



**King'ori v Kimani (Environment and Land Case E012 of 2023)  
[2026] KEELC 352 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 352 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E012 OF 2023**

**JM ONYANGO, J  
JANUARY 28, 2026**

**BETWEEN**

**GLADYS WANGECHI KING'ORI ..... PLAINTIFF**

**AND**

**SYLVESTER KIMANI ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff has approached this Court vide a Complaint dated 6<sup>th</sup> February 2023. At the centre of the dispute is the Plaintiff's claim that the Defendant's continued occupation of the property known as Thika Municipality/20/301 (hereinafter "the suit property") has no lawful anchor and persists in defiance of proprietary right.
2. Accordingly, the Plaintiff seeks judgment against the Defendant as follows:
  1. A permanent injunction against the Defendant, his servants, agents or any other person from trespassing or in any way interfering with the Plaintiff's ownership and possession of land parcel known as Thika Municipality Block 20/301.
  2. The Defendant to give vacant possession of the suit land within 30 days failure to which eviction to issue.
  3. An order evicting the Defendant from land parcel Thika Municipality Block 20/301 owned by the Plaintiff.
  4. An Order compelling the Officer Commanding Thika Police Station to aid with the eviction of the Defendant, his servants and/or agents.
  5. A share of the properties the Defendant has acquired from the sale of the family's matatu business.



6. Costs of this suit.
7. Interest on cost.

### **Plaintiff's Case**

3. The Plaintiff avers that at all material times to this suit she was the registered proprietor of the suit property having purchased the same from one Kinuthia Mwangi Wamwangi on 9<sup>th</sup> January 2006 for a consideration of Ksh. 400,000/-.
4. The Plaintiff states that having lawfully acquired the suit parcel, she developed the land and constructed a residential house. The Defendant subsequently took up occupation of the premises and has continued to reside there to date.
5. The Plaintiff avers that on or about 25<sup>th</sup> October 2021, she instituted divorce proceedings against the Defendant in MCDC E1220 of 2021 Gladys Wangechi King'ori versus Sylvester Kimani on the grounds of cruelty and adultery. The case was ultimately dismissed by a judgment dated 5<sup>th</sup> December 2022 with the court finding that there was no subsisting marriage between the parties.
6. The Plaintiff seeks the Court's protection through a permanent injunction and an order of eviction, contending that the Defendant's continued occupation of the suit property is unlawful and indefensible.
7. At the hearing, the Plaintiff testified as PW1 and adopted her witness statement dated 6<sup>th</sup> February 2023 as her evidence in chief. PW1's bundle of documents in her list of documents were adopted their evidence and marked as PEX 1-8.
8. She stated that the Defendant has refused to move out of the suit property and she now seeks the intervention of the Court to defend her proprietary rights.

### **Defendant's Case**

9. The Defendant contested the Plaintiff's claim vide their Statement of Defence dated 21<sup>st</sup> August 2023 and advanced a markedly different characterisation of the dispute.
10. The Defendant contended that the matter is not one of land, but of domestic relations. According to the Defendant, the suit property is enmeshed in a purported matrimonial relationship, and the Plaintiff's claim is therefore said to lie outside the proper remit of this Court.
11. The Defendant failed to appear at the hearing of the main suit. The Plaintiff's advocate filed an affidavit of service sworn on 8<sup>th</sup> May 2025 confirming that the Defendant was duly served with the Hearing Notice dated 6<sup>th</sup> May 2025 via the Whatsapp social media platform.
12. I have examined the affidavit of service sworn on 8<sup>th</sup> May 2025 and I am satisfied that the hearing notice was duly served on the Defendant.

### **Issues for Determination**

13. Having established the factual matrix, and having noted the Defendant's absence despite proper service, the Court is called upon to determine the real questions that lie at the heart of this dispute. Stripped of any matrimonial colouring, the matter is revealed as a contest over land, possession, and lawful occupation.



14. The Court must consider: whether the Plaintiff has demonstrated a lawful entitlement to the suit property; whether the Defendant’s continued occupation is justified in law, and whether the Plaintiff is entitled to the reliefs sought.

### **Analysis and Determination**

15. The question of lawful entitlement lies at the very heart of this dispute. It is the Plaintiff who asserts dominion over the suit property, claiming that the Defendant’s occupation is without legal foundation.
16. The law in Kenya recognises the title to land as the primary source of proprietary right. Under the [Land Registration Act](#), 2012, the registration of land vests in the registered person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.
17. Section 26 of the [Land Registration Act](#) provides:
- “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”
18. A certificate of title, once issued by the Registrar, is taken by all courts as prima facie evidence that the person named therein is the absolute and indefeasible owner of the subject land, subject only to encumbrances, easements, restrictions, and conditions contained or endorsed on the certificate.
19. The evidence before the Court establishes that the Plaintiff acquired the suit property lawfully. The Certificate of Title to the suit property which is registered in the name of the Plaintiff and undisputed by the Defendant, demonstrate clear ownership.
20. The Plaintiff’s Certificate of Title enjoys statutory primacy and, absent any evidence that it was obtained by fraud, misrepresentation, illegal act, or corrupt scheme, stand as prima facie confirmation of her ownership.
21. Beyond the mere possession of a title deed, the Plaintiff’s case is fortified by the surrounding circumstances. The Plaintiff undertook development of the land, investing labour and resources to erect a dwelling house. Such improvements, coupled with continuous possession prior to the Defendant’s occupation, reinforce the objective manifestation of ownership.
22. While development alone does not create title, it is a legitimate indicium of a proprietor’s exercise of their rights under the law.



