



**Warui v Muhia (Environment and Land Appeal E006 of 2023)  
[2025] KEELC 6534 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6534 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT AND LAND APPEAL E006 OF 2023  
LN MBUGUA, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**REBECCA WAIRIMU WARUI ..... APPELLANT**

**AND**

**MARGARET WANJIKU MUHIA ..... RESPONDENT**

*(Being an appeal from the judgement of Hon S. Mogute (S.P.M.)  
delivered in Nyahururu CM ELC No106 of 2018 on 11.10.2023)*

**JUDGMENT**

1. The respondent/plaintiff filed the suit before the trial court vide a plaint dated 3.9.2014 claiming that she was allocated the suit parcel Unsurveyed Residential plot no. R129 Nyahururu in Maina estate vide a letter of allotment dated 2.11.1992 by the Commissioner of lands. She has been paying the dues to the relevant authorities. However, in January 2013, the plaintiff realized that the defendant, now the appellant had constructed semi permanent dwellings on the suit premises.
2. The plaintiff therefore prayed for judgment against the defendant in the following terms;
  - a) An order for defendant’s forcible eviction from Unsurveyed Residential Plot no. R. 129 Nyahururu (Maina Village)
  - b) General damages for trespass to land plus interest thereon at court’s rate.
  - c) Costs of the suit plus interest thereon at court’s rate.
  - d) Any other or better relief deemed fit by the honourable court”.



3. The defendant opposed the suit through her statement of defence dated 30.9.2014 where she denies the averments set out in the plaint. Her case is that vide a sale agreement dated 16.4.2005, she bought the suit parcel from its legal allottee namely John Waboro Mwangi.
4. At the trial, the plaintiff Margaret Wanjiru Muhia testified as PW1 reiterating the averments set out in her plaint. In support of her case, she produced the allotment letter, plot allotment document, bundle of receipts, a letter of complaint, summons to go to chief's office, the agreement of 18.3.2013, demand notice, the response thereof and a valuation report as her exhibits.
5. On cross examination, Pw1 stated that the plots had been advertised on the notice board of Nyahururu Municipality, she asked for the plot and got the ballot no. 129. She did not pay the required charges in time. She paid later after seeking for an extension in writing. Her plot was residential whereas that of defendant was industrial.
6. In re-examination, Pw1 stated that there was no communication that her plot had been repossessed. She avers that she found the building on her land in year 2013 and it was new.
7. The proceedings of 24.11.2021 upto 25.1.2022 in which the defendant/ appellant gave her evidence in chief are missing in the record of appeal. I have however traced the aforementioned typed records in the original file hence the appellant will not be penalized for that omission.
8. The Defendant Rebecca Wairimu Warui testified as DW1. Her case is that John Waboro Mwangi gave her the suit plot in year 2002 to be taking care of it then he sold the said plot to her in year 2005. She then constructed a house, planted trees at the boundaries, put up a fence and also installed water and electricity. No one turned up to stop her from putting up these developments until year 2013 when a lady turned up claiming the suit plot.
9. Thereafter, she was called to go to the assistant chief and she found that a letter had been written, she signed it to stop the demolitions on the property seeing that she was straight from the hospital. When she recovered, someone read the letter to her which was indicating that she would vacate the suit plot within 6 months.
10. In support of her case, the defendant also produced several documents as exhibits including, the letter of allotment and ID Card, photographs of the suit premises, the letter of 18.3.2013, letter of 12.7.2013, 29.8.2013, 9.9.2014, notice of 12.8.2015, valuation report of 31.5.2019 and treatment notes of 17.3.2013.
11. On cross examination Dw1 stated that the agreement of 16.4.2005 refers to an industrial plot in respect of the suit plot, but the plots in her area are residential. She was not given any receipts or acceptance letter, she has never paid any rates and she was not given a transfer. She contends that she was unwell when she was summoned to go to the chief.
12. On re-examination, Dw1 stated that no one told her to leave the suit land and she was not asked to pay any monies either.
13. DW2 one Stephen Kihenjo Mwaura introduced himself as an assistant director land administration working at the ministry of lands, of which in year 2014, he was stationed at Nyahururu as a District Land Officer. He was dealing with unregistered parcels of land. Maina Village where the suit plot is located was within his jurisdiction.
14. That he received a letter dated 9.9.2014 seeking particulars of the legal owner of plot R. 129 in Maina village. He responded through the letter dated 18.9.2014 where he stated that the plot has two letters of allotments.



