



**Njuki & 16 others v Nguta & 2 others (Environment and Land Case
4 of 2016) [2025] KEELC 5755 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5755 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 4 OF 2016**

**A KANIARU, J
JULY 30, 2025**

BETWEEN

BENSON MWANIKI NJUKI & 16 OTHERS PLAINTIFF

AND

HENRY MICORO NGUTA 1ST DEFENDANT

JOHN MWANIKI MICORO 2ND DEFENDANT

BENARD KARIUKI MUNYI 3RD DEFENDANT

JUDGMENT

1. The plaintiff – Benson Mwaniki Njuki – and 16 others who are his clansmen impleaded the three defendants – Henry Micoro Nguta, John Mwaniki Micoro and Benard Kariuki Munyi – before this court vide a multi-track plaint dated 21.1.2016 and filed in court on even date. They are claiming land parcels No’s Mbeere/Kirima/3661, Mbeere/Kirima/3679, Mbeere/Kirima/3680, Mbeere/Kirima/3681 and Mbeere/Kirima/3682 said to be held in trust for them by the defendants, which trust they henceforth want determined or dissolved.
2. The discernible narrative in the plaint is that the plaintiffs are members of the Mwendia clan, which is one of the 17 clans that make the Mbeere community. The 1st and 2nd defendants, who are father and Son respectively, are members of that same clan. The 3rd defendant is a purchaser of one of the parcels of land from the 1st defendant’s brother. All the parcels of the land are an aggregate of some 50 acres said to have been bought by Mwendia clan from Marigu clan of the same Mbeere community. The sale took place a long time ago and it seems clear that the plaintiffs expected that the land would be transferred to Mwendia clan so that it could be shared out among clan members. But Marigu clan transferred the land to 1st defendant who then gifted a portion to his son, 2nd defendant, and transferred another to his brother, who in turn sold it to 3rd defendant. This turn of events led the plaintiffs to file this suit. They felt cheated or shortchanged because according to them, the land should belong to Mwendia clan.



3. The plaintiffs are seeking three prayers as follows:
 1. A declaration that the 1st, 2nd and 3rd defendant hold parcels of land number Mbeere/Kirima/3661, Mbeere/Kirima/3680, Mbeere/Kirima/3681 and Mbeere/Kirima/3682 in trust for themselves as well as 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th and 17th plaintiffs herein.
 2. An order that the trust held by 1st, 2nd and 3rd defendants be determined and land parcels No's Mbeere/Kirima/3661, Mbeere/Kirima/3679, Mbeere/Kirima/3680, Mbeere/Kirima/3681 and Mbeere/Kirima/3682 be shared among members of Mwendia clan including 1st and 2nd defendant and 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th and 17th plaintiffs in an equitable manner.
 3. Cost of the suit with interest.
4. The defendant responded to the suit via a defence dated 17.2.2016 and filed on 22.2.2016. They denied the plaintiff's claim and pleaded, inter alia, that the Mwendia clan did not buy any land from Marigu clan and that the land was actually bought by 1st defendant's grandfather -Mwene Wa Nguyori - for his family. The 1st defendant is the surviving member of that family and that is why the land was transferred to him. The allegations of existence of trust were denied. It was also pleaded that the 3rd defendant was a bonafide purchaser of the portion of land that he owns. The defendants averred that they are the registered proprietors of the land and therefore have the right to do with it as they please.
5. The court started hearing the matter on 18.5.2021. Benson Mwaniki Njuki, the 1st plaintiff, gave his evidence as PW1. He adopted his written statement as his evidence. His written statement is dated 27.1.2015. He said it is untrue to say that the land does not belong to the clan (meaning Mwendia clan) and that it was equally untrue to say that 1st defendant's grandfather bought the land. The land, he said, was given to the Chairman of Mwendia clan and it is therefore for all members of that clan. In his written evidence – or statement if you like – this witness reiterated that the land was sold by Marigu clan to Mwendia clan. The two clans had engaged each other about the transfer of the land and the chairman of Marigu clan was said to have agreed to transfer the land to Mwendia clan. But it later turned out that the land was transferred to 1st defendant and this witness only came to discover this much later.
6. During cross-examination, this witness said it is not true to say that Mwene Wa Nguyori bought the land; that it is in fact Kanjugu who bought it. PW1 further said that Kanjugu had no relationship with Mwene. He also further said that the land belonged to Mwendia clan and that the clan has more people than he has mentioned in this suit. Asked whether they, as a clan, demanded to get the land from Marigu clan, he said that they did. He also said he couldn't tell how the 1st defendant became the registered owner of the land.
7. Junius Njeru Mutembei testified as PW2. He is the son of Timothy Mutembei, the deceased clan chairman succeeded by PW1. According to this witness, the land should belong to the house of Ntharaanu because Kanjugu, the person who allegedly bought it, said it should belong to that house. He further said that he himself and 1st and 2nd defendants belong to that house. He also said further that the land was bought from a person called Mageti who came from Marigu clan. Some history surrounding the matter was given by this witness. Land Adjudication is said to have come to the area sometimes in 1972. All clan land came under adjudication but there was a big portion, about 7000 acres in size, that the clans had leased to an Indian, which was not put under adjudication. The understanding was that the area would come under adjudication later. The area leased was owned by



