



REPUBLIC OF KENYA



**Kariuki & 2 others v Wachria & another (Environment and Land Case 654 of 2009) [2025] KEELC 6426 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6426 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 654 OF 2009  
AA OMOLLO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**EVANSON GACHIE KARIUKI ..... 1<sup>ST</sup> PLAINTIFF**

**JOHN KIHORO KARIUKI ..... 2<sup>ND</sup> PLAINTIFF**

**JOSEPH WACHIRA KARIUKI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**FRANCIS KARIUKI WACHRIA ..... 1<sup>ST</sup> DEFENDANT**

**WANJIRU MUTAHI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Vide a plaint filed on 21<sup>st</sup> December, 2009, by the three plaintiffs, they want this court to grant them the following reliefs against the two Defendants:
  - a. A declaration that the transfer of L.R. Dagoretti/Uthiru/282 into the joint names of the defendants was unlawful and, therefore, an order to issue for cancellation of the defendant's title and registration of the property to issue in the Joint names of the plaintiffs.
  - b. Costs and interest thereon.
2. The Plaintiffs pleaded that the defendants are currently the registered owners of that piece of parcel of land known as LR Dagoretti/Uthiru/282, which was previously registered in the name of the deceased, Kariuki Kihungu-deceased.
3. The Plaintiff aver that, Kariuki Kihungu-deceased, never alienated his interest in the suit property by way of transfer to the defendants or any other party, who may have acquired interest in the suit property, either before or after the defendants and neither have the plaintiffs done any alienation by



- way of transfer to the defendants or any other 3<sup>rd</sup> party and therefore, the transfer to the defendants was fraudulent, and against the interest of the estate of the deceased.
4. The 1<sup>st</sup> Defendant filed an amended statement of defence dated 27<sup>th</sup> February, 2010 denying the plaintiffs' claim. He pleaded that he is the absolute proprietor of L.R No. Dagoretti/Uthiru/282 hence no cause of action accrues in favour of the plaintiffs over the subject property.
  5. The 1<sup>st</sup> Defendant denied the particulars of fraud levelled against him and put the plaintiffs to strict proof. He also pleaded that the instant suit is res judicata. He prays that the Plaintiffs' suit be dismissed with costs.
  6. The 2<sup>nd</sup> Defendant did not file any statement of defence, and later in the proceedings, the claim was withdrawn as against her.
  7. The plaintiffs called three witnesses to support their case. The 1<sup>st</sup> Plaintiff gave his testimony on 6<sup>th</sup> February, 2020. He said that the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are his brothers. He averred that the 1<sup>st</sup> Defendant (Francis Kariuki Wachira – deceased) is a son to his distant cousin called Wachira S/O Njoka. PW 1 states that the 2<sup>nd</sup> Defendant was her step-sister.
  8. PW 1 continued in evidence that the defendants claimed the suit property was sold to them by Peter Wanganga Kihanya. That they sued the said Peter Wanganga before the Kikuyu Land Disputes Tribunal where Peter conceded that his parcel of land was Uthiru/284 and 285. The said Peter also agreed that he had sold to the Defendants parcel 285. He produced a copy of the green card showing the transfer to the Defendants done on 27<sup>th</sup> October, 2005.
  9. The Plaintiffs said they were unhappy with the decision of Kikuyu LDT and filed an appeal at the Provincial Tribunal. The appeal before the Provincial LDT was then transferred to the High Court and registered as Succession Cause No. 219 of 2001. He produced a copy of the ruling in 219/2001 as P ex 33 and Tribunal's proceedings as P ex 4. He urged the court to grant the prayers sought.
  10. Under cross-examination, PW 1 admitted that Peter Wanganga's evidence was that he sold plot 284 but admitted plot 282 does revert to the owners. He affirmed that they disagreed with the finding of the Tribunal that awarded the suit property to the 1<sup>st</sup> Defendant. Further, PW 1 confirmed that their father had 3 wives namely Gathoni Kariuki, Wanjiru Kariuki and Murugi Kariuki.
  11. PW 1 said he is the son to the 2<sup>nd</sup> wife Wanjiru Kariuki while the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are sons of the 3<sup>rd</sup> wife Murugi Kariuki. PW 1 said the 2<sup>nd</sup> Defendant was the daughter of Gathoni Kariuki and that Gathoni had only one child. PW 1 denies the 1<sup>st</sup> Defendant is the grandson of Gathoni Kariuki – deceased.
  12. PW 1 admits the suit property belongs to the house of Gathoni Kariuki. However, PW 1 avers that since Gathoni did not have beneficiaries apart from the 2<sup>nd</sup> Defendant who was married, the family agreed that the property would be shared between the 2<sup>nd</sup> and the sons of the 3<sup>rd</sup> house.
  13. The second plaintiff adopted the evidence as given by PW 1. The 3<sup>rd</sup> Plaintiff John Kahoro Kariuki gave evidence as PW 3. He adopted his witness statement dated 2<sup>nd</sup> December, 2024 as his evidence in Chief. He also produced the documents in the list of even date. PW 3 avers that the 1<sup>st</sup> Defendant was not born amongst their family and denied he is a grandson to Gathoni Kariuki-deceased.
  14. PW 3 asserted that the 1<sup>st</sup> Defendant is a grandson from a far and it is the Assistant Chief who put him as their kin. They were unhappy with the decision of the Kikuyu Land Dispute Tribunal that the suit property be shared between the two Defendants. That they appealed the said decision but the



