



**Njuguna v Okworo (Environment and Land Case 174 of 2012)  
[2026] KEELC 328 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 328 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE 174 OF 2012  
MAO ODENY, J  
JANUARY 29, 2026**

**BETWEEN**

**HANNAH WAIRIMU NJUGUNA ..... PLAINTIFF**

**AND**

**JOASH MASESE OKWORO ..... DEFENDANT**

**JUDGMENT**

1. By Plaintiff dated 10<sup>th</sup> August, 2009, the Plaintiff sued the Defendant seeking the following orders:
  - a. A perpetual injunction restraining the Defendant, his agents, servants, workmen, relatives, assigns or those claiming under or through him from entering, using, occupying, developing or in any manner howsoever interfering with parcel of land known as Tittle No 12783/51 Kiratina Farm Nakuru.
  - b. An order directing the Defendant to vacate the suit premises within Fourteen 14 days from a date the decree is issued herein failing which the Plaintiff be at liberty to use auctioneers to forcefully remove the Defendant and/or his servants, agents or workers from the property known as Tittle No 12783/51 Kiratina Farm Nakuru.
  - c. General damages for trespass.
  - d. Costs and interest of the suit.
2. The Defendant filed a Statement of Defence dated 2<sup>nd</sup> September, 2009, where he denied the allegations in the Plaintiff.

**Plaintiff's Case**

3. PW1, Hannah Wairimu Njuguna, adopted her witness statement dated 1<sup>st</sup> December, 2017, as her evidence in chief and produced documents from her list of documents as PExh.1 to 10. She testified



- that a building was erected on her land, and she wrote a letter to the Town Clerk dated 18<sup>th</sup> June, 2009, and received a response.
4. It was her testimony that she went to the Chief who wrote a letter dated 28<sup>th</sup> April, 2009, who was to identify the person who was constructing on her land, PW1 further told the court that Mungai Kariuki Advocates wrote a letter dated 22<sup>nd</sup> July, 2009 to the Defendant which notified them that they had trespassed onto her land.
  5. PW1 testified that she used to pay rates for the suit land and produced payment receipts. She also stated that her advocate wrote a letter dated 18<sup>th</sup> January, 2013 to Kenya Power & Lighting Company informing them that they had trespassed onto her land.
  6. PW1 stated that Wambui Ndungu was her advocate whom she had tasked to sell some of her parcels of land and produced copies of sample agreements that she had drawn for purchasers and that she had not tasked Simon Mukunga Kariuki to sell her property. He was only to look for a buyer and forward the transaction to her advocate, Wambui Ndungu.
  7. It was PW1's testimony that Simon got a buyer and took him to the advocate who did the sale agreements, and that she had not signed any of the agreements in respect of the suit parcel. She further stated that she did not know Michael Gikonyo Mburu and that Simon never brought a buyer called Michael to her shop.
  8. PW1 was referred to the sale agreement dated 19<sup>th</sup> October, 2007, the subdivision approval dated 8<sup>th</sup> July, 1993, and stated that she had never seen them. She testified that neither her ID nor her name was in the sale agreement, and when referred to a letter dated 5<sup>th</sup> June, 2009, in Defendant's bundle, she testified that she had neither seen the letter nor received Kshs.912,580/=.
  9. It was PW1's evidence that she was not aware of a Petty cash voucher of 2<sup>nd</sup> January 2006 and a mutation sketch in the Defendant's bundle. She further stated that she never authorized the construction of any building on the suit property, reported the matter to the Assistant Chief and refused to sell the land to the Defendant.
  10. Upon cross-examination by Mr. Ikuu, PW1 denied that Simon Mukunga was her agent in sale of land, but admitted that he was her broker who brought her purchasers in some properties. She also denied that she had authorized the subdivision of the land. It was her testimony that they never wrote any agreement with Simon but did not withdraw instructions from him. Further, that she had given Simon a copy of the letter of allotment but not her ID.
  11. According to PW1, she took the allotment letter to Nairobi to follow up on the issuance of a title, but found that an unknown person, whom she had not authorized, had paid for the title.
  12. Upon e-examination by Mr. Waiganjo, PW1 stated that she never allowed Mukunga and Gikonyo to subdivide the land into 3 portions. Further that Mukunga had no authority to sign any mutation on her behalf. PW1 also testified that she had the documents of the suit property but did not give them to Mukunga or Gikonyo.

