



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wathiru v Gikaba & 2 others (Environment and Land Case  
808 of 2017) [2025] KEELC 7930 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7930 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 808 OF 2017  
JM ONYANGO, J  
NOVEMBER 13, 2025**

**BETWEEN**

**NANCY WANJIRU WATHIRU ..... PLAINTIFF**

**AND**

**ELIJAH NJUGUNA GIKABA ..... DEFENDANT**

**AND**

**LYDIA NJOKI KINYUA ..... 1<sup>ST</sup> PROPOSED DEFENDANT**

**CHARLES MULI ..... 2<sup>ND</sup> PROPOSED DEFENDANT**

**RULING**

1. This Ruling is in respect of two applications filed by the proposed Defendants. I shall consider them in the order in which they were filed. By Notice of Motion dated 20<sup>th</sup> March 2025, the Proposed 2<sup>nd</sup> Defendant Applicant sought the following orders: -
  - a. Spent.
  - b. That pending the hearing and determination of this application interpartes, there be a stay of execution of the judgment entered on 8 11 2019.
  - c. That Lidya Njoki Kinyua be joined as a Defendant in the suit.
  - d. That the judgment delivered on the 8 11 2019 and all the consequential orders thereto be set aside and the proposed defendant be granted unconditional leave to file a defence.
  - e. That the suit be ordered to start denovo.
2. The application is based on the 7 grounds set out on the face of the Notice of Motion and on the Proposed 2<sup>nd</sup> Defendant Applicant's Supporting Affidavit sworn on even date by Lydia Njoki Kinyua.



- She avers that she has been in occupation of what was formerly known as L.R. No. Kiambu Munyu 1273 since 2011, having purchased a 40 x 80 ft portion of the land from Reuben Kamau Kimondo.
3. She further states that she and Reuben Kamau Kimondo bought the same portion of land from the Defendant, Elijah Njuguna Gikaba. She explains that the one acre of land claimed by the Plaintiff in the present suit includes the 40 x 80 ft plot that she bought from Kimondo and which she and her family have occupied since 2011. The Proposed 2<sup>nd</sup> Defendant contends that the Plaintiff Respondent failed to disclose to the court that she was in occupation of the land and did not join her as a party to the proceedings. She adds that the Plaintiff Respondent has now threatened to evict her from the property on the strength of the judgment delivered on 8<sup>th</sup> November 2019.
  4. She avers that she is an interested party in the suit and she intends to raise a defence on several grounds. First, she asserts that the suit is statutorily time-barred, having been filed on 30<sup>th</sup> October 2017 to enforce a sale agreement made on 4<sup>th</sup> May 1988, nearly 29 years later. Second, she maintains that, as a person in possession of a 40 x 80 ft portion within the one acre claimed by the Plaintiff Respondent, she ought to have been joined as a party to the proceedings. Third, she argues that the sale agreement sought to be enforced through specific performance is null and void for want of Land Control Board consent.
  5. She concludes by stating that it would be fair and just for the court to grant the orders sought to remedy the injustice caused by the Judgment delivered on 8<sup>th</sup> November 2019.
  6. The Application is opposed by the Plaintiff Respondent through a Replying Affidavit sworn by her on 5<sup>th</sup> April 2025. She explains that she is the registered owner of land parcel No. Kiambu Munyu 8059, which was subdivided from L.R. No. Kiambu Munyu 1273, the suit property in question. She states that she acquired the parcel pursuant to the Judgment delivered in this suit.
  7. The Plaintiff Respondent avers that the parcel had initially been purchased by her late husband, Patrick Waithiru Muhoro, from the deceased Defendant through a sale agreement. She contends that upon her husband's death in 2014, she obtained a Grant of letters of administration over his estate and, as the legal representative and filed a suit for specific performance to compel the transfer of one (1) acre from Kiambu Munyu 1273. She explains that the court, in its Judgment of 8<sup>th</sup> November 2019, found in her favour.
  8. She further states that following the Judgment, the original parcel, Kiambu Munyu 1273, was subdivided into two portions: Kiambu Munyu 8059, which was registered in her name, and Kiambu Munyu 8060, which remained in the name of the Defendant. She then subdivided her parcel, Kiambu Munyu 8059, into twelve plots, each measuring approximately 40 x 80 feet, and indicates that the Proposed 2<sup>nd</sup> Defendant Applicant, Lydia Njoki Kinyua, is currently occupying plot number Kiambu Munyu 9142, which arose from that subdivision.
  9. She adds that she obtained title deeds for all the resultant plots, including Kiambu Munyu 9142, and through her advocates issued a demand letter dated 22<sup>nd</sup> April 2024 notifying the Proposed 2<sup>nd</sup> Defendant Applicant that her occupation amounted to trespass.
  10. The Plaintiff Respondent denies the Proposed 2<sup>nd</sup> Defendant Applicant's claim of being in occupation since 2011, asserting that during her visits to the site over the years, she did not observe any development or sign of occupation. She also denies any knowledge of Reuben Kamau Kimondo, from whom the Applicant alleges to have purchased the land, maintaining that he is a stranger to the property and has never been a registered proprietor of Kiambu Munyu 1273. She relies on the green card entries for both Kiambu Munyu 1273 and Kiambu Munyu 8059 to demonstrate that ownership has always been with the Defendant and later herself.



