



**Munene v Mwangi (Environment and Land Appeal E006 of 2022)
[2026] KEELC 792 (KLR) (18 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 792 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E006 OF 2022
SM KIBUNJA, J
FEBRUARY 18, 2026**

BETWEEN

ISABELA WANJIKU MUNENE APPELLANT

AND

MARIA WANJIKU MWANGI RESPONDENT

*(Being an appeal against the judgment and decree of Hon. A.K. Mwicigi,
PM, delivered on 9th March 2022 in Baricho PM ELC Case No. 98 of 2018)*

JUDGMENT

1. Aggrieved by the decision of the trial court, the appellant lodged the present appeal vide a memorandum of appeal dated 28th March 2022, raising six (6) grounds that are on the face of it.

The appellant faults the trial court’s judgment contending inter alia that the learned trial magistrate erred in law and fact by holding that no succession cause had been filed in respect of the estate of the late Peter Mwangi Maganjo, a finding which was contrary to the land register and the evidence tendered before the court; that the trial court contradicted itself by acknowledging the existence of succession proceedings relating to the estate of the deceased at one point, and subsequently holding that no such proceedings had been undertaken; that the trial court failed to consider evidence that the respondent’s husband had been paid the full purchase price for the suit land, and had willingly settled the appellant thereon; that the evidence did not support the finding that the transfer of the suit property was fraudulent; that The the trial court was at wrong for upholding the respondent’s case notwithstanding the failure to enjoin the Land Registrar, who is the statutory custodian of land records, and for a general misapprehension of the legal principles governing the pleading and proof of fraud.

The appellant prays that the judgment of the subordinate court be set aside; the appeal be allowed; the appellant’s counterclaim be upheld, and the respondent’s suit in the lower court be dismissed.



2. Pursuant to the directions of the court that the appeal be canvassed through written submissions, the learned counsel for the appellant and respondent filed their submissions which the court has considered.

In their submissions dated 27th January 2025, the learned counsel for the appellant submitted inter alia that the trial court erred in holding that no succession cause had been filed in respect of the estate of Peter Mwangi Maganjo. It was contended that the record, particularly entry number five in the green card, clearly demonstrated that succession proceedings had been undertaken and that the suit property had been transmitted to Francis Munene Kiura.

Counsel further submitted that the trial court contradicted itself by acknowledging, on the one hand, the existence of succession proceedings and, on the other, by finding that there was nothing to show how the property moved from the name of the deceased.

The counsel further submitted the trial court failed to take into account evidence that the vendor, who was the registered proprietor of the suit land, had received the full purchase price and had settled the appellant's husband and his family on the land, as early as the year 2004. It was argued that upon payment of the purchase price and taking of possession, a constructive trust arose in favour of the appellant and her family, and that the trial court erred in failing to so find.

It was also submitted that the respondent had failed to prove any fraud on the part of the appellant, and that the trial court improperly shifted the burden of proof to the appellant without any cogent evidence of fraud. It was contended that the respondent neither denied that her husband had sold the land to the appellant's husband and received the purchase price, nor that the appellant took possession of the land during the lifetime of the deceased.

Counsel further submitted that the respondent did not challenge the existence of the sale agreements or dispute the authenticity of the signatures attributed to her late husband.

The counsel went on to submit that the respondent failed to enjoin the Land Registrar, who is the statutory custodian of land records, while knowing well that if fraud had occurred in the registration process, the same would necessarily have involved officials at the land registry.

Counsel further submitted that the trial court erred in holding the appellant solely accountable for transactions undertaken at the land office. The counsel urged the court to find merit in the appeal and to allow it as prayed.

3. The learned counsel for the respondent filed her written submissions dated 3rd June 2025, submitting inter alia that although the appellant alluded to the existence of Succession Cause No. 120 of 2008 and Kerugoya Civil Case No. 20 of 2008, the judgments in those matters were never placed before the trial court or this court for consideration. It was therefore contended that there was no contradiction in the impugned judgment, as the appellant failed to demonstrate the legality of the transfer of the suit property from the deceased, Peter Mwangi Maganjo.

