



REPUBLIC OF KENYA



**Kirimi v Laban (Civil Appeal E313 of 2025)
[2026] KEHC 3267 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E313 OF 2025
SM GITHINJI, J
MARCH 12, 2026**

BETWEEN

TABITHA GACHERI KIRIMI APPELLANT

AND

PAULINE MUTHONI LABAN RESPONDENT

*(Being an Appeal from the Judgment of Hon. T.M Mwangi (S.P.M)
in Meru ELC No. 138 of 2019 delivered on 10th of August, 2023)*

JUDGMENT

1. This Appeal arises from the judgment of the learned Principal Magistrate Hon. T.M Mwangi delivered on 10.8.2023 in Meru ELC Suit No. 138 of 2019 wherein the Appellant's suit was dismissed with costs.
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 5th March, 2024;
 1. The learned trial magistrate erred in law in assuming jurisdiction and sitting as a family/succession court by making a determination that the respondent was wife of late Moses Kirimi Mbogori under customary law.
 2. The learned trial Magistrate misdirected himself by taking into consideration issues for determination that were not pleaded and were not before the trial court for determination.
 3. The learned trial magistrate erred in law and fact in not appreciating sufficiently or at all the evidence tendered by the appellant on her contribution made in acquisition of suit property.
 4. The learned trial magistrate erred in law and fact by failing to hold that title no. 23980/57 was matrimonial property having been acquired during subsistence of marriage and only registered in the name of one spouse.



5. The learned trial magistrate erred in law and fact in holding that the respondent was a transferee for value without notice despite the respondent having admitted in evidence that the Appellant was a spouse of the registered owner.
6. The learned trial magistrate erred in law and fact in holding that the suit property was not subject to overriding interests under section 28 (j) of the *Land Registration Act* as read together with *Matrimonial Property Act*.

Evidence at trial

3. PW1 Tabitha Gacheri Kirima, the Appellant herein, adopted her witness statement dated 28/11/2019 as her evidence in chief and produced the documents filed therewith as exhibits. She stated that she solemnized her marriage to Moses Kirimi Mbogori customarily which was subsequently formalized at the Attorney General Offices at Embu. The Respondent, who claimed to be the wife to the deceased, alleged to have purchased the suit land from him. Although the land belonged to her husband, it was bought using funds from a company where she was a director, and she ought to have been involved in its subsequent sale to the Respondent. The suit land formed part of the matrimonial property as it was purchased in 2005 by her and the deceased.
4. DW1 Pauline Muthomi Laban, the Respondent herein, adopted her witness statement dated 5/4/2022 as her evidence in chief and produced the documents filed therewith as exhibits. She told the court that she was the 2nd wife of the deceased herein while the Appellant was the 1st wife. She was a tenant on the suit land and the deceased had sworn an affidavit denying her as his wife. She filed Meru CRC No. 452/2018 and Meru ELC No. 6/2018 after the deceased attempted to evict her from their matrimonial home.
5. DW2 Samuel Gituma Mbogori, a brother to the deceased, adopted his witness statement dated 5/4/2022 as his evidence in chief. He stated that his brother was married to the Appellant and after dowry was paid, they started living together. The deceased thereafter married the Respondent under customary law and dowry was equally paid, and the Respondent was the one living with the deceased prior to his demise.
6. DW3 Collins Otieno, an Advocate of over 10 years standing adopted his witness statement dated 21/1/2018 as his evidence in chief. He stated that no spousal consent was needed for the transfer of the land from the deceased to his wife Pauline, and the agreed purchase price was Ksh. 1,500,000.
7. DW4 Inspector James Mutuma, a qualified forensic examiner, received a letter dated 22/3/2018 from Anyoka Advocate to examine the disputed signatures on some documents. He noted that the deceased's signatures on A1, the transfer and A2, the affidavit of marriage matched those on B2, the witness statement in ELC No. 6/2018.

Submissions

8. The Appellant, through the firm of Okubasu & Munene Advocates, filed submissions dated 21/10/2025, faulting the trial court for stepping beyond its statutory mandate when it adjudicated upon a matrimonial and/or succession issue, thereby committing a jurisdictional error. Counsel faulted the trial court for deliberating on the issue of customary marriage or co-wives, which were not framed for determination. Counsel asserted that the Appellant proved indirect acquisition of the property in question which formed part of the matrimonial property, and its transfer to the Respondent was void for want of a spousal consent.