- Provincial Appeals Committee referred the matter to High Court registered as Succession Cause No. 219 of 2001. They denied signing any transfer in favour of the 1<sup>st</sup> Defendant.
15. It is the further evidence of PW 3 that the case in Succession Cause No. 210 of 2001 did not give any land to the 1<sup>st</sup> Defendant. Also, he could not understand on what basis the 1<sup>st</sup> Defendant is claiming the administration of the estate of Gathoni Kariuki – deceased. That when they (Plaintiffs) obtained the letters of administration of estate of Gathoni Kariuki, they discovered the 1<sup>st</sup> Defendant was already registered as the owner of suit property.
  16. During cross-examination, PW 3 said that in their custom, if you have three wives, you share your property to them per house. That there was no issue on sharing done to the 2<sup>nd</sup> and 3<sup>rd</sup> houses (wives). According to him, the Tribunal gave the 1<sup>st</sup> defendant the suit property as “Uramati”
  17. PW 3 asserts that the 1<sup>st</sup> Defendant is the son of Wachira S/O Njoka. That Njoka shared a grandfather with their grandfather but the grandmothers were different. That he is entitled to Gathoni’s share because she raised him up when his mother – Murugi died. He urged the court to allow their claim. This marked the close of the plaintiffs’ case.
  18. As earlier stated, the Plaintiffs on 12<sup>th</sup> November, 2024 withdrew the suit against the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant relied on the sole evidence of Thomas Njau Kiuki who had succeeded Francis Kariuki-deceased. He adopted his witness statement dated 13<sup>th</sup> February, 2023 and produced the documents filed on 12<sup>th</sup> November, 2024 as D ex 1-6.
  19. In cross-examination by Mrs. Waweru learned counsel for the Plaintiffs, DW 1 said that Francis Kariuki (original 1<sup>st</sup> defendant – deceased) was the grandson of Gathoni Kariuki-deceased. That the said Francis was the son of Wachira Kariuki who is a step brother to the plaintiffs.
  20. He continued that Wachira Kariuki was the son of Wairimu Wachira. He insists that Wachira S/O Gathoni died as an adult. It is his evidence that L.R No. 282 was in the name of Gathee I, who is also called Wachira Kariuki from Gathoni’s house. That Gathee II was from the second house and a brother to the 1<sup>st</sup> plaintiff. This Gathee II was also called Wachira Kariuki. This witness describes the 2<sup>nd</sup> Plaintiff as Gathee III.
  21. DW 1 continued to state that he does not know Wachira Njoka. That L.R. Genge/Uthiru/237 has several names, including his father’s name. His grandfather died, leaving a young widow, and his step-grandfather is taking advantage. That the Plaintiffs have their own plots No. 281 while the other family settled in Nyeri. This ended the evidence of 1<sup>st</sup> Defendant.

