

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA**

**ELCA NO 5 OF 2023**

***(Formerly Nyahururu ELCA No. E011 of 2023)***

**PETER GIKONYO & 7 OTHERS.....PLAINTIFFS**

**VERSUS**

**ESTHER WANJIRU & 4 OTHERS.....DEFENDANTS**

**JUDGMENT**

The Appellants sued the Respondents for the following: -

- a. A permanent Injunction be and is hereby issued against the Defendant (Respondents), their Servants or Agents from interfering with the quiet possession and enjoyment of land parcel numbers NYANDARUA/MUMUI/1299,1300 and 1301.
- b. The Land Registrar Nyandarua County be and is hereby ordered to cancel the illegally and irregularly issued Title Deeds.
- c. Costs of the suit.
- d. Any other order the Court may deem fit to grant.

According to the Complaint, the Appellants averred that they purchased the aforesaid parcels from the Estate of Peter Gitau Kinyanjui who had also purchased the same from one Francis Mwangi Mwaniki's (also Deceased) which were hived off from NYANDARUA/MUMUI/22.

They proceed to say that Francis Mwangi Mwaniki's Estate was distributed through a Succession Cause and Peter Gitau Kinyanjui was

allocated 8 Acres as a bona fide purchaser for value from NYANDARUA/MUMUI/11. But upon the demise of Peter Gitau Kinyanjui, the family of Francis Mwangi Mwaniki illegally sub-divided Kinyanjui's land and procured Titles for the same which are NYANDARUA/MUMUI/1299, 1300 and 1301.

By a Defence and Counter-claim filed in Court on 6/5/2022, the 2<sup>nd</sup> Respondent denied the claim. She denied being the Administrator of the Estate of her Deceased's father's Estate but was a beneficiary of 13.2 acres part of NYANDARUA/MUMUI/22. She further held that this property was sub-divided vide a Court Order in Nakuru High Court which orders were to be executed with the assistance of OCS Kinangop and she got her Title Deed NYANDARUA/MUMUI/1300.

On 25/4/2018 and due to the hostility by the Appellants, she is unable to take full possession of her said land vide orders from Succession Cause No 20 of 1991, Nakuru. She claims to be a beneficiary of the Estate of Francis Mwangi Mwaniki who was the registered owner of NYANDARUA/MUMUI/22 and that the Appellants are trying to re-distribute the Estate of Francis Mwangi Mwaniki long after the exercise had been concluded, she prayed for:-

- a. A Declaration affirming that she (the second Respondent) is the bona fide owner of NYANDARUA/MUMUI/1300 and 1301.
- b. A Declaration do issue to the effect that the Appellants are trespassers on the parcels of land.

- c. A Declaration do issue that the Appellants are only entitled to occupy the portion of land demarcated as belonging to Peter Gitau.
- d. Permanent Injunction against the Appellants barring them from dealing, interfering with, alienating or otherwise disposing of the 2 parcels of land.
- e. Costs.
- f. General damages for trespass.
- g. Interest.

The Appellants on 22/6/2022 amended the Plaint to *inter alia* substitute Mary Wamuyu, the 4<sup>th</sup> Respondent with Grace Wambui as Administrator of the estate of Peter Gitau Kinyanjui. He also added the Land Registrar, Nyandarua County.

On 17/8/2022 the 1<sup>st</sup> Respondent also filed a Defence denying all the Appellants' averments and asking the Court to dismiss the suit with costs.

On 26/10/2022 Judgment was pronounced in favour of the 2<sup>nd</sup> Respondents Counter-claim. The same was arrived at after the Appellants failed to turn up in Court. On 10/1/2023, the Appellants filed an Application to set aside the default Judgment.

The Application was dismissed on 22/1/2023 for want of Jurisdiction. The Appellants were aggrieved by the said Ruling and have appealed to this Court to have the Decision and Ruling of Hon Daffline Nyaboke Sure (SRM) made on 22/2/2023 be overturned and the following orders be made: -

- a. The Judgment of Hon Daffline Nyaboke Sure (SRM) delivered on 26/10/2022 be stayed until the Hearing and determination of this Appeal.
- b. The Judgment of Hon Daffline Nyaboke Sure (SRM) delivered on 26/10/2022 be set aside and the Appellants to proceed to tender evidence in that matter in the lower Court.

The Appellants gave their reasons and grounds for the Appeal as follows:-

1. The learned Trial Magistrate erred in Law and fact when she ruled that she had no jurisdiction which is contrary to known and established principles in setting aside Application.
2. The learned Trial Magistrate erred in Law and fact when she refused to grant stay of execution of a Judgment which was obtained on the basis of Illegality and obtained irregularly and withholding of material facts from Court.
3. The learned Trial Magistrate erred in Law and fact when she refused to give the Applicants/Appellants a chance to be heard when obviously they had good grounds upon which the Judgment could have been set aside.
4. Any other grounds may become apparent upon receiving proceedings in the matter.

I believe the issue for consideration in this case is whether the Appellants ought to have been locked out of the Hearing when they failed to appear in Court on 12/10/202. On the said date, the Trial Magistrate held that Chuma Mburu, Advocate was served with a

Hearing Notice on 19/8/2022 but never appeared in Court for the Hearing of the case on 12/10/2022 nor did his clients and that,

“.....I have perused the proceedings and the Plaintiffs have never been ready for Trial since the 8<sup>th</sup> June, 2022 when the matter was first slated for hearing.....”

One earlier hearing when the Plaintiffs are said not to have been ready for hearing, Mr Thairu for the Plaintiffs appeared in Court and told the Court that he was unwell. By then, the Defendant had filed her Defence late without leave of Court. It was granted leave that day. Again, one earlier adjournment with genuine reasons as were advanced by the Plaintiffs cannot form a basis for the Court to conclude that the Plaintiffs were not ready for trial. Failure by the Plaintiffs not to turn up for hearing on 12/10/2022 has been explained by them that their Advocate, Mr Chuma Mburu did not inform them of the Hearing date. He also did not turn up in Court.

It has been variously held that the sins of Counsel cannot be visited on his client. Again by holding that the Plaintiff did not have a good case that could succeed if they were granted the opportunity to be heard was not a good reason to lock them out of the alter of justice. They ought to have been heard even if the Court was of the view that they had no case. That is why Courts are there. In the premises I order that the Judgment of Honorable Daffline Nyaboke Sure, Senior Resident Magistrate dated 26/10/2022 and all Decrees and orders emanating therefrom be set aside forthwith and the suit be heard de novo by another Court.

The costs of this Appeal shall await the outcome of the suit in the lower Court i.e. Engineer SPMCC ELC Case No E015 OF 2021. In a nutshell this Appeal succeeds. The case shall be mentioned in the lower Court on 15/1/2026 for the allocation of a Hearing date.

**Judgment dated, signed and delivered at Nyandarua this 11th Day of December 2025.**

**MUGO KAMAU  
JUDGE**

**In the presence of: -**

**Samson                      Court Assistant.**

**For Appellant      Mr. Gachoka.**

**For Respondent      Mr. Chacha.**