



**Stanley & another v Mwongera & 5 others; Rutere & another (Interested Parties)
(Environment and Land Case 151 of 2017) [2025] KEELC 5645 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5645 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE 151 OF 2017**

BM EBOSO, J

JULY 28, 2025

BETWEEN

JANE KANARIO STANLEY 1ST PLAINTIFF

JOCELYN KINANU MWIRICHIA 2ND PLAINTIFF

AND

CLIFFORD MWONGERA 1ST DEFENDANT

JOHN K MWIRICHIA 2ND DEFENDANT

KIMATHI S MWIRICHIA 3RD DEFENDANT

RUTH NDURU STANLEY 4TH DEFENDANT

DAVID MUGO ALIAS WILLIAM MITHIKA MUGO 5TH DEFENDANT

MUTHURI RUFUS M'RINGERA 6TH DEFENDANT

AND

CHARLES NKURU RUTERE INTERESTED PARTY

JULIA KANANU NKURU INTERESTED PARTY

RULING

1. Jane Kanario Stanley and Jocelyn Kinanu Mwirichia initiated Meru ELC Case No. 151 of 2017 through a plaint dated 11/5/2017. They sought the following verbatim reliefs:
 - a. A declaration that the defendants hold the suit land in trust for the plaintiffs and the plaintiffs are entitled to equal share. [sic]



- b. An order of cancellation of all suit lands so as to give transfer to the plaintiff their entitlements and defendants be ordered to sign and execute transfer documents in favour of plaintiffs and failure executive officer of the Honourable court be empowered to sign and execute all transfer documents in favour of the plaintiffs herein. [sic]
2. Their case was that parcel number Abothuguchi/ Mariene/980 [hereinafter referred to as “the suit land”] belonged to their late grandfather, Irura, and was family land held in trust by their late father, Stanley Mwirichia Irura, who died in 1998. They contended that in 1917, Clifford Mwangera purported to sell and transfer the suit land without their consent. They further contended that, like his late father, Clifford Mwangera held the suit land in trust and that the purported sale of the suit land was a breach of the trust and constituted fraud. They itemized various particulars of breach of trust. They also itemized various particulars of fraud.
3. Clifford Mwangera [the 1st defendant] filed a defence and counterclaim dated 18/6/2017 in which he denied the allegation that the suit land was family land held in trust. He contended that he was the absolute proprietor of the said land, adding that the said land was transferred to him for good consideration by his late father and that it was registered in his name long before the demise of his late father. He denied the allegation that the land was transferred to him through succession relating to his late father’s estate.
4. By way of counterclaim, the 1st defendant reiterated the foregoing and sought a declaration that the suit land was his property. He also sought injunctive orders against the plaintiff.
5. Muchiri Rufus Rutere [the 6th defendant] filed a statement of defence dated 5/6/2016 in which he stated that he was a stranger to land parcel number Abothuguchi/Mariene/980, adding that he was a bona fide purchaser for valuable consideration of Plot No. 9 Kinjo Market.
6. Charles Nkuru Rutere and Julia Kananu Nkuru joined the suit as interested parties and filed a defence dated 10/1/2020. They contended that they lawfully purchased parcel number Abothuguchi/ Mariene/980 from Clifford Mwangera on 28/12/2016, adding that at the time of purchase, Clifford Mwangera was the sole absolute and lawful registered proprietor of the suit land. They termed the plaintiff’s suit as a ploy between the plaintiff and the defendants who are family members, to frustrate completion of the sale of the suit land and to steal the suit land from them. They urged the court to dismiss the plaintiff’s claim.
7. Vide a ruling dated 11/5/2022 by Nzili J, Meru CMCC Case No 194 of 2018 was transferred to Meru ELC for consolidation with this suit and eventual disposal. [At this point, although the CMC file was collapsed into the file folder relating to ELC Case No 151 of 2017, there is no evidence to suggest that the said case was registered at the ELC Registry. Clearly there can be no consolidation before registration of the case in the ELC Registry]
8. Meru CMCC Case No. 194 of 2018 was filed by Charles Nkuru Rutere and Julia Kananu Nkuru against Clifford Mwangera. They sought the following reliefs against Clifford:
 - a. Specific performance of in accordance with clause No. 8 of the sale agreement dated 28th December, 2016 between the defendant and the plaintiff. [sic]
 - b. Damages for breach of the sale agreement/ contract between the defendant and the plaintiffs dated 28th December, 2016 and interest thereon at the present market rates.
 - c. Refund of part of the purchase price paid to the defendants on 28th December, 2015, 16th January, 2017 and 28th February, 2017 all totaling to Kshs. 5,250,180/= together with interest



thereof at the current market rates to be tabulated from 28th December, 2015 up to and until final payment.