many Mbeere clans, Marigu and Mwendia clans included. The land in dispute was a portion within the leased land.

8. According to PW2 the leased land had boundary features which included River Nguu on one side, River Thiba on the other, a road cutline still on another, and finally a road to a place called Kivaa. The disputed land itself abuts on river Thiba. The leased land was fairly rectangular in shape with the mentioned boundary features representing each of the four sides. The official description of the leased land was Mbeere/Kirima/2244. The lease seems to have come to an end in 1992 or thereabouts. The lessee left and the leased land was left in custody of the then Embu County Council. The various clans that owned it decided to claim it. Many disputes were filed with the disputed land being the subject in Appeal No. 141 of 1996. PW2 said that Marigu clan was to handover or transfer the disputed land to Mwendia clan. That was the agreement but Marigu clan instead transferred the land to 1st defendant. The 1st defendant then transferred a portion – parcel No. 3680 – to his son, 2nd defendant, and another portion – parcel No. 3679 – to his brother – Danson Kiura Mwene – who sold it to 3rd defendant – Benard Kariuki Munyi. It appears clear that the plaintiffs did not get to know what had happened until the defendants started engaging in activities that raised their suspicions. While taking evidence of this witness, the court took a delineated visual impression of the described topology of the area including the position of the disputed land.
9. This witness was cross-examined on 22.3.2022. He maintained that the land was sold by Marigu clan to Mwendia clan and that the person leading the purchase on the part of Mwendia clan was Kanjugu. He denied that it is Mwene Wa Nguyori who bought the land.
10. PW3 was Peter Njiru Magu. He is the 3rd plaintiff in the suit. He is, he said, from Ntharanu house of the Mwendia clan. He also said that the 1st plaintiff is the current chairman of Mwendia clan but before him was Timotheo Mutembei, his own grandfather, who showed them the clan parcels of land, the disputed land included, before he died. The disputed land, this witness said, is clan land and as it was the subject of a dispute, it should be owned by all those members of Mwendia clan who contributed money to finance the dispute relating to it. The land, according to him, should be given to 1st plaintiff who should then distribute it to such members. Like PW2, this witness said that Marigu clan was supposed to transfer the disputed land to Mwendia clan for distribution among its members but Marigu clan chose to transfer the land to 1st defendant.
11. PW3 was subjected to cross-examination. The cross-examination mainly focused on the money said to be contributed by clan members. It emerged that apart from the disputed land, there was also another 18-acre piece of land which went to Mwendia clan.
12. Then there was PW4, Stanley Njiru, who is the 7th plaintiff. This witness adopted his written statement as his evidence. The statement is dated 27th January 2015. He is shown saying that the disputed land was sold by Marigu clan to his Mwendia clan and his own father, Perminus Itiara, settled on the land in 1970. He himself came from Mombasa in 1982 and found his father there. He started taking care of his father. The father passed on in 1987 and was buried there. This witness further said he is still living on the land with his family. He is cultivating the land and has about 300 miraa stems and some trees. He also plants other crops.
13. Like all the other witnesses before him, this witness was cross-examined. In response to some of the questions asked, he said he lives on the disputed land; that he is aware that the land was registered in the name of 1st defendant; that he was aware that the disputed land was part of a larger piece of land leased to a sisal growing company called Meka; that the company no longer uses the land and those who had leased the land were told to take it back; and that he knew Mwene Wa Nguyori, the grandfather to 1st defendant, but it is not true to say that it is Mwene Wa Nguyori who bought the disputed land.