Counsel further submitted that the appellant bore the legal burden of proving how title to the suit land was transferred from the deceased to the late Francis Munene Kiura, but failed to discharge that burden. Reliance was placed on the decision in the case of Munyu Maina versus Hiram Gathiha Maina (2013) eKLR in support of the proposition that a registered proprietor must go beyond the title, and demonstrate the root of their ownership where the title is challenged.

With regard to the appellant's contention that the purchase price had been paid, counsel submitted that the issue had already been litigated between the two deceased husbands in Baricho Civil Case No. 26 of 2008, Francis Munene Kiura versus Peter Mwangi Maganjo, and that the question of purchase could not be reopened through the present appeal.



Counsel further submitted that the appellant could not advance arguments relating to the legality of the transfer without having called the Land Registrar to testify on how the title moved from the late Peter Mwangi Maganjo to the late Francis Munene Kiura, and therefore the decision of the trial court was grounded on sound legal principles. The counsel urged the court to find that the appeal lacked merit and to dismiss it with costs to the respondent.

4. From the grounds on the memorandum of appeal and record of appeal, the court finds the following issues arises for determinations:
 - a. Whether the learned trial magistrate erred in law and fact in finding that the transfer, and subsequent subdivision of land parcel No. Kiine/Sagana/3641, were unlawful and fraudulent, having regard to the evidence on succession and transmission, and the applicable principles governing proof of fraud and challenge to title.
 - b. Whether the learned trial magistrate properly dismissed the appellant's defence and counterclaim and granted the reliefs sought by the respondent.
5. I have carefully considered the grounds on the memorandum of appeal, record of appeal, submissions by the learned counsel, superior court decisions cited thereon, and come to the following findings:

- a. This appeal arises from the judgment of Hon. A.K. Mwicigi, PM, delivered on 19th March 2022 in Baricho PM ELC Case No. 98 of 2018, in which the learned trial magistrate held that the transmission of Land Parcel No. Kiine/Sagana/3641 from the estate of the late Peter Mwangi Maganjo was irregular and unlawful, and that the resultant subdivision of the parcel into Kiine/Sagana/3907 and 3908 was therefore null and void. On that basis, the trial court ordered the Land Registrar to cancel the subdivisions and revert Parcel No. Kiine/Sagana/3641 to the name of the deceased, Peter Mwangi Maganjo.

The court further dismissed the appellant's suit and counterclaim and issued eviction orders against the appellant.

- b. The suit before the trial court was commenced by the respondent vide a plaint dated 11th December 2012, seeking for inter alia orders for cancellation of the titles to Land Parcels No. Kiine/Sagana/3907 and 3908; and for the same to revert to the original Parcel No. Kiine/Sagana/3641, to be registered in her name. She also sought eviction orders against the defendants from Parcel No. Kiine/Sagana/3641 and its resultant subdivisions, together with the costs of the suit.

The respondent's case was that her late husband was the registered proprietor of Land Parcel No. Kiine/Sagana/3641, measuring approximately 0.01 hectares, and that he passed away on 26th January 2010. She averred that following his death, she instituted succession proceedings in Nyeri High Court being Succession Cause No. 399 of 2010.

She further pleaded that in the year 2017, upon conducting an official search, she discovered that the original parcel had been transferred from the name of her late husband to the names of the defendants, and subsequently subdivided into Parcels No. Kiine/Sagana/3907 and 3908, which were registered in the names of Francis Munene and Isabel Wanjiku Munene together with two minors. The respondent maintained that she had been in possession of the suit land even prior to the demise of her husband and contended that the transfer and subdivision of the land were fraudulent.

- c. In response, the appellant filed a defence and counterclaim dated 21st November 2018 in which she denied the material averments in the plaint. She contended that the suit land had



been lawfully purchased by her late husband and that the full purchase price was paid to the respondent's late husband. She further averred that the transaction was undertaken in accordance with the law and that the requisite Land Control Board consent was duly obtained.

In her counterclaim, the appellant maintained that she and the other defendants were the lawful proprietors of Land Parcels No. Kiine/Sagana/3907 and 3908, having acquired the same from Peter Mwangi Maganjo, the late husband of the respondent. She further averred that the respondent was in unlawful occupation of Land Parcel No. Kiine/Sagana/3907, which she claimed belonged to her.

On the basis of the foregoing, the appellant prayed that the respondent's suit be dismissed and that an order of eviction do issue against the respondent, her agents and servants from Land Parcel No. Kiine/Sagana/3907, together with the costs of the suit.

