



**Kimuu v Njiru (Suing as the Representative of the Estate of Njiru Kimuu (Deceased))  
(Civil Appeal 164 of 2020) [2026] KECA 451 (KLR) (6 March 2026) (Judgment)**

Neutral citation: [2026] KECA 451 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL 164 OF 2020  
K M'INOTI, S OLE KANTAI & A ALI-ARONI, JJA  
MARCH 6, 2026**

**BETWEEN**

**JAMES NJIRU KIMUU ..... APPELLANT**

**AND**

**KIMUU NJIRU (SUING AS THE REPRESENTATIVE OF THE ESTATE OF  
NJIRU KIMUU (DECEASED)) ..... RESPONDENT**

*(Being an appeal against the Judgment of the Environment and Land Court at  
Kerugoya (Cherono, J.) delivered on 5th June, 2020 in E.L.C. (O.S.) No. 23 of 2018)*

**JUDGMENT**

1. This is a first appeal arising from the judgment by the Kerugoya Environment and Land Court (hereinafter “ELC”) where the respondent’s suit against the appellant was allowed, with the effect that the suit property known as Mwerua/Kabiriri/11 was held to belong to the estate of the late Njiru Kimuu and the transfer of their and all resultant parcels therefrom were cancelled.
2. This being a first appeal, our mandate is as stated in the case of Nairobi Bottlers Limited vs. Imbuga (Civil Appeal E661 of 2022) [2024] KECA 434 (KLR):  

“Our mandate in a first appeal as donated by rule 31 of the Court of Appeal Rules, 2022 is to re- appraise the evidence and to draw inferences of fact; to retry the case.”
3. We shall now set out the background of this appeal to bring the issues in contention into context.
4. The respondent herein, Kimuu Njiru, was the plaintiff in E.L.C. (OS) No. 23 of 2018, where he sued his son, James Njiru Kimuu, (the appellant) as 1<sup>st</sup> defendant alongside 9 other defendants. His case was that the late Njiru Kimuu (his father) was the lawful registered owner of the suit land known as Mwerua/Kabiriri/11 (“the suit land”) and he accused the appellant of fraudulently changing the name



on the land title by claiming to be the deceased and having himself registered as the owner of the land in place of the deceased. The particulars of fraud, as set out in the plaint, included: purporting that the deceased was alive on 13<sup>th</sup> June, 2011; forging the signature and/or thumbprint of the deceased, subdividing the land into 21 parcels without a clean title and transferring portions to himself and to the 2<sup>nd</sup> to 8<sup>th</sup> defendants; and failing to file a succession cause to distribute the deceased's estate. The respondent stated that he became aware of the fraud on 2<sup>nd</sup> February, 2018, after obtaining a copy of the land register, and he asked the court to cancel all the land transfers and subdivisions to revert the title to the original parcel number, the suit land, in the deceased's name.

5. The appellant denied the allegations and claimed that the respondent obtained a letter of administration for the deceased's estate through falsehoods. He alleged that the respondent lied to the court by claiming that his father was Njiru Kimuu when his actual father was Runji Kimuu. The appellant further stated that the respondent lied about the year of the deceased's death, claiming Njiru Kimuu died in 1972 when he actually died in 1998. The appellant also said that he was in the process of filing an application to revoke the grant. He asserted that he was the lawful registered owner of the land parcel Mwerua/Kabiriri/11/20. He denied that the transfers and subdivisions of the land were illegal and claimed that the land transferees had taken possession of their portions and had built permanent buildings and schools thereon. Finally, he averred that the respondent was fully aware of the land transfers and subdivisions and even provided him with the original title deed, supplied building stones, and showed him where to build. He argued that the claim was therefore time-barred and brought in bad faith.
6. The court delivered judgment on 5<sup>th</sup> June, 2020 and held that the respondent's testimony was candid and believable. The court was convinced that the original land Mwerua/Kabiriri/11/20 belonged to the respondent's deceased father, Njiru Kimuu, who passed away in 1972, and that the respondent had been appointed as the legal representative of his father's estate. The court rejected the appellant's claim that the "Umbui" Clan gave him the land in 1971. The court noted that the appellant was born in 1975, four years after the land was first registered. The court considered the appellant's testimony to be hearsay and held that he had taken advantage of the similar name he shared with the deceased to fraudulently register a change of name and transfer the land to himself. The court concluded that the titles of the 2<sup>nd</sup> to 8<sup>th</sup> defendants, who acquired the land from the appellant, were not protected because they were acquired illegally. The court ruled that the respondent's claim was proven to the required standard and entered a judgment in favor of the respondent against the appellant.
7. Being aggrieved by the finding of the ELC, the appellant filed the present appeal. The record of appeal and memorandum of appeal are both dated 26<sup>th</sup> October, 2020 seeking orders that the appeal be allowed, the judgment of the trial court be set aside and be substituted with an order dismissing the respondent's suit. The appellant contends that the Judge did not consider the reasons for the name change, including the circumstances leading to surrender of the old title deed and failed to find that the lack of an identification (ID) on the original green card for the suit land was an indication that the owner was a minor. The learned Judge is faulted for failing to consider that no action was taken to succeed the deceased Njiru Kimuu until 2011, which was long after his alleged death in 1972. The court is also said to have disregarded the appellant's evidence specifically regarding the respondent's father's name being "Runji" and having no connection to the name "Njiru Kimuu". The appellant argues that the Judge wrongly shifted the burden of proof to him instead of requiring the respondent to prove his case. The appellant asserts that the judgment was inconsistent with the evidence presented and legal principles. The appellant filed written submissions dated 23<sup>rd</sup> June, 2025 in support of the appeal, which we have considered.