14. The final witness in the plaintiffs' dispute or narrative concerning the disputed land was PW5, Charles Mwaniki Njiru, who is indicated as 16th plaintiff in the suit. He said he was on the disputed land and was actually born on the land in 1986. His portion is about two or three acres and he grows bananas, pawpaws and some miraa. This witness adopted his written statement as his evidence. The land, he averred, is his only source of livelihood. During cross-examination, this witness maintained that he knows the disputed land as clan land. He didn't seem to know much else about the land.
15. The court started taking defence evidence on 17.4.2023. The first witness was Henry Micoro Nguta and he gave his evidence as DW1. Micoro adopted his written statement. In it, he said that the 2nd defendant is his son and that he, his son, and the plaintiffs belong to Mwendia clan. According to him, the disputed land was bought by his late grandfather, Mwene Wa Nguyori, from the Marigu clan. The land formed part of a larger piece of land – Mbeere/Kirima/2244 – leased to a company called Meka, a Sisal Development Company, in 1963. The leased land belonged to all the 17 clans of the Mbeere tribe. The lease came to an end in 1982 and each of the 17 clans started staking its claim to ownership. The aim was for each clan to get its portion and distribute it to its members. Various disputes on ownership were filed and in the disputes, the 1st plaintiff represented the Mwendwa clan. At the end of the disputes, Marigu clan was awarded 590 acres of land. The disputed land formed part of the 590 acres. The 1st defendant represented his late grandfather and he was therefore given by Marigu clan the 50 acre portion bought by his grandfather. That is the portion he subdivided into land parcels no's Mbeere/Kirima/3661, 3679, 3680, 3681 and 3682. He then transferred parcel No. 3679 to his son and parcel No. 3679 to his brother. His brother then sold his portion to Bernard Kariuki, the 3rd defendant.
16. The disputed land, DW1 said, was not bought by Mwendia clan. It was bought by his late grandfather – Mwene Wa Nguyori - and it is not therefore available for distribution to members of the Mwendia clan. Mwendia clan itself is said to have been awarded its land which it distributed to its members, among them the plaintiffs. The suit before the court was said to be filed in bad faith and with malice.
17. DW1 was cross-examined. During cross-examination, he said he belonged to Ntharanu house of the Mwendia clan and that the plaintiffs do not belong to that house. He then clarified and said that the 1st plaintiff belongs to the house and that while his own grandfather was Mwene Wa Nguyori, the 1st plaintiff's grandfather was one Nthathau. Asked about the land disputes among the clans, he said he was aware about them but didn't know about proceedings in Appeal No. 170 of 1996. He further said that the disputed land was his own and in order for Marigu clan to transfer it to him, he was asked to give a bull. He gave 15,000/= which was the bull's worth. He did everything openly, he said.
18. DW2 was John Mwaniki, the 1st defendant's son sued in the matter as 2nd defendant. He adopted his written statement as evidence. In his written statement, he said, inter alia, that his own parcel of land was No. 3680 transferred to him by his father, 1st defendant, and his parcel of land was a resultant sub-division of a larger parcel, Mbeere/Kirima/2244. The background and history of the matter as captured in his written statement is in accord with that of DW1.
19. This witness was also subjected to cross-examination. He said his great grandfather bought the disputed land long ago, that he didn't know how many children his great grandfather had; that his portion was transferred to him in 2015; and that there are other people using the land, one of them being Njue, who is 1st plaintiff's son, and Henry Njagi (17th Plaintiff).
20. Then there was DW3 – Bernard Kariuki Munyi – who is 3rd defendant in the suit. He adopted his written statement as his evidence. In his statement, he stated, inter alia, that he is the registered owner of parcel No. 3679 and he got title to it on 25.8.2015. He bought it from Danson Kiura Nguta and it was unoccupied at the time. He said he has cultivated the land, planted eucalyptus and other trees,