9. The Respondent through the firm of Dennis Anyoka Moturi & Co. Advocates filed submissions dated 24/10/2025. Counsel argued that where a claim involves spousal consent or matrimonial property, the court must necessarily consider evidence relating to the existence of a spousal relationship, and cited *Jane Wambui Ngeru v Timothy Mwangi Ngeru* [2015] KEELC 657 (KLR) and *Muinde v Mwanja & 2 Others*, ELC No. E052 of 2024 [2025] KEELC 984 (KLR). Counsel submitted that since the Appellant had invited the trial court to determine the issue, she cannot approbate and reprobate by lamenting that the court had no jurisdiction, and cited *Benson Ndoli Gwage v Lakbir Dhillion* Cause No. 1442 of 2014 [2019] KEELRC 2541 (KLR). Counsel further submitted that the trial court acted within its jurisdiction in making an incidental finding that the Respondent was a wife of the deceased, for purposes of determining the validity of the impugned transfer and whether spousal consent was necessary. Counsel lauded the trial court for finding that the Appellant had failed to prove any contribution, direct or indirect to the acquisition of the property, and therefore the property did not qualify as matrimonial property requiring spousal consent.

Analysis and Determination

10. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and to draw its own conclusions on the same.
11. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA, the court held as follows: “This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
12. I have considered the appeal herein, the trial court’s judgment which is the subject of this appeal as well as the submissions by counsel.
13. From the grounds of appeal, the singular issue for determination is whether L.R No.23980/57 was matrimonial property for which spousal consent was a prerequisite to a valid transfer.
14. Before delving into the merits of the appeal, the jurisdiction of the trial court to determine the matter had been questioned.
15. In dealing with a similar matter, the court P. Nyamweya J, as she then was) in *Jane Wambui Ngeru v Timothy Mwangi Ngeru* [2015] KEELC 657 (KLR), cited by counsel for the Respondent, expounded that, “The dispute herein involves property situated on a parcel of land, and the specific prayers sought by the Plaintiff in the Plaint filed herein dated 18th March 2014 are a declaration that the Plaintiff is the owner of the said property, that that the continued occupation of the property by the Defendant is illegal, orders of eviction, and a permanent injunction restraining the Defendant from dealing with the suit property. These are clearly orders relating to the use, occupation and title to land and within the jurisdiction of this Court. In addition the *Land Registration Act* which provides for certain matrimonial property rights and co-ownership of the matrimonial home as between spouses specifically provides under section 101 thereof that this Court has jurisdiction to hear and determine disputes, actions and proceedings concerning land under the Act...It is thus the current legal position that concurrent jurisdiction is given to various courts to hear disputes relating to matrimonial property rights including this Court. The only limitation applicable to this Court is that it can only hear such disputes if they involve or relate to land.”



16. The Appellant's claim before the trial court was hinged on an alleged illegal transfer of the suit land to the Respondent on account of lack of a spousal consent. The determination of that claim entailed a comprehensive evaluation of the circumstances surrounding the purported transfer, including, inter alia, the relationship of the Respondent to the deceased and the nature of title held in respect of the suit land.
17. On the merits, the Respondent testified that the deceased settled her in the suit land in 2012, and following a subsequent disagreement with him, he attempted to evict her therefrom, necessitating the institution of Meru ELC No. 6/2018. Her testimony was corroborated by Samuel Gituma, a brother to the deceased, who affirmed that the Appellant and the Respondent were both wives of the deceased, and the Respondent lived with him on the suit land.
18. Although the Appellant was adamant that the suit land was jointly acquired by her and the deceased using funds from KITA General Stores, in which she was the director, she tendered no documentary evidence to substantiate that contention. She stated that, "I do not have anything to show I participated in acquiring any property of the deceased. I have not come with anything to show I am a director of KITA. I have not brought anything to show KITA exists. I have not brought, carried anything to show funds for buying plot came from KITA General Stores Limited. I have nothing to show that I was involved in buying of shamba either as a wife or as director of KITA."
19. Conversely, the document examiner confirmed that the signatures appearing on the transfer form dated 13/7/2015 and the affidavit of marriage sworn on 15/6/2015, both drawn by DW3, corresponded with the known signature of the deceased as contained in the Replying Affidavit in Meru ELC No. 6/2018 filed on 29/1/2018, copies of CFC Stanbic Bank Cheques dated 10/12/2012, 10/1/2013, 10/9/2012 and letter addressed to the principal MUCST dated 30/3/2011.
20. In the premises, I find that the Appellant failed to prove that the suit land constituted matrimonial property for which spousal consent was a prerequisite to a valid transfer. The evidence on record reveals that the suit land was solely owned by the deceased and he was at liberty to voluntarily transfer it to whomever he pleased.
21. The upshot from the foregoing analysis is that the appeal is in want of merit, and it is accordingly dismissed, with no order as to costs.

DATED AND DELIVERED AT MERU THIS 12TH DAY OF MARCH, 2026.

S.M. GITHINJI

JUDGE

In the presence of:

Mr. Mwirigi Batista for the Appellant

Mr. Dennis Anyoka for the Respondent.

