



Miruri v Muchiri & 2 others (Environment and Land Case E022 of 2024) [2025] KEELC 5912 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5912 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E022 OF 2024**

**AK BOR, J
JULY 24, 2025**

BETWEEN

NJERU MIRURI PLAINTIFF

AND

ROBERT IRERI MUCHIRI 1ST DEFENDANT

SALIANO NYAGA MUCHIRI 2ND DEFENDANT

DOMINIC NJERU MUCHIRI 3RD DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit in August 2024 seeking an order for the Defendants to remove themselves or any other person that they may have placed on the land known as Evurore/ Nthambau/287 (the suit land) and in default, that they be forcibly evicted and vacant possession be given to the Plaintiff. He sought an order directed to the Officer Commanding Ishiara Police Station or any other nearest police station to provide security to ensure the enforcement of the order. He also sought to have the Defendants pay mesne profits at a rate to be determined by the court as well as the costs of the suit and interest.
2. The basis of the Plaintiff’s claim is that he was declared the legal owner of the suit land, which he held in trust for the Kere Clan, pursuant to a decree issued in Siakago PMC Land Dispute Tribunal Case No. 8 of 2010. That at all times, the Defendants continuously and deliberately illegally interfered with the Plaintiff’s peaceful occupation of the suit land by trespassing on the land.
3. He gave particulars of trespass as forcibly and illegally entering the suit land; cultivating and harvesting trees; burning charcoal and threatening to use physical force against the Plaintiff using bows and arrows. The Plaintiff averred that he had suffered loss and damage as a result of the Defendants’ actions and particularised the loss as loss of use of the suit land and destruction of trees. He averred that the



- Defendants unjustly registered a caution against the suit land interfering with his rightful control over the land.
4. The Defendants filed a defence and stated that the suit land is registered in the name of their late father Muchiri Chirigu and that they had developed the suit land. They averred that the proceedings and judgment and Award No. 8 of 2010 in the Principal Magistrate at Siakago were quashed in Embu ELC No. 10 of 2014 (JR), which was formerly Kerugoya ELC Case No. 44 of 2013. They urged that the Plaintiff's suit should be dismissed with costs.
 5. During the hearing, the Plaintiff called Stephen Njeru Munyi his nephew to give evidence. He adopted his witness statement dated 26/3/2024 and that of the Plaintiff where he mainly supported the Plaintiff's claim. He told the court that the Plaintiff was elderly, unwell and that he had challenges communicating. Mr. Munyi testified that the Plaintiff was awarded the suit land in Tribunal Case No. 8 of 2010 against the Defendants' father, Muciri Cirigo, and that the Tribunal's decision was adopted as an order of the court.
 6. He maintained that the order remains a valid court order since no appeal was preferred by Muciri Cirigo. He averred that there was no court order for cancellation of the Plaintiff's proprietorship nor were there any proceedings leading to such a court order and that any entry in the register cancelling the Plaintiff's proprietorship was a forgery.
 7. The Plaintiff produced copies of his national identity card, title deed issued on 10/9/2021 in his name, the decree issued in Siakago Principal Magistrate's court in Siakago Land Disputes Tribunal Case No. 8 of 2010 and letters from the Chief. He also produced copies of the green card for the suit land cancelling his name, and the demand letter.
 8. The 1st Defendant, Robert Ileri Muchiri testified on behalf of the Defendants and adopted his witness statement. He denied that they entered the suit land in 2015 armed with arrows, bows, rungas and pangas. It was his evidence that they had been cultivating the suit land since 1986. He was emphatic that the suit land belonged to their late father and that they have always ploughed the land. He testified that during the hearing at the Tribunal they sent Danstan Njeru Chirigu to represent them and they lost. However, they succeeded on appeal and the Plaintiff's title was cancelled meaning they are the ones who should be using the suit land.
 9. The 1st Defendant produced a copy of the judgment in ELC JR Case No. 10 of 2014 dated 5/10/2017- Republic v Njeru Miruri & 2 Others Ex-parte Robert Ileri Muchiri together with the decree in that case. He also tendered in evidence copies of the certificate of official search over the suit land, green card for the suit land and the certificate of death for Muchiri Cirigo.
 10. The court directed parties to file and exchange written submissions which it has considered. The Plaintiff submitted that he had proved ownership of the suit land by producing a copy of the title. He relied on *Rutongot Farm Limited v Kenya Forest Service & 3 Others* [2018] eKLR where the court held that once proprietary interest has been lawfully acquired, then the guarantee to the protection of the right to property under Article 40 of *the Constitution* ensues and the person shall not be arbitrarily deprived of the property. He urged that the Defendants actions of encroaching on his land amounted to illegal trespass. He also sought mesne profits and relied on Order 21 Rule 3 of the Civil Procedure Rules.
 11. The Defendants submitted that this suit was res judicata following the determination of ELC JR Case No. 10 of 2014 in which the court found that the defunct Evurore Land Disputes Tribunal lacked jurisdiction to determine Case No. 358 of 2009. That in the judicial review proceedings, the award of the Tribunal which had been adopted by the Siakago SPM Court Case No. 8 of 2010 was set aside



