



REPUBLIC OF KENYA



**Njiru v Njiru (Environment and Land Appeal E015 of 2025)
[2026] KEELC 647 (KLR) (11 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 647 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E015 OF 2025
SM KIBUNJA, J
FEBRUARY 11, 2026**

BETWEEN

PATRICK NJOGU NJIRU APPELLANT

AND

LINUS NJAGI NJIRU RESPONDENT

(Being an Appeal against the judgment and decree of Hon. Mary Njuguna, SRM, delivered on 21st February 2025 in Gichugu MELC Case No. E019 of 2023)

JUDGMENT

1. Aggrieved by the decision of the learned trial magistrate delivered on 21st February 2025 in Gichugu MELC Case No. E019 of 2023, the Appellant lodged the present appeal vide the Memorandum of Appeal dated 6th March 2025, raising the following four (4) grounds:
 1. That the learned trial magistrate erred in law and in fact in failing to appreciate that the Appellant had lived on Land Parcel No. Ngariama/Rungeto/287 for nearly fifty (50) years, from the year 1975.
 2. That the learned trial magistrate erred in law and in fact by failing to properly consider and evaluate the evidence tendered by the Appellant and his witnesses, thereby arriving at an erroneous decision.
 3. That the learned trial magistrate erred in law and in fact in dismissing the Appellant's counterclaim through a misapplication of the principles governing customary trust.
 4. That the learned trial magistrate erred in law and in fact in finding that the Appellant lacked locus standi to institute and prosecute the counterclaim.

The appellant therefore seeks for an order setting aside the judgment delivered on 21st February 2025 in Gichugu MELC Case No. E019 of 2023, and substituting it with an order allowing the appellant's



counterclaim thereof and for costs in this appeal to be provided for. The appellant also filed the record of appeal dated 18th June 2025, following which the appeal was admitted and directions on filing and exchanging submissions were issued by the court.

2. The learned counsel for the appellant and respondent filed their submissions dated 23rd July 2025 and 30th July 2025 respectively, which the court has considered.

The counsel for the Appellant inter alia submitted that the learned trial magistrate wholly failed to consider and evaluate the Appellant's evidence and the authorities relied upon, thereby arriving at an erroneous decision. It was counsel's contention that the Appellant tendered uncontroverted evidence demonstrating that the late Njiru Njagi alias Njiru Kigio (deceased) held Land Parcel No. Ngariama/Rungeto/287 in trust for his sister, Selina Muthoni Njagi (deceased), and her children. That the existence of the trust was demonstrated by the Appellant's evidence that he and his late mother had lived on the suit land from as early as 1971, and that even after the Land Disputes Tribunal Award was set aside in 2005, they continued to occupy the land peacefully until 2018, when the succession proceedings were commenced.

On the question of customary trust, counsel submitted that it was not in dispute that the late Selina Muthoni Njagi had occupied the suit land from 1971, that she utilised and occupied two (2) acres thereof, and that the Appellant had undertaken developments on that portion of the land. It was counsel's position that the Appellant had satisfied the legal prerequisites for establishment of a customary trust as set out by the Supreme Court in the case of *Isack M'Inanga Kiebia versus Isaaya Theuri M'Lintari & another* [2018] eKLR.

With respect to the succession proceedings, counsel submitted that the dispute before the trial court concerned the determination of a trust over land, and not the administration or distribution of the estate of a deceased person. The counsel further argued that the *Law of Succession Act* (Cap 160) is limited to matters of intestate and testamentary succession and the administration of estates, and that disputes founded on trust fall within the jurisdiction of the Environment and Land Court.

Accordingly, it was submitted that the Appellant's counterclaim was properly before the trial court notwithstanding the existence of succession proceedings relating to the estate. The Appellant urged the Court to allow the appeal, set aside the judgment of the trial court, and substitute it with an order allowing the Appellant's counterclaim.

3. The learned counsel for the Respondent commenced their submission by addressing the question of whether the Appellant had locus standi to institute and prosecute the counterclaim.

