

**REPUBLIC OF KENYA**  
**IN THE ENVIROMENT AND LAND COURT AT EMBU**  
**ELC CASE NO. 70 OF 2016**

**DOMINIC NJERU NYAGA.....1<sup>ST</sup>**  
**PLAINTIFF**

**LEONARD KARIUKI NYAGA.....2<sup>ND</sup>**  
**PLAINTIFF**

**PATRICK KITHAKA NYAGA** (Suing as the Personal  
Representative of the Estate of  
**CHELESTINO NYAGA GICHONI).....3<sup>RD</sup>**  
**PLAINTIFF**

**VERSUS**

**JOSEPHINE KANYIVA KARINGA.....1<sup>ST</sup>**  
**DEFENDANT**

**PETER NGARI KIRINGA.....2<sup>ND</sup>**  
**DEFENDANT**

(Sued as Administrators of the Estate of **KARINGA  
NJERI KUNYIRA**)

**JUDGMENT**

1. The Plaintiffs brought this suit in their capacity as the Personal Representatives of the Estate of Chelestino Nyaga Gichoni claiming that the late Chelestino Nyaga Gichoni was the proprietor of the land known as Mavuria/Mavuria/1422, measuring approximately 68 acres, located in Mavuria within Embu County (the suit property). They claimed that allocation of the suit property and ownership was based on Mbeere

custom and was subject to the complex land ownership system by which different clans owned the land.

2. According to them, the suit property formed part of the land that was transferred from the Kiragwa clan to the Muruga Clan, which the late Chelestino Nyaga belonged to. They stated that the suit property is occupied by several members of the late Chelestino's family and beneficiaries including his wife and children as well as his brothers and their families. They stated that they had built several permanent homesteads on the land, had sisal plantations and were growing subsistence crops on the suit property. Further, that they had dug wells and designated family burial sites on the disputed land.
3. The Plaintiffs elaborated that the suit property was the subject of a protracted dispute between the late Chelestino Nyaga, the late Karinga Njeru and other interested parties. Further, that the dispute was arbitrated in various administrative, quasi-judicial and judicial bodies including the Land Adjudication and Settlement Board, Special District Commissioner, Embu Magistrates Court and High Court without some of the matters being finalised. The Plaintiffs were alarmed when persons unknown to them visited the suit property in circumstances showing intent to deprive them of the land and they were apprehensive that they might be evicted from the suit property.
4. The Plaintiffs claimed that sometime in October 2016, a surveyor visited the suit property on instructions from the Defendants to subdivide it for intended sale and reallocation. They claimed that the Defendants had trespassed onto the

suit property and threatened to forcefully evict them with their families from the land. They pleaded particulars of illegality on the part of the Defendants in their purported ownership of the suit property. They expressed fear and apprehension that they may be evicted from the suit property which is of a unique character and peculiar location in a convenient area within Embu County. They added that the land was of great personal value and a treasured family heirloom to the Plaintiffs.

5. Through the amended plaint dated 19/8/2019, the Plaintiffs sought a declaration that the suit property formed part of the Estate of the late Chelestino Nyaga Gichoni and a permanent injunction to restrain the Defendants or their agents from interfering with the Plaintiffs' ownership, occupation, possession and use of the suit property.
6. The Defendants denied the Plaintiffs' claim and averred that the 1<sup>st</sup> Defendant's late husband who was representing the Kere Clan was awarded the suit property upon determination of the dispute between the Kere Clan and Kiragwa Clan. Further, that any transaction that members of Kiragwa Clan conducted before with respect to the suit property was rendered void when the land was awarded to the Kere Clan.
7. They urged that the Plaintiffs and their family members were licensees on the suit property. That having failed to pay consideration for the portion that they occupy, their licence was terminated and notice to vacate given. They emphasised that the Plaintiffs did not have any interest over the suit property, which was capable of being protected.
8. The Defendants denied the allegations of illegality pleaded by the Plaintiffs and argued that the suit property was registered

in favour of the late Karinga Njeru Kunyira. The Defendants counterclaimed that the Plaintiffs and members of their family unlawfully trespassed upon the suit property without the consent or authority of the lawful proprietor and put up structures on a portion of the suit property measuring approximately 15 acres. The Defendants claimed that the Plaintiffs and members of their families were causing degradation of the suit property and that their unlawful actions were interfering with the rights of the lawful beneficiaries of the land.

