



**Namu v Ngoroi (Environment and Land Case 175 of 2014)  
[2026] KEELC 966 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 966 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND CASE 175 OF 2014**

**AK BOR, J**

**FEBRUARY 4, 2026**

**BETWEEN**

**MARY ROSE NAMU ..... PLAINTIFF**

**AND**

**JANE MUTHONI NGOROI ..... DEFENDANT**

**JUDGMENT**

1. What falls for determination in this judgement is the Defendant's counterclaim. The Plaintiff's suit was dismissed on 5/5/2025. In the counterclaim dated 16/7/2008, the Defendant averred that Embu Municipality/1112/988 located within Embu town was part of plot number 40 Shauri Yako that the Embu Municipal Council allocated to the Defendant's late husband, Ngoroi Mita in 1974. The Defendant claimed that she had been in continuous and uninterrupted possession of the suit land since 1988 and that she had therefore acquired title over the land through adverse possession.
2. Her claim is that the Plaintiff fraudulently acquired title over the suit land in 1989. She set out particulars of fraud against the Plaintiff as acquiring a plot owned by Embu Municipal Council from the County Council of Embu; fraudulently acquiring title from the Commissioner of Lands for a plot which lay within the jurisdiction of the Embu Municipal Council and was therefore trust land without the consent of the Council; and acquiring title over a plot that was already occupied by the Defendant without her consent.
3. The Defendant averred that the Plaintiff was a trespasser who had threatened her with eviction. She sought a declaration that she is the legal owner of Embu Municipality/988 (the suit land). She sought a permanent injunction to restrain the Plaintiff or her agents from entering, trespassing, evicting her or in any manner interfering with her ownership and possession of the suit land. In addition, she sought to have the title over Embu Municipality/988 rectified and cancelled and to be registered as lessee of that parcel of land. She also sought costs and interest together with any other relief that the court may deem just to grant.



4. In the defence to the counterclaim dated 16/3/2009, the Plaintiff 's late husband denied the Defendant's claim and averred that the suit property was allocated to him by the County Council of Embu following which a certificate of lease was issued to him on 1/11/1994. She added that the County Council of Embu had licensed the late Ngoroi Mwitia to trade on part of the suit land and that the licences were not renewed after a certificate of lease was issued to him. He added that the Council had on several occasions issued notices to the illegal occupants of the suit land to vacate to no avail. The Plaintiff urged the court to dismiss the counterclaim.
5. Jane Muthoni Ngoroi gave evidence during the trial. She told the court that she was the legal representative of the Estate of Ngoroi Mita. That her late husband, Ngoroi Mita was allocated plot number 163 Shauri on 2/11/1972 by the Municipal Council on a permanent basis. She stated that it was the current suit land even though it had been encroached partially by allottees of the Commissioner of Lands, Nairobi. That she and her husband applied for various business permits for the installation of posho mills, electricity and complied with public health requirements in the 1980s and 1990s as required by the local authority. She stated that they had been running businesses on the suit land, which were fully sanctioned by the local authority.
6. She stated that the Plaintiff instituted a suit against her in 2008. She instituted Embu HCCC No. 78 of 2007 (OS) which was consolidated with the current suit. She also instituted Embu CMCCC No. 82 of 2009 but the orders that were issued in her favour, were of no effect.
7. She explained that the allottee of the suit land, that is the Plaintiff's husband, was a powerful Permanent Secretary in the second regime. That the second allottee was a District Commissioner (DC) who rose to the rank of Permanent Secretary in the Ministry of Interior and Internal Security.
8. She told the court that she had occupied the suit land and had been paying rates as required by the Municipal Council and the current County Government. She relied on various documents and urged that the suit land was lawfully hers and not the Plaintiff who was only allocated land on paper.
9. She was emphatic that her allocation was not revoked by the allocating authority and that the allotment by the Commissioner of Lands to the Plaintiff was unprocedural and illegal because the municipality revoked and annulled that allocation. She added that the Municipal Council of Embu did not surrender the suit land to the Commissioner of Lands for allocation.
10. She produced copies of the letters dated 5/3/1979 regarding an application for additional business Shauri Yako plot number 40, which granted Ngoroi Mita permission to install a posho mill on the suit land. The letter dated 25/5/1976 she produced was written by the East African Power and Company Lighting Limited on installation of electricity supply to the furniture workshop on plot T/2 Embu Municipality. The letter dated 8/12/1978 addressed to Ngoroi Mita from the Municipal Council of Embu indicated that the records did not show that he had a plot in Shauri Yako but that he owned plot number T 40, which was supposed to be a timberyard. She produced the public health inspection report dated 26/2/1982 in relation to plot number T9 or 40 Shauri Yako workshop. She annexed other applications for business licence dated 30/9/1980, health inspector's certificate dated 15/6/1981 and application for permit dated 17/2/1982.
11. The other documents which the Defendant produced included the demand note from Embu Water and Sanitation Company Limited due on 21/12/2006, single business permit issued to Njeru Metha which was to expire on 31/12/2007, single business permit issued to Henry Mugambi as well as the minutes of the Ordinary Meeting of the Town Planning Works and Housing Committee held on 17/6/1993, page 10 of which dealt with applications for various types of plots in Embu. It was resolved at that meeting that all direct allocation of plots in Embu Municipality by the Commissioner of Lands