It was submitted that the Appellant's claim was premised on rights allegedly accruing to the estate of Selina Muthoni Njagi (deceased), and that in the absence of letters of administration, the Appellant lacked the legal capacity to sue on behalf of the deceased's estate. Counsel inter alia submitted that under the *Law of Succession Act* (Cap 160), a deceased person's estate can only be represented by a duly authorised legal representative, being a person holding a grant of representation, and that only such a person has locus to institute or pursue claims touching on the estate.

In support of that position, counsel relied on the decisions in the cases of *Elijah Nderitu Gachagua versus Francis Gakuu Gachagua & 2 Others* [2019] eKLR, *Trouistik Union International & another versus Jane Mbeyu & another* (2008) 1 KLR (G&F) 730, and *Julian Adoyo Ongunga & another versus Francis Kiberenge* (suing as the administrator of the Estate of Fanule Evans Amudavi (deceased)) [2016] eKLR.

On the question whether the trial court properly analysed the evidence or misapplied the principles of customary trust, counsel submitted that the learned trial magistrate correctly evaluated the evidence



on record regarding how Selina Muthoni Njagi gained entry onto the suit land. Counsel contended that the evidence demonstrated that her occupation of the land was permissive, arising out of sibling goodwill, and not as of right.

Counsel further submitted that there was no evidence that Njiru Njagi alias Njiru Kigio (deceased) was allocated the suit land for the benefit of other family members, and that the essential elements necessary to establish a customary trust were not proved. According to counsel, the trial court's findings were supported by the evidence and were legally sound. The Respondent's counsel urged the Court to dismiss the appeal with costs.

4. From the record and submissions, the following issues arise for determination by the court:
 - a. Whether the Appellant had locus standi to institute and prosecute the counterclaim.
 - b. Whether the learned trial magistrate erred in law and fact in rejecting the claim of customary trust over Land Parcel No. Ngariama/Rungeto/287.
 - c. What orders should issue.
 - d. Who meets the costs?

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 conclusions:

- a. This appeal arises from the judgment of the Honourable Mary Njuguna, SRM, delivered in Gichugu Magistrate's Court Environment and Land Case No. E019 of 2023 on 21st February 2025.

In the impugned judgment, the learned trial magistrate found that the Appellant and the other counter-claimant lacked locus standi on the basis that neither had taken out letters of administration to prosecute the counterclaim on behalf of the estate of the late Selina. On that ground, the counterclaim was dismissed.

The trial court further addressed the question whether Land Parcel No. Ngariama/Rungeto/287 was held in trust and concluded that no trust had been established. Consequently, the learned magistrate granted the orders as sought by the Respondent.

- b. The background of the suit in the lower court was that the Respondent commenced the suit before the trial court by a plaint dated 24th April 2023, seeking for the following reliefs:
 1. An order directing the Defendant to vacate Land Parcel No. Ngariama/Rungeto/287 within seven (7) days of the judgment, and in default, an order for his forcible eviction from the suit land, with the Officer Commanding Station (OCS), Kianyaga, being authorised to provide security during the eviction exercise;
 2. A permanent injunction restraining the Defendant, his servants, agents, and any other persons claiming under him from entering, remaining on, returning to, cultivating, or in any other manner interfering with Land Parcel No. Ngariama/Rungeto/287;
 3. Costs of the suit and interest.

In support of his claim, the Respondent pleaded that he was the son of the late Njiru Njagi alias Njiru Kigio (deceased). He averred that the Appellant had entered the suit



land forcefully pursuant to an award of the Land Disputes Tribunal, which award was adopted in Kerugoya Land Disputes Tribunal Case No. 50 of 2000.

The Respondent further pleaded that the said tribunal award was challenged in Embu High Court Civil Appeal No. 92 of 2005, whereupon it was set aside. He averred that he thereafter instituted and prosecuted Succession Proceedings being S.P.M Succession Cause No. 36 of 2018, in which the trial court awarded the appellant a portion measuring $\frac{1}{4}$ acre out of the suit property.

