



REPUBLIC OF KENYA



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**Kimotho v Muriithi & another (Environment and Land Appeal
E26BB of 2024) [2025] KEELC 8119 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E26BB OF 2024**

**JM MUTUNGI, J
NOVEMBER 13, 2025**

BETWEEN

SUSAN WANJIRU KIMOTHO APPELLANT

AND

LUCY WAMBUI MURIITHI 1ST RESPONDENT

KIRINYAGA COUNTY GOVERNMENT 2ND RESPONDENT

*(Being an Appeal; from the Judgment and subsequent Decree of
Hon. A.K Ithuku, Chief Magistrate sitting vide Kerugoya Civil Case
No. 154 of 2013 delivered and dated 23rd September 2021)*

JUDGMENT

1. This Appeal arises from the Judgment of Hon. A. K. Ithuku (Chief Magistrate) delivered on 23rd September 2021 in Kerugoya CMCC No. 154 of 2013. In that decision, the Learned Trial Magistrate found in favour of the 1st Respondent and issued several consequential orders. The Court declared that the 1st Respondent was the lawful proprietor of land parcel Kabare/Nyangati/5908, issued a permanent injunction restraining the Appellant, her servants or agents from interfering with the 1st Respondent's ownership and possession of the said parcel, and awarded costs of the suit to the 1st Respondent.
2. The Appellant, who was the 1st Defendant in the Lower Court, was dissatisfied with the Learned Trial Magistrate's judgment and has preferred this Appeal. The appeal is premised on the Memorandum of Appeal dated 22nd October 2021, setting out the following four grounds:
 1. That the Learned Trial Magistrate erred in law and in fact in finding that the 1st Respondent was the registered owner of land parcel Kabare/Nyangati/5908 whereas the 1st Respondent



had not demonstrated how she obtained title to land that had been compulsorily acquired by the 2nd Respondent.

2. That the Learned Trial Magistrate erred in law and in fact in finding that the exchange of land by the 2nd Respondent was not complete, despite sufficient evidence that the land had been compulsorily acquired by the 2nd Respondent and that the original owner had been duly compensated with another parcel, Kirinyaga/Marurumo/271.
 3. That the Learned Trial Magistrate erred in law and in fact in failing to consider that the Appellant had followed all proper procedures in acquiring Plot Number 30A (B) from the 2nd Respondent.
 4. That the Learned Trial Magistrate erred in law and in fact in failing to consider the evidence tendered by the Appellant.
3. The Appellant prays that the Judgment delivered on 23rd September 2021 be set aside and substituted with an order dismissing the 1st Respondent's suit with costs.

Background and Pleadings before the Lower Court

4. The 1st Respondent instituted a suit by way of a Complaint dated 17th June 2013 against the Appellant. In the suit, the 1st Respondent sought a declaration that she was the lawful owner of land parcel Kabare/Nyangati/5908; a permanent injunction restraining the Appellant, her agents, servants, and/or employees from entering upon, erecting structures on, transferring, alienating, or in any manner interfering with her rights over the said parcel; and costs of the suit.
5. The 1st Respondent's case before the Trial Court was that she was the registered proprietor of the suit land, having purchased it from one Anthony Mbogo Munene. She contended that the Appellant, without any colour of right or lawful justification, had on diverse occasions interfered with her proprietary rights over the suit land and that despite demands the Appellant did not desist from interfering precipitating the institution of the suit.
6. The Appellant filed a Statement of Defence dated 11th July 2013, denying the allegations in the complaint. She averred that what the 1st Respondent referred to as Kabare/Nyangati/5908 was in fact Plot No. 30A (B), which she lawfully owned. According to the Appellant, it was the 1st Respondent who had trespassed upon and interfered with her quiet possession and enjoyment of the property.
7. The Appellant maintained that she had purchased Plot No. 30A (B) from one Josiah Nyaga Gichima, and that the land initially known as Kabare/Nyangati/716 had belonged to the late Njuguna Mwaniki, who was later compensated with another parcel in Mwea after the then Municipal Council compulsorily acquired the land. The Appellant asserted that upon acquisition, the council subdivided the original parcel into several plots, among them Plot No. 30A (B), which later changed hands and ultimately came into her ownership and possession. She urged the trial Court to dismiss the 1st Respondent's claim with costs.

