



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njeru v Thaara & 5 others (Environment and Land Appeal
E008 of 2021) [2025] KEELC 5903 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5903 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E008 OF 2021**

AK BOR, J

JULY 17, 2025

BETWEEN

LYDIA MUTHONI NJERU APPELLANT

AND

NJERU MBUGI THAARA 1ST RESPONDENT

JACOB KITHAKA MUNYI 2ND RESPONDENT

LYDIA NTHURAKU MUNYI 3RD RESPONDENT

ERICK MUNYI MUTITU 4TH RESPONDENT

GEOFFREY KARIUKI NJOKI 5TH RESPONDENT

FREDRICK MURIMI KITHAKA 6TH RESPONDENT

JUDGMENT

1. This appeal arises from the ruling of Hon W. Ngumi, Principal Magistrate delivered on 5/5/2021 in Siakago MC ELC Case No. 22 of 2020- Lydiah Muthoni Njeru v Njeru Mbugi Thari. The Appellant instituted that suit claiming that she entered into a sale agreement dated 13/1/2018 with the 1st Respondent, vide which the 1st Respondent agreed to sell to her 0.20 hectares out of the land known as Mbeti/Kiamuringa/290 for Kshs. 92,000/=. She claimed that despite notice, the 1st Respondent failed to transfer the portion to her. She sought specific performance of the agreement and an order for the Land Registrar, Mbeere South to lift any caution or restriction placed against the suit land to facilitate the transfer of the land as well as costs of the suit.
2. On 10/6/2020, parties entered into a consent to compromise the suit, pursuant to which the 1st Respondent would transfer the agreed portion of land to the Appellant within 14 days of the consent. It was also a term of the consent that the Land Registrar was to lift any caution or restrictions placed against Mbeti/Kiamuringa/290 to facilitate the transfer and each party would bear its costs of the suit.



3. On 21/12/2020, the 2nd to 6th Respondents filed a notice of motion seeking to have the consent order and judgment issued on 12/6/2020 set aside. They sought to be joined in the proceedings as interested parties. They also sought an order directing the Land Registrar, Mbeere South to cancel all resultant subdivisions of Mbeti/Kiamuringa/290 and for the title to revert to the name of Njeru Mbugi Thari.
4. The application was made on the grounds that the 2nd to 6th Respondents had been in occupation of the suit land since 1975 and that they had extensively developed it. They averred that the original owner of the land was known as Mbugi Thari, the 1st Respondent's father and that he agreed to transfer the parcel of land to the 2nd to 6th Respondents' father Elijah Ngungi. That upon the death of Mbugi Thari, the 1st Respondent effected a change to the ownership of the suit land vide a change of name and he was subsequently registered as its proprietor. That the 1st Respondent acknowledged that his father Mbugi Thari, had entered into an agreement to transfer the suit land to the 2nd to 6th Respondent's father.
5. Further it was averred that since Elijah Ngugi, the 2nd to 6th Respondents' father was dead, the 1st Respondent consented to transfer the suit land to their mother Lydia Nthuraku Munyi (deceased) but once the consent of the Land Control Board was granted, the 1st Respondent refused to transfer the suit land and instead issued the 2nd to 6th Respondents with an eviction notice demanding that they vacate the land.
6. The 1st Respondent filed MCL & E No. 3 of 2018 against the 2nd to 6th Respondents seeking eviction orders against them. They intended to file a counterclaim in the lower court case against the 1st Respondent for orders of adverse possession. They averred that while MCL & E No. 3 of 2018 was pending in court, the 1st Respondent subdivided the suit land into Mbeti/Kiamuringa/6283 and 6284 and sold 6284 to the Appellant. Parcel number 6283 was registered in the name of Jane Gicuku Mwaniki.
7. The 2nd to 6th Respondents averred that the consent order was filed without disclosure of the fact that there was a pending suit touching on the suit property. It was urged that the consent order was used to perpetrate fraud in obtaining two title deeds issued on 12/10/2020. Additionally, that the Appellant and the 1st Respondent acknowledged the existence of MCL & E No. 3 of 2018 in the sale agreement dated 13/1/2020 and that parties had agreed that the sale of the portion of the suit land was conditional upon the successful completion of the suit. They averred that it was evident that the Appellant and the 1st Respondent instituted the lower court case with the intention of defeating suit no. MCL & E No. 3 of 2018 and it was only fair that the consent be set aside for having been procured with the intention of defeating the pending case.
8. The Appellant opposed the application through herreplying affidavit in which she deponed that she was the registered proprietor of Mbeti/Kiamuringa/6284, having purchased it from the 1st Respondent for valuable consideration. She denied any fraudulent intent in entering the consent and explained that she sued the 1st Respondent due to delays in effecting the transfer of the portion she had purchased. She contended that the applicants had not been adjudged by any court to have any interest or rights over the suit land, and that they lacked the capacity to set aside the orders of the court or cancel her registration.
9. Further, she noted that the applicants did not file a counterclaim in MCL&E No. 3 of 2018 and were strangers to the proceedings in the lower court. She challenged the authority said to have been given to the 2nd Respondent by the 3rd Respondent to swear the supporting affidavit as well as the attached authority allegedly signed by the deceased 3rd Respondent. She maintained that the 2nd to 6th Respondents were aware of her interest in the land and urged the court to find that the application was an abuse of the court process and dismiss it with costs.



