



**Ngabia v Wachiuri & 2 others (Environment and Land Case  
71 of 2020) [2026] KEELC 1499 (KLR) (11 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1499 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 71 OF 2020**

**JA MOGENI, J  
MARCH 11, 2026**

**BETWEEN**

**SAMUEL NJIRANI NGABIA ..... PLAINTIFF**

**AND**

**ANDREW KIGATHI WACHIURI ..... 1<sup>ST</sup> DEFENDANT**

**DIRECTOR OF SURVEYS ..... 2<sup>ND</sup> DEFENDANT**

**STANLEY PAUL MBUGUA GITHONGO ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By way of history, the Plaintiff filed a Complaint dated 14/12/2016 against the Defendants. That Complaint was however dismissed on 08/12/2025 for want of prosecution. What is now before the Court for determination are two Counter-claims which were filed by the 1<sup>st</sup> Defendant dated 13/04/2017 and another by the Interested Party dated 29/11/2018.
2. The 1<sup>st</sup> Counter-claim filed by the 1<sup>st</sup> Defendant (hereinafter referred to as “1<sup>st</sup> Counter-claimant”) prays that the Plaintiff’s suit to be struck out and/or dismissed with costs and for the Honorable Court to enter Judgment in the Counter-Claim in favor of the 1<sup>st</sup> Defendant as against the Plaintiff for the following:
  - a. The Plaintiff to surrender the original Certificate of Title for the suit property, that is Land Reference Number 13537/99 Thika Municipality to the Honorable Court to the 1<sup>st</sup> Defendant for surrender to the relevant Land Offices and the subsequent issuance of a separate Certificate of Title for the 1<sup>st</sup> Defendant’s property, that is Land Reference Number 13537/233 Thika Municipality to be released to the 1<sup>st</sup> Defendant herein and another for the Plaintiff’s property, that is Land Reference Number 13537/232 Thika Municipality for release to the Plaintiff;



- b. The Plaintiff to execute the relevant Application forms for Consent by the relevant Land Control Board and the Transfer Forms for the transfer of the 1<sup>st</sup> Defendant's property, that is Land Reference Number 13537/233 Thika Municipality as well as avail the requisite Affidavit of Consent by spouse together with the Plaintiff's provision of the relevant copies of his Identity Card, PIN Certificate and coloured passport photographs, all for purposes of the transfer of the 1<sup>st</sup> Defendant's property, that is Land Reference Number 13537/233 Thika Municipality to the 1<sup>st</sup> Defendant herein
  - c. The Plaintiff to provide all other necessary documentation and execute such further and or other documents as shall be necessary for purposes of effecting and facilitating the registration of the transfer of the 1<sup>st</sup> Defendant's property, that is Land Reference Number 13537/233 Thika Municipality and the to the 1<sup>st</sup> Defendant herein.
  - d. Should the Plaintiff fail to comply with (b) and (c) above, then the Honorable Court do mandate the Deputy Registrar of the Court to execute and or sign all such applications forms for consent, surrender, transfers, affidavits and or such other documentation as shall be necessary for the transfer of the 1<sup>st</sup> Defendant's property, that is Land Reference No. 13537/2333 Thika Municipality and the subsequent registration thereof in favour of the 1<sup>st</sup> Defendant herein.
  - e. Costs of the Counter-claim.
  - f. Any other further and or relief this Honorable Court may deem just and necessary to grant and order.
3. The 1<sup>st</sup> Defendant avers that despite the Plaintiff's clear and unequivocal admission of having sold the 1<sup>st</sup> Defendant's property to the 1<sup>st</sup> Defendant and also having received entire purchase price for the same from the 1<sup>st</sup> Defendant, the Plaintiff refused, neglected and or failed to complete the said sale transaction by causing the 1<sup>st</sup> Defendant's property to be transferred to the 1<sup>st</sup> Defendant.
  4. The 1<sup>st</sup> Defendant stated that he has been willing to complete the sale of the 1<sup>st</sup> Defendant's property and he even issued the requisite Completion Notice to the Plaintiff through his Advocates on record.
  5. The 1<sup>st</sup> Defendant claim against the Plaintiff is for orders of specific performance of the Sale Agreement in general and in particular for:
    - i. The Plaintiff to surrender the original Certificate of Title for the suit property to the Honorable Court to the 1<sup>st</sup> Defendant for purposes of surrender of the same to the Lands Offices for subsequent issuance of a separate certificate of Title for the 1<sup>st</sup> Defendant's property to be released to the 1<sup>st</sup> Defendant herein and another for the Plaintiff's property for release for the Plaintiff herein
    - ii. The Plaintiff to execute the relevant Application forms for Consent by the relevant Land Control Board and the Transfer forms for the transfer of the 1<sup>st</sup> Defendant's property as well as avail the requisite Affidavit of Consent by spouse together with the Plaintiff's provision of the relevant copies of his Identity Card, PIN Certificate and coloured passport photographs, all for purposes of the transfer of the 1<sup>st</sup> Defendant's property, to the 1<sup>st</sup> Defendant herein.
    - iii. The Plaintiff to provide all other necessary documentation and execute such further and or other documents as shall be necessary for purposes of effecting and facilitating the registration of the transfer of the 1<sup>st</sup> Defendant's property, to the 1<sup>st</sup> Defendant herein.