23. The Defendant has advanced no evidence that displaces the statutory presumption of ownership enjoyed by the Plaintiff.
24. Accordingly, the Court finds that the Plaintiff has demonstrated lawful entitlement to the suit property.
25. Having established that the Plaintiff holds lawful and registered ownership of the suit property, the question of the Defendant's occupation must be examined against that title.
26. The law is clear: the right of a registered proprietor to exclusive possession is inviolate, save where another is lawfully entitled through lease, license, matrimonial right, or statutory exception. No such entitlement has been demonstrated by the Defendant.
27. The Defendant's occupation rests on assertion alone, unsupported by any legal instrument, agreement, or judicial recognition.
28. The prior determination that no marriage subsists between the parties in MCDC E1220 of 2021 removes any purported matrimonial right to reside on the property.
29. In the absence of consent, lease, or statutory authority, continued occupation constitutes unlawful interference with the Plaintiff's proprietary rights.
30. The principle is settled: possession without title or lawful justification cannot stand against the registered proprietor. There is no legal foundation for the Defendant to maintain possession.
31. The Court thus finds that the Defendant's continued occupation is unjustified in law, constitutes an interference with the Plaintiff's lawful rights and cannot be sustained.
32. The two preceding determinations resolve the central factual and legal disputes in this matter. The Plaintiff has established lawful ownership of the suit property under section 26 of the [Land Registration Act](#), 2012, and the Defendant's continued occupation has been shown to be without legal justification. It follows that the entitlement to reliefs flows directly from the Plaintiff's proprietary rights.
33. Relief by way of a permanent injunction and an order of eviction is not granted in a vacuum; it is grounded in the law and the equities.
34. What constitutes a permanent, or perpetual, injunction was aptly articulated in *Kenya Power & Lighting Co. Ltd v Sheriff Molana Habib* [2018] eKLR, in which the Court stated as follows:

“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the Court and is thus a decree of the Court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected.”
35. In the present case, the conditions for the grant of a permanent injunction are clearly met. The Plaintiff has demonstrated lawful ownership of the suit property, and the Defendant has no legal basis to occupy or interfere with that property.
36. The evidence adduced fully supports the Plaintiff's claim, while the Defendant offers no lawful justification for continued occupation.



37. In these circumstances, a permanent injunction is not only appropriate but necessary to protect the Plaintiff's rights and to prevent ongoing or future infringement. The relief serves the dual purpose of vindicating ownership and ensuring that the Plaintiff's entitlement to exclusive possession is respected in law.
38. In my view, an order of eviction is similarly warranted. The Defendant's continued presence on the suit property constitutes a direct and unlawful interference with the Plaintiff's proprietary rights.
39. While the *Land Act*, 2012, provides for statutory eviction notices under Sections 152E and 152F, the Court is satisfied that such a notice is not a prerequisite in this case.
40. The Plaintiff has instituted a substantive suit, the Defendant has been duly served with the pleadings and hearing notices, and has had ample opportunity to present any lawful claim to the property.
41. The Defendant was properly notified to vacate the suit property See *Kilimo v Malenya* [2023] KEELC 19331 (KLR).
42. The Court emphasises that the eviction is not punitive but remedial. It is designed to protect the Plaintiff's lawful rights, enforce exclusive possession, and ensure that the Defendant cannot continue to occupy property to which he has no entitlement.
43. The upshot of the foregoing is that the Plaintiff has proved her case against the Defendant.
44. In the premises, I enter judgment for the Plaintiff and make the following orders:
  1. The Plaintiff is granted a permanent injunction against the Defendant, his servants, agents or any other person restraining him from trespassing or in any way interfering with the Plaintiff's ownership and possession of the land parcel known as Thika Municipality Block 20/301.
  2. The Defendant shall give vacant possession of the suit land within 30 days from the date hereof failure to which eviction shall issue.
  3. The Plaintiff is hereby granted an order evicting the Defendant from land parcel Thika Municipality Block 20/301 owned by the Plaintiff.
  4. The Officer Commanding Station (O.C.S) Thika Police Station is directed to aid with the eviction of the Defendant, his servants and/or agents.
  5. Costs of this suit.

It is so Ordered.

**DATED, SIGNED AND DELIVERED, AT THIKA THIS 28TH DAY OF JANUARY 2026**

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**J. M. ONYANGO**

**JUDGE**

In the presence of:

Ms Ng'ang'a for Mrs Kariuki for the Plaintiff

No Appearance for the Defendant

Court Assistant: Hinga