- d. Costs of the suit and interest thereon at the prevailing court rates.
9. Clifford Mwongera filed a defence dated 19/11/2018 in Meru CMCC Case No. 194 of 2018 in which he admitted selling the suit land to the two plaintiffs in the said suit, adding that his efforts to complete the sale had been frustrated by his siblings who filed Meru ELC Case No. 151 of 2017 and obtained restraining orders against him.
10. Subsequent to the transfer of Meru CMCC Case No. 194 of 2018, ELC Case No. 151 of 2017 was mentioned severally before Yano J with a view to recording a negotiated settlement. No settlement was achieved. Consequently, Yano J listed the case for trial.
11. Against the above background, John K Mwirichia [2nd defendant] and Kimathi S Mwirichia [3rd defendant] brought an application dated 6/5/2025 seeking the following verbatim orders:
 1. Spent
 2. Spent
 3. That this Honorable court be pleased to order that the applicants/ 2nd and 3rd respondents refund Kshs. 5,250,180/= to the interested parties.
 4. That this Honourable court be pleased to order that the 1st respondent to transfer land parcel No. Abothuguchi/Mariene/980 into John K. Mwirichia, Kimathi S. Mwirichia and Jane Kanario Stanely.
 5. That the costs of this application be provided for.
12. The above application is the subject of this ruling. The application was premised on the grounds outlined in the motion and in the joint supporting affidavit of the two applicants. It was canvassed through oral submissions tendered on 8/7/2025.
13. The case of the two applicants is that they objected to the sale of the suit land to Charles Nkuru Rutere and Julia Kananu Nkuru. They add that as a result of their objection, consent to transfer the suit land was denied. They contend that they are ready and willing to refund the purchase price paid as and when ordered by the court. They add that the interested parties have no accrued rights over the suit land.
14. The two applicants argue that the suit land is family owned land that is fully developed hence their plea that they be allowed to refund to the two purchasers the purchase price of Kshs. 5,250,189 so that they can retain the land. They add that they want this family land to remain intact because they have buried some of their kin on the land, contending that they have sentimental attachment to the land.
15. The 7th and 8th defendants filed grounds of opposition dated 12/5/2025 urging that the application was defective, dead on arrival, bad in law and an abuse of the court process. They contended that the application was brought in bad faith with the sole motive of delaying the hearing of the main suit. The defendants further contended that the application was misplaced as it was an invitation to the court not only to descend into the arena and litigate for the applicants but to also impose an irregular, unacceptable proposal upon the 7th and 8th defendants. The respondents contended that the application was an attempt to amend their claim.
16. The application was argued orally on 8/7/2025. Mr Mutege, counsel for the applicants, submitted that the applicants sought orders to compromise the suit in terms of prayers 3 and 4. Counsel argued that the applicants wanted to settle the suit in total by refunding the 7th and 8th defendants the purchase



price that they paid to the 1st defendant. Counsel further submitted that the applicants wanted the suit land to be retained by the plaintiff, the 2nd defendant and the 3rd defendant. Counsel added that the rest of the parties are family members, adding that once they get the 7th and 8th defendants out of the matter, the other issues will be resolved at family level. Counsel urged the court to allow the application as prayed.