11. The Plaintiff Respondent contends that the Applicant's continued occupation of her land is illegal, fraudulent, and based on misrepresentation, since the alleged vendor had no legal title to pass. She insists that the Applicant is a trespasser and should be treated as such.
12. She further deposes that it is only fair and just that the court preserve her proprietary rights as the registered owner under the court's judgment of 8<sup>th</sup> November 2019 and that the Applicant be restrained from interfering in any way with her property, including plot No. Kiambu Munyu 9142.
13. She also notes that the Applicant has already filed another suit, OS No. E003 of 2024, claiming adverse possession over the same parcel, which in her view amounts to forum shopping. She adds that the present application is an abuse of the court process, as it seeks to review a judgment delivered five years earlier.
14. In conclusion, she states that the application lacks merit and is intended merely to delay her from developing her land. She urges the court to dismiss it with costs.
15. The second application for determination is dated 14<sup>th</sup> July 2025, brought by Charles Muli, the Proposed 3<sup>rd</sup> Defendant Applicant. Through the application, he seeks the following orders:
  - i. Spent.
  - ii. An order be issued staying the implementation of this Honourable Court's Judgment entered on 8<sup>th</sup> November 2019 pending the service, hearing and determination of this Application.
  - iii. An order be issued vacating and or setting aside the Judgment entered on 8<sup>th</sup> November 2019 and all its consequential orders.
  - iv. An order be issued staying the proceedings of the Thika Magistrate ELC Case No. E065 of 2024: Nancy Wanjiru Waithiru vs Charles Muli filed based on the Judgment of 8<sup>th</sup> November 2019, pending the service, hearing and determination of this Application.
  - v. The Applicant Charles Muli be joined as a Defendant in this suit.
  - vi. The suit be ordered to start de novo.
  - vii. The costs of and incidental to this Application be provided for.
  - viii. Such other, further, incidental or alternative reliefs as the Honourable Court may deem just and expedient.
16. The Application is based on the 7 grounds set out on the face of the Notice of Motion and on the Proposed 3<sup>rd</sup> Defendant Applicant's Supporting and Further Affidavit sworn on 14<sup>th</sup> July 2025 and 12<sup>th</sup> September 2025 by Charles Muli. He explains that on 13<sup>th</sup> September 2010, he purchased two parcels of land, each measuring 40 by 70 feet, identified as Plots No. 5 and 6 Githima Munyu, situated on L.R. No. KIAMBU MUNYU 1273, from one Francis Kimani Mwangi, trading as Henmwa Investments Limited. He adds that he has been in possession of the said parcels since the date of purchase.
17. The Proposed 3<sup>rd</sup> Defendant further states that James Mwangi Kimani, the father of Francis Kimani Mwangi, had earlier bought the same land from the Defendant, through sale agreements dated 15<sup>th</sup> April 2010 and 29<sup>th</sup> April 2010. He contends that the one acre of land claimed by the Plaintiff Respondent in this suit forms part of the two plots he purchased and which he has occupied since 2010. He asserts that the Plaintiff Respondent did not disclose to the court that he was in possession



and occupation of the land at the time of filing the suit on 30<sup>th</sup> October 2017, nor did she join him as a party to the proceedings.

