



**Ndiritu & 2 others v Ngahu (Environmental and Land Originating Summons  
76 of 2015) [2025] KEELC 888 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 888 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 76 OF 2015**

**JO OLOLA, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**SAMUEL NDIRITU ..... 1<sup>ST</sup> PLAINTIFF**

**GEOFFREY WAWERU ..... 2<sup>ND</sup> PLAINTIFF**

**MARGARET WAMBUI W/O MUGAMBI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**LEAH GATHONI NGAHU ..... DEFENDANT**

**JUDGMENT**

**Background**

1. By an Originating Summons dated 3<sup>rd</sup> March, 2015, Samuel Ndiritu, Geoffrey Waweru and Margaret Wambui w/o Mugambi (hereinafter the Plaintiffs) pray for the determination of the following:
  1. Whether Ngahu s/o Kibui (deceased) held land parcel Thegenge/Kihora/153 in trust for the Applicants family;
  2. Whether the Defendant succeeded (sic) the Estate of Ngahu s/o Kibui alias Ngahu Kibui subject to the interest of the Applicants in Thegenge/Kihora/153;
  3. Whether the Defendant holds L.R Thegenge/ Kihora/153 in trust for the Applicants;
  4. Whether the said trust should be determined and the Applicants be registered as proprietors to land parcel number Thegenge/Kihora/153; and
  5. Whether the Defendant should pay costs to the Plaintiffs.
2. The Originating Summon is supported by an Affidavit sworn by the 1<sup>st</sup> Plaintiff wherein he deposes that during land consolidation and registration in the year 1958, Ngahu Kiboi got registered as



proprietor of the suit property in trust for the family of Wangui Ngahu who had no male surviving issue. It is the Plaintiffs case that they had been utilizing the suit property even before land registration.

3. Leah Gathoni Ngahu (the Defendant) however denies the Plaintiff's claim. In her Replying Affidavit sworn on 1<sup>st</sup> April, 2015, the Defendant asserts that she is the registered owner of Land Parcel No. Thegenge/Kihora/153 having acquired the same by way of transmission. The Defendant avers that no trust was created on the Suitland as she has lived on and cultivated the same all her life.
4. The Defendant further avers that the Plaintiffs have their own land miles away from her own and that her late husband had allowed his grandmother to farm arrowroots on the marshland where water was available and the Plaintiff's mother used to help her till the said portion.
5. It is the Defendant's case that the Suitland was the result of the consolidation of various parcels of land bought from Wambia Wandanyu and a small portion from his late father, Kibui Ngahu.

### **Analysis and Determination**

6. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
7. By their Originating Summons as filed herein, the three plaintiffs who are two brothers and their sisters-in-law have asked the court to determine whether or not one Ngahu s/o Kibui (deceased) was registered as proprietor of the parcel of land known as Thegenge/Kihora/153 in trust for the Plaintiffs' family. Given that the Defendant herein inherited the said parcel of land following the death of the said Ngahu S/o Kibui, the Plaintiffs further urge the court to determine if the Defendant's registration as the proprietor of the land was subject to the Plaintiff's interests thereon.
8. It was the Plaintiffs' case that during land consolidation and registration, the now deceased husband of the Defendant got registered as proprietor of the land in trust for the family of Wangui Ngahu who was his half-sister. It is the Plaintiffs' case that their mother, the said Wangui Ngahu and the Plaintiffs themselves have been utilizing a well-known portion of the suit property since the time of land registration in recognition of the rights and interests held by their mother thereon.
9. On the other hand, the Defendant denies that the suit property was registered in the name of her husband in trust for the Plaintiffs' family. It is the Defendant's case that she is the absolute proprietor of the land having acquired the same by way of transmission and having lived thereon and utilized the same all her life. The Defendant asserts that the portion of land claimed by the Plaintiffs was a marshland that her late husband had allowed his grandmother to use for growing arrowroots and that the Plaintiff's mother had only been helping the said grandmother to till the land.
10. In regard to matters of a claim to land under customary trust, the Supreme Court in Isack Kieba M'Inanga –VS- Isaaya Theuri M'Lintari & Another (2018) eKLR, held as follows:

“ Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. In this regard, we agree with the High Court in Kiarie –vs- Kinuthia, that what is essential is the nature of the holding of the land and the intention of the parties. If the said holding is for the benefit of other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land. Some of the elements that would qualify a claimant as a trustee are:

1. The land in question was before registration, family, clan or group land;



2. The Claimant belongs to such family clan or group;
3. The relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous;
4. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances; and
5. The claim is directed against the registered proprietor who is a member of the family, clan or group.”

11. When she testified before this court in October, 2022, the Defendant denied being related in any way to the Plaintiffs. It was however clear to me that the basis of that denial was the clear advancement in her age. In her statement recorded and filed herein some six (6) years earlier in July 2016, she acknowledged the fact that her husband’s father Kibui Ngahu was a Step-brother to Wangui Ngahu who was the grandmother of the Plaintiffs herein.
12. It was common ground that the Defendant’s father-in-law and the Plaintiffs’ said grandmother were the products of the family matriarch – Ngahu Waititu. The said Ngahu Waititu had two wives – Wangui Ngahu and Muthoni Ngahu. The Plaintiffs herein were the grandchildren of Wangui Ngahu while the Defendant’s husband originated from the first household.
13. According to the Defendant, her husband Ngahu S/o Kibui bought a portion of the suit property from one Wambia Wandugu during the period of land consolidated and demarcation in the year 1958. The same was then consolidated with a portion described as being about one half acre which was given to the Defendant’s husband by his father Kibui Ngahu. It was the said consolidated piece measuring some 2.5 acres that was registered in the name of the Defendant’s husband.
14. When her husband died on 23<sup>rd</sup> October, 2002, the Defendant filed Nyeri High Court Succession Cause No. 187 of 2013 at the conclusion of which the Suitland was transmitted to her name as the absolute proprietor thereof.
15. According to the Defendant and her witnesses, during his lifetime, Ngahu S/o Kibui had allowed her step-sister Mariam Njeri Ngahu to use a portion of the suit property to grow arrowroots. That permission to use the land was however terminated by the Defendant upon being registered as the proprietor of the suit property. It was evident that it was the said move by the Defendant to terminate the Plaintiff’s use of the land that led to the institution of these proceedings.
16. Having obtained registration of the property in her name, the Defendant caused her Advocate Messrs Andrew Kariuki & Co. Advocates to write a letter dated 20<sup>th</sup> December, 2014 addressed to the Plaintiffs as follows: -