**Submissions:**

22. Directions were taken for filing of written submissions. The Plaintiffs filed submissions dated 10<sup>th</sup> June 2025 while the 1<sup>st</sup> defendant’s submissions are dated 23<sup>rd</sup> June, 2025.
23. The Plaintiffs opened their submissions with a narration of the facts they have given as their evidence. They also analysed the evidence of witnesses who testified before the Kikuyu Land Dispute Tribunal. From their analysis, they concluded that there is nothing to demonstrate the title obtained by the 1<sup>st</sup> Defendant was lawfully obtained.
24. The Plaintiffs raised the following two questions for determination:
  - a. Whether registration of 1<sup>st</sup> Defendant extinguished application of Kikuyu customary law.
  - b. Whether the 1<sup>st</sup> Defendant procured the registration fraudulently.



25. They submitted that the evidence on record clearly and succinctly demonstrates that the Kikuyu Tribunal and Nyeri Tribunal of Elders confirmed that:
- i. The 1<sup>st</sup> wife of Kariuki Kihungu namely Gathoni had only one child, a girl named Wanjiru. ii. The Defendant's father (Wachira Njoka) never claimed any part of Kariuki Kihungu's land.
  - ii. Witnesses, including Wanjiru Kariuki (surviving daughter of Gathoni and Kariuki), Gathee II (2<sup>nd</sup> plaintiff herein), and David Muya Njoka confirmed the 1<sup>st</sup> Defendant's family line was from Njoka Muya.
  - iii. The Kikuyu Tribunal awarded Plot Dagoretti/Uthiru/T.282 to be shared between the Defendant and Wanjiru (daughter of Gathoni), but this was challenged and appealed to Nyeri Provincial Tribunal, then to the High Court (Nyeri Succession Cause No. 50 of 1989; giving rise to 219 of 2001)
  - iv. The Defendant's objection to the grant in the cause 219 of 2001 was dismissed on 15<sup>th</sup> July 2003, for want of merit and indolence.
  - v. No appeal or setting aside of that Ruling of 15<sup>th</sup> July 2003 has ever been made to date.
  - vi. The defendant was identified by the assistant chief of his area as a cousin to the plaintiffs in the Kikuyu Tribunal and there is no record of the defendant objecting to the assistant's chief depiction of his relationship in that regard.
  - vii. The defendant's representation with regard to the estate of the deceased Gathoni in succession cause 807 of 2007 and the various related evolution of claims depict serious inconsistencies which only sum up to his attempts at sustaining a concerted scheme to defraud the true beneficiaries of her estate. The Defendant's claims are inconsistent, contradictory, and made in bad faith to mislead and defraud. The Defendant's changing position regarding his lineage, purposefully made to suit the forum or objective, should estop him from claiming any entitlement. The plaintiffs were able to demonstrate and prove with evidence that the defendant engaged in fraud, misrepresentation, illegality and want of procedure or corruption.
26. The plaintiffs rely not only on statutory succession and land laws but also on Kikuyu customary law principles, which form part of the applicable legal framework under Section 3(2) of the *Judicature Act* (Cap. 8), which recognises African customary law so far as it is not repugnant to justice and morality.
27. In this matter:
- a. The defendant's claim to Plot Dagoretti/Uthiru/T.282 was based on his alleged contribution to correcting administrative errors and his relationship through the Njoka family. The Assistant Chief, Michael Kanyonga, testified before the Kikuyu Tribunal that the defendant was recognized for his "uramati" only.
  - b. Multiple witnesses, including the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, Wanjiru (daughter of Gathoni), and elders, confirmed that the defendant is not a biological descendant of Kariuki Kihungu or Gathoni. Thus, he does not qualify for "igai".
  - c. The estate of Gathoni Kariuki, including Plot T.282, was customarily surrendered to Gathee II (2<sup>nd</sup> Plaintiff), in accordance with "igai" rights as the stepson and caregiver particularly since Gathoni had no surviving sons, and her daughter Wanjiru was married and relinquished any claim over the suit land.



