



**Gathinji v Obure (Enviromental and Land Originating Summons
E002 of 2024) [2026] KEELC 2326 (KLR) (27 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2326 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024
MN MWANYALE, J
APRIL 27, 2026**

BETWEEN

PAUL NYAGA GATHINJI APPLICANT

AND

THOMAS OKENYE OBURE RESPONDENT

RULING

1. Vide the application dated 27th November 2025, the Applicant Mr. Paul Nyaga Gathinji who was the unsuccessful litigant in this suit sought interpretation of the Judgment dated 30th September, 2025 on whether the Applicant is permitted in addition to harvesting sugarcane, to also harvest and remove mature blue gum trees that he had planted on parcel Transmara/Ololchani/437 prior to giving possession to the Respondent.
2. The other prayers in the application have been overtaken by events.
In support of the application penned the following Grounds; -
 - i. That in its judgment dated 30th of September 2025, the court expressly allowed the Applicant to harvest sugarcane, but the fate of the mature blue gum tress was not clarified in the judgment.
 - ii. That the Respondent has commenced eviction steps and if this is done the Applicant will be deprived of his trees.
3. The above grounds were reiterated in the supporting affidavit where the Applicant annexed a copy of the Judgment, and decree.
4. Though the application seems straight forward, it was opposed by the Replying affidavit of Thomas Okenye Obure, in which he deposes that the court only allowed harvest of sugarcane, that he had



planted the blue gums and the Applicant did not prove ownership of the same, that permitting the Applicant to harvest the blue gum would be sanction trespass as well as unjust enrichment.

5. The Applicant was canvassed by way of written submissions, which the court has considered and the court frames the sole issue for determination as to whether the application is merited.

Analysis and Determination

6. In its judgment, the court observed at paragraph 6(ii) that the Applicant had planted trees which had matured. Further at paragraph 7, of the judgment, the Applicant identified an Agricultural report dated 23.10.2024 which report was produced at P.Exhibit 8 and the said report captures the issue of the blue gum trees as indicated at paragraph 12 and 13 of the judgment, hence the depositions by the Respondent that the issue of blue gums was not pleaded and proven, is not only misleading but actually dishonest on the part of the Respondent, who did not lay any claim on the crops and the blue gum trees on the suit property.
7. Since the Applicant proved having planted the sugarcane, and the blue gum trees, and as the court has allowed harvest of the sugarcane the application in so far as it seeks interpretation of the judgment, is allowed in terms that; -
 - i. The Respondent shall grant the Applicant herein, access by way of an easement, to enable the Applicant harvest his mature blue gum.
 - ii. The Applicant shall issue sufficient notice to the Respondent, once he intends to harvest the blue gum and the sugarcane.
 - iii. The Easement granted does not affect the earlier vacant possession orders issued in the judgment dated 30.09.2025.
 - iv. There shall be no orders as to costs.

DATED AT KILGORIS THIS 27TH DAY OF APRIL, 2026

HON. M.N. MWANYALE

JUDGE

In the presence of

CA – Sylvia/Clara

Mr. Shira for Applicant

N/A for Mr. Omwoyo for Respondent

