

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCA NO E001 OF 2025

MARY MUTHONI GITAU.....APPELLANT

VERSUS

VIRGINIA WANJIKU MUCHIRI.....1ST RESPONDENT

**SARAH NJERI GICHIA.....2ND
RESPONDENT**

**SAMUEL MWANGI MUCHIRI.....3RD
RESPONDENT**

**MAGDALINE W. KARIUKI.....4TH
RESPONDENT**

JUDGMENT

The genesis of this Appeal is the Principal Magistrate’s Court, Case No. ELC E014 of 2024 where the Appellant herein was the Plaintiff in the lower Court and the Respondents the Defendants. In the lower Court, the Appellant prayed for the following Orders: -

- a. A Declaration that the Appellant’s forcible eviction from her matrimonial home situate at L.R NYANDARUA/KAHURU/4829 by the Respondents was unjust, unlawful and illegal and the Appellant should therefore be immediately and unconditionally returned to the same together with all her possessions.

- b. A permanent injunction be granted restraining the Respondents, their employees, servants or agents from accessing, entering, occupying, wasting, alienating or in any other manner interfering with the Appellant's right to her quiet possession and use of her matrimonial home and household goods and/or items all situate at land parcel No. NYANDARUA/KAHURU/4829.
- c. That the officer commanding Kinangop police station be directed to provide security, if need be, during the restoration of the Appellant to her matrimonial home and possessions all situate at the said L.R No. NYANDARUA/KAHURU/4829.
- d. Costs of the suit together with interest at court rates.
- e. Any other or further relief that this Honourable Court may deem fit or just to grant.

The Appellant is the 2nd wife of 1st Respondent's son, a co-wife to the 2nd Respondent and sister-in-law to the 1st Respondent.

Her prayers were based on the grounds, as she pleads, that on 16/2/2024 or thereabout, the 1st Respondent caused her entire family, including the Appellant, to be summoned before the 4th Respondent where she and her husband were accused of stealing goods belonging to the 2nd Respondent and should therefore vacate their matrimonial home on the suit land within 7 days and on 26/2/2024 with the help from an elder from the 4th Respondent's office, the 1st, 2nd and 3rd Respondents forcibly, illegally and unlawfully evicted the Appellant and her husband from their matrimonial home on L.R. NYANDARUA/KAHURU/4829 with all their

household and personal effects including her clothes. As a result, the Appellant has suffered mental and emotional anguish due to the cruel and degrading treatment meted to her by the Defendant and has been severely traumatized. The Plaintiff is dated 22/3/2024.

On 3/6/2024 the Respondents filed a Defence of even date, denied the Appellant's claim save the descriptive parts of the parties. They further denied that the house situate on L.R No. NYANDARUA/KAHURU / 4829 is the Appellant's matrimonial home and also that they threw out the Appellant's personal property.

On 1/10/2024 the suit against the 4th Defendant was withdrawn and the hearing of the suit commenced. The Appellant said her husband, Peter Gichia Muchiri told her to stay at home and not work. She adopted her statement dated 22/3/2024. She narrated that the 3rd Respondent and one Isaac Mwangi Maina entered her bedroom on 31/5/2023 and removed all her husband's personal effects including clothes and took them to her co-wife's house with instructions from their mother-in-law.

The Appellant and her husband together with their children had put up the semi-permanent house she was evicted from and yet the 2nd Respondent had deserted her husband on several occasions and at one time she did so for 3 consecutive years. She then produced OB No. 50/11/6/2023 from Kinangop Police Station to show how she had been assaulted. She said that she used to live with her husband on the suit land till 26/2/2024 after they got married in 2010.

On cross-examination by Mr. Wainaina for the Defendant, the Appellant testified that she has 4 girls who are all not biologically

Peter Gichia's. She also admitted that she had seen a marriage certificate confirming her husband's marriage to the 2nd Respondent but that she married Peter customarily and that she had not given any money towards the purchase of the land.

On re-examination, the Appellant said she had children before her marriage to Peter. PW2 Samson Boche Kanyuru also took to the witness box after the Appellant. She said she knew the Appellant who is 2nd wife to his friend Gichia Muchiri. He even went to Murang'a for their dowry negotiations and even to the event of Mary's daughters and that the co-wife kicked out the Appellant from her home.

On cross-examination by Mr Wainaina, the witness said she couldn't tell whether the Appellant paid any money for the property.

On re-examination, he said that the Appellant was Gichuki's 2nd wife.

DW3 - Kamau Mwangi David adopted his statement of 22/3/2024, he said he knew Mary Muthoni, wife to Peter Gichia since the 2 got married under kikuyu customary law and that he was present during the dowry negotiations for the two of them in Murang'a.