9. The Defendants sought to have the Plaintiffs and members of their families remove themselves and their properties from the suit land within 90 days of the date of judgment and in default, they be forcefully evicted.
10. The suit was heard on 4/6/2025. The 1<sup>st</sup> Plaintiff gave evidence and told the court that he was the legal representative of the estate of the Chelestino Nyaga Gichoni pursuant to the limited grant of letters of administration *ad litem* issued on 31/10/2016. He stated that his late father owned the suit property, having inherited it from his own father. That the suit property was transferred from the Kiragwa Clan to Muruga Clan which his father belonged to upon payment of the consideration in the form of a heifer and she-goat and that the land was subsequently subdivided upon adjudication. He explained that since the purchase of the suit property, many generations of his father's family and clan had lived on the land uninterrupted and that they did not have any other home.
11. He told the court that they had constructed several permanent homesteads and other developments on the land. He

mentioned that a surveyor went to the land in October 2016 on instructions from the Defendant to subdivide the suit land for intended sale or reallocation. He added that the Defendants had trespassed on the suit property and were threatening to forcefully remove the Plaintiffs from the suit land. Further, that the Defendants had made it impossible for the occupants of the land to peacefully reside there due to constant threats of removal.

12. The Plaintiff produced the Authority to Act and limited grant of letters of administration *ad litem*. On cross-examination, he told the court that the suit property was registered in the name of Karinga Njeru Kunyira but at some point, his father Chelestino Nyaga was registered as the proprietor. He did not know when the adjudication was done. He stated that his Muruga Clan bought the suit property and that during the adjudication process, his father and grandfather laid claim to suit property. He claimed that there were cases between his father and Karinga Kunyira, which were determined in their favour. According to him, the late Karinga worked as an officer of the land board and used his position to acquire the title over the suit land. His father died in 2009. He maintained that they were using the whole land, which measures about 68 acres.
13. He gave names of people who went to the land including two persons who have settled on the suit land. He denied that the people who sold the land to them were defeated in a case or that his clan was to buy the land from those who won the case. He never sought permission to stay on the land. They have lived on the suit land undisturbed for many years. They

had planted trees and crops on the land and had constructed on it. They buried his father, grandfather and great grandfather on the land. He explained that the Kere Clan which is said to have defeated the Kiragwa Clan reside in Siakago, Mbeere North while he clarified that they were in Mavuria, Mbeere South.

14. Josephine Kanyiva Karinga gave evidence. She told the court that she was the widow and legal representative of the estate of her late husband Karinga Njeru Kunyira. She told the court that the suit property was registered in favour of her late husband and formed part of his estate. Further, that the suit property was the subject of a dispute between the Kere Clan represented by her late husband and, Kiragwa Clan during the adjudication process. That the dispute was determined in favour of the Kere Clan and the suit property was registered in favour of her late husband. According to her, the Plaintiffs were members of Muruga Clan said to have purchased the land from members of Kiragwa Clan before the determination of the dispute. That once the disputes were determined, members of Kiragwa Clan vacated the land but the Plaintiffs including their late father Chelestino Nyaga Gichoni did not vacate.
15. She stated that her late husband gave the Plaintiffs and members of their family notice to vacate the land however, the Plaintiff's late father requested her late husband to give him time to organize himself so that he could purchase the portion that he and members of his family were occupying. According to her, that was the basis on which her late husband permitted the late Chelestino Gichoni and his family to

continue occupying the suit land. Her husband however passed away before pursuing the matter to its conclusion.

