



Gatai v Mwangi (Appeal E008 of 2024) [2025] KEELC 5422 (KLR) (17 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5422 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA**

APPEAL E008 OF 2024

JM KAMAU, J

JULY 17, 2025

BETWEEN

HENRY MWANGI GATAI APPELLANT

AND

ERASTUS MATHYA MWANGI RESPONDENT

(An Appeal from the Judgment and Decree in Engineer Senior Principal Magistrate's Court SPMELC No.E001 of 2023, Hon. H.O. Barasa (SPM) dated 5th March 2024)

JUDGMENT

1. The Appellant filed suit in Engineer Chief Magistrate's Court vide Complaint dated 23.12.2022. His case is that he gifted the Respondent his parcel of land known as LR No. Nyandarua/Mumui /1098 measuring 2 Acres who, as he says, was his casual worker at his office in Nairobi on condition that the same would not be sold and that the same was to serve the future of his family. He kept the Title Deed (in the name of the Respondent) in his custody. But in or around October 2022 the Appellant discovered that the said Title Deed was missing from where he had kept it.
2. The Respondent together with other staff denied having taken it. He therefore placed a caution against the land and reported the matter to Parklands Police Station, Nairobi. The Respondent has in the past attempted to subdivide the land Nyandarua /Mamui/78 in order to pave way for Nyandarua/Mamui/1097 and 1098. The Respondent intends to dispose of the land. The said gift was never identified and assigned to the Respondent.
3. The process was never reduced into writing and hence the gift is null and void and the Appellant would want the gift to be reversed. The Respondent has never taken possession of the suit land. The Appellant therefore prays for judgement that –
 - a) A declaration that the gift inter vivos of Parcel No. Nyandarua/ Mumui/1098 to the Respondent herein was null and void ab initio and has no effect.



- b) An order cancelling Title Deed Registration No. Nyandarua/ Mumui/ 1098 currently registered in the name of the Respondent and that Nyandarua Land Registrar be directed and authorized to issue a new Title Deed for the said suit property in the name of the Appellant without any conditions.
- c) Costs of this suit and interest thereon.
4. On his part, the Respondent filed a statement of Defence dated 24.4.2023 in which he denied the Appellant's claim and specifically denies that the suit property Nyandarua/Mumui/1098 was given to him by the Appellant as a gift with a condition that he should not sell it. He claimed to have taken possession of the suit land in 2014 and that he had paid consideration of the land in kind through various projects he had undertaken for the Appellant. He says that this suit is meant to settle scores since judgement was entered on 21.10.2022 in Milimani Small Claims Commercial Court Suit No. E4332 between the Appellant herein as the Respondent and one Michael Mwangi Gitau and 2 others and that the Respondent (Sic) therein was the Appellant's client.
5. The Appellant herein was allegedly the 2nd Respondent in the Small Claims Court and that Judgment was entered in favour of the Respondent herein against the 1st Respondent there for the sum of Kshs. 933,052/= plus costs of the claim.
6. An appeal was preferred and filed in the High Court as Miscellaneous Application No. E812 of 2022 for stay of execution of the judgment by the said Michael Mwangi Gitau but later withdrawn. The Respondent therefore asked the court to dismiss the suit with costs.
7. In the Reply to Defence dated 15.5.2023, the Appellant reiterated the entirety of his averments in the Plaintiff.
8. The hearing of the suit commenced on 1.8.2023 when the Appellant, a practicing Architect adopted his statement dated 23rd December 2022 as his evidence in chief and produced the following documents to buttress his case:-
- a) Copy of Search Certificate.
- b) Copy of OB Report No.29/7/12/2022.
- c) Copy of Application for Registration of Caution dated 14.12.2022.
- d) Copy of Chief's letter dated 13.12.2022.
9. His evidence was to the effect that he subdivided his land LR No. Nyandarua / Mumui/78 into Nyandarua/Mumui/1097 and 1098 among others and gifted the Respondent with Nyandarua/ Mumui/1098 measuring 2 Acres or thereabout on condition that the same could not be sold and for the same to secure the future of his family. But that the Respondent betrayed him even before the land was subdivided and identified to him on the ground. The Respondent stole the Title Deed from the Appellant's house, a fact he discovered in October 2022 which he reported to the Police and that he has never found the Title to the date of the hearing of the case. He therefore prayed that the gift could be reversed by the court for it did not serve the purpose it was intended for. The Respondent went to the ground and started subdividing the land without a registered Surveyor.
10. While answering questions from Mr. Matagaro for the Defence, the Appellant said that the Respondent was operating from his (Appellant's) office and that he (Appellant) did the sub-division on paper but not on the ground.



