



**Kagunga v Njeru (Sued as Legal Administrator of the Estate of the
Late Njeru M’njama) & 3 others (Environment and Land Appeal
E006 of 2024) [2025] KEELC 18523 (KLR) (8 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 18523 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E006 OF 2024
AK BOR, J
DECEMBER 8, 2025**

BETWEEN

GREGORY MWANIKI KAGUNGA APPELLANT

AND

**GECEREMINA NGAI NJERU (SUED AS LEGAL ADMINISTRATOR OF THE
ESTATE OF THE LATE NJERU M’NJAMA) 1ST RESPONDENT**

JACOB NJERU NYAGA 2ND RESPONDENT

LAND REGISTRAR EMBU WEST 3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

*(An appeal arising from the judgment of Hon J.W Gichimu, Senior Principal
Magistrate, delivered on 23/8/2022 in Runyenjes ELC Case No. 9 of 2018)*

JUDGMENT

1. This appeal arises from the judgment of Hon J.W Gichimu, Senior Principal Magistrate, delivered on 23/8/2022 in Runyenjes ELC Case No. 9 of 2018. The Appellant, Gregory Mwaniki Kagunga instituted the suit in the magistrates court seeking an order that the 2nd Respondent holds the title over Kyeni/Kagumo/3253 (the suit land) in trust for him. In the alternative, he sought a declaration that he had acquired title to the land through adverse possession as well as costs of the suit.
2. According to the plaint, the Appellant’s case was that he purchased the suit land from the 1st Respondent’s husband sometime in 1991 for the consideration of Kshs. 40,000/= and that the 1st Respondent witnessed the transaction. He averred that the he occupied the suit land immediately upon entering into the agreement. However, the 1st Respondent’s husband died before he could transfer the land to him.



3. Sometime in 2016, the 1st Respondent illegally and unlawfully transferred the suit land to the 2nd Respondent without his knowledge and consent, despite him being in occupation of the land which he has developed extensively. He contended that by the time the 2nd Respondent purported to acquire the suit land, the 1st Respondent's title had been extinguished through prescription. He sought to have the title deed issued to the 2nd Respondent cancelled and for the suit land to be transferred to him.
4. The 1st Respondent died during the pendency of the suit and no substitution was made. There is no evidence that she filed a defence to the suit.
5. The 2nd Respondent filed an amended defence and counterclaim and sought a declaration that he is the legal owner and proprietor of the suit land. He counterclaimed for a permanent injunction to restrain the Appellant and his agents, servants or legal representatives from re-entering, occupying, alienating, disposing of or otherwise dealing with the suit land. He also sought an order for the eviction of the Appellant, general and aggravated damages for trespass and costs of the suit. He denied the Appellant's allegations in the amended plaint and maintained that the Appellant was a trespasser on the suit land.
6. The 2nd Respondent's case was that on or about 15/1/2016, he entered into a sale agreement with the 1st Respondent for the purchase of the suit land in consideration of Kshs. 500,000/= . He stated that when he visited the suit land, he found a house erected on the land, but was assured by the 1st Respondent that he would obtain vacant possession, because the occupant was merely a licensee. The suit land was transferred to him and a title deed in his name issued to him after complying with the requirements for the purchase of the land. He stated that the Appellant placed a caution against the land, which was removed by an order of the court dated 2/8/2017 following his application.
7. He stated that by virtue of being issued with a title, he is the rightful owner of the suit land and that he purchased it free of any encumbrance or defect in title. He set out the particulars of trespass and loss and damage against the Appellant.
8. The 3rd and 4th Respondents filed a defence and denied knowledge of the allegation that the Appellant purchased the suit land but admitted that the 2nd Respondent is the current registered owner. They denied that they colluded with the 1st and 2nd Respondents to transfer the suit land to the 2nd Respondent. They denied that there was any illegality on their part in the transfer of the suit land to the 2nd Respondent.
9. The Appellant filed a reply to the 2nd Respondent's defence and counterclaim and reiterated the content of his amended plaint. He averred that the 2nd Respondent was aware of the transaction between the 1st Respondent's husband and the Appellant over the suit land. He contended that the title to the suit land was obtained illegally and fraudulently since there was a caution in place over the suit land. He set out particulars of fraud and denied the particulars of trespass and loss and damage pleaded against him.
10. During the hearing, the Appellant testified that the 1st Respondent's husband agreed to sell him the suit land for Kshs. 40,000/= in the presence of the 1st Respondent and the Appellant's wife, who were both witnesses. He stated that he paid Kshs. 30,000/= as a deposit on 15/2/1985 and commenced the process of obtaining a title deed since the entire parcel of land was parcel Kyeni/Kigumo/1516. That they proceeded to the Land Board for subdivision on 28/8/1985. They also visited the Survey Department where a sketch map of the land was drawn which subdivided parcel no. 1516 into parcels 3252 and 3253. They filled the Land Control Board (LCB) form but before visiting the Land Control Board, the deceased, Njeru M'Njama told him to clear the balance of the purchase price, which he did.



11. He stated that they visited the LCB with the deceased and his family, including the 1st Respondent, but Njeru M’Njama died before the consent of the LCB was issued. Njeru M’Njama however, instructed him to move into parcel no. 3253. The consent was later issued and he collected it in the company of the 1st Respondent. They agreed that the transfer would be effected upon conclusion of the succession proceedings for the estate of Njeru M’Njama. He was however surprised to receive a letter from the 1st Respondent to vacate the land claiming that she had sold it to the 2nd Respondent who is her grandson. He stated that he settled on the suit land and had put up a permanent home where he lived with his family. He tills the land. He buried his daughter who died in the late 90’s on the suit land.
12. On cross-examination, he stated that he did not have the sale agreement for the suit land. The 1st Respondent died on 30/8/2017. On re-examination, he stated that the agreement for sale was oral. The Appellant produced the LCB consent for parcel no. 3253, copies of the register for the suit land, certificate of death of his daughter Judith Kanini, and photographs showing developments on the suit land.
13. The 2nd Respondent stated that on or about 15/1/2016, he entered into a sale agreement with the 1st Respondent for the sale of parcel no. 3253. That he confirmed that the suit land was registered in her late husband’s name and that she had obtained grant of letters of administration. Pursuant to the agreement, he paid the agreed purchase price of Kshs. 500,000/= and the land was transferred to him. The 1st Respondent was his grandmother and that the suit land belonged to her deceased husband. He was issued with a title deed on 2/12/2016.
14. On cross-examination, he confirmed that he visited the suit land before buying it but did not confirm how long the Appellant had lived on the land. He stated that he did not see any houses on the land or the houses in the photos produced by the Appellant. The green card shows that the land was given to him as a gift. He produced copies of the title deed for the suit land, sale agreement dated 15/1/2016, grant of letters of administration dated 11/5/2015, certificate of confirmation of grant dated 19/6/2015, official searches dated 19/4/2016, 19/9/2016 and 4/1/2017. He also produced copies of the court order dated 2/8/2016, and the eviction notice dated 11/5/2017.
15. The trial court found that the suit against the 1st Respondent abated on 1/9/2018 and was not revived before the Appellant closed his case. As such, there was no subsisting claim against the 1st Respondent, whose role in the transaction was central since she was the legal representative of the estate of Njeru M’Njama, the seller. The court held that any orders sought would inevitably affect the estate of the 1st Respondent, yet the cause of action did not survive her, and proceedings would amount to condemning her unheard. Consequently, the court dismissed the Appellant’s suit against both Respondents. It further found that the 2nd Respondent, being the registered proprietor, was entitled to the rights and privileges under Section 24 of the *Land Registration Act*. The trial court entered judgment for the 2nd Respondent as prayed in the amended counterclaim with costs.
16. The Appellant raised six grounds in his memorandum of appeal. He faulted the trial court for finding that his claim did not survive against the 2nd, 3rd and 4th Respondents.
17. He also faulted the court for not finding that he and his family had been in open, continuous, uninterrupted and exclusive occupation, possession and use of the suit land for more than twelve years and that the occupation is adverse to the 2nd Respondent. He further faulted the court for not finding that the 2nd Respondent’s title to the land had long been extinguished and the 2nd Respondent was therefore holding the suit land in trust for him. He added that the court failed to appreciate the proper effect and purpose of the evidence adduced and arrived at a decision that was against the weight of the



- evidence. He faulted the court for failing to find that a claim of adverse possession had been proved against the 2nd Respondent.
18. He urged this court to allow the appeal and set aside the judgement of the trial court be set aside. He also prayed for the costs of the appeal and of the trial court.
 19. The appeal was canvassed through written submissions. The Appellant submitted that his claim before the trial court was for adverse possession and that the trial court erred in holding that an order for adverse possession could only be made against the 1st Respondent, yet the law is clear that such a claim lies only against the registered owner of the land. He submitted that the 2nd Respondent, being the registered owner, was the proper party against whom the claim was rightly made, and that the claim survived the death of the 1st Respondent.
 20. The Appellant argued that by the time the 2nd Respondent was registered as the owner of the land in December 2016, title had already been extinguished in 2004 when the Appellant's claim for adverse possession crystallized. He added that 2nd Respondent was fully aware, by the 2nd Respondent's own admission, that he had been on the suit land since 1991 but still went ahead to purchase the land in order to defeat his claim. Accordingly, he held the land in trust for him. He urged the court to allow the appeal guided by Section 38 of the *Limitation of Actions Act*, which empowers the court to order that a claimant who has acquired land by adverse possession be registered as proprietor.
 21. The 2nd Respondent submitted that the trial court was right in finding that the suit against the 1st Respondent abated due to the failure to substitute the 1st Respondent within one year of her demise in accordance with Order 24 Rule 4(3) of the Civil Procedure Rules. He submitted that the fact that the Appellant's initial claim was founded on a sale agreement, he acknowledged that his possession was neither hostile nor adverse to the rights of the owner which is a critical requirement for a successful claim of adverse possession. He further submitted that the statutory period for adverse possession had not lapsed at the time of filing suit against him since he acquired title over the suit land in 2016. It was his position that he acquired title to the suit land in good faith and following all necessary legal procedures.
 22. The 3rd and 4th Respondents submitted that the Appellant could not claim adverse possession while presenting evidence that he had purchased the suit land. They submitted that, whereas the Appellant alleged there was illegal and unlawful transfer of the suit land to the 2nd Respondent, he failed to produce evidence to support that allegation leading to the trial court's conclusion that none of the orders he sought could be granted. They submitted that the trial court's judgment was based on good law and should not be interfered with. They urged this court to dismiss the appeal.
 23. The issue for determination is whether the appeal has merit. The Appellant's case is that he purchased the suit land from Njeru M'Njama, the 1st Respondent's late husband in 1991. That he took possession of the suit land upon paying the full purchase price with the seller's blessings and that the 2nd Respondent holds the title in trust for him. He maintained that the transfer of the land to the 2nd Respondent was unlawful.
 24. The 2nd Respondents' case, on the other hand, is that the Appellant is a trespasser on the suit land and that he lawfully acquired the property from the 1st Respondent in 2016 after completing succession proceedings. He also urged that the trial court was right in finding that the suit against the 1st Respondent abated upon her death thereby extinguishing any claim, and that his title was indefeasible under Section 24 of the *Land Registration Act*.



25. On the effect of abatement of the 1st Respondent's suit, the 1st Respondent died during the pendency of the proceedings, and no substitution was effected within a year under Order 24 Rules 4 and 7 of the Civil Procedure Rules. The suit abated as against the 1st Respondent.
26. However, the law recognizes that where a cause of action survives against the remaining defendants, proceedings may continue against them. In this case, the Appellant's cause of action for trust was pleaded not only against the 1st Respondent but also against the 2nd Respondent, who is the current registered proprietor of the suit land. Since a trust is an overriding interest under section 28 of the [Land Registration Act](#), it attaches to the land itself and not just the parties and therefore binds the 2nd Respondent despite abatement of the suit against the 1st Respondent.
27. It is difficult to accept the 2nd Respondent's submission that he acquired title over the suit land in good faith. His claim is that he bought the suit land from his grandmother but the green card shows that the land was given to him as a gift. It was not possible for his grandmother to bequeath to him land which his grandfather sold to the Appellant in his lifetime, more so when the 2nd Respondent's grandmother was well aware of the transaction that her late husband entered into with the Appellant and that he put him in possession.
28. On the substance of the claim, the Appellant's contention that he purchased the suit land from the late Njeru M'Njama was uncontroverted. He testified that he paid the agreed full purchase price of Kshs. 40,000/=, a fact which was also not controverted. The 1st Respondent witnessed the agreement. The Appellant testified that the agreement was oral even though he produced evidence that the parties obtained LCB consent for the transfer of the suit land to him, which transfer was not completed because the seller died before the transfer could be effected.
29. The Appellant's testimony was that the seller put him in possession of the suit land upon payment of the purchase price. He developed the land by constructing a home and even buried his daughter on it. He produced photographs which showing the substantive developments on the land. The 2nd Respondent admitted that at the time he purchased the suit land from the 1st Respondent, the Appellant was in possession of the land even though he was told that he was a licensee. Had he bothered to speak to the Appellant, he would have established the Appellant's interest over the suit land.
30. Once the Appellant paid the purchase price for the land, the seller held the title in trust for the Appellant. From the conduct of both the Appellant and the seller, it is evident that the late Njeru M'Njama intended to transfer the suit land to the Appellant and, in furtherance of that intention, granted him possession. These circumstances gave rise to a constructive trust, with the late Njeru M'Njama holding the land in trust for the Appellant. That trust bound the 1st Respondent when she dealt with the suit property after the succession proceedings, and continued to subsist at the time the suit land was transferred to the 2nd Respondent. It follows therefore that at the time of transfer of the land to the 2nd Respondent, the 1st Respondent did not have a good title which she could pass to the 2nd Respondent. The 2nd Respondent did not acquire a good and valid title under the law.
31. The appeal succeeds. The judgment of the trial court is hereby set aside. This court finds that the 2nd Respondent holds the title over Kyeni/Kagumo/3253 in trust for the Appellant. An order is issued cancelling the 2nd Respondent's title over Kyeni/Kagumo/3253. The Appellant will be registered as proprietor of the suit land. The 2nd Respondent's counterclaim is dismissed. The 2nd Respondent will bear the costs of the appeal and the suit before the trial court.

DELIVERED VIRTUALLY AT EMBU THIS 8TH DAY OF DECEMBER 2025.

K. BOR



JUDGE

In the presence of:

Mr. Gregory Mwaniki Kagunga- Appellant

Mr. Jacob Njeru Nyaga- 2nd Respondent

Diana Kemboi-Court Assistant

