



**Njeru v Kuria & 16 others (Miscellaneous Application  
E005 of 2024) [2025] KEELC 5657 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5657 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
MISCELLANEOUS APPLICATION E005 OF 2024**

**JO OLOLA, J  
JULY 31, 2025**

**BETWEEN**

**ZAWERIA WANGUI NJERU ..... APPLICANT**

**AND**

- PETER KURIA ..... 1<sup>ST</sup> RESPONDENT**
- CHARITY WANJIKU ..... 2<sup>ND</sup> RESPONDENT**
- BETH MUTHONI ..... 3<sup>RD</sup> RESPONDENT**
- ESTHER WAITHIEGENI ..... 4<sup>TH</sup> RESPONDENT**
- SARAH WAIRIMU ..... 5<sup>TH</sup> RESPONDENT**
- HARRISON KIBUTHU THIMU ..... 6<sup>TH</sup> RESPONDENT**
- GIKEU NJUGUNA ..... 7<sup>TH</sup> RESPONDENT**
- SUSAN NYACHANIA THIMU ..... 8<sup>TH</sup> RESPONDENT**
- JACKLINE WAIRIMU MWANGI ..... 9<sup>TH</sup> RESPONDENT**
- DUNCAN WARUTUMO ..... 10<sup>TH</sup> RESPONDENT**
- JANE WANJIKU GACHANJA ..... 11<sup>TH</sup> RESPONDENT**
- BEATRICE WANJIRA ..... 12<sup>TH</sup> RESPONDENT**
- FRANCIS WAMBUGU MUREITHI ..... 13<sup>TH</sup> RESPONDENT**
- ANTHONY MWANGI ..... 14<sup>TH</sup> RESPONDENT**
- CAROLINE WAWIRA ..... 15<sup>TH</sup> RESPONDENT**
- KENYA POWER AND LIGHTING COMPANY LIMITED ... 16<sup>TH</sup> RESPONDENT**
- NYERI WATER AND SANITATION COMPANY LIMITED 17<sup>TH</sup> RESPONDENT**



## RULING

1. By the Notice of Motion dated 6<sup>th</sup> October, 2023, Zaweria Wangui Njeru (the Applicant) prays for an order that the Respondents be evicted from the parcel of land known as Nyeri/Municipality Block 2/1326 and that they deliver vacant possession to the Applicant. It is further the Applicant's prayer that the OCS Nyeri be directed to provide security during the eviction.
2. The application is supported by two (2) Affidavits sworn by the Applicant and is premised on the grounds:
  - i. That the Applicant is the registered proprietor of the said property;
  - ii. That the Respondents have illegally entered, occupied and taken possession of the subject land without the Applicant's consent or any colour of right;
  - iii. That the Respondents were served with an eviction notice dated 04.10.2023 and they have not filed any pleadings to oppose the eviction; and
  - iv. That it is only in the interest of justice that the Application be allowed as prayed.
3. The 1<sup>st</sup> to 15<sup>th</sup> Respondents are opposed to the application. By their Grounds of Opposition dated 23<sup>rd</sup> May 2024 they state:
  1. That the Application is Res Judicata and /or sub judice the Court having determined a similar suit involving the same parcel of land the subject of this suit and the same parties namely Nyeri/Municipality Block 2/1326 in Nyeri High Court Environment and Land Court Civil Suit No. 20 of 2021; Zaweria Wangui Njeru –vs- Susan Nyachania Thimu & 13 Others; and
  2. That the Application and the provisions of law under which the application has been brought under the Land Act No.6 of 2012 are not applicable in the circumstances of this suit thereby making the suit bad in law and an abuse of the Court process.
4. In addition to those Grounds of Opposition the Respondents have through the 15<sup>th</sup> Respondent Caroline Wawira sworn an affidavit wherein they aver that in the year 2021 the Applicant filed ELC Case No. 20 of 2021 wherein this court issued an order of interlocutory injunction restraining the Respondents from encroaching upon or erecting any structures on the suit land.
5. The 15<sup>th</sup> Respondent avers that the registration of the Respondents as the proprietors of the suit property is irregular and fraudulent as the same was done without consideration of the Respondent's rights over the same.
6. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
7. By this application brought under the provisions of Sections 152A, B, E, G and F of the Land Act No. 6 of 2012, the Applicant has urged the court to order that the Respondents be evicted from the parcel of land known as Nyeri/Municipality/Block 2/1326 and that the OCS Nyeri Police Station be directed to provide security during the eviction.
8. It is the Applicant's case that she is the registered proprietor of the said parcel of land. She accuses the Respondents of illegally entering the same and taking possession thereof without her consent. It is



further the Applicant's case that on 4<sup>th</sup> October, 2023, she did serve the Respondents with an eviction notice but they have neither complied nor filed any pleadings in opposition thereto.

