



**Gicheha v Kiragu (Environment and Land Appeal E019 of 2024)  
[2025] KEELC 8200 (KLR) (11 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8200 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND APPEAL E019 OF 2024**

**JM KAMAU, J  
NOVEMBER 11, 2025**

**BETWEEN**

**PAUL KAMANDE GICHEHA ..... APPELLANT**

**AND**

**JACOB KINYUA KIRAGU ..... RESPONDENT**

**JUDGMENT**

1. In this Appeal that emanates from the Judgment of the Honourable Judicaster Nthuku, the Hon Principal Magistrate, Ol-kalou delivered on 28 11 2024 in Ol-kalou Magistrate ELC No E012 of 2024, the Respondent sued the Appellant for the following orders:-
  - a. An order for the Appellant to give vacant possession of the parcel of land known as Nyandarua Ndemi 75 and in default, an eviction order be issued for his forceful eviction.
  - b. Costs of the suit.
  - c. Any other of further relief that the Court may deem fit and just to grant.
2. The Plaintiff is dated 13 3 2024. He claims that on 1 2 2000 the Respondent was registered the sole and absolute proprietor of the parcel of land L.R No. Nyandarua Ndemi 75 measuring 2.4. Hectares or thereabout and upon taking possession, he put up a semi-permanent structure thereon which was owned by the Appellant who refused to remove it but instead instituted a case i.e before the Nyandarua District Land Disputes Tribunal, case No. 49 of 2000 and sought to be registered as proprietor.
3. The case was determined in favour of the Appellant as a result of which the Respondent lodged an Appeal before the Nyeri Provincial Appeals Committee being Appeal No. 1 of 2003.
4. On 13 11 2008, the Provincial Tribunal set aside the District Tribunal Award and directed that the Respondent's Title to the suit land be maintained which award (Provincial) was adopted in Nyahururu PMCC No 10 of 2011 on 13 9 2011 and a Decree accordingly issued.



5. Then in Nyahururu ELC No 239 of 2017 (OS), the Appellant instituted a suit seeking to be declared as having acquired the same suit by way of Adverse Possession and the Court found in the Appellant's favour on 31 5 2018.
6. The Respondent was aggrieved and lodged an Appeal before the Court of Appeal at Nakuru i.e Appeal No. 138 of 2018 and on 2 2 2024 the Court of Appeal set aside the Judgment at Nyahururu ELC No 239 of 2017 (OS). However, in spite of the above, the Respondent averred that the Appellant has continued occupying the suit land and has failed to remove the structures he had constructed thereon.
7. On his part, the Appellant filed a Defence dated 28 5 2020 in which he admitted having filed Nyandarua District Tribunal case No. 49 of 2000. He claimed to used the land without interruption since 1988 pursuant to a sale agreement dated 21 6 1986 between himself and its previous owner but which sale became void for want of Consent of the Land Control Board. He claimed to have also put up a semi-permanent structure, 3 houses, dug a dam, planted trees and that he has also been farming the land wholly. He averred that the Respondent's registration of the Land as owner is subject to his overriding interest thereon as a person in actual possession of the land and that the Respondent's Title to the suit land is in trust for the Appellant. He also pleaded that the suit is time-barred and also res judicata in view of the many suits over the same subject matter. The same thereof ought to be dismissed.
8. The Respondent gave evidence to the effect that he was registered the proprietor of L.R No Nyandarua Ndemi 75 on 1 2 2000 after which he issued quit Notices to the Appellant who instituted Tribunal case No. 49 of 2000 where he succeeded but upset on appeal by the Provincial Appeals Committee and in the PMCC Court the award was adopted and eventually the Court of Appeal decided that the suit land belongs to the Respondent. He produced the following documents.
  1. Title Deed for L.R. Nyandarua Ndemi 75.
  2. Proceedings and award in Nyandarua District Land Disputes Tribunal Case No 49 of 2000.
  3. Proceedings and award in Nyeri Provincial Appeals Committee Appeal No. 1 of 2003.
  4. Decree in Nyahururu PMC No. Land Dispute No. 10 of 2011
  5. Judgment in Nyahururu ELC No 239 of 2017 ( O.S).
  6. Judgment in Nakuru Court Appeal Case No. 138 of 2018.
9. On cross-examination, the Respondent said he does not live on the said land.  
After the Respondent closed his case, the Appellant adopted his witness statement dated 11 6 2024 in which he said that he purchased L.R. NYANDARUA NDEMI 175 from one M'mugambi M'Rinjau on 21 6 1 986 at Kshs. 44,000 -. The same is 6 acres in total.
10. Part of the purchase price went to clear the costs of the S.F.T loan. He then took possession of the suit land in 1988, developed it and started farming and has been in exclusive possession. But the vendor failed to transfer the land to the Appellant giving all manner of excuses only for the Appellant to learn later that the land had been registered in favour of the vendor and immediately transferred it to the Respondent who then issued a Demand Notice to the Appellant to vacate. He then produced the following documents to support his case.
  1. Agreement dated 21 6 1986 and the English translation thereof.
  2. Two payment receipts issued by the SFT on 2 8 1995 and 4 6 1996 respectively.
  3. Demand Notice issued by the SFT dated 24 4 1996.