17. Mr Arithi, counsel for the 5th defendant, stated that because his client was not affected by the application, he chose not to participate in the application. On the other hand, Mrs Kaume, for the plaintiff, submitted that she supported the application although her client did not file any response.
18. Counsel for the 7th and 8th defendants, Mr Ndubi, submitted that his clients were opposed to the application, adding that the application was principally between the 2nd and 3rd defendants on one part and the 7th and 8th defendants on the other part. Counsel further submitted that the application affected the case of the 7th and 8th defendants against the 1st defendant. Counsel argued that pleadings in Meru CMCC No. 194/2018 which was consolidated with this case, indicated that the real dispute was between the above parties.
19. Counsel argued that the claim by the 7th and 8th defendants arose from a sale agreement between them and the 1st defendant, dated 28/12/2016. Counsel added that clause 8 of the sale agreement stipulated what was to happen in the event of default. Counsel contended that the 2nd and 3rd defendants were not parties to the agreement, adding that the application sought to rewrite the said agreement.
20. Counsel argued that the applicants had never filed pleadings in this suit despite having entered appearance. Counsel submitted that pleadings would be the anchorage of an application of this nature. Counsel contended that the two applicants did not have the locus to bring the application in the absence of any pleadings. Counsel decried the fact that the application was brought on the eve of the hearing for the sole purpose of frustrating the scheduled hearing of the main suit. Counsel submitted that the grant of the application would not settle the suit.
21. Mr Gichunge, counsel for the 1st defendant, submitted that he associated himself with the submissions of Mr Ndubi, adding that the application was marred with many errors. Counsel contended that the applicants designated the 1st defendant as an applicant and that the application which the applicants served was dated 7/5/2025, yet the one filed in court was dated 6/5/2025. Counsel urged the court to dismiss the application on the above grounds.
22. Counsel for the applicants, Mr Mutege, in a rejoinder, admitted that on perusal of the record he had not seen a defence by the applicants. Counsel submitted that he came on record in 2024, adding that previously the applicants were represented by Mr Mokua. Counsel contended that, except for the errors of date and designation of the 1st defendant as an applicant, there was no other error. He urged the court to ignore the typographical and clerical errors and allow the application.
23. The court has considered the application, the response to the application, and the parties' respective oral submissions. The single issue to be determined in this ruling is whether the application satisfies the criteria for entering judgment on the basis of agreement/compromise /satisfaction. I will be brief in my analysis.
24. The two applicants moved the court under Order 10 rule 6 and Order 51 of the Civil Procedure Rules. Order 10 rule 6 provides a framework on an application for interlocutory judgment in claims relating to pecuniary damages only or for detention of goods with or without a claim for pecuniary damages. It does not deal with applications for judgment on the basis of agreement/compromise/satisfaction. Clearly, by moving the court under Order 10 rule 6 of the Civil Procedure Rules, the applicants misapprehended the law.



25. The relevant framework for the orders sought is found in Order 25 rule 5 of the Civil Procedure Rules which deals with compromise of a suit. The said framework provides as follows;
- (1) Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.
 - (2) The court, on the application of any party, may make any further order necessary for the implementation and execution of the terms of the decree.
26. Have the two applicants satisfied the above criteria? Put differently, have the two applicants demonstrated evidence of agreement/compromise/satisfaction of the suit in a manner that would warrant entry of judgment as prayed? My answer to the above question is in the negative. First, a perusal of the court record has not revealed any defence by the two applicants. Legally, the court does not know what the substantive case of the two applicants is. That is, however, only one of the reasons why I say there is no agreement/compromise/satisfaction that would warrant entry of judgment as prayed by the duo.
27. The plaintiffs have not pleaded that receipt of the sum of Kshs. 5,250,180 from any of the defendants would wholly settle their claim. In their plaint in Meru CMCC Case No. 194 of 2018, dated 1/11/2018, Charles Nkuru Rutere and Julia Kananu Nkuru sought specific reliefs. Their first prayer was a plea for an order of specific performance. Insofar as refund of the purchase price is concerned, they sought, in addition to a refund of the paid purchase price, interest at the “current market rates to be tabulated from 28th December, 2016, up to and until payment”. They also sought costs of the suit. The two applicants want the court to enter judgment marking this suit as compromised but they have not filed pleadings and they have said nothing about the other limbs of the claim.
28. Clearly, the court has no proper basis upon which to exercise its jurisdiction under Order 25 rule 5 of the Civil Procedure Rules. In the absence of a mutual compromise by the parties, the suit will proceed to trial.
29. For the above reasons, the finding of the court is that the application dated 6/5/2025 does not satisfy the criteria for entering judgment in a suit on the basis of agreement/compromise/satisfaction. Consequently, the application dated 6/5/2025 is rejected and dismissed for lack of merit.
30. There are no proper reasons to justify a departure from the general principle in Section 27 of the *Civil Procedure Act* - that costs follow the event. Accordingly, the applicants will bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF JULY, 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Mrs Mutegi for the 2nd Defendant

Ms Mugo for the 6th Defendant

Court Assistant - Tupet