28. It is their assertion that the defendant obtained title without letters of administration or legal transmission from Gathoni's estate, making his acquisition fraudulent. That a court cannot aid a litigant seeking to perpetuate fraud or disinherit rightful heirs. Recognition of fraud as a valid title route would reward deceit and undermine orderly succession processes and statutory protections under the [Law of Succession Act](#) (Cap. 160).
29. To support their argument, the Plaintiffs rely in the case of *Sirgoi Tea Estate Limited v Paul Kibii Cheriro* [2021] eKLR; the learned J. M.A. Odeny, cited a number of case law and made observations that wholly apply to the matter herein and reinforced the principle that titles obtained fraudulently are not protected under the doctrine of indefeasibility. The court in the cited case stated that it cannot turn a blind eye to irregularities and fraudulently acquired titles under the guise of title sanctity. It held in part that:-
- “In the case of *KENYA NATIONAL HIGHWAY AUTHORITY – VS – SHALIEN MASOOD MUGHAL & 5 OTHERS* [2017] eKLR, Maraga, J (as he then was) expressed himself as follows: -
- “Court should nullify titles by land grabbers who stare at your face and wave to you a title of the land grabbed and loudly plead the principle of the indefeasibility of title deed...” The court cannot therefore turn a blind eye to sanitize irregularity and fraudulently acquired titles all in the name of indefeasibility of title.
- In the case of *Alice Chemutai Too – Vs – Nickson Kipkurui Korir & 2 Others* [2015] eKLR, Hon. Sila Munyao, J. held as follows with respect to indefeasibility of title: “It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, procedurally, or through a corrupt scheme. Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation. ....”
30. They concluded their submissions by urging the court to enter judgment in their favour.
31. On his part, the 1<sup>st</sup> Defendant submits on the previous cases where ownership was the main issue. Like the plaintiffs, he also analysed the evidence adduced before the Kikuyu Land Dispute Tribunal. According to him it is the plaintiffs who now want to acquire the suit land fraudulently.
32. He also submitted on the following questions;
- i. Whether the Defendants are the absolute proprietors of the suit property.
  - ii. Whether the Plaintiffs have a viable legal interest in the suit property.
33. In answering the first question, the 1<sup>st</sup> Defendant relied on the provisions of Section 26 of the [Land Registration Act](#) as well as the case of *Alice Chemutai Too Vs Nickson Kipkurui Korir & 2 Others* (2015) eKLR. He submits that no evidence has been tendered by the plaintiffs to prove the alleged fraud.
34. The 1<sup>st</sup> Defendant states that he has demonstrated the origin of the suit land as belonging to the 1<sup>st</sup> wife of Kariuki Kihungu. Hence, the suit property continues as the property belonging to the 1<sup>st</sup> house – Gathoni Kariuki, although at first registration it was erroneously made to their neighbour's name, Peter Wanganga. The Tribunal addressed the error and a solution reached in favour of the Defendants.



35. In concluding, the 1<sup>st</sup> Defendant submitted that they became registered owners of the land in 2005 after a determination by the Kikuyu Land Disputes Tribunal. He urged the court to find no fraud has been proved and proceed to dismiss the plaintiff's suit.