- and that the Plaintiff's success at the Tribunal was quashed. That the order for quashing was noted on the green card for the suit land as entry no. 7 and that entry quashed entry no. 2 which transferred the suit land to the Plaintiff.
12. The Defendants urged that the judicial review proceedings were between the same parties litigating under the same title and that the issues raised in the plaint were raised and settled. They urged that the Plaintiff's case was weak and did not support his prayer to have them evicted from the suit land.
 13. The issue for determination is whether the Plaintiff's suit has merit. The foundation of the Plaintiff's suit is that he was declared the lawful owner of the suit land parcel pursuant to the award rendered by the Siakago Land Disputes Tribunal, which was subsequently adopted as a judgment of the Principal Magistrate's Court at Siakago in Case No. 8 of 2010 on 15/4/2010. He seeks to have the Defendants evicted from the suit land and for vacant possession to be granted to him. He also seeks to have the Defendants pay him mesne profits for the use of the suit land to be assessed by the court. In support of his claim, the Plaintiff produced the decree issued in the Tribunal case and a copy of a title deed issued to him on 10/9/2021 among other documents.
 14. On their part, the Defendants maintained that the Tribunal's award upon which the Plaintiff's claim is premised was quashed through judicial review proceedings in Embu ELC JR No. 10 of 2014 (formerly Kerugoya ELC JR No. 44 of 2013). They produced copies of the judgment and decree in that case, where the court held that the Tribunal acted beyond its mandate by purporting to determine the ownership of registered land. The court issued an order of certiorari quashing the proceedings and award of the Tribunal.
 15. The Plaintiff denied that the judicial review proceedings took place but it is evident from the judgment furnished to this court that he was represented by counsel in that case. The green card for Evurore/Nthambu/287 shows that entry number 7 made on 20/12/2022 reflects the outcome of that judgment. The Plaintiff's registration as proprietor was cancelled pursuant to the court order, and the first entry showing the registration of Muchiri Chirigu, the Defendants' deceased father as proprietor was reinstated. The Plaintiff failed to prove the allegations of forgery against the Defendants.
 16. It is evident that the Plaintiff's title over the suit land is based on a decree that was nullified by a competent court in the judicial review proceedings. This court finds no merit in the Plaintiff's suit and dismisses it with costs to the Defendants.

DELIVERED VIRTUALLY AT EMBU THIS 24TH DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Njeru Miruri- the Plaintiff

Mr. Robert Ileri Muchiri- the 1st Defendant

Mr. Saliano Muchiri- the 2nd Defendant

Mr. Dominic Muchiri- the 3rd Defendant

Diana Kemboi- Court Assistant

