



Mwangi (Suing on Behalf of the Estate of Mbuthia Mwangi alias Gachiri Mbuthia) v Gachiri (Environment and Land Case 35'B' of 2023) [2026] KEELC 1014 (KLR) (18 February 2026) (Judgment)

Neutral citation: [2026] KEELC 1014 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 35'B' OF 2023**

JA MOGENI, J

FEBRUARY 18, 2026

BETWEEN

MBUTHIA MWANGI (SUING ON BEHALF OF THE ESTATE OF MBUTHIA MWANGI ALIAS GACHIRI MBUTHIA) PLAINTIFF

AND

PETER MBUTHIA GACHIRI DEFENDANT

JUDGMENT

1. The Plaintiff in this matter had filed a suit via Complaint dated 6/12/2021, seeking Judgment against the Defendant and declaratory orders for the property title number LR Escarpment(JET) Scheme/25 and a permanent injunction against the Defendant.
2. The Defendant in response filed a Defence and Counter-claim dated 17/02/2022.
3. This Court dismissed the Plaintiff's suit for want of prosecution and for want of attendance on 22/10/2024. The Plaintiff sought to have the dismissal set aside and the suit heard on merit vide the Notice of Motion dated 13/03/2025 filed in Court.
4. The Court granted the Plaintiff a conditional order dated 30/06/2025 setting aside the dismissal orders issued on 22/10/2024 and the Plaintiff was required to comply with Order 11 and pay thrown away costs before the next hearing which was set for 6/10/2025.
5. When the parties appeared in Court on 6/10/2025 the Plaintiff had not filed any Defence nor complied with the orders and so the Counsel for the Defendant advised the Court that since the parties had already canvassed the Counter-Claim and the Plaintiff/Defendant had also not filed any Defence to the Counter-claim the Court was requested to set Judgment date for the Counter-claim which is the instant date.



6. The Defendant in his Defence averred that LR No. Escarpment JET SCHEME/25 was registered in the name of his late father Gachiri Mbuthia who was a brother to Mwangi Mbuthia the deceased.
7. He further stated that there was no unanimous decision arrived at as alleged by the Plaintiff and any of the stated decision is void and not binding as the Title Deed for the parcel of the land was in the name of Gachiri Mbuthia. That in fact whereas there was a matter filed in the High Court being Nairobi Succession Cause No. 780 of 2006 seeking revocation, the suit was dismissed.
8. The Defendant denied all averments that are contained in the Plaint although the same has been dismissed for want of prosecution.
9. Together with the Defence the Defendant filed a Counter-claim.

Counter-claim

10. In the Counterclaim the Defendant contend that LR No. Escarpment Jet Scheme/25 was registered in the name of his late father Gachiri Mbuthia alias Geoffrey Gachiri Mbuthia and he obtained a Title Deed on 15/5/1978.
11. According to the Defendant this suit property belonged to their late grandfather Mbuthia Wanjau but it was registered in the Defendant's father's name to hold in trust for himself and his brothers namely;
 - a. Mwangi Mbuthia (deceased)
 - b. Gachiri Mbuthia (deceased)
 - c. Muchiri Mbuthia
12. It is when the late Gachiri Mbuthia passed on that the Defendant petitioned for Grant of Letters of Administration vide Succession Cause No. 42 of 2004 and the subject land was part of the assets of the deceased. The Defendant and his co-administrator his late mother had proposed to distribute the suit property to the three (3) brothers and the Grant was confirmed on 6/12/2005 and each brother received 1.533 acres.
13. That the land was subdivided into LR No Escarpment Jet Scheme/4181 to 4183 and each got their title deeds with the Defendant being registered owner of LR No. Escarpment Jet Scheme/4183 while the deceased land is LR No. Escarpment Jet Scheme/4181.
14. That sometime in 2008 the Plaintiff invaded the Defendants portion and put up his dwelling house by force and the Defendant wants the Plaintiff to vacate his parcel of land and he has issued him with notice of intention to sue. He prays for the following in the Counter-claim:
 - a. An order of Declaration that the Defendant is the legal and lawful owner of LR No Escarpment Jet Scheme/4183;
 - b. An order that the Plaintiff do remove his building and or developments from LR No Escarpment Jet Scheme/4183 in default orders of eviction of the Plaintiff, his servants and his agents be issued;
 - c. An order of permanent injunction restraining the Plaintiff, his servants or agents/siblings from entering, encroaching, farming, cultivating or in any adverse manner from interfering with LR No Escarpment Jet Scheme/4183;
 - d. That the OCS Lari Police Station do supervise the enforcement of the eviction;



- e. Mesne profits for the illegal entry since 2008 and costs of demolition of the Plaintiff's residences and structures;
- f. Costs of this suit;
- g. Any other or further relief.