### **Defendant's Case**

13. DW1, Kodeck Okworo, testified that he had been given a Power of Attorney dated 21<sup>st</sup> November 2017, in respect of the suit land, by the Defendant who is his younger brother and resides in America, and produced it as Dex No.1.



14. DW1 adopted the witness statement by the Defendant dated 8<sup>th</sup> June, 2025, as part of his evidence, and produced a list of documents dated 8<sup>th</sup> June, 2015, as Dex No. 2 to 12. He testified that he participated in the search and the purchase of the plot in 2007 with his brother who left for America thereafter.
15. It was DW1's testimony that he continued with the transaction and development of the plot and that the purchase price was paid through Herald Commercial Agencies, which was owned by Michael Gikonyo. DW1 Also stated that they developed the suit property, where they built apartment blocks of eight units. It was his evidence that they did not encounter any interference since 2007, when they started the construction, but in 2009, his sister called him and informed him that she had been summoned by the Area Chief that they were building on land where the owner had not authorized the sale. He stated that they went to Chief Lelei, and the Plaintiff agreed that she had given the agents authority to sell the land.
16. DW1 testified that the Plaintiff stated that the agents had sold the land at a lower price, of Kshs, 370,000/ per plot instead of Kshs 500,000/, each. It was his evidence that the Plaintiff went to Nairobi to follow her documents but instead filed this suit. DW1 stated they bought the suit plot through the Plaintiff's authorized agents.
17. Upon cross-examination by Waiganjo, DW1 stated that they had done due diligence before purchase, but admitted that he had not produced a copy of the search. He stated that the sale agreement was between Herald Commercial Agencies and the Defendant.
18. DW1 confirmed that he neither had any written instructions between the Plaintiff and Herald Commercial Agencies, nor Herald's certificate that showed they were authorized to sell the land. He also told the court that he had not seen the Plaintiff's instructions to Mr. Mkunga to sell the land and that his brother the Defendant paid Kshs.740,000/= to Herald Commercial Agency.
19. It was DW1's testimony that the sale agreement was dated 19<sup>th</sup> October, 2007, and was not sure whether the purchase price was paid on 15<sup>th</sup> December, 2007, but got the building permits in 2008, which he did not produce in court. DW1 further stated that the building was completed before the Plaintiff filed this case, but he did not have a title to the suit land. He also stated that he has not filed a counterclaim for the issuance of the title.
20. According to DW1, the Plaintiff had the title for the whole portion, and the agreement between her brother and the Agency was valid as it was on behalf of the Plaintiff who gave out her PIN No. and title, but admitted that the documents did not have the Plaintiff's signature.
21. DW2, Michael Gikonyo Mburu, adopted his witness statements dated 4<sup>th</sup> June, 2015, and 14<sup>th</sup> March, 2018, as his evidence in chief.
22. Upon cross-examination, he stated that he had a certificate of Registration for Herald Insurance and Commercial Agencies, which he did not produce in court. DW2 admitted that he was not a registered Estate Agent and that the authority to sell the suit land was verbal, further that Simon Mukunga informed him of the transaction. DW2 also stated that Mr. Mukunga had not shown him any written document giving him instructions to sell the land. DW2 confirmed that he received Kshs.740,000/= from the Defendant, but had not released the money to the Plaintiff to date. He further stated that he had engaged someone to prepare the mutation forms.
23. Upon re-examination, DW2 stated that they were given verbal instructions by the Plaintiff, and that Mr. Mukunga had approached him in 2007, informing him that the Plaintiff had instructed him to sell the land. He confirmed that he had not paid the purchase price to the Plaintiff.



