



REPUBLIC OF KENYA



**Waburi v Muiruri & 6 others (Environment and Land Case 161 of 2017)  
[2025] KEELC 7529 (KLR) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7529 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND CASE 161 OF 2017  
MN GICHERU, J  
NOVEMBER 3, 2025**

**BETWEEN**

**MARGARET WANJIRU WABURI ..... PLAINTIFF**

**AND**

**CHRISPIN MUIRURI ..... 1<sup>ST</sup> DEFENDANT**

**GEOFFREY GITAU NDUNGU ..... 2<sup>ND</sup> DEFENDANT**

**IRENE WANGARI NDEGWA ..... 3<sup>RD</sup> DEFENDANT**

**KIMATHI SILAS KINIU ..... 4<sup>TH</sup> DEFENDANT**

**RACHEL WAMAITHA KURIA ..... 5<sup>TH</sup> DEFENDANT**

**JOHN KAMAU NJUGUNA ..... 6<sup>TH</sup> DEFENDANT**

**PURITY WANGARI NJUKI ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff seeks the following reliefs against the Defendants whether jointly or severally.

a. Vacant possession of L.R. No. Mitubiri/Wempa/Block 2/1206, suit land.

b. Costs of this suit.

2. The Plaintiff's case is as follows.

Firstly, she is the registered owner of the suit land which measures approximately 0.2023 Ha. She acquired the suit land through purchase from Methi and Swani Farmers Co-operative Society Limited. She has a share certificate No. 311, ballot No. 640 and title deed for the land to prove ownership. Secondly, the 1<sup>st</sup> to 6<sup>th</sup> Defendants claim the suit land through purchase from Margaret Wanjiru Mburu of ID No. 48xxxxxx vide a sale agreement dated 7-6-2013. The Plaintiff contends that the said sale is



null and void for a number of reasons. They include that the Plaintiff was not a party to the agreement as she is Margaret Wanjiru Waburi and not Margaret Wanjiru Mburu. Further to the above, the agreement is inconceivable and non factual. Thirdly, the 7<sup>th</sup> Defendant has occupied the suit land and built a residential house in collaboration with the 1<sup>st</sup> to 6<sup>th</sup> Defendants. For the above stated reasons, the Plaintiff prays that her claim be allowed as prayed for in the plaint dated 15-4-2015.

3. In support of the case, the Plaintiff filed the following evidence.
  - i. Witness statement dated 15-4-2015.
  - ii. Copy of agreement for sale dated 7-6-2013.
  - iii. Copy of certificate of official search dated 12-2-2015.
  - iv. Copy of letter from Methi and Swani Co-operative Society dated 15-2-2015.
  - v. Copy of title deed for the suit land dated 13-11-2014.
  - vi. Photograph of a house on the suit land.
4. The Defendants through their counsel on record filed a written statement of defence dated 10-7-2024 in which they reply as follows. Firstly, the 1<sup>st</sup> Defendant's name is not Chrispin Muiruri as stated in the pleadings. His name is Chrispin Muriuki. Secondly, the Plaintiff is not the registered owner of the suit land and that they bought it from the lawful owner, one Margaret Wanjiru Mburu and they occupy it lawfully. Thirdly, the particulars of fraud are all denied and the Plaintiff is an imposter with no lawful claim over the suit land. For the above reasons, the Defendants pray for the dismissal of the suit with costs.
5. In support of their case, the Defendants filed the following evidence.
  - i. Witness statement dated 13-9-2024.
  - ii. Copy of share certificate dated 17<sup>th</sup> April 1984, in the name of Margaret Wanjiru Mburu.
  - iii. Copies of certificates of official search in the name of Margaret Wanjiru Mburu dated 25-4-2013 and 6-6-2013.
  - iv. Copy of the agreement for sale dated 7-6-2013.
  - v. Copies of receipts dated 29-12-1988, 25-9-1999, 10-10-1979, 25-10-1979 and 30-9-2019.
  - vi. Copy of title deed in the name of Margaret Wanjiru Waburi dated 11-11-2014.
  - vii. Copy of green card showing that the suit land was first registered in the name of Margaret Wanjiru Mburu on 11-8-2011 and later on 13-11-2014 in the name of Margaret Wanjiru Waburi.
  - viii. Copy of letter dated 20-11-2020 addressed to the Plaintiff asking her to surrender the title deed to the Commissioner for Co-operative Development and Liquidator and the Legal Officer and Liquidator of Methi and Swani Farmers Co-operative Society Limited.
6. At the trial on 14-7-2025, the Plaintiff adopted her witness statement and documents as her evidence. She was cross-examined on how two title deeds were issued for the suit land on 31-3-2014 and 13-11-2014. The other area of cross-examination was on when she joined Methi and Swani Farmers Co-operative Society which owned the land before it was transferred to members of the Co-operative Society.



