



Kang'ethe (Suing as the Legal Representative of the Estate of Waithaka Nyambuya) v Kaihi (Sued as the Legal Representative of the Estate of Ignatious Kamau Kaihu) & 2 others (Environment and Land Appeal E014 of 2024) [2026] KEELC 208 (KLR) (27 January 2026) (Judgment)

Neutral citation: [2026] KEELC 208 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E014 OF 2024
MN GICHERU, J
JANUARY 27, 2026

BETWEEN

ESTHER WAMBUI KANG'ETHE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF WAITHAKA NYAMBUYA) APPELLANT

AND

BOWN STEPHEN KAIHI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF IGNATIUS KAMAU KAIHU) 1ST RESPONDENT

COUNTY GOVERNMENT OF MURANG'A 2ND RESPONDENT

PERIS NJOKI NYINGI 3RD RESPONDENT

JUDGMENT

1. The Appellant seeks two orders in her appeal against the judgment dated 14-3-2024 in Murang'a CM's Court ELC Case No. E083 of 2021.
 - a. Overturn the lower Court's judgment and enter judgment as prayed for in the suit.
 - b. Costs of this appeal.
2. There are eight grounds of appeal as follows. The learned trial magistrate erred in law and in fact,
 - i. in finding that the deceased son Nyambuya Waithaka had the capacity to invite the 1st Respondent onto the property when parcel No. Loc.11/Maragi/1193/25 was still registered in the names of the deceased,
 - ii. by holding that the property Loc.11/Maragi/1193/107 belonged to the 1st Respondent ignoring the fact that he got registered upon the invite of the deceased son and any subsequent transactions ought to have been unlawful and illegal,



- iii. when he wrongly evaluated the evidence before him and thus arrived at an erroneous decision to the detriment of the Appellant,
 - iv. by not paying regard to the documentary evidence tendered by the Appellant to prove her case,
 - v. when he held ownership of Loc.11/Maragi/1193/107 had been proved by the 1st and 3rd Respondents when there is evidence enough that the 1st Respondent's registration and subdivision of Loc.11/1193/25 amounted to intermeddling with the estate of the deceased herein,
 - vi. in finding that the Appellant did not prove her claim of fraud to the required standards,
 - vii. in holding the acquisition and registration of land parcel No. Loc.11/Maragi/1193/107 by the 1st Respondent was legal yet there was a glaring mistake on how the subdivision of the original parcel No. Loc.11/Maragi/1193/25 was done and
 - viii. in failing to take into account the history, facts and circumstances under which the 1st and 3rd Respondents acquired ownership and registration of the suit property.
3. The facts of the case according to the Appellant's who was the Plaintiff in the lower court case are as follows. Plot No. Loc. 11/Maragi1193/25 is owned by Waithaka Nyambuya who died in the year 1953. In the year 1988 , the family of Waithaka Nyambuya filed succession cause No. 47 of 1988 at the Magistrates Court at Murang'a where a grant of representation was issued to Isabella Wanjiru Thuo on 16-8-2021. The 1st Respondent's father Ignatius Kamau Kaihu filed a protest in Succession Cause No. 47 of 1988. Upon the death of Ignatius Kamau Kaihu, his son the 1st Respondent did not pursue the protest filed by his father. Instead the 1st Respondent filed Murang'a High Court Succession Cause No. 491 of 2013 and included land parcel No. Loc.11/Maragi/1193/07 as part of his father's estate.
4. When Succession Cause No. 47 of 1988 was concluded, the family of the late Waithaka Nyambuya visited the office of the 2nd Respondent to have the suit parcel registered in their names, they were shocked to find that sometime in the year 1990, long after the death of Waithaka Nyambuya, Plot No.Loc.11/1193/25 Maragi had been subdivided into two plots and plot No. 1193/107 registered in the name of Ignatius Kamau Kaihu. The Appellant's father could not understand how such subdivision could happen when the proceedings in respect of the estate of Waithaka Nyambuya were still pending. The subdivision was obviously fraudulent. Upon further inquiry, the 2nd Respondent revealed to the Appellant's father that the suit plot had indeed been subdivided into two portions one of which was in the name of Waithaka Nyambuya and the other in the name of Ignatius Kamau Kaihu. They also learnt that the father of the Appellant had been collecting rental income from the houses on plot No. 1193/25 to the exclusion of the estate of Waithaka Nyambuya, the rightful owner of the suit plot.
5. When the Appellant's father came to know of what happened to his father's land, he filed the lower court suit seeking several orders while include the following.
- a. A declaration that the subdivision of Loc.11/Maragi/1193/25 into Loc.11/Maragi/1193/25 and Loc.11/1193/107 is null and void in that it amounted to intermeddling with the estate of a deceased person.
 - b. The registration of the 1st Defendant's father Ignatius Kamau Kaihu as the owner of Loc.11/Maragi/1193/107 was fraudulent and the same be cancelled.
- (bb) A declaration that any subsequent transfer to the 3rd Defendant is null and void and the same be cancelled.