- has miraa crop on it and also has mangoes, oranges, and banana stems growing there. He asserted that he is a bonafide purchaser for value and that the plaintiffs have no claim or interest on the land. This witness was cross-examined and he said that the land was vacant when he bought it.
21. The final witness on the defence side was Abiud Kamau Kiura. He testified as DW4. Like several other witnesses, he adopted his written statement as his evidence. In his oral testimony, he said that the disputed land was bought from Marigu clan by 1st defendant's grandfather – Mwene Wa Nguyori. In his written statement, DW4 said that he knew the parties as they all come from the same area as himself. The 1st and 2nd defendants were said to come from the Mwendia clan while he himself is the treasurer of Marigu clan. He further said that the 1st defendant's grandfather – Mwene Wa Nguyori - bought the land from one Macori Wa Kumenya of the Marigu clan and that land was part of the land parcel No. Mbeere/Kirima/2244. That land parcel No. 2244 was leased to a sisal growing company called MEKA in 1960's but the leased land belonged to the 17 clans of the Mbeere tribe. The lease came to an end in 1982 and reverted to the then Embu County Council which held it in trust for the 17 clans.
 22. The clans then decided that the trust should be determined and lodged their various claims with the area adjudication officer intending that their respective portions could be delineated and awarded to each clan for distribution or sharing out to individual members. The Marigu clan was awarded 590 acres and its specific portion was parcel No. 3394. That portion included the land bought by Mwene Wa Nguyori. Mwene Wa Nguyori was deceased and his sons had also passed on. The 1st defendant, a grandson, happened to be the person remaining in the lineage. The chairman of the Marigu clan at the time, one Jacob Njue Mutembei, therefore transferred the land to the 1st defendant.
 23. DW4 said that the land did not belong to Mwendia clan and the two clans didn't have any dispute over the land. Mwene Wa Nguyori was said to have been using the land. He left it to his wife, then to the son, and now to 1st defendant. The plaintiffs were said to have no claims to the land. In answer to the questions asked during cross-examination, the witness said he became the treasurer of Marigu clan about five (5) years ago; that he took over that role or position from one Charles Njiru; and that his father – Mbiti Kivuti – was a committee member of Marigu clan. The father was the one taking members of the clan around showing them the boundaries of the land. On the side of Mwendia clan, there was Timotheo Mutembei who was doing the same. He reiterated that its 1st defendant's grandfather who had bought the disputed land.
 24. Hearing over, submissions were filed. The plaintiffs' submissions are dated 5.9.2024. The plaintiffs started by stating their case including the prayers they are seeking. They submitted that they are entitled to the disputed land and would wish to have it distributed equitably to all members of the Mwendia clan. To the plaintiffs, the disputed land was bought from Marigu clan from an ancestor common to the defendants and the plaintiffs themselves. They are therefore entitled to it as much as the defendants.
 25. The plaintiffs' position is that they have made available enough evidence to prove their case. According to them, the disputed land has all along been utilized by Ntharanu house of Mwendia clan and some of the plaintiffs – like 7th plaintiff – have been living on the land. Reference was also made to various disputes relating to the disputed land. The disputes were said to have taken place on the basis that Marigu clan had sold the land to Mwendia clan. According to the plaintiffs, this reinforces their position that the disputed land is actually clan land. The clan members were also said to be the ones contributing money to finance expenses related to the disputes.
 26. The 1st defendant was faulted for not giving details of the alleged purchase of the land by his grandfather. The transfer of the land to him therefore did not mean that he was the absolute owner. The transfer was said to be subject to the interests of the plaintiffs.