On the part of the Defendants, the first Defendant was the sole witness. His testimony was to effect that the seller of the suit land was Margaret Wanjiru Mburu who had all the original records for the land. The Plaintiff was to be given L.R. No. Mitubiri/Wempa/Block 2/4110. The letter dated 20-11-2020 clearly states that the suit land was erroneously issued to her. It required her to surrender the title to the liquidator of Methi and Swani Farmers Cooperative Society Limited. It is the defence case that the change of name from Margaret Wanjiru Mburu to the Plaintiff's name took place one year after the Defendants had bought the suit land. Finally, even though the 1<sup>st</sup> Defendant has been on the suit land for long, the Plaintiff did not serve him personally but instead did so under substituted service.

7. Counsel for the Defendants was to file written submissions by 14-8-2025 but did not so. As a result it was the Plaintiff's counsel who filed his submissions first. The issues raised in the Plaintiff's submissions are as follows.
  - i. Whether the Plaintiff is lawfully registered as the owner of the suit land.
  - ii. Whether the Defendants can be deemed as lawful owners of the suit land in the absence of a consent of the Land Control Board.

On the other hand, the Defendant's counsel in his submissions dated 19-9-2025 which is more than 30 days outside the set timelines raised the issues of whether fraud was proved to the required standard and whether the Defendants are innocent purchasers for value without notice of defect in title.

8. I have carefully considered all the evidence adduced in this case by both sides bearing in mind the burden on the Plaintiff to prove her case to the required standard. The evidence that I have considered includes the witness statements, documents and testimony at the trial. I have also considered the written submissions by both sides and the issues raised therein. I must say that I had to bring out the issues out of the submissions because neither of the counsel on record identified the issues clearly and unequivocally as was expected of them.
9. On the first issue raised by the Plaintiff, I find that she is not lawfully registered as the owner of the suit land. Firstly, the Plaintiff cannot explain when she joined Methi and Swani Cooperative Society Limited. If she was a genuine member of the Company, she should know much more than she did when she testified on 14-7-2025. She could not recall when she started paying for the suit land, had no ballot paper, no share certificate and no receipts. This is uncharacteristic of a person who is a genuine member of a land buying company. In contrast Margaret Wanjiru Mburu who sold the suit land to the Defendants has receipts issued by Methi and Swani dating back to the year 1979. The Defendants have better evidence than the Plaintiff. Secondly, it is clear from the copy of the green card that was produced by the Defendants as an exhibit that on 11-8-2011, Margaret Wanjiru Mburu was registered as the owner of the suit land and issued with a title deed on the same date. The Plaintiff is unable to explain how she came to be registered as the owner of land that had been registered in the name of Margaret Wanjiru Mburu ID No. 4881625 three months earlier. She has no sale agreement with Margaret Wanjiru Mburu, no evidence of payment of consideration, no consent of the land control board, no transfer of land instrument and no evidence of payment of stamp duty. It should not be lost that under sections 107 and 108 of the *Evidence Act*, it is the Plaintiff with the burden of proof because she is the one who would fail if no evidence was adduced on either side. She is in fact the one who filed this suit seeking the eviction of the Defendants from the suit land. Thirdly, the Plaintiff has failed to prove fraud on the part of the Defendants to the standard required in cases where fraud is alleged. In the case of *Ndolo vs. Ndolo Civil Appeal No. 128 of 1995*, the standard of proof in cases where fraud is alleged was set at beyond a balance of probabilities but below the standard of beyond reasonable doubt as in criminal cases. The Plaintiff has fallen short of this high standard of proof.



10. Regarding the second issue raised by the Plaintiff, I find that it was never raised anywhere in the pleadings or in the witness statement. The plaint dated 15-4-2015 has twelve(12) paragraphs and none of them has mentioned anything to do with the consent of the land control board. The same applies to the witness statement by the Plaintiff. When the Plaintiff's counsel cross examined the 1<sup>st</sup> Defendant on 14-7-2025, he did not raise the issue of the consent of the land control board. It is therefore unfair to raise this issue suddenly in the written submissions. Had it been raised in the beginning, the Defendants would have responded to it at that time. Since the issue was not raised in the beginning, I find that it cannot be properly raised abruptly in the written submissions as it was never a trial issue.
11. Having dealt with the issues raised by the Plaintiff, I find that I have already dealt with the issue of fraud raised by the Defendants' counsel. As for the doctrine of innocent purchaser for value without notice of defect in title, I find that it has no application in this case because it was not proved by the Plaintiff that there was any fraud on the part of any of the Defendants or the person who sold the land to them.
12. For the above stated reasons, I find no merit in the Plaintiff's case and I dismiss it with costs to the Defendants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 3RD DAY OF NOVEMBER, 2025.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Miss Maina holding brief

Defendant's Counsel - Miss Wairimu holding brief