11. On re-examination, the Appellant said that he had entrusted the Respondent with his office and also his residential house.
12. On his part, the Respondent adopted his written statement dated 24.3.2023 and produced documents as his evidence in chief. The said documents are:-
 - a) Ownership documents in respect to Nyandarua/Mumui/1098.
 - b) Bundle of Projects handled with the Appellant.
 - c) Screenshots of Website and Appellant's Company profile.
 - d) Bundle of photos of farm visits.
 - e) Bundle of emails when Appellant was instructing him for jobs and when the Appellant was purchasing a motor vehicle.
 - f) Bundle of invoices and minutes for meetings attended by the Appellant.
13. The Respondent adduced evidence to the effect that he worked for the Appellant for about 18 years from 2005 to 2018 at a retainer of between Kshs.2,000= and Kshs. 3,000= a week plus food. When the two differed, they varied the working relationship so that the Respondent could be paid for every successful project which the Respondent got with the Appellant's help. But the Appellant did not keep his promise. It is after the Appellant sub-divided Nyandarua/Mumui/78 that he agreed that he was going to transfer 2 Acres therefrom as payment for the Respondent's services. This was at the Respondent's request and that several people attending a party hosted by the Appellant witnessed the gift being given such as a Mr. Ndung'u, Mr. Chege and other employees of the Appellant. The Respondent also said that he sued the Appellant alongside Mr. Michael Mwangi Gitau in the Small claims Court because the Appellant was a friend of Michael Mwangi Gitau and for no other reason.
14. The Respondent further in cross-examination stated that he was an Architectural Technician and that he had not produced any documents to show that the two had a contract. The same was verbal and that this was a labour contract. He also said that there was no written agreement that the Appellant would transfer the land to him neither did he have an acknowledgement from the Appellant that the Appellant owed him any money. He also said that he was using the Appellant's name to get his projects. He said that he was not gifted the land but he worked for it. Further that the Respondent went to the Small Claims Court against the Appellant, lost the case and in fact did pay costs of the case to the Appellant.
15. This ended the case before the Honourable Mr. H.O. Barasa, Senior Principal Magistrate who delivered the Judgment dated 5.3.2024 as contained in the Decree dated 9.2.2024 as follows:-

Claim for: -

 - a) A declaration that the gift inter vivos of Parcel No. Nyandarua/Mumui/1098 to the Respondent herein as null and void ab initio and has no effect.
 - b) An order cancelling Title Deed Registration No. Nyandarua/Mumui/1098 currently registered in the name of the Respondent and the Nyandarua Land Registrar be directed and authorized to issue a new Title Deed for the said suit property in the name of the Appellant without any conditions.
 - c) Costs of this suit and interest thereon.