- without the prior approval of the council would be rejected and the Council would consider them null and void. Arrangements were to be made for the council to visit Commissioner of Lands or Minister for Local Government to express the council's dissatisfaction with the land allocation in the municipality.
12. The Defendant also produced a copy of the land register for Embu Municipality 1112/988 indicating that a lease was issued to David Namu Njagi on 7/10/1994 with the lessor being the County Council of Embu. She produced minutes and a letter from the Ministry of Housing touching on the Slum Upgrading Program for Shauri Yako slums together with the alist of plot owners in Shauri Yako. The certificates of death with she produced is not legible. She produced orders issued by the court and ruling delivered on 2/2/2012 in Embu HCC No. 66 of 2008 as well as the ruling in HCC No. 175 of 2014 delivered on 1/4/2016.
  13. On cross-examination, she stated that she had been paying rates. One of the documents she produced gave the plot number as Shauri No. 163. However she maintained that what she is claiming is plot number 40 2T. She argued that they were allocated the land and that her letter of allotment got burnt. She did not have a lease.
  14. She argued that her counterclaim related to Embu Municipality/Block 112/988. She reiterated that the allocation of the suit land to the Plaintiff was done fraudulently and that the land was hers it having been allocated to them in 1975. Her husband died in 1979. After his death, people went to the plot claiming that the land had been allocated to them. Her documents mentioned the plot number as T/ plot number 40. She did not know where plot number 988 was. Her own plot was in Shauri Yako. She stated that the plot was snatched from her and she was arrested and kept in a police station after her husband died. Her husband's plot was number 163. She stated that they had lived on the suit land and were paying rates.
  15. The Plaintiff gave evidence. Her late husband, David Namu owned Embu Municipality 1112/988. He followed due process when he was allocated the land. He applied for allocation of a plot in Embu Municipality through the Commissioner of Lands. His application was approved. Vide the letter dated 8/1/1988 addressed to David Namu, the Municipal Council of Embu requested him to pay stand premium and rent for the plot allocated to him. He made the payment which the Council acknowledged vide the letter dated 27/1/1989.
  16. The plot was surveyed and became plot number 1112/988. Prior to 3/4/1990, it did not have a defined boundary. David Namu was registered as the proprietor of the suit land and a certificate of lease was issued to him on 1/11/1994. He issued a notice to the occupants of his plot to vacate the land. Most of the occupants gave him vacant possession but the Defendant declined to do so. David Namu was forced to engage the Municipal Council of Embu as the lessor to evict the Defendant.
  17. He wrote to the Provincial Commissioner on 9/4/1996 as the Chairman of the Land Allocation Committee seeking his assistance in evicting the Defendant from the land. He wrote a letter to the Municipal Council on 24/11/2006 requesting the Council to relocate the illegal occupants on his land to enable him develop it. The Council wrote the letter dated 1/12/2006 to all the occupants of the suit land demanding vacant possession because its owner intended to develop the land. On 25/1/2008, David Namu issued a demand letter to the Defendant through his advocate. The Municipal Council of Embu wrote to Embu Water and Sewerage Company and Kenya Power and Lighting Company Limiting clarifying that David Namu was the registered proprietor of the suit land.
  18. That despite being served with several eviction notices, the Defendant refused to give vacant possession of the Plaintiff's late husband's property. The Plaintiff stated that they continued paying rent and rates to the Municipal Council of Embu to avoid losing the plot.