16. That upon the demise of her husband, she went to the suit property accompanied by the Chief, Mavuria Location. That she talked to the Plaintiff's mother and uncle and they promised to take steps to initiate the land process before she filed succession proceedings for her late husband's estate. She reiterated that the Plaintiffs and members of their family occupied approximately 15 acres of the suit property and according to her they were on the land as licensees. She added that there were other members of the Kere Clan who were entitled to a share of the land according to what her late husband told her. She told the court that the families of Gerald Muriuki Ngungi and Geoffrey Mwaniki Njiru also occupied the suit property.
17. On cross-examination, she told the court that her late husband was a police officer and did not work for the land board. He had 4 wives and she was the only surviving one. That the suit property was not included in the succession proceedings because she sent her children to get all the land records but they did not get records for the suit property. The people who live on the suit land were not from the Kere Clan. She clarified that members of the Kere Clan lived in Siakago and not Mbeere South. She went to the suit land when her husband died to ask for money to file succession proceedings.
18. She could not produce the notice, which she claimed that her late husband issued to the people to vacate the suit land. He died in 2006. She confirmed that Gerald Ngungi was from the Kere Clan but not Geoffrey Njiru.

19. On re-examination, she stated that most Kere Clan members lived in Mbeere North. That the suit land belonged to Mbuti and he told her husband to be in charge of it. When she went to the suit property to ask for money, the occupant told her that he would send her money but failed to send. She asked Chelestino Nyanga's brother for money because her dying husband told her to go to that old man. She maintained that her husband had allowed the occupants of the suit property to stay on the land and they were to purchase it.
20. Godfrey Mwaniki Njiru gave evidence. He told the court that he occupied a portion measuring approximately 3 acres out of the suit property. His portion was adjacent to the portion occupied by Gerald Muriuki Ngungi. He was born on the suit property. His father died in 1992 and his mother passed away in 1996. They were both buried on the portion of land which he occupies. He told the court that he occupies the land with his three brothers. He lives with his wife and young children. He has built a permanent home and planted assorted trees on the suit property.
21. His late father was a member of the Ngui Clan and had purchased the portion which they occupy. According to him, he and his brothers occupied the portion from the late Karinga Njeru Kunyira which they acquired for valuable consideration. He promised to transfer the land to them but passed away before doing so. He knew the Plaintiffs because they grew up together. They were not in good terms with his parents because they supported the late Karinga during the adjudication of the dispute against the Kiragwa Clan who sold the land to the Plaintiff. He stated that the Plaintiff occupied

approximately 15 acres. A larger part of the land was bushy and unoccupied. He added that the Plaintiffs started fencing the other part after filing this suit but that previously they were not utilising the land.

22. On cross-examination, he told the court that he belonged to the Ngui Clan. His family was the only Ngui Clan on the suit land. He denied that his parents were working on the suit land and argued that they were in the process of buying the portion of land from Mr. Karinga. There were no chaos during the burial of his mother. He maintained that the Plaintiffs occupied 15 acres and that a surveyor had gone to the land. He did not have the surveyor's report in court.
23. Gerald Muriuki Ngungi gave evidence. He resided in Gatumbiri Village, Mavuria Location in Mbeere South. He occupied approximately 3 acres of the suit property. His late father, Joshua Ngungi Munyi occupied the same portion during his life time. His mother died in the 60s and was buried on the land. His father was also buried on the land when he passed away in 1984. He got married in 1981 and established his home on his portion of the land. He lives on the land with his two adult sons. They had built permanent homes and installed electricity. He had planted several trees, miraa and kept domestic animals.
24. His father was a member of the Nditi Clan and was a great friend of Karinga Njeru Kunyira. He stated that the late Karinga allocated the 3 acre portion which he occupies to his late father on the understanding that once the disputes touching on the suit property were resolved he would sell the portion to him for valuable consideration. During the hearing of the

adjudication cases touching on the suit property, his father's elder brother testified as a witness on behalf of Karinga.