16. This suit coming up for hearing on 1.8.2023, 10.8.2023, 8.9.2023 and for judgment on 29.2.2024 Before Hon. H.O. Barasa (SPM)

It is hereby ordered: -

1. That this suit is hereby dismissed.
2. That costs of the suit is awarded to the Respondent.

Having been dissatisfied with this judgement, the Appellant filed this Appeal seeking judgment for –

- a) A declaration that the gift inter vivos of Parcel No. Nyandarua/Mumui/ 1098 to the Respondent herein was null and void ab initio and has no effect.
- b) An order cancelling Title Deed Registration No. Nyandarua/Mumui/1098 currently registered in the name of the Respondent and the Nyandarua Land Registrar be directed and authorized to issue a new Title Deed for the said suit property in the name of the Appellant without any conditions.
- c) Costs of this suit and interest thereon, with the following as the principal grounds of Appeal :-
 - a) That the Learned Trial Magistrate erred in law and in fact and occasioned a grave miscarriage of justice by failing to declare that the gift inter vivos of Parcel No. Nyandarua /Mumui/1098 was null and void ab initio and has no effect.
 - b) That the Learned Trial Magistrate erred in law and in fact by failing to appreciate that no Title Deed or offer for the suit land was ever issued to the Respondent and who never accepted the same.
 - c) That the Learned Trial Magistrate fell into grave error by failing to appreciate that the Respondent was never settled on the Parcel of land being Nyandarua / Mumui/1098.
 - d) That the Learned Trial Magistrate erred both in law and in fact by failing to appreciate that no legitimate instrument of ownership was passed over to the Respondent and he has never settled on the said Title nor allowed to settle thereon.
 - e) That the Learned Trial Magistrate failed to appreciate mischief that occurred between the period 2022 when the Respondent stole the Title from the Appellant herein.
 - f) That the Learned Trial Magistrate fell into grave error by failing to order a cancellation Title No. Nyandarua /Mumui/1098 in the name of the Respondent.

17. It is not in dispute that the suit property is already in the name of the Respondent. The question is how it was so transferred. The Respondent does not say how the suit land was transferred to him and whether the two went to the Land Control Board to seek consent for the same to be transferred to him. He also denies that the same was a gift meant for him for use of his future family.

18. As this court has said over and over in the past as concerns a Title, where the sanctity of a Title Deed has been questioned the Title Holder must show how he obtained it.



19. The Respondent claims that he was given the parcel of land as payment for his fees as an Architectural Technician. He says he did to have a license to practice as an Architect and therefore he could not have earned such fee. Secondly, he does not say how much was the fee and how it was quantified. The documents produced by him as proof of the said briefs have no relevance to the suit land nor do they mention the same. I therefore find the evidence of the Respondent so incredible to be relied upon. How then do I hold that the land was given to him as a gift, a fact that he has vehemently denied? You cannot force a gift on anybody.
20. The concept of gifts is divided into two categories. First gifts inter vivos and gifts causa mortis. Gifts inter vivos as contemplated in the Law of Succession are such that the owner of the property or asset donates it to another without anticipation of death. A key distinction is that gifts causa mortis are revocable by the donor before his death, while gifts inter vivos are not.
21. A gift inter vivos, which is Latin for between the living, is a gift that is made during the lifetime of the grantor.
22. Generally, a gift inter vivos (a gift made during the donor's lifetime) is irrevocable once it has been completed. This means that the donor cannot take back the gift once it has been legally transferred to the recipient and accepted.
23. For a gift inter vivos to be irrevocable, it must be completed, meaning there must be a clear intent to make the gift, delivery of the gift to the recipient, and acceptance by the recipient.
24. While generally irrevocable, there are some limited exceptions. For example, if the gift was made under duress, undue influence, or if there was a failure of consideration (if the gift was made with a condition that was not met), the gift might be challenged and potentially revoked. Additionally, if the gift was made due to fraud or misrepresentation, it might be revoked.
25. If the gift is made with a condition, and that condition is not met, the donor may have grounds to seek revocation.
26. If the Donee (recipient) of the gift has notice that the gift was made with a condition or that the donor intended to retain some control over the gift, the donor may have more grounds to argue for revocation.
27. In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift must be perfected. In the case of inter vivos the gift must go to the Donee absolutely during the lifetime of the donor. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gift.
28. Further, it is fundamental to understand the intention of the parties and their acts done sufficiently to establish the passing of the gift to the Donee. The gift must have passed from the deceased to the recipient for it to be valid.
29. In Halsburys Laws of England 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor’s subsequent conduct gives the Donee a right to enforce the promise”.



