



REPUBLIC OF KENYA



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

**Mucheke & another v Muraya (Environment and Land Appeal  
73 of 2023) [2025] KEELC 3308 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 3308 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND APPEAL 73 OF 2023  
JM KAMAU, J  
MARCH 27, 2025  
(FORMELLY NYAHURURU ELCA NO. E032 OF 2022)**

**BETWEEN**

**KAMAU MBOGO MUCHEKE ..... 1<sup>ST</sup> APPELLANT**

**MARY WANJIKU KAMAU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MICHAEL MURAYA ..... RESPONDENT**

*(Appeal from the ruling of C. Obulutsa Chif Magistrate in Nyahururu  
CMC ELC No. 226 of 2018 delivered on 6th December 2022.)*

**JUDGMENT**

1. The Respondent filed Nyahururu CMCC case No. 104 of 2018 for Judgment for orders that:
  - a. A declaration that the Plaintiff is legal Owner of two [2] acres which he occupies and which are within title number Nyandarua/Ol'aragwai/4897 pursuant to a Decree of this Honourable Court in Nyahururu Land Dispute Case number 32 of 2006 and for excision of the said two [2] acres and registration thereof in favour of the plaintiff at the defendants' costs.
  - b. An order of permanent injunction restraining the defendants either by themselves, their agents, servants and anybody else whatsoever from entering, remaining, interfering or in any way howsoever from dealing with two [2] acres which are part of title Number Nyandarua/Ol'aragwai/4897 but are distinct and occupied by the plaintiff.
  - c. Kenya Shillings 52,700/- being the costs of trees cut and removed from the suit land by the defendants without the consent nor authority of the Plaintiff together with interest at court rates.



- d. Costs of the suit plus