According to the Respondent, he appealed against that decision in Kerugoya Civil Appeal No. 89 of 2019, and the appellate court held that the Appellant was not entitled to any portion of the suit property, thereby setting aside the lower court's decision. The Respondent further averred that, notwithstanding the said appellate decision, the Appellant refused to vacate the suit land and instead commenced acts of waste, including cutting down trees thereon, prompting the filing of the suit.

- c. In response, the Appellant filed a Statement of Defence and Counterclaim dated 2nd June 2023, denying the contents of the plaint. In the counterclaim, the Appellant joined his siblings and pleaded that their late mother, Selina Muthoni Njagi (deceased), was a sister to Njiru Njagi alias Njiru Kigio (deceased). They averred that Land Parcel No. Ngariama/Rungeto/287 had been allocated to the late Njiru Njagi alias Njiru Kigio by the Ugaciku Clan in the year 1959. They maintained that the late Selina Muthoni Njagi was not allocated land at the time on account of prevailing customary practices under which women were not given land.

It was pleaded that the late Njiru Njagi thereafter gave two (2) acres out of the suit property to Selina Muthoni Njagi (deceased) and her five children for their use. The Appellant and the other counterclaimants averred that Selina Muthoni Njagi and her children settled on the said portion and had remained in occupation thereof to date.

It was further pleaded that Selina Muthoni Njagi died and was buried on the suit land, and that following her demise, the Appellant continued to live on and depend on the said two-acre portion of the suit property.

The appellant and the other counterclaimants sought the following reliefs against the Respondent:

1. A declaration that Njiru Njagi alias Njiru Kigio (deceased) held two (2) acres out of Land Parcel No. Ngariama/Rungeto/287 in trust for Selina Muthoni Njagi (deceased) and her family;
 - 2b. An order directing the subdivision of Land Parcel No. Ngariama/Rungeto/287 and the transfer of two (2) acres therefrom in favour of the 1st Counterclaimant;
 3. Costs of the suit and interest thereon at court rates.
- d. This being a first appeal, the duty of this Court is to re-evaluate the evidence afresh and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses. This principle was stated in *Selle & Another versus Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where the Court of Appeal held:

“This Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this Court is by way of retrial... this Court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always



bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

- e. On the issue of whether the Appellant had locus standi to institute and prosecute the counterclaim, it is important to point out from the onset that it is settled law that the estate of a deceased person can only be represented in court by a person holding a valid grant of representation. Section 79 of the *Law of Succession Act* (Cap 160) vests the property of a deceased person in the personal representative. This Section provides that:

“79. The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

Section 82 of the Law of Succession limits the power to sue or be sued on behalf of the estate to such a representative, as follows:

“82. Powers of personal representatives

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- a. to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative; ...”

That principle has been restated consistently by the superior courts, including in the case of *Rajesh Pranjavin Chudasama versus Sailesh Pranjivan Chudasama* [2014] ECLR, where the Court of Appeal held that:

“.....in our view, the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession.”

Further, in the case of *Julian Adoyo Ongunga & another versus Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased)* [2016] eCLR, where A. C. Mrima J held that:

“...the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction, since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves



the estate of a deceased person, since in most cases the estate involves several other beneficiaries or interested parties.”

- f. In the counterclaim before the trial court, the Appellant and his siblings expressly grounded their claim on alleged rights accruing to the estate of Selina Muthoni Njagi (deceased). The reliefs sought included a declaration that the late Njiru Njagi held two acres of the suit land in trust for Selina Muthoni Njagi (deceased) and her family, and an order for subdivision and transfer of that portion. It was common ground that none of the counterclaimants had taken out letters of administration to represent the estate of Selina Muthoni Njagi (deceased).

This Court agrees with the learned trial magistrate that the Appellant lacked locus standi to institute and prosecute the counterclaim, which is a suit in itself, the same having been brought on behalf of the estate of Selina Muthoni Njagi (deceased), without the requisite letters of administration.

- g. Having so found, the learned trial magistrate was entitled to dismiss the counterclaim on that ground alone. In law, as confirmed in the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1, the question of locus standi goes to the root of the proceedings, and once a party is found to lack the requisite legal capacity, the court is divested of jurisdiction to entertain the substantive merits of the claim.