Hearing of the Counter-Claim

15. At the hearing of the Counter-claim on 28/01/2025, Peter Mbuthia testified as PW1 - the claimant in the Counter-claim and adopted his witness statement dated 17/02/2022 as his evidence in chief. At the same time he adopted his List of Exhibits bearing 'PW-Exhibit 1-8'. He told the Court that his father's name is Gachiri Mbuthia but the Plaintiff's father was Mwangi Mbuthia who was the older brother to Gachiri Mbuthia.
16. He reiterated what he stated at paragraph 12 and added that at the conclusion of the Limuru Succession Cause 42 of 2004 LR No. Escarpment Jet Scheme/25 was shared as follows:
 - a. Family of Gachiri Mbuthia – 1.533 Acres
 - b. Late Mwangi Mbuthia- 1.533 Acres
 - c. Muchiri Mbuthia- 1.533 Acres
17. It was his testimony that when his brother Gachiri Mbuthia passed on Mbuthia Mwangi who is also the brother of the late Gachiri Mbuthia, started claiming that he was also known as Gachiri Mbuthia. However, according to PW1, this allegation is not true because two brothers born of the same mother cannot share similar names as naming in the Kikuyu custom has a sequence where names alternate on either side of the parent's relatives.
18. He testified that the suit property has never been under investigation of the DCIO Lari since the documentation on ownership is clear and the registered owner is the late Gachiri Mbuthia. That the suit filed by the Plaintiff is an attempt by him to stall the handing over and removal of his developments from the Defendant's portion of land and to buy more time.
19. PW1 thus prays for Judgment in terms of the Counter claim and eviction orders to issue and mesne profits to be awarded to him.
20. David Muchiri Mbuthia testified as PW2. He adopted his witness statement dated 17/02/2022 and averred that he is the uncle to the Plaintiff and Defendant who are his nephews since the late Mwangi Mbuthia father to the Plaintiff and the late Gachiri Mbuthia father to the Defendant were his elder brothers.
21. It was his testimony that the late Gachiri Mbuthia held LR No. Escarpment Jet Scheme/25 (now LR No Escarpment Jet Scheme/4181 to 4183) in trust for the late Mbuthia Wanjau. Further that the late Mwangi Mbuthia could not share a name with the late Gachiri Mbuthia which claim only came alive after the death of the late Gachiri Mbuthia on 1/12/1995. That the Kikuyu naming has a sequence where names alternate on either side of the parent's relatives. This fact was evidence in the Death Certificate and the Chief's letter filed by the Plaintiff showing that his name is Mwangi Mbuthia.
22. Further he testified that the National Identity Card of the Plaintiff bears the name Mwangi Mbuthia and the family name of his children bear his name.
23. Through Succession Cause Limuru Succession Cause 42 of 2004 the family of Gachiri finalized and distributed the particular asset as stated at paragraph 16 above. That after the subdivision the mutation



was registered and the attempt to move into the individual portions has been obstructed by the Plaintiff and his siblings.

