



Kariuki & another v Kiarie & another (Environment and Land Appeal 110 of 2024) [2025] KEELC 6429 (KLR) (23 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6429 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 110 OF 2024
JM ONYANGO, J
SEPTEMBER 23, 2025**

BETWEEN

DADSON MUTHUA KARIUKI 1ST APPELLANT

DEVJI NARAN PATEL 2ND APPELLANT

AND

DANIEL KIOKO KIARIE 1ST RESPONDENT

**GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED 2ND
RESPONDENT**

((Being an appeal from the judgment and decree of the Chief Magistrate's Court at Ruiru by Hon. Charles Mwaniki delivered on 29th August 2024 in MCELC No. E199 of 2022))

JUDGMENT

1. This appeal challenges the judgment of Hon. Charles Mwaniki K, Principal Magistrate delivered on 29th August 2024 in Ruiru CMELC Case No. E199 of 2022 dismissing the Appellant's case and entering judgment in favour of the 1st Respondent on his Counterclaim.
2. In the suit in the lower court, the Appellants who were the Plaintiffs filed suit against the Respondents who were the Defendants, claiming that they were the registered owners of the land parcel known as Ruiru/Kiu Block 2 (Githunguri)/560, hereby referred to as the suit property. The Appellants alleged that the suit property was initially owned by Githunguri Constituency Ranching Company Limited which subsequently allotted it to its members through a balloting process. The Appellants purchased the suit property from one Marther Mueni Mburu vide a sale agreement dated 2nd December 2014. Martha Mueni had in turn purchased the suit property from Joseph Mwaura Kanguku who bought it from Mary Nyokabi Mugo, the wife of David Marai Mugo, the original allottee,



3. After paying the agreed purchase price, the Appellants were issued with the necessary documents including the Ballot Number, Share Certificate and Clearance Certificate which enabled them to have the land registered in their names. In June 2022, they cleared the ground and put up a concrete slab in preparation for the construction container shops. It is at this point that the 1st Respondent entered the suit property claiming that it belonged to him. He erected a fence and put up some temporary structures thus denying the Appellants quiet and peaceful enjoyment of the suit property.
4. It was the Appellants' claim that the 1st Respondents actions were illegal as they amounted to trespass. The Appellants therefore sought the following reliefs:
 - a. A declaration that that the Appellants are the lawful registered owners of land parcel number Ruiru/Kiu Block 2 (Githunguri)/560.
 - b. An order directing the 1st Respondent whether by himself, his servants or employees to vacate the and deliver vacant possession of the suit property to the Appellants.
 - c. A permanent injunction restraining the 1st Respondent by himself, his servants, employees or agents from remaining on or continuing in occupation of land parcel number Ruiru/Kiu Block 2 (Githunguri)/560.
 - d. An order directing the Officer Commanding Ruiru Police Station to ensure compliance with this Honourable court's orders.
 - e. Damages for trespass and loss of user by the Appellants of their property.
 - f. Costs of the suit together with interest
5. Upon being served with Summons to enter appearance, the 1st Respondent filed a Defence and Counterclaim. In the Defence, he denied the Appellant's claim in its entirety.
6. In his Counterclaim he averred that the suit property was allocated to his grandfather Mwangi Munene vide ballot card number RW 000869 and Share Certificate No. 607. His grandfather in turn transferred 1¼ acres and a residential plot measuring ¼ acres to the 1st Respondent's father, Kiarie Mwangi Munene who was issued with share certificate number 2263 dated 14th July 2017. On 9th July 2019, the said Kiarie Mwangi Munene transferred transferred the ¼ acre plot to the 1st Respondent vide share certificate 2263 and he was issued with share certificate no.4253 as well a clearing certificate.
7. The 1st Respondent averred that owing to competing claims between him and Marther Mueni, they were both summoned by the 2nd Respondent and after scrutinizing their documents, the 2nd Respondent reached the verdict that the suit property initially belonged to the Mwangi Munene who is now deceased and that the same should be transferred to the 1st Respondent. The 1st Respondent's efforts to have the suit property registered in his name have been unsuccessful. He averred that in the meantime, the Appellants colluded with the 3rd Respondent and fraudulently had the suit property registered in their names.
8. He therefore prayed that the Appellant's title be cancelled and that the suit property be registered in his name. He also prayed for a permanent injunction restraining the Appellants from interfering with the suit property.
9. The 2nd Respondent filed a Defence denying the Appellants' claim against it.