4. Letter dated 20<sup>th</sup> July, by the Plaintiff.
  5. Letter dated 2<sup>nd</sup> August, 2000 by the Defendant.
  6. Letter dated 18<sup>th</sup> August, 2000 by the Plaintiff.
  7. Photographs of the developments on the land.
  8. Proceedings and the Award in Nyandarua District Land Disputes Tribunal Case No 49 of 2000.
  9. Judgment in Nyahururu ELC Case No 239 of 2017.
  10. Judgment in Nakuru Civil Appeal No 138 of 2018.
11. On cross-examination by Mr Kairu for the Respondent, the Appellant said that the Title Deed is in the name of the Respondent and that he lost the case at the Court of Appeal. He insisted the land is his since he bought it. After the close of the case, the Court delivered its Judgment as follows:-

“.....The Court of Appeal found in favour of the Plaintiff. So the Decision by the Court of Appeal which was in favour of the Plaintiff, what the Plaintiff is seeking from the Courts is enforcement of the orders issued by the Court of Appeal. And that is not res judicata because that issue has never been litigated before any Court. The Defendant told this Court he wants the Court to go with the Decision of the District Lands Tribunal. That’s not possible as the Decision of the distribution land tribunal that now defunct cannot supersede the decision of the Court of Appeal. Based on the decision by Court of Appeal, the Defendant is illegally on the Plaintiff’s land and the Plaintiff is entitled to quiet Enjoyment and possession of his land with the rights. Section 25 of RLA provides Rights of a proprietor.

1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-

- a. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

I therefore find that the Plaintiff has proved his claim on a balance of probabilities and I order

1. That the Defendant gives vacant possession of L.R Nyandarua Ndemi 75 within 60 days from today, failure to which the Plaintiff will be at liberty to evict him from the said parcel of land at the Defendant’s costs.
2. In case eviction has to be done by the Plaintiff, I order that the OCS Ol-kalou provides security to the Plaintiff during the said eviction.
3. Costs and interest of the suit be borne by the Defendant.....”



12. Dissatisfied with this Judgment, the Appellant appealed to this Court on the following grounds: -
1. The learned trial magistrate erred in law and fact in failing to hold that the suit before her was *res judicata*.
  2. The learned trial magistrate erred in law and fact by failing to find that the suit was statute barred by virtue of Sections 4 and 7 of the *akn ke act 1968 21 Limitation of Actions Act*.
  3. The learned trial magistrate erred in law and fact by failing to find that the Court lacked jurisdiction to determine the suit.
  4. The learned trial magistrate erred in law and fact by failing to consider the Defence put forth by the Appellant.
  5. The learned trial magistrate erred in law and fact by failing to list the issues for determination and then determining them; thereby occasioning an injustice to the Appellant.
  6. The learned trial magistrate erred in law and fact in giving a Judgment which was against the weight of evidence.
13. I asked the parties herein to file their submissions after which I returned to write this Judgment.
14. There have been several suits filed over this subject hierarchically resting with Court of Appeal at Nakuru Civil Appeal No. 138 of 2018. This Appeal set aside the Decree in Nyahururu PMCC No. 10 of 2011 to the disadvantage of the Appellant. This is the Decree that ought to have been executed. The 2 Decrees are in favour of the Respondent. These are the Decrees which ought to have been executed instead of filing a fresh suit and I agree with the Appellant that the suit against which this Appeal is preferred is *res judicata*. Sections 31 to 34 of the *akn ke act 1924 3 Civil Procedure Act* provide that:
15. Transfer of decree
- (1) The court which passed a decree may, on the application of the decree holder, send it for execution to another court—
    - (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of that other court; or
    - (b) if such person has no property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court; or
    - (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the court which has passed it; or
    - (d) if the court which has passed the decree considers for any other reason, which it has recorded in writing, that the decree should be executed by such other court.
  - (2) The court which passed a decree may of its own motion send it for execution to any court of inferior but competent jurisdiction
16. Questions to be determined by court executing decree
- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.



- (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
- (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.
17. Explanation. —For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.
18. I invite the Respondent herein to go back to the Courts that gave him Judgment so that he can, if time still allows him, execute the Decrees therein and so that he can be able to enjoy the fruits of his successful Judgment but not to go back to other Courts which is just burdening the workload of the Courts. One wonders, twice the Respondent has been given the ownership of the parcel of land L.R No. Nyandarua Ndemi 75. All he needed was to file the Decrees at the Lands office. Not to ask another Court to pronounce him the owner of the said land. However, it is crucial to ascertain whether the Decrees are still alive and executable. But even if they were not, recourse was not to file another suit. In short, this Appeal succeeds with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 11TH DAY OF NOVEMBER 2025.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: SAMSON.

Mr. Komu.....for the Appellant

Mr. Chege..... for the Respondent

