



**Wambui v Kinyua & another (Environment and Land Case
1001 of 2015) [2025] KEELC 7003 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7003 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1001 OF 2015**

JG KEMEI, J

OCTOBER 9, 2025

BETWEEN

JEAN VERAH WAMBUI PLAINTIFF

AND

DOMINIC GATHECA KINYUA 1ST DEFENDANT

**ROBERT WAIRIRI, PAUL JOHN WAMBUGU JOSPEH MUCHOKI,
DOMINIC MOKERA ASOYA, FARMCIAH MUTHONI MUCHOKI &
PAUL GIKONYO MANGURIAH T/A MWANA MUKIA-NYONIA GIAKWA
ENTERPRISES 2ND DEFENDANT**

JUDGMENT

The Pleadings

1. Vice an amended plaint dated the 18/3/24, the plaintiff sued the defendants for orders that;
 - a. A declaration that the plaintiff is the sole legal and lawful owner of all that piece of land known as plot No 575 (formerly 534), being part of Block LR No 8469/4, situated at Hunters, Kasarani Area, Nairobi County.
 - b. A permanent injunction against the 1st Defendant restraining him, either on his own or through his assigns, agents, successors, and/or personal representatives, from entering, taking possession of, constructing or erecting structures, or otherwise interfering with the suit premises.
 - c. An order that the OCS Kasarani Police Station supervise personally or through his junior officers the eviction of the 1st Defendant from the suit premises, including the demolition and removal of any structures erected on the premises, and restore the premises to its original condition.



- d. Costs of this suit plus interest at court rate.
 - e. An order of specific performance against the 2nd defendant herein requiring the delivery of all that piece or parcel of land known as 575(534) (suit land), part of Block LR No 8469/4, situated in Hunters Kasarani area, Nairobi County, to the Plaintiff.
 - f. In the alternative to prayer, an order for a refund of Kshs 484,500/- being fees for processing of the title deed paid to the 2nd Defendant herein for purchase of Plot No 575 by the Plaintiff.
 - g. Interest on b) from 29/8/2003.
2. The Plaintiff asserts that, through her mother, she acquired the suit plot from the previous owner, Samuel Wa Njurumba, for a consideration of Kshs 420,000/- and was issued with share certificate No 2183 for plot No 575. Around July 2016, she discovered that the 1st Defendant had trespassed on the suit land without her knowledge or consent.
 3. Without particularising fraud and illegality, the Plaintiff averred that the 1st Defendant unlawfully, illegally, and fraudulently entered her land.
 4. The 1st defendant denied the claim of the Plaintiff in his statement of defence dated 10/12/2020. He denied trespassing on the Plaintiff's land and stated that he is the owner of plot No 572 (formerly 533) on LR No 8469/4, and is unaware of the Plaintiff's claim. He averred that the two plots are separate and distinct on the ground, so the plea for the demolition of his development does not stand. The court was urged to dismiss the claim with costs.
 5. PW1 – Jean Vera Wamboi testified as PW1 and produced documents in support of her case marked as PEX No 1-10.
 6. She stated that while residing in the United Kingdom, she authorised her mother, Jemimah Njeri Kamau, to purchase the suit land on her behalf. She also stated that although she paid the purchase price, she did not produce any evidence to support this. Upon returning to Kenya, she visited the plot with her mother in 2010, who showed her the suit land, which was vacant at that time. Without providing any evidence, she stated that by then, the seller of the land had passed away.
 7. Without providing any proof, she claimed she had obtained approval from Nairobi City County to develop the land. However, in 2015, she realised there was nearly complete construction on site. She reported the issue to the 2nd defendant much later, although the officials refused to inspect the land.
 8. PW2 – Jemimah Njeri Kamau stated that she is the mother of the Plaintiff and relied on her witness statement dated 20/3/24.
 9. She confirmed that the plaintiff, while in the United Kingdom, asked her to purchase the plot on her behalf, which she did. She could not recall the seller's name, the amount paid, or the year she bought the land in question. The seller and a representative from the second defendant showed her the land. After arriving in Kenya, she showed PW1 the suit land.
 10. DW1 - Dominic Gatheca Kinyua testified and relied on his witness statement dated 1/2/2021 and produced documents marked as DEX No 1-9 in support of his defence.
 11. He stated that he purchased the land in 2013 from Margaret Muthoni Njuguna, who was introduced to him by a land agent named Peter Kiguro Njihia. After verifying the ownership documents in her possession, they proceeded to the land and, finding it satisfactory, visited the offices of the 2nd defendant at Jeevanjee Gardens, where he confirmed that Margaret Muthoni Njuguna was the owner of plot 533