- c) The 2nd Defendant be compelled to cancel the sub divisions and restore the original Plot No. Loc.11/Maragi/1193/25.
 - d) The 1st and 3rd Defendants to account for the rent they have been collecting from thereon Loc.11/Maragi/1193/107.
 - e) Damages.
 - f) Any further or better relief the Court may deem fit to grant.
 - g) costs of this suit and interest.
6. The facts of the case according to the 1st Respondent are as follows. He is the administrator of the estate of his late father Ignatius Kamau Kaihu. In the year 1958 his father and Waithaka Nyambuya, the Appellant's grandfather became partners in the ownership of Plot No. A13 Mukuyu Market. They became registered as joint owners of the plot. The plot number later changed from No. A13 to number 1193/25. The reason why the late Waithaka Nyambuya invited Ignatius Kamau Kaihu to be his partner was that his plot was in danger of being auctioned because it had not been developed. He had been sent a notice to show cause vide a letter dated 16-9-1958 by the office of the African District Council for failure to complete his building on the suit plot. On 18-11-1958 he wrote a letter to the chairman of Fort Hall African District Council requesting that he partners with Ignatius Kamau Kaihu. This request was allowed vide a letter dated 11-12-1958. Following the partnership, Ignatius Kamau Kaihu. This request was allowed vide a letter dated 11-12-1958. Following the partnership, Ignatius Kamau Kaihu occupied part of the suit plot measuring 26ft x80ft while Waithaka Nyambuya occupied the remaining 15ftx80ft. While Ignatius developed his portion of the land, Waithaka Nyambuya did not have the resources to develop his portion and he sold it to Kamau Mukuria who took possession. Before the end of the year 1958, Waithaka Nyambuya died. He left Ignatius and Kamau Mukiria in occupation of the suit plot. They developed their respective portions. In 1963, Ignatius was issued with a lease for his portion of the suit land by the African District Council. Later in 1990s, Ignatius requested that the suit plot be subdivided into two portions so that he could be relieved of the burden of paying council charges for the entire plot yet he only occupied a portion of it. The request was approved and plot has split into two portions which are numbers Loc.11/Maragi/1193/25 and Loc.11/Maragi/1193/107 respectively. The former plot was registered in the name of Waithaka Nyambuya while the latter was registered in the name of Ignatius. Ignatius was issued with a letter of allotment for his plot and later a lease. Since 1958, it is the families of Ignatius and Kamau Mukiria who have been in occupation of the suit land. Neither Waithaka Nyambuya nor his family members have ever occupied the suit land. The 1st Respondent therefore denied any fraud on his part reiterating that he bought the land lawfully from Waithaka Nyambuya.
7. The learned trial magistrate found in favour of the Respondents finding that the allegations of fraud by the Appellant's father were not proved. He dismissed the suit with costs to the Respondents.
8. In her written submissions dated 18-9-2025, the Appellant's counsel did not identify the issues for determination. In the absence of any issues identified by the Appellant's Counsel, I will treat the eight grounds of appeal as the issues for determination.



9. This being a first appeal, the Court will be guided by holding in the case of *Selle vs Associated Motor Boat Co. Ltd* [1968] E.A 123 which is to the following effect.

“A first appellate Court has a duty to re-evaluate, re-analyse and reconsider the evidence on record and draw its own independent conclusions, while bearing in mind that it did not see or hear the witnesses testify”.