8. This appeal was heard on 29<sup>th</sup> September, 2025 on the Court’s virtual platform. Learned counsel Mr. Kagio appeared for the appellant. The firm of Ngigi Gichoya on record for the 1<sup>st</sup> to 8<sup>th</sup> original defendants were served with a hearing notice but were not present and had not filed written submissions by the time of hearing. The Office of the Attorney General was similarly served for the original 9<sup>th</sup> and 10<sup>th</sup> defendants but was absent and had not filed written submissions despite having been required to do so in the hearing notice and at case management conference.
9. We have considered the record of appeal, the submissions by the appellant and the relevant law.
10. The appellant contends in his grounds of appeal that there was never a person called Njiru Kimuu and that the land was registered to the appellant when he was a minor, thus the failure to indicate any ID number on the green card. He faulted the court for shifting the burden of proof to him rather than requiring the 1<sup>st</sup> respondent to prove his case. In a nutshell, the question before this Court is whether the appellant is the same Njiru Kimuu as reflected in the green card entry of 1971.
11. When the matter came up for hearing before the ELC, the respondent told the court that his father died before adjudication while his son, the current appellant, was born in 1975. On his part, the 1<sup>st</sup> respondent testified that his father, the respondent, had always told him since he was young, that the suit property belonged to him and had given him the title deed to deal with the land. The appellant stated that he rectified the registration of land to include his Christian name, James, after he was baptized. He said that the land was clan land that could be registered to a child whether born or unborn. It was also his evidence that there was no one other person other than himself named Njiru Kimuu in their clan.
12. A look at the green card for the suit property reflects that the first registration was that of Njiru Kimuu on 18<sup>th</sup> February, 1971. The appellant’s name appears on the green card as the proprietor on 13<sup>th</sup> June, 2011.
13. Pursuant to a notice to produce, the appellant filed a copy of his ID, which indicated that he was born on 10<sup>th</sup> September, 1975. As earlier noted, the land was first registered to Njiru Kimuu on 18<sup>th</sup> February, 1971.
14. We are of the considered view that it would be stretching the court’s imagination too far, to believe that the suit land was registered to the appellant more than 4 years before he was born. The appellant before us cannot be the same Njiru Kimuu recorded in 1971 as proprietor of the suit property. It is more probable that the land was registered to his grandfather whom he is named after, in line with the respondent’s pleadings. The appellant herein avers that there was no one else in the clan referred by the name Njiru Kimuu, save for himself. We believe that the appellant may not be an authority on previous clan members as he was born in 1975 and did not meet even his own grandfather who he is said to be named after. The foregoing notwithstanding, there is no law that supports the registration of an unborn child to an interest in land. Section 47 of the Registered *Land Act* (repealed) which is reflected in exact terms in section 47 of the *Land Registration Act* permits the minors name of a person under the age of eighteen years to be entered in the register to enable the minor’s interest to be held in trust. The law does not however envisage or allow registration of the name of an unborn child at all.
15. The situation that faced the Judge at ELC was that the appellant visited the lands office and requested for a change of name, and this was permitted after he produced a letter from his local chief to confirm his name. He used that process to effect a transfer of the original suit land from the deceased to himself, purporting that he had been the owner of the land all along. That was, for all intents and purposes a fraudulent transaction. The land had been registered in the name of the deceased in 1971 and after the deceased died the law required that succession proceedings be undertaken to determine who would



benefit from the estate of the deceased. The appellant did not go through the process required in law; he instead sought to use “short cuts” where he deceived the 9<sup>th</sup> respondent and had a change of name effected effectively transferring the suit land to himself in place of the deceased. This is something that the law cannot not allow or sanction.

16. We agree with the learned ELC Judge that the evidence by the respondent is believable and that the respondent proved his case on a balance of probabilities. We concur that the suit property belonged to the estate of Njiru Kimuu, who died before the birth of the appellant. If there was any intention to have the land given to the appellant, the same would have had to undergo the proper process of succession.
17. We also agree with the final decision of the ELC Judge in stating that other parties who acquired land from the appellant did not acquire a good title as one cannot pass what he does not have.
18. Section 25 of the [Land Registration Act](#) protects the sanctity of title held by a proprietor or to a purchaser of land upon a transfer or transmission but such title can be challenged:
  - (a) on the grounds 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.”

The appellant having acquired his purported title fraudulently misrepresented to the 2<sup>nd</sup> to 8<sup>th</sup> defendants that he had a good title to pass to them. He did not. He could not pass what he did not have.

We find this appeal unmerited and the same is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED IN NYERI THIS 6<sup>TH</sup> DAY OF MARCH, 2026.**

**K. M’INOTI**

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**ALI – ARONI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**Signed**

**DEPUTY REGISTRAR**