- (now 572). Later, they went to her advocate's office, where a sale agreement was signed and the purchase price of Kshs 3.3 Million was transferred to Ms Njuguna's account.
12. Armed with the sale agreement, he returned to the offices of the 2nd Defendant to effect the transfer, whereupon he was issued with a new certificate No 3143, and the register was amended to reflect his name as the new owner of the land. He fenced the land and began developing a seven-storey building comprising residential apartments.
 13. The 2nd defendant failed to enter an appearance or file any statement of defence in the suit.

The survey Reports

14. By the consent of the parties, the Plaintiffs and the 1st Defendant's survey reports dated 15/11/23 and 04/10/23 were admitted in evidence.

The written submissions

15. Regarding whether plot Nos 572 and 575 are the same on the ground, the Plaintiff submitted that the map produced by her survey is the genuine cadastral map, unlike that of the 1st Defendant, which is a proposed subdivision whose registration is doubtful. The court was urged to rely on the cadastral map for its accuracy.
16. The court was urged to determine that plot No 575 and 572 are identical based on the accuracy of the cadastral map, and to confirm that plot 575 is correctly situated on the ground and belongs to the Plaintiff.
17. Concerning whether the Plaintiff is entitled to an order of specific performance, the Plaintiff submitted that she paid the sum of Kshs 484,500/-, covering the purchase price and the title processing fees. She also stated that the Plaintiff has developed the land; therefore, the 2nd defendant should be ordered to refund the purchase price with interest from 2003 until full payment is made.
18. The 1st Defendant submitted that the plaintiff failed to produce evidence supporting her claim to the plot through a sale agreement, contrary to the provisions of section 3(3) of the Law of Contract Act. Consequently, he argued, she is therefore not entitled to any of the prayers sought.

Analysis and determination

19. Having considered the pleadings, the evidence adduced during the trial, the written submissions, and the key issues that emerge are;
 - a. Whether plots No. 575 and 572 are the same on the ground
 - b. Whether the plaintiff has proven ownership of plot 575
 - c. Whether the Plaintiff is entitled to the orders of specific performance
 - d. Costs of the suit
20. It is not in dispute that plots 575 and 572 have not been titled or registered. The parties' contest, therefore, is based on the acquisition documents that each party is holding to defend their entitlement.
21. It is undisputed that both plots originate from the 2nd Defendant, a land-buying company that sold land to its members through share certificates. Once allocated, members then resell to third parties, as is the case in this suit.



22. Evidently, both the Plaintiff and the 1st Defendant in this case have alluded to their conflicting interests regarding the suit land on plots No. 575 and 572.
23. It is a settled principle of law that he who alleges must prove. Sections 107 and 109 of the [Evidence Act](#), Cap 80 Laws of Kenya which provides as follows: -
 - “ 107. Whoever desires any court to give judgment as to any legal right or liability dependent on facts which he asserts must prove that those facts exist.
 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that evidence of the fact shall lie on any particular person.”
24. The burden of proof therefore falls on the Plaintiff to substantiate her claims.