Evidence before the Trial Court

8. The 1st Respondent testified as PW1 and adopted her witness statement as her evidence in chief. She testified that she purchased the suit land, Kabare/Nyangati/5908, from Anthony Mbogo. She stated that the Appellant had subsequently fenced off the property.
9. In cross-examination, the 1st Respondent told the Court that she purchased the land on 19th July 2012, having first conducted an official search and visited the site, where she found the land was vacant and



unoccupied. She further stated that she was unaware of the existence of Plot No. 30A (B) or of any alleged compensation made to the previous owner. She, however, confirmed that the Appellant was the one paying rates for the property but maintained that her own title to the land was valid and lawfully acquired. In re-examination, she reiterated that she held a valid title deed to the suit property and was unaware of any Government acquisition or any prior ownership of the land by one Njuguna Mwaniki.

10. The Appellant testified as DW1. She stated that her parcel was Plot No. 30A (B), which she purchased from Josiah Njagi. She confirmed that she paid the requisite land rates after acquiring the plot. In cross-examination, she told the court that her plot measured 40 feet by 70 feet and that she was not aware of the existence of any other overlapping plots. She also stated that she obtained the property through the Kerugoya/Kutus Municipal Council. Upon re-examination, she stated that she had documents from the defunct Council and a sale agreement evidencing her ownership.
11. The Appellant further called Josiah Njagi, who testified as DW2. He confirmed that he knew the Appellant and had indeed sold to her his plot, identified as Plot No. 30A (B). In cross-examination, he stated that the original owner of the land was the late Njuguna Mwaniki, who had been compensated with another parcel in Marurumo. He maintained that Plot No. 30A (B) existed physically on the ground. In re-examination, he stated that he had filed documents showing that the County Council had carried out an exchange of land involving the said parcels.
12. Upon reviewing the evidence adduced by the parties, the Learned Trial Magistrate found that the Appellant had failed to produce any documentary proof or credible evidence demonstrating that an exchange of land between the defunct Municipal Council and the late Njuguna Mwaniki was ever effected. In the Court's view, the Appellant had not established that the property known as Kabare/Nyangati/716 the land said to have been compulsorily acquired was lawfully exchanged or compensated for in accordance with the law.
13. The Learned Trial Magistrate further held that the list produced as a "compulsory acquisition schedule" could not, by itself, constitute proof of either compulsory acquisition or land exchange. In reaching that finding, the trial court drew guidance from an excerpt of a ruling delivered in Kerugoya HCC No. 1 of 2012, (Johnson Gakuru Gachoki & 24 Others –vs- James Ndege Njuguna & 8 Others) where Justice B. N. Olao observed as follows in reference to the same parcel of land:

“The Council that purportedly allocated that suit land to the Plaintiff/Applicant here has not placed before the Court any evidence that it compulsorily acquired land parcel Kabare/Nyangati/716 from the registered owner, Njuguna Mwaniki, and paid him any compensation as required by law.”
14. The Learned Trial Magistrate observed that no further evidence had been produced before him to demonstrate that the alleged acquisition or exchange had ever been completed. Consequently, he agreed with the 1st Respondent's submissions that the Municipal Council could not allocate what it did not lawfully own.
15. In conclusion, the Learned Trial Magistrate held that the Appellant's claim, being premised on a purported purchase of property allegedly allocated by the local authority, could not stand in the face of validly registered property rights. He found that the 1st Respondent had proved her case on a balance of probabilities and proceeded to grant the declaratory and injunctive orders sought, together with costs.

Submissions of the Parties.

16. The Appeal was canvassed by way of written submissions. Learned Counsel for the Appellant identified the main issue for determination as whether the alleged compulsory acquisition of the



