



Mwangi (Suing as the administrator of the Estate of the Late Zelipher Nyakinyua Mwangi) v Kigotho (Environment and Land Case 270 of 2019) [2025] KEMC 343 (KLR) (13 November 2025) (Judgment)

Neutral citation: [2025] KEMC 343 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND CASE 270 OF 2019
PA NDEGE, SPM
NOVEMBER 13, 2025**

BETWEEN

BONFACE NJAGA MWANGI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE ZELIPHER NYAKINYUA MWANGI) PLAINTIFF

AND

DAID WAWERU KIGOTHO DEFENDANT

JUDGMENT

1. The plaintiff filed this suit on 15/10/2019 and sought judgment against the Defendant for:
 - a. A permanent injunction restraining the Defendant by itself (sic), agents and/or servants from carrying out any other developments, alienating, leasing out or in any other way dealing with parcel of land known as title No. Nakuru Ol'ongai Phase 11/82.
 - b. Eviction orders and demolition of the semi-permanent structures erected therein.
 - c. Mesne profits
 - d. General/ punitive/ exemplary damages.
 - e. Cost of this suit and interest at court rates.
 - f. Any other relief that this court may deem just and fit to grant.
2. According to the plaintiff, the defendant and his brother entered into a lease agreement for ½ an acre of the parcel of land herein with the plaintiff's mother in 2005, intended for 3 years. That however, the defendant continued to occupy the land beyond the lease term and refused to vacate, which necessitated the filing of this suit.



3. The Defendant entered appearance and filed a Statement of Defence. He basically opposed the plaintiff's claim in toto, and pleaded that he is the owner of the land parcel herein, an acre thereof, since 1974. He therefore denied being a tenant of the estate herein, and prayed to have this claim dismissed. He further claimed that this suit is statutorily time barred, having been lodged after the expiry of twelve years and therefore contrary to the provisions of Section 7 of the *Limitation of Actions Act*.
4. Both parties herein testified, relied on their written statements and documents filed alongside their respective pleadings. At the close of hearing, learned counsel for each of the parties herein filed and, I do believe, exchanged their respective submissions.
5. There is the issue of whether the claim herein is statutory time barred. As submitted by the learned counsel for the defendant, the plaintiff's claim is that the defendant and his brother entered this parcel of land via the lease agreement herein. since there was no counter claim lodged by the defendant, the burden of proof herein lay with the plaintiff and he must succeed or fail in this suit within the confines of his pleadings. At the crux of the claim herein, is the lease agreement that the defendant is purported to have executed with the deceased for a period of three years which upon expiry, the defendant refused to vacate and held on to the suit property herein.
6. The defendant has however denied being a tenant in the suit property herein and called for strict proof thereof from the plaintiff. according to the defendant, he has occupied this parcel of land since 1974, long before the late Zelipher Nyakinyua Mwangi became the registered owner. The plaintiff however produced a lease agreement as PEXH, NO. 4. The issue is whether that lease was valid. This is because the defendant's name has been indicated therein as a co-lessee, but he has not signed the lease agreement.
7. For a formal, registrable lease of land to be valid and enforceable as an interest in land, it must be signed by both the lessor (landlord) and the lessee (tenant). It is trite law that an unsigned lease agreement by the lessee is generally not a valid instrument for creating a legal interest in the land. Given that the lease herein was for a period of 3 years, hence more than 2 years, it is considered a registrable interest in land. It therefore follows that an unsigned or unregistered lease instrument for a term greater than two years cannot be relied upon in court as a valid lease agreement that confers an interest in land. In any event, that lease would be invalid for want of attestation as attestation is demanded by S. 3(3) (b) of the *Law of Contract Act* (Cap 23) Laws of Kenya.
8. While such an unsigned document coupled with possession and rent payment could create certain limited legal rights, for example a tenancy at will or a periodic tenancy, it would not constitute a valid, registered lease of land in Kenya even before the 2012 land Acts. The signature of both the lessor and lessee was a fundamental requirement for a formal lease to be legally valid and enforceable according to its full terms.
9. I thus do hereby find no valid lease agreement between the parties herein and and therefore do find that the plaintiff has failed to prove that the defendant herein was a tenant in the land parcel herein to the required standard and as pleaded. This suit and case as fashioned against the defendant herein therefore fails in its entirety.
10. Having dismissed the plaintiff's main evidence against the defendant herein as invalid and hence inadmissible as against the defendant herein, I further find that the suit herein is statutorily time barred as raised by the defendant herein. It is clear that the plaintiff seeks to recover suit land herein from the defendant after the expiry of 12 years since the title thereof was allegedly acquired. The upshot is that the suit herein be and is hereby dismissed with costs to the defendant for want of proof, and alternatively, for being statutorily time barred.



DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 13TH DAY OF NOVEMBER, 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiffs' counsel: Matoke H.

Defendant's counsel: n/a

Plaintiff: n/a

Defendant: n/a