Whether plots No. 575 and 572 are the same on the ground

25. The court has reviewed the survey reports submitted by the parties, which they agree upon. Clearly, both surveyors confirmed that plot No 575 and 572 occupy the same ground. The Plaintiff contends that because her registered cadastral map is valid, it should take precedence over the subdivision scheme map produced by the 1st Defendant, and therefore her ownership of Plot No 575 should be upheld. However, given the professional findings of the surveyors that plot Nos 575 and 572 are the same on the ground, I find the Plaintiff's argument, at best, flawed. It is rejected.
26. I therefore find that plot Nos 575 and 572 are situated on the same ground.

Whether the plaintiff has proven ownership of parcel 575

27. In determining this issue, I will reference the wisdom of the court in the case *Hubert L Martin & 2 others Vs Margaret J Kamau & 5 others* (2016) eKLR, where the court held as follows;
 - “A Court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld This investigation must start at the root of the title and follow all processes and procedures that might forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its mot without li break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its mot. No party should take it for granted that simply because they have a tide deed or Certificate of lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold Every party must show that their title has a good foundation and passed properly to the current tide holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as fib the only way I can determine which of the two titles should be upheld.”
28. In Kenya, the law requires that any disposal of an interest in land must be in writing, signed by all involved parties, with each signature attested by a witness present at the time of signing. See section 3(3) of the Law of Contract. In this case, the disposal involved an interest in land represented by a share certificate and, in my view, falls within the definition of a disposal of interest in land for which the parties should produce a sale agreement.



29. PW1 and PW2 agreed that they did not produce a sale agreement for the land acquisition. PW2 testified that she purchased the land from Samuel Wa Njurumba, who had since passed away. However, on the day she testified, she could not recall the name of the seller. She admitted that she had no sale agreement, no evidence of payment of shares, no share certificate, and no membership documented in the name of Njurumba. No evidence was presented to confirm that Njurumba was a member of the 2nd Defendant. The ballot in favour of Njurumba was not produced as evidence. She had nothing to show how she acquired the land. PW1, on the other hand, presented a share certificate in her name but without a corresponding entry in the 2nd Defendant's members register. Neither was any witness from the 2nd Defendant called to testify on the claim. There was also no evidence before the court that Njurumba was deceased.
30. In the absence of any documents establishing the origin of ownership in favour of the Plaintiff, the court finds that she has failed to prove any interest in the land.

Whether the Plaintiff is entitled to the orders of specific performance

31. On the sad realisation that plot 575 was actually plot 572 on the ground and that it was in the hands of the 1st Defendant, the plaintiff amended her claim to include an order for specific performance against the 2nd Defendant. Notably, the 2nd defendant failed to defend the case. As a result, the court will decide this issue on its merits.
32. In the case of Joyce Mugure Mwangi & 7 others V s Joachim Ngugi Kiarie & 16 others (2019) EKLK the Court stated that specific performance like any other equitable remedy is discretionary and the Court will only grant it on well-known principles. The jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or unenforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. The Court went ahead to state that even where damages are not an adequate remedy specific performance may still be refused on the ground of undue influence or where it will cause severe hardship to the Defendant.
33. The Plaintiff's case was that her mother bought the plot on her behalf from a Mr. Njurumba. She claimed to have paid the said Njurumba for the land. As previously stated, these allegations were never proven. Therefore, there is no valid enforceable contract between the two. Consequently, since the Plaintiff did not purchase the plot from the 2nd defendant, I find that there is no privity of contract between the Plaintiff and the 2nd defendant; as a result, an equitable order of specific performance would not be granted in her favour.
34. The court determines that the Plaintiff is not entitled to any order of specific performance. This prayer is dismissed.
35. Regarding the costs of the suit, I find that costs follow the event, and in this case, the Plaintiff shall bear the costs of the suit in favour of the 1st Defendant.
36. Final orders for disposal
 - a. The Plaintiffs' suit is not merited.
 - b. It is dismissed with costs in favour of the 1st Defendant
37. Orders accordingly



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered Online in the Presence of;

1. Ms Amondi HB for Ms Wanyonyi for the Plaintiff

PARA 2. Mr Kariuki for the 1st Defendant

3. N/A for the 2nd Defendant

4. C/A – Ms. Yvette Njoroge