24. PW2 told the Court that the Plaintiff constructed his residential house during the pendency of this suit in the hope that they can use it as a means to acquire the parcel of land belonging to the Defendant. He prays that the Plaintiff's suit be dismissed and that the Counter-claim be upheld with costs being awarded to the Defendant.
25. With that the Plaintiff in the Counter-claim closed their case. The Court gave directions on filing of submissions. The Plaintiff in the Counter-claim filed their submissions dated 4/03/2025.
26. The suit is unopposed and the evidence of the Plaintiff in the Counter claim is uncontroverted.
27. Even where a suit is undefended in a default Judgment hearing such as the current suit, the Plaintiff still has a mandatory obligation to provide evidence to prove their claim on a balance of probabilities.
28. The failure of a Plaintiff/Defendant in the Counter-claim (herein after 'Defendant') to contest the case does not automatically entitle the Plaintiff in the Counter claim (herein after 'Plaintiff') to Judgment; the Court must be satisfied that the Plaintiff has sufficiently proved their case.
29. In his submissions the Plaintiff has relied on the cases of *Prisila Jesondin Chumo vs Nelly Jebor* of [2016]eKLR, *Kiplangat Shelisheli Mutarakwa v Joseph Rotich Kones*, [2014]eKLR, *Derrick Kamau Wamatu v Felistus Nungari Njoroge* [2018]eKLR, *Simon Njuge Njoka vs Simon Gatimu Kanyi* (2007)eKLR, *Samuel Odhiambo Oludhe & 2 Others vs Jubilee Jumbo Hardware Limited & Another* [2018]eKLR and *Park Towers Ltd vs John Mithamo Njika & 7 Others* (2014) eKLR.
30. The gist of the submissions is that the Defendant/Plaintiff in the Counter-claim has proved his case on a balance of probability and is entitled to enjoy the rights over the parcel of land as clearly stipulated in Section 24 of the *Land Registration Act*. Further that he is entitled to damages since the Plaintiff/Defendant has trespassed on his suit property where he is the absolute proprietor. Further that since there is trespass the law does not require the Defendant/Plaintiff to prove any specific damage but he is entitled to compensation.

Analysis and Determination

31. The summary of the facts is that the Plaintiff filed this suit in 2021 claiming ownership of the suit property. The Defendant (Peter Mbuthia) who is the Plaintiff in the Counter claim filed a Defense and a Counter-claim, asserting that the land originally belonged to their grandfather, Mbuthia Wanjau, but was held in trust by the Defendant's father, Gachiri Mbuthia.
32. Following Gachiri's death, the land was distributed through a 2004 Succession Cause into three equal portions of 1.533 acres each for the three (3) branches of the family (Mwangi, Gachiri, and Muchiri). The Plaintiff/Defendant in the Counter claim (son of Mwangi) allegedly encroached upon the Defendant's/Plaintiff's in the Counter claim specific share (LR No. 4183) and built a house there by force. The Plaintiff's/Defendant's in the Counter claim, main suit was dismissed for lack of prosecution, leaving the Court to determine the Defendant's (now Plaintiff's) Counter-claim.
33. Based on the pleadings and evidence, the Court identifies the following key issues:
 - i. Whether the Defendant (Plaintiff in Counterclaim) is the lawful registered owner of LR No. Escarpment Jet Scheme/4183.
 - ii. Whether the original parcel was held in trust and subsequently subdivided legally through the succession process.



- iii. Whether the Plaintiff's (Defendant's in Counter claim) occupation of the land constitutes trespass and if an eviction order is warranted.
 - iv. Whether the Defendant (Plaintiff in the Counter-claim) proved his Counter-claim on a balance of probabilities, given that the suit was unopposed.
34. The copy of title that was presented for the suit property LR No. Escarpment Jet Scheme/4183 does indicate that Peter Mbuthia Gachiri was issued with the title on 23/11/2020 to hold in trust for the family since the land was allocated to the family of Gachiri Mbuthia who was a son of Mbuthia Wanjau the grandfather to the Plaintiff herein. The other title is LR No. Escarpment Jet Scheme/4182 issued to David Muchiri Mbuthia. The Plaintiff's father the late Mwangi Mbuthia was allocated LR No. Escarpment Jet Scheme/4181. The three as stated were brothers.
35. The Plaintiff's claim is based on proprietorship of the suit land and entitlement to the rights in respect to ownership of land. He has produced documentary evidence in form of a title deed over the suit land in his name as proof of ownership.
36. Also, from the evidence presented, the Court took judicial notice of Kikuyu customary naming patterns to dismiss the Plaintiff's claim that his father used two identical names of brothers, a concept supported by various High Court succession rulings regarding family lineage.
37. Section 24 of the [Land Registration Act](#) No 3 of 2012 states that 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 of the said Act provides that 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, but subject - to encumbrances charges or leases shown on the register and the overriding interests as stated in Section 28 of the Act.
38. Section 26 of the [Land Registration Act](#), 2012 provides;
- “(1) 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.”
39. The Court relied on the fact that the Defendant held a valid title following a Confirmed Grant of Letters of Administration.
40. The Courts are therefore mandated by Statute to consider a title document as prima facie evidence of ownership to land and conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above. In the present case the title produced by the Plaintiff shows that the



suit land is registered in his name. That position remains uncontroverted since the Counter-claim is undefended. The Defendant failed to file any pleadings in opposition to the claim either in person or through his Counsel on record.

