



**Kinuthia v Mwangi (Environment and Land Appeal E036 of 2024)
[2026] KEELC 2105 (KLR) (20 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2105 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E036 OF 2024**

MN GICHERU, J

APRIL 20, 2026

BETWEEN

KIARIE NJOROGE KINUTHIA APPELLANT

AND

MARGARET WAMBUI MWANGI RESPONDENT

JUDGMENT

1. In the Memorandum of appeal dated 26-7-2024, the Appellant seeks the following reliefs.
 - a. The appeal be allowed.
 - b. That the prayers sought in the suit filed in the lower court be allowed as prayed.
 - c. The costs of this appeal and those in the lower court be borne by the Respondent.

2. The appeal is based on Six(6) grounds as shown below.

The learned Senior Principal Magistrate erred in law and fact in –

- i. making an erroneous finding that the Appellant was not the owner of land parcel No. Loc. Samuru/Mwitingiri/Block 1/1537, suit land,
- ii. making a finding that the suit land was wholly sold to one John Ngeera Wanjohi while the converse was true,
- iii. ruling that the Appellant is not the owner of the suit land while documentary evidence adduced by the Appellant clearly indicated the Appellant was the registered proprietor of the suit land,
- iv. failing to interrogate the issues in controversy especially the fact that the Respondent failed to adduce evidence in Court and hence the Appellant’s testimony was not controverted,



- v. making a finding based on land parcel No. Loc. Samuru/Mwitingiri/Block 1/631 which finding was a clear departure from the Appellant suit in the amended plaint and
 - vi. arriving at a judgment which was against the weight of the evidence adduced.
3. The facts of the case according to the Appellant are as follows. One, the Appellant is the registered owner of land parcel No. Samuru/Mwitingiri/Block 1/5137. Two, the Respondent caused a restriction to be placed upon the suit land without any lawful cause and/or excuse. This restriction has unreasonably curtailed the Appellant's enjoyment of the proprietary rights granted to him under the Land Registration Act. Three, the Appellant prayed for an order directing the Land Registrar Murang'a to remove the caution lodged against the suit land.
 4. The facts of the case according to the Respondent are simply that she did not register any restriction or caution in respect to the suit land. Secondly it is the Criminal Investigation Department in their letter dated 15-8-2016 who registered the restriction. Three, it is the Attorney General who should have been sued on behalf of the CID. Finally, the Respondent was wrongly sued and the suit should be dismissed.
 5. In his judgment dated 2-6-2024, the learned trial magistrate dismissed the Appellant's suit on the ground that the evidence adduced in court relates to L.R. Samuru/Mwitingiri/Block 1/631 and not the suit land.
 6. I have carefully considered the appeal in its entirety including the record, the grounds and the written submissions dated 28-11-2025. Since the Appellants counsel has not framed any issues in his written submissions, I will frame the issues in line with the grounds of appeal and the judgment dated 2-6-2024. I find the following to be the issues for determination.
 - a. Whether the Appellant owns L.R.No.Loc. Samuru/Mwitingiri/Block 1/5137 or Samuru/Mwitingiri/Block 1/631.
 - b. Whether the suit land was sold to the one John Ngeera Wanjohi or not.
 - c. Whether there was any documentary evidence to prove that the Appellant is the owner of the suit land.
 7. On the first issue, I find that the Appellant, Kiarie Njoroge Kinuthia has not adduced any evidence that he owns LR. No. Samuru/Mwitingiri/Block 1/5137. The evidence that he had adduced only proves John Ngeera Wanjohi owns L.R. No. Samuru/Mwitingiri/Block 1/5631. This evidence is in form of sale agreement dated 15-6-2015, certificate of lease dated 17-6-2015, copy of register for the suit land certified as a true copy of the original on 27/3/2019 and a copy of certificate of official search dated 10-9-2018. The Appellant has not filed similar evidence in relation to L.R. Samuru/Mwitingiri/Block 1/5137. It was incumbent upon him to file such evidence because he is the one who desired the Court to give judgment in his favour. Section 107(1) of the Evidence Act provides as follows.

“Whoever desires any Court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”

In this case the Appellant only adduced evidence to prove that John Ngeera Wanjohi owned L.R. No. Samuru/Mwitingiri/Block 1/631. Without the requisite evidence, the Court cannot find that the Appellant owns L.R. No. Samuru/Mwitingiri/Block 1/1537.
 8. As for the second and third issues, I find that they are all well covered in the finding on the first issue.



9. Looking at the other grounds of appeal, I find that the trial magistrate did not fail to interrogate the issues in controversy. This was a case where the Appellant just failed to file the right evidence. The trial magistrate would only have ruled in favour of the Appellant if he had filed the right evidence. The documents filed proved the case of John Ngera Wanjohi but not the Appellant's. Finally all the weight of the evidence adduced proves only one thing, that is to say, John Ngera Wanjohi owned L.R. No. Samuru/Mwitingiri/Block 1/631.
10. In conclusion for the reasons already given, I find no merit in the Appellant's appeal which I dismiss.
No order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 20TH DAY OF APRIL, 2026.

M.N. GICHERU JUDGE.

Delivered online in the presence of ;-

Court Assistant – Anthony

Appellant's Counsel – T.M. Njoroge

Respondent's Counsel – Absent