“RE: Illegal and Unlawful Occupation and Trespass On L.R. No. Thegenge/Kihora/153

Our Client: Leah Gathoni Ngahu

.....

Our above named client informs us that that you have without any shred /colour of right have remained, continued trespassing, occupying and/or working in the above described Plot thereby denying our client his (sic) proprietary rights and/or occasioning him (sic) loss of user despite our client’s verbal demands that you give vacant possession.



This is now to demand that you move out and vacate from our client's plot, pulling down and cart (sic) away structures you have erected thereon strictly within the next fourteen (14) days from the date hereof.

Please note that if this demand is strictly not adhered to, we have firm instructions to institute the necessary suit against you to forcibly evict you therefrom and shall seek general damages for trespass, mesne profits for loss of user plus costs without any further reference to you.”

17. It was evident that the demand by the Defendant was not adhered to. Some three (3) months after receiving the demand letter, the Plaintiffs initiated this suit seeking a declaration that the Defendant's husband had held the land in trust for themselves and that the Defendant's own registration as the proprietor was equally subject to the said trust.
18. As can be seen from the above demand letter dated 20<sup>th</sup> December, 2014, the Defendant herself did acknowledge that the Plaintiffs had been utilizing a portion of the suit property for a long period of time. As to how the Plaintiffs came to be on the Suitland, the Defendant deposes at Paragraph 12 of her Replying Affidavit sworn on 1<sup>st</sup> April, 2015 that it was her late husband who had allowed his grandmother to farm arrowroots on the marshland where water was available to ensure that the grandmother would not suffer from hunger during the dry seasons. It was the Defendant's case that the Plaintiff's mother was not given the land but had merely been assisting her mother to till the portion of the marshland where the arrowroots were being grown.
19. That being the case, it was evident that the Plaintiff's grandmother Wangui Ngahu had to the knowledge of the Defendant been utilizing the disputed property. As it were, Wangui Ngahu was the second wife of Ngahu Waititu, the original owner of the land before it was consolidated and demarcated. The Defendant did not explain when that permission was given and why her husband allowed the step-mother to use the portion of land for such a long period.
20. From the material placed before the court, the Defendant's husband was registered as the proprietor of the Suitland on 14<sup>th</sup> August, 1958. It was clear that until his death in the year 2002, the Defendant's husband did not take any effort to remove the step-mother from the land. It was also evident as conceded by the Defendant and her witnesses that at some point in time Mariam Njeri Ngahu, the mother of the Plaintiff and a step sister to the Defendant's husband took over the cultivation of the land without any protests from any quarters.
21. As it turned out Mariam Njeri Ngahu outlived her step-brother by about 10 years. A year after her death in 2012, the Defendant herein instituted Nyeri High Court Succession Cause No. 187 of 2013 following which she obtained registration of the suit property by way of transmission.
22. It was clear to me that as at the time she instituted the succession proceedings, the Defendant was aware of the fact that the Plaintiffs had an interest in a portion of the suit property which had been utilized by the Plaintiff's family from the time the Defendant's husband had been registered as the proprietor of the suit property.
23. In the circumstances of this case, it was clear to me that the Defendant's husband was holding the suit property for the benefit of other members of the family and in particular the Plaintiff's family. The Plaintiffs had not built on the land but they were clearly the ones in possession and had utilized the same for cultivation over the years as of right. That land was ancestral family land previously owned by the Plaintiff's grandfather.



24. While the Defendant asserted that part of the land was bought by her husband from one Wambia Wandagu, no evidence was provided of any such purchase. Given her knowledge of the circumstances in which the Plaintiffs came to start utilizing the land, it was strange that the Defendant would wait until the year 2014, some 12 years after her husband's death to deny any relationship with the Plaintiffs and to accuse them of trespass to the suit property.
25. In the premises, I am persuaded that the Plaintiffs have established that the Defendant's husband Ngahu S/o Kibui held the suit property in trust for himself and the Plaintiff's family. The Defendant herein having acquired the property by way of transmission following the death of her husband, holds the same subject to the interest of the Plaintiffs.
26. Accordingly, I hereby enter judgment in favour of the Plaintiffs and make the following orders:
- a. The Defendant's husband Ngahu S/o Kibui (the deceased) held land parcel No. Thegenge/Kihora/153 in trust for himself and for the Plaintiff's family.
  - b. The Defendant having by way of transmission acquired title to the said Land Reference No. Thegenge/Kihora/153 holds the same subject to the interests of Plaintiffs.
  - c. The said trust is hereby determined with an order that the portion utilized by the Plaintiffs be surveyed and sub-divided from the suit property at the Plaintiff's cost.
  - d. Each party shall bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Plaintiff
- c. Mr. Gathiga Mwangi Advocate for the Defendant

