



**Ndeleva v Karanja & another (Environment and Land Case
7 of 2023) [2026] KEELC 630 (KLR) (10 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 630 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE 7 OF 2023
MN GICHERU, J
FEBRUARY 10, 2026**

BETWEEN

STEPHEN MUASYA NDELEVA PLAINTIFF

AND

TABITHA MUTHONI KARANJA 1ST DEFENDANT

**LAND REGISTRAR – MURANG'A (THROUGH THE ATTORNEY
GENERAL) 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff seeks the following reliefs against the Defendants both jointly and severally.
 - a. A declaration that L.R No. Kakuzi/Ithanga/Gituamba Block 1/580 suit land, belongs to the Plaintiff.
 - b. A declaration that Peter Karanja Muniu (deceased) act of transferring the suit land to himself was unlawful.
 - c. An order cancelling and revoking all transactions, transfers, dealings and all entries entered in favour of Peter Karanja Muniu (deceased).
 - d. An order directing the 2nd Defendant to revoke the title deed issued to Peter Karanja Muniu, on 19-7-2016 and issue a new title to the Plaintiff.
 - e. That the registration of the title deed issued to Peter Karanja Muniu pertaining to the suit land be revoked and the said land be registered in the name of the Plaintiff.
 - f. Costs of the suit.
 - g. Interest on (f) above.



h. Any other relief as the Court may deem fit and just to grant.

This is as per the amended plaint dated 12-10-2023.

2. The Plaintiff's case is as follows. Firstly, he was a member of Mavoloni Company Limited which bought and sold land to its members. He was allocated three plots which were

i. Kakuzi Ithanga Gituamba Block 1/579.

ii. Kakuzi Ithanga Gituamba Block 1/580.

iii. Kakuzi Ithanga Gituamba Block 1/581.

In total he had bought 9 shares. Each share was Kshs 1000/= and he paid Kshs 9,000/= in total. He occupied the suit in the year 1988 after the company subdivided the land and allocated it to its members. He built a house on the land and planted trees and crops amongst other development. Secondly, the Plaintiff lost the title deed for Plot No.580, the suit land. He reported the loss of the title deed to the Company that sold him the land. When he visited the lands office, he found that the suit land had been fraudulently transferred to Peter Karanja Muniu who has never resided on the land or taken possession. Thirdly, the records held by Mavoloni Company Limited do not have the name of Peter Karanja Muniu or the person who is said to have sold the suit land to him one Andrew Maingi Makau as a member. None of them bought the suit land from the Plaintiff. Finally, records at the Land Registry show that on 8-12-1988, the suit land was transferred to Beatrice Loko and then to Andrew Maingi Makau on the same date. He was then issued with a title deed. This Andrew Maingi Makau used to work at the land registry as a Government Officer.

3. In support of his case, the Plaintiff filed the following evidence.

i. Witness statements by the Plaintiff, Joseph M. Mutisya and Vincent Mbithi Muiya.

ii. Copy of demand letter dated 17-7-2017.

iii. Copy of the register for suit land with 4 entries upto 8-12-1988.

iv. Copy of the register for the suit land with 8 entries upto 19-7-2016.

v. Copy of letter from Mavoloni Company Limited dated 28-10-2015.

vi. Copy of letter from Mavoloni Company Limited dated 5-12-2015.

vii. Copy of Mavoloni Company shareholders from numbers 560-602.

viii. Copy of register from number 1644 to 1651.

ix. Copies of certificates of official search for the suit land dated 17-7-2017 and 16-2-2017.

x. Copy of notice of intention to institute a suit against the Government dated 4-12-2018.

xi. Seven photographs showing mature trees growing on a piece of land.

xii. Copy of register for land parcel No. Kakuzi/Ithanga – Gituamba/Block 1 Mavoloni 118.

