



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Mwangi v Saimore & another (Environment and Land Case  
E016 of 2020) [2025] KEELC 5208 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5208 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E016 OF 2020**

**MD MWANGI, J  
JUNE 13, 2025**

**BETWEEN**

**TERESIAH WANJIRU MWANGI ..... PLAINTIFF**

**AND**

**SIMANGA NAKUMAMA SAIMORE ..... 1<sup>ST</sup> DEFENDANT**

**DAVID SIMANGA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. This case was initiated by the Plaintiff herein vide the plaint dated 19th December 2020. The gist of the Plaintiff's case was that she purchased a total of thirty three and a half acres of land from the 1<sup>st</sup> Defendant on 25<sup>th</sup> May 2007.
2. The Plaintiff alleged that she commenced payment of the purchase price and at the same time engaged a surveyor to identify the beacons and boundaries of the subject land. Before completion of the transaction, the Plaintiff states that she realized that the property she had purchased then known as Kajiado/Kaputiei-North/19578 did not have any access road. According to the Plaintiff, she made a decision to terminate the agreement with the 1<sup>st</sup> Defendant but the Defendants allegedly pleaded with her to complete the transaction with a promise to excise three and a half acres from the 1<sup>st</sup> Defendant's adjacent parcel of land known as Kajiado/Kaputiei-North/17041 to create an access road for the Plaintiff's land. The three and a half acres were to be amalgamated with the Plaintiff's 30 acres' land making it thirty three and a half acres in total. The costs of the excision and amalgamation was to be borne by the Plaintiff.
3. The Plaintiff affirms that upon completion of the process of excision and amalgamation, she took possession of the then consolidated thirty three and a half acres and commenced cultivation therein and sunk a borehole as well. The Defendants however, sometimes thereafter, started claiming that



the Plaintiff was an intruder who had swindled the 1<sup>st</sup> Defendant. They sought to evict her and her employees from the suit land and actually blocked her from accessing it and or using and enjoying it. She eventually had to flee. The Plaintiff claims that the Defendants erected thorn fences around and at the entrance of the suit land making it impossible for her to access it.

4. The Plaintiff sought judgement against the Defendants jointly and severally for an order of permanent injunction restraining the Defendants from interfering with the suit land and an order for assessment of the loss occasioned by the Defendants' actions as well as the costs of the suit.

### **Response by the Defendants**

5. The Defendants' response to the Plaintiff's claim was by way of a statement of Defence and Counter-claim dated 13<sup>th</sup> June 2021. The Defendants were categorical that the agreement between the Plaintiff and the 1<sup>st</sup> Defendant was for sale of thirty acres of land only; not thirty three and a half acres as alleged by the Plaintiff. They denied the Plaintiff's assertion that they subsequently agreed to an additional three and a half acres to be excised from the 1<sup>st</sup> Defendant's adjacent parcel of land or at all.
6. The Defendants insisted that the Plaintiff's parcel of land measuring thirty acres bordered the Isinya - Konza road, a fact that was captured in the sale agreement between the Plaintiff and the 1<sup>st</sup> Defendant and that the Plaintiff had indeed confirmed the same before signing the agreement. The excision of the additional three and a half acres from the 1<sup>st</sup> Defendant's adjacent land (Kajiado/Kaputiei-North/17041) was obtained through deception, threats and intimidation against the 1<sup>st</sup> Defendant. The Plaintiff unilaterally proceeded to excise the three and a half acres' portion from the 1<sup>st</sup> Defendant's adjacent land and amalgamated it to her land without the consent, acquiescence and or approval of the 1<sup>st</sup> Defendant and that of her family.
7. The Defendants assert that the Plaintiff is not entitled to the additional three and a half acres of land. The Defendants rely on the terms of the agreement dated 25<sup>th</sup> May 2007 to demonstrate that the Plaintiff was only entitled to the thirty acres that she had purchased from the 1<sup>st</sup> Defendant for the sum of Kshs. 1,650,000/- and that was curved out of Kajiado/Kaputiei-North/19578. The agreement contained a clause to the effect that the property sold bordered the Isinya – Konza road.
8. The Defendants pleaded that sometimes in September 2007, the Plaintiff who by then owned Kajiado/Kaputiei-North/17041 started demanding an access road through the 1<sup>st</sup> Defendant's adjacent land which demands the 1<sup>st</sup> Defendant declined to honour. The Plaintiff however, pressured the 1<sup>st</sup> Defendant threatening to rescind the agreement and seek a refund of the purchase price, the costs of the improvement on the land and other consequential costs.
9. The 1<sup>st</sup> Defendant who was then financially crippled was forced to concede to the Plaintiff's demand orally to avoid embarrassment and humiliation. The Plaintiff took the 1<sup>st</sup> Defendant's title and behind her back alienated the three and a half acres portion out of it. It was only upon return of the 1<sup>st</sup> Defendant's title, that the Defendants realized that the title number had changed from L.R No. Kajiado/Kaputiei-North/17041 to L.R No. Kajiado/Kaputiei-North/25514 and reduced by three and a half acres.
10. The Defendants accuse the Plaintiff of fraudulently excising and amalgamating into her land three and a half acres of the Plaintiff's land. The Defendants have particularized the fraud at paragraph 17 of the counter-claim. They pray for judgement against the Plaintiff for a declaration that the 1<sup>st</sup> Defendant (Plaintiff in the counter-claim) is the sole legal proprietor of all that parcel of land known as L.R No. Kajiado/Kaputiei-North/17041 as and is entitled to quiet, peaceful and uninterrupted possession of the same, a permanent injunction restraining the Plaintiff from claiming and interfering with her



