



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELC E006 OF 2023**

TERESIA WAMBUI IRUNGU(Suing as the legal representative of  
DAVID IRUNGU MUTHUI-Deceased) .....  
PLAINTIFF

=VERSUS=

NAFTALI MUTHUI MAINA.....1<sup>ST</sup>  
DEFENDANT  
THE DISTRICT LAND REGISTRAR, MURANG'A.....2<sup>ND</sup>  
DEFENDANT

## JUDGMENT

(1)The Plaintiff seeks the following reliefs against the 1<sup>st</sup> Defendant.

- (a) A declaration that the registration of Naftali Muthui Miana in respect of land title No.Loc. Gacharagenin/3845, suit land, measuring approximately 0.405 hectares was done in trust for the Plaintiff, Teresia Wambui Irungu and her children namely Benard Maina Wambui, Emily Wamaitha Wambui, Naftali Muthui Irungu and Joseph Kiumu Irungu.
- (c) An order directing the Land Registrar to cancel the title to the suit land, held by the 1<sup>st</sup> Defendant and the same be registered/transferred in the name of the Plaintiff in its entirety; and the Land Registrar be allowed to dispense with the production of the old title owned by the 1<sup>st</sup> Defendant.
- (d) That an order of transfer of the suit land as prayed in clause (c) above be implemented by the Deputy Registrar of this Court in the place of the registered owner, the 1<sup>st</sup> Defendant.
- (e) That in the alternative to (b), (c) and (d) above, a declaration that the registration of the suit land in the name of the 1<sup>st</sup> Defendant is done in trust for the Plaintiff and her four children and a further order empowering the Land Registrar Murang'a to note their interest in the register of the property.

**(f) A permanent injunction restraining the 1<sup>st</sup> Defendant whether by himself, his servants, agents or any other person whomsoever from evicting, demolishing the Plaintiffs house, leasing, charging or otherwise interfering with the Plaintiff's peaceful and actual possession, cultivation, user, development and enjoyment of the suit land.**

**(g) Costs and interest of the suit.**

**(h) Any other relief as the Court may deem fit and just to grant.**

(2)The Plaintiffs' case is as follows. Firstly , she is the wife of David Irungu Muthui who is a son of the 1<sup>st</sup> Defendant. She got married to David in the year 2001 and they moved to the suit land where she has lived since then after her husband died in the year 2010. Together with David, they got 4 children. The suit land is family land. Secondly, the suit land which measures approximately 1 acre is registered in the name of the 1<sup>st</sup> Defendant, her father in law. The Plaintiff has tried to have the land registered in her name but the 1<sup>st</sup> Defendant has refused to allow her. Thirdly, the Plaintiff has developed the land by building a permanent 3 roomed stone house, a wooden house, a kitchen, a toilet, a bathroom, a cowshed, her son's house, planted trees and has 747 tea bushes on the land. Her husband is buried on the suit land. Fourthly, after the death of her husband, the 1<sup>st</sup> Defendant was kind to the Plaintiff to the point of paying the outstanding dowry which her husband had not paid. However, in July 2016, the 1<sup>st</sup> Defendant became hostile to the Plaintiff and threatened to evict her and her children. Fifthly, she reported the matter to the area chief. At the chief's office, the 1<sup>st</sup> Defendant said that he wished to distribute land to his children and relocate the Plaintiff and her children to land parcel No. Loc.20/Githuri/0916. The Plaintiff refused to relocate because the 1<sup>st</sup> Defendant had given the suit land to her husband David before his death and the family had carried out substantial developments thereon. It was agreed that the status quo be maintained. The 1<sup>st</sup> Defendant attempted to sell the land in the year 2020 but the Plaintiff lodged a caution. He brought a surveyor to the land on 30-11-2022 and thus made the Plaintiff apprehensive and that is why she filed this suit.

(3)In support of her case, the Plaintiff filed the following evidence.