4. The 1st Defendant in a written statement of defence dated 4-4-2022, denies the Plaintiff's claim and avers as follows. Firstly Peter Karanja Muniu is a bonafide purchaser without notice of any fraud who is not even aware that the Plaintiff is in possession of the suit land. The land was sold by Beatrice Loko Mbithi, David Kaseke Maingi and Caroline Nduku Maingi all of whom are third parties in this case. Secondly, before purchasing the land, the 1st Defendant's husband visited the land registry. This was



in the year 2015. The purchase price was Kshs. 2,250,000/= which was paid to the sellers in three installments of Kshs. 1.5 Million, 150,000/= and Kshs 600,000/=. All lawful procedures in a land sale were carried out and the title deed is in the name of the 1st Defendant's husband. Thirdly, in the year 2015, the deceased moved into the suit land and planted maize and beans. He also dug water trenches to irrigate the land. It was only in the year 2017 that the buyer of the suit land became aware of the Plaintiff's claim when he was summoned to Gatanga Police Station and asked to produce his title deed and transfer documents. The deceased husband of the 1st Defendant had documents to prove ownership while the Plaintiff had no evidence at all. Fourthly, the Plaintiff was nothing on the suit land and does not live on it. Finally, Peter Karanja Muniu had no authority or power to change the register which is in the custody of land registry officers. The land was sold to him by the children Andrew Maingi Makau who had also bought it from an undisclosed person.

5. In the course of the proceedings, in June 2019, the Defendant sought leave to issue a third party notice to Beatrice Loko Mbithi, Daniel Kaseke Maingi and Caroline Nduku Maingi on the ground that they are the ones who sold the suit land to him. At that time, Peter Karanja Muniu, the husband of the current Defendant was alive. The said application was allowed on 3-7-2019. The third parties did not file any response to the notice issued to them by the Defendant.
6. In support of her defence, the Defendant filed the following evidence.
 - i. Copy of the register for the suit parcel.
 - ii. Copy of certificate of official search for the suit land dated 24-9-2015.
 - iii. Copy of sale agreement dated 6-9-2015.
 - iv. Copy of title deed for the suit land in the name of the third parties.
 - v. Copy of title deed in the name of Peter Karanja Muniu.
 - vi. Other relevant documents.
7. At the trial on 8-10-2024, 3-2-2025, 27-5-2025 and 8-7-2025 a total of six (6) witness testified. They included the Plaintiff and the 1st Defendant. The Plaintiff then called Vincent Mbithi and Jacob Mutunga while the Defendant called Beatrice Loko, one of the third parties. In addition to these witness, a Land Registrar from Murang'a also testified.

Both parties stuck to their narratives as it is in the pleadings and the witness statements and as summarized above in paragraphs 2 and 4 of this judgment.

The cross-examination of Beatrice Loko Mbithu, the Defendant's witness, revealed she is the person named in entry No. 2 of the proprietorship Section of the register of the suit land. This is entry land that is cancelled. It is dated 8-12-1988. It is her evidence that she was 15 years when the entry was made having been born in the year 1973.
8. Even though the Court gave directions on the filing of submissions on 8-7-2025, the Defendant's counsel did not file any written submissions as directed or at all. As late as 5-2-2026, the Court checked for the Defendant's written submissions but found none on the case Tracking System, CTS. The Plaintiff's counsel in his written submissions dated 26-1-2026 identified two(2) issues for determination.
 - i. Who between the Plaintiff and the 1st Defendant is the lawful proprietor of the suit property?
 - ii. What is the appropriate relief to issue?



9. I have carefully considered the evidence adduced by the parties including the witness statements, documents and testimony at the trial. I have also considered the written submissions by learned counsel for the Plaintiff. I find that the two issues identified are not sufficient to resolve the dispute conclusively. The other issues that arise are as follows.
- i. Whether it was necessary to particularize fraud in the Plaintiff's pleadings.
 - ii. Whether fraud has been proved to the required standard.
 - iii. Whether the third parties should indemnify the Defendant in the event she is found liable to the Plaintiff.
10. On the first issue raised by the Plaintiff's counsel, I find that it is the Plaintiff and not the Defendant who is the lawful owner of the suit land. The reason for this is that the Plaintiff is able to prove that he was a shareholder in the land buying company and the company records including the shares certificates and members list have his name. He appears in register that contains other names of other members. His name is repeated as numbers 579,580 and 581. Above his name is the name of John Ndambuki Muneene and below him is John Nguli Muasya who are numbers 578 and 582 respectively. These records as well as the Plaintiff himself are recognized by the officials of the Mavoloni Company Ltd. No such recognition is accorded to Beatrice Loko or Andrew Maingi Makau. When the 1st Defendant testified on 27-5-2025, she said that she purchased the land in 2015 from Beatrice Loko Maingi who inherited it from her father but she did not know how Beatrice's father obtained the land. When Beatrice Loko testified on 8-7-2025 she said that her father bought the land. She said she did not have documents to prove this purchase by her father. Neither the Defendant nor the first third party is able to trace their ownership to the root of the title. They are not able to prove that the person who allegedly sold the land to Andrew Maingi Makau was a member of Mavoloni Company or that he himself had bought from a member of the Company. Had there been such a genuine member, he would be in the register of members with his own membership number and not number 580 which belongs to the Plaintiff. In the case of Munyu Maina Vs Hiram Gathiha Civil Appeal No.239 of 2009, (Nyeri) the Court of Appeal had this to say.

