



Kiara (Suing on Behalf of the Estate of Erastus Muthama Kiara – Deceased) v Muthiora & others (Environment and Land Case 233 of 2014) [2025] KEELC 7899 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7899 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE 233 OF 2014
JO OLOLA, J
NOVEMBER 13, 2025**

BETWEEN

MARION MUTHAMA KIARA (SUING ON BEHALF OF THE ESTATE OF ERASTUS MUTHAMA KIARA – DECEASED) APPLICANT

AND

DR. BEN MUTUNGI MUTHIORA & OTHERS DEFENDANT

RULING

1. By the Notice of Motion dated 5th February 2024, Marion Muthamia Kiaria suing on behalf of the Estate of Erastus Muthama Kiara (the Applicant) prays for the following:
 - a. Spent;
 - b. That the Court be pleased to extend time and admit the Plaintiff's Valuation Report dated 28th February, 2022 herein in respect of the suit premises known as I.R 56777 and L.R 2787/1274 in Nanyuki Municipality in Laikipia County;
 - c. That the Court be pleased to assess the compensation due to the Plaintiff in respect of the suit premises known as I.R 56777 and L.R 2787/1274 in Nanyuki Municipality in Laikipia County;
 - d. That the Court be pleased to order the Defendants to pay a sum of Kshs 2,000,000/= per each one-quarter (1/4) of an acre in respect of the suit premises known as I.R 56777 and L.R 2787/1274 in Nanyuki Municipality in Laikipia County within sixty (60) days failure of which an eviction order do issue against any Defendant who fails to comply thereof;
 - e. That the Court be pleased to order the OCS, Nanyuki Police Station do offer security in ensuring compliance of the eviction order herein;



- f. That the Chief Land Registrar, Nairobi and the Registrar of Titles, Nairobi be and are hereby ordered within sixty (60) days from the date hereof (to) sub-divide the suit premises into nine (9) plots using the original title in respect of the suit premises known as I.R 56777 and L.R 2787/1274 in Nanyuki Municipality in Laikipia County and register the new plots in the name of Marion Muthama Kiara to enable him (sic) transfer the same to the Defendants who will pay up the assessed amount per each plot thereof;
 - g. That the orders hereof do apply to related matters before this Honourable Court in respect of the suit premises hereof; and
 - h. That the costs be borne by the Defendant hereof.
2. The application is supported by an Affidavit sworn on 5th February 2024 by Henry Kurauka, the Applicant's Counsel on record and is premised inter alia, on the grounds that:
 - i. The application is urgent to enable the Respondents to comply with the Orders and Decree granted by Hon. Lady Justice L.N. Waithaka on 6th December 2016;
 - ii. The Respondents appealed against the said judgment but on 4th February 2022, the Court of Appeal dismissed the Appeal with costs;
 - iii. The suit premises are registered in the name of the late Erastus Muthamia Kiara but the Applicant has confirmed letters of administration for the estate;
 - iv. The Plaintiff is unwell and has been greatly prejudiced by the Respondents;
 - v. The Respondents met with the Applicant and her children and agreed to make payments but they have subsequently failed to do so thereby making the Applicant and the children to suffer great loss, prejudice and damage; and
 - vi. The Respondents have not complied with the decree and this court is clothed with jurisdiction to make appropriate orders in the interest of justice.
3. Dr. Ben Mutungi Muthiora (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 27th February 2024, the Respondent avers that he has always been ready to pay the value of the subject plot upon the Applicant completing the process of subdivision, registration and transfer to himself otherwise he would be left exposed as his ownership of the plot would be uncertain.
4. The Respondent further avers that while the Applicant is seeking orders that the Chief Land Registrar do sub-divide the suit premises and to register the same, the Applicant has failed to state why all along she has failed to initiate and complete the subdivision and registration process. It is his case that he is ready to deposit the sum in court to be released to the Plaintiff upon her completion of the subdivision, registration and transfer process.
5. I have carefully perused and considered the application as well as the response thereto by the Respondent. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
6. By her application before the court, the Applicant prays for an extension of time to admit the Valuation Report dated 28th February 2022 in respect of the suit properties described as I.R. No. 56777 and L.R. No. 2787/1247 in Nanyuki Municipality in Laikipia County. That prayer as I understand it was not opposed by the Respondent.



7. In addition, the Applicant has urged the court to be pleased to assess the compensation due to herself in respect of the said premises and to order the Respondent to pay a sum of Kshs. 2,000,000/- for each one-quarter of an acre in respect of the suit properties failure to which the Respondent ought to be evicted from the suit premises.
8. The application before the court arises from a decree issued herein on 6th December, 2016 wherein the court had found that the Defendant's occupation of a portion of the suit land was unlawful. The Decree further directed that:
 - “2. The Defendant is at liberty to redeem his interest in the suit property by paying to the Plaintiff the current market price of the land he occupies;
 3. The Plaintiff do commission a valuation of the suit property by a registered valuer;
 4. In determination of the market price of the land, the valuer takes into account only the value of the land disregarding the improvements thereon made by the Defendant;
 5. The report of the valuer to be filed with the court within 45 days from the date of this judgment to enable it access the compensation due to the Plaintiff;
 6. The defendant may if he so desires commission an independent valuation of the portion he occupies and file the report within the time intimated above; and
 7. In the event the defendant is not willing to redeem his interest in the suit property, he shall vacate the suit property within 45 days of delivery of this judgment failing which the plaintiff shall be at liberty to have him forcibly evicted therefrom.”
9. It was apparent from the material placed before the court that the decree of the court was not effected after the Respondent instituted Nyeri Court of Appeal Civil Appeal No. 43 of 2017. On the 4th February 2022, the Court of Appeal dismissed the said Appeal following which the Applicant instructed Messrs Roma Valuers, Environment & Property consultants Ltd to prepare the valuation report filed herein dated 28th February 2022.
10. The Valuation Report estimates the Open Market Value of the property said to be measuring approximately 2.64 Acres at Kshs. 21,120,000/=. While the Respondent was granted an opportunity to equally commission an independent valuation of the portion of the property that he occupies, it would appear that he chose not to do so as no such valuation report has been placed before the court.
11. From a perusal of the Report presented by the Applicant, it was evident that the suit property has been sub-divided into 9 equal portions 5 of which had been developed by the Respondent. In the absence of any other contrary report to the Valuation Report dated 28th February 2022, that would mean that each of the 9 portions was valued at approximately Kshs. 2,364,700/-.
12. Arising from the foregoing, it was clear to me that the compensation due to the Applicant from the Respondent is the sum of Kshs. 11,733,330/= being the value of the 5 developed portions. The Respondent is hereby directed to pay the said sum of Kshs. 11,733,330/- to the Applicant within sixty (60) days from today failure to which the Applicant shall be at liberty to have him evicted therefrom.



13. In addition, it's hereby directed that the Chief Land Registrar Nairobi and the Registrar of Titles Nairobi do sub-divide the suit premises into Nine Portions in accordance with the Survey Report dated 28th February 2022 and to register the five (5) developed portions into the name of the Respondent.
14. The Respondent shall bear the costs of the said sub-division.
15. Each party shall bear their own costs in regard to this application.
16. It is so ordered.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 13TH DAY OF NOVEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Kuranka Advocate for the Plaintiff/Applicant

Mr. Mwangi Kairuki Advocate for the Defendant/Respondent

