



**Kiiru v Gitau & 2 others (Environment and Land Appeal
E053 of 2024) [2025] KEELC 5438 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5438 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E053 OF 2024**

MN GICHERU, J

JULY 22, 2025

BETWEEN

EZRA KARANJA KIIRU APPELLANT

AND

JOHN THUO GITAU 1ST RESPONDENT

MARY WANGUI MWANGI 2ND RESPONDENT

ELIZABETH NJERI WANJA 3RD RESPONDENT

(Being an appeal from the whole judgment of Honourable O. Wanyaga the Principal Magistrate at Kigumo delivered on 2nd December 2024 in MC ELC No. E007 of 2022, John Thuo Gitau, Mary Wangui Mwangi and Elizabeth Njeri Wanja -vs- Ezra Karanja Kiiru)

JUDGMENT

1. The Appellant seeks the following orders against the Respondents.
 - i. That the judgment of the learned trial magistrate in Kigumo SPM’s Case No. MCELC E007 of 2022, dated 2-12-2024 be set aside.
 - ii. That the Appellant’s prayers in the plaint dated 14-4-2022 be allowed in their entirety.
 - iii. Costs of this appeal.
2. The appeal is based on the following grounds.

The learned trial magistrate erred in law and in fact in-

 - i. finding for the Respondents as against the weight of evidence,



- ii. dismissing the Appellant’s defence and counterclaim also against the weight of overwhelming evidence,
 - iii. failing to appreciate the fact that the Appellant had been occupying his 0.5 acres portion of land for a period of more than 15 years before the Respondents acquired title in the year 2021,
 - iv. failing to consider that the Appellant had overriding interest in 0.5 acres of the suit land as enshrined in Section 28 of the [Land Registration Act, 2012](#),
 - v. ignoring the weight of the evidence of D.W. 2 Jamleck Mwangi, the original owner of the parent title Mitubiri/Wempa Block 1/ 6418 which after subdivision resulted in the suit land title number Mitubiri/Wempa/Block 1/6809,
 - vi. directing that the Appellant be evicted from a portion of land which he was already entitled to by way of adverse possession, against the Respondents’ title and
 - vii. relying on wrong principles of law and failing to appreciate the provisions relating to laws of land registration and acquisition.
3. The facts of the case according to the Plaintiffs(Respondents) as follows. One, they are the registered owners of L.R. No. Mitubiri/Wempa Block 1/6809. It measures 0.430 Ha. Two, they have never allowed the Defendant to use or occupy the land but he has encroached on it without their permission. They cannot now access their land and that is why they filed the suit in the lower court seeking the eviction of the Defendant from their land.
 4. The facts of the case according to the Defendant (Appellant) are as follows. On 16-3-2005, he purchased 0.5 acres from Jamlick Mwangi Gichohi. The land was to be carved out of L.R. No. Mitubiri/Wempa Block 1/6418. The Appellant was not immediately issued with a title deed because he did not have money for registration. On 21-1-2006 Joseph Muniu Mwaura purchased 7 points from the same Jamlick Mwangi Gichohi who had sold land to the Appellant. When he engaged the services of a surveyor, it was found out that the Appellant’s land and that of Joseph Muniu Mwaura had been amalgamated in a single title that was Mitubiri/Wempa Block 1/6809. The Appellant who was not aware of this error, engaged the services of the same private surveyor that Muniu had engaged. On 25-10-2016, he was issued with a title deed which was for land parcel No. Mitubiri/Wempa Block 1/6810. Later on 20-12-2018, Joseph Muniu sold L.R. No.6809 to the Respondents. The size of the Respondents land was indicated as 0.430 hectares . In October 2021, the Respondents entered the suit land and fixed beacons. The Appellant objected because the Respondents encroached onto his land. The Appellant had already built a permanent house which was L.R No.6809 and not on L.R. No. 6810. The Surveyor advised the Appellant to first transfer his land to his neighbour Harrison Muhanda Mburu. He did so and the land was transferred as advised. This did not solve the problem because the parties tried all means possible to resolve the dispute amicably but failed to do so. They ended up in Court.
 5. In his judgment dated 2-12-2024, the learned trial magistrate allowed the Respondents’ claim, dismissed the Appellant’s counterclaim, issued an order of injunction restraining the Defendant from encroaching on L.R. No. 6809 and ordered that the Appellant vacates the suit land by 2-3-2025 failing which he would be evicted and the OCS Makuyu Police Station would provide security during the eviction.
 6. Counsel for the parties filed written submissions dated 3-6-2025 and 25-6-2025 respectively.
 7. I have carefully considered the appeal in its entirety including the record, the grounds, the written submission and the law cited therein. I find two(2) anomalies in this case.



8. The first one is that even though the Appellant says that he bought 0.5 acres of land from Jamlick Mwangi Gichohi on 16-3-2005, the title deed that he annexed to the supporting affidavit dated 17-5-2022 shows that the approximate area of his land is 0.430 Ha. If one multiplies 0.43 Ha. with 2.471 to get the size in acres, one gets 1.06253 acres. The title deed is dated 25-10-2016. This increase in the size of the Appellant's land from 0.5 acres to 1.06253 acres is unexplained by the Appellant.
9. The second anomaly is that this is essentially a boundary dispute. The Respondents are saying that the Appellant has encroached onto their land No. Mitubiri/Wempa Block 1/6809. The Appellant is saying that his land No. Mitubiri/Wempa Block 1/6809 has been amalgamated with L.R. No. 6809.
10. Section 18(2) of the *Land Registration Act* provides as follows.

“The Court shall not entertain any action or other proceeding relating to a dispute as to boundaries of registered land unless the boundaries have been determined in accordance with this section...”

The trial magistrate should not have entertained the dispute at all since it related to a boundary between L.R. No. 6809 and 6810 both of which are registered. The Respondents should not have filed the suit in the first place. They should have asked the Land Registrar to resolve the boundary dispute. After the boundary dispute resolution, any party who is dissatisfied with the decision of the Land Registrar may then approach the Court by way of appeal. All this is provided for under Regulation 40 of the Land Registration (General) Regulations, 2017. Paragraph 40(6) provides as follows.

(6) Any party aggrieved by the decision of the Registrar made under paragraph (5), may within thirty days of the date of notification, appeal the decision to the Court.”

11. For the above stated reasons, I find no merit in the appeal which I dismiss. As for costs, I find that each party should bear its own because even the Respondents should not have filed the lower court suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 22ND DAY OF JULY, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Mr. Muturi

Respondents' Counsel – Mr. Gatonye