18. He avers that the Plaintiff Respondent, armed with the Judgment of this court and through a demand letter dated 22<sup>nd</sup> April 2024, has threatened to evict him from the property, which would leave him without a home and violate his constitutional right to property under Article 40 of *akn ke act 2010 constitution the Constitution*.
19. He further states that the Plaintiff Respondent has since filed another suit against him, being Thika Magistrates ELC Case No. E065 of 2024: Nancy Wanjiru Waithiru vs Charles Muli, seeking a permanent injunction to restrain him and his agents from entering, fencing, or trespassing upon land parcel No. Kiambu Munyu 9141, one of the subdivisions from Kiambu Munyu 1273.
20. The Proposed 3<sup>rd</sup> Defendant deposes, on the advice of his advocates which he believes to be true, that the present suit is statutorily time-barred, having been filed on 30<sup>th</sup> October 2017 to enforce a sale agreement made on 4<sup>th</sup> May 1988, nearly 29 years later. He also avers that the sale agreement sought to be enforced through specific performance was null and void for want of Land Control Board consent. He maintains that he has suffered and continues to suffer substantial and irreparable loss due to the ongoing threats of eviction, and therefore urges the court to grant the orders sought in his application.
21. In the Further Affidavit, he clarifies that he remains the registered and beneficial owner of the parcel of land derived from L.R. No. Kiambu Munyu 1273, which he has owned and occupied since 2010. He asserts that the Judgment delivered on 8<sup>th</sup> November 2019, which the Plaintiff Respondent relied upon to obtain a title deed issued on 29<sup>th</sup> January 2024, was obtained fraudulently and through material non-disclosure, as the Plaintiff Respondent deliberately failed to include him in the proceedings despite being aware of his possession and the existence of his permanent house on the land. He contends that the judgment was issued in violation of his constitutional rights to property and fair hearing under Articles 40 and 50 of *akn ke act 2010 constitution the Constitution* of Kenya.
22. He further avers that the area Chief, mentioned in the Plaintiff's affidavit, had no jurisdiction to deal with land transfer or cautions. He maintains that the Plaintiff knowingly excluded him from the subdivision process despite his visible occupation, thereby attempting to deprive him of his proprietary rights. He reiterates that the Plaintiff only purchased one acre from the original parcel and should have confined the subdivision to the unoccupied portions.
23. The Plaintiff Respondent opposes the application through a Replying Affidavit sworn by her on 5<sup>th</sup> August 2025. She reiterates that following delivery of the Judgment, she proceeded to subdivide the property into twelve equal portions and obtained individual title deeds for each subdivision.
24. She further avers that her advocate duly issued a demand letter notifying the Applicant that his continued occupation of one of the parcels constituted trespass, as he held no legal or equitable interest in the land. She denies the Proposed 3<sup>rd</sup> Defendant's Applicant's claim of purchase from Francis Kimani Mwangi t a Henmwa Investments Limited, asserting that the land was never registered in that entity's name. She refers to the Green Card for L.R. No. Kiambu Munyu 1273, which shows the Defendant as the registered owner and records a caution placed in 2012 to protect her late husband's interest, which was later withdrawn following the court's judgment. She contends that the Applicant's occupation was merely permissive and incidental, not conferring any proprietary rights or entitlement to be joined in the original suit.
25. Finally, she maintains that entertaining the Applicant's claim would undermine the sanctity of the court's judgment and the integrity of the land registration process. She asserts that she would



suffer irreparable harm if the Application were allowed, and therefore urges the court to dismiss the Application with costs, describing it as frivolous, vexatious, and an abuse of the court process.

26. The Applications were canvassed by way of written submissions. The Proposed 2<sup>nd</sup> Defendant Applicant filed Written Submissions dated 16<sup>th</sup> May 2025, filed by M s Waichungo Martin and Company Advocates. The Proposed 3<sup>rd</sup> Defendant Applicant filed his submissions dated 12<sup>th</sup> September 2025 through M s JN & P Law Advocates LLP, while the Plaintiff Respondent filed Written Submissions dated 29<sup>th</sup> September 2025, which I have read and considered.

### **Analysis and Determination**

27. This court is of the considered opinion that the issue for determination is whether the Proposed Defendants have met the threshold to be enjoined in the suit post-judgment.

28. Joinder of parties provided for under Order 1 Rules 10 and 11 of the Civil Procedure Rules is intended to ensure that all persons materially interested in the subject matter of a suit are included so that their rights can be protected. The general law on joinder is that a court can, either on its own motion or by an application, join a party to a case before passing judgment in the case. The jurisdiction to join a party to a case post-judgment is exercised only in exceptional and justifiable circumstances. In *Merry Beach Limited vs Attorney General & 18 Others* [2018]eKLR the Court of Appeal stated as follows:

“However, there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. The order enjoining a party would also have to set aside the judgment entered to give him/her an opportunity to be heard.”

29. What emerges from the record and from the evidence presented is that the Plaintiff Respondent instituted this suit against the Defendant by a Plaint dated 30<sup>th</sup> October 2017, seeking orders for specific performance requiring the Defendant to alienate and transfer one acre from L.R. No. Kiambu Munyu 1273 (also known as Plot 4558 in Munyu Settlement Scheme) into her name. Alternatively, she prayed that the Chairman of the Kilimambogo Land Control Board be authorized to issue the necessary consent for the subdivision and transfer, and that the Executive Officer of the Court be directed to execute all necessary transfer and Land Control Board forms on behalf of the Defendant. She also claimed costs of the suit and any other relief the Court deemed fit.

