



**Njeru (Suing as the Legal Representative of the Estate of the
Late Peterson Njeru) v Mwaniki (Environment and Land Appeal
E029 of 2023) [2025] KEELC 5857 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5857 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E029 OF 2023**

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

BETWEEN

**RUDIA MUTHONI NJERU (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF THE LATE PETERSON NJERU) APPELLANT**

AND

PETER MUNGAI MWANIKI RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of Hon J.A Otieno, Senior Resident Magistrate [SRM], delivered on 4/12/2023 in Embu CM ELC Case No. 58 of 2017- Rudia Muthoni Njeru [Suing as the Legal Representative of the Estate of Peterson Njeru Nthia] v Peter Mungai Mwaniki, which the Appellant filed seeking to have the Land Registrar, Mbeere ordered to remove the caution or restriction registered by the Respondent against the land known as Evurore/Nguthi/2634 [the suit land]. The Appellant also sought an order for the Respondent and his servants or agents to vacate the suit land and render vacant possession. An order for the Officer Commanding the Siakago Police Station to enforce compliance with the order was also sought in that claim.
2. It was the Appellant's claim that her late husband is the registered owner of the suit land and that the Respondent had illegally occupied the land without her consent. Additionally, that the Respondent illegally registered a caution against the suit land. It was her case that her late husband entered into a sale agreement with the Respondent for the sale of the suit land at the agreed consideration of Kshs. 40,000/= but the Respondent only paid a deposit of Kshs. 17,100/= leaving a balance of Kshs. 22,900/= . That as a result of the failure to clear the balance of the purchase price, her late husband did not transfer the land to the Respondent.
3. The Appellant claimed that her husband wrote a letter to the Respondent on 17/5/2011 asking him to meet at the offices of Rose W. Njeru & Co. Advocates on 27/5/2011 to collect his money and vacate



- the suit land but the Respondent failed to do so. Instead, the Respondent is said to have forcefully continued to occupy the suit land without the consent of the Appellant's family.
4. The Respondent's case was that although the suit land is still registered in the name of the deceased, he purchased it from him and settled thereon before the registered owner died. He averred that the Appellant was a witness to the sale and that she received some of the purchase price. He stated that he entered into an agreement with the Appellant's deceased husband for the sale of one acre out of Evurore/Nguthi/1581 at Kshs. 25,000/= which he fully paid. That the deceased caused the subdivision of the land and his land was given a new number, being Evurore/Nguthi/2634. The Appellant's husband allowed him to occupy the land immediately on entering the sale agreement and he constructed a semi-permanent house and moved his family to the land where they live and have extensively developed.
 5. He averred that although the deceased was to transfer one acre to him, he only excised $\frac{3}{4}$ acre. The Respondent added that he even had to surrender his bicycle to the Appellant's husband to settle the purchase price which the Appellant also witnessed. It was his contention that the Appellant now wishes to sell the suit land to a third party at a higher price which would render him and his family destitute. He sought the dismissal of the Appellant's suit with costs.
 6. During the hearing, the Appellant gave evidence and produced copies of the certificate of search over parcel number 2634, the notice dated 23/1/2017 issued to the Respondent to vacate the land and the responses dated 14/2/2017 and 17/3/2017 from the Respondent and his advocate.
 7. The Respondent's testimony was that the agreed purchase price was Kshs. 25,000/= and that he paid Kshs. 21,000/= and gave the vendor a bicycle in addition to the purchase price. That he was purchasing one acre but was only given $\frac{3}{4}$ acre and the other $\frac{1}{4}$ acre was sold to a third party who developed it but was later evicted. He stated that the vendor refused to attend the Land Control Board [LCB] and told him to be satisfied with his portion. He added that when he took possession, neither the vendor nor his wife sought to have him evicted. To prove his case, he produced copies of the sale agreement dated 12/5/1999, acknowledgements of payment of the purchase price, and photographs showing the handover of the bicycle.
 8. In its judgment delivered on 4/12/2023, the trial court found that the Appellant did not produce any evidence to support the claims of breach of contract by the Respondent and that she failed to discharge the burden of proof. That in contrast, the Defendant had tendered a written sale agreement dated 12/05/1999 for the sale of one acre of land from Evurore/Nguthi/1581, which he entered into with the vendor, who had since died. The court observed that the agreement supported by the official search of the suit land buttressed the Respondent's assertion that the deceased excised $\frac{3}{4}$ acres instead of the agreed one acre.
 9. The trial court further observed that the Respondent's exhibits including the acknowledgment receipts and photographs of the handover of a bicycle were not controverted and that those exhibits supported his claim that he completed payment. The trial court found the suit unsustainable on account of being statute barred under Sections 4[2] and 7 of the *Limitation of Actions Act* and struck it out with costs to the Respondent. That is what led to the appeal before this court.
 10. The Appellant filed a memorandum of appeal and set out six grounds of appeal. She faulted the trial court for finding that she did not prove breach of the agreement by the Respondent yet it was not an issue for determination in the proceedings. She also faulted the court for finding that her claim was statute barred and for failing to find that the Respondent was a trespasser. Further, that the trial court erred when it failed to find that the Respondent's claim was time barred since the Respondent's claim to the suit land was based on a sale agreement made in 1999.



