



Munyao & 15 others v J.K. Wanderi Auctioneers (Environment and Land Case E001 of 2024) [2025] KEELC 7180 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7180 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND CASE E001 OF 2024**

JM KAMAU, J

OCTOBER 23, 2025

BETWEEN

TABITHA WAMBUI MUNYAO & 15 OTHERS & 15 OTHERS PLAINTIFF

AND

J.K. WANDERI AUCTIONEERS DEFENDANT

JUDGMENT

1. This suit was commenced by a Plaint dated the 14/6/2023 and filed in this Court on the following day. All the 16 Plaintiffs averred that they are the legal owners of Nyandarua/OL- Kalou South/174 where they have “permanent structures and properties”. They claim that the Defendant demolished permanent structures unlawfully and without any legal justification and also auctioned their properties.
2. The Plaintiffs claimed that these were unlawful and illegal actions by the Defendant particularized as follows: -
 - a. Demolishing permanent and temporary structures of the Plaintiffs.
 - b. Destroying properties of the Plaintiffs.
 - c. Executing a Decree on wrong parcel of land.
 - d. Failing to serve the Plaintiffs properly.
 - e. Failing to notify the Plaintiffs of the orders.
 - f. Failing to furnish the Plaintiffs with all Court processes.
3. The Plaintiffs claim that the Defendant, an Auctioneer, acted maliciously with the intention of infringing upon the Plaintiffs’ rights. The Plaintiffs accordingly prayed for the Judgment against the Defendant for the following: -



- a. A Declaration that the actions by the Defendant were malicious, out of site and thus illegal.
 - b. General damages.
 - c. Compensation for the damage caused by the Defendant to the Plaintiffs.
 - d. Special damages.
 - e. Costs of the suit.
 - f. Interest.
 - g. Any other relief that this Honourable Court may deem fit to grant.
4. Simultaneously with the filing of the Statement of Defence, the Defendant raised a preliminary objection to the effect that Elizabeth W. Ngugi lacked locus standi to sue on behalf of the Plaintiffs without leave of Court and that the suit was brought in contravention of Order 9 Rule 2 (a) of the Civil Procedure Rules.
 5. In his Statement of Defence, the Defendant denied the contents of the Plaint and averred that the Plaintiffs have never been owners of the parcel of land known as Nyandarua/OL- Kalou South/174 which in any case is non-existent after the same was closed subsequent to its sub-division in 2001 pursuant to a Court Order. He also denied the particulars of any unlawful actions. He admitted that in execution of Court orders issued in Nyahururu (pre-cursor of this Court) in ELC No 245 of 2017, he lawfully evicted the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Plaintiffs from the parcel of land Nyandarua/OL- Kalou South/1698 and that therefore the suit raises no course of action. He accordingly asked that the suit be dismissed with costs.
 6. The suit was set down for hearing after attempts at Mediation failed with PW1 Elizabeth Wangari Ngugi taking to the witness box on the 13/3/2025.
 7. In an interesting twist, there is on record another Plaint dated 22/4/2024 and filed on 8/3/2024, about 34 days earlier than the date of the suit. It is not an Amended Plaint and I don't know how it found its way in Court. The same is Civil suit No E001 of 2024 with exactly the same parties word for word and the contents are similar. But since the 2 suits are similar and the proceedings seem to have adopted the latter Plaint without any mention of the former, I will proceed with the latter Plaint.
 8. When PW1, Elizabeth Ngugi took to the Witness stand, she made no reference to any Witness Statement and I couldn't trace any in the file, only a multiplicity of Verifying Affidavits from all the Plaintiffs who deponed that Elizabeth Wangui Ngugi had drawn the first Plaint and read it to them and they confirmed that the averments therein were true and accurate.
 9. The Verifying Affidavit to the subsequent Affidavit was sworn by Elizabeth W.Ngugi who attached copies of the Authority to act from all the 16 Plaintiffs.
 10. Notwithstanding any Witness Statements, I allowed Elizabeth W.Ngugi to testify. She said that one morning the 1st Plaintiff, who is her sister was woken up by the O.C.S OL- Kalou police Station. She fainted when the officer commanding police station threatened to make her life difficult. A tractor also came to her compound on the 9/8/2022 and demolished all her properties and belongings on her parcel of land i.e. No Nyandarua/OL- Kalou/174 where there was a 6 roomed permanent house among others.



