



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCLA E009 OF 2023**

**JULIA MUTHONI MWANGI ..... APPELLANT**  
**VERSUS**  
**GEOFFREY MWANGI GAKINGO .....RESPONDENT**

**JUDGMENT**

(1) In the memorandum of appeal dated 11-4-2023, the appellant seeks the following orders against the respondent.

- (i) Setting aside of the Judgement and decree in Muranga CM's Civil Case No. 359 of 2014 which ordered for the eviction of the appellant from L.R. Loc.20/Mirira/4389.**
- (ii) Rectification of the register in respect of L.R. Loc.20/Mirira/4389 by causing its subdivision and the appellant getting a title for the area occupied by herself.**
- (iii) Costs of the suit.**

(2) There are six grounds for seeking the above orders. They are as follows.

The learned trial magistrate erred in law and fact;-

- (i) in not appreciating that the suit land was family land in which the respondent was registered as trustee on behalf of the family,**
- (ii) in not appreciating that the suit land was family land before the respondent registration,**
- (iii) in failing to appreciate that the appellate had a definite and clear portion of the suit land to the exclusion of the respondent in line with customary trust,**
- (iv) in misdirecting himself that the appellant was in occupation of a portion of the suit land on humanitarian grounds without cogent evidence,**

- (v) to appreciate the defence, counterclaim and evidence of the appellant and ended up delivering a biased judgement devoid of analysis of the defence case and in deliberately and willfully ignoring the defendants written submissions and thereby arriving at a biased judgment.**

(3) The respondent who was the Plaintiff in the lower court filed the suit in the lower court seeking two orders.

(a) Eviction of the defendant (appellant) from L.R No. Loc.20/Mirira/4389 with the assistance of the nearest police station and mesne profits.

(b) Costs of the suit.

(c) Any other relief the Court may deem fit to grant.

His case was that he is registered owner of the land. The appellant is his sister who had been married but when she differed with her husband she came back home. Out of kindness, the respondent allowed her to occupy the suit land. This was on the understanding that after the conclusion of a succession cause in respect of L.R. Loc.20/Gikindu/Mirira/303, the appellant would move out of the suit land to her own share of L.R No.303.

Upon conclusion of the succession cause L.R No. Loc.20/Mirira303 was subdivided into two (2) equal parcels being Loc.20/Mirira 5393 and 5394. L.R. No. 5393 is registered in the name of appellant. The respondent wanted the appellant to move out of the suit land to her own land. The suit land belongs to the respondent because he is the one who consolidated it and had it registered in his name. The land which was originally Loc.20/Mirira/898 was 4.5 acres. The respondent subdivided it into L.R. No. 4388 and 4389. He sold L.R No. 4389 to one Gichui and was left with L.R No. 4388. When the respondent was consolidating the land, the appellant who was already grown up being older than the respondent did not bother to consolidate her own land.

(4) In her defence and counterclaim dated 15-12-2014, the appellant sought the following orders against the Plaintiff.

(a) Dismissal of the Plaintiff's suit with costs.

(b) Judgment in her favour in the counterclaim and rectification of the register in respect to L.R No.20/Mirira.4389 by causing its subdivision and the appellant getting a title to the land occupied by herself.

(c) Costs of the suit.

(d) Any other relief that the court may deem fit to grant.

Her case was as follows. Firstly, she acknowledges that the respondent is registered as the owner of the suit land but such registration is as a trustee because the suit land is family land. Secondly, the appellant's occupation of the suit land since 1990 was not out of favour extended to her by the respondent but because the land is her lawful share of family land. Thirdly, the clan resolved that defendant moves out of L.R. No. Loc. 20/Mirira 388 to L.R. Loc. 20/Mirira.4389 and L.R No. 388 is solely occupied by the Respondent. Fourthly, the clan subdivided Loc.20/Mirira/4389 into two portions with the appellant being shown her portion where she has constructed her homestead. The Plaintiff sold his portion and now wants to disturb the appellant. Loc.20/Mirira/439 belonged to Wanjira Karanja who was the grandmother to the parties and it was never registered to the respondent as his own land but in trust for the family. L.R No. 20/Mirira/303 also belonged to Wanjira Karanja who was the parties' paternal grandmother. If the appellant is moved from the suit land this will cause her substantial hardship to her and her family who have nowhere else to go as the land they are being asked to move to experiences floods during the rainy season and it is not suitable for settlement.

(5) In his judgment dated 16-3-2023, the learned trial magistrate made the following findings; Firstly, he found that the respondent had proved his case to the required standard. Secondly, he found that the appellant had failed to demonstrate the existence of a customary trust. Thirdly, he found that the Plaintiff had not proved mesne profits. Finally, the counterclaim by the appellant was dismissed with costs.