- iv. Should the Plaintiff fail to comply with (ii) and (iii) above, then the Honorable Court do mandate the Deputy Registrar of the Court to execute and or sign all such applications forms for consent, surrender, transfers, affidavits and or such other documentation as shall be necessary for the transfer of the 1<sup>st</sup> Defendant's property, and the subsequent registration thereof in favour of the 1<sup>st</sup> Defendant herein
6. The 1<sup>st</sup> Defendant averred that despite issuance of notice to sue the 1<sup>st</sup> Defendant (Plaintiff in the main suit) has refused and neglected to comply.
7. The second Counter-claim filed by the Interested Party (hereinafter referred to as "2<sup>nd</sup> Counter-claimant") seeks the following:
  - a. A declaration that the Interested Party is the proprietor of the Land Reference No. 13537/232 Thika Municipality.
  - b. The Plaintiff to execute the relevant Application forms for consent by the relevant Land Control Board and the Transfer Forms for the transfer of the Interested Party property, that is Land Reference No. 13537/232 Thika Municipality as well as avail the requisite Affidavit of Consent by spouse together with the Plaintiff's provision of the relevant copies of his Identity Card, PIN Certificate and coloured passport photographs, all for purposes of the transfer of the Interested Party property, that is, Land Reference No. 13537/232 Thika Municipality to the Interested Party herein.
  - c. The Plaintiff to provide all other necessary documentations and execute such further and or other documents as shall be necessary for purposes of affecting and facilitating the registrations of the transfer of the Interested Party Property, that is Land Reference No. 13537/232 Thika Municipality to the Interested Party herein
  - d. Should the Plaintiff fail to comply with (b) and (c) above, then the Honorable Court do mandate the Deputy Registrar of the Court to execute and or sign all such applications forms for consent, surrender, transfers, affidavits and or such other documentation as shall be necessary for the transfer of the Interested Party property, that is Land Reference No. 13537/232 Thika Municipality and the subsequent registration thereof in favour of the Interested Party herein.
  - e. Costs of the Counter-Claim.
  - f. Any other further and or relief this Honorable Court may deem. just and necessary to grant and order.
8. The Counter-claimant pleads that he bought one and a half acres of land from the Plaintiff in 1985 vide a Sale Agreement dated 11/04/1985 and he paid the full purchase price of Kesh 102,500 which was acknowledged by the Plaintiff.
9. That at the time of purchase the Plaintiff's land was known as Plot No. 48 Ithuri Farm Juja Ltd and for proof of ownership the Plaintiff gave the Interested Party a copy of his Share Certificate No. 48 for Ithuri Farm Juja Ltd.
10. That the Interested Party immediately took possession of the suit property and has been on the suit property uninterrupted for thirty-three (33) years to date. At paragraph 3 of the Sale Agreement, it was agreed that the Plaintiff would give the Interested Party a title for his one and a half acres as soon as he secured the same from Ithuri Farm Juja Ltd.



