



**Gichobi v Gathua (Environment and Land Appeal E004 of 2022)
[2025] KEELC 6855 (KLR) (6 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6855 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E004 OF 2022**

AK BOR, J

OCTOBER 6, 2025

BETWEEN

SAMWEL MURIITHI GICHOBI APPELLANT

AND

MARGARET WAMBUI GATHUA RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of Hon W. Ngumi, Principal Magistrate, delivered on 13/4/2022 in Siakago PM ELC Case No. 12 of 2020 Margaret Wambui Gathua v Samuel Muriithi Gicobi, which the Respondent, instituted vide the plaint dated 2/9/2020 seeking eviction of the Appellant from land known as Mbeere/Wachoro/1850 and a permanent injunction to restrain him, his family and agents from claiming, entering into, working or remaining on the suit land. She sought to have the Officer Commanding Station, Kiritiri oversee the eviction exercise and the costs of the suit.
2. The Respondent's case as pleaded in the plaint was that she was the registered owner of the land known as Mbeere/Wachoro/1850 measuring 0.09 hectares (the suit land), which was allocated to her during the adjudication process and a title issued to her on 2/5/2017. She averred that on or about 2014 and 2015, while inspecting her parcels of land, she noticed a structure on the edge of the suit land, which had been erected by the Appellant without her authority. She stated that upon inquiry, the Appellant stated that he would move out of the suit land but he later started claiming to be a purchaser. She averred that the Appellant's acts amounted to trespass and pleaded particulars of trespass against the Appellant.
3. The Appellant filed a defence in which he denied that the Appellant owned the suit land and further denied the particulars of trespass set out against him. He contended that he purchased the suit land from Margaret Wambui Karani and that he had been in lawful possession and occupation of the land for over 13 years and had put up permanent buildings on the suit land. The Respondent filed a reply to the defendants defence and reiterated the contents of her plaint.



4. At the hearing before the Learned Magistrate, the Respondent adopted her written statement as her evidence in chief and stated that she was allocated the suit land around 1979 amongst other parcels of land. In 2014 or 2015 she was hospitalized in Nairobi and went to live with one of her daughters. When she returned home, she found that the Appellant had put up a structure in the form of a shop on her land claiming that he had bought it from someone she did not know. She maintained that she had not sold the land to anyone.
5. On cross examination, she stated that the Appellant occupied the land in 2016. She spoke to him but he refused to vacate the land and that is when she decided to come to court. It was her testimony that the title deed was erroneously issued in the name of Margaret Wangui, which is not her name. She testified that she got the title in 2019 and that she noticed the mistake when she collected the title deed. She stated that she was told that an affidavit could correct the mistake. She confirmed that there was no other document that refers to her as Margaret Wangui. She also stated that she had not made any effort to correct the name because the title was with the bank since she used it as security for a loan. She tendered in evidence copies of the title deed for the suit land, the affidavits she swore on 21/6/2019 and 5/4/2017, bank statements and loan facility form from Progressive Credit Bank Limited, photograph and demand letter
6. Similarly, the Appellant adopted his written statement as his evidence in chief where he stated that the Respondent was a stranger to him. He claimed that he acquired the suit land through a sale agreement dated 31/7/2007, which he entered into with Margaret Wambui Karani at the agreed price of Kshs. 30,000/=. He claimed that he paid the full price and was put in vacant possession of the land. Before negotiating the consideration, he visited the adjudication office at Kiritiri and confirmed that the land belonged to Margaret Wambui Karani. He claimed that he was shown the adjudication record for verification and was given a copy showing the land as plot no. 1850. He claimed that Margaret Wambui Karani was allocated the plot by the allocating committee and that the land was initially marked plot no. 129 and later changed to plot no. 1850.
7. He testified that they entered into an agreement in the presence of village elders and that the agreement was signed by the area Chief, who affixed his official stamp. That upon taking possession in 2007, he erected a permanent building on and has occupied the land without interference. He stated that when the government started issuing title deeds for land within Wachoro Adjudication area, he visited the relevant offices to undertake the process of transferring the suit land from Margaret Wambui Karani's name to his name. However, he was informed that the title deed for the suit land had been collected by someone else. He informed Margaret Wambui Karani, who was unaware of that position. He was advised by the Land Registrar to place a caution against the land, which he did. He also reported the matter to the local area Chief who summoned the Respondent over the issue but the Respondent failed to comply.
8. On cross examination, he told the court that the person who sold him the land was Margaret Wambui Karani and that she told him that the land was hers. He stated that plot no. 1850 measured $\frac{1}{4}$ of an acre and that they did not go to the Land Control Board because they did not have a title. They did not sign transfer forms for they were advised to wait for the title deed. He produced a copy of the sale agreement dated 31/7/2007 written in Kikuyu language and translated into English, the record from the adjudication office and an official search for the suit land.
9. The Appellant called Margaret Wambui Karani to give evidence. She adopted her written statement as her evidence in chief and confirmed that she knew the Respondent whom she sold plot no. 1850 to, and that the plot was previously registered as plot no. 129 by the then allocating committee. She claimed that she was allocated the suit land in 1979 and the allocation was confirmed by the