- d. In her reply to the defence and counterclaim, the respondent maintained that the suit land had been illegally acquired. She contended that no valid Land Control Board consent had been obtained in respect of the transaction relied upon by the appellant. She further averred that the appellant's late husband had been charged in court over the alleged illegal acquisition of the land, but that the proceedings were not concluded due to his demise. In response to the counterclaim, the respondent denied the appellant's assertions and maintained that she was in lawful occupation of her late husband's land. She questioned the basis upon which the appellant had come to occupy the suit property and contended that it was the appellant who ought to be evicted from the land.
- e. The record confirms that the suit was heard on 28th April 2021, at which hearing both parties testified and tendered their respective evidence. Upon the close of the hearing, the court directed the parties to file and exchange written submissions within the given timelines. It was upon consideration of the evidence on record and the parties' submissions that the learned trial magistrate delivered the impugned judgment.
- f. This court will start by considering the first issue of whether the learned trial magistrate erred in law and fact in finding that the transfer and subsequent subdivision of Land Parcel No. Kiine/Sagana/3641 were unlawful and fraudulent, having regard to the evidence on succession and transmission, and the applicable principles governing proof of fraud and challenge to title. The starting point is the *Land Registration Act*, No. 3 of 2012. Section 24 (a) provides that:

“Subject to this Act:

- a. The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 25(1) further states:

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...”



It is trite that the rights set out above are not absolute, in view of Section 26(1) of the Act, which qualifies indefeasibility as follows:

“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.”

- g. Where land is registered in the name of a deceased person, the applicable law shifts to the Law of Succession Act (Cap 160). Section 45(1) thereof provides that:

“Except so far as expressly authorised by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

And, Section 79 of the said Act vests the estate of a deceased person as follows:

“The property of a deceased person shall vest in the personal representative of the deceased upon the grant of representation.”

While Section 82(b)(ii), restricts disposition of immovable property in the name of a deceased to only personal representatives, and even then goes on to provide that:

“...no immovable property shall be sold before confirmation of the grant.”

That position is reinforced by Section 55(1) of the Act by providing that:

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed.”

Lastly, Section 66 of the Act sets out the order of preference of persons entitled to apply for a grant of letters of administration, giving priority to the surviving spouse and the children. The purchasers and strangers to the estate cannot come before the spouse and or children of a deceased in that order of priority under the said statute.

- h. There is no dispute that Peter Mwangi Maganjo, the original registered proprietor of LR No. Kiine/Sagana/3641, died on 26th January 2010. It is also not disputed, based on the appellant’s own testimony, that Francis Munene Kiura was registered as proprietor on 11th March 2010, barely three months after the death of the registered owner.

The appellant’s case in this appeal rests on the assertion, advanced principally through their submissions, that the suit land was transmitted to Francis Munene Kiura through a succession cause. However, no grant of letters of administration, certificate of confirmation of grant, or



succession proceedings were produced in evidence to demonstrate how Francis Munene Kiura acquired legal authority over the estate of the deceased. This omission is not a mere procedural lapse. Under Sections 45 and 79 of the Law of Succession Act, the estate of a deceased person vests only in a duly appointed personal representative, and any dealing with estate's property, in the absence of a grant, amounts to intermeddling.

Further, even where a grant exists, Section 55 and section 82(b)(ii) expressly prohibit the distribution or transfer of immovable property prior to confirmation of the grant, which by law cannot occur before the lapse of six months from the date of grant of letters of administration, leave alone date of death.

- i. The registration of Francis Munene Kiura as proprietor on 11th March 2010 therefore raises a fundamental legal questions and inconsistencies. First, no evidence was tendered to show that he was entitled, under Section 66 of the Act, to petition for a grant to the estate of Peter Mwangi Maganjo, in priority to the spouse and or children.

Secondly, even assuming a grant existed, no evidence was produced to show that it had been confirmed so as to lawfully support a transmission of immovable property, and how it could have been obtained and confirmed in three months after the death.