- i. Her witness statement dated 10-2-2023.**
- ii. Copy of agreement for the suit land.**

- iii. **Copies of proceeding before the chief on 3-11-2016 and 8-12-2016.**
- iv. **Copy of chiefs letter dated 19-10-2020.**
- v. **Notices of intention to remove caution dated 11-10-2022 and 24-8-2022.**
- vi. **Application for objection to remove caution dated 17-10-2022.**
- vii. **KTDA advise slip for tea bushes.**
- viii. **Witness statement by Josphat Mwangi Waweru dated 20-11-2023.**
- ix. **Further witness statement by the Plaintiff dated 20-11-2023.**
- x. **Eight photographs of the suit land.**

(4)The 1<sup>st</sup> Defendant in a written statement of defence dated 8-3-2023 denies the Plaintiff's claim averring as follows. Firstly, other than the Plaintiff's husband he is a father of the following children.

- (a) Susan Wanjeri Njuguna,**
- (b) Jane Wambui Muthui,**
- (c) Joseph Maina Muthui,**
- (d) Ann Wangui Muthui and**
- (e) Mary Nyambura Muthui.**

These other children are also beneficiaries of the suit land and have children of their own. Secondly, the two sons of the 1<sup>st</sup> Defendant Joseph Maina and David Irungu were shown where to put up their homes. The Plaintiff's deceased husband was shown a portion measuring 0.0725 Ha out of the suit land. The Plaintiff's home and her husband's grave are on this portion measuring 0.0725 Ha. Thirdly, the suit land is not ancestral land. It was acquired through purchase by the 1<sup>st</sup> Defendant who together with his elder brother Samuel Maina Munuhe bought L.R. No. Loc. 19/Gacharageini/1249 which mutated to L.R. No. 3844 and 3855, the latter being the suit land. Fourthly, the Plaintiff is intent in grabbing the whole of the suit land as opposed to the portion shown to her. She wishes to sell the land and is claiming beneficial interest even when the 1<sup>st</sup> Defendant is alive. The 1<sup>st</sup> Defendant wishes to distribute his land in lifetime so that his heirs do not fight over it in the event of intestacy. In this connection, he has subdivided the suit land into 5 portions to wit Loc.19/Gacharageini/4295-4299 so as to transfer them to his children. The Plaintiff has been

allocated Loc.19/Gacharageini/4298 by the 1<sup>st</sup> Defendant which takes care of her interest and the said portion has her house and her husband's grave. The rest of the land is not available to the Plaintiff as it is meant for the other children of the 1<sup>st</sup> Defendant.

(5) In support of his case, the 1<sup>st</sup> Defendant filed the following evidence.

- (i) His witness statement dated 20-6-2023.**
- (ii) Copy of register for L.R. No. 1249.**
- (iii) Copy of application for consent of the land control board dated 19-10-2020.**
- (iv) Copy of title deed for L.R. No. 3845 dated 26-4-2018.**
- (v) Copy of official search for L.R. 3844 dated 8-3-2023.**
- (vi) Copy of mutation form for L.R. 3845 dividing it into 5 portions.**
- (vii) Copies of title deed for parcels numbers 4295-9 all in the name of the 1<sup>st</sup> Defendant and dated 21-2-2023.**
- (viii) A map of Gacharageini unit.**

(6) At the trial on 10-2-2025 and 17-6-2025, the Plaintiff, her witness Josphat Mwangi and the 1<sup>st</sup> Defendant testified. The parties, in their evidence did not change the positions that they took in their pleadings.

(7) Counsel for the parties filed written submissions dated 9-2-2026 in the case of the 1<sup>st</sup> Defendant while the Plaintiff's are undated.

The 1<sup>st</sup> Defendant identified two issues for determination.

- (i) Whether the 1<sup>st</sup> Defendant held the suit land in trust for the Plaintiff.**
- (ii) Whether the orders sought should be granted.**

(8) I have carefully considered the evidence adduced in this case by both sides including the witness statements, documents and testimony at the trial. I have also considered the written submissions by both sides including the law cited therein.

Under **Order 15 rule 2** of the Civil Procedure Rules, the Court has power to frame issues. Proceeding under that provision, I frame the issues as follows. This is in addition to the ones framed by the 1<sup>st</sup> Defendant's Counsel.