- original land parcel by the then Municipal Council was properly undertaken and whether the subsequent allotment and transfer to the Appellant were lawful.
17. Counsel submitted that the land known as Kabare/Nyangati/716 had been compulsorily acquired by the government and that a compulsory acquisition schedule was produced during the trial to confirm that process. It was his submission that the acquisition was undertaken in accordance with due process and that there was no dispute as to its legality.
 18. He further contended that Plot No. 30A (B), which the Appellant occupies, was lawfully allocated and that the Appellant had satisfactorily demonstrated the chain of ownership leading to her acquisition of the property. Counsel urged that the 1st Respondent's claim was founded on a misconception, as the parcel she referred to as Kabare/Nyangati/5908 was in fact the same property as Plot No. 30A (B).
 19. In conclusion, Counsel submitted that the Appellant had clearly established her ownership of Plot No. 30A (B) and that the Learned Trial Magistrate erred in disregarding the evidence and documents placed before him. He accordingly urged the Court to allow the Appeal, set aside the Judgment of the trial Court, and substitute it with an order dismissing the 1st Respondent's suit with costs.
 20. The 1st Respondent filed written submissions dated 12th June 2025. Learned Counsel identified two issues for determination:
 - a. Who between the parties is the rightful registered proprietor of land parcel Kabare/Nyangati/5908 (also referred to as Plot No. 30A (B)); and
 - b. Who should bear the costs of the suit?
 21. On the first issue, Counsel submitted that the central question was whether the land parcel Kabare/Nyangati/716 was ever compulsorily acquired by the then Kirinyaga County Council (now County Government of Kirinyaga) and subsequently subdivided into several plots, including Plot No. 30A (B), or whether it was subdivided into parcels Kabare/Nyangati/5879 and Kabare/Nyangati/5908.
 22. Counsel pointed out that the green card for Kabare/Nyangati/716 showed that Njuguna Mwaniki originally owned the property, that a restriction had been placed on the title but was later removed by a Court order on 3rd January 1994, and that on the same date the parcel was registered in the names of James Ndege Njuguna, Joseph Maraga, and Joseph Gioko.
 23. Further, counsel submitted that the green card for Kabare/Nyangati/5908 indicated that it was first registered in the name of Joseph Njega Gioko, who later sold it to Anthony Mbogo, and subsequently, the land was transferred to the 1st Respondent.
 24. It was Counsel's Submission that even assuming the original parcel Kabare/Nyangati/716 had been compulsorily acquired, there existed a clear legal process to be followed. The Appellant, however, had not produced any credible evidence demonstrating that such a process was ever undertaken in respect of that parcel.
 25. Counsel therefore urged this Court to find that the 1st Respondent lawfully acquired Kabare/Nyangati/5908 and is its rightful registered proprietor, and to dismiss the appeal with costs.
 26. The 2nd Respondent did not file any submissions.

Analysis, evaluation and Determination

27. I have carefully considered the Record of Appeal, the Judgment appealed from, and the rival submissions of the parties. This being a first Appeal, the duty of this Court is to re-evaluate the evidence



afresh and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses. This principle was stated in *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where the Court of Appeal held:

“This Court is not bound necessarily to accept the findings of fact by the court below. An Appeal to this Court is by way of retrial... this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

28. From the record and submissions, two issues arise for determination:

1. Whether land parcel Kabare/Nyangati/716 was lawfully and compulsorily acquired by the defunct Municipal Council of Kerugoya/Kutus; and
2. Whether, in light of the above, the Learned Trial Magistrate erred in holding that the 1st Respondent was the lawful owner of land parcel Kabare/Nyangati/5908.

Whether land parcel Kabare/Nyangati/716 was lawfully and compulsorily acquired by the defunct Municipal Council of Kerugoya/Kutus

29. The Appellant’s case, both before the trial court and on appeal, rests on the assertion that land parcel Kabare/Nyangati/716, initially owned by one Njuguna Mwaniki, was compulsorily acquired by the defunct Municipal Council and that the said owner was duly compensated with another parcel of land in Mwea, Kirinyaga/Marurumo/271. The Appellant contends that upon such acquisition, the Municipal Council subdivided the land and allocated Plot No. 30A (B) to her predecessor in title.

30. To assess the validity of this claim, it is necessary to examine the law governing compulsory acquisition before the 2010 Constitution. Before its repeal by the *Land Act*, 2012, the operative statute was the Land Acquisition Act (Cap 295). Under that regime, only the Government, acting through the Commissioner of Lands on the written direction of the Minister, could compulsorily acquire land for public purposes.

31. Section 6 of the Land Acquisition Act (Cap 295) provided that—

“(1) Where the Minister is satisfied that any land is required for the purposes of the Government, and that the acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and Country planning, or the development or utilization of any property in such manner as to promote the public benefit, he may in writing direct the Commissioner to acquire the land compulsorily under this Part.

(2) The Commissioner shall then cause a notice that the Government intends to acquire the land to be published in the Gazette and shall deliver copies of the notice to the Registrar and every person who appears to have an interest in the land.”

32. Further provisions required notice and inquiry to affected owners (Sections 7–9), assessment and award of compensation (Section 9), payment of compensation, and formal vesting of the land in the Government (Section 19). The statutory provisions made it clear that a local authority such as a Municipal Council had no power to compulsorily acquire land on its own. If such a body required land for a public purpose, it could only do so through the Commissioner of Lands acting under ministerial authority.