24. DW3, Henry Chege Kamau, the Chief Menengai Location adopted his witness statement dated 4<sup>th</sup> June, 2015, as his evidence in chief and produced minutes of a meeting held in his office on 15<sup>th</sup> May, 2009, as Dex No. 10.
25. Upon cross-examination, he stated that in 2015, he was the Chief of Free Area and that he had received a complaint from the Plaintiff that some people had constructed on her land. He stated that the Plaintiff had denied selling the land to anybody but Mr. Mukunga claimed that he had been authorized to sell the Plaintiff's land. DW3 confirmed that Mr. Simon Mukunga and Mr. Michael Gikonyo did not have any written authority, and that during the meeting Mr. Gikonyo had promised to give the Plaintiff the money.
26. Upon re-examination, DW3 stated that they never reached an agreement since the Plaintiff never attended the meeting.

### **Plaintiff's Submissions**

27. Counsel for the Plaintiff filed submissions dated 21<sup>st</sup> October, 2025, and identified the following issues for determination:
  - a. Whether the Plaintiff sold the suit property or part thereof to the Defendant.
  - b. Whether the Plaintiff is entitled to the prayers sought in this suit.
28. On the first issue, whether the Plaintiff sold the suit property or part thereof to the Defendant, counsel submitted that the Plaintiff produced a title to the suit land which was issued on 30<sup>th</sup> April 2008, and denied giving Simon Mukunga authority to sell the property in 2007. Counsel further submitted that the Defendant produced sale agreement dated 19<sup>th</sup> October 2007 between Joash Masese Okworo (Defendant) and M/S Herald Insurance & Commercial Agencies which indicated that the Vendor was the registered owner of the piece of land known as and marked as plot No. "B" and "C" on the sketch attached as subdivision of L .R No 12783/51 Kiratina Farm Nakuru and that had agreed to sell at Kshs. 740,000/ and that the agreement was signed by Herald Insurance & Commercial Agencies and Joash Masese Okworo.
29. Mr. Waiganjo submitted that DW2, the proprietor of Herald Insurance & Commercial Agencies stated that the initial instructions to sell the land were given verbally to Simon Mukunga who is not mentioned in the sale agreement and that he confirmed that he did not have any written instructions to sell the land. Further that he is not a registered Estate Agent and that he also did not release the money to the Plaintiff.
30. Counsel relied on Sections 18 and 19 of the Estates Agents Act and submitted that the said provision required persons practicing as estate agents to provide an indemnity policy to cover any loss to people that might have lost money in the course of the agent's practice.
31. Mr. Waiganjo relied on the case of Odra Realtors Ltd V Abdulghani Kipkemboi Komen [2019] – Nakuru ELC No. 111 of 2016, and urged the court to find that the sale agreement dated 9<sup>th</sup> October, 2007, between Herald Insurance & Commercial Agencies and the Defendant was null and void.
32. On the second issue, as to whether the Plaintiff is entitled to the orders sought, counsel submitted that DW2 failed to produce evidence to confirm his appointment as the Plaintiff's agent authorized to sell the suit land, hence there was no valid contract for sale that existed between the Plaintiff and Defendant.
33. Counsel submitted that the Defendant was a trespasser on the Plaintiff's property and urged the court to order the Defendant to vacate the suit property and in default be evicted by an auctioneer.



## Defendants' Submissions

34. Counsel for the Defendant filed his submissions dated 3<sup>rd</sup> December, 2025, and identified one issue for determination, as to whether the Plaintiff was aware of the sale of her property by M/S Herald Insurance & Commercial Agencies through her express instructions to Mr. Gikonyo and Mr. Simon Mukunga Kariuki.
35. Counsel submitted that the Plaintiff admitted that she had instructed Simon to sell her property, and had given her documents to DW2, including the allotment letter and ID card to enable him to pay the requisite fees for the title to be processed only for the Plaintiff to refuse to transfer the title. Mr. Ikua stated that the Plaintiff's only complaint was that the suit parcel had been sold at a lower price than she anticipated.
36. Counsel further submitted that the Defendant constructed on the suit land openly over a long period of time with no order stopping him, hence the Plaintiff was aware and took no action. Counsel stated that the Defendant has spent a lot of money in developing the suit parcel, and in the interest of justice and given the Plaintiff's conduct, no damages for trespass should be awarded to her.
37. It was counsel's submission that should the court find in favour of the Plaintiff on the issue of authority between the Plaintiff and her agents, the Defendant should not be punished with costs and damages, and urged the court to dismiss the Plaintiff's suit with costs.

