



**Ngari & Njeru (Suing as The Legal Representatives of the Estate of the Late Njeru Nthagu) & another v Ngari (Environment and Land Appeal E011 of 2023) [2025] KEELC 6571 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6571 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E011 OF 2023  
AK BOR, J  
OCTOBER 2, 2025**

**BETWEEN**

**JOSPHAT NJERU NGARI & PATRICK NYAGA NJERU (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE NJERU NTHAGU) ..... 1<sup>ST</sup> APPELLANT  
EDWARD MBOGO NDANGU ..... 2<sup>ND</sup> APPELLANT  
**AND**  
FREDRICK IRERI NGARI ..... RESPONDENT**

*(Appeal arises from the ruling of Hon S.K Ngii, Principal Magistrate, delivered on 20/4/2023 in Siakago MCL & E 53 of 2021)*

**JUDGMENT**

1. This appeal arises from the ruling of Hon S.K Ngii, Principal Magistrate, delivered on 20/4/2023 in Siakago MCL & E 53 of 2021, which the Appellants instituted seeking a declaration that the registration of the parcels of land known as Nthawa/Riandu/641, 1367 and 4532 to 4535, which resulted from the subdivision of Nthawa/Riandu/643 in the name of the late Ngari Kangangi, was to hold in in trust for the Thaara clan. They sought a permanent injunction to restrain the Respondent and his servants, employees, family members or anyone claiming through him from dealing with the suit land plus costs and any other relief the court deemed fit to grant.
2. The Respondent filed a defence and averred that his father, the late Ngari Kangangi was registered as the absolute owner of the suit land and not as a trustee for other clan members as it was contended.
3. In the judgment delivered on 13/4/2022, the Learned Magistrate found in favour of the Appellants and declared that the registration of Nthawa/Riandu/641 and 1367 in the name of the late Ngari



Kangangi was in trust for the Thaara Clan. The trial court held that there was no proof that parcel 643 was held in trust for the clan.

4. After delivery of the judgment, the Appellants filed the application dated 19/1/2023 seeking to have the trial court review its judgment and issue an order directing that the late Ngari Kangangi held Nthawa/Riandu/4532 to 4535, which resulted from the subdivision of Nthawa/Riandu/643 in trust for the Thaara Clan. They sought to be registered as trustees of Nthawa/Riandu/641, 1367 and 4532 to 4535 for the benefit of all the rightful beneficiaries of the Thaara Clan. They also sought to have the court administrator execute the relevant documents to facilitate their registration as trustees and for the Land Registrar to dispense with the production of the title deeds for the suit land at the time of registration.
5. The Appellants deponed in the supporting affidavit sworn on 19/1/2023 that they only obtained evidence confirming that the late Ngari Kangani held Nthawa/Riandu/4532 to 4535 in trust for Thaara Clan after the suit was determined. That they came across evidence that the late Ngari Kangani had conducted cases in respect of land parcel 643 on behalf of the members of Thaara Clan after the determination of the suit. They produced the proceedings and award in Land Adjudication Committee Case No. 60 of 1971. For this reason, they urged the court to review its judgment in order to include that piece of evidence and thereafter include the resultant subdivisions of land parcel 643 in the judgment.
6. Additionally, they averred that the judgment of the trial court was not capable of being executed since it did not state the persons to hold the suit properties in trust for purposes of distributing the property to deserving members of the Thaara Clan. They stated that they filed the suit in person and failed to include the names of the parties who should be appointed to distribute the suit properties in their claim. The applicants attached copies of the official searches of the subdivisions of parcel number 643.
7. The Respondent opposed the application through the replying affidavit where he deponed that Land Adjudication Committee Case No. 60/71, cited by the Appellants as new evidence was irrelevant and would not have changed the trial court's decision, for it did not prove that Ngari Kangangi held Nthawa/Riandu/643 in trust for the Thaara clan. He averred that the new evidence discovered required cross-examination in a full hearing and was not good evidence to support the prayer for review. He added that there was unreasonable delay in bringing the application.
8. After considering the application, the trial court found that the Appellants' contention that the decree following the judgment was incapable of implementation for the reason that the court did not specify in whose name the suit properties were to be registered, was misguided because the Appellants did not seek such order in the plaint. The court found that there was no error apparent in the judgment. The court also found that the Appellants failed to demonstrate that the Land Committee proceedings in Case No. 60 of 1971 were not within their knowledge or could not be discovered after exercising due diligence. Moreover, that those proceedings did not support the claim that the late Ngari Kangani held Nthawa/Riandu/4532 to 4535 in trust for the Thaara clan, as the determination of the Committee did not allude to any trust. The court dismissed the application.
9. Being aggrieved by that decision, the Appellants lodged this appeal. The Appellants raised six grounds of appeal. They faulted the trial court for failing to consider that they had sufficiently proved that the Respondent's late father held original parcel of land being Nthawa/Riandu/643 in trust for the Thaara Clan. They faulted the trial court for failing to consider that the suit had been filed by litigants in person and that they inadvertently failed to state who should hold the suit land in trust for the clan members. The other attack on the trial court's decision was that the Learned Magistrate failed to consider that the judgment or decree was incapable of execution without the changes they sought in the application.