27. The decided case of Isack M’Inanga Kiebia –vs- Isaaya Theuri M’liantari & Another [2018] eKLR was cited and quoted for guidance as to the essentials required for proof of a customary trust. A submission was then made that the plaintiffs in this case have proved such trust. The court was then urged to cancel the transfer and direct the 1st defendant to share out the land equitably to deserving members of the Mwendia clan.
28. The defendants’ submissions are dated 9.10.2024. The defendants started by spelling out the prayers in the plaintiffs’ suit. They then delved into the suit’s background before giving a general highlight of the entire matter. It was reiterated that the disputed land was bought by the 1st defendant’s grandfather – Mwene Wa Nguyori – for his family and not for the entire Mwendia clan. Mwendia clan was said not to have bought any land from Marigu clan. The defendant then faulted the plaintiffs for not setting out the particulars of the customary trust they are claiming.
29. Like the plaintiff, the defendants cited Isack Kieba’s case (supra) to demonstrate the threshold to be met to prove a customary trust. The case of Juletabi African Adventure Limited & Another –vs- Christopher Michael Lockley [2017] was also cited to make the point that the burden of proving customary trust is on the person alleging it and that the proof should be by way of evidence. The defendant alleged that they had shown that the disputed land was bought by the 1st defendant’s grandfather and Marigu clan was said to have confirmed this by transferring the land to 1st defendant.
30. Further submission by the defendant is to the effect that no customary trust was proved by the plaintiffs and no fraud or illegality on their part was demonstrated. Due process was said to have been followed to acquire the title. The 1st defendant was said to have been within his remit to transfer the land to the other defendants as he did. The 3rd defendant was further said to be an innocent purchaser for value and the cases of Weston Gitonga & 10 others –vs- Peter Rugu Gikango & Another [2017] eKLR and Lawrence P. Mukiri –vs- Attorney General & 4 others [2013] eKLR were cited and quoted to illustrate what innocent purchase is all about.
31. Ultimately the plaintiffs were said not to be entitled to the reliefs they are seeking.
32. I have considered the case as filed and defended, the evidence made available by both sides, and the rival submissions. There are two divergent positions relating to how the disputed land was sold. The plaintiff’s position is that it was sold by Marigu clan to Mwendia clan. The defendants’ position was that the land was bought by the 1st defendant’s grandfather – Mwene Wa Nguyori – for his family and the disputed land was therefore not clan land at all. The court’s finding on these two positions will provide the way forward.
33. The disputed land is said to be a 50 – acre portion that was within a larger parcel of land known as Mbeere/Kirima/2244, a rectangular-shaped portion bordered by River Thiba on one side, River Nguu on the other, a road cutline on yet another side and finally the road to Kivaa on still another side. Parcel No. 2244 was said to be 7000 acres in size and was leased to a company called Meka owned and/or operated by an Indian. Local history has it that when that general area came under adjudication, this 7000 - acre piece of land was not put under adjudication. The understanding was that the land would come under adjudication “after the Indian had left.” The Indian left in 1992 and that is when the issue of clan ownership and subsequent disputes relating to that ownership started in earnest.
34. I now go back to the positions espoused by the two disputing sides as to the mode and purpose of acquisition of the disputed land. According to the plaintiffs, the disputed land was sold to Mwendia clan by Marigu clan and it was therefore for all members of the Mwendia clan. The land was not bought by Mwene Wa Nguyori as alleged. Instead, it is one Kanjugu who transacted and Kanjugu had no relationship with Mwene Wa Nguyori. The position that it is Kanjugu and not Mwene Wa Nguyori



who bought the land is manifested in the evidence of PW1, PW2, and PW3. Kanjugu, it emerged, allegedly transacted for and on behalf of the Mwendia clan. A further averment by the plaintiffs was that the disputes relating to the disputed land were conducted and even financed by the Mwendia clan. Mwendia clan itself was engaging Marigu clan over the issue of ownership. This engagement was through the leadership of both clans.