11. That the 1<sup>st</sup> Defendant also bought from the Plaintiff a portion of land next to the Interested Party four years after the Interested Party had purchased his. The Plaintiff promised both the Interested Party and the 1<sup>st</sup> Defendant that he would comply but meanwhile the parties were at liberty to develop their plots.
12. Soon after the sales Plaintiff relocated to Nakuru but he never gave the Interested Party his contacts but he came to learn from the 1<sup>st</sup> Defendant on 11/10/1998 the Plaintiff got a title deed and deed plan for Plot 48 Ithuri Juja Farm and it is LR 46155 (LR 13537/99) Thika without informing him. Further that the Plaintiff despite knowing that the Interested Party is a purchaser in possession, failed to advise the Surveyor (2<sup>nd</sup> Defendant) to excise the one and a half (1 ½) acres from LR 46155 (LR 13537/99) Thika Municipality and issue the Interested Party title Deed and a deed plan.
13. It is the averment of the Interested Party that the Plaintiff's conduct was with intent to defraud the Interested Party his land by failing to give him notice of the proposed subdivision of LR 46155 (LR 13537/99) Thika Municipality.
14. The Interested Party has set out four (4) grounds of fraud against the Plaintiff at paragraph 24 of the Counter-claim and averred that also claimed adverse possession stating that limitation period for bringing any action against the Interested Party occupation has lapsed and the occupation has been notorious, open and without secrecy.
15. When the parties appeared in Court on 8/12/2025 the Plaintiff did not turn up despite the date for hearing having been issues earlier still the Plaintiff failed to attend Court.
16. At one point the Counsel for the 1<sup>st</sup> Defendant sought leave from the Court to substitute the 1<sup>st</sup> Defendant with a Guardian Ad Litem through the Notice of Motion Application dated 27/01/2025 due to illness following a report filed in Court. The Application being unopposed was allowed.
17. This led to the dismissal of the Plaintiff's case for want of prosecution and Court attendance and the counter-claim was lined up for hearing at 10:15 a.m.

### **Hearing of the Counter-Claim**

18. DW1 testified through a Guardian Ad Litem. Micheal Ruirie Kigathi with the consent filed in Court from his siblings since he was testifying on behalf of the ailing 1<sup>st</sup> Defendant, Andrew Kigathi Wachuiri. He adopted his witness statement and supplementary witness stated filed on 10/09/2025 as his evidence in chief and sought to have documents contained in the Trial Bundle dated 10/09/2019 produced as exhibits.
19. Further following the transfer of the file to the Thika ELC Court he sought to have the 1<sup>st</sup> Defendant's List of Documents filed on 19/04/2017 at pages 20-52 of the trial bundle adopted and the documents at pages 53-54 adopted and produced as exhibits.
20. With that DW1 closed his case.
21. DW3 – Stanley Paul Mbugua Githongo who had filed documents as Interested Party adopted his witness statement contained in the Trail Bundle as his evidence in chief. He told the Court that he will not call any witness. He produced documents at pages 1-12 of his Trial bundle. He produced the original copy of the Sale Agreement dated 11/04/1985 of which he had filed a copy in the Trial Bundle at page 14.
22. He testified to have paid Kesh 102,000 for the suit property and that he owes nothing since he paid the full amount as stated in the Sale Agreement for the portion of 1 ½ acres. He testified to have received a receipt from the lawyer who stamped and signed the Agreement. It was his testimony that at the time



of signing the Sale Agreement, the Plaintiff did not have a title deed and so he gave DW3 a copy of the Share Certificate but not the original.

23. It was his testimony that he got to know about this instant matter when he met the 1<sup>st</sup> Defendant who informed him that the Plaintiff had refused to give him their title deeds including the one for the Interested Party. He testified that he now does not hold that the 1<sup>st</sup> Defendant tried to defraud him since the 1<sup>st</sup> Defendant asked him to join the suit as a 3<sup>rd</sup> Defendant.
24. He also stated that the land that he bought reduced due to the access road and so he just needs to get what is remaining of the 1 ½ acres since he has no complaint about the access road.
25. According to him, he occupied the suit property in 1985 but the 1<sup>st</sup> Defendant came to the suit property in 1989. That he has been doing farming on the suit land since he bought it.
26. In cross-examination he testified that he had no claim for fraud against the 1<sup>st</sup> Defendant that he had been misled by some neighbours and that he has a good neighbourly relationship with the 1<sup>st</sup> Defendant.
27. With that he closed his case.
28. Parties were directed to file their written submissions.

