

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ELCOS NO E021 OF 2025

JOSEPH MACHARIA
NDIRANGU.....PLAINTIFF

VERSUS

GRACE NJERI NJOROGE.....1ST
DEFENDANT

THE LAND REGISTRAR NYANDARUA COUNTY...2ND
DEFENDANT

JUDGMENT

This is a suit where the Plaintiff has sued his estranged wife, Grace Njeri Njoroge and the Land Registrar, Nyandarua asking the Court to give an Order for: -

- a. A Declaration that the Defendants' act of registering the Title to the parcel of Land NYANDARUA/OL-JORO-OROK SALIENT/ 10859 situate in Nyandarua County in the joint names of himself, the Plaintiff and his minor son, Peter Ndirangu aged almost 8 years now having been born on 29/3/2019 is illegal.
- b. A Declaration that the Plaintiff is the sole legal owner of the suit parcel of land.

- c. An order to the 2nd Defendant for the cancellation of the joint registration.
- d. A Declaration that the 2nd Defendant rectifies the register so that it reads the proprietor to be the Plaintiff only.
- e. An Order for a permanent injunction restraining the 1st Defendant by herself, her servants, employees or agents from dealing in whatever way with the property land Ref. No. NYANDARUA/OL-JORO-OROK SALIENT/10859.
- f. Costs and interest incidental to the suit.
- g. Any other or further relief that this Court may deem appropriate to award.

None of the Defendants entered appearance nor filed Defence. The Plaintiff recorded a Statement which was adopted as his evidence in chief adduced on 20/1/2026 where he testified that he lawfully acquired the suit property having bought it with his hard-earned cash while working in Japan as a professional athlete. He also testified that he is the biological father of the minor, Peter Ndirangu Macharia born on 29/3/2019. He said that during “a separation” with his former spouse, Grace Njeri Njoroge, the 1st Defendant, his former spouse registered the parcel of land in his

name and that of his minor son without his knowledge or consent. This was done to frustrate his ability to deal with the land, despite having acquired it solely when working in Japan as an athlete. Now that he has returned to Kenya, he wishes to sell the land to raise funds for both his welfare and that of the child. He said that the registration of the property in the name of the minor is a legal obstacle, since the minor cannot legally transact, and no guardianship order exists permitting any such transaction on the latter's behalf.

He finally testified that it is in the best interest of the minor for the property to revert to the Plaintiff's name to ensure it is properly managed and for him to put it to economic use.

After the Defendant failed to enter Appearance, the Plaintiff sought for interlocutory Judgment on 13/10/2025 and before writing this Judgement I invited the Plaintiff's parents and chief for a Report/ Recommendation on the Plaintiff's forthrightness and their opinion on his ability to stand on his word. They all gave a good Report culminating in the letter dated 4/2/2026 from his area chief, Paul Githae Mariata, acting chief, Weru location where he says that the Plaintiff used to take beer but currently he

stopped and that he is at his parent's home assisting in domestic chores and that his character is good. The area Assistant Chief said he did not have any objection to the Plaintiff being permitted to sell the suit property. However, although drinking is not a crime nor is it always a case of irresponsibility and/or being senseless, the chief does not tell us when the Plaintiff stopped drinking and why. Could it be because he had no money to drink anymore? He also doesn't tell us how he used to behave when he was drinking. The father came to Court and denied that his son has ever taken alcohol but the mother said he used to drink. The Plaintiff himself denied. And as I have said above, some of the people who drink are known to be so industrious and very responsible and I would not use this to demonize the Plaintiff at all. However, the Plaintiff has not shown how he acquired this property, whether he bought it and if so, was it bought by himself alone or with assistance from the 1st Defendant. He has not attached a copy of the sale agreement yet there is nothing to show who the property belonged to before it was transferred to him and his son. Where is the abstract of Title to show the land belonged to him alone before 29/1/2025 when it was registered in their joint names or a copy of the previous Title Deed.

He filed this suit with the prayers that he be allowed to dispose of the property and that his estranged wife, 1st Defendant be restrained from dealing with the property. This sparks of suspicion that there could be a reason for the desire to dispose of the suit land, other than what is explicated by the Plaintiff.

Secondly, the Plaintiff says that the source of money that he used as the purchase price for the property came from his athletic activities in Japan. There is no evidence that he ever went to Japan for the same e.g. by way of stamped travel documents such as a passport. From the photographs he has attached in his list of Documents you can't tell whether the races he is doing are in Japan or elsewhere.

Further, the Plaintiff has not indicated what his former wife was doing when he was busy looking for money. Could she have been taking care of their children? Could she also have contributed towards the purchase of the property, thus making it matrimonial.

I also wish to say that particulars of fraud must not only be properly pleaded but also proved.