19. The Plaintiff denied that the Defendant's occupation of the suit plot was open, notorious and uninterrupted. She stated that the Defendant sued the Municipal Council in RMCCC No. 92 of 1988 seeking allocation of an alternative plot when she was served with an eviction notice. She maintained that the Defendant had not acquired title to the suit land through adverse possession and added that her occupation had not been continuous for over 12 years as she claimed. She pointed out that the Defendant had been issued notices to vacate the land since 1996 and that she was occupying the suit land illegally. She maintained that her husband did not acquire the suit land fraudulently. She added that the Defendant's claim for adverse possession was an admission that her husband was the legal owner of the suit land.
20. The Plaintiff produced the rates demand note dated 8/2/2011 issued in her husband's name and limited grant of letters of administration ad litem. She produced a letter dated 30/12/2009 from the Municipal Council of Embu to KPLC clarifying that David Namu Njagi owned plot number 1112/988 Embu Municipality and a letter of the same date addressed to Embu Water and Sewerage Company Limited. She also produced a copy of the letter of allotment issued to David Namu dated 17/12/1987.
21. The letter dated 9/12/1986 from the Office of the President addressed to the Commissioner of Lands indicated that the President had approved the request by Mr. David N. Namu for allocation of a commercial plot in Embu Municipality. The Municipal Council of Embu wrote to David Namu on 30/1/1988 requesting him to remit stand premium and rent following the allocation. The Municipal Council of Embu wrote to him on 27/1/1989 requesting him to make payment while apologizing for sending his letters to the wrong address.
22. The Plaintiff produced a copy of the receipts issued by the Municipal Council of Embu on 25/1/1989 on account of the stand premium paid. She also produced letters dated 2/1/1990 and 27/3/1990 regarding the survey of land as well a copy of the cheque dated 27/3/1990 on account of rates demanded. The Municipal Council of Embu acknowledged receipt of the payment vide the letter dated 3/4/1990. She also produced several receipts issued by the Ministry of Lands together with the approved building plans and a certificate of lease.
23. She also produced letters written by David Namu on 9/4/1996 and 24/11/2006 seeking assistance in getting vacant possession of the suit land. She also produced a copy of the letter dated 1/12/2006 vide which the Municipal Council of Embu requested the occupants of plot number 988 to vacate the premises to pave way for the intended development. The letter confirmed that Mr. David Namu Njagi was the owner of the land and intended to develop it and the Council was therefore warning the occupants that it would not licence them for any business on the plot in 2007. She also produced a copy of the demand letter dated 25/1/2008.
24. On cross-examination, she stated that she could not remember if there was a survey plan. According to her the land was vacant. She had not met the Defendant on the suit land.
25. The court directed parties to file and exchange written submissions, which it has considered. The Defendant submitted that the letter dated 5/10/1992 from the Ministry of Local Government stated that the Council plot, which had been given to her was taken away without giving her an alternative plot. She added that the Minister for Local Government had approved the direct allocation of an alternative residential plot within Embu Municipality for Mrs Ngoroi. She submitted that the Municipal Council acknowledged her as the owner by virtue of the fact that the letters to her late husband whom she succeeded continued to be addressed to her up to 2007 when she filed suit. She maintained that the letter dated 5/10/1992 emanated from the Municipal Council of Embu which allocated the plot to her.