41. It therefore follows that the Defendant/Plaintiff (in Counter claim) herein is the absolute owner of LR No. Escarpment Jet Scheme/4183 as shown since he also attached a mutation of the original scheme LR No. Escarpment Jet Scheme/25 and he shows the process followed to obtain his title deed.
42. I also note that the Plaintiff/Defendant who is the Defendant in the Counter-claim had annexed a Death Certificate and a letter from Gitithia Location Chief which indicates the name of the father of the Plaintiff as Mwangi Mbuthia not alias name as Gachiri Mbuthia. Therefore, the Defendant in the Counter claim does not own LR No. Escarpment Jet Scheme/4183 but it is owned by the Plaintiff in the Counter claim.
43. Among the rights to be enjoyed by a registered owner of any land is the right for peaceful and quiet enjoyment of the land he owns, in other words the rightful owner to the land has a right to possession, occupation and use of the suit land. The Plaintiff conducted evidence that shows that the Defendant has illegally taken possession of the suit land and is utilizing it for his own benefit, those actions of the Defendant amount to violation of the Plaintiff's right as guaranteed in *the Constitution* and must be stopped. It is the Plaintiff's case that the Defendant's occupation of his land is without his consent or legal basis. The Defendant though represented by Counsel on record failed to rebut the claim.
44. The dispute herein involves ownership of a parcel of land, and the specific prayers sought by the Plaintiff in the Counter-claim filed herein is for eviction orders to issue against the Defendant herein.
45. In *Karuru v. Njeri* (1968) EA 361 it was established that where evidence is undisputed and not cross-examined, the Court should generally accept it unless it is inherently incredible.
46. On the second issue, my perusal of the Green Card indicates that the file for the title was opened on 14/02/1975 and the land LR No. Escarpment Jet Scheme/25 measured 4.6 acres and the Land Certificate was registered in the name of Gachiri Mbuthia. This is the land upon which the issuance of the grant to Mary Njeri Gachiri and Peter Mbuthia Gachiri was subdivided as stated in paragraph 16.
47. There is no information on the Green Card to indicate that LR No. Escarpment Jet Scheme/25 was held in trust but there is information to indicate that it was divided and shared out as an asset of Gachiri Mbuthia (deceased) to his sons. There is therefore a constructive trust that can be inferred.
48. On the third issue, about the Plaintiff's occupation of LR No. Escarpment Jet Scheme/4183 one has to interrogate if the Plaintiff is the family that was referred to when the title document stated that the Peter Mbuthia Gachiri is holding in trust the suit property. This issue has not clearly been canvassed here.
49. On the fourth issue, from the information presented before this Court I would like to refer to the case of *Miller v. Minister of Pensions* [1947] 2 All ER 372 which denotes the balance probabilities standard. In that case it was decided that even in undefended cases, the claimant must prove their case is more probable than not.
50. I am persuaded from all that I have referred to above that the Plaintiff has proven his claim on a balance of probability and established that the Defendant has a legal right to the suit land based on the evidence placed before this Court, the Plaintiff's claim therefore succeeds.
51. The Court in *McPhail v Persons Unknown* [1973] Ch 447 (UK) affirmed that a legal owner is entitled to an immediate order for possession against a trespasser, and the Court has little discretion to suspend such an order.