The issues of fraud have not been properly particularized and in his evidence, the Plaintiff did not explain what documents were falsified hence making the transaction illegal.

But more importantly, the joint proprietor of the suit land is a minor. Who speaks for the minor in this case? Who other than the Court will protect the interests of the 8-year-old child in the suit property? The minor has a right to own a property such as this one regardless of how the right was crystalized. I do not agree with the Plaintiff when he says that it is in the best interest of the minor to ensure that the property reverts to the father's name to ensure it is properly managed and for it to be put into economic use. The minor, Peter Ndirangu Macharia is unable to defend his rights. Regardless of how they accrued, he has constitutional rights over the property under Article 40 of the Constitution. Article 40 of the Constitution of Kenya, 2010 provides that:

(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property —

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

Under Article 21 (3) of the Constitution of Kenya, 2010,

All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

Under Article 27 (1) of the Constitution of Kenya, 2010, every person is equal before the law and has the right to equal protection and equal benefit of the law.

Under Article 53 (2) of the Constitution of Kenya, 2010, a child's best interests are of paramount importance in every matter concerning a child.

Article 260 of the Constitution of Kenya, 2010 defines a child as an individual who has not attained the age of 18 years.

Under Article 60 (1) of the Constitution of Kenya, 2010 on Principles of Land Policy, land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with:

(b) security of land rights.

(f) elimination of gender discrimination in law, customs and practices related to land and property in land.

Such customs and practices include those that bar children from owning land.

Under Article 68 of the Constitution of Kenya, 2010, parliament shall: -

(c) enact legislation.

(iii) to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on termination of marriage.

Under section 8 (1) of the Children's Act, 2022: -

In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law, Administrative authorities or Legislative bodies: -

(a) The best interests of the child shall be the primary consideration.

(2) all judicial and administrative institutions, and all persons acting in the name of such institutions (like this Court) when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a cause of action calculated to-

(a) safeguard and promote the rights and welfare of the child.

(b) Conserve and promote the welfare of the child.

(3) In any matters affecting a child, the child shall be accorded an

opportunity to express their opinion and that opinion shall be taken into account in appropriate cases having regard to the child's age and degree of maturity.

I am not sure that Peter is able to express his opinion on the sale of the land in Question, that is jointly owned by his father and himself and in this case, the Court shall ensure that his interests over the suit land are protected.

Under Section 31 (2) (c) (v) of the children's Act, parental duties of a parent include the duty to receive, recover and otherwise deal with the property of the child for the benefit, and in the best interest of the child.

The Kenyan legal framework also includes the Convention on the Rights of the Child, to which Kenya is a signatory. According to Article 3.1 of the Convention on the Rights of the Child, the best interests of the child shall be a primary consideration in all actions directly or indirectly concerning them, both in the public and the private sphere. Article 3.2, in turn, obliges States to undertake all legislative and administrative measures to ensure the protection and care necessary for children's wellbeing.

The South African Law Commission on Review of the Child Care Act, gives an overview of the best interests of Children standard. The Parliamentary Assembly in the mentioned Article is convinced that the wishes, and feelings of children should be considered in judicial and administrative proceedings, in matters affecting them. The Article gives the provisions of section 28(2) and section 7 of the Children's Act of South Africa. The commission in the Article is convinced of the need to include guidance to the courts as to what exactly it means when it said that a particular Decision must be in the interest of a particular child. The Parliamentary Assembly, in promoting the participation by Children in Decisions affecting them, gives an overview of a child's right to participate in Decisions affecting children.

The best interest of the child standard is also enshrined in article 4 of the African Charter on the Rights and Welfare of the Child.

Children's rights in Australia are primarily governed by the UN Convention on the Rights of the Child, which includes the right to safety, education, health, and participation.

In this case it is expected that the minor is not aware of what is happening to his property and the same must be protected until he reaches the age of majority, 10 years from now.

I must say that what is happening now seems to be pull and push between the Plaintiff and the 1st Defendant but the unfortunate state of affairs the two find themselves in should not affect the rights of their minor son. I believe that there must have been a consensus of both parents for this property to change hands and be registered in the joint names of father and son which I must say was Solomonic.

The people who made the Decision meant well for the entire family. The same must have been for a good reason and so should remain. But I must order the Plaintiff to continue paying the requisite fees for the property such as rates and rents and not to neglect it so that there is an excuse to have it sold through the back door. For the benefit of doubt, the prayers in the Suit dated 20/6/2025 are disallowed. Since the Defendants never participated in the suit, I make no orders for costs. The Court has spoken.

**Ruling dated, signed and delivered at Nyandarua this 26th
Day of February 2026.**

**MUGO KAMAU
JUDGE**

In the presence of:

C/A Samson.

Plaintiff..... Ms. Bundi.

1st Defendant.....N/A.

2nd Defendant.....N/A.