26. In her view, the problem was the conflict between the allocation of the plot numbers, difference in the description of the land and the allocating regimes of the same land. That on one hand was the Municipal Council of Embu and on the other hand was the Commissioner of Lands, Nairobi. This led to conflicting registration by different allocating regimes.
27. The Defendant argued that she had occupied the plot with the authority of the Municipal Council of Embu, which currently is the County Government of Embu. She urged that her evidence had previously been analysed by Lady Justice Ong'udi in her ruling. She added that she paid rates in 2009 to the allocating authority. She urged that she and her late husband were allocated the suit property in 1974 and that their allotment was valid. Further, that they had developed the plot extensively with the approvals of the local authorities which allocated them the suit land.
28. She pointed out that the Plaintiff's documents elucidated different numbering for the plot. The Defendant's plot was number 40, Shauri, Embu Municipality. She also relied on the minutes of the meeting held on 17/6/1993 vide which the Embu Municipal Council Committee resolved that all direct allocation of plots in the Embu Municipality made by the Commissioner of Lands without the Council's approval would be rejected. She maintained that that resolution was never challenged. The Defendant submitted that the Plaintiff failed to join the Embu Municipality or County Government of Embu to the suit as the entity which allocated the suit land to the Defendant and which also issued licences and demands for payment of rent.
29. Further, the Defendant submitted that the Plaintiff had not tendered a surrender of lease of the property by the Embu Municipal Council to the Commissioner of Lands for the issuance of leases on its property. She added that the Plaintiff did not produce a certified survey plan from the Land Registrar to indicate the property in question. Additionally, that no documents from the Department of Survey and Ministry of Lands were produced to indicate the exact location of the suit plot. The Defendant concluded that the Plaintiff did not know where her plot was situated and that the allocation of the suit land to her was fraudulent, illegal and highly irregular. She argued that this was a classic case of illegal land appropriation by the Commissioner of Lands.
30. The Defendant argued that the question of who owns and occupies which parcels should be determined by Commissioner of Lands and the Embu Municipality, who the Plaintiff ought to have joined to the suit. The Defendant argued that she preceded the Plaintiff in her occupation, use and development of the suit land legally and procedurally. She concluded that the Plaintiff was a Johnny-come-lately with questionable documents that were incomplete and not authentic and was determined to dispossess the Defendant of her land.
31. The Plaintiff submitted that the Defendant alleged that the suit land Embu Municipality 1112/988 was the same as plot number 40 Shauri Yako Market yet she did not tender evidence to support that allegation. That the Defendant assumed the role of a County Surveyor without any documentary evidence to support her claim. She pointed out that the Defendant failed to produce any document to show that she was allocated the suit land by the Municipal Council or receipts for payment of rates unlike the Plaintiff who produced the letter of allotment and certificate of lease. She added that despite claiming that the suit property was plot 40 Shauri Market, the Defendant failed to prove any nexus between the two parcels of land.
32. Further, that the Defendant did not produce evidence of payment of rates. She also failed to prove the particulars of fraud pleaded. The Plaintiff argued the Defendant should have sued the County Government of Embu as the lessor of the suit property to shed light on the alleged double allocation. Further that she did not call a witness from the County Government to explain if the suit property



- had two numbers. She maintained that the suit land only had one number being Embu Municipality 1112/988.
33. The Plaintiff submitted that the Municipal Council of Embu did not allocate any plot to the Defendant and relied on the letter dated 8/12/1978 from the Municipal Council of Embu addressed to the Defendant.
  34. The Plaintiff submitted that the prayers which the Defendant seeks are to be implemented by a lessor who is not a party to the suit. She contended that it was critical to include the Municipal Council of Embu as a party to the suit. The Plaintiff pointed out that the documents which the Defendant relied on as evidence of payment of rates were in respect of plot number 163 Shauri and that the Defendant failed to show the nexus between the suit land, plot 40 and 163 Shauri Yako.
  35. The Plaintiff relied on Section 107 of the *Evidence Act* and urged that the Defendant failed to discharge the evidentiary and legal burdens of proof. She pointed out that it was the Defendant's duty to join the Municipal Council to the suit to support her claim that she was allocated the suit property. She urged the court to dismiss the counterclaim with costs.
  36. The issues for determination is whether the court should allow the counterclaim by declaring that the Defendant is the legal owner of Embu Municipality/988 and if the court should grant a permanent injunction to restrain the Plaintiff or her agents from interfering with the Defendant's ownership and possession of the suit land. Lastly, it is whether the Plaintiff's title over Embu Municipality/988 ought to be cancelled and an order made for the Defendant to be registered as lessee of the suit land.
  37. The Defendant claimed that plot number 163 Shauri was allocated to her late husband, Ngoroi Mita on 2/11/1972 by the Municipal Council on a permanent basis, which she claimed is the suit land. The Defendant did not tender evidence of such allocation. In her counterclaim, she pleaded at paragraph 9 that they were allocated plot no. 40 Shauri Yako and also testified that she was claiming is plot number 40 2T.
  38. What the Defendant relied on as proof of ownership was the fact that she and her husband carried out their business on the plot and the correspondence touching on the business permits and licences, as well as compliance with the requirements of the local authority. The other ground was that Defendant had been paying rates as required by the Municipal Council and the current County Government. These actions do not prove ownership of the suit land. The Defendant did not take steps to have the plot where she and her late husband were conducting their business surveyed and registered in their names.
  39. The Defendant did not lead evidence to show that the plot on which she conducted her business was the same land that was allocated to the Plaintiff. This only becomes apparent from the Plaintiff's husband's and the municipal council's attempts to evict the Defendant from the land as well as the injunctive orders that she seeks against the Plaintiff. She argued that they were allocated the land and that her letter of allotment got burnt. It is not contended that the Defendant does not have a lease over the plot that she lays claim to.
  40. It is not in dispute that the Plaintiff's late husband, David Namu Njagi, applied for allocation of a plot in Embu Municipality through the Commissioner of Lands and his application was approved as shown by the letter of allotment dated 17/12/1987. He paid the stand premium and rent for the plot allocated to him. The plot he was allocated was surveyed and became plot number 1112/988. David Namu was registered as the proprietor of the suit land and a certificate of lease was issued to him on 1/11/1994.
  41. David Namu's ownership of the suit plot was buttressed by various correspondence. The Council wrote the letter dated 1/12/2006 to all the occupants of the suit land demanding vacant possession