10. In the ruling dated 5/5/2021, the trial court allowed the 2nd to 6th Respondents' application and set aside the consent judgment entered into on 12/6/2020. The trial court based its decision on the fact that there was a pending matter in court involving the 2nd to 6th Respondents and the 1st Respondent in which the 1st Respondent sought to evict them from the land. The court stated that the 2nd to 6th Respondents though not expressly stating so, seemed to be saying that they had a right over the property. The court found that the 2nd to 6th Respondents would suffer prejudice if the land were transferred to a third party who was not party to the pending suit.
11. The trial court noted that a clause in the sale agreement stated that the transaction would take effect only upon conclusion of the eviction case which was not brought to the attention of the court at the time of filing the consent. The court was of the view that the condition had not been met and the actions of the Appellant and the 1st Respondent appeared to have been ill intentioned to frustrate the eviction case. The trial court relied on *Contractors Ltd v Margaret Oparanya (2004) eKLR* and found that the power to interfere with consent judgments or orders was discretionary and that the case before it was one that deserved the exercise of the discretion in favour of the 2nd to 6th Respondents. That led to the filing of this appeal.
12. The grounds of appeal set out in the memorandum of appeal are that the Learned Magistrate erred when she failed to consider that the 2nd to 6th Respondents had not raised sufficient grounds in their application to justify the setting aside of the consent judgment entered into on 12/6/2020; that the trial court failed to consider that the 3rd Respondent was already dead when the application dated 21/12/2020 was filed and could not have given the 1st Respondent authority to plead on her behalf; the court erred when it issued orders against Jane Kisilu Mwaniki who was not a party to the application dated 21/12/2020; the court erred when it failed to consider that the 2nd to 6th Respondents had not proved that they had any interest over the suit property capable of being protected; the court when it failed to consider that the 2nd to 6th Respondents were not parties to the sale agreement between the Appellant and the 1st Respondent; and the trial court was faulted for holding that the 1st Respondent should have consulted the 2nd to 6th Respondents before transferring the suit property to the Appellant and Jane Kisilu Mwaniki.
13. The issue for determination is whether the court should allow the appeal and set aside the ruling of the trial court dated 5/5/2021. It is well settled that a consent judgment or order has the same binding effect as a contract and is enforceable against the parties who willingly enter into it. In *Board of Trustees National Social Security Fund versus Micheal Mwalo [2015] eKLR*, it was held that a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. That to impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.
14. The 2nd to 6th Respondents were not parties to the court proceedings at the time the consent was recorded and were not privy to the sale agreement between the Appellant and the 1st Respondent, which formed the basis of the consent judgment. They therefore lacked the legal standing to challenge the consent, as they were complete strangers to both the agreement and the proceedings in which the consent was adopted as a judgment of the court.
15. The Respondents claimed that they had been in occupation of the suit land for many years and intended to file a claim for adverse possession but no claim had been filed or determined by any court of law by the time the trial court gave its ruling. The suit that was pending before the court sought to have



- them evicted from the suit land. They had not obtained any declaration of their rights over the land and thus could not be said to hold any legal interest over the suit land at the time they moved the court.
16. A claim for adverse possession can only be established through a substantive suit, in which the claimants will lead evidence to prove the claim. That process had not commenced. It was therefore premature for the trial court to treat the 2nd to 6th Respondents as persons with rights over the land when no court had adjudicated or recognised those rights. The trial court acted on mere allegations.
 17. Further, there was nothing to show that the consent between the Appellant and the 1st Respondent was obtained through fraud or collusion or by an agreement contrary to the policy of court. There was no evidence to suggest that the consent was aimed at defeating any legitimate rights of the 2nd to 6th Respondents or that it was procured through deception. The learned magistrate placed a lot of weight on unsubstantiated claims.
 18. The trial court also fell into error by allowing an application supported by an affidavit that was purportedly sworn on behalf of the 3rd Respondent, who was dead at the time the application was filed. The trial court issued orders which affected the title of Jane Gicuku Mwaniki, yet she was not a party to the suit and had not been served with the application. This was contrary to the rules of natural justice, on the requirement that no party should be condemned unheard. The Learned Magistrate erred by setting aside the consent judgment.
 19. The court finds merit in the appeal. The ruling of Hon. W. Ngumi, Principal Magistrate, delivered on 5/5/2021 in Siakago MC L&E Case No. 22 of 2020 is set aside and in its place an order is issued dismissing the Notice of Motion dated 21/12/2020. The Appellant is awarded the costs of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 17TH DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of:

Diana Kemboi- Court Assistant

No appearance for the parties

