



**Wachira (Suing as the Administrator of the Estate of Francis Wachira Karubiu) v Murage (Environment and Land Appeal E007 of 2021) [2025] KEELC 6256 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6256 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**  
**ENVIRONMENT AND LAND APPEAL E007 OF 2021**  
**JM MUTUNGI, J**  
**SEPTEMBER 26, 2025**

**BETWEEN**

**WINNIE KARIUKO WACHIRA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF FRANCIS WACHIRA KARUBIU) ..... APPELLANT**

**AND**

**BEATRICE WAIRIMU MURAGE ..... RESPONDENT**

*(Appeal from the Judgment of the Gichugu Principal Magistrate's Court in Civil case No. 2 of 2018 delivered on 29th March 2021 by Hon. Leah Wandia Kabaria (Principal Magistrate))*

**JUDGMENT**

1. The present Appeal is against the Judgment delivered by Hon. Leah Wandia Kabaria (PM) in Gichugu Principal Magistrate's Court Civil Case No. 2 of 2018 on 29<sup>th</sup> March 2021. By the Judgment the Learned Magistrate dismissed the suit by the Appellant, who was the Plaintiff before the Lower Court holding that the Appellant had failed to prove that the suit property was matrimonial property, or that spousal consent was required to effect the transfer to the Respondent (Defendant in the Lower Court). The Trial Magistrate further held there was no evidence of fraud to substantiate the fraud allegations.
2. The Appellant aggrieved and dissatisfied with the Judgment of the Learned Magistrate has appealed to this Court against the Judgment listing 6 grounds of Appeal as follows:-
  1. That the Honourable Learned Magistrate erred in law and fact in making a finding that L/UP No. 257 Kianyaga was not matrimonial property.
  2. That the Honourable Learned Magistrate erred in law and fact by disregarding the evidence of the Appellant.



3. That the Honourable Learned Magistrate erred in law and fact in failing to make a finding that the transfer of that L/UP No. 257 Kianyaga to the Respondent was tainted with illegality and the Appellant being the legal wife did not consent to the transfer as a spouse.
  4. That the Honourable Learned Magistrate erred in law and fact in failing to make a finding that the evidence of the Respondent was marred with inconsistency and as such could not be relied upon.
  5. That the Honourable Learned Magistrate erred both in law and fact for considering irrelevant matters and against the weight of the evidence on record in arriving at the said decision in favour of the Respondent's as against the Appellant.
  6. That Honourable Learned Trial Magistrate erred in law and fact in failing to consider or even adequately adopt and appreciate the written submissions of the Plaintiff on record and the authorities annexed therein in support of the Appellant's case.
3. The Appellant therefore prays that the Learned Magistrate's Judgment be set aside and the costs of the Appeal be awarded to the Appellant.
  4. The brief facts of the Appeal are that the Appellant was the wife of Francis Wachira Karubiu (deceased) and they solemnized their marriage on 28<sup>th</sup> November 1992. Her late husband was the owner of plot Lock Up 257 Kianyaga within Kirinyaga County ("the suit property"). The Appellant averred that her husband died on 18<sup>th</sup> May 2016, aged 62 years and that on or about 20<sup>th</sup> June 2016 she discovered that the suit property had been registered in the Respondent's names with the approval of the County Government which prompted her to lodge a caution with the Chief Officer Lands, Housing and Development, County Government of Kirinyaga. The Appellant contended that the property was matrimonial property and she had not given spousal consent for the property to be transferred to the Respondent's name. She stated her late husband did not have any lawful partnership with the Respondent and the transaction vesting ownership of the suit property with the Respondent was fraudulent, illegal and null and void for want of spousal consent. The Appellant in the Plaint prayed inter alia for Judgment/orders:-
    - a. The Plaintiff claim against the Defendant is for declaration that the said partnership, withdrawal of partnership by the deceased and subsequent registration of the Defendant was illegal, unlawful, fraudulent and therefore null and void abinitio and therefore there was no partnership capable of transferring of L/UP No. 257 Kianyaga and: -
    - b. An order for cancellation of the names of the current registered persons in respect of L/UP No. 257 Kianyaga and that the said L/UP No. 257 Kianyaga be reinstated in the names of Francis Wachira Karubiu (deceased).
  5. The Respondent filed a defence dated 3<sup>rd</sup> February 2018. In the Defence she averred she was the lawful proprietor of the suit property. She denied the Appellants claim that the property was fraudulently and illegally registered in her name. She contended the Appellant had no cause of action against her and reiterated she was the lawful and rightful owner of the suit property.
  6. Both the Appellant and the Respondent testified before the Lower Court as the sole witnesses in support of their respective claims.
  7. The Appellant's evidence was to the effect that after her husband's death in 2016 she went to check on his property and that was when she found the Respondent at the plot in question and the Respondent claimed the plot belonged to her. It was the Appellant's evidence that as the wife of the deceased, who



