



Nganga & another v Mungai & 3 others (Environment and Land Case 505 of 2018) [2026] KEELC 247 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELC 247 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 505 OF 2018**

**J OMANGE, J
JANUARY 22, 2026**

BETWEEN

NANCY WANJIKU NGANGA 1ST PLAINTIFF

DAVID NGANGA THUO 2ND PLAINTIFF

AND

ALICE NJOKI MUNGAI 1ST DEFENDANT

TABBYROSE WAMAITHA WANJA 2ND DEFENDANT

KAREITHI NAAMAN (AREA CHIEF KNAGEMI) 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

JUDGMENT

1. At the heart of this family dispute is the property of the late Hannah Wangechi Dagoretti/Kangemi 812 hereinafter referred to as the suit property. It is the Plaintiffs case that their late mother Hannah Wangechi left behind a will dated 16th February 2012 which was prepared at the local chief's office. The chief is sued as the 3rd Defendant herein. The Plaintiffs contend that no testate succession has been carried out on the deceased estate after her death in September 2016.
2. The Plaintiffs aver that the Defendants have been illegally erecting structures on the suit property. It is also her evidence that her buildings on the suit property was burned down by unknown people. She deposes that upon visiting the lands office she was shocked to learn that the suit property had been transferred into the name of the 1st and 2nd Defendants who had been taking care of the deceased before her death.
3. The Plaintiff contends that she has been caused mental anguish by the Defendants who are insisting that she vacates the suit property in violation of her right to inherit. It is the case of the 1st Plaintiff



that the transfer into the names of the 1st and 2nd Defendant were fraudulent. She therefore seeks the following orders as particularized in the amended plaint.

- a. An injunction do issue restraining the 1st & 2nd Defendants whether by themselves, their agents and or servants or any other person from further encroaching, trespassing, wasting, damaging, alienating, interfering, developing and/or dealing with the property title deed number Dagoretti/Kangemi/812.
- b. A declaration that Dagoretti/Kangemi/812 is a family land and an order granted for testate succession to be carried out on the estate of the late HANNAH WANGECI NICHOLAS.
- c. That the 4th defendant be ordered to release all documents relating to the transfer of Dagoretti/Kangemi/812 (suit property).
- d. The court be pleased to verify the Plaintiff's documents.
- e. The 1st & 2nd Defendants be compelled to demolish all houses erected thereon.
- f. The court order the supervision of the OCS Kabete Police Station during the demolition of the illegal structures erected on Dagoretti/Kangemi/812 by the 1st and 2nd Respondents.
- g. Vacant possession by the 1st and 2nd Defendants.
- h. Specific damages of Kshs 200,000.
- i. General damages.
- j. A declaration that the transfer registered in favour of the 1st and 2nd respondent in respect of the property L.R. Dagoretti/Kangemi/812 is fraudulent, illegal null and void ab initio.
- k. A declaration that Dagoretti/Kangemi/812 is a gift to the 1st Plaintiff from the Late Hannah Wangeci Nicholas.
- l. An order that Dagoretti/Kangemi/812 be transferred to the first plaintiff Nancy Wanjiku Nganga.
- m. An order directed to the Deputy Registrar of the High Court of Kenya to execute a Transfer of the suit land in favour of the 1st plaintiff.
- n. A permanent injunction restraining the 1st and 2nd defendant whether by themselves, their agents, employees, servants or otherwise whatsoever any person claiming under them howsoever from selling, disposing, pledging, alienating from taking possession or in any other manner dealing with the proper known as L.R. Dagoretti/Kangemi/812 or any part thereof that could interfere with the 1st plaintiff's share of the suit land.
- o. An order directed to the 4th defendant for cancellation and removal of the 1st and 2nd defendants as the registered proprietor of the property known as L.R. Dagoretti/Kangemi/812.
- p. An award of damages against the defendants jointly and severally for loss and deprivation of property.
- q. Interest thereon.
- r. Costs of this suit.
- s. Any other relief the court deems fit.