35. If this be true, it seems to me logical, even commonsensical, that Marigu clan leadership was supposed to transfer the disputed land to the leadership of the Mwendia clan. But that evidently did not happen. Instead, the disputed land was transferred to 1st defendant who does not appear to have been one of the leaders of Mwendia clan. A crucial question arises: Why did Marigu clan behave this way? The answer to the question finds expression in the evidence of DW4, the treasurer of Marigu clan, who said both in his evidence in chief and in cross-examination that it is Mwene Wa Nguyori who had bought the land.
36. Another critical question arises which the plaintiffs, by omission, failed to answer: Why couldn't the plaintiff sue the Marigu clan or at least call it to give evidence? This question arises because the plaintiffs' evidence is that the sale of the disputed land was an inter-clan transaction with Marigu clan as the vendor while Mwendia clan was the purchaser. When Marigu clan therefore failed to transfer the land to Mwendia clan, it was committing an actionable wrong. Indeed, it seems clear that this was a clear breach or violation of agreement. But the plaintiffs did not sue the Marigu clan. Instead, they sued the 1st defendant to whom the disputed land was transferred.
37. But even assuming that the plaintiffs did not want to sue Marigu clan, then there was the option of calling its representative as a witness. Again, this was not done. In my view, the omission to sue Marigu clan, or at least secure supportive evidence from it makes the plaintiffs' case less veracious. It was a serious omission.
38. The converse is obviously true regarding the defendants' case. The defendants alleged that it is Mwene Wa Nguyori who bought the land and he did so for his family and not for the entire Mwendia clan. To drive the point home, the defendants called DW4 – Abiud Kamau Kiura – who is the treasurer of Marigu clan and who indeed confirmed that the defendants' averments were correct. It seems therefore clear to me that Marigu clan knew who had bought the land and its action of transferring it to the 1st defendant was not misplaced. It was also not an act of betrayal to the Mwendia clan.
39. The plaintiffs think that the land should be treated as one held by the defendants in trust for them or the entire Mwendia clan. Trust, particularly a customary trust is a matter of evidence. The beginning point for the plaintiffs would have been a clear demonstration that the disputed land was clearly clan land. They failed to demonstrate this. The next thing would have been a demonstration that the land was transferred to the 1st defendant for Mwendia clan or for some members of that clan. That again was not demonstrated. Now with these two basic requirements having not been met, the plaintiffs' averments concerning trust sound unconvincing and hollow. To this court, the disputed land was not clan land. It was land bought by Mwene Wa Nguyori for his family and descendants. With the facts being the way they are, it is futile to entertain the issue of trust.
40. The upshot, in light of the foregoing, is that the plaintiffs' case as conceived and prosecuted is wishy-washy. The omissions made by the plaintiffs were unhelpful to their cause. This contrast sharply with the defence evidence which included a testimony from the side that sold the disputed land. That side obviously knew the party it sold the land to.
41. I therefore dismiss the plaintiffs' entire case with costs to the defendants.

JUDGEMENT DATED, SIGNED AND DELIVERED ONLINE AT KITUI THIS 30TH DAY OF JULY, 2025.



In the presence of,

Ms. Rose Njeru for plaintiff - present

Ms. Kimathi for Okwaro for defendant

Plaintiff – absent

Defendant - absent

Court Assistant – Musyoki

A. KANIARU

JUDGE

Environment & Land Court, Kitui