In the above case the Court of Appeal held inter alia that “Jurisdiction is everything. Without it, a court has no power to make one more step”.

Accordingly, upon finding that the Appellant lacked locus standi, there was no necessity for the trial court to proceed to consider the issue of customary trust. Any findings made on that issue were therefore superfluous and did not affect the ultimate disposal of the counterclaim.

- h. Having found that the Appellant lacked locus standi to institute and prosecute the counterclaim, the dismissal of the counterclaim was properly grounded on that basis alone. The question of customary trust, therefore, did not fall for determination in the absence of legal capacity.

In any event, the record demonstrates that the question of the Appellant’s entitlement to a portion of Land Parcel No. Ngariama/Rungeto/287 has been the subject of prior litigation. Although the proceedings and award of the Land Disputes Tribunal were not placed before the trial court or this Court, the same were expressly referenced and considered in subsequent proceedings, notably Gichugu S.P.M Succession Cause No. 36 of 2018 and Kerugoya High Court Succession Appeal No. 89 of 2019.

In Succession Cause No. 36 of 2018, the Appellant lodged a protest and asserted entitlement to the suit land as a dependant of the estate of Njiru Njagi alias Njiru Kigio (deceased), on the basis that he had lived on the land from 1971. The probate court awarded the Appellant ¼ acre out of the suit property.

That decision was challenged in Succession Appeal No. 89 of 2019, wherein the High Court held that the trial court had erred in declaring the Appellant a dependant of the deceased, and inter alia observed that:

“ Even if such an application had been made, the facts in this case militate against its success for the reason that the appellant’s claim to the land against the deceased was, in the lifetime of the deceased, a proprietary one. He had sued the deceased over the land and won initially at the tribunal, only to lose on appeal. It was not permissible



for the appellant to vacillate and lay a claim over the estate based on dependency at the probate and administration court.”

The High Court therefore concluded that the declaration of the Appellant as a dependant of the deceased had no basis in law.

On the question whether the Appellant was entitled to two (2) acres out of the suit property, the High Court further held that:

“In any event, the appellant’s claim before the land tribunal was a specific one, not based on the *Law of Succession Act*, and as such the trial magistrate fell into error by allowing the ventilation of the said claim in the succession proceedings where the claim is res judicata.”

The High Court set aside the order awarding the Appellant ¼ acre and affirmed that the Appellant was not legally entitled to any portion of the deceased’s estate. In the circumstances, and bearing in mind the litigation history as reflected in the succession proceedings and the appellate judgment thereon, this Court is not persuaded that the issue of entitlement to the suit property can properly be reopened through the present proceedings. Litigation must come to an end. The appeal is found to be without merit and is for dismissal.

- i. 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 Appeal15 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.”

- j. And in the case of Morgan Air Cargo versus Everest Enterprises Limited [2014] eKLR, the court set out the factors that ought to be considered when determining the costs to include the conduct of the parties; the subject of litigation; the circumstances which led to the institution of the proceedings; the events which eventually led to their determination; the stage in which they are terminated; the relationship between the parties; and the need to promote reconciliation amongst the disputing parties pursuant to Article 159(2) of *the Constitution*.

Having given due considerations to the foregoing factors as discerned from the facts in the appeal, the disclosed related previous litigations, the court find no reasons to depart from the edict that costs follow the event, unless where otherwise directed, for good reasons. The court therefore finds it fair and just to award the respondent the costs in this appeal.

6. The foregoing determinations on this appeal leads the court to find and order as follows:
 - a. That the appeal has no merit and is dismissed in its entirety.
 - b. That the judgment of the learned trial magistrate delivered on 21st February 2025 in Gichugu MELC Case No. E019 of 2023, is hereby affirmed.
 - c. The costs of the appeal shall be borne by the Appellant.

Orders accordingly.



DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 11TH DAY OF FEBRUARY 2026.

S. M. KIBUNJA

ELC JUDGE

In The Presence of:

Appellant – Mrs Makworo

Respondent – No Appearance

Kinyua - Court Assistant.

S. M. KIBUNJA

ELC JUDGE

