



**Nyamu (Suing as the Legal Administrator of the Estate of Nyamu Kiura - Deceased)
& another (eter Murimi Kathee) v Murungo & 7 others (Environment and Land
Case 19 of 2018) [2025] KEELC 6276 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6276 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE 19 OF 2018
JM MUTUNGI, J
SEPTEMBER 24, 2025**

BETWEEN

**JULIUS NJIRAINI NYAMU (SUING AS THE LEGAL ADMINISTRATOR OF
THE ESTATE OF NYAMU KIURA - DECEASED) 1ST PLAINTIFF
PETER MURIMI KATHEE 2ND PLAINTIFF
ETER MURIMI KATHEE**

AND

**HENRY MBURU MURUNGO 1ST DEFENDANT
MWANGI NDUMA GICHURU 2ND DEFENDANT
MURIUKI KOMBA 3RD DEFENDANT
BENSON GICHOBI MUTAHI 4TH DEFENDANT
PETER NJAGI MATHAGU 5TH DEFENDANT
STEPHEN MUGO TOTO 6TH DEFENDANT
JOHN WAWERU GITHANDIKA 7TH DEFENDANT
LAND REGISTRAR KIRINYAGA COUNTY 8TH DEFENDANT**

RULING

1. Before the Court is a Notice of Motion dated 24th October 2024 brought by the 6th Defendant, Stephen Mugo Toto (the Applicant), seeking diverse orders intended to facilitate forensic examination of fingerprints appearing on various land-related documents exhibited before the Court. The Applicant prays for orders:



1. That this honourable Court be pleased to grant an order directing the Directorate of Criminal Investigation (DCI) – Kiambu Head Office to conduct a forensic examination of the vendor’s fingerprints in the sale of land agreement dated 25th October 1996 to establish whether or not the said fingerprints belong to the deceased, Nyamu Kiura.
2. That this honourable Court be pleased to order that the 1st Plaintiff Julius Njiraini Nyamu fingerprints (left and right) be taken by the Directorate of Criminal Investigation (DCI) Officers – Kiambu Head office for purposes of comparison, matching and confirmation as to whether or not the applicant signed the Sale of Land Agreement dated 25th October 1996.
3. That this honourable Court be pleased to issue an order directing the Directorate of Criminal Investigation (DCI) Officers – Kiambu Head Office to conduct a forensic examination of the vendor’s fingerprint on the acknowledgment slip dated 15th April 1996 to establish whether or not the said fingerprints belong to the deceased, Nyamu Kiura.
4. That this honourable Court be pleased to issue an order directing the Directorate of Criminal Investigation (DCI) Officers – Kiambu Head of Office to conduct a forensic examination of the 1st Plaintiff Julius Njiraini Nyamu’s fingerprint on the sale of land agreement dated 15th February 1997 to establish whether or not the said fingerprints belong to the 1st Plaintiff Julius Njiraini Nyama.
5. That this honourable Court be pleased to issue an order directing the Directorate of Criminal Investigations (DCI) officers – Kiambu Head of Office to conduct a forensic examination of the 1st Plaintiff, Julius Njiraini Nyamu’s fingerprint on the receiving of Title Deed acknowledgment dated 24th August 1997 to establish whether or not the said fingerprints belong to the 1st Plaintiff.
6. That the Land Registrar Kirinyaga County, the County Surveyor Kirinyaga County, or any other relevant officer be ordered to avail the original transfer of land forms dated 23rd January 1997 related to parcel No. Inoi/Kamondo/1946 to the DCI Officers – Kiambu Head Office for purposes of forensic examination of the fingerprints belong to the deceased, Nyamu Kiura.
7. That this Honourable Court be pleased to grant an order directing the Directorate of Criminal Investigations (DCI), Kiambu Head Office, to conduct a forensic examination of the Transferor’s fingerprints in the original transfer of Land Forms dated 23rd January 1997 related to parcel No. Inoi/Kamondo/1946 to establish whether or not the said fingerprint belongs to the deceased, Nyamu Kiura.
8. That the Land Registrar – Kirinyaga County, the County Surveyor Kirinyaga County or any other relevant officer be ordered to avail the following documents to the DCI Officers – Kiambu Head Office for purposes of forensic examination of the fingerprint impressions contained therein namely: Original Mutation Form for Land Parcel No. Inoi/Kamondo/611 dated 25th May 1990, Original Mutation Form for Land Parcel No. Inoi/Kamondo/611 dated 12th April 1996, Original Mutation Form for Land Parcel No. Inoi/Kamondo/1886 dated 9th December 1996 and original Mutation Form for Land Parcel Inoi/Kamondo/1943 dated 28th January 1998.
9. That this Honourable Court be pleased to grant an order directing the Directorate of Criminal Investigations (DCI) – Kiambu Head Office to conduct a forensic examination of the fingerprints in the original mutation form for Land Parcel No. Inoi/Kamondo/611 dated 25th May 1990, Original Mutation form for Land Parcel No. Inoi/Kamondo/1239 dated 12th April