quiet possession, enjoyment and utilization of all those parcels known as L.R No. Kajiado/Kaputiei-North/17041 and finally an order directing the Land Registrar Kajiado to delete from its records entries in green card for parcel No. Kajiado/Kaputiei-North/25516 issued to the 1<sup>st</sup> Defendant herein after amalgamation. They too pray for the costs of the suit.

11. The Plaintiff's case was on 2<sup>nd</sup> April 2025 dismissed with costs for non-attendance. The matter therefore proceeded with the hearing of the Defendant's counter-claim only.
12. The 1<sup>st</sup> Defendant testified as the only Defendants' witness. She adopted as here evidence in chief, her witness statement affirming the averments in her statement of Defence and Counter-claim. She too produced as exhibits the 7 documents listed on the Defendants' list of documents dated 13<sup>th</sup> June 2022.

#### **Directions by the court.**

13. The directions by the court upon close of the hearing of the Defendants' counter-claim were that the Defendants to file written submissions. The Defendants duly complied. The court has had the opportunity to read and consider the submissions in writing this judgment.

#### **Issues for determination.**

14. Having carefully considered the 1<sup>st</sup> Defendant's counter-claim, the evidence adduced at the hearing and the submissions fled on her behalf, the issues that present themselves for determination are;
  - a. Whether the Plaintiff lawfully acquired the additional three and a half acres from the 1<sup>st</sup> Defendant;
  - b. Whether the 1<sup>st</sup> Defendant is entitled to the reliefs sought in her counter-claim as against the Plaintiff; and
  - c. What orders should issue in respect to the costs of the counter-claim.

#### **Analysis for determination.**

##### **A. Whether the Plaintiff lawfully acquired the additional three and a half acres from the 1<sup>st</sup> Defendant;**

15. There is no dispute that the Plaintiff and the 1<sup>st</sup> Defendant had entered into an agreement for the sale of 30 acres of land. The dispute is on the extra three and a half acres which the Plaintiff alleged were given to her by the 1<sup>st</sup> Defendant for purposes of an access road. The Defendants as explained in the above analysis however deny the allegations by the Plaintiff accusing her of fraudulently acquiring the extra three and a half acres from the 1<sup>st</sup> Defendant through deception and intimidation.
16. The purchase of the 30 acres of land is evidenced by the agreement between the parties dated 25<sup>th</sup> May 2007. There is no evidence of variation of the agreement to cater for the additional three and a half acres; nor a supplemental agreement for that matter.
17. Section 3(3) of the Law of Contract Act Chapter 23 which came into force on 1st June, 2003 provides as follows in relation to transactions for disposition of land or interests in land:-

