF JUNE, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant’s Counsel – Miss Wangui Wangai

Respondent’s Counsel – Mr. Mugo (present)