33. It follows that for the Appellant's claim to succeed, she needed to demonstrate that the alleged acquisition of Kabare/Nyangati/716 complied with these statutory requirements. Specifically, she was required to produce:
1. A gazette notice of intention to acquire issued by the Commissioner of Lands;
 2. Evidence of compensation to the original owner;
 3. An award of compensation or valuation record;
 4. Proof of vesting of the land in the Government or local authority; and
 5. Correspondence or ministerial authority confirming that the Commissioner of Lands undertook the process.
34. In the present case, the appellant produced none of these. What was tendered was a "list of compulsory acquisition schedule" indicating that the Municipal Council had allegedly acquired Kabare/Nyangati/716. No gazette notice, no compensation documentation, and no vesting entry in the land register were produced. Neither was any officer from the defunct Municipal Council or the Commissioner of Lands' Office called to testify.
35. The record, however, contains certain correspondence relied on by the Appellant to suggest that the process had been initiated. There is a letter dated 24th June 2013 written by the Kirinyaga County Government to the Chairman, National Land Commission, complaining that parcels of land had been acquired in the 1970s for the extension of the township but that the transfer documents executed in favour of the Local Authority had been lost. The letter laments that some of the original owners were taking advantage of the missing documents to sell their land to unsuspecting persons. Attached to that letter was a list from the National Land Commission of properties said to have been affected by the intended acquisition, though it is not clear whether the suit property was among those listed.
36. The Appellant also produced an earlier letter from the Kirinyaga County Council, addressed to the Commissioner of Lands, requesting assistance in acquiring land in Kerugoya, Kutus, and Wang'uru for township expansion. The attached list of affected landowners included the name of the late Njuguna Mwaniki, the original proprietor of Kabare/Nyangati/716.
37. Further, there is a letter dated 10th November 1984 from the Commissioner of Lands, Ministry of Lands and Settlement, referring to the acquisition of land "by way of exchange." The author acknowledged that transfers had been executed by the concerned landowners and by himself, but before the Officer in Charge, the late Mr. B.C. Murago, could finalize the process, he left office, and the documents could not thereafter be traced.
38. Taken together, these letters reveal that there were genuine governmental intentions to acquire land for township expansion and that some preliminary steps were taken. However, they equally show that the process was never concluded. The officer who was to finalize the transfer passed on before completion, and the relevant documentation went missing. No evidence of compensation or formal vesting of title ever materialized.
39. Thus, while the correspondence demonstrates intentions and attempts to acquire the land, it does not establish that a lawful acquisition or exchange actually occurred within the meaning of the Land Acquisition Act. The process remained inchoate. As such, it cannot be said that the land was ever lawfully acquired or transferred to the Municipal Council.



40. The Learned Trial Magistrate, therefore, correctly found that the Appellant failed to prove that the alleged compulsory acquisition and exchange were completed in accordance with the law. I fully agree. Whether the 1st Respondent lawfully acquired title to the land parcel Kabare/Nyangati/5908 and is entitled to the orders granted
41. The 1st Respondent's title traces to a different chain altogether. The green card for Kabare/Nyangati/5908 indicates that the land was first registered in the names of Joseph Njega Gioko, who subsequently sold it to Antony Mbogo Munene, from whom the 1st Respondent purchased the property on 19th July 2012. A certificate of Official search confirmed this ownership sequence.
42. Under Section 26(1) of the [Land Registration Act](#), 2012, a certificate of title is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner, subject only to challenge on grounds of fraud or misrepresentation to which the person is proved to be a party, or where the title was acquired illegally, unprocedurally, or through a corrupt scheme.
43. The Appellant did not plead or prove any fraud or illegality in the acquisition of the 1st Respondent's title. No evidence was presented to show that the process leading to the registration of Kabare/Nyangati/5908 was tainted by irregularity or that the title was issued in contravention of the law. The 1st Respondent's evidence that she carried out due diligence, obtained a search, and found the land unoccupied was not rebutted.
44. Given the absence of proof that the original parcel (Kabare/Nyangati/716) was ever acquired or transferred to the Municipal Council, and the uncontroverted evidence that Kabare/Nyangati/5908 was lawfully registered to the 1st Respondent through a recognized chain of transactions, the trial Court correctly found that the 1st Respondent is the lawful proprietor.

Conclusion

45. From the totality of the evidence and the law, it is evident that:
1. The alleged compulsory acquisition of Kabare/Nyangati/716 was never completed in accordance with the Land Acquisition Act;
 2. The Municipal Council therefore had no valid title to confer upon any third party, including the Appellant's alleged predecessor; and
 3. The 1st Respondent lawfully acquired Kabare/Nyangati/5908 through a proper conveyancing process and is entitled to full protection of the law under Section 26 of the [Land Registration Act](#).
46. The Learned Trial Magistrate properly evaluated the evidence and applied the law correctly. The Court finds no misdirection in fact or law to warrant interference with his decision.
47. The upshot is that the Appeal lacks merit and the same is dismissed with costs to the 1st Respondent.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 13TH DAY OF NOVEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