adjudication authority and she was issued with an allocation document. She stated that immediately upon allocation, she took possession and commenced cultivation as required by the adjudication authority. That on 31/7/2007, she had a financial problem and decided to dispose of the suit land to the Appellant whom she put into vacant possession. She added that at the time of the sale transaction, the title deed of the plot had not been issued, and she was surprised to learn from the Respondent that it had been issued to a stranger.

10. On cross examination, she stated that parcel 129 was changed to 1850. She did not go to the land registry to confirm that the plot no. 129 had been changed to 1850. She stated that she was given a paper that changed the number, which she gave to the Respondent. She confirmed that they did not go to the Land Control Board despite and did not sign the transfer documents. She denied being known as Margaret Wangui and stated that she did not know Margaret Wambui Gathua.
11. On conclusion of the hearing the trial court rendered its judgment, where it held that the Respondent failed to prove how plot no. 129 was changed to 1850 or that the land sold to him was actually parcel no. 1850. The trial court noted that the extract from the Adjudication Register did not show an alteration of the parcel number from 129 to 1850. The court was satisfied that the Respondent held a clean title and that the Appellant had trespassed by constructing on the suit land, and ordered the Appellant to vacate the land within 180 days, failing which eviction would issue. The court also granted a permanent injunction to restrain the Appellant, his family members and agents from entering into and working or remaining on the land, on the expiry of 180 days from the date of judgment.
12. Being aggrieved by the judgment of the Learned Magistrate, the Appellant lodged this appeal and raised eight grounds in the memorandum of appeal. He faulted the trial court for failing to appreciate that the subject matter of the suit was ownership and occupation of the suit land previously registered as plot no. 129 pursuant to the Land Adjudication Office in Mbeere. He faulted the court for finding that the suit land belonged to the Respondent and granting eviction orders to his detriment without considering the legitimacy of his claim and without evaluating the evidence adduced. He contended that the court misdirected itself and based its finding on unreasonable and wrong considerations.
13. Additionally, he averred that the court failed to consider that the Respondent failed to prove her claim on a balance of probabilities and that the court failed to appreciate his submissions. He urged that the court erred by dismissing his submissions and allowing the Respondent's suit and urged that the findings of the trial court were unsupported by law.
14. The appeal was canvassed through written submissions. The Appellant submitted that he entered the suit land as a bona fide purchaser for value without notice and that his interest was that of a purchaser, which the trial court failed to recognise. He submitted that the Respondent did not produce any document to prove her ownership of the suit land. It was his view that the Respondent should have at least produced an allotment letter. That having challenged the Respondent's proprietorship, Sections 24 and 25 of the *Land Registration Act* cited by the Respondent in her submissions did not apply to this case. He added that the Respondent used misrepresentation and fraudulently had the suit land transferred to her name thereby depriving the original owner, Margaret Wambui Karani and he of the land. He urged the court to allow the appeal.
15. The Respondent submitted that the title deed over the suit land issued to her on 2/5/2017 was conclusive evidence of proprietorship. She cited Section 26(1) of the *Land Registration Act* and submitted that the Appellant's defence did not contain any allegation that the title was acquired illegally, unprocedurally or through a corrupt scheme nor did he adduce evidence on that. She submitted that she proved her case on a balance of probabilities and urged the court to dismiss the appeal with costs.