1996 and the original mutation for Land Parcel No. Inoi/Kamondo/1886 dated 9th December 1996 to establish whether or not the said fingerprints belong to the deceased Nyamu Kiura.

10. That this Honourable Court be pleased to grant an order directing the Directorate of Criminal Investigations (DCI) – Kiambu head office to conduct a forensic examination of the 1st proprietor's fingerprints in the original mutation form for Land Parcel No. Inoi/Kamondo/1943 dated 28th January 1998 to establish whether or not the said fingerprint belongs to the 1st Plaintiff, Julius Njiraini Nyamu.
 11. That upon the grant of prayer 1-10 above, the Court do order and/or direct that the forensic examiner's report be filed in Court as expert evidence within 60 days of service of the order.
 12. That the costs of this application be in the cause.
2. The application is supported on the grounds appearing on its face and the Affidavit sworn by the Applicant on the same date. The Applicant states that he purchased one acre of land from the deceased out of land parcel No. Inoi/Kamondo/1239 on 15th April 1996 for Kshs. 125,000/-. The deceased allegedly signed an acknowledgment slip by placing his fingerprint on the document. The transaction was witnessed by the deceased's son, John Muriuki, and wife, Rossy Micere, who also affixed their fingerprints.
 3. He further avers that on 25th October 1996, he entered into a second agreement with the deceased for the purchase of an additional half acre from Inoi/Kamondo/1886 at a consideration of Kshs. 110,000/-. He claims that this sale agreement was similarly signed by the deceased, the 1st Plaintiff, and the 3rd Defendant as witnesses. The Applicant states that the deceased, aware of his deteriorating health, executed all the necessary documents to enable the transfer, including mutation and transfer forms, and it was agreed that the documents would bear the date of presentation to the Lands Office.
 4. To complete the purchase, the Applicant states he enlisted the assistance of the 1st Defendant, who contributed part of the purchase price in exchange for a share of the land. The land parcel No. Inoi/Kamondo/1886 was subdivided into Inoi/Kamondo/1943 – 1946, with parcel No. 1946 measuring 0.21 hectares being registered jointly in the name of the Applicant and the 1st Defendant on 23rd January 1997.
 5. Following the death of the deceased, the Applicant states that the deceased's wife and son, Rossy Micere and John Kariuki, executed a further acknowledgment (sale agreement) on 15th February 1997 confirming receipt of Kshs. 97,300/- from the Applicant and the 6th Defendant. This, he says, was also witnessed by the 1st Plaintiff.
 6. The Applicant states that land parcel Inoi/Kamondo/1946 was later subdivided into two parcels: Inoi/Kamondo/3110 and 3111, which were registered in the names of the 1st and 6th Defendants respectively. The Applicant contends that the entire process was legal, procedural, and duly consented to by the deceased and his family, and was supported by written agreements.
 7. In response to allegations of fraud raised in the suit, the Applicant urges the Court to allow the DCI to conduct forensic analysis on various original documents, sale agreements, acknowledgment slips, mutation forms, and transfer forms to confirm the authenticity of the fingerprints therein and prove that they belong to either the deceased or himself.
 8. The 2nd Defendant and the Plaintiffs opposed the application vide Grounds of Opposition dated 30th October 2024 and 2nd November 2024 respectively. Their objections are broadly similar and based on three main grounds:



1. That the application seeks to engage in criminal investigations, which falls outside the jurisdiction of the Environment and Land Court, pursuant to Article 162(2)(b) of *the Constitution* as read with Section 13 of the *Environment and Land Court Act*.
 2. That the Court lacks jurisdiction to direct the Directorate of Criminal Investigations on how to carry out investigations, as doing so would violate Article 245 of *the Constitution*, which secures the independence of the National Police Service.
 3. That the application is speculative, lacking a clear legal basis, and constitutes an abuse of the Court process.
9. On 6th November 2024, the Court directed that the application be dispensed through written submissions.
10. Having carefully considered the application, the Supporting Affidavit, the grounds of opposition, and the applicable legal framework, the following issues arise for determination:
1. Whether this Court has jurisdiction to grant orders compelling the Directorate of Criminal Investigations to conduct forensic fingerprint analysis on the documents identified in the application.
 2. Whether the orders sought are merited in the circumstances of the case.

On Jurisdiction

11. It is not in dispute that this Court is clothed with jurisdiction to hear and determine disputes relating to the environment, the use and occupation of, and title to land pursuant to Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
12. In the present matter, the issue is ownership and title to land, and whether certain documents were fraudulently executed. The Applicant seeks to authenticate contested documents through forensic fingerprint analysis conducted by the DCI. The question is whether this Court can issue such orders on the application of a party when the other party objects.
13. Article 245(4) of *the Constitution* provides that no person may direct the Inspector General of Police with respect to the investigation of any particular offence. This is to safeguard the independence of the investigative function. However, the Applicant is not seeking to trigger a Criminal investigation per se, but to adduce expert evidence that he contends is relevant to the Civil dispute.
14. This Court takes the view that where a party seeks to obtain forensic analysis for use in a civil land dispute particularly where fraud or forgery is alleged such evidence may be admissible if properly produced. The Court is not barred from allowing a party to file a forensic report from a competent authority such as the DCI. However, there is no legal basis upon which the Court can, in Civil matters make a compelling orders for purposes of obtaining evidence at the instance of a party. The Court is an arbiter in the dispute and cannot be used by one party in the dispute to gather evidence for use in the case. The Court in such eventuality may unwillingly find itself drawn in the arena of the dispute. It is the parties who bear the burden of proving what they allege and/or rebutting the evidence preferred by the opposing party. See Sections 107 – 109 of the *Evidence Act*, Cap 80 Laws of Kenya.
15. Accordingly, the jurisdiction of this Court extends to admitting such evidence if lawfully obtained but not to directing the DCI to conduct investigations or file reports within specified timelines at the instance of a party. Doing so would offend Article 245(4) of *the Constitution* and could interfere with the independence of the Institution charged with investigative functions.



16. The application prays for wide ranging orders covering numerous documents including sale agreements, acknowledgment slips, mutation forms, and transfer forms spanning several years. While the Applicant asserts that these documents bear fingerprints of either the deceased or himself, no evidence has been presented to demonstrate that efforts have been made to obtain those documents for examination through other legal mechanisms such as discovery.
17. Moreover, the Applicant has not demonstrated that the DCI has refused to cooperate, or that the intended forensic analysis cannot be procured privately or through an independent expert, as contemplated under Sections 48 to 50 of the *Evidence Act*. It is also unclear whether any official request has been made to the DCI or whether the DCI is amenable to such examination.
18. While the Applicant may be entitled to defend his case using expert evidence, it is not the function of the Court to initiate or direct the forensic process. The Applicant remains at liberty to obtain an expert report, including from the DCI, and to apply to have the same admitted as part of his evidence at the appropriate stage in the proceedings, subject to the usual evidentiary rules and cross-examination.
19. The Court is not satisfied there is a basis on which the orders sought in the application can be granted. The burden to establish the authenticity of the documents that the Applicant relies on rests on him. It is not for nothing that under Section 3(3) of the *Law of Contract Act*, Cap 23 Laws of Kenya requires that a contract for disposition of an interest in land be in writing and that the execution by the parties to the agreement be witnessed by independent witnesses who are present at the time of the execution. These are the persons who would be expected to testify in proof of such document.
20. The upshot is that I find no merit in the Applicant's Notice of Motion application dated 24th October, 2024 and I hold the same constitutes an abuse of the Court process and is ordered dismissed with costs to the Plaintiffs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY OF SEPTEMBER 2025

J. M. MUTUNGI

ELC - JUDGE

