



Mbiti alias Peter Nyaga Nicholas v Nyaga & 6 others (Environment and Land Appeal E014 of 2024) [2026] KEELC 969 (KLR) (4 February 2026) (Judgment)

Neutral citation: [2026] KEELC 969 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E014 OF 2024
AK BOR, J
FEBRUARY 4, 2026**

BETWEEN

PETER NYAGA MBITI ALIAS PETER NYAGA NICHASIO APPELLANT

AND

SIMON GICHOVI NYAGA 1ST RESPONDENT

MARTIN MBAKA 2ND RESPONDENT

SERAPHINO NDERI 3RD RESPONDENT

SELESTIANO NYAGA 4TH RESPONDENT

THE CHIEF LAND REGISTRAR 5TH RESPONDENT

THE HON ATTORNEY GENERAL 6TH RESPONDENT

LAND REGISTRAR MBEERE DISTRICT 7TH RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of Honourable N. Kihara, Senior Resident Magistrate (SRM), delivered on 4/4/2024 in Siakago ELC Case No. 19 of 2018, which the Appellant, Peter Nyaga Mbiti, instituted seeking a declaration that the registration of the 1st to 4th Respondents as proprietors of the land known as Nthawa/Riandu/1299 (the suit property) by the 5th and 6th Respondents and the title deeds issued to them were illegal and unprocedural and therefore null and void.
2. The Appellant sought to be declared as the lawful proprietor of the suit property and an order for the names of the 1st to 4th Respondents cancelled or deleted from the proprietorship section of register for the suit land and for his name to be reinstated and a title deed issued to him. Further, he sought an order for the 1st to 4th Respondents, their agents, family members or anyone acting under their instructions to



- be permanently restrained from entering, occupying or utilising the suit property or interfering with his occupation of the land as well as costs of the suit.
3. From the plaint, the Appellant's case was that he was the lawful proprietor of the suit property, which he claimed to have occupied since 1987 and to have extensively developed. He averred that upon conclusion of the land adjudication and demarcation in Riandu Adjudication Section within Embu County, he was registered as proprietor of the land on 9/1/1989. The registration was pursuant to the implementation of Minister's Land Appeal Case No. 224 of 1980, which was in respect of several parcels of land including the suit property that were owned by the Irimba Clan of the Mbeere tribe to which he belonged.
 4. Sometime in 1993, he discovered that the 1st to 4th Respondents colluded with the 5th and 6th Respondents and used forged documents to transfer the suit property to themselves. He argued that the transfer was illegal, fraudulent and unprocedural and was done without his knowledge. He pleaded particulars of fraud against the Respondents.
 5. The 1st, 2nd and 4th Respondents filed a defence where they averred that they were the absolute owners of the suit property, which they stated was allocated to them by the Irimba clan. They denied that the Appellant occupied the suit property. They averred that after land adjudication and demarcation of the Riandu section, they were issued with the adjudication record for parcel no. 1299 while the Appellant was issued the one for parcel 1301.
 6. The 5th, 6th and 7th Respondents filed a defence and denied any fraud on their part. The suit against the 3rd Respondent was withdrawn on 7/7/2021 following his death.
 7. At the hearing before the Learned Magistrate, the Appellant stated that he was the proprietor of parcel no. 1299 measuring approximately 3.4 hectares situated in Riandu Sub-location, Mbeere North District, Embu County where he has lived with his family since 1984. He averred that he was registered as the proprietor of the suit land in 1989 following the Minister's decision in Land Appeal Case No. 224 of 1980, which awarded the disputed parcels, including parcel 1299, to the Irimba Clan represented by Titima Menge.
 8. His name was included in the list of clan members as entitled to the suit property, which was duly forwarded by the District Commissioner (DC) to the Director of Land Adjudication and Settlement for implementation, following which he was registered as proprietor of parcel no. 1299. When he went to process the title deed in 2007, he discovered that his name was no longer reflected as proprietor of the land. The inquiries he made revealed that the 1st to 4th Respondents were registered as proprietors of the suit property on 6/12/1993, on the basis of another implementation letter. The Appellant contended that that registration was done without his knowledge or consent.
 9. He maintained that he had been in continuous occupation and had extensively developed the suit property since 1987 while the 1st to 4th Respondents resided on different land parcels. Further, that in the fraudulent transfer he was purportedly allocated parcel no. Nthawa/Riandu/1301, which belongs to his cousin Ngondi Ndegerie, now dead, and in which he had no interest. He maintained that no further implementation could lawfully be undertaken after the Minister's decision in Ministers Appeal Case No. 224 of 1980.
 10. He tendered in evidence copies of the register for land parcel 1299; letter dated 20/8/1986 by the Chief Nthawa Location; letter dated 20/7/1987 by the Director of Land Adjudication and Settlement; letter dated 23/4/1987 by the DC Embu then; letter dated 23/7/1987 by the Director of Land Adjudication then to the Chief Land Registrar and letter dated 22/4/1988 to the Chief land Registrar. He also produced copies of his letter dated 4/8/2024 to the Land Registrar Mbeere District; letter by the Land