### **Submissions**

29. As intimated before, the 3<sup>rd</sup> Defendant chose to join issues with the 1<sup>st</sup> Defendant and therefore did not file any submissions. The 1<sup>st</sup> Defendant's submissions state that this case originally filed as ELC No. 1571 of 2016 (transferred from Nairobi), focusing on the claim for specific performance regarding a land transaction.
30. In his submissions, the 1<sup>st</sup> Defendant outlines a litigation history beginning with the Plaintiff's suit in 2016. A significant turning point occurred during the full hearing on 8/12/2025. Despite being duly served, neither the Plaintiff nor his legal counsel attended the proceedings. Consequently, the Court exercised its authority to dismiss the Plaintiff's suit for want of prosecution. The matter then proceeded to a full hearing based on the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' respective counterclaims. The 1<sup>st</sup> Defendant's case was anchored by the testimony of Michael Ruirie Kigathi, appearing as a Guardian Ad Litem for the 1st Defendant (his father), who is currently mentally ill.
31. The 1<sup>st</sup> Defendant's submission details a valid land transaction initiated in 1989. The 1<sup>st</sup> Defendant responded to a newspaper advertisement for the sale of a plot by the Plaintiff through his agents, Kuria Holdings Limited. Following an introduction to the Plaintiff and his advocates, the parties executed a Sale Agreement dated 30/01/1989, for a 1 ½ acre portion of land for a consideration of Kshs. 350,000.
32. The evidence confirms that the 1<sup>st</sup> Defendant paid the purchase price in full, settled the legal fees, and was subsequently issued a Share Certificate for Ithuri Farm Juja Limited. Since the time of purchase, the 1<sup>st</sup> Defendant has maintained exclusive possession and has developed the property. The land was later surveyed and subdivided into two parcels: L.R. No. 13537/232 which was sold to the 3<sup>rd</sup> Defendant) and L.R. No. 13537/233 which is the 1<sup>st</sup> Defendant's property.
33. From the submissions of the 1<sup>st</sup> Defendant, the primary legal issue is whether the 1<sup>st</sup> Defendant is entitled to an order for specific performance to compel the completion of the sale. The 1<sup>st</sup> Defendant argues that this entitlement is reinforced by the Plaintiff's own pleadings. Specifically, he submits that in both the Plaintiff and the Reply to the Counterclaim, the Plaintiff expressly admitted to selling the



property to the 1<sup>st</sup> Defendant and even authorized the 1<sup>st</sup> Defendant to have custody of the original title deed, Title No. 13537/99.

34. The submission emphasizes that because the Plaintiff's main suit was dismissed, all allegations of fraud previously leveled against the 1<sup>st</sup> Defendant remain unproven and legally dead. The 1<sup>st</sup> Defendant contends that the Plaintiff has already signaled a readiness to complete the transaction through these judicial admissions.
35. The 1<sup>st</sup> Defendant in the submission relies on the equitable remedy of specific performance and the principles of land law regarding the finality of valid sale agreements where the consideration has been fully paid. To guide the Court on the appropriate relief, the submission cites the precedent of *Gigi Vs. Njeri & 2 Others* (2025) KEELC 8580 (KLR).

In that case, the Environment and Land Court established a framework for relief in similar disputes, which the 1<sup>st</sup> Defendant moves the Court to adopt, including:

- i. A declaration of lawful ownership.
  - ii. Orders directing the Defendant to undertake subdivision and register the mutation within 60 days.
  - iii. The execution of all necessary transfer documents.
  - iv. A provision that, should the Defendant fail to comply, the Deputy Registrar of the Court be authorized to execute the transfer documents on the Defendant's behalf.
36. The 1<sup>st</sup> Defendant sums up his submission and concludes that the counterclaim is meritorious and undisputed in fact. They pray for a Judgment that grants specific performance, ensuring the legal title is finally transferred to the 1<sup>st</sup> Defendant, consistent with the long-standing possession and the Plaintiff's previous admissions.

### **Analysis and Submissions.**

37. The litigation originated from a Plaint filed by the Plaintiff on 14/12/2016 in Nairobi and subsequently transferred to Thika. However, the Plaintiff demonstrated a consistent lack of interest in prosecuting the matter, culminating in the dismissal of the Plaintiff's suit on 8/12/2025, for want of prosecution and non-attendance.
38. What remained for the Court's determination were two distinct Counterclaims:
  1. The 1<sup>st</sup> Defendant's Counterclaim based on a 1989 Sale Agreement for 1.5 acres for L.R. No. 13537/233 for Kshs. 350,000.
  2. The Interested Party's (3rd Defendant) Counterclaim based on a 1985 Sale Agreement for 1.5 acres for L.R. No. 13537/232 for Kshs. 102,500.
39. Both parties sought Specific Performance, alleging they had paid the full purchase prices, taken possession, and developed the land, yet the Plaintiff had failed to formalize the transfers.
40. Based on the pleadings and the evidence adduced by DW1 Michael Ruirie Kigathi as Guardian Ad Litem and DW3 Stanley Paul Mbugua Githongo, the following issues arise:
  - i. Whether there exist valid and enforceable Sale Agreements between the Plaintiff and the Counter-claimants.



