



**Ngugi v Mwangi (Environmental and Land Originating Summons
E010 of 2024) [2026] KEELC 665 (KLR) (10 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 665 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2024
MN GICHERU, J
FEBRUARY 10, 2026**

BETWEEN

JOHN KAMANDE NGUGI APPLICANT

AND

JOSEPH KAMANDE MWANGI RESPONDENT

RULING

1. This ruling is on the notice of motion dated 25-9-2025. The motion which is brought under Rule 73 of the Probate and Administration Rules and all other enabling provisions of the law seeks one main prayer which is as follows.
 2. The Deputy Registrar of this Court be authorized to execute/sign mutation forms of one acre out of Loc.7/Ichagaki/5151 which is subdivided into two portions measuring 0.22 acres and 0.18 acres totaling 0.4 Ha equivalent to 1 acre as drawn by the surveyor and to be transferred to John Kamande Ngugi.
2. The motion is supported by the affidavit by the Applicant dated 25-9-2025 and is also based on two (2) grounds. The gist of the affidavit and the grounds is as follows. Firstly, the Court adjudged that one acre of the suit land be transferred to the Applicant in an order dated 7-4-2025. Secondly, the Applicant engaged a surveyor who found out that it was impossible to curve out one acre and it was preferred that the land be in two portions measuring 0.22 Ha and 0.18 Ha to make 0.4 Ha. Thirdly, the judgment dated 7-4-2025 should be implemented as per the above recommendation. Finally, the Respondent is adamant and cannot cooperate and that is why it has become necessary to file this application.
3. The motion is opposed by the Respondent who has sworn a replying affidavit dated 2-12-2025 in which he replies as follows. One, this matter touches on and forms part of the property of the deceased Njeri Karanja which is the subject of Succession cause No. 742 of 2011 at the High Court of Kenya at Nyeri and the Respondent has no capacity to be sued in this matter. Secondly, there is an appeal



against the decision in cause No. 742 of 2011, aforementioned and the Court cannot order the transfer of property where there is no valid certificate of confirmation of grant which specifies the rightful beneficiaries and their shares. Thirdly, allowing the application dated 25-9-2025 will encourage potential fraud and the Applicant should apply to the probate Court for the appointment of suitable administrators rather than bypass the entire administration process.

For the above and other reasons, the Respondent prays for the dismissal of the motion dated 25-9-2025.

4. I have carefully considered the motion in its entirety especially the affidavits by the parties as well as the record. I find that the motion has merit for the following reasons.

Firstly, the judgment dated 7-4-2025 stands unchallenged by the Respondent, who though served, chose not to participate in the suit. Had he taken part in the case, he would have raised the issues raised in his replying affidavit dated 2-12-2025 at the trial. The Court would then have determined the issues at the trial. The Respondent, having slept on his rights cannot seek to ventilate them close to 1 ½ years since he was served on 13-6-2024. Secondly, the jurisdiction of the Probate and Administration Court is different from that of the Environment and Land Court. While the former Court deals with intestate and testamentary succession and the administration of estates of deceased persons, the latter Court is concerned with resolution of disputes relating to the environment and the use, occupation of, and title to land. While the former Court deals with who are the lawful heirs of deceased persons and who should get a share of their estates, the latter Court deals with the land rights of occupiers of land irrespective of whether they are Dependants of the deceased owner of the land that they occupy or not. In this case, the Applicant's occupation of the suit land overrides any claim by a Dependant of the estate of the deceased in Succession Cause No. 742 of 2011 or any other cause. It is therefore immaterial what the Succession cause may decide or has decided especially if the Applicant was not listed as a Dependant of the estate of the deceased owner of the suit land.

5. The above notwithstanding, the Applicant who filed this suit seeking to be declared to be entitled to one acre of the suit parcel which he occupied in 1998 now seeks to be declared the owner of land that he has not occupied on the ground that the said land was not in a good position and it was impossible to curve one acre ...”

I find that to allow the application as presented would materially alter the character of the suit. While the Plaintiff was declared to be entitled to specific land that he occupied in 1998, he now seeks to be declared to be entitled to different land.

I find that this would not be proper because by law, the Plaintiff is only entitled to the land occupied in 1998 and not to any other land. The motion dated 25-9-2025 is therefore allowed only as it relates to land occupied by the Plaintiff in 1998 and not to my other land. The application is therefore only partially successful and partially unsuccessful.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 10TH DAY OF FEBRUARY, 2026.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Njonjo

Applicant's Counsel – Mr T.M. Njoroge

Respondent's Counsel – Mr Simiyu h/b for Mwariri