- j. The appellant did rely on a sale agreement executed during the lifetime of the deceased, and maintained that possession was taken in 2004. However, that transaction was conclusively addressed in Baricho Civil Case No. 26 of 2008, wherein the court ordered a refund of the purchase price with interest to Francis Munene Kiura. That decision was never appealed and remains binding. Following that order, the sale agreement could no longer sustain any proprietary claim over the suit land, the purchaser's interest having been settled through an order of a monetary refund. This court cannot revisit the merits of that decision in this appeal, but it is entitled to take judicial notice of its legal consequence.
- k. In the circumstances, the registration of Francis Munene Kiura as proprietor of the suit property, was neither explained nor anchored in any lawful succession process recognised under the Law of Succession Act. In line with the provision of Section 26(1)(b) of the Land Registration Act, a title acquired unprocedurally or contrary to statute does not enjoy the protection of indefeasibility.
- l. The learned trial magistrate, therefore, cannot be faulted for finding that the transfer of the suit land from the deceased to Francis Munene Kiura was not legally demonstrated. On the contrary, the evidence on record supports the conclusion that the registration was effected in contravention of mandatory succession law provisions and cannot be legally defended. Accordingly, this court finds no basis for interfering with the learned trial magistrate's conclusion that the transfer of the suit land was tainted and incapable of conferring a valid title.
- m. Having found as above that the registration of the suit land in the name of the late Francis Munene Kiura was unlawful and not supported by any valid succession process, the appellant's defence and counterclaim lacked a legal foundation. It follows that the learned trial magistrate properly dismissed the appellant's defence and counterclaim and granted the reliefs sought by the respondent.

The appellant's counterclaim had sought for recognition of ownership over Parcels Kiine/Sagana/3907 and 3908, which arose from a subdivision of the original Parcel Kiine/Sagana/3641. That subdivision was predicated on an invalid transfer. In the absence of a lawful root of title, the appellant could not assert any enforceable proprietary rights capable of defeating the respondent's claim.



The appellant's reliance on the historical sale transaction was incapable of advancing her case, as that transaction had been conclusively determined in Baricho Civil Case No. 26 of 2008, where the court ordered a refund of the purchase price with interest. The effect of that decision was to extinguish any proprietary or equitable interest over the suit property arising from the sale agreement, leaving no basis for the counterclaim.

- n. Further, the appellant's reliance on occupation and constructive trust was not available to her. The issue of constructive trust was neither pleaded nor canvassed before the trial court and cannot properly be introduced for the first time on appeal. In any event, the factual foundation upon which such a claim would rest, the alleged sale transaction, had already been conclusively determined in the Baricho Civil Case, and therefore had dissipated. Continued occupation of the suit land, in the absence of a valid title or legally recognisable interest, could not override the statutory framework governing succession and transfer of immovable property, nor confer ownership.
- o. The trial court, therefore, properly dismissed the appellant's defence and counterclaim and correctly granted the reliefs sought by the respondent, including cancellation of the invalid subdivision, and recovery of possession. The absence of the Land Registrar as a party did not vitiate these findings, as the dispute concerned the legality of the appellant's title, not the administrative conduct of the registry. Accordingly, this court finds no merit in the appellant's challenge on this issue. The Court finds the appeal lacks merit.
- p. Section 27 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya provides that costs shall ordinarily follow the event unless the court, for good reason, orders otherwise.

The court in the case of re Estate of Monica Wanjiru Macharia (Deceased) (Family Appeal 15 of 2023) [2024] KEHC 14780 (KLR) held that:

“Section 27 of the Act is clear that it lies in the discretion of the court to award costs in a suit. This discretion must be exercised judiciously.”

In the circumstances of this appeal, the court finds no reasons to deviate from the edict in the above legal provision on costs. The appellant having failed in the appeal should meet the respondent's costs.

- 6. Having come to the above conclusions in this appeal, the orders that commend themselves and are issued are as follows: -
 - a. That the appeal is without merit and is dismissed in its entirety.
 - b. That the judgment and orders of the trial court delivered on 9th March 2022 in Baricho PM ELC Case No. 98 of 2018 is hereby affirmed.
 - c. The appellant is to meet the respondent's costs in the appeal.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 18TH DAY OF FEBRUARY 2026.

S. M. Kibunja

ELC JUDGE

In the Presence of:

Appellant



Respondent

Kinyua - Court Assistant.

S. M. Kibunja.

ELC JUDGE