4. The 1st Defendant filed a statement of Defence and Counterclaim in which she deposes that she allowed the 1st Plaintiff to occupy a portion of the suit property as a licensee. She insists that she did not contrive to defraud the 1st Plaintiff of her share of the inheritance. In the end the 1st Defendant seeks an order declaring her and the 2nd Defendant lawful owners of the suit property and further an order evicting the 1st Plaintiff from the suit property.
5. The 2nd Defendant reiterated the averments by the 1st Defendant and similarly filed a counterclaim seeking a declaration of ownership.
6. The 1st Plaintiff testified as PW 1. She told the court that she was being evicted from the suit property where she had lived with her mother the late Hannah Wangechi Nicholas. She stated that all her siblings had been bequeathed assets by her late mum. Upon cross examination by counsel for the 1st Defendant she stated that she was not given property as she was at her husbands. She clarified that the property was given in 2012 and her mother left to live with the 1st Defendant in 2015. She said that while alive her mother allowed her to build on the property. Her rooms on the property were later burned down. She admitted that although her mother had diabetes, she was mentally sound.
7. Upon cross examination by counsel for the 2nd Defendant, she conceded she had no evidence her mother was threatened to transfer the property to the 1st and 2nd Defendant. She said that by the time her mother left to go and live with the 1st Defendant, she was already residing on the suit property. She clarified that the visit to the chiefs office was brought about by a disagreement between the 1st and 2nd Defendant. She insisted that during the meeting her mother indicated her desire that the 1st Plaintiff live there as a single mother.
8. PW2 David Thuo brother to the 1st Plaintiff strongly supported the 1st Plaintiffs case. He told the court that prior to her death his mother warned him that he should not chase his sister the 1st Plaintiff from the suit property. He confirmed that his mother was sane but said he could not understand how she left her daughter the 1st Plaintiff without any land.
9. PW 3 Nancy Wanjiku Thuo told the court she learned of the dispute in 2014 and tried to assist the 1st Plaintiff. She insisted that the deceased Hannah Wangechi was not in good shape as she asked why her father had not gone to visit.
10. PW 4, a cousin testified that 1st Defendant was not allowing the deceased to see visitors. She said that before the deceased died, she had said that the 1st Plaintiff should be left in 812.
11. The 1st Defendant Alice Njoki Mungai testified as DW1. She produced her witness statement and list of documents. She denied that she prevented any of her relatives from visiting her late mother who lived with her before her death. She stated that her mother signed the transfer before she even came to live with her.
12. Upon cross examination she reiterated that her mother transferred the suit property to her before she came to live with her. It was her evidence that her mother willingly signed the transfer. She insisted that her mother did not give the 1st Plaintiff any land even after she was taken to the chief.
13. DW 2 who was the grandchild to the deceased told the court that her grandmother whom she lived with from birth had willingly given her the suit property. Upon cross examination, she narrated an incident when she was taken to the Chief by the 1st Plaintiff and while there, the decision was made that the deceased had given two people leave to construct and further that Nancy Wanjiku was to be considered single. Upon re examination she clarified that the two people given leave to construct were her and the 1st Defendant so that it could benefit her grandmother.