## Analysis And Determination

38. The issues for determination that arise from the pleadings are whether the Plaintiff sold the suit property to the Defendant and whether the Plaintiff is entitled to, the orders sought in the Plaintiff.
39. This is a very unfortunate case where a purchaser (the Defendant) entered into an agreement with an agent who purportedly had instructions or authority to sell land on behalf of the Plaintiff.
40. Currently in Kenya, buying land is a very risky process, whereby, apart from carrying out due diligence in the normal way through a search at the land's registry, a purchaser is forced to engage extra ordinary methods to confirm that land really belongs to the purported title holder. The use of the word "purported" is deliberate due to the fact that the person might not also be sure of the root of the title or might be part of the problem tainting the root of the title.
41. When dealing with a third party who is not the title holder and presents himself/herself as having authority to sell on behalf of the owner, a purchaser must be extra vigilant to tick all the check lists to ensure that such a person legally has the authority to sell the land.
42. From the onset, the Defendant did not tender any evidence to show that DW2 had the authority to sell the land on behalf of the Plaintiff. DW1 stated that he was informed by one Simon Mukunga that he had been given verbal authority to sell the land, DW2 therefore went ahead and entered into a sale agreement with the Defendant as the Vendor as the owner of the suit property which was a misrepresentation. He also admitted that he engaged someone to do the subdivision and the mutation without involving the Plaintiff who was the owner of the suit.
43. DW2 further gave evidence and confirmed that he received the purchase price of Kshs 740,000/= but never remitted it to the plaintiff to date. DW2 was also not a registered Real Estate Agent as required under Sections 18 and 19 of the *Estate Agents Act* Cap 533 of the laws of Kenya.
44. In the case of *Mapis Investment (K) Limited v Kenya Railways Corporation* [2006] eKLR, the Court of Appeal held that an estate agency contract was illegal and unenforceable because the agent was not



registered under the *Estate Agents Act* (Cap 533). The Court deemed the agreement, which involved a Sh95 million claim for selling land to the Embassy of Japan, contrary to public policy and in violation of the Act.

45. The court cannot sanitize a transaction that arose from an illegal transaction as was held in the Mapis case (supra) that courts ought not to pronounce themselves on obligations that are founded on illegal business or allow itself to be made the instrument of enforcing obligations arising from illegal business.
46. Similarly, in the case of Mike Munga Mbuvi v Kenya Airways Limited [2017] eKLR, the court struck out a claim for commission by the plaintiff because he was not a registered estate agent as required by the *Estate Agents Act* (Cap 533). The court held that the claim was based on an illegal contract, applying the principle of *ex turpi causa non oritur actio* (no action can arise from a dishonorable cause), and awarded costs to the defendant.
47. In the case of *Scott vs Brown Doering, McNab & Co. (3)* [1992] 2 QB 724 at page 728 the court held that:

“No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not, if the evidence adduced by the plaintiff proves the illegality the court ought not to assist him.”
48. The above cases emphasize the requirement for the registration of estate agents as per the Act to enable them carry out their mandate. The lack of authority to sell the land on behalf of the Plaintiff made the sale invalid, and any resultant transaction was null and void. The Defendant cannot benefit in an illegal transaction.
49. I have considered the pleadings, the evidence on record, and the relevant judicial authorities and find that the Plaintiff has proved her case on a balance of probabilities and issue the following specific orders:
  - a. A perpetual injunction is hereby issued restraining the Defendant, his agents, servants, workmen, relatives, assigns or those claiming under or through him from entering, using, occupying, developing or in any manner howsoever interfering with parcel of land known as Tittle No 12783/51 Kiratina Farm Nakuru.
  - b. An order is hereby issued directing the Defendant to vacate the suit premises within ninety ( 90) days from a date the decree is issued herein failure to which an eviction notice to issue.
  - c. Costs of the suit to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 29<sup>TH</sup> DAY OF JANUARY 2026.**

**M. A. ODENY**

**JUDGE**