Registrar Mbeere District on notice of intention to remove caution and the letter dated 18/10/1993 by the Chief Land Registrar.

11. The other documents which he produced included the allocation list; allocation by Committee dated 7/1/1993; proceedings in the Resident Magistrate Court Civil Suit No. 262 of 1992 later High Court Civil Suit No. 1615 of 1995 at Nairobi and now High Court Civil Suit No. 59 of 2008 and the ruling dated 26/1/1994 setting aside the award and judgment entered on 17/9/1993 as well as the pleadings in Resident Magistrate Court Civil Suit No. 262 of 1992.
12. The Appellant called Albert Ngondi Mati as a witness. He stated that he is a member of the Irimba Clan, and the registered proprietor of parcel no. Nthawa/Riandu/1125. He told the court that during the Land Adjudication and Demarcation, he was awarded parcel no. 1125 while the Appellant was awarded parcel no. 1299. He confirmed that Minister's Land Appeal Case No. 224 of 1980 determined that 20 members of the Irimba Clan were to be awarded their respective parcels of land, and a list of names was forwarded by the DC to the Director of Land Adjudication and Settlement vide the letter dated 23/4/1987. Pursuant to the implementation of that decision, the Appellant was registered as proprietor of parcel no. 1299 and he was registered as proprietor of parcel no. 1125.
13. He averred that Simon Gachovi Nyaga, Martin Mbaka, Seraphino Nderi and Selestino Nyaga connived to be registered as proprietors of parcel no. 1299. Further, that in Embu PMCC No. 262 of 1992, it was ordered that the list of names of Irimba Clan members, including his and the Appellant's, would be submitted to the Lands Office for use in the subdivision and distribution. He maintained that the transfer of parcel no. 1299 to the Respondents was fraudulent, as they reside on and utilize different parcels of land.
14. The 2nd Respondent's testimony was that he together with the 1st, 3rd and 4th Respondents were joint proprietors of parcel no. 1299 after the process of land adjudication and demarcation and which they claim was allocated to them by the Irimba Clan. He averred that there was an error when the records of adjudication were issued and the Appellant was issued two different records for parcel 1299 and 1301. That the Appellant's registration was challenged in Embu PMCC No. 262 of 1992 and it was ordered that Irimba Clan allocate land to the genuine land owners. He averred that the Appellant got parcel no. 1301, which he claims belongs to his cousin. He contended that that was not true because he is the registered owner of the land according to the official searches.
15. He produced copies of the title deed for parcel 1299, adjudication records for parcel 1299 and 1301, the proceedings in Minister's appeal no. 224 of 1980, authority to plead, decree in High Court Civil Suit No. 1615 of 1995 and the list of allocation dated 7/1/1993.
16. The Respondents relied on the testimony of Alfred Ngiri Marangi, who stated that he was Chairman of the Irimba Clan of Mbeere then and knew the 1st, 2nd, 4th Respondents as well as the 3rd Respondent (now dead). He averred that after adjudication, parcel nos. 1299 and 1301 were erroneously issued, and the Appellant rushed to have himself registered as the owner of both parcels. That through him as Chairman, the Irimba Clan resolved to challenge the Appellant's registration to prevent the Respondents from being rendered landless, which challenge succeeded in Embu PMCC No. 262 of 1992 and the Respondents were registered as proprietors of parcel no. 1299, while the Appellant retained parcel 1301 pursuant to that order.
17. He stated that the Appellant acted in bad faith in suing the Respondents instead of the Clan, as he donated land to his cousin and now seeks to acquire the Respondents' land. He asserted that parcel no. 1299 belonged to the Respondents who are the absolute proprietors, and that the family of the 3rd Respondent was still in occupation, and that the Appellant had never been in occupation as he