52. The Plaintiff has averred that the Defendant has trespassed on his land and constructed a house. In Philip Ayaya Alushula v. Webb (2005) eKLR the Court confirmed that trespass is actionable without proof of damage. And in the case of Inverugie Investments Ltd v. Hackett [1995] 1 WLR 713 the Court established the user principle, meaning a trespasser must pay a reasonable fee for the use of the land they occupied, regardless of whether the owner would have actually rented it out.
53. By now it must be apparent to the Plaintiff in the Counter claim that the Defendant who is the Plaintiff in the Counter claim is the registered proprietor who holds all rights and privileges appurtenant thereto. This includes the right of ingress and egress, and the right to occupation and use. These rights are vested in the Defendant who is the Plaintiff in the Counter claim, not the Defendant.
54. Therefore, this being the case, and in light of the fact that the Defendant failed to prove his case, I allow the Counter-claim. Whereas I appreciate that the Defendants have been on the suit land for a considerable amount of time and they have my sympathy however I must be true to *the Constitution* and do what is right.
55. On the issue of whether there was trespass by the Defendant and if an Order of Permanent Injunction should Issue, this Honourable Court has held that the title by the Plaintiff has not been challenged. Further, the Plaintiff has proved that the Defendant trespassed into the Plaintiff's land, the next issue is whether as a result of the same; the Defendant should be permanently restrained.
56. To respond to this, the Principles on Injunction were established in the celebrated case of Giella v Cassman Brown & Co. Limited (1973) EA 358. I reiterate that the Plaintiff having produced a title document, I hold that the Plaintiff has indeed established a prima facie case and proved his case to the required threshold to warrant the grant of permanent injunctive orders sought. Consequently, I will proceed to find that the Defendant either by themselves, agents, servants and /or anyone claiming under the Defendant should be permanently restrained from entering, trespassing onto, cultivating, building structures thereon, interfering with and/or in any other manner dealing with the suit land.
57. On the issue of whether the Plaintiff is entitled to General Damages as sought. From the foregoing, it is clear that the Plaintiff is the absolute, rightful and indefeasible owner of the suit property herein, I have also held that the Defendant is guilty of encroaching and trespassing onto the Plaintiff's land. The said trespass denied the Plaintiff use, occupation, possession and enjoyment of said land. The Defendant on the other side has been using and enjoying the use of the land through the unlawful actions. It is this loss of use and all the incidental rights that have been infringed by the Defendant that the Plaintiff now seeks compensation for. The Plaintiff has submitted that a general damage award for Kesh 500,000 will be adequate.
58. I am aware that in many cases where a party claims for both mesne profits and damages for trespass the Court can only grant one. In saying so, I refer to the case of Maina Kabuchwa v Gachuma Gacheru (2018) eKLR where the Court held that:-
- “Where a party claims for both mesne profits and damages for trespass, the Court can only grant one.”
59. Therefore, since I am persuaded to grant general damages, I will decline to grant mesne profits.
60. The Defendant in the Counter claim did not rebut any of the evidence presented and so it is imperative that they allow the Plaintiff in the Counter-claim to enjoy his rights over the land.
61. The Defendant in the Counter-claim is thus given 90 days to give vacant possession and in default the Plaintiff is at liberty to execute the order for eviction. In this period of 90 days, the Defendant in the



Counter claim is directed not to undertake any construction, inter any body on the suit land, or in any other way negatively alter the character of the suit land. After lapse of the 90 days the Defendant shall be barred by an order of permanent injunction, restraining him from entering, being upon, utilizing, or in any other way interfering with the Plaintiff's quiet possession of the suit land. The Plaintiff will also get the costs of both the suit and the Counterclaim.

62. Given the foregoing the Court makes the following orders:

- a. A declaration is hereby issued that the Plaintiff in the Counter-claim is the legal and lawful owner of LR No Escarpment Jet Scheme/4183.
- b. The Court issues the order and directs the Defendant in the Counter-claim to remove within 90 days his building and or developments from LR No. Escarpment Jet Scheme/4183 in default orders of eviction of the Defendant in the Counter-claim, his servants and his agents be are hereby issued and the Defendant has liberty to apply for the eviction orders.
- c. An order of permanent injunction is hereby issued restraining the Defendant in the Counter claim, his servants or agents/siblings from entering, encroaching, farming, cultivating or in any adverse manner from interfering with LR Nos Escarpment Jet Scheme/4183.
- d. The OCS Lari Police Station is directed to supervise the enforcement of the eviction.
- e. The Court issues an award of Kesh 500,000 to the Plaintiff in the Counter claim as general damages.
- f. The Defendant in the Counter claim to cater for all demolition costs failure to which the Plaintiff in the Counter claim shall pay for the cost and recover from the Defendant in the Counter-claim.
- g. Costs of this suit and Counter-claim are awarded to the Plaintiff in the Counter-claim.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 18TH DAY OF FEBRUARY 2026.

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MOGENI J

JUDGE

In the presence of:-

..... for the Plaintiff

.....for Defendant

Melita..... Court Assistant

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MOGENI J

JUDGE