10. The 3rd Respondents also filed their Defence denying the 1st Respondent's claim. They stated that the suit property was transferred to the Appellants based on the documents presented to the 3rd Respondents officers who exercised due diligence and registered the said documents as they believed they were genuine.
11. In response to the Counterclaim, the 3rd Respondent maintained that the Appellants are the registered proprietors of the suit property having acquired it from the 2nd Respondent and issued them with a certificate of title on 3rd August 2015. They denied the particulars of fraud attributed to the 3rd Respondent's officers.
12. The 3rd Respondent stated that should they be found to be culpable for the transfer on reliance on the information or misrepresentation of the the 2nd Respondent and the Appellants and that the 1st Respondent will have suffered loss, it would seek indemnity under Order 1 Rule 24 of the Civil Procedure Rules as against the 2nd Respondent and the Appellants.
13. The suit was set down for hearing when both parties and their witnesses testified. After holding that the Appellant's title had successfully been impeached, the court dismissed the Appellants' case and entered judgment for the 1st Respondent on his Counterclaim. The Appellants' title was cancelled and the court directed that a new title be issued in the name of the 1st Respondent. The court also issued a permanent injunction restraining the Appellants from interfering with the suit property.
14. It is the said judgment that triggered the instant appeal in which the Appellants have raised 15 Grounds of Appeal which have aptly been condensed into 2 issues namely; whether the learned trial Magistrate misdirected himself in holding that the 1st Respondent is the rightful owner of the suit property and whether the Counterclaim should have been allowed.
15. The appeal was canvassed through written submissions and the Appellants. 1st and 2nd Respondents filed their respective submission which I have considered in arriving at my decision. The 3rd Respondent did not file any submissions.

Analysis and Determination

16. The main issue for determination is whether the learned trial magistrate misdirected himself in holding that the 1st Defendant is the rightful owner of the suit property.
17. This is a first appeal, and the duty of a first appellate court was set out in *Abok James Odera t/a A. J. Odera & Associates vs John Patrick Machira t/a Machira & Co. Advocates* (2013) eKLR, where this Court pronounced itself as follows: -

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority vs Kustron (Kenya) Limited* 2000 2EA 212.”
18. This Court will therefore re-evaluate and consider afresh the evidence tendered before the trial court and come to its own conclusion on the same.
19. As both the Appellants and the 1st Respondent claimed to be the rightful owners of the suit property, it was incumbent upon the court to investigate the root of title of the Appellants as well the documents presented by the 1st Respondent.



20. It is not in dispute that the suit property was initially owned by Githunguri Constituency Ranching Company, the 2nd Respondent herein. The Appellants claim to have purchased the suit property from one Marther Mueni who in turn bought it from Joseph Mwaura Kunguku. The said Joseph Kunguku bought the suit property from Mary Nyokabi Mugo who is the widow of David Marai Mugo, the original allottee. The 1st Appellant testified that he visited the suit property and after confirming that it was vacant, he entered into a sale agreement with the vendor, Marther Mueni. He thereafter visited the offices of the 2nd Respondent who confirmed that the documents in respect of the suit property were genuine. He later presented the documents to the Land Registrar and he was issued with a title deed.
21. In support of their case, the 1st Appellant produced various exhibits including a copy of the title deed dated 3.8.2016, a copy of the sale agreement dated 2.12.2014 between the Appellants and Marther Mueni Mburu, copies of acknowledgments of payment made to Marther Mueni dated 3.12. 2014 and 3.2.2015, a receipt for transfer and clearance of ¼ acre plot dated 6.2.2015, a copy of Ballot No. RW 000869 dated 19.7.2011 a copy of a survey receipt dated 31.5.1988, share certificate No. 1239 dated 6.2.2015 in the names of the Appellants, a clearance certificate issued to Dadson Muthua Kariuki and Devji Naran Patel dated 6. 2 2015, photographs of the developments on the suit property, a copy of the OB dated 11.8.22 and a copy of the demand letter dated 28.9.2022.
22. On his part, the 1st Respondent testified that he inherited the suit property from his father Kiarie Mwangi Munene who had in turn inherited it from the 1st Respondent's grandfather, Mwangi Munene. He said the dispute over the suit property had been resolved by the 2nd Respondent in favour of his grandfather. He told the court that he had been in possession of the suit property and he had buried his late daughter on the suit property.
23. The 1st Respondent produced the 17 documents in his list of documents which include a ballot card dated 30.5.1973, a copy of an allotment card dated 27.3.1988, receipts from Githunguri Constituency Ranching Co. Ltd issued between 1983 and 2019. He also produced a copy of a clearance certificate in the name of Mwangi Munene dated 22.1.1992, a copy of a share certificate in his name dated 9. 7.2021, photographs of the suit property and a copy of the verdict by Githunguri Constituency Ranching Company Ltd dated 4th December 2020.
24. What emerges from the documents produced by the Appellants and 1st Respondent is that the 2nd Respondent allocated the suit property to Mwangi Munene on 19.10 1972 vide share certificate no. 607 and to David Marai Mugo vide Share certificate no. 4921 dated on 12.9.1984.
25. The Appellants trace their title to the share certificate No. 4921 dated 12.9.84 issued to David Marai Mugo. The same was transferred to Mary Nyokabi Mugo, the widow of David Marai Mugo who was issued with Share Certificate no. 3547 dated 19.7.2001. It is not clear whether Mary Nyokabi Mugo obtained a Grant of letters of Administration in respect of her late husband before the transfer was effected as she did not produce a copy of the Grant. Mary then sold the suit property to Joseph Mwaura Kanguku vide a sale agreement dated 26.8.2011. Joseph in turn sold the suit property to Marther Mueni Mburu vide a sale agreement dated 15.11.2011. Marther Mueni was issued with share certificate no. 2551 dated 18.11.2011. Marther then sold the suit property to the Appellants vide a sale agreement dated 2nd December 2014. Upon transfer of the suit property to the Appellants, they were issued with share certificate No. 1239 dated 6.2.2015. The 2nd Respondent subsequently issued the Appellants with a clearance certificate dated 6.2.2015 which they used to obtain their title deed.
26. On the other hand, the 1st Respondent's title can be traced to share certificate No. 607 issued to Mwangi Munene-Deceased by Githunguri Constituency Ranching Company on 19.10.1972. The same was subsequently transferred to Kiarie Mwangi Munene vide Share Certificate No. 2263. Kiarie Munene