10. Applying the above holding to this case and looking first at the first ground of appeal, I find that the learned trial magistrate did not make any finding in his judgment dated 14-3-2024 that the son of Waithaka Nyambuya invited the 1st Respondent when the suit property was still registered in the name of the deceased. The analysis and findings are to be found at pages 4 and 5 of the judgment dated 14-3-2024. Even from the evidence on record, there was no mention by any party of the sons of Waithaka Nyambuya and Ignatious Kamau Kaihu dealing with each other. Instead it is the two old men who dealt with each other. I therefore find no merit in the first ground of appeal. This finding covers the second ground of appeal which wrongly avers that the 1st Respondent was invited by the son of Waithaka Nyambuya to the partnership in the ownership of the suit plot. There is no such evidence. The letter dated 16-9-1958 is to Waithaka Nyambuya. The letter dated 18-11-1958 is by Waithaka son of Nyambuya of Mukuyu market plot No. A13 Forthall. The same with the letters dated 11-12-1958, 28-3-1967 and 21-1-1963. The evidence filed by the parties herein makes no mention of Waithaka Nyambuya's son.
11. Looking at the third ground of appeal, I find nothing wrong with the evaluation of the evidence by the learned trial magistrate. Like him, I believe the version of evidence adduced by the father of the 1st Respondent, Ignatius Kamau Kaihu that he was lawfully registered as the owner of the suit land after he was invited by Waithaka Nyambuya who was in danger of having his plot auctioned for failure to comply with the conditions of allotment, namely, failing to develop the plot. There is overwhelming evidence to prove that the entry to occupation of and registration of Ignatius Kamau Kaihu as the owner of suit land was lawful and everything was done above board. The original owner and the relevant governmental authorities consented to the entry, occupation and registration.
12. I find no merit in the 4th ground of appeal because the Appellant filed very scanty evidence in form of documents that did not preponderate her case. These documents related to recent proceedings in the succession causes and correspondence between the County Government and the family of the Appellant. The Appellant's documents are contradicted by the 1st Respondent's documents dating back to 16-9-1958 and which this court accepts as the truth of matter.

The evidence adduced by and on behalf of the Appellant lacks detail. Her age is not stated to establish if she was born by 1958 when the transactions between her grandfather and the 1st Respondent's father took place or if her evidence is mere hearsay. On 16-11-2023 when the Appellant testified before the learned trial magistrate, she said she did not know about the letter dated 16-5-1958. She also did not understand the letter dated 17-7-1987. The letter of 1958 concerns the Appellant's grandfather's failure to complete a building in the suit land as required by the regulations. This is when he decided to invite the 1st Respondent's father to be his partner. The letter of 17-7-1987 was written by the 1st Respondent's father to the Municipal Council of Murang'a where he seeks to be separated from the partnership with the Appellant's family because of their failure to develop their part of the suit plot. The documents filed by the Appellant's side in the lower court do not carry much weight when compared to the ones filed by the 1st Respondent's side. The ones by the 1st Respondent's side are weighty and factual. They are also corroborated by those filed by the 2nd Respondent. This finding covers the fifth ground of appeal.



13. As for the sixth ground of appeal, I find that it has no merit. In the amended plaint dated 20-1-2022, the Appellant pleaded thirteen (13) instances of fraud allegedly perpetrated by the three Respondents. None of those particulars of fraud was proved to the required standard set in the case of Ndolo vs Ndolo where the Civil Appeal No. 128 of 1995 where the standard of proof in fraud cases is higher than a balance of probabilities, but lower than proof beyond reasonable doubt. As per the finding in paragraph [12]above, the Appellant was not able to prove her case on a balance of probabilities leave alone the standard in the case of Ndolo vs. Ndolo (Supra). The trial magistrate cannot be faulted for the finding. He was right.
14. As already found in paragraph [11] of this judgment, the Respondents who had no burden of proof adduced more than sufficient evidence to prove that the occupation by and registration of the 1st Respondent as the owner of the suit land was lawful and procedural. I find no merit in the seventh ground.
15. Finally on the final ground of appeal, I find that it is the Respondents who brought out the history of the suit land that was consistent and supported by official documents. The Appellant had no such history and adduced uncorroborated hearsay evidence which was neither accurate nor factual. For the above state reasons, I find no merit in the appeal dated 5-4-2024 which I dismiss with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 27TH DAY OF JANUARY, 2026.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Jackline

Appellant's Counsel – Mr. Kimori

1st and 3rd Respondent's Counsel – Mr Kariuki

2nd Respondent – Mr. Chege