- claimed. He maintained that the Appellant's explanation that he lacked money to process his title from 1989 to 2014 was false and misleading.
18. The trial court in its judgment found that the Appellant had failed to establish any fraud or illegality on the part of the 1st to 4th Respondents in collusion with the 5th and 6th Respondents. It found that the Appellant had not proved his case on a balance of probabilities and dismissed the suit.
 19. The Appellant raised eight grounds of appeal in his memorandum of appeal dated 18/4/2024. He faulted the trial court for failing to find that he was the lawful proprietor of parcel no. 1299 acquired after the process of land adjudication and demarcation. He contended that the Learned Magistrate erred in not finding that there was an appeal to the Minister whose decision was then filed in the Magistrates Court vide Civil Case No. 269 of 1992 and that the court confirmed the decision of the Minister and awarded the suit land to the 1st and 3rd Respondents and land parcel 1301 to the Appellant. He faulted the court for finding that the decision of the Minister in appeal no. 224 of 1980 was overturned by the Resident Magistrates court in Embu Civil Case No. 262 of 1992.
 20. Further, he faulted the court for not finding that the Respondents and Alfred Ngiri Marangi filed Civil Case Number 262 of 1992 seeking to reallocate parcels of land that were already registered in the names of persons including the Appellant and that the Appellant whose land parcel 1299 was not involved in the case which deprived him of his land unlawfully and unprocedurally. He faulted the court for failing to find that the Order in Civil Case Number 262 of 1992 that awarded the suit land to the Respondents was set aside on 26/1/1994 since the Resident Magistrate's Court did not have jurisdiction to entertain the matter or to record the consent cancelling ownership of the land. He averred that there was no basis for the 1st to 3rd Respondents owning or being proprietors of the suit land.
 21. The Appellant urged that pursuant to Section 29 of the [Land Adjudication Act](#), the Minister's decision on appeal was final. He contended that the Learned Magistrate misconstrued the process under that Act, which has no provision for an appeal.
 22. He further faulted the court for not finding that his title to the suit land was unlawfully and unprocedurally cancelled and that that unlawful and unprocedural process did not confer on the 1st to 3rd Respondents any title. The trial court was also faulted for not finding that under the process of land adjudication and demarcation, there is no provision in law or requirement for filing the decision in an appeal to the Minister in the Magistrate's Court for adoption and further that there is no provision for appealing against a decision of the Minister for the decision is final.
 23. The Appellant prayed that the appeal be allowed, the judgment and decree of the trial court be set aside, and in its place orders be granted declaring the Respondents' registration as proprietors illegal, null and void, reinstating him as the registered proprietor of parcel no. 1299, and restraining the Respondents from interfering with his proprietary rights over the land. He also prayed for costs of the appeal.
 24. The court directed parties to file and exchange written submissions, which it has considered. The Appellant submitted that the title vested upon the 1st to 4th Respondents is vitiated by the fact that the orders issued on 16/2/1992, pursuant to which the said Respondents were registered as proprietors of the suit property were set aside by the same court on 26/1/1994 after the court reviewed its earlier decision on the basis that it did not have jurisdiction in the matter. Consequently, he submitted that the 1st to 4th Respondents acquired the suit land in a process that was null and void which did not confer title on them. He submitted that he had proved his case on a balance of probabilities and the trial court erred in dismissing his claim.
 25. The 1st, 2nd and 3rd Respondents submitted that the suit land was registered in their names by their clan representatives and that the matter was litigated and finalized. They submitted that the Appellant



failed to prove the fraud he alleged against them. They averred that litigating on the same matter is an abuse of the court process and an infringement of their right of quiet possession of their property.