**(i) Whether a registered owner of land can be compelled to distribute his land in his lifetime in a certain manner.**

**(ii) Whether Joseph Maina, the elder son, has been favoured by the 1<sup>st</sup> Defendant.**

(9) On the issue of whether a land owner can be compelled to distribute his land in his lifetime in a particular manner, I find that he cannot be compelled. In the case of **Muriuki Marigi vs Richard Marigi Muriuki and 2 Others Civil Appeal No. 189 of 1996**, a son had sought to compel his polygamous father to distribute his land equally amongst his wives or households wishing to get a bigger share than his step brothers because he was the only son in his mother's house. He succeeded before the Land Disputes Tribunal and the High Court at Nyeri but failed when the Court of Appeal held as follows.

**“ It is, however, noteworthy that the Law of Succession Act does recognize the rights of wives and children over their husband's/father's estate as the case may be. Those rights accrue after death. Otherwise the rights remain inchoate and are not legally enforceable in any court of law or otherwise.**

**Wherever they accrue the estate is shared either according to the personal laws of the deceased in case of agricultural land or as provided in the relevant provisions of the Law of Succession Act. The Appellant as the registered owner of the suit property is still alive. His property is not yet available for subdivision and distribution among his wives and children except if he personally on his own free will decided to sub-divide and distribute it among them. He may not be urged, directed or ordered to do it against his will.”**

Similarly, the 1<sup>st</sup> Defendant cannot be compelled to transfer the suit land to the Plaintiff.

Under Section 24 of the Land Registration Act, the 1<sup>st</sup> Defendant enjoys absolute ownership of the suit land together with all rights and privileges belonging or appurtenant thereto.

(10) Regarding the issue of holding the suit land in trust for the Plaintiff, I find that the 1<sup>st</sup> Defendant holds the land in trust for her. However, he does not hold it in trust for her alone. He holds it in trust for her and all his other children. In the Plaintiff's case, she stands in the place of David Irungu Muthui who was a son of the 1<sup>st</sup> Defendant. If the whole land were to

be given to the Plaintiff alone, that would be discriminatory. The 1<sup>st</sup> Defendant has other children against who he cannot discriminate. **Article 27(5)** of the **Constitution** of Kenya provides as follows.

**“ A person shall not discriminate directly or indirectly against another person on any of the grounds contemplated in clause (4)”.**

The grounds in Sub Article (4) include race, sex, pregnancy, marital status, health status, ethnic or social original, colour, age, disability, region, conscience, belief, culture, dress, language or birth.

What this means is that the daughters and sons of the 1<sup>st</sup> Defendant should be treated equally otherwise he would be discriminating the daughters on gender. Again, the married and the unmarried daughters should be treated equally otherwise, he would be accused of discriminating against the married daughters on the ground of marital status. The Constitution forbids discrimination on both grounds of gender and marital status.

- (11) Finally on whether Joseph Maina Muthui has been favoured, I find no evidence of this favouritism. This case is about the suit land only. This is Loc. 19/Gacharageini/3845. It is not about any other land. So far, this land has been distributed in a fair manner. It is also expected that any other land of the 1<sup>st</sup> Defendant would be allocated in a manner that is not discriminatory. As we have seen from the case of Muriuki Marigi, the 1<sup>st</sup> Defendant cannot be compelled to distribute his property in his lifetime. If he dies intestate, the Law of Succession will apply. If he distributes his property in his lifetime in a discriminatory manner, those discriminated against could sue him.
- (12) In conclusion and for the reasons given, I find **no merit** in the Plaintiffs’ suit which I **dismiss**. Regarding costs, since this is a family dispute, in the hope that the parties may seek to live in harmony, I will order that each party bears its own costs.
- It is so ordered.**

**Dated, Signed and Delivered virtually at Murang’a this 6<sup>th</sup> day of May, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of; -**  
**Court Assistants – Jackline and Antony**  
**Plaintiff’s Counsel – Miss Waititu**  
**1<sup>st</sup> Defendant’s Counsel – Mr Mbugua**