



**Mutua v Kamau t/a Nyanduma Horticulture Impex Enterprises (Environment and Land Case E360 of 2024) [2025] KEELC 7619 (KLR) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7619 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND CASE E360 OF 2024**  
**TW MURIGI, J**  
**OCTOBER 31, 2025**

**BETWEEN**

**MICHAEL MBITHI MUTUA ..... PLAINTIFF**

**AND**

**DR. LUCIA WANJIKU KAMAU T/A NYANDUMA HORTICULTURE IMPEX ENTERPRISES ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit vide a Complaint dated 29<sup>th</sup> August, 2024, seeking the following orders:-
  - a. An order that the Defendant transfers to the Plaintiff Plot 1 excised from L.R No. 6845/151 and issue him with the respective title documents in accordance with the survey map.
  - b. An alternative order that the Defendant give to the Plaintiff all the completion documents, including original title number 6845/151, signed transfers in triplicate in favour of the Plaintiff, deed plans, land rent and rates clearance certificates, PIN and photos, and any other documents necessary to effect the transfer,
  - c. An order that if the Defendant fails to execute transfers and any other documents for effecting the transfer in favour of the Plaintiff, the Registrar of this Honourable Court signs the same.
  - d. An order that the transfer be effected without the original title held by the Defendant.
  - e. An order that the transfer be effected with a copy of the survey map.
  - f. Costs.
2. The Defendant was served with Summons to Enter Appearance but never entered an Appearance or filed a Defence.
3. The matter proceeded to formal proof hearing on 26<sup>th</sup> March 2025.



## **Plaintiff's Case**

4. The Plaintiff Michael Mbithi Mutua testified as PW1. He adopted his witness statement, dated 29<sup>th</sup> August 2024, as his evidence in chief. He also produced the documents in his list, dated 29<sup>th</sup> August 2024 in support of his case.
5. The Plaintiff told the court that he purchased the suit property from Mansess Irura Ndegwa, vide a sale agreement dated 1<sup>st</sup> November 2016 for Kshs. 46,000,000/=, which he paid in full. He further stated that Manessess Irura Ndegwa had previously purchased the suit property from the Defendant. He testified that at the time of his purchase, the suit property had already been surveyed, subdivided, and beaconed.
6. It was his testimony that he paid a transfer fee of Kshs 50,000/= to the Defendant, who issued him a land certificate in his name. He stated that he took possession and carried out extensive development on the property. He told the court that the Defendant has refused to process the title in his name. He further mentioned that he is willing to pay the stamp duty and all legal costs to complete the transfer in his name once he receives the necessary documents.
7. The Plaintiff closed his case and filed written submissions dated 27<sup>th</sup> March 2025, which I have considered.

## **Analysis And Determination.**

8. Although the suit was undefended, the Plaintiff has a duty to formally prove its case on a balance of probabilities as required by law.
9. In the case of Kirugi and Another Vs Kabiya & 3 others (1987) KLR 347, the Court of Appeal held that;  

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
10. Similarly, in the case of Gichinga Kibutha Vs Caroline Nduku (2018) eKLR, the Court held that;  

“It is not automatic that instances where the evidence is not controverted, the Claimants shall have their way in Court. He must discharge the burden of proof. He must prove his case, however much the opponent has not made a presence in the contest.”
11. Having considered the pleadings, the evidence on record, and the submissions by the Plaintiff, the only issue for determination is whether the Plaintiff is entitled to the orders sought in the Plaintiff.
12. The Plaintiff produced a sale agreement dated 1<sup>st</sup> November 2016 (PEX 2) and receipts to show that he purchased the suit property from Manasses Irura Ndegwa. He also produced a share certificate (PEX 1) and a receipt for the transfer of land (PEX 6) to show that he is the registered owner of the suit property. receipt showing that he had paid transfer fees to the Defendant. He also produced photographs (PEX 7) to show how he has developed the suit property.
13. Based on the evidence on record, this court finds and holds that the Plaintiff has proved his case on a balance of probabilities against the Defendant.
14. I therefore enter judgment for the Plaintiff against the Defendant in the following terms;



- a. An order is hereby issued that the Defendant transfer to the Plaintiff Plot 1 to be excised from L.R. No. 6845/151 and issue him with the title document in accordance with the survey map.
- b. In the alternative, the Defendant is to give the Plaintiff all the completion documents, including the original title No. 6845/151 signed transfers, triplicate in favour of the Plaintiff, deed plans, land rent and rates clearance certificates, PIN, and photos, and any other documents necessary to effect the transfer.
- c. The Registrar of this court is to sign all the documents to execute the transfer if the Defendant fails to execute the same.
- d. The Plaintiff is awarded costs of the suit.

**JUDGMENT READ, DATED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF OCTOBER, 2025 AT NAIROBI.**

.....

**HON. T. MURIGI**

**JUDGE**

In The Presence Of: -

Ms Musa for the Plaintiff

Ahmed – Court Assistant