11. The witness did call the criminal investigation officers. The said demolition was carried out by J.K Wanderi Auctioneers. Her sister then vacated and had to do with makeshift houses. She vacated to Gilgil on the advice of the Doctor. She then produced the following documents:
 - a. Copy of Kenya Gazette excerpt.
 - b. Copy of Judgment and Decree in Nyahururu ELC No 245 of 2017.
 - c. Copy of eviction order issued in Nyahururu ELC No 245 of 2017.
 - d. Court file for Nyahururu ELC No 245 of 2017.
 - e. Copy of Response to the demand letter.
12. On cross-examination by Mr Chanyo for the Defendant, Mrs. Ngugi said that it is the 1st Plaintiff who gave her Power of Attorney to act for, whilst the other Plaintiffs did not because they are all the 1st Plaintiff's children.
13. She said that the suit land L.R No Nyandarua/0L-KALOU/174 belongs to Munyao Kakunia. She said she was aware of Nyahururu ELC case No 245 of 2019 but that there is no way the Court could have permitted 2 different Auctioneers, viz. Nasioki Auctioneers and J.K Wanderi Auctioneers to evict her sister from the suit land.
14. PW2 Emmanuel Karisa Kenya, a very experienced Forensic Document Examiner with more than 30 years' experience who retired as a commissioner of police in 2015 and who is now in private practice produced in court 6 Reports for examination from Elizabeth Wangui Ngugi. The examination was in relation to the signatures therein. He said that the Judgment dated 29/4/1999 in Nairobi HCCC No 1994 of 1979 was not signed by Justice Msagha Mbogholi, and the Order dated 15/5/2001 was not signed by Justice Kasanga Mulwa. The signatures of the same Land Registrar in the Report dated 14/10/2024 and 15/11/2024 differ.
15. He also produced Court orders whose signatures (Deputy Registrar) differ and that the Order dated 25/5/2021 from the High Court Nairobi is signed but the D.R disputes it as his signature.
16. After the close of the Plaintiffs' case, John Kamburi Wanderi adduced his evidence basing it on his statement recorded on 7/7/2023 which was that he is an Auctioneer licensed in class B and authorized to carry out execution of Court Orders, selling both movable and immovable properties, repossession of chattels and also levying Distress for Rent.
17. He testified that he did execute a lawful Order from the Court. On 7/8/2021 he received Court Orders issued in Nyahururu ELC case No. 245 of 2017 authorizing his firm to evict the 1st to the 8th Plaintiffs in the instant case from the parcel of land known as Nyandarua/OL- Kalou South/1698.
18. In the same Order the Court directed that all structures built or erected on the said land be removed at the aforesaid Plaintiffs' own costs and that the officer commanding OL- Kalou Police Station do provide security. This he did on 9/8/2021. He said he had nothing to do with Nyandarua/OL- Kalou South/174 and that even the Plaintiffs have never owned the same. He did execute the Court Order on Nyandarua/OL- Kalou South / 1698 and not on Nyandarua/OL- Kalou South/174. He asked the Court to dismiss this suit as it discloses no cause of action.
19. On cross-examination by Elizabeth Wangui Ngugi, the Defendant said that the Judgment in the case he executed is dated the 7/5/2020 and that the Order was issued on 7/7/2021. He had valid instructions applied for by Raydon Mwangi & Associates Advocates for the Decree Holder and that due diligence



was applied in the execution of the Order on 9/5/2021. On re-examination by his counsel Mr Chunyo, Mr Wanderi said that he was not a party in Nyahururu H.C.C.C No 245 of 2017.