was the owner of the suit plot, her consent was mandatory for the plot to be transferred and her consent was not sought or obtained before the plot was transferred to the Respondent. The Appellant affirmed her late husband was working and living at Kianyaga while she was living at Kerugoya. She stated she did not know who her husband was living with at Kianyaga. She denied she and her late husband had separated in 1999 as claimed by the Respondent. The Appellant stated she began to locate her late husband's properties after he died and that is when she discovered the Respondent was on the suit plot.

8. The Respondent in her evidence affirmed she was living on the suit plot as her own. It was her evidence that she was living with the deceased as his 2<sup>nd</sup> wife. She stated the plot was transferred to her by her husband so that they could construct on the same. She testified the plot was transferred to her in 2015 although she started living in the plot in the year 2007 and was still living there. In cross examination the Respondent stated the deceased married her in 2006 though dowry was taken to her home in 1999. She stated since the plot was transferred to her name she pays rates to the County Government.
9. The Appeal was canvassed by way of written submissions. The Appellant's submissions are dated 24<sup>th</sup> February 2025 while those by the Respondent are dated 2<sup>nd</sup> May 2025. I have reviewed the Record of Appeal and considered the evidence presented before the Learned Magistrate. I have further perused and considered the submissions filed on behalf of the parties. In my view this appeal turns on the determination of a singular issue;

Whether the suit plot L/UP No. 257 Kianyaga was a matrimonial property within the meaning of Section 6 of the *Matrimonial Property Act*, 2014 and if so whether spousal consent was a prerequisite before the property could be transferred to a third party?

10. Section 6(1) of the *Matrimonial Property Act*, 2014 provides as follows:-

6(1) For the purposes of this *Act*, Matrimonial Property means:-

- a. The matrimonial home or homes;
- b. Household goods and effects in the matrimonial home or homes; or
- c. Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

11. From the Appellant's evidence the suit property was not being used by her and her late husband as their matrimonial home. The Appellant testified that she was living in Kerugoya while her husband was living in Kianyaga. She stated her late husband would visit her on Fridays and go back to work on Mondays. At any rate the Appellant explained that it was after the death of her husband that she visited the suit plot and discovered the Respondent was living there. It is evident therefore, the suit property was not being utilised as a matrimonial home by the Appellant. Hence any household goods thereon could equally not qualify to be classified as matrimonial property.
12. Further no evidence was led to show when the suit property was acquired by the Appellant's late husband. Was it before their marriage in 1992 or after? If before then the property was not acquired during the subsistence of the marriage and therefore would not qualify as Matrimonial Property. Under Section 79(3) of the *Land Act*, 2012 spousal consent is only required where the charge is over a Matrimonial home. It provides as follows:-
  - (3) A charge of a matrimonial home, shall be valid only if any document or form used in applying for such a charge, or used to grant the charge, is executed by the chargor and any spouse of the chargor living in that matrimonial home, or there is evidence from the document that it has been assented to by all such persons".



13. There is no legal requirement that property that is not matrimonial property would require spousal consent before it can be dealt with by the registered owner.
14. In the present matter it is my determination that there was no proof that the suit plot was matrimonial property and/or that spousal consent was required before it could be transferred to the Respondent. I hold that the property was not matrimonial property and that no spousal consent was required for the transfer to be effected to the Respondent. The Appellant's claim for illegality and fraud was predicated on the assumption that the suit property was matrimonial property and that spousal consent was required. It was not. In the premises no fraud and/illegality was proved. There is no basis upon which I could fault the Learned trial Magistrate and I hold she properly and rightly appraised the evidence and reached the correct decision.
15. The Appeal lacks merit and I dismiss the same but make no order for costs of the Appeal. Each party to bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

