

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**  
**ELC MISCELLANEOUS APPLICATION NO. E012 OF**  
**2022**

**GATHURI NGARI.....**  
**APPLICANT**

**VERSUS**

**ALLAN NYAGA GATHURI NGARI.....**  
**.....RESPONDENT**

**RULING**

Through the application dated 31/5/2022, the Applicant seeks to have the caution lodged by the Respondent against the land known as Gaturi/Nembure/2107 removed. He also seeks to have the order served upon the Land Registrar Embu for compliance and for the Officer Commanding the Manyatta Police Station to supervise the eviction exercise to ensure compliance with the decree issued on 7/12/2017.

The application was supported by the affidavit sworn by the Applicant, who averred that the suit land was registered in his name and that he had lived on the suit land since he was born. That under unclear circumstances, the Respondent trespassed onto the land and started utilizing it and refused to give vacant possession despite several demands, which necessitated the filing of ELC Case No. 169 of 2015 (Formerly Kerugoya ELC Case No.

732 of 2013) (Formerly Embu Civil Case No.14 of 1983) for eviction orders. He added that the Respondent had placed a caution against the land claiming beneficiary interest.

He contended that on 7/12/2017, the court sitting at Embu delivered its judgment and ordered the eviction of the Respondent from the suit land and suspended the order for 90 days to allow the Respondent to vacate the land. That on 9/7/2018, the Respondent filed an application for stay of execution of the decree pending determination of an intended appeal, which was dismissed but the court directed that status quo be maintained for a period of two years to enable the Respondent pursue his intended appeal. The Respondent filed the application dated 3/12/2018 for extension of time to file the appeal but on the 23/9/2021, the Court of Appeal sitting at Nairobi in Civil Application No.151A of 2018 dismissed the application with costs describing it as wanting.

The Applicant stated that he tried to ask the Respondent to vacate the suit land but the Respondent refused. The Respondent also refused to withdraw the encumbrances he registered against the title over the suit land making it impossible for the Applicant to transact, subdivide or alienate the land to the rightful beneficiaries. He urged that court orders were not made in vain and sought the costs of the application. He exhibited copies of the official search, judgment dated 7/12/2017, ruling dated 7/12/2019 dismissing the application for stay of execution and Court of Appeal ruling dated 23/9/2021.

The Respondent who is acting in person responded to the application through a letter dated 15/9/2025. He stated that he was not going to vacate the land or remove the caution he registered against the suit land because he is the bona fide owner of the land which fact is supported by a ruling delivered on 14/2/1984 by a panel of elders of an arbitration committee. He explained that his advocate misrepresented to him that he filed an appeal against the eviction orders and he later discovered that was not true.

The Respondent claimed that the Applicant was using the name Gathuri Ngari that originally belonged to him. That he adopted the name Allan Nyaga Gathuri Ngari after he was dissatisfied with his uncle's treatment and that the Applicant's true name is John Murithi Ngari, as reflected in his school records and which is also how he is known by neighbours, chiefs, and clan members. He alleged that the Applicant colluded with the land registry to obtain registration of the suit land in his name and requested the court to direct the Directorate of Criminal Proceedings (DCI) to investigate the true identities of the parties. He annexed a copy of the proceedings and ruling made by the arbitration committee. The court directed parties to file and exchange written submissions, but at the time of writing this ruling none of the parties had filed their submissions. The only submissions on record are by the Applicant in relation to a preliminary objection dated 29/6/2022 by the Respondent which objection was dismissed on 24/1/2024 for want of prosecution.

The issue for determination is whether the application has merit. What the court can deduce from the judgment delivered in Embu ELC Case No. 165 of 2015 is that the parties in this dispute are cousins, in the sense that the Respondent's mother was the sister to the Applicant's father.

The court noted in that judgment that the Applicant was known as John Muriithi but that the land records showed the name Gathuri Ngari. Further, that the suit property formed part of a larger parcel of land, which originally belonged to the parties' grandfather. The grandfather had three children, the Applicant's father and the Respondent's mother and a sister. The evidence adduced in that suit was to the effect that their grandfather's land was subdivided into three but the portion for the Respondent's mother who was not married was registered in the Applicant's father's name as the eldest son because at the time women could not be registered as proprietor's land. The proceedings of the Arbitration Committee give the background on how the Respondent was allocated the suit land by the clan. It is apparent that many suits have been filed over the suit land, with some dating back to 1983.

The issue of the Applicant's name being different from the name on the land register does not seem to have been addressed yet this is material. The registered proprietor of the suit land is Ngari Gathuri according to the search dated 24/5/2022.

It is apparent that the Applicant seeks eviction of the Respondent pursuant to previous proceedings to wit ELC Case No. 169 of 2015

(Formerly Kerugoya ELC Case No. 732 of 2013) (Formerly Embu Civil Case No.14 of 1983).

It was improper for the Applicant to file a miscellaneous application yet there was a previous suit being ELC Case No. 169 of 2015. The application for eviction should have been filed in the suit where judgment was entered.

The court declines to grant the orders sought in the application dated 31/5/2022. Each party will bear its costs.

Delivered virtually at Embu this 10<sup>th</sup> day of December 2025.

**K. BOR  
JUDGE**

**In the presence of:**

Mr. Gathuri Ngari-the Applicant

Mr. Allan Gathuri Ngari- the Respondent

Diana Kemboi-Court Assistant