This Court has looked at both submissions before settling down to write its Judgment.

20. In the first place, although Elizabeth Wangari Ngugi had a power of Attorney from the 1st Plaintiff executed on 15/6/2021. She conducted the matter as if she was an Advocate of the High Court of Kenya which is deplorable and should not be encouraged. However, I closed my eyes to that conduct.
21. From the documents produced by the Plaintiffs themselves there is an order dated 2/5/2001 and issued on 15/5/2001, earlier in Nairobi HCCC No. 1994 of 1979 to the effect that the Deputy Registrar of the Court was authorized to sign all the necessary papers to affect the transfer of 30 Acres to the Plaintiffs in the case i.e., Peter Ngugi Kainamia, John Muraya Kainamia as Peter Muraya Kainamia out of L.R. No. Nyandarua/OL- Kalou South /174. The Defendant in the case was Munyao Kakumia, the husband to the 1st Plaintiff herein and father to the other Plaintiffs. Judgement delivered on 29/4/1999. The court in that case (Justice A Msagha Mbogholi) observed that the Defendant had all along held that land in trust for the Plaintiffs.

..... He must now do all acts to facilitate transfer of the 30 Acres to the Plaintiffs in terms of the prayers in the Plaint dated 21/6/1979.”

22. This change is reflected in the Green Card of the parcel of land where entry No. 6 provides:

Decree from High Court of Kenya Civil case No. 1994 of 1979”.

Entry No. 7 was the withdrawal of caution Entry No. 5 by the cautioner, Peter Ngugi Kainamia, of P.O. Box 560 OL- Kalou claiming beneficial owner interest. Finally, in entry No. 8 of 13/11/2001 this Title 174 was closed on sub-division into Title Nos. 1627 to 1628 (inclusive). This is corroborated by the evidence in Gazette Notice No. 6371 dated 21/9/2001 slightly more than 2 months between the date of the notification and the date the Title was closed. The events above flow systematically and I have no reason to doubt even for a second that the Green Card is genuine. Accordingly, Land Parcel NO. Nyandarua /OL- Kalou South/174 ceased to exist on 13/11/2001. I do not buy the evidence of the Plaintiffs that they were evicted from Nyandarua /OL- Kalou South/174 on the 9/8/2022. It was 21 years non-existent.

23. On 7/8/2020 her Ladyship the Honourable Lady Justice M.C. Oundo sitting in Nyahururu in ELC. Case No. 245 of 2017 (formerly Nakuru ELC case NO. 41 of 2016) made orders as follows:
 1. Urgency of the case.
 2. That an eviction order be and is hereby issued against the Defendants (currently the 8 Plaintiffs) as follows:
 - a. Tabitha Wambui Munyao.
 - b. Gregory Kania Munyao
 - c. Isaac Njenga Munyao
 - d. Peter Githinji Munyao
 - e. John Muruga Munyao
 - f. Ngotho Munyao



