

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELCOS CASE NO. E028 OF 2025 (O.S)**

**EVA WANGUI KIHANYA ..... 1<sup>ST</sup>**  
**PLAINTIFF**  
**MARK KAHINGA KIHANYA ..... 2<sup>ND</sup>**  
**PLAINTIFF**  
**EDWIN KIBUI KIHANYA ..... 3<sup>RD</sup>**  
**PLAINTIFF**

***VERSUS***

**ATTORNEY GENERAL ..... 1<sup>ST</sup>**  
**DEFENDANT**  
**CHIEF LAND REGISTRAR KIAMBU ..... 2<sup>ND</sup> DEFENDANT**

**J U D G M E N T**

1. The Plaintiffs (Applicants) filed suit by way of Originating Summons dated 21<sup>st</sup> July 2025 seeking the following reliefs: -

- a) *Spent*
- b) *That a Vesting Order do issue declaring all that parcel of land known and described as Land Reference Number MUGUGA/GITARU/1565 SITUATED within Kiambu to be registered in the names of EVA WANGUI KIHANYA, MARK KAHINGA KIHANYA and EDWIN KIBUI KIHANYA the Plaintiffs' herein;*

- c) *That subsequent to the Vesting Orders the Defendant do change the name in the title and the register to reflect names of EVA WANGUI KIHANYA, MARK KAHINGA KIHANYA and EDWIN KIBUI KIHANYA the Plaintiffs' herein;*
- d) *That the costs be in the cause.*
- e) *Any other orders that the court may deem fit to grant.*
2. The Originating Summons is anchored on the 1<sup>st</sup> Plaintiff/Applicant's Supporting Affidavit, sworn on 21<sup>st</sup> July 2025 on her own behalf and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs. She stated that the Plaintiffs are the beneficial owners of all interests in Land Reference Number MUGUGA/GITARU/1565 (hereinafter referred to as the 'suit property'), which had been registered in the name of their late grandmother, Elizabeth Wangui Kanyi, who held the property in trust for them as they were minors at the time of registration.
3. She averred that the late trustee diligently attended to all matters concerning the property until her death on 24<sup>th</sup> June 2023, after which the Plaintiffs have been unable to undertake any dealings relating to the land due to the absence of a surviving trustee.
4. The 1<sup>st</sup> Plaintiff further contended that the National Land Commission had notified them of the Government's intention to compulsorily acquire the property with effect from 25<sup>th</sup> June 2025 for the James Gichuru Junction Rironi Junction (A104/B3) Road Project. They asserted that the Commission had requested a Title Deed bearing the Plaintiffs' names before compensation could be processed.

Correspondence from the Commission, and a letter by their advocates responding to the Commission's request, were exhibited.

5. The 1<sup>st</sup> Plaintiff stated that compensation for compulsory acquisition would not be effected unless the land register is rectified to reflect them as the registered proprietors. She maintained that the vesting orders sought were necessary to enable the Chief Land Registrar to effect the requisite changes on the register and issue a Title Deed in their names.
6. She further asserted that unless the orders are granted, they stand to suffer prejudice as the National Land Commission has already taken possession of part of the property. It was her position that their entitlement to be registered as proprietors, issued with a Title Deed, and paid compensation was not contested by any party.
7. Despite being served with the Originating Summons the Defendants have never entered appearance nor filed a Replying Affidavit.

### **Analysis and Determination**

8. I have carefully considered the Originating Summons dated 21<sup>st</sup> July 2025, the Supporting Affidavit sworn by the 1<sup>st</sup> Plaintiff, and the annexures thereto. I have also noted that despite service, the Defendants did not enter appearance or file any response. The Summons therefore stands unopposed. Nonetheless, the Plaintiffs

bear the burden of demonstrating entitlement to the vesting orders sought.

9. The Plaintiffs' case is that the suit property, LR MUGUGA/GITARU/1565, is registered in the name of their late grandmother, Elizabeth Wangui Kanyi, who held the land in trust for them as beneficiaries. It is uncontested from the exhibited documents that the Plaintiffs were minors at the time of registration, and that the trustee managed the property on their behalf until her demise on 24<sup>th</sup> June 2023.
10. The law is clear that where a trustee dies and the trust property remains in their name, the beneficiaries may move the court for orders vesting legal ownership in them or appointing a person to effect transfer. Under Order 37 Rule 1 and Rule 8 of the Civil Procedure Rules, beneficiaries are expressly permitted to approach the court for the determination of questions relating to trusts, including the vesting, transmission or administration of trust property.
11. I also note that sections 24, 25 and 26 of the Land Registration Act recognise that a registered proprietor may hold land in trust for another, and such beneficial interest is enforceable notwithstanding the name appearing on the certificate of title. Further, under section 60 of the Trustee Act, the court retains jurisdiction to issue vesting orders where a trustee is unable to execute transfer of property, such as in cases of death.

12. The Plaintiffs have demonstrated that the late trustee is deceased, that she held the property purely in a fiduciary capacity, and that her death has rendered it impossible for them to transact, including responding to an imminent compulsory acquisition process initiated by the National Land Commission.
13. The National Land Commission's correspondence, which is uncontroverted, confirms the Government's intention to compulsorily acquire the suit property and its requirement that compensation be processed only after production of a Title Deed reflecting the rightful owners. The Plaintiffs therefore, stand to suffer loss and delay in compensation if the court does not intervene.
14. The court's power to issue vesting orders is equitable in nature and is exercised where the circumstances justify intervention to ensure that beneficial ownership is perfected in law. In **Re Estate of Mwangi Giture (Deceased) [2016] eKLR**, the court held that vesting orders are appropriate remedies to facilitate transmission of property from a deceased trustee to beneficiaries.
15. The Plaintiffs have placed before the court sufficient evidence demonstrating their beneficial entitlement to the land and the impediment created by the trustee's death.
16. There is no contrary claim before this court challenging the Plaintiffs' beneficial rights or disputing the trust arrangement. On the material

presented, I am satisfied that the Plaintiffs have met the threshold for issuance of the vesting orders sought. Consequently, the court issues the following orders:

- i). A Vesting Order is hereby issued in respect of all that parcel of land known as Land Reference Number MUGUGA/GITARU/1565, vesting the said property in the names of: EVA WANGUI KIHANYA, MARK KAHINGA KIHANYA, and EDWIN KIBUI KIHANYA, being the beneficial owners thereof.*
- ii). The Land Registrar, Kiambu, is hereby directed to rectify the land register for LR MUGUGA/GITARU/1565 and to issue a Title Deed in the names of the above-named Plaintiffs pursuant to the vesting order.*
- iii). Each party shall bear their costs.*

**Dated, signed and delivered virtually this 19<sup>th</sup> day of November 2025.**

.....  
**J. M ONYANGO**  
**JUDGE**

**In the presence of:**

1. Ms Kendi for Mr Omuganda for the Plaintiffs
2. No Appearance for the Defendant

Court Assistant: Hinga