- ii. Whether the Counter-claimants have fulfilled their contractual obligations (payment of purchase price).
  - iii. Whether the 3<sup>rd</sup> Defendant (Interested Party) has established a claim for Adverse Possession through 33 years of uninterrupted occupation.
  - iv. Whether the Defendants are entitled to orders of Specific Performance to compel the Plaintiff to execute transfer documents.
  - v. Whether the Deputy Registrar of the Court should be authorized to sign documents in the event of the Plaintiff's default.
41. A contract for the sale of land must meet the requirements of Section 3(3) of the *Law of Contract Act* (Cap 23), which stipulates that the agreement must be in writing, signed by both parties, and the signature witnessed. The evidence shows that the 1<sup>st</sup> Defendant entered into an agreement in 1989 and the 3<sup>rd</sup> Defendant in 1985. Both provided original or secondary evidence of these contracts. Notably, the Plaintiff's own pleadings contained judicial admissions of these sales, which, under the *Evidence Act* Cap 80, do not require further proof.
42. Specific performance is an equitable remedy where the Court directs a party to fulfill their contractual obligations. This is a frequently applies relief by the Courts when land is involved, as monetary compensation is rarely considered an adequate substitute for unique real property. In *Gigi vs. Njeri & 2 Others* (Supra), the Court held that where a purchaser has paid the full price and taken possession, the vendor holds the legal title only as a constructive trustee for the purchaser. The Plaintiff's failure to complete the transfer despite receiving full payment is a breach of trust and contract.
43. The 3<sup>rd</sup> Defendant pleaded Adverse Possession under Section 7 of the *Limitation of Actions Act* (Cap 22), which bars a legal owner from recovering land after 12 years of open, notorious, and uninterrupted occupation by another. Having occupied the land since 1985 for 33 years, the 3<sup>rd</sup> Defendant's right to the land has crystallized, and the Plaintiff's title is effectively extinguished by operation of law.
44. The Plaintiff previously alleged fraud against the Defendants. However, as established in *Ratnam v. Cumarasamy* (1965) 1 WLR 8 and adopted by Kenyan Courts, the burden of proving fraud is higher than the standard balance of probabilities. Since the Plaintiff's suit was dismissed, these allegations remained mere allegations with no probative value and no evidentiary weight.

### **Final Orders**

45. Having considered the unopposed evidence of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, the Court finds the Counterclaims highly meritorious and issues the following orders:
- i. A declaration is hereby made that the 1<sup>st</sup> Defendant is the lawful owner of L.R. No. 13537/233 and the Interested Party (3<sup>rd</sup> Defendant) is the lawful owner of L.R. No. 13537/232.
  - ii. The Plaintiff is ordered to surrender the original Certificate of Title for L.R. No. 13537/99 (Thika Municipality) to the Court within 30 days for purposes of subdivision and issuance of separate titles.
  - iii. The Plaintiff shall execute all necessary transfer forms, Land Control Board consents, and provide requisite identification (ID, PIN, Photos) to facilitate the registration of the two parcels in favor of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants respectively within 60 days.



- iv. In the event the Plaintiff fails to comply with orders (2) and (3) above, the Deputy Registrar of this Court is hereby authorized and mandated to execute all applications, surrender forms, transfers, and affidavits necessary to effect the registration of the land in the names of the Defendants.
- v. The costs of both Counterclaims are awarded to the 1<sup>st</sup> Defendant and the Interested Party (3<sup>rd</sup> Defendant), to be borne by the Plaintiff.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 11<sup>TH</sup> DAY OF MARCH 2026.**

.....

**MOGENI J**

**JUDGE**

In the Presence of:

Plaintiff – Absent

Kibunja for the 1<sup>st</sup> Defendant

2<sup>nd</sup> Defendant – Absent

Wambui holding brief for Mr. Wainaina for the 3<sup>rd</sup> Defendant (Interested Party)

Mr. Melita - Court Assistant