9. In opposition to the application, the Respondents have filed Grounds of Opposition dated 23<sup>rd</sup> May, 2024 wherein they state that the application is res judicata and/or sub judice as the subject matter and the parties are the same as those in Nyeri ELC Case No. 20 of 2021. It is further their case that the application has been brought under provisions of the law which are not applicable in the circumstances of this suit.
10. In further support of those Grounds of Opposition, Caroline Wawira (the 15<sup>th</sup> Respondent) has sworn a Replying Affidavit in which she avers as follows at Paragraph 4 to 6 thereof:

“ 4. That I the Applicant herein had in the year 2021 filed suit in this Honourable Court namely Environment and Land Court at Nyeri ELC Civil Suit No. 20 of 2021 Zaweria Wangui Njeru-vs-Susan Nyanchania Thimu;

5. That the said suit was determined by this Honourable Court and this Honourable Court granted an order thus:-

“That an Order of Interlocutory Injunction be and is hereby issued against the Respondents their servants, agents and/or anybody acting on their behalf restraining them from abetting encroaching erecting any building or shanties or causing acts of waste on Land Reference Nyeri Municipality Block 2/1326; and

6. That I am advised by my Advocate on record that in the aforementioned suit a prayer for the Respondents eviction from the parcel of land had also been sought as is being sought in the application herein but the same was not granted by this Honourable Court.”

11. As it turned out, the Respondents have neither annexed any pleadings from the said suit nor an extract of the orders referred to. While the Applicant concedes to the existence of the earlier suit, it is her case that the parties were not the same and that the cause of action is a continuing trespass on the parties sued herein and hence separate and distinct from the earlier suit. It is the Applicant's case that the acts complained of hereby occurred in the year 2023 and that the 15<sup>th</sup> Respondent who has sworn the Replying Affidavit was not a party in the earlier suit.
12. As was held by the Court of Appeal in Isaack Ben Mulwa –vs- Jonathan Mutunga Mweke (2016) eKLR:

“ Each action of trespass constitutes a fresh and distinct cause of action. It is inconceivable that a claim based on an action for trespass committed in 2015 would be res judicata simply because the same parties or their parents litigated over the same matter in 1985. It is a well-settled principle that continuous injuries to land caused by the maintenance of tortious acts create separate causes of action barred only by the running of the statute of limitation against each successive acts.”

13. In the matter herein, the Applicant has annexed to her Supporting Affidavit a Copy of the Certificate of Lease which indicates that she is the registered proprietor of the suit property. The Respondents on the other hand have not adduced any evidence to challenge the Applicant's proprietorship appearing to suggest in the Replying Affidavit that they have acquired rights to the land by way of adverse possession while at the same time purporting that their structures have been built outside the boundaries of the



suit property. They have not denied that they were served with notice to vacate the land nor have they on their own taken any steps to avert the notice.

14. In the case of Julius K.M. Ringera –vs- Charles Mwangi Muhindi (2022) eKLR, the court faced with similar circumstances held and I agree as follows:

“The Applicant’s application is in the circumstances properly before the court. I am of the view that the provisions of Sections 152E to 152 I of the Act were enacted not only to provide a humane manner of carrying out evictions in line with the internationally acceptable standards but also a summary procedure for determining disputes over trespass to land where there is no contestation over title to land. I am satisfied from the material before me that the Applicant is the lawful owner of the suit property. The Applicant has placed evidence before the court showing that the suit property was allocated to him by the Commissioner of Lands and that he complied with the terms of allotment.”

15. In the circumstances herein, I was equally persuaded that the Applicant was properly before this court and that the proper procedure had been applied in seeking the eviction of the Respondents who have failed to demonstrate any entitlement to the suit land.
16. Accordingly, I hereby allow the Motion dated 6<sup>th</sup> October, 2023 in terms of prayer No. 1 and 2 thereof with costs. The orders shall however be suspended for a period of 30 days to allow the Respondents to hand over vacant possession of the suit land.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 31<sup>ST</sup> DAY OF JULY, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.

Ms. Wangechi Advocate for the Applicant

Mr. Kibicho holding brief for Muhoho Advocate for the 1<sup>st</sup> to 15<sup>th</sup> Respondents

Mr. Ododa for the 16<sup>th</sup> Respondent