- g. Charles Kinuthia Munyao
 - h. Samuel Ndumu and /or their agents and the removal of all structures in the parcel for land known as Nyandarua /OL- Kalou South/1698 erected and or built by the Defendant.
3. That the firm of J K Wanderi Auctioneers do execute the order in terms of Judgment dated 10/12/2019 against the defendants having failed to comply with the orders and/or directive of the court dated 23/6/2020.
 4. That the OCS in charge of Ol kalou Police Station do provide security to J K Wanderi Auctioneers during the eviction of the Defendants/Judgment Debtors from the suit parcel of Land and ensure compliance with the Judgment of the Court acted 10/12/019.
24. Apparently, there was another order by the same Judge issued on 7/8/2020 giving the instructions to carry out the above order to Nasioki Auctioneers which seems not to have been acted upon.
 25. From the copy of Title Deed produced by the Plaintiffs L.R. No. Nyandarua /OL- Kalou South/1698 meaning 10.30 Hectares was issued on 23/12/2002 to Peter Ngugi Kainamia Identity Card No. 207584407 and John Muraya Kainamia Identity Card No. 8169502. The same was a Sub-division of Nyandarua/OL- Kalou South/ 1627 which was one of the 2 Titles that were carved out of L.R. No. Nyandarua /OL- Kalou South/174 further confirming that as at the time of the eviction and demolition of the buildings on the suit property, NYA/OL KALOU/174 was not in existence.
 26. Further, in Nyahururu E L C Case No. 245 of 2017, which is actually reported in Kenya Law, Justice M.C. Oundo gave the following Judgment on 10/12/2019.
 27. In conclusion, as mentioned at the beginning of Judgment, this case is a culmination of a very protracted land dispute over the suit land ownership. I wish to wisely urge the parties herein who I perceive to be somehow related persons, to now put this matter to rest. As the adage goes, litigation must to come to end.
 28. The net result is that I find and hold the Plaintiff's suit against the Defendants has been proved on a balance of probabilities. I accordingly enter Judgment in favour of the Plaintiff as against the Defendant and proceed to dismiss the Defendants' defence and counter claim. I award the Plaintiff the following reliefs.
 - i. An order for the 1st to 8th Defendants do deliver vacant possession of all that parcel of land known as land reference numbers. Nyandarua/OL- Kalou South/1698 to Plaintiffs being the absolute registered proprietors and demolish all the illegal structures thereof.
 - ii. An order of permanent injunction granted against the 1st to 8th Defendants by themselves, their servants, employees, agents and/or proxies restraining them from sub-dividing, fencing, removing beacons, cutting trees, entering, encroaching, remaining, using cultivating or in any manner interfering with all that parcel of land known as Land reference numbers. Nyandarua/ OL- Kalou South/1698.
 - iii. An order of eviction from the suit land by the Defendants within the next 60 days form this date hereof. In default forceful eviction to be made at the Defendants costs.
 - iv. The OCPD and OCS in charge of OL- Kalou Police Station to ensure that these orders are complied with without failure.



- v. Mesne Profits of a sum of Kshs. 1,000,000/= to the Plaintiffs for the period the Defendants have used and been in occupation of the suit land.
- vi. I award an amount of Kshs. 100,000/= to the Plaintiff as compensation for the infringement of their right to use and enjoy their suit properties occasioned by the Defendant's trespass.
- vii. The costs of the suit is awarded to the Plaintiffs.

It is ordered.

29. This being the case, I find that the plaintiffs' case lacks merit since they were lawfully evicted from the suit premises. The efforts to bring a document examiner to disprove court documents were unnecessary. All they ought to have done is to ask for the relevant files in order to prove whether these court Orders existed or not.
30. The explicit Judgment reported in Kenya Law and the Gazettee Notice notifying the members of the public that Nyandarua /OL- Kalou/174 was to be cancelled cannot also be cooked. I see no malice or unlawfulness in the eviction of the Plaintiffs nor in the demolition of their houses since this was in conformity with a court order. The Auctioneer did his work dutifully and diligently as instructed by the court. In any case the Plaintiffs herein had been given by the Court the option of leaving the suit premises and delivering vacant possession of the Suit land to the Defendant (Plaintiff's) in suit No. E L C 245 of 2017) being the absolute registered Proprietary and demolish all the illegal structures thereon. There was an alternative order of forceful eviction if the Plaintiffs did not vacate from the Suit premises within 60 days of the Judgment. In fact, the eviction took place in August 2021, about 2 years from the time of the Judgment. No. stay was in place and no Appeal as at the time of the eviction and demolition. I am not ignorant of the fact that eviction and demolition from a piece of land which a party believes is hereditary is such a painful thing to live with but since due process was followed in the case at land, and the Plaintiffs had about 2 years to mitigate their losses, this court finds its hands tied to doing only one thing which is to dismiss this Suit with costs which I hereby do.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 23RD DAY OF OCTOBER, 2025

MUGO KAMAU

JUDGE

In the presence of:

C/A

..... for the Plaintiffs.

..... for the Defendant.