He said that the Appellant was chased away from her home, and not by Gichia. He said that all the parties in the suit were well known to him.

In cross-examination, he said he had known Gichia for over 40 years and that he also got married to Sarah, the 2nd Respondent and that he didn't know whether the Appellant contributed to the property.

The 4th and last Plaintiff's witness, Wilfred Muchiri Njoroge testified by adopting his witness statement also dated 22/3/2024. He said he was Peter's fathers' brother – Julius Muchiri Gichia an uncle to the Appellant's husband. He said he had witnessed a meeting where the 1st Respondent was accusing the Appellant of using witchcraft against Peter Gichia. All the first 3 Respondents were in the meeting.

On cross-examination, the witness said that Gichia has 2 wives and that they paid dowry in respect to the 2nd wife, the Appellant, in 2012 or thereabout. That closed the Appellant's case and opened the door for the 1st Respondent, Virginia Wanjiku Muchiri to testify.

Virginia Wanjiku Muchiri adopted her witness statement dated 7/7/2024. She said that she only knew the 2nd Respondent, Sarah as the only wife to her son. In the said statement, the 1st Respondent said that the 2nd and 3rd Respondents were her daughter-in-law and son respectively.

The 2nd Respondent married her son in 1983 and the 3 solemnized the union in 1996. The 2 have been blessed with 5 issues. After holding a family meeting and after interrogating the issue they all discovered that the Appellant was not her son's Peter Gichia Muchiri's wife.

She has never been in dowry negotiations or payments in respect to the Appellant and that the Appellant is an intruder, to cause disharmony in Gichia's marriage to the 2nd Respondent.

On cross-examination by Mr Njihia for the Appellant, the 1st Respondent said that she didn't know the Appellant and has never seen her in the home and that PW4 was not her brother-in-law. Peter never told her she was married to the Appellant.

PW1 - Sarah Njeri Gichia, the 2nd Respondent then testified by adopting her Statement dated 7/6/2024 as her evidence in chief. She testified that Peter Gichia was her husband since 1983 and that the 2 built a house together which is not complete. She was not aware of any other wife to her husband. She then solemnized the marriage in the Full Gospel Churches of Kenya in 1996, which was meant to be monogamous. She finally said that the home was built after disposing of several of their properties. It is only in early 2024 that the Appellant started asserting herself but her husband denied there was a second wife. She produced the following documents.

1. Certificate of Official search in respect of Land Parcel Number NYANDARUA/KAHURU/4829.
2. Photographs taken at the said land parcel Number NYANDARUA/KAHURU/4829

On cross-examination by Mr Njihia, Sarah denied having ever deserted the matrimonial home, even for a year and on re-examination, the witness said she and her husband Gichia, had bought a number of properties and that she has never left the home.

The very last witness in this case, PW3, Stephens Mbae Kimani, adopted his 31/5/2024 statement. He testified that he got married to Peter Gichia Muchiri's elder sister in 1976. He said he knew Gichia to be married to only one wife - Sarah Njeri Gichia and not any other

person. He has never known or seen any other wife, not even Mary Muthoni Gitau.

On cross-examination, Mr Kimani said he did not know any of the brothers of his late father-in-law save one Wachuma and on re-examination he maintained that Gichia had only one wife.

Having had the case closed, the Honourable H. Adika, Senior Principal Magistrate wrote his judgment which was delivered on 17/12/2024. He concluded that there was no evidence that the Appellant was married to Peter Gichia Muchiri under kikuyu customary law since such a marriage must be registered under section 43 of the Marriage Act. Such a Certificate was not exhibited in Court.

Secondly, and most important, despite Peter Gichia Muchiri being alive and present during the tenure of this case, he remained silent throughout the process, never speaking or submitting any response or support to the Appellant's allegations. The question remained, why?

He further concluded that the property in question was not matrimonial in the absence of proof of a marriage. He further said, which I agree with, that the Court must be careful in granting the reliefs sought so that it doesn't unintentionally infringe upon the rights of other persons. And finally, that by withdrawing her case against the 4th Respondent who she claims ordered the eviction, this weakened her case, leaving the Court uncertain as to whether any eviction ever took place.

Accordingly, the suit was dismissed with costs to the 1st, 2nd and 3rd Respondents.

Having been dissatisfied with the Judgment of the lower Court, the Appellant filed this Appeal against all the 4 Respondents asking this Court to allow the Appeal, and that the Order of the learned Trial Magistrate dismissing the Appellant's suit be set aside and that the same be substituted with an Order entering Judgment for the Appellant against the Respondents with costs thereof. The grounds upon which the Appeal is sought are that: -

1. The learned trial magistrate erred in law and in fact by failing to find and hold that the Appellant had proved her case on a balance of probabilities to warrant judgment being entered in her favour.
2. The learned trial magistrate erred in law and in fact by proceeding as though he had been called upon to determine whether there was a valid marriage between the Appellant and **PETER GICHIA MUCHIRI** who was the registered owner of the suit premises which was a misdirection on the part of the said magistrate.
3. The learned trial magistrate erred in law and in fact by failing to find and hold that the Appellant was in occupation and use of the suit premises before the cause of action had arisen.