30. For a gift to be valid, it needs to be made with the donor's intention to give, the recipient's intention to accept, and delivery of the gift. While documentation isn't always required, it's advisable for significant gifts to be documented with a Deed or letter to avoid future disputes.

31. Both the donor (person giving the gift) and the Donee (person receiving the gift) must intend for the transfer to be a gift. The gift must be delivered to the Donee.

For something to be a gift it must be:

1. voluntarily given;
2. unconditional – nothing is expected in return; and
3. charitable – nothing is gained from giving a gift.

32. In the Australian case of *Papathanasopoulos v Vacopoulos* [2007]

.....When a couple broke off their engagement, Ms. P tried to give the ring back but Mr. V told her to keep it as a gift. Instead, the ring was thrown away. Even though the ring was personal property and voluntarily given and accepted, an engagement ring is not a gift because it is conditional on a marriage taking place.....”

33. In our case, although christened as a gift, the suit land was given on condition that it should not be sold. Secondly, the same was not meant for the Respondent but for his future family which is yet to happen and the family members are the only ones that can claim the suit land and not the Respondent. The same, if it was to settle some fees, can therefore not qualify to be a gift.

34. Parties are bound by their own pleadings and coming to the evidence of the Appellant, the same appears credible in that he testified that he had intended to gift the suit land to the Respondent. But the latter went ahead of him and stole the Title Deed from him and is intent on selling it thereby unsettling the very purpose the gift inter vivos was intended for. The “gift”, although already transferred in the name of the Respondent was yet to be handed over to him and was therefore incomplete. It can therefore not stand since the same was not consummated.

35. There were several people in the party invited by the Appellant such as Mr. Ndung'u and Mr. Chege who the Respondent has told us were privy to the suit land being given to him. The Respondent did not call any of them as a witness yet they were his fellow employees. Failure to call them must be taken to mean that the evidence they could have given was adverse to the Respondent's case. But having denied that the suit land was given to him as a gift by the Appellant and having failed to show that he paid some consideration for it and how much the same was, the Respondent can only get the suit land by renegotiating for the same with the Appellant and paying the consideration to be agreed upon. But I cannot make such an Order since it is not one of the prayers in this Appeal. But nothing prevents the parties from doing so.

36. Although Section 80 of the *Land Registration Act*, 2012 provides as follows: -

- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

Subsection (2) of the Act provides that a Title can be rectified where the land had been acquired without valuable consideration and the registered proprietor is not in possession thereof:



- (2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default”
37. This proviso acts against the Respondent. As shown above, the suit land was not paid for on behalf of the Respondent. Again, the Respondent has not been able to demonstrate that he is in possession of the suit land.
38. As to the services rendered by the Respondent to the Appellant, if any, this court has no jurisdiction to determine. Jurisdiction lies elsewhere.
39. In the premises, this Appeal succeeds and I give Judgment to the Appellant as follows:
- a) A declaration be and is hereby granted that the gift inter vivos of Parcel No. Nyandarua/Mumui/1098 to the Respondent herein was not accepted and was also interfered with in order not to achieve the purpose intended by the Donor thereof and consequently the same is of no effect.
 - b) An order rectifying Title Deed Registration No. Nyandarua/Mumui/ 1098 currently registered in the name of the Respondent and the Nyandarua Land Registrar is hereby directed to rectify Title Deed for the said suit property to read the name of the Appellant forthwith.
40. I also award costs of this Appeal and those of the lower Court to the Appellant.

JUDGMENT SIGNED, DATED AND DELIVERED AT NYANDARUA THIS 17TH DAY OF JULY, 2025.

HON MUGO KAMAU

JUDGE

In the presence of:

C/A - Samson.

N/A ...for the Appellant.

Mr. Matagarro...for the Respondent.