(6) In his written submissions dated 13-11-2025, the respondent's counsel submitted that there is no "live" appeal in this case because the appellant's Counsel did not amend the pleadings to include the name of Peter Maina Mwangi as a party in this case even after the application for

substitution was allowed on 11-12-2024. No submissions were filed by the appellant's counsel.

(7) This being a first appeal, this court has a duty to do the following four (4) things. Firstly, it must re-evaluate, re-assess and reconsider the evidence presented before the trial Court. Secondly it must make its own independent conclusion based on that evidence. Thirdly, it should bear in mind that it did not see and hear the witnesses and therefore give allowance for this limitation. Finally, it must exercise its own independent judgment. This was the ratio decidendi in the case **Selle vs Associated Motor Boat Co. Ltd [1968] E.A 123 by the East African Court of Appeal.**

(8) I have carefully considered the appeal in its entirety including the entire record, the grounds of appeal, the written submissions by the respondents and the law applicable to the facts of this case. In the absence of any issues identified by the appellant's counsel owing to the absence of written submissions, I will treat six grounds of appeal as the appellants issues and the only issue raised by the respondent's counsel in the submissions dated 13-11-2025 as the respondent's issue.

(9) Regarding the first ground of appeal, I agree with the appellant's counsel that the suit land did not belong to the respondent but to his paternal grandmother, Wanjira Karanja, and he was to hold the same in trust for his sister the appellant because his other sister Benedette Wanjiku did not want any land.

The following are the reasons for the finding that the suit land is family land and not the respondent's. Firstly, the appellant is much older than the respondent and she has a better grasp of the history of the ownership of the suit land from the grandmother to the mother and finally to the respondent. Secondly, her evidence on this ownership is corroborated sufficiently in material particulars by the evidence of close family members like Margaret Mukami Njuguna, James Kamau Mwangi and Joseph Peter Wanjoya. These witnesses are aunt and cousins to the parties respectively and their evidence supports the appellant's position. In contradistinction, the respondent's evidence stands alone unsupported by any other evidence. I believe what the appellant and her witnesses said at the trial that the appellant occupied the suit land permanently and not temporarily. Thirdly, if the appellant

was meant to occupy LR.5393 at all, she would have done so from the beginning because absence of succession proceedings could not have prevented such occupation. She would have settled on the land as she awaited the succession proceedings. This finding covers, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal.

- (10) Regarding the 5<sup>th</sup> ground of appeal, I find that the learned trial magistrate ought to have considered that the mere registration of the respondent as the owner of the suit land was not absolute but subject to the overriding interests of a person in occupation as per **Section 30(g) of the Registered Land Act – (Now Repealed) and Section 28(b) of the Land Registration Act (Act No. 3 of 2012)**.

In the case of **Isack M’Inanga Kiebia Vs Isaaya Theuri M’Linturi and another**, the Supreme Court of Kenya held that a customary trust is an overriding interest under Section 28(b) of the Land Registration Act and it binds registered land even if it is not noted in the register.

- (11) Finally, on the failure by the appellant’s counsel to file an amended appeal with the name of the appellant’s son as the appellant following the death of the appellant, I find that this failure on the part of the appellant’s counsel does not affect the substance of the appeal. The substance of the appeal deals with the whether a customary trust exists over the land registered in the name of the respondent and occupied by the appellant and her family. Failure to amend the pleadings does not affect the appeal in any way because the proceedings in this case acknowledge that the appellant did not occupy the land alone but with her adult children who include the one who substituted her in the proceedings before the Deputy Registrar. The respondent has not demonstrated how failure to amend the pleadings has prejudiced him yet such a amendment of name only does not affect the issues for determination in the appeal.

- (12) I conclusion and for the reasons already given, I order as follows.

(a) The Judgment and decree in Murang’a CM’s Civil Case No. 359 of 2014 is hereby set aside and an order is made dismissing the plaintiff’s suit.

- (b) Judgment is entered in favour of the defendant such that she gets registered as the owner of the land that she has occupied since 1990 being the whole of or a portion of L.R. No. Loc.20/Mirira/4389.
- (c) L.R. No. Loc. 20/Mirira.5393 to be registered in the name of the respondent/plaintiff.
- (d) If the respondent/Plaintiff does not cooperate in the registration process, the Deputy Registrar of this Court to execute all the necessary instruments to give effect to the Court orders.
- (e) To foster unity and harmony between the families of the appellant and the respondent torn apart by this long litigation, there will be no orders as to costs.

**It is so ordered.**

**Dated, signed and Delivered virtually at Murang'a this 15<sup>th</sup> day of December, 2025.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of; -**  
**Court Assistant – Mwangi Njonjo**  
**Appellant's Counsel – Absent**  
**Respondent's Counsel – Mr. Mwangi Ben**