“No suit shall be brought upon a contract for the disposition of an interest in land unless:

- a) the contract upon which the suit is founded:
  - i. is in writing



- ii. is signed by all the parties thereto; and
- b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”

18. The above provisions are replicated in section 38 of the Land Act. The acquisition of the three and a half acres should have been evidenced in writing in accordance with the provisions of section 3(3) of the Law of Contract Act and section 38 of the Land Act for it to be legally valid and enforceable in law. In the absence of such evidence, the court finds and holds that the acquisition is invalid in law.

**B. Whether the 1<sup>st</sup> Defendant is entitled to the reliefs sought in her counter-claim as against the Plaintiff**

19. From the evidence presented before the court, the Plaintiff upon excising the three and a half acres from the 1<sup>st</sup> Defendant’s adjacent parcel of land proceeded to have it consolidated with the thirty acres she had acquired vide the agreement of 25<sup>th</sup> May 2007. Essentially therefore, the Plaintiff already has a title to the three and a half acres.

20. The Defendants pray for an order directing the Land Registrar Kajiado to delete from its records entries in the green card for parcel No. Kajiado/Kaputiei-North/25516 issued to the 1<sup>st</sup> Defendant herein after amalgamation. The intention is off course to reverse the three and a half acres consolidated into the Plaintiff’s Parcel No. Kajiado/Kaputiei-North/25516.

21. The question for this court to consider is therefore whether the title of the Plaintiff over the three and a half acres invalidly acquired from the 1<sup>st</sup> Defendant should be cancelled. In that regard section 26(1) of the Land Registration Act which is the applicable law states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”

22. The certificate of title in respect of the three and a half acres was acquired illegally and unprocedurally as the court has already found that the acquisition by the Plaintiff was not lawful. Section 26 allows for cancellation of a title acquired illegally, unprocedurally or through a fraudulent scheme.

23. Accordingly, I allow the 1<sup>st</sup> Defendant’s prayer for an order that the Land Registrar Kajiado to delete from its records entries in green card for parcel No. Kajiado/Kaputiei-North/25516 issued to the 1<sup>st</sup> Defendant herein after amalgamation.

24. The prayer for a permanent injunction too is merited. It is allowed.

**C. What orders should issue in respect to the costs of the counter-claim.**

25. Under the provisions of Section 27 of the Civil Procedure Act, costs of or incidental to all suits shall be in the discretion of the court, provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall, for good reason otherwise order. As explained by retired



Justice Kuloba in his book "Judicial Hints" on Civil Procedure, 2<sup>nd</sup> Edition, 2005 at 95, the words, "the event" means the result of the entire litigation. The Defendants counter-claim having succeeded against the Plaintiff, the Defendants are entitled to the costs of the counter-claim against the Plaintiff.

### **Conclusion**

26. From the above analysis, the Defendants' counter-claim succeeds and the court grants the following reliefs;
- a. A declaration be and is hereby issued that the 1<sup>st</sup> Defendant (Plaintiff in the counter-claim) is the sole legal proprietor of all that parcel of land known as L.R No. Kajiado/Kaputiei-North/17041 and is entitled to quiet, peaceful and uninterrupted possession of the same;
  - b. A permanent injunction be and is hereby issued restraining the Plaintiff from claiming and interfering with the 1<sup>st</sup> Defendant's quiet possession, enjoyment and utilization of all that parcel known as L.R No. Kajiado/Kaputiei-North/17041;
  - c. An order be and is hereby issued directing the Land Registrar Kajiado to delete from the register entries in the green card for parcel No. Kajiado/Kaputiei-North/25516 issued to the 1<sup>st</sup> Defendant herein after amalgamation
  - d. The costs of the suit and the counter-claim are awarded to the Defendants against the Plaintiff.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 13<sup>TH</sup> DAY OF JUNE 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

N/A by the Parties

Court Assistant: Mpyoe

**M.D. MWANGI**

**JUDGE**

