



**Gikunji & another v Muthiru (Environment and Land Case
E012 of 2023) [2026] KEELC 577 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 577 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E012 OF 2023
MN KULLOW, J
FEBRUARY 6, 2026**

BETWEEN

MARGARET NYAWIRA GIKUNJI 1ST PLAINTIFF

FREDRICK GITARI KATHUNGU 2ND PLAINTIFF

AND

JAMES MBURU MUTHIRU DEFENDANT

JUDGMENT

Introduction

1. This matter is in relation to property known as LR No Nairobi/Block 119/2674
2. The plaintiffs filed the originating summons application date 22nd August 2023 seeking to be registered as the proprietor of the suit property indicating that they had bought the suit property from the defendant via a sale agreement dated 29th March 2004. That upon purchase, they signed a transfer agreement and the defendant release the certificate of title to them. That the defendant has failed to release the relevant documents needed to effect registration of the transfer of the suit property in the plaintiffs names .
3. The plaintiffs have pleaded despite several attempts to have the defendant release the completion documents, the defendant has neglected to do the same hence this application seeking for the following orders
 - a. That this honourable court do direct that the plaintiffs be registered as the proprietors of the parcel of land Nairobi/Block 119/2674 measuring approximately 0.0233 hectares
 - b. That this honourable court be pleased to order the defendant to sign all relevant papers to give effect to the registration of LR No Nairobi/Block 119/2674 to the plaintiffs.



- c. That this honourable court be pleased to order the defendant to urgently and immediately hand over the original Land control Board consent to transfer all clearances, three certified copies of identity card, three certified copies of KRA Pin certificates, three passport size photos and all relevant completion documents to the plaintiff's advocate
 - d. That in default to comply with prayers 2 and 3 hereinabove, the land registrar Nairobi Land registry be authorized to transfer LR No Nairobi/BLOCK 119/2674 to the plaintiffs.
 - e. Costs of the application
 - f. Any other reliefs the honourable court may deem fit
4. The defendant was duly served as evidenced with the affidavit for service of one Richard Mukai Njuguna sworn on the 22nd January 2025 but failed to enter appearance nor file a defence
 5. The Matter proceeded for hearing on the 2nd July 2025 where the 1st plaintiff appeared as PW1 and gave his evidence relied on his sworn witness statement dated 18/8/2023 and the supporting affidavit. She reiterated the fact that he bought the suit property via a sale agreement from the defendant and acquired the certificate of title to the same and also executed the transfer agreement. She stated that the defendant had failed to produce the completion documents to enable the said transfer and have the plaintiffs registered as the legal owners

Analysis and Determination

6. Having looked at the pleadings filed by the plaintiff, and on consideration of the submissions filed as well, the defendant having not entered appearance nor put in a defense, I come to the conclusion that the determination of the instant suit turns on only one issue for determination and that whether the plaintiff is entitled to the orders as prayed for in the Originating summons dated 22nd August 2023.

I would like to bring to the attention of the court the case of Daniel Kenga Katana & 4 others v Dzitu Toto Bokole & 3 others [2022] eKLR which addressed the issue of uncontroverted evidence. The learned judge in coming up with his judgment stated; "The issue that the court has to deal with is whether the Plaintiff discharged the burden of proof. The Plaintiff gave evidence to prove ownership of the suit land by adducing oral and documentary evidence which was uncontroverted. It is trite that uncontroverted evidence is weighty and courts will rely on it to prove facts in dispute. The evidence cannot be controverted by allegations in the statement of defence if the defendants fail to call a witness to adduce evidence and be cross-examined to test the evidence." He further went to quote what was said by Justice Mwangi in Peter Ngigi & Another (suing as legal representative of the Estate of Joan Wambui Ngigi -v- Thomas Ondiki Oduor & Another 2019 eKLR where he stated "The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements". He went ahead to dismiss the appeal based on the fact that the defendant never participated in the hearing process neither did he adduce any evidence alluding to the fact that he was not keen in defending the claim. The same reasoning can be applied by this honourable court since the defendant was of no show in the hearing process neither did, he put in any response to the pleadings.

7. The plaintiffs produced documentary evidence as in their list of documents. The plaintiff testified as PW1 and adduced a Copy of Sale Agreement dated 29/03/2004. This agreement is between the plaintiffs and the defendant herein over the suit property. It is not in dispute that the plaintiffs are the purchasers in the agreement. The agreement identifies the suit properties herein, has a consideration and is signed by both parties. Also adduced was a Copy of the transfer document in favour of the plaintiffs and a copy of title deed over the suit property still in the defendants' name. Clause 3 of the



sale agreement indicated that the vendor would hand over the certificate of title upon execution of the agreement which speaks to why the plaintiffs have the certificate of title in possession. The evidence of the sale agreement, the transfer document and the certificate of title point out to an existing sale that happened as between the plaintiffs and defendants giving a clear history of how the plaintiffs acquired the title to the suit property.

It has been established that a certificate of title is held to be prima facie evidence of ownership of the stated land. This is provided for in Section 26(1) of the [Land Registration Act](#) which provides; -

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... 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 ... 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.”

8. I hold the view that the Plaintiffs have established their claim to title is legitimate and are therefore entitled to the orders as in the originating summons

Conclusion

9. The upshot of the following is that the Plaintiffs have established their case on a balance of probabilities and are entitled to the orders sought as in the originating summons and the court makes the following orders

- a. The plaintiffs be registered as the proprietors of the suit property
- b. That the defendant is hereby to sign all relevant papers to give effect to the registration of LR NO Nairobi/Block 119/2674 in favour of the plaintiffs.
- c. The defendant is to surrender the Land control Board consent, three certified copies of identity card, three certified copies of KRA Pin certificates, three passport size photos and all other relevant completion documents to the plaintiff's advocate
- d. In default of the orders above the Land registrar Nairobi to effect the transfer the suit property to the plaintiffs.
- e. The defendant to bear the costs of the suit

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 6TH DAY OF FEBRUARY 2026.

MOHAMMED N. KULLOW

JUDGE

Judgment delivered in the presence of: -

Ms. Wambui for the Plaintiffs

No appearance for the Defendant