14. DW 3 Kareithi Naaman the Chief confirmed that a complaint was brought by the 2nd Defendant on land issues. When he visited the home the deceased confirmed that she had allowed the 1st and 2nd Defendant to build. He was categorical that he could not recall the resolutions in the meeting as he was not the one taking notes.
15. Counsel for the Plaintiff framed the following issues for determination; Whether the suit property was a gift to the 1st and 2nd Defendants? Whether the purported transfer was valid Whether the deceased had the mental capacity to gift What is the status of the unmarried daughter under the Agikuyu customary law with regard to property
16. On the first issue counsel submitted that the deceased had children to whom she distributed her property as follows; Dagoretti/Kangemi/S.181 – John Gichamba Ng’ang’a (Deceased). Dagoretti/Kangemi/808 – Maingi Multipurpose Cooperative society. Dagoretti/Kangemi/809 – Alice Njoki Mungai. Dagoretti/Kangemi/810 – David Ng’ang’a Thuo. Dagoretti/Kangemi/811 – Lucy Wanja (Deceased) mother to the 2nd Defendant. Dagoretti/Kangemi/812 – The deceased was living there with her daughter (Nancy Wanjiku Ng’ang’a the 1st Plaintiff herein)
17. Counsel submitted that the deceased who was living with the 1st Plaintiff since 1994 urged the 1st Plaintiff who was unmarried to construct on the suit property and through this gifted the 1st Plaintiff the suit property. He referred the court to the case of Re Estate of Godana Songoro Guyo (Deceased) eKLR in which Justice Nyamweya J as she then was set out the characteristics of a gift inter vivos.
18. On the transfer to the 1st and 2nd Defendant, counsel submitted that the transfer is invalid for reasons that the late Hannah Wangechi had no capacity to make the transfer; that there was no consent of the land control board; that there was no certificate of thumb print and lastly that the stamp duty was not paid.
19. Exploring further the issue of capacity, counsel submitted that the 1st Defendant took the deceased away from her home and coerced her to disinherit the 1st Plaintiff. He pointed out that the cause of death of the deceased was a clear indication that she had dementia. To this end he referred the court to the case of Re estate of Erastus Lunyagi Sagala (Deceased) Succession Cause 12 of 2019 in which Kimaru J as he then was inferred that a deceased who died of hypoglycaemia was not in a position to see clearly a will he was said to have signed.
20. On the question of Land Control Board consent, counsel argued that failure to obtain a consent of the board was fatal to the transfer. He referred the court to the case of Peter Muiruri Kamau versus Mary Mwhaki Kamau (2017) eKLR.
21. Counsel pointed out that the fact that the deceased thumb printed the transfer is suspicious as the deceased knew how to write. He also noted that there was no certificate authenticating the thumb print. Equally it was his contention that the failure to pay stamp duty was fatal to the transfer.
22. Lastly counsel submitted at length on Agikuyu customary law and the protection it afforded the 1st Plaintiff as an unmarried daughter. Counsel argued that the court should protect the 1st Plaintiff’s right to inherit her mother’s property as an unmarried daughter.
23. Counsel for the 1st Defendant argued that the Plaintiffs submitted on issues which they had not raised in their plaint and hence denied the Defendants a chance to respond to the issues.
24. Counsel for the 2nd and 3rd Defendant identified three issues for determination; Whether the gift and transfer of title to the 1st and 2nd Defendant is valid and indefeasible Whether the Plaintiffs have any claim for the property registered in the names of the 1st and 2nd Defendant Whether the allegations



of fraud has been substantiated by the Plaintiffs during the transfer of property parcel Dagoretti/Kangemi/812

25. On the first issue, counsel submitted that the transfer was registered following a valid gift *inter vivos* hence was irrevocable. The necessary consents had been obtained and stamp duty paid. It was his submission that the defendants are entitled to the protection of Section 26(1) of the [Land Registration Act](#). Counsel argued that in view of the fact that registration had been concluded, the Plaintiffs claim could not lie. Lastly, he stressed that the Plaintiffs had failed to prove mental incapacity or fraud.
26. Having considered the pleadings, the evidence and the submissions by counsels the court distils the following issues for determination; Whether the transfer to the 1st and 2nd Defendant was valid or if it was invalid by reason of mental incapacity, failure to obtain land control board consent, failure to pay stamp duty or fraud Whether the 1st Plaintiff is entitled to the orders she seeks of ownership of the suit property, injunctive orders and damages
27. These two main issues encompass the various issues that were raised by the parties herein. The 1st and 2nd Defendants claim is that the deceased Hannah Wangechi transferred the suit property to them during her lifetime and hence it is a gift *inter vivos* which cannot be interfered with. On the other hand it is the case of the Plaintiffs that the deceased transferred the land after being coerced by the 1st and 2nd Defendants to do so. That she had no mental capacity to transfer the suit property. I will deal with this aspect first before venturing into the other procedural issues the Plaintiffs rely on.
28. Gift *inter vivos* are provided under Section 42 of the [Law of Succession Act](#) that:

“Where-

 - (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
 - (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”
29. Nyamweya J. (as she then was) in *Re: Estate of the Late Gedion Manthu Nzioka (deceased)* [2015] eKLR stated as follows: “In Law, gifts are of two types (gift *inter-vivos* and gifts made in contemplation of death (gifts *Mortis Causa*). For gifts *inter-vivos*, the requirements of law are that the said gift may be granted by deed, an instrument in writing, or by delivery, by a way of a declaration of a trust by the donor, or by way of resulting trusts or the presumption of gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of a trust in writing. Gift’s *inter- vivos* must be complete for the same to be valid.”
30. Key characteristics of gift *inter-vivos* can thus be summed up as follows; The gift must be given during the donors lifetime not in contemplation of death Donor must have the capacity and intend an irrevocable transfer Can be by deed, written instrument or declaration of trust The gift must be ‘perfected’ or complete
31. In the instant case, the Plaintiffs challenge the transfer on the basis that the Defendants took advantage of the mental status of the late Hannah Wangechi to force her to thumb print the transfer. That the Defendants impersonated the deceased through a criminal scheme. While the question of the mental capacity of the deceased was pleaded and even submitted on by counsel for the Plaintiffs, the evidence by the two Plaintiffs did not support the claim of mental incapacity. PW 1 in her evidence says, “my