30. Her position was that the Defendant was the registered owner of the suit property and had, by a sale agreement dated 4<sup>th</sup> May 1988, agreed to sell one acre to her late husband, Patrick Waithiru Muhoro, who fulfilled all his obligations but died before the transfer was completed. She contended that the Defendant neglected and refused to perform his obligations under the agreement, prompting the lodging of a caution on the land to protect the estate. The Defendant did not appear or file a defence, and the matter proceeded to a formal proof hearing, where the Plaintiff testified without calling any additional witnesses. Judgment was subsequently entered on 8<sup>th</sup> November 2019.

### **Application dated 20<sup>th</sup> March 2025**

31. The Proposed 2<sup>nd</sup> Defendant claims that she purchased a 40 x 80 ft portion of L.R. No. KIAMBU MUNYU 1273 from Reuben Kamau Kimondo in 2011 and has continuously occupied the same since then. She asserts that this plot falls within the one-acre area claimed by the Plaintiff Respondent and that she was never joined as a party to the original suit. She further contends that the sale agreement upon which the Plaintiff Respondent relied is null and void for lack of Land Control Board consent



and that the suit was statutorily time-barred, having been filed nearly 29 years after the original agreement. The Plaintiff Respondent denies the Proposed 2<sup>nd</sup> Defendant's claim of being in possession of the suit property since 2011, and further denies that Reuben Kamau Kimondo ever had any title or right to transfer the property.

32. In assessing these competing claims, it is evident that Proposed 2<sup>nd</sup> Defendant demonstrates a prima facie interest in the land and an assertion of possession and proprietary claim. The law, as set out in Merry Beach Limited, recognizes that post-judgment joinder may be granted where a person was not served or heard and may suffer injustice if excluded. However, the court must also consider whether the claimed interest is legally sustainable. In this case, Proposed 2<sup>nd</sup> Defendant relies solely on a sale agreement from a purported seller who was not a registered owner, raising serious doubts on the validity of her claim. Therefore, while she has a procedural right to be heard, her substantive claim is legally weak, as a good title cannot pass from a non-owner.

#### **Application dated 14<sup>th</sup> July 2025**

33. The Proposed 3<sup>rd</sup> Defendant claims ownership and occupation of two plots purchased from Francis Kimani Mwangi in 2010, which he asserts were part of the one-acre plot claimed by the Plaintiff Respondent. He alleges that the Plaintiff Respondent obtained the 2019 Judgment fraudulently, without disclosing his occupation, thereby violating his constitutional rights to property and fair hearing. He also challenges the original sale agreement for want of Land Control Board consent and raises the defence of statutory limitation.
34. The Plaintiff Respondent disputes the Proposed 3<sup>rd</sup> Defendant's claim, asserting that the land was never registered in the name of Francis Kimani Mwangi, and that the Proposed 3<sup>rd</sup> Defendant's occupation was permissive or incidental, thus not conferring proprietary rights. She further maintains that his claims constitute forum shopping, as he has filed a separate suit based on the same facts, the suit being OS No. E003 of 2024).
35. The court notes that the Proposed 3<sup>rd</sup> Defendant's claim largely hinges on the unverified sale from Francis Kimani Mwangi, whose legal authority to sell is highly questionable, given the Green Card records showing the Defendant and subsequently the Plaintiff as registered owners.
36. In addition, both Proposed Defendants rely heavily on the assertion that the original suit is time-barred and that the sale agreement lacked Land Control Board consent. While these are valid legal arguments in theory, they relate to the merits of the original suit, which has already been adjudicated, and the court must be cautious not to reopen settled matters absent compelling evidence of fraud or procedural impropriety.
37. It is also noteworthy that both the Proposed Defendants filed their Applications in 2025, despite the Judgment they seek to challenge having been delivered on 8<sup>th</sup> November 2019. Neither party provides any explanation for the delay of approximately six years before seeking relief. In law, applications to set aside a judgment or to join parties post-judgment must be filed promptly, and the court has consistently emphasized that unexplained delay undermines a party's entitlement to relief. In *Karanja Karimi vs Joseph Karimi & 2 Others* [2019] eKLR, the Court held that the failure to act expeditiously affects a party's claim to relief. The exercise of discretion to reopen a concluded matter is contingent on timely action. The absence of a satisfactory explanation for the long delay in filing these applications therefore, weakens the Applicants' claims.
38. Consequently, I find that both applications lack merit. The two applications are hereby dismissed with costs to the Plaintiff Respondent.



**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

.....

**J. M ONYANGO**

**JUDGE**

In the presence of:

Miss Gicheru for the Proposed 2nd Defendant Applicant

Miss Mbiti for Mr Ngwere for the Proposed 3rd Defendant Applicant

Court Assistant: Hinga

