



**Mang'ara v Muchiri & another (Civil Appeal 122 of 2020)  
[2025] KECA 1606 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1606 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL 122 OF 2020  
J MOHAMMED, AO MUCHELULE & LK KIMARU, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**GERISHON NGURE MANG'ARA ..... APPELLANT**

**AND**

**PATRICK NG'ANG'A MUCHIRI ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MUCHIRI GACHUHI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the judgment of the Environment and Land Court  
at Murang'a (J.G. Kemei J.) dated 3rd October 2019 in ELC NO. 198 OF 2017)*

**JUDGMENT**

1. This appeal challenges the judgment of the Environment and Land Court (ELC) (J.G.Kemei, J.) delivered on 3<sup>rd</sup> October 2019.
2. Patrick Ng'ang'a Muchiri (the 1<sup>st</sup> respondent) by a plaint dated 9<sup>th</sup> February 2017, claimed to be co-owner of Plot LOC 16/Gatura 447/51 situated in Muranga County (the suit property) with his two deceased brothers, David Gachuhi Muchiri and Ernest Ndungu Muchiri purchased from one Grace Wanjiru and registered in their names. He alleged that in 2016 he discovered that Gerishon Ngure Mang'ara (the appellant) had, without consent, constructed permanent structures and was conducting business on the suit property, amounting to trespass. Reliefs sought included eviction, demolition, injunction, damages, mesne profits, and costs.
3. The appellant's defence was that he purchased the suit property in 1999 from David Gachuhi Muchiri (the 2<sup>nd</sup> respondent) in the presence and with the approval of John Muchiri Gachuhi who is the 1<sup>st</sup> respondent's father, for valuable consideration and had developed permanent structures thereon with the knowledge of the 1st respondent. He denied trespass, asserting lawful occupation.



4. The 2<sup>nd</sup> respondent, joined as third party, admitted purchase of the suit property in 1995 and registration in his sons' names but alleged that the family later agreed orally to sell to the appellant. He denied receipt of sale proceeds and maintained that the appellant developed the property openly.
5. The trial court in its judgment found inter alia that the 1<sup>st</sup> respondent had locus standi under Section 91(2) of the Land Registration Act (LRA) as tenant in common, to protect the whole property; that the 2<sup>nd</sup> respondent had no legal or equitable title and lacked authority to sell; that the purported 1999 sale was null and void; and that the appellant, lacking valid title, was a trespasser. The trial court awarded general damages of Kshs.500,000.00 against the appellant and the 2<sup>nd</sup> respondent was ordered to indemnify the appellant the sum of Kshs.100,000. Further, the appellant was ordered to vacate the suit premises within 60 days, demolish structures erected thereon, and was permanently restrained from re-entry. Costs were awarded to the 1<sup>st</sup> respondent.
6. Dissatisfied with that decision, the appellant filed the instant appeal.

### **Submissions by counsel**

7. At the hearing of the appeal, the appellant and the 1<sup>st</sup> respondent, who were represented by counsel had filed written submissions. The appellant was represented by Messrs Kirubi, Mwangi Ben & Co. Advocates who submitted that the 1<sup>st</sup> respondent lacked locus standi absent letters of administration or compliance with Order 1 Rule 8 of the Civil Procedure Rules; that the appellant was an innocent purchaser for value, misled by the 2<sup>nd</sup> respondent's misrepresentation of ownership; that the 1<sup>st</sup> respondent was aware of construction on the suit property since 2005 yet delayed filing suit until 2017; that the equitable remedy should have been compensation of Kshs.2.8 million for developments, not demolition; and that the award of damages for trespass was unpleaded, unproven, and excessive.
8. The 1<sup>st</sup> respondent was represented by Messrs. Kaka Kamau & Co. Advocates who submitted that the 1<sup>st</sup> respondent was the only surviving registered owner of the suit property and had standing to sue; that the appellant's occupation of the suit property was unlawful as the 2<sup>nd</sup> respondent lacked authority to sell; that a person without title is a trespasser as held in *Mbira v. Gachuhi* [2002] 1 EA; and that the trial court correctly applied the law. Counsel asserted that the appeal was devoid of merit and should be dismissed with costs.

### **Determination**

9. We have considered the record, the submissions filed, the authorities cited and the law.
10. As a first appellate court, our role is to re-evaluate evidence afresh (*Selle v. Associated Motor Boat* [1968] EA 123).
11. We discern the following issues for determination:
  - a. Whether the 1<sup>st</sup> respondent had locus standi to protect the suit property from trespass;
  - b. Whether the 2<sup>nd</sup> respondent had authority and capacity to dispose the suit property;
  - c. Whether the appellant was entitled to compensation for any loss in respect of the suit property; and
  - d. Whether the 1<sup>st</sup> respondent was entitled to an award of damages of Kshs.500,000 for trespass.
12. On the question of locus standi, the suit property was registered in the names of the 1st respondent and his two deceased brothers. Section 91(2) of the Land Registration Act (LRA) provides that unspecified



co-ownership is presumed tenancy in common. Each tenant holds an undivided share and on death, a share devolves to the estate (section 91(5) LRA). In the instant case, the 1st respondent, as surviving co-owner, had standing to protect the whole suit property from trespass. We therefore find that the trial court rightly found that the 1<sup>st</sup> respondent had locus standi to file suit in respect of the whole suit property.

13. Regarding ownership of the suit property and whether the 2<sup>nd</sup> respondent had capacity to sell the suit property, the records confirmed that ownership in 1995 was vested in the 1st respondent and his two brothers. Further, that the 2<sup>nd</sup> respondent was not a registered owner and lacked authority to dispose of the suit property. The purported 1999 sale was therefore void ab initio. In the circumstances, no valid title passed to the appellant and his reliance on misrepresentation by the 2<sup>nd</sup> respondent could not confer legal rights.
14. Regarding compensation for developments erected on the suit property, the appellant sought Kshs.2.8 million, but failed to plead or counterclaim this relief. It is settled law that parties are bound by their pleadings. As stated in *Caltex Oil (Kenya) Ltd v. Rono Ltd* [2016] KECA 457, courts cannot grant unpleaded remedies. We find that while the appellant may have invested in good faith, his claim was procedurally defective and cannot succeed. Equity cannot override statutory requirements.
15. Regarding damages for trespass, an assessment of damages lies within the trial court's discretion. We find that the award of Kshs.500,000 was proportionate to the duration of trespass and unchallenged by evidence.
16. We therefore find that no error of principle has been demonstrated and we decline the invitation to interfere.
17. Having re-evaluated the evidence, we find that the appellant relied on a void sale and failed to protect his interests by effecting transfer or paying rates. We find that the trial court properly found him a trespasser.
18. In the result, we find that the appeal lacks merit and is hereby dismissed with costs to the 1<sup>st</sup> respondent. The judgment and orders of the trial court are affirmed in full.
19. Orders accordingly.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed



**DEPUTY REGISTRAR**