- mum had diabetes but she was mentally sound”. PW 2 her brother upon cross examination by counsel for the 1st Defendant reiterated that his mother was sane. The testimony of these two witnesses her own children, far outweigh the testimony of the cousins who tried to paint a picture of a mother who was confused and did not know what she was doing.
32. In the face of this evidence by the 1st and 2nd Plaintiffs and in the absence of any medical evidence to the contrary I find that mental incapacity has not been proved. The issue of the thumb print is further discounted by the transfer document which bears a thumb print and written signature. However, the strongest evidence in support of the Defendants emerged through the uncontroverted testimony that at the time the deceased signed the transfer she had not yet moved to the 1st Defendants home. This shredded the argument that she was coerced after being held incommunicado in the 1st Defendants home as stated by some of the Plaintiff witnesses.
 33. It is my finding therefore that the deceased willingly transferred the suit property to the Defendants during her lifetime. Counsel for the Plaintiffs raised the issue of consent of the Land Control Board during submissions. Counsel for the 1st Defendant pointed out that this issue was never raised during the pleadings denying the Defendants a chance to lead evidence on the same. While the court is alive to the provisions of Section 6 of the *Land Control Act* and the settled principle that courts will not enforce transactions rendered void by statute, it is equally trite that parties are bound by their pleadings and submissions cannot take the place of evidence.
 34. The issue of land control board consent was not pleaded nor was evidence led on the same. Determination of the matter would require interrogation of factual matters including the nature of the land, the character of the transaction and the surrounding circumstances. These matters cannot be determined at submission stage. As such the court will not be drawn into making a finding on this issue at this stage. The same argument applies to failure to pay stamp duty which again was alleged at submission stage and equally disputed by way of submission.
 35. Having considered all the foregoing it is my finding that Hannah Wangechi willingly gifted the 1st and 2nd Defendants the suit property in her lifetime. This court can only uphold her wishes.
 36. So where does this leave the 1st Plaintiff. It is not in dispute that by the time her late mother left the suit property to stay with her sister, she was living on the suit property where she resides to date. It is also common ground that her late mother was on record as declaring she should be treated as single. The strongest evidence in her favour came from her brother PW2 who told the court that his late mother was categorical that he should not chase his sisters. I also note that even when the deceased was leaving the compound to go and reside with her daughter she left the 1st Plaintiff on the suit property even though she had by then transferred it to the 1st and 2nd Defendant. While she did not bequeath the 1st Plaintiff any land, it is clear from the evidence that was adduced by nearly all the parties that she intended that her daughter reside on the suit property. This court must ensure that even in her absence the deceased’s wish is upheld and that her daughter is not evicted from the place she has called home.
 37. While the Counsel for the Plaintiffs tried to argue that the 1st Plaintiff was entitled to certain rights under Agikuyu Customary Law again the Amended Plaint did not specifically plead customary law. In the same vein, there was no expert evidence led that would enable this court make definitive findings on customary law. However, the 1st Plaintiff is not totally without remedy. Evidence was led that part of her late mothers estate has not been administered. She therefore has an opportunity to raise a claim from the estate in a Succession court.
 38. In the end the court makes the following orders in respect of the suit and counterclaims which have partially succeeded;



- a. A declaration is hereby issued that the 1st and 2nd Defendant's registered title is valid but is held subject to the 1st Plaintiff's interest on the portion on which she resides arising from long occupation and dependency.
- b. An order is hereby issued restraining the Defendants, their agents, servants, or assigns from evicting, harassing, or in any manner interfering with the 1st Plaintiff's occupation of the suit land.
- c. The Plaintiff shall remain in occupation of the suit land pending determination and distribution of the deceased's estate yet to be administered in appropriate succession proceedings.
- d. Each party is to bear their own costs for the suit

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22ND DAY OF JANUARY 2026.

J. OMANGE

JUDGE.

In The Presence Of:

Mr. Njau holding brief for Mr. Wanyonyi for 1st and 2nd Plaintiffs.

Mr. Kimani for 1st Defendant.

Mr. Wainaina for 2nd Defendant.

Court Assistant – Peter.