10. The Appellants also faulted the trial court for failing to consider all the reliefs sought in their application and urged the court to allow the appeal, set aside the ruling of the trial court, and substitute it with an order allowing their application as well as costs of the appeal.
11. The appeal was canvassed through written submissions. The Appellants submitted that the trial court failed to consider the fact that there was no other avenue open to the Appellants to execute the decree of the trial court since they could not file a new suit seeking the relief for it would be res judicata in light of section 7 of the *Civil Procedure Act*. They submitted that Ngari Kangangi was the Chairman of Thaara Clan and adjudicated all cases on behalf of the clan including objection case no. 130. They invited this court to be guided by Article 159 of *the Constitution* and do justice without paying regard to technicalities. They added that their application was brought within reasonable time.
12. The Respondent submitted that the ruling of the trial court was sound in law and should not be interfered with. He urged that the appeal be dismissed with costs.
13. The issue for determination is whether the appeal has merit. A party seeking review of a judgment or decree must satisfy the conditions set out under Order 45 Rule 1 of the Civil Procedure Rules. These are discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced at the time the decree was passed; mistake or error apparent on the face of the record; or for any other sufficient reason.
14. In the application before the Learned Magistrate, the Appellants relied on the discovery of new evidence, more specifically the proceedings in Land Adjudication Committee Case No. 60 of 1971, which they contended showed that the late Ngari Kangangi, held Nthawa/Riandu/643, and by extension the resultant subdivisions, Nthawa/Riandu/4532 to 4535, in trust for the Thaara clan. They reiterated that the trial court's judgment was incapable of implementation due to the absence of orders regarding the registration of trustees, which they contended was an inadvertent omission on their part because they acted in person during trial.
15. In this court's view, the trial court rightly found that the Appellants failed to demonstrate that the evidence contained in Land Adjudication Committee Case No. 60 of 1971 was not available to them during trial, or that they could not obtain it after exercising due diligence. Those proceedings relate to events that happened in 1971, and the Appellants did not offer any explanation as to why the evidence only came to their knowledge after the conclusion of the hearing and delivery of the trial court's judgment.
16. The court has looked at the proceedings in Land Adjudication Committee Case No. 60 of 1971 and agrees with the trial court that the proceedings do not establish a trust in respect of parcel 643 or its resultant subdivisions. Regarding the claim that the decree was incapable of implementation for lack of directions on the persons to be registered as trustees, this court agrees with the trial court that such relief was not sought in the plaint and as such, the court cannot grant orders not for it is trite law that parties are bound by their pleadings.
17. The appeal lacks merit and is dismissed with costs to the Respondent.

**DELIVERED VIRTUALLY AT EMBU THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Macharia Muraguri for the Respondent



Diana Kemboi- Court Assistant  
No appearance for the Appellant