“...We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered owner must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him...”

Just like the Respondent in the above case, the Defendant and the third parties in this case were expected to go an extra mile and prove that the title deed they hold was acquired lawfully. This they have failed to do because they do not know who was the owner of the land before Andrew Makau Maingi. The Plaintiff traces the ownership of the land to the land buying company. The Plaintiff has therefore a better claim.

11. It is a requirement of law that particulars of fraud be pleaded. It is Order 2 rule 10(1) (a) which reads as follows.

“Subject to Sub rule 2, every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including ...



- a. Particulars of any misrepresentation, fraud ...”

In the amended plaint dated 12-10-2023 the particulars of fraud are not pleaded in one paragraph as is the practice. They are scattered all over the plaint. The best practice is to plead them in one paragraph. At paragraph 7, the Plaintiff avers that the late Peter Karanja Muniu was not a member of Mavoloni. At paragraph 12, it is pleaded that the Plaintiff discovered an irregularity in the registration records of the suit parcel when he visited Thika Lands office. The same thing is listed in paragraph 13. At paragraph 14, the Plaintiff for the 1st time avers that the suit land was fraudulently registered in the name of Peter Karanja Muniu without the Plaintiff's knowledge and consent. It is my finding that even though there was failure to plead fraud clearly and separately, the fact that it is pleaded in the mentioned paragraphs and the witness statement was sufficient disclosure by the Plaintiff to enable the Defendants adequately understand and respond to the allegations.

12. I find that fraud has been proved against the Defendants and the third parties to the standard set in the case of Ndolo vs. Ndolo. Civil Appeal No. 128 of 1995. This is because neither the Defendants nor the third party can tell how Andrew Makau Maingi acquired the suit land. There is no sale agreement, no payment of purchase price, no share certificate, and no listing on Mavoloni Company members register. Secondly, the tampering with the register and the inclusion of the 1st interested party as an owner of the land before she had attained the age of majority all smack of fraud. I find that fraud on the part of the Defendants has been proved to a standard higher than a balance of probabilities as set in the case of Ndolo vs Ndolo(Supra).
13. As for the third parties indemnifying the Defendant for selling land to her husband that did not belong to them, I find that are bound to indemnify her. This is because the third parties did not respond to the third party notice issued by the Defendant. It is provided as follows in Order 1 rule 17.

“If a person ...who is served as mentioned in rule 15 desires to dispute the Plaintiff's claim in the suit against the Defendant on whose behalf the notice has been given, or on his own liability to the Defendant, the third party must enter appearance in the suit on or before the date specified in the notice; and in default of his so doing he shall be deemed to admit the validity of the decree obtained against such Defendant...”

When the 1st third party testified herein in Court, she corroborated the Defendant's case that she is the one who sold the suit land to the Defendant. She was also unable to explain who sold the land to her father, Andrew Makau Maingi. In short she too has no defence against the claims by Plaintiff and the 1st Defendant.

14. For the above stated reasons, I enter judgment for the Plaintiff against the 1st Defendant as follows.
- a. I declare that L.R. No. Kakuzi/Ithanga/Gituamba Block 1/580, suit land, belongs to the Plaintiff Stephen Muasya Ndeleva.
- b. I declare that Peter Karanja Muniu, (deceased) and the registered owner of the land was fraudulently registered as owner.
- c. I do hereby direct the Land Registrar Murang'a to cancel the registration of Peter Karanja Muniu as the owner of the suit and to register the Plaintiff as the rightful owner.
- d. The Deputy Registrar of this Court to sign any instrument necessary to give effect to the decree herein, if necessary.
- e. The costs of the suit and interest to the Plaintiff.



- f. The third parties to indemnify the 1st Defendant for the loss of the suit land and the costs of the suit.

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 ;-

Mwangi Njonjo - Court Assistant

Plaintiff's Counsel - Mr Njogu

Defendant's and 3rd Parties Counsel – Mr Muturi Njoroge