because its owner intended to develop the land. On 25/1/2008, David Namu issued a demand letter to the Defendant through his advocate. The Municipal Council of Embu wrote to Embu Water and Sewerage Company and Kenya Power and Lighting Company Limited clarifying that David Namu was the registered proprietor of the suit land.

42. The Defendant challenged the allocation of the suit land to the Plaintiff's late husband on the ground that the Commissioner of Lands allocated a plot within the jurisdiction of the Embu Municipal Council which was trust land without the consent of the Council. Further, that the allotment by the Commissioner of Lands to the Plaintiff was unprocedural and illegal because the municipality revoked and annulled that allocation vide the resolution of the Ordinary Meeting of the Town Planning Works and Housing Committee held on 17/6/1993 to the effect that all direct allocation of plots in Embu Municipality by the Commissioner of Lands without the prior approval of the council would be rejected and the Council would consider them null and void.
43. This court is not persuaded that the Council had power to revoke such allocations in such a manner. It is noteworthy that the lease over the suit land was issued to David Namu Njagi on 1/11/1994, more than a year after the Council passed that resolution, with the same Council indicated as the lessor. There is no evidence to show that the Council went further than passing the resolution and communicated to the Commissioner of Lands that the Council had revoked the allocations made by the Commissioner without the Council's approval.
44. The court notes that the Municipal Council of Embu was involved in the allocation of the suit land to David Namu as shown by the letters dated 30/1/1988, 27/1/1989 and 3/4/1990 requesting payment of stand premium. The Council confirmed through its letters dated 30/12/2009 addressed to Embu Water and Sewerage Company and Kenya Power and Lighting Company Limited that plot no. 1112/988 Embu Municipality was registered in the name of David Namu Njagi.
45. The Council issued the notice dated 1/12/2006 to all occupants of the suit land to vacate the suit land while indicating that it would not licence them to conduct business on the plot in 2007. These actions on the part of the Council do not support the contention that it revoked the allocation of the suit land to David Namu.
46. The Defendant failed to prove her claim for adverse possession of the suit land. She did not prove that her occupation of the suit plot was open, notorious and uninterrupted. What is not in doubt is that she had been permitted by the Council to carry out business on the suit land but was never allocated the suit land. The Defendant failed to prove that the suit land was fraudulently allocated to the Plaintiff's late husband.
47. The court declines to grant the orders sought in the counterclaim. Each party will bear its costs for the counterclaim.

**DELIVERED VIRTUALLY AT BUNGOMA THIS 4<sup>TH</sup> DAY OF FEBRUARY 2026.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Fundi Kimanzi for the Plaintiff

Jane Muthoni Ngoroi- the Defendant in open court in Embu