4. The learned trial magistrate erred in law and in fact by failing to find and hold that the Appellant was unlawfully and illegally evicted from the suit premises by the Respondents despite the overwhelming evidence of the Appellant and her witnesses which position had he properly addressed himself to would have tipped the scales in favour of the Appellant.

5. The learned trial magistrate erred in law and in fact by failing to find and hold that no independent witnesses were called by the Respondents to rebut the Appellant's claim a factor which had he properly addressed himself to would have led to a finding in favour of the Appellant.

6. The learned trial magistrate erred in law and in fact by failing to find and hold that the Respondents acted in a most high-handed and capricious manner by evicting the Appellant from the suit premises.

7. The learned trial magistrate erred in law and in fact by failing to find and hold that the Respondents' acts complained of were in violation of Articles 47 (1) and 50 (1) of the Constitution which matter had he properly addressed himself to would have resulted in a judgment being entered in favour of the Appellant.

8. The learned trial magistrate erred in law and in fact by invoking the provisions of the **Marriage Act (Cap 150) Laws of Kenya** which statute is now repealed thereby

occasioning a serious miscarriage of justice to the detriment of the Appellant.

9. The learned trial magistrate erred in law and in fact by considering only the Respondents' evidence and disregarding that of the Appellant and her witnesses thus occasioning a further miscarriage of justice.

10. The learned trial magistrate erred in law and in fact in finding and holding that by virtue of the aforementioned **PETER GICHIA MUCHIRI** choosing to remain silent though aware of the proceedings raised doubts about the Appellant's case.

To begin with, the Appellant dropped her case against the 4th Defendant, now 4th Respondent Magdaline W. Kariuki way back on 1/10/2024. But has still insisted on filing an Appeal against her. This is highly contradictory.

Whereas I agree with the Appellant that the **Marriage Act (Cap 150) Laws of Kenya** has been repealed and further that it is not the Act under which the 2nd Respondent and Gichia Muchiri had solemnized their marriage, this holding did not prejudice the Appellant's case in any way. I do agree with the Trial Magistrate Mr. Adika SPM that no marriage to Peter Gichia Muchiri by the Appellant has been proved and that the said Gichia is conveniently quiet. His silence is too loud. The Appellant seeks the Orders she does because of her alleged association with Mr. Gichia if at all Mr. Gichia is still alive. The least he could have done is to testify and own up.

Secondly, the Trial Magistrate said that the Court must be careful in granting the reliefs sought so that it doesn't unintentionally infringe upon the rights of other people. This observation is very loaded. One, there is the 2nd Respondent who has produced a marriage Certificate to show that she was legally married to the man of the day, Peter Gichia Muchiri. The marriage, according to the Marriage Certificate says that the same was celebrated and solemnized on 22/3/1996 under the repealed African Christian Marriage and Divorce Act (CAP 151 Laws of Kenya) having been previously under customary Law. This being a monogamous marriage it left no room for marriage to another wife. But this is not to say that such people married under the Act do not engage in other extra marital engagements. But I will leave this at that. The truth is that no such marriage or engagement to another woman has been proved in this case. On the photographs taken of the Appellant allegedly on the suit land, there is no proof that the same were taken on the suit land and the Certificate of the computer print out by one Gristan Wainaina, Advocate does not show how the said Wainaina Advocate knew that the location of the photos was on L.R. No. NYANDARUA/KAHURU/4829. More important though, the Appellant does not mention when she got married to Mr. Gichia Muchiri even remotely nor does any of her witnesses. Even assuming that it is true she was the said wife of Mr Gichia Muchiri which is not the case, there is nothing to show that when the suit land was bought she had already married Mr. Gichia Muchiri. By then, the 2nd Respondent was already married. The 2nd Respondent is therefore the only person who can claim that the property is matrimonial.

Nonetheless, I am not saying that this is the case. But not one whose entry into the life of Gichia Muchiri is unknown.

This Appeal is therefore disallowed. I make no Orders as to costs.

**Judgment read and delivered at Nyandarua this 19th
Day of March 2026.**

**MUGO KAMAU
JUDGE**

In the Presence of: -

Court Assistant: Samson.

Mr. Njihia for the Appellant.

Ms. Wambui for the 1st, 2nd, 3rd Respondents.

N/A for the 4th Respondent.