26. The 4th, 5th and 6th Respondents submitted that the trial court reached a sound conclusion and that the suit land was allocated to the 1st to 3rd Respondents by their clan representatives. They averred that the clan officials distributed the land to their members and the Respondents were awarded the suit property. That the issue has been litigated in Nairobi High Court Civil Suit No. 1615 of 1995 and that the clan and the High Court awarded the land to the Respondents. They urged that the appeal should be dismissed.
27. The issue for determination is whether the appeal has merit, put differently; whether the Appellant proved his claim before the trial court and deserved the reliefs he sought in the suit. The Appellant's case is that when the land adjudication and demarcation process was concluded in Riandu Adjudication Section within Embu County, he was registered as proprietor of the land on 9/1/1989. That this followed the implementation of Minister's Land Appeal Case No. 224 of 1980, which was in respect of several parcels of land including the suit property that were owned by the Irimba Clan of the Mbeere tribe to which he belonged. The 1st, 2nd and 4th Respondents' position is that the suit property was allocated to them by the Irimba clan. That after land adjudication and demarcation of the Riandu section, they were issued with the adjudication record for parcel no. 1299 while the Appellant was issued the one for parcel 1301.
28. The Appellant contended that he was registered as the proprietor of the suit land in 1989 following the Minister's decision in Land Appeal Case No. 224 of 1980, which awarded the disputed parcels. That his name was in the list of clan members that was forwarded by the DC to the Director of Land Adjudication and Settlement for implementation, following which he was registered as proprietor of parcel no. 1299. He claimed that he could not process the title deed until 2007, and that is when he discovered that his name was no longer reflected as proprietor of the land. He learned that the 1st to 4th Respondents were registered as proprietors of the suit property on 6/12/1993, on the basis of another implementation letter.
29. Alfred Ngiri Marangi, former Chairman of the Irimba Clan of Mbeere told the court that after adjudication, parcel nos. 1299 and 1301 were erroneously issued, and that the Irimba Clan resolved to challenge the Appellant's registration through Embu PMCC No. 262 of 1992 to prevent the Respondents from being rendered landless. That this resulted in the Respondents being registered as proprietors of parcel no. 1299, while the Appellant retained parcel 1301. Looking at the plaint in Embu PMCC No. 262 of 1992, Alfred Marangi sued Nyaga Titima but not the Appellant.
30. By then, the register for parcel no. 1299 had been opened and the Appellant's name had been registered as entry number 3 on 9/1/1989, before that suit was filed. The Appellant ought to have been made a party to that suit since he was already registered as proprietor of the suit property. The decree issued on 26/3/1999 pursuant to the consent reached by Alfred Marangi and Nyaga Titima for the reallocation of land including the suit land affected the Appellant's registration as proprietor of the suit land without his involvement and did not take into account the fact that the Appellant was already living on the land.
31. The Respondents denied that the Appellant occupied the suit property. The Appellant's case is that he has lived with his family since 1987 on parcel number 1299. He asserted that he had developed the suit property since 1987 and that the 1st to 4th Respondents resided on different parcels of land. He was emphatic that Nthawa/Riandu/1301, which the Respondents claim was allocated to him belongs to his cousin Ngondi Ndegerie. The Appellant's assertion that the Respondents resided on different parcels of land was not controverted.



32. Section 29 of the *Land Adjudication Act* provides that the decision of the Minister on an appeal was final. When an appeals had been determined, the Director of Land Adjudication was mandated by law to alter the duplicate adjudication register to conform with the determinations, certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who would alter the adjudication register accordingly.
33. The order in Civil Case Number 262 of 1992, which is the basis upon which the 1st to 4th Respondents were registered as the proprietors of the suit land was set aside on 26/1/1994 since the Resident Magistrate's Court did not have jurisdiction to entertain the matter or to record the consent cancelling ownership of the land. The court agrees with the Appellant's submission that after the Minister's decision in Ministers Appeal Case No. 224 of 1980, there was no legal basis for further implementation. The decision of the Minister in appeal no. 224 of 1980 could not have been lawfully overturned by the Resident Magistrates court in Embu Civil Case No. 262 of 1992.
34. This court could not find the document supporting the position that decision of the Minister in appeal no. 224 of 1980 was overturned by the Resident Magistrates court in Embu Civil Case No. 262 of 1992. What the court can decipher from the proceedings before the Resident Magistrate on 26/1/1994, the Learned Magistrate found that the orders made on 16/2/92 were a nullity and set them aside. From the submissions made before the court on that day, Mr. Kibe told the court that on 16/2/92 the parties appeared before the DM II Prof Wandere and entered into a consent for the matter to be referred to the Chief of Ntawa Location for purposes of overseeing the allocation of the land in question to members of Irimba Clan.
35. The appeal is allowed. The judgment of Hon. N. Kahara, SRM delivered on 4/4/2024 in Siakago PM ELC Case No. 19 of 2018 is set aside and substituted by an order granting reliefs (a) to (c) sought in the plaint dated 28/10/2014.
36. The Appellant is awarded the costs of the appeal and the suit before the trial court.

DELIVERED VIRTUALLY AT BUNGOMA THIS 4TH DAY OF FEBRUARY 2026.

K. BOR

JUDGE

In the presence of: -

Mr. Duncan Okwaro for the Appellant

Mr. Gichuki Momanyi for the Respondents