16. The issue for determination is whether the Appellant has demonstrated sufficient grounds for this court to interfere with the trial court's judgment. The dispute is over ownership of Mbeere/Wachoro/1850, which the Respondent claims was allocated to her by the government in 1979 and that she was issued a title deed, which was mistakenly written in the name of Margaret Wangui, but according to her the name refers to her. On the other hand, Margaret Wambui Karani also claims that she was allocated the same land in 1979, and that it was initially known as plot no. 129 before it was renumbered as no. 1850, and that she sold it to the Appellant.
17. The Respondent relied on the title deed for the suit land, which shows the registered owner as Margaret Wangui. To support her claim, she produced affidavits stating that Margaret Wambui Gathua and Margaret Wangui as indicated in the title deed of the suit land, are one and the same person. She also relied on the bank statements and other documents to show that she had used the title over the suit land as security for a loan. Although the law treats a title deed as prima facie evidence of ownership under section 26(1) of the *Land Registration Act*, where the root of title is challenged, a proprietor must demonstrate that it was lawfully obtained.
18. In this case, there are two claimants to the original allocation of the land both with similar names and neither of them admits to being Margaret Wangui, the person named on the title of the land. The Appellant produced an extract from the adjudication records showing that parcel no. 1850 was allocated to a Margaret Wambui. The extract produced does not have any other details to show which land it related to and it cannot be said with certainty that it relates to the suit land.
19. The Appellant's testimony was that he took possession of the land in 2007 after purchasing it from Margaret Wambui Karani and developed while the Respondent maintained that the structure was erected on the suit land in 2016. If indeed the land was allocated in 1979 during the adjudication, there should have been some follow up by the true owner to obtain the title over the land. No evidence was led as to who between Mary Wambui Gathua and Mary Wambui Karani the land adjudication committee allocated the suit land to.
20. It does not help matters when the title is in the name of Mary Wangui and not Mary Wambui's name yet the land registrar is deemed to have used the details of ownership furnished by the relevant land adjudication office to issue the title to the lawful proprietor. No steps were taken to cause the Land Registrar to change the register and have the name Mary Wangui replaced by Mary Wambui.
21. The court notes that the Learned Magistrate based her decision on the fact that banks undertake due diligence before accepting a title as security. However, the copy of the green card for the suit land was not produced by either party, which would have shown the ownership details and the encumbrances registered against the suit land. The title having been issued in the name of Mary Wangui, it is unlikely that a prudent bank could lend monies to Margaret Wambui Gathua's daughter on the strength of a title that was not in Margaret Wambui Gathua's name but was registered in Mary Wangui's name. It is doubtful that a charge or mortgage can be lawfully registered against the suit land by any person who is not Mary Wangui.
22. It would have been helpful if an officer who was involved in the adjudication process had been called to give evidence as to who between Mary Wambui Gathua and Mary Wambui Karani was allocated the suit land during the adjudication process. The evidence of the Land Registrar would have clarified why the title deed was issued in the name of Mary Wangui if indeed the land was allocated to Mary Wambui, and the proper steps that should have been taken to correct this anomaly if indeed it were a typing error. The affidavits deponing to the fact that Mary Wambui Gathua is also Mary Wangui are irregular in this court's view and incapable of conferring the title to Mary Wambui Gathua.



23. Neither Mary Wambui Gathua nor Mary Wambui Karani led evidence to prove on a balance of probabilities that the suit land was allocated to them during the adjudication process in 1979. The Appellant's claim to the suit land is anchored on Mary Wambui Karani's claim that she was allocated the suit land and that she sold it to the Appellant.
24. Taking into account the evidence adduced and the totality of the facts of this case, the court is not satisfied that the Respondent proved her ownership of the suit land to the required standard. The Respondent failed to prove her claim before the trial court on a balance of probabilities. The appeal succeeds and judgment of the trial court is set aside.
25. Given the peculiar circumstances of the case, each party will bear its costs for the suit and the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 6TH DAY OF OCTOBER 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Samuel Muriithi Gicobi- the Appellant

Diana Kemboi- Court Assistant

No appearance for the Respondent