11. Another ground of appeal was that the trial court erred by dismissing the Appellant's suit yet the Respondent did not file any counterclaim on any interest he may have had on the suit. She also faulted the trial court for disregarding her evidence and dismissing her case. She challenged the trial court for entering judgment in favour of the Respondent yet in her view, the sale transaction was void for lack of LCB consent and that the only recourse available to the Respondent was to recover the purchase price as debt under the provisions of section 7 of the *Land Control Act*.
12. The Appellant sought to have the judgment of the trial court set aside and for the appeal to be allowed. She also sought costs of the appeal and for the trial court. The court directed parties to file and exchange written submissions on the appeal which it has considered.
13. The Appellant submitted that while it is true that the *Limitation of Actions Act* prescribes statutory periods for bringing certain claims, the trial court failed to appreciate the continuing nature of the trespass complained of. She argued that her case was not solely founded on breach of contract but on unlawful occupation and trespass by the Respondent. She urged that trespass is a continuing tort and each day the Respondent remained on the land without her consent renewed the cause of action. That as such, the doctrine of continuing injury applied and her suit was not time barred.
14. She also argued that the Respondent relied on an agreement from 1999 but made no effort to enforce it within the statutory time. Additionally, that he did not file a counterclaim for specific performance or any other remedy. She went on to argue that the agreement whether valid or not became stale in law and that the Respondent's presence on the suit land amounted to trespass.
15. She further submitted that her evidence that the Respondent failed to clear the purchase price and was issued with an offer for refund which he refused to take was consistent with her pleadings. It was her position that the trial court dismissed that evidence for want of written documentation while accepting the Respondent's evidence which was also largely unsupported. She argued that the sale transaction was void for lack of LCB consent and that the trial court enforced a transaction prohibited by law.
16. The Appellant submitted that the Appellant did not adduce evidence to prove that the agreed purchase price was Kshs. 40,000/= and that the Respondent paid Kshs. 17,100/= as the Appellant contended. He maintained that he proved through the sale agreement and acknowledgements that he paid Kshs. 21,000/= and that the land he was to purchase was one acre. He maintained that the Respondent's husband breached the agreement for he only gave him possession of $\frac{3}{4}$ acre and not the agreed one acre. According to him, he ought to have paid Kshs. 18,750/= for the $\frac{3}{4}$ acre but ended up paying Kshs. 21,000/= thereby overpaying the consideration by Kshs. 2,250/=.
17. He averred that the Appellant breached the agreement by failing to effect transmission of the suit land and maintained that the Appellant's suit was time barred and that the trial court did not err in that regard. He urged that he was not a trespasser on the suit land but is the owner and purchaser. He submitted that want of LCB consent did not render the land transaction void where the parties had already set the intention to transfer the land legally and a constructive trust could be inferred.
18. The issue for determination is whether the trial court erred in arriving at the findings it reached and whether the appeal has merit. The Appellant's claim was founded on the sale agreement entered into on 12/5/1999. Under Section 4 [2] and 7 of the *Limitation of Actions Act*, any action founded on contract or recovery of land must be brought within six and twelve years respectively. The Appellant's suit, filed in on 21/3/2017, was clearly outside the prescribed statutory limitation periods.
19. The Appellant contended that the purchase price agreed for the portion that the Respondent was purchasing was Kshs. 40, 000/= but did not adduce any evidence to back this contention. From the evidence adduced, the Respondent entered into the sale agreement with the Appellant's late husband



in 1999 which gave the agreed purchase price as Kshs. 25,000/= . The Respondent claimed that despite paying Kshs. 21,000/= towards the purchase of an acre of land, he was only given $\frac{3}{4}$ of an acre by the vendor.

20. The Appellant did not dispute the fact that the Respondent was granted possession of the land in the 1990's after his family was displaced from Molo following tribal clashes. Want of LCB consent did not render the land transaction void as the Appellant submitted. A trust can be inferred since the vendor received part of the agreed purchase price from the Respondent and gave him a smaller piece of land than what had been agreed upon.
21. The trial court correctly found that the Appellant failed to prove breach of the agreement by the Respondent. The burden of proof lay with the Appellant, and she did not discharge that burden. To prove her case, the Appellant only produced a certificate of official search over Evurore/Nguthi/2634, a notice to vacate, and the Respondent's response to the notice. The Respondent produced the sale agreement dated 12/5/1999, acknowledgments of payment, and photographs showing the handover of a bicycle as payment of the purchase price.
22. The trial court did not err when it concluded that the Respondent had fulfilled his obligations under the agreement. The prayer for removal of the caution could not succeed after the Respondent had demonstrated a legitimate interest in the suit land. The reliefs sought could not be granted by the trial court because the Respondent is not a trespasser.
23. The appeal lacks merit, and is dismissed with costs to the Respondent.

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

K. BOR

JUDGE

In the presence of: -

Ms. Wanjiku Kamochu for the Appellant

Mr. Peter Mungai- the Respondent

Diana Kemboi- Court Assistant