25. He knew the Plaintiffs who he went to school with. He stated that the Plaintiff's extended families occupied and utilized approximately 15 acres of the disputed land. They were members of Muruga Clan. According to him, they occupied the land through the invitation of members of Kiragwa Clan. Kiragwa Clan members had a dispute with the Kere Clan over the suit property.
26. That members of the Kiragwa Clan were defeated by the Kere Clan and the suit property was registered in favour of Karinga representing the Kere Clan. That on determination of the disputes, members of the Kiragwa Clan vacated the land. He told the court that the Plaintiffs promised to purchase the portion of the land which they were occupying from the late Karinga when he went to evict them but they did not purchase the land as promised.
27. On cross examination, he told the court that he belonged to the Nditi Clan. Other Nditi Clan members lived around there. He knew Karinga, he explained that Runji Kathutwa was on the land but was defeated by Karinga in the case. Runji was from the Kiragwa Clan. Muruga did not have land there. He confirmed that he knew Chelestino Gichoni and that he was buried on the land. His mother and father were also buried on the land. He attended the burials. He gave names of his cousins who he claimed lived on the land. He maintained that Karinga allocated them 3 acres which he was to sell to them once the dispute was resolved.

28. Upon conclusion of the hearing, the court directed parties to file and exchange written submissions. The Plaintiffs submitted that the issues for determination were whether they were the legal owners of the suit property or the Defendants had any proprietary interest over the suit property. The Plaintiffs submitted that the suit land was purchased by his clan from Kiragwa Clan after paying consideration, a fact which was not disputed by the Defendants. They relied on photographs evidencing their occupation including the family graveyard.
29. They pointed out that the Defendants did not produce any title registered in their favour. They relied on Section 26 of the Land Registration Act. They urged that the witnesses acknowledged that the Defendants have never lived on the suit land. They maintained that the evidence which they adduced regarding ownership of the suit property was not controverted and was therefore unchallenged. They cited **Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 Others [2015] eKLR** where Onguto, J stated that tracing ownership of unregistered land depended on tracing the root of title, and that the court had to ascertain that the documents availed by the parties were genuine and led to a good root of title without any break in the chain.
30. They emphasized that the Defendants had failed to provide evidence of ownership of the suit property. Further, that they had not proved that the occupation of the land by the Plaintiffs was derived from their permission or grant. They urged that the Defendants failed to prove any proprietary interest over the suit property.

31. The Defendants submitted that the Plaintiffs acknowledged in their pleadings that the suit property was registered in the name of the late Karinga. They urged that the particulars of illegality pleaded by the Plaintiffs were not proved. The Defendants relied on **Kimuigei v Kiptegucho & 5 Others [2025] KEELC 357** where the court addressed the standard of proof in a claim based on illegality and fraud. They submitted that the Plaintiffs made vague and general allegations of illegality which were not proved to the required standards.
32. That while the Plaintiffs claimed that the suit property was purchased by their Kiragwa Clan to Muruga Clan during the colonial era in Kenya, no evidence of the transaction was tendered in court. Additionally, that no evidence was tendered to show that the Plaintiffs and members of their Kiragwa Clan made any claim to the suit property when the area was declared to be an adjudicated section in the early 70s. That the issue of which clan owned land should have been dealt with during the adjudication process.
33. The Defendants argued that the Plaintiffs did not tender any evidence of the existence of the cases and their outcomes between their late father and the late Karinga. According to them, the Plaintiffs' father never made any claim to the suit land because he was aware that he occupied the suit property as a licensee.
34. The Defendants urged that the Plaintiffs were not truthful when they claimed that they were in possession of the whole of the suit property in their pleadings. That it had emerged during the hearing that other parties were living on the suit

property. That the parties gave evidence and stated that they were living on the suit property with the authority of the late Karinga who had promised to sell them the portions they were occupying after the determination of the clan disputes touching on the suit property during the adjudication process.