**Analysis and Determination:**

36. There is no dispute that the suit property is currently registered in the joint names of the Defendants. There is also no dispute that the property traces its origin to the father of the Plaintiffs, that the same was allocated to the house of Gathoni Kariuki–deceased who is the 1<sup>st</sup> wife of Kihungu Kariuki.

37. The dispute arises on the question of whether Gathoni Kariuki – deceased left a beneficiary entitled to inherit the land or the same should now be shared by the sons of the 2<sup>nd</sup> and 3<sup>rd</sup> wives now comprised in the Plaintiffs. Hence the two questions raised by the plaintiffs of:

- a. Whether the 1<sup>st</sup> Defendant is a beneficiary of Gathoni's estate.
- b. Whether or not the 1<sup>st</sup> Defendant fraudulently acquired the suit land.

38. Both parties made reference to previous proceedings that took place between the two parties. The first case was filed before the Kikuyu Land Disputes Tribunal in the year 2000 where the current 1<sup>st</sup> defendant was the complainant. The 1<sup>st</sup> defendant stated in those proceedings and also before this court that he was the son of 2<sup>nd</sup> Defendant who is a step sister to the Plaintiffs.

39. The Plaintiffs have denied that the 1<sup>st</sup> Defendant is the son to Wanjiru Kariuki (2<sup>nd</sup> Defendant) who was the daughter to Gathoni Kariuki and step sister to the plaintiffs. According to the Plaintiffs, the 1<sup>st</sup> Defendant is son of Wachira Njoka who is their cousin.

40. In the proceedings before the Tribunal, the 1<sup>st</sup> Plaintiff in explaining their relationship referred to the 1<sup>st</sup> Defendant's father thus "He (Kahuki Kihugu) then invited his step brother Njoka Kihugu the claimant's father to Kabete hoping that he would also get a job there. He allowed his step brother to put up a structure on the five acres allowed him by the department."

41. The 1<sup>st</sup> Plaintiff also confirmed in the case before the Tribunal that Gathoni's daughter (2<sup>nd</sup> Defendant) did not get any share in the suit property because she was happily married. The 2<sup>nd</sup> Plaintiff equally confirmed Wanjiru (2<sup>nd</sup> Defendant) was the daughter of the 1<sup>st</sup> wife. That he was entitled to this land (evidence before Tribunal) because he took care of his stepmother (Gathoni).

42. While interviewing the 2<sup>nd</sup> Defendant, the elders of the Tribunal did not ask her whether or not she had any relations with the 1<sup>st</sup> Defendant. However, they asked if she had any interest on her late parent's property and her answer was "who would not have no interest on his parent's property?" Thus, the Plaintiffs averment that she was not interested in the suit property without supporting evidence is incorrect.

43. The Tribunal in their wisdom proceeded to award the suit property to the Defendants to be shared equally. Since the title was erroneously registered in the name of Peter Wanganga, a neighbour, the same was to be corrected so that the Defendants could acquire title as beneficiaries of Gathoni-deceased. The 1<sup>st</sup> Defendant said they became registered as owners in 2005 pursuant to execution of the award of the Tribunal.

44. The Plaintiffs stated that they appealed this decision to the Provincial Appeals Committee, but it appears that the appeal was never determined. They say the Provincial Appeals Committee referred the matter to the High Court, and it was registered as High Court Succession Cause No. 219 of 2001. It



is not clear what became of this case, as what was produced were rulings on interlocutory applications (Pex 4).

45. Vide the ruling dated 25<sup>th</sup> January, 2008, Makhandia J. (as he then was), found that the Respondent (Francis Kariuki Wachira) had an absolute title to Dagoretti/Uthiru/282 and refused to grant the petitioners (now Plaintiffs) stop orders as prayed in the application dated 9<sup>th</sup> October, 2006. In essence, the trial judge then did not set aside the decision of the Kikuyu Land Dispute Tribunal.
46. With this background, now I am tasked to determine whether the registration of the 1<sup>st</sup> Defendant on the suit property was fraudulent. The particulars included acquiring registration without the knowledge and consent of the deceased Kariuki Kihugu or the Plaintiffs. As already came out in the evidence, Kariuki Kihugu was long dead, and his three widows proceeded to share his property.
47. The 1<sup>st</sup> Defendant was claiming a share of one of the widows Gathoni Kariuki not directly through Kariuki Kihugu. Therefore, Kariuki Kihugu – deceased could not give consent from his grave. Second, the 1<sup>st</sup> Defendant did not require consent of the Plaintiffs as he had a decree in his favour. Hence the first two grounds of fraud levelled are without merit.
48. The plaintiffs also pleaded under 5(c) and (d) that the 1<sup>st</sup> Defendant misrepresented facts over his relations with the deceased Kariuki Kihugu. This court does not power to determine who the beneficiaries of Kariuki Kihugu is. Despite, the evidence adduced by the plaintiffs affirm that Wanjiru Kariuki alias Wanjiru Mutahi (2<sup>nd</sup> Defendant) is the daughter of the 1<sup>st</sup> wife Gathoni Kariuki.
49. They (plaintiffs) also affirmed that the suit property was allocated to the 1<sup>st</sup> wife Gathoni when the widows shared the properties of their deceased husband. The Plaintiffs argued that Kikuyu customs did not provide for daughters to inherit land but they failed to adduce evidence to support their assertion on application of Kikuyu inheritance customs.
50. Although they withdrew the claim against the said Wanjiru, there is nothing on record to affirm that Wanjiru has no interest in the suit property. In any event, they brought this case as the administrators of the estate of Kariuki Kihungu – deceased. Although Kariuki Kihungu owned the land but at the time of registration, in 1959, the same was registered in the name of Gathee Kariuki II. The 1<sup>st</sup> plaintiff said that Gathee Kariuki II refers to the 2<sup>nd</sup> Plaintiff.
51. Further, if Gathee II refers to the 2<sup>nd</sup> Plaintiff who they say was registered in trust for the family, then this suit brought on behalf of the estate of Kariuki – Kihungu has n cause of action. On this ground, the allegations of fraud as against the estate of Kariuki Kihungu – deceased and his beneficiaries also fails because the suit property did not form part of that estate.
52. The claim was also premised on fraud but the witnesses attempted to introduce evidence that they were entitled to the land by the application of customary trust. Even if the claim on customary trust was to be pursued, the particulars of trust was not pleaded in the trust and no evidence led to that effect. This is taking into consideration the fact that the registration of the suit land was registered into the Defendants' name pursuant to a court order. Hence, customary trust cannot be inferred.
53. The Plaintiffs' claim is convoluted further by the fact of joint registration of the suit title in the names of the Defendants. Although they withdrew the suit as against the 2<sup>nd</sup> Defendant, the withdrawal does not take away her rights bestowed to her by law. Section 91(2) and (6) of the [Land Registration Act](#) speaks thus on joint registration;

“2. Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the



nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares.

6. No tenant in common shall deal with their undivided share in favour of any person other than another tenant in common, except with the consent in writing, of the remaining tenants, but such consent shall not be unreasonably withheld.”

54. In light of the legal position on joint tenancy/registration as in this case, is my considered view that the plaintiffs claim against one owner only does not lie since the joint registration has not been severed. Secondly, the registration having been obtained through a court order which has not been set aside or reviewed, the allegations of fraud pleaded are without merit. Thirdly, having confirmed that Gathoni had a daughter and without any evidence led to show why the said daughter should be disentitled to land assigned to her mother, the allegation of customary trust is also not proved.

55. In conclusion, I find that the plaintiff’s claim is without merit for reasons stated herein above. Consequently, the suit is dismissed with costs to the 1<sup>st</sup> Defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**A. OMOLLO**

**JUDGE**