15. On cross examination, Dw2 stated that it was not possible for a residential area to have allocations for light industries, adding that they allocated plots through direct allocation or plot allocation committees and that the letters of allotments had to be authenticated of which P. exhibit 1 was authenticated.
16. Dw2 was not aware if the dispute had been brought to their office for resolution. However, both the Commissioner of Lands and the District Land office have records of the suit plot and he could look for those records if given an opportunity.
17. With that evidence, counsel for the plaintiff applied for the witness to be stood down to avail the records of the plot in question. The application was allowed, but Dw2 did not turn up thereafter. The defence case was then closed and none of the parties raised an issue in regard to the incomplete evidence of Dw2.
18. In a judgment delivered on 17.10.2023, the plaintiffs claim was allowed in terms that the defendant was to be evicted from the suit parcel, the plaintiff was awarded general damages for trespass at Kshs. 120 000 as well as costs of the suit and interest.
19. Aggrieved by the aforesaid decision, the defendant/ appellant filed her memorandum of appeal on 31.10.2023 raising seven (7) grounds of appeal enumerated as follows;
  - i. That the learned magistrate erred in law and in fact in finding that the respondent Margaret Wanjiku Muhia was the legal allottee of Unsurveyed Residential Plot No. R129, Nyahururu (Maina Village).
  - ii. That the Leanred Magistrate erred in law and in fact in failing to find tha the respondent Margaret Wanjiku Muhia had not accepted the offer in the letter of allotment dated 2/11/1992 Ref No. 68966/11 in writing and had not met the mandatory conditions attached to the offer to include payment of Kshs. 4,690/- being stand premium within a period of 30 days as stipulated in the letter of allotment and thus she did not own the plot.
  - iii. That the Learned Magistrate erred in law and fact in failing to find that the respondent Margaret Wanjiku Muhia was incapable of sustaining a suit on Plot No. R129, Nyahururu (Maina Village) for eviction and payment of damages against the defendant based on her evidence and documents produced in court.
  - iv. That the Learned Magistrate erred in law and in fact in ignoring the evidence of DW2 Director of Land Administration that the letter of allotment issued to the respondent and the one issued to John Waboro Mwangi were authentic and it amounted to double allocation.
  - v. That the Learned Trial Magistrate erred in law and in fact in ignoring the defendant's rights as a person in possession and for ordering for her eviction.
  - vi. That the Learned Trial Magistrate erred in law and in fact in applying the wrong principles in awarding Kshs. 120,000/- as damages for trespass which damages were not proved nor supported by evidence and were excessive in the circumstances.
  - vii. That the Learned Magistrate erred in law and in fact in failing to consider the defendant's evidence, documents and written submissions while deciding the case".
20. The appellant therefore prays for judgment that the appeal be allowed with costs and that the plaintiff's suit before the trial court be dismissed with costs.
21. The appeal was heard by way of written submissions. The submissions of the appellant are dated 6.5.2025 where it is argued that the respondent did not discharge the burden of proof as set out at Section 108 of the *Evidence Act* in that the respondent never paid the amounts set out in the letter of



allotment, she had no acceptance letter, that her receipts are from Nyahururu Municipal council and not the ministry of lands or Commissioner of lands. To this end, reference was made to the case of *Joseph N. K. Arap Ngok v Moiyo Ole Keiwa & 4 Others* (1997) Eklr and *Ali Mohamed Dagone v Hakar Absbir & Others* ELC Case no. 65 of 2017.

22. It was further submitted that the appellant had clearly identified her plot as per the PDP attached to the letter of allotment dated 2,11,1992. That this being a case of double allocation where none had complied with terms of the offer, then her rights as the person in possession ought to have taken precedence.
23. It was also argued that there was no basis for the award of Kshs. 120 000 as no evidence was tendered to show what loss the respondent had suffered.
24. The submissions of the respondent are dated 30.7.2025 where she reiterates her evidence that she is the lawful owner of the suit plot, adding that the appellant could not prove ownership of the suit plot with just a sale agreement. She also refutes the averments advanced by the appellant that this was a case of double allocation. She contends that the trial court found the appellant to be a trespasser, hence damages were rightfully awarded.
25. In support of her case, the respondent relied on several authorities including *Stanley N Muriithi & Another v Bernard Munene Ithiga* [2016] KECA 821 (KLR), *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022, *Kenya Power & Lighting Company Ltd v Ringera & 2 Others* (Civil Appeal E247 & E248 of 2020 (Consolidated) [2022] KECA 104 (KLR) (4 February 2022) and *Place Investment Ltd v Geoffrey Kariuki Mwenda & Another* (2015) eKLR.