35. The Defendants submitted that the Plaintiffs admitted in paragraph 10 and 11 of the amended plaint that the Defendants had access to the suit property which gave credence to the Defendants contentions that the Plaintiffs were on the suit property with the licence of the late registered proprietor who had permitted the Plaintiff's late father to continue occupying the land with the understanding that he would purchase it for valuable consideration. They urged that the Plaintiffs as licensees were on a portion measuring approximately 15 acres. That it was admitted that the Defendants took a surveyor to the land and that is when it ascertained that the actual area occupied by the Plaintiffs was 15 acres.
36. The Defendants attached a copy of the register over the suit property to the submissions and pointed out that Chelestino Nyaga registered a caution against the land claiming the interest of a licensee. The court notes that that caution was registered in 1998 and another restriction was registered on 17/8/2016 restricting dealings with the suit property until the family members agreed.
37. The issue for determination is who between the Plaintiffs and the Defendants has a superior claim to the suit property. The fact that the late Chelestino's family and beneficiaries

including his wife, children and his brothers and their families reside on the suit land was not controverted.

38. The parties' claim is that the suit property was clan land. From the evidence adduced, it is difficult to ascertain the issue as to which clan was allocated the suit land between the Kere, Kiragwa and Muruga Clans. With the limited information as to the clan ownership of the suit land, the court cannot conclusively determine the issue of which clan was allocated the suit land, nor can it establish which clan succeeded in the dispute resolution mechanisms mentioned by the Plaintiffs through various administrative, quasi-judicial and judicial bodies including the Land Adjudication and Settlement Board, Special District Commissioner, Embu Magistrates Court and High Court. Had the decisions made by these bodies been availed to this court, it would have provided guidance on the previous determinations of the land dispute by those forums.
39. The Defendants urged that the Plaintiffs and their family members occupied the suit property as licensees. That having failed to pay consideration for the portion that they occupy, their licence was terminated and notice to vacate given. No evidence was led to support the assertion that the Plaintiffs occupy the suit land as licensees or that a notice to terminate the license was served on the Plaintiffs as the Defendants contended. No evidence was led of what consideration the late Chelestino Nyaga or the Plaintiffs were required to pay the Defendants and when it was payable.
40. The Plaintiffs did not challenge the evidence led by the defence that Gerald Muriuki Ngungi and Godfrey Mwaniki Njiru each occupy three acres of the suit property. Their

testimony was that the Plaintiffs only occupied 15 acres of the suit property. The Defendants also urged that the Plaintiffs occupied 15 acres of the suit property and not the entire portion of the suit property. What is clear from the evidence given by the parties and their witnesses is that the Plaintiffs do not occupy the entire suit property.

41. Godfrey Mwaniki Njiru told the court that he knew the Plaintiffs and that they grew up together on the suit property. Apart from the defence stating that the Plaintiffs occupy 15 acres of the suit land, no evidence was supplied from a surveyor that would establish the exact size of the suit property that the Plaintiffs occupy. What is not in contention is that Chelestino Nyaga's family has been in occupation of the suit property and that when he died in 2009, he was buried on the suit property.
42. The court has looked at the copy of the register supplied by the Defendants. Entry no. 1 shows Chelestino Nyaga's name entered as proprietor on 20/1/1998 and entry no. 4 is Karinga Njeru's name registered on 16/2/98 after removal of the restriction at entry number 2, which restricted dealings with the land until the Minister's Appeal was finalised. Entry no. 5 dated 13/5/98 was a caution lodged by Chelestino Nyaga claiming interest of a licensee while entry no. 6 is a restriction barring dealings with the suit property until the family members agreed.
43. From the foregoing, the Plaintiffs have to some extent proved their claim to a portion of the suit property but not the whole of it. The order that commends itself to this court to make is that of splitting the suit property between the families of Chelestino Nyaga and Karinga Njeru.

44. According to the land register, the suit property measures 25.0 hectares, which is approximately 61.7 acres. Once you remove the 6 acres occupied by the families of Gerald Muriuki Ngungi and Godfrey Mwaniki Njiru, it leaves 55 acres. This will be shared equally between the families of Chelestino Nyaga and Karinga Njeru's family taking into account the area on which Chelestino Nyaga's family have built on and buried their kin. A survey will be undertaken to subdivide the suit land with the joint participation of both the Plaintiffs and the Defendants, who will share the survey costs equally.

45. 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. Brian Ochola for the Plaintiffs

Diana Kemboi- Court Assistant

No appearance for the Defendants