



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gitu v Muchiri (Environment and Land Appeal 67 of 2023)  
[2025] KEELC 4865 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4865 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL 67 OF 2023**

**JM KAMAU, J**

**JUNE 12, 2025**

**BETWEEN**

**JOHN MUCHIRI GITU ..... APPELLANT**

**AND**

**PETER GITU MUCHIRI ..... RESPONDENT**

**JUDGMENT**

1. The Appeal emanates from the Ruling of the Honourable Mr. James H. S. Wanyaga, Senior Resident Magistrate in Nyahururu CMELC No 377 of 2018 that was read and delivered on 16/1/2023. The Appellant was the Defendant in the lower court while the Respondent was the Plaintiff. The Respondent filed a suit on 7/11/2018 urging the court to make orders for: -
  - a. A Declaration of a constructive and/or customary trust in the Plaintiff's favour over a portion of 1 ½ Acres in plot No. 98 Githemba and for the trust to be registered.
  - b. A permanent injunction do issue restraining the Defendant by himself, his servants, agents and/or employees from evicting, demolishing the Plaintiff's houses and/or in any other way interfering with the Plaintiff's occupation on plot No. 98 Gituamba.
  - c. Costs of this suit plus interest
  - d. Any other or further reliefs that this Honourable court may deem fit and just to grant.
2. The Respondent's claim was that he is the son of the Appellant and both reside on the suit land, Gituamba on distinct portions marked by fences and farming activities. The Appellant had acquired the said parcel of land from his late father, Peter Gitu Wandeto to hold in trust for himself and his children but which the Defendant breached and disregarded and ordered the Respondent to vacate from the suit land and remove all his structures or be forcefully evicted therefrom.



3. The Respondent said that he occupies and has developed approximately 1 ½ Acres which he has also cultivated and fenced. The said plaint was amended by the Respondent on 7/6/2019 to correct the name of the suit property to read L.R. No Gituamba/Muhotetu Block 2/193. On 9/6/2021, the Appellant filed a Defence statement and Counterclaim the same dated 26/5/2021 in which he denied the entire claim by the Respondent. He disowned the Respondent as his son and said that the Respondent claimed to be his son after he [the Appellant] accommodated him purely on humanitarian grounds and that the Respondent is a trespasser than a rightful claimant who has already been given marching orders.
4. The Appellant also said that even if the court were to find the Respondent a genuine son, he is not entitled to any kind of inheritance from the Appellant but as a grown-up, he should work hard for his own property and that he had not contributed anything for the acquisition of the suit land. The Respondent is a “muhoi” under Kikuyu customs and traditions.
5. In the Counter-claim, the Appellant says that he is the sole and absolute proprietor of L.R. Gitumaba/Muhotetu Block 2/193 and hence he has exclusive use and possession and he now seeks from the court an order of vacant possession of the parcel of land he [the Appellant] gave to the Respondent and which the latter has occupied since 2016. He prays that in default of the Respondent giving him vacant possession of the land, the Respondent be forcefully evicted from the suit land. He also prays for costs of the suit as well as that of the Counter-claim. The Appellant also made a prayer for any other relief the court may deem fit and just to grant.
6. A temporary injunction was granted on 13/2/2019 restricting the Appellant from evicting the Respondent from and/or demolishing the latter’s houses on the suit land. This was at the ex parte stage during the hearing of the substantive Application dated 12/2/2019. It is not indicated what became of the Application dated 12/2/2019 and the case proceeded for hearing on 30/11/2020 where the Respondent gave a sworn statement to the effect that his mother, Ruth Mary Wambui Muchiri died in the year 2005 on 4<sup>th</sup> May. She was the Appellant’s 1<sup>st</sup> wife. He said he was in possession of part of the suit land and he had even cultivated part of it. He attributed his woes to the Appellant’s 2<sup>nd</sup> wife and the support from the local administration. He said that his young family of a wife and a young child depends on the land for sustenance. The Respondent produced the following documents to support him:-
  1. Copy of birth certificate.
  2. Copy of identification card.
7. On cross-examination the Respondent said that his late mother had already separated with his father, the Appellant, before she died. He said he did not have any document to show that the land belonged to his late grandfather nor did he know whether there was ever filed a Succession Cause in respect of the said estate. He had reported a case of arson against the Appellant at Rumuruti police station but which turned up to be a case of giving false information against him.
8. In re-examination, the Respondent denied that his late mother had been divorced or separated from the Appellant before she met her death.
9. After the close of the Respondent’s case, the Appellant took to the witness stand and started giving his sworn evidence. He said that the Respondent came to look for him in 2016 and was accommodated by the Appellant but he left with his mother in 1990 when he was about 1 ½ years old but in 2017 the Respondent started demanding for land and a cow. He did produce a Title Deed in court as an exhibit and a charge sheet.



10. On cross-examination, the Appellant confirmed that the Respondent was his son and that the suit land was his which he had bought and not inherited from his father. He further says he was given the land by his father. He said that he was ready to pass his inheritance to all his children when the time comes.
11. On re-examination the Appellant confirmed that he did inherit the land from his father which was devolved to him as repayment for their good relationship.
12. This marked the close of the case and what followed was Judgment.
13. In the Judgment the Honourable Trial Magistrate held that the right of a proprietor cannot be defeated except as provided for in the Act. He also rightly held and found that his court had no powers to compel a registered owner to allocate his parcel of land to his son. The said transmission can only happen upon the death of the registered owner and through a succession cause. He therefore made a further finding that the Respondent had failed to prove any case against the Appellant and he made an elaborate finding based on very sound legal pronouncements both from statutory law and case law from the court of Appeal, High court of Kenya and the Environment and Land court of Kenya. I hail the Judgment dated 21/10/2021 as very sound.
14. Then on 4/3/2022 the Appellant filed an Application for Review and/or varying the Judgment delivered on the 21/10/2021 and the Appellant's Counter-claim and asked the court to determine the same on merit. He based his Application on the ground that there was an error on the face of the record and that there were sufficient reasons for the court to review the said Judgment. He argued that no prejudice would be caused to the Respondent if the Application were allowed. He averred that on the last page of the Judgment the Trial Magistrate observed that he could not give eviction orders against the Plaintiff [Respondent] as there was no Counter-claim on record that had sought for such prayer. The Respondent claims that the Counter-claim was not considered despite the same being on record.
15. This Application was responded to by way of a Replying Affidavit by the Appellant deponing that the Trial Magistrate had indicated on page 1 of the Judgment that there was a Defence and Counter-claim and that the issue of eviction had been addressed in the Judgment with the prayers of eviction severally mentioned and the same had not been sought. The same was dismissed on 16/1/2023 on the ground that the prayer in the Counter-claim seeking for eviction was never proved but in which Ruling the Court did observe that in as far as the Counter-claim is concerned, it was in error to state that the same was never filed. The Trial Magistrate further held that from the evidence in support of the Counter-claim it was his considered view that the evidence adduced may not allow for the eviction of the Respondent from the suit property.
16. For the eviction orders to be issued, as was observed by the Trial Magistrate, the Court must consider all available facts touching on both parties. He further proceeded to say that the Defendant [Appellant] acknowledged that the Plaintiff [Respondent] is indeed his son but from his estranged wife. Accordingly, there was no proof of the cause of action pleaded to warrant an order for eviction of the Plaintiff [Respondent] from the family land and finally,

“.....I make a further finding that the Defendant [Appellant] has failed to prove any case against the Plaintiff. The Counter-claim fails.....”
17. Upon delivery of this Ruling, the Appellant was aggrieved and filed an appeal on the following grounds:
  1. The Learned Trial Magistrate erred in law and fact by finding that there was no proof of the cause of action pleaded to warrant an order for evictions of the Respondent from L.R. Gitumaba/Muhotetu Block 2/193



2. The Learned Trial Magistrate erred in law and fact by failing to find that the Appellant was entitled to exclusive possession, use and occupation of L.R. Gitumaba/Muhotetu Block 2/193
  3. The Learned Trial Magistrate erred in law and fact by failing to find that the Appellant had proved a case against the Respondent for vacant possession of L.R. Gitumaba/Muhotetu Block 2/193
  4. The Learned Trial Magistrate erred in law and fact by failing to find that the Appellant had proved his counterclaim as against the Respondent
  5. The Learned Trial Magistrate erred in law and fact in dismissing the Appellant's counterclaim.
18. This being an adversarial system I am not ignorant of the fact that I am obligated to give eviction order against the Respondent's son or I order that he remains on the suit premises but against his father's will. None of the above will bring a solution to the already sour relationship. The lower court has found and rightly so, that the Respondent has no right to inherit his father, the Appellant, as long as the latter is still alive.
19. Honestly speaking, this matter ought not to have seen the 4 corners of the Court but unfortunately it has come this far. I will break from tradition and order that both parties do proceed to settle the matter by way of mediation. Either by way of a Court Annexed Mediation or through the Alternative Justice System. I strongly believe this is the best thing to do and which will restore the father- son relationship which is now not healthy at all. I believe this is what the Learned Trial Magistrate Honourable James H S Wanyanga meant by advising the parties herein to try and settle the matter out of court.
20. Even at this [appellate] stage it is not too late. The Respondent is in dire need of the Appellant's blessings which is even more important than the parcel of land he is chasing. The Appellant on the other hand is deserving of the Respondent's support and respect. The two are reciprocal. My wish is that none loses what he deserves from the other.
21. Consequently, I will give both parties the opportunity to proceed before any of the above which will enable them first heal from the bruises this case has caused on them. Secondly, I have confidence that they will be able to settle the matter. It is my prayer that they succeed on both. In the unlikely event that neither succeeds, I will determine the appeal but which will leave one of the parties in tears. This case will be mentioned in Court on 19/6/2025 where I invite both parties in Court physically.

**DATED AND DELIVERED AT NYANDARUA THIS 12TH DAY OF JUNE, 2025.**

**MUGO KAMAU**

**JUDGE**

In the presence of

Court Assistant –Samson.

Applicant's Counsel -N/A

Respondents' Counsel – N/A