## Determination

26. This being a first appeal, the court reminds itself of its primary role to re-evaluate, re-assess and re-analyse the evidence and then determine whether the conclusions reached by the learned magistrate are to stand and give reasons either way as was pronounced in the celebrated case of *Selle and Another Versus Associated Motor Boat Company Ltd & Others* [1968] EA 123, and *Abok James Odera t/a A.I Odera & Associates Vs John Patrick Machira t/a Machira & Co. Advocates* (2013) eKLR.
27. I have looked at the pleadings, the evidence, the trial court's judgment as well as the submissions proffered herein. The question falling for determination is whether the trial court erred in allowing the respondent's claim of the suit parcel as well as awarding damages for trespass.
28. I find that one of the reasons as to why plaintiffs claim was allowed by the trial court was on the admission letter before the chief dated 18.3.2013 where the appellant apparently agreed to vacate the suit premises. The trial court was not satisfied that the appellant was coerced into executing the said agreement. A scrutiny of the document (Plaintiff exhibit 6) reveals that the document was only signed by the two protagonists, it was not witnessed by any one, it only has the stamp of the assistant chief.
29. In her evidence in chief, the appellant had this to say about the agreement;

“I was summoned by the assistant chief after that lady reported there and this was after I reported to him that the lady was claiming the plot was hers. I was called on phone and I went there where I found that the letter was written. I was to sign and she had stopped the demolition and so I was read for the letter, I signed it and it was given the same to me. The letter was read to me and I was told that the same was stopping the demolition of my home. I was sick as I was from the hospital the previous day and so I never bothered with the letter for I was told the same was to stop demolition of my house”.



30. I find that on a balance of probabilities, the appellant gave a plausible account of how she signed the letter. She feared the demolition of her house. To this end, the trial court should not have given any probative value in the document of 18.3.2013 in arriving at its conclusion.
31. It is pertinent to note that each of the claimant was waving an allotment letter issued the same date of 2.11.1992, but none of the claimants has a title. The appellant argues that this was a case of double allocation thus the person in occupation, herself should have the land.
32. In the case of *Danson Kimani Gacina & another v Embakasi Ranching Company Ltd* [2014] eKLR, the court had this to say in relation to such claims;
- “The law on unregistered land, unlike on registered land, is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered, then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property”.
33. In the case at hand, the respondent had availed the plot allocation document dated 29.10.1992 in which the Nyahururu Municipal Council was offering her a plot in response to her application; The contents thereof reads as follows;
- “I am pleased to inform you that following your application and subsequent ballot you were allocated plot UNS R. 129 in Nyahururu Municipality. A letter of allotment thereof will be issued in due course..”
34. True, the letter of allotment was issued shortly thereafter on 2.11.1992. The evidence contained in this letter is corroborated by respondent’s own evidence where she avers that she had seen the advertisement on the Notice Board of the municipality, she then applied for the plot, got ballot no. 129 and was then issued with the allotment letter. This evidence is buttressed by the evidence of Dw2 who stated that they were allocating plots through direct allocation or plot allocation committees.
35. On the other hand, the appellant in her own words states that the documents she got from the seller, John Waboro Mwangi were the allotment letter and the ID card. What I discern from the evidence of Pw1 and Dw2 is that the letter of allotment came about after a process of allocation. And in the case at hand, the respondent had given evidence of the root of her allotment letter. The appellant had none.
36. Another issue for consideration is that the allotment letter for the respondent referred to residential plot, that of the appellant was for light industries. During cross examination, Dw2 stated that “its not possible for a residential plot to be allocated “a light industry plot” adding that R stood for zoning. It follows that this was not a case of double allocation as alluded to by the appellant as the plots were not in the same zoning area.
37. This far, I find that the respondent had proved her case on a balance of probabilities. Thus the judgment of the trial court in relation to the claim of ownership must stand.
38. On damages, the appellant admits to being in occupation of the suit property. The court below as well as this court have pronounced that the plot belongs to the respondent. It follows that the appellant is a trespasser, hence an award of damages was an appropriate remedy. I therefore decline to disturb the judgment of the trial court on the award of damages.



39. In the end, this appeal is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2025  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Vanessa CA

Maina Kairu for the Appellant

Muigai H/B for Ndegwa for the Respondent