through a chief's letter dated 30th May 2017. The property was then transferred to Daniel Kioko Kiarie vide Share Certificate No.4253 on 9.7.21. The latter certificate makes reference to Share Certificate No.2263. Daniel Kioko Kiarie was later issued with a Clearance Certificate dated 9.7 2021.

27. It is clear from the evidence on record that there was double allocation. Under such circumstances, the share certificate that was issued first must prevail. This is why in their verdict dated 4.12.20 the Board members of the 2nd Respondent purported to cancel and withdraw the documents issued by the company to Marther Mueni and Joseph Kanguku.
28. In arriving at her decision, the trial magistrate relied on the verdict of the 2nd Respondent company's directors. Although the said decision appears to be logical, the company did not deem it fit to summon the Appellants who were registered owners of the suit property before purporting to withdraw the documents issued to Joseph Mwaura Kanguku and Marther Mueni Mburu and holding that the suit property lawfully belongs to the Kiarie Mwangi Munene. This was contrary to the rules of natural justice which require that a parties be heard before they are condemned.
29. In their verdict, the Board members of the 2nd Respondent pointed out that the Joseph Mwaura Kanguku and Marther Mueni Mburu failed to show how the property from David Marai Mugo to Mary Nyokabi Mugo, they ignored the fact that Kiarie Mwangi Munene had not obtained a Grant of Letters of Administration in respect of the estate of Mwangi Munene and he therefore lacked the capacity to have the suit property transferred to him. In her evidence, DW2 clearly stated that they had not instituted succession proceedings in respect of the estate of Mwangi Munene-Deceased.
30. In the case of *Trouistik Union International & Another v Jane Mbeyu & Another* (1993) KECA 89 KLR the Court of Appeal restated the principle laid down in the case of *Virginia Otieno v Joash Ougo* (1988)1KAR as follows:

“The administrator is not entitled to bring an action as an administrator before he has taken letters of administration. If he does, the action is incompetent at the date of its inception”
31. Additionally, section 55 of the *Law of Succession Act* provides that:

Section 55. “No grant of representation whether or not limited in its terms shall confer power to distribute any capital assets constituting a net estate or to make any division of property unless and until the grant has been confirmed as provided by section 71.”
32. This Court must remind litigants that pleadings are the foundation upon which the parties' claims stand and must be drafted with utmost care. When pleadings are filed without ensuring that foundational documents such as letters of administration are included, they not only imperil their client's case but also compromise the administration of justice. The Court is not a place for speculative contest, but a forum where parties must appear with the full authority that the law demands.
33. I am therefore of the opinion that the trial magistrate erred in holding that the 1st Respondent was the rightful owner of the suit property as he had not taken out a grant of letters of administration in respect of the estate of Mwangi Munene.
34. With regard to the question of fraud, I agree with the trial Magistrate that the 1st Respondent did not lead any evidence to demonstrate that the Appellants acquired their documents fraudulently. It is trite law that fraud must not only be pleaded and particulars thereof provided but it must be proved to a standard beyond reasonable doubt. See the case of *Gichinga Kibutha v Caroline Nduku* (2018) KEELC 38981.



35. Consequently, the appeal succeeds partially. The judgment of the lower court is set aside and substituted with an order dismissing both the suit and Counterclaim. The 1st Respondent is at liberty to pursue the registration of the suit property in his name upon obtaining a grant of letters of administration.

36. I therefore make the following final orders:

- a. The title for land parcel number Ruiru Kiu Block 2 (Githunguri in the names of Dadson Muthua Kariuki and Devji Naran Patel is hereby cancelled.
- b. The 3rd Respondent shall amend the register in respect of land parcel No. Ruiru Kiu Block 2 (Githunguri) to reflect the name of Mwangi Munene (Deceased).
- c. In view of the circumstances of this case, each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 23RD DAY OF SEPTEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

No Appearance for the Appellants

Miss Ndavuta for Mr Machua for the 1st Respondent

Mr. Kanyi Kiruchi for the 2nd Respondent.

Court Assistant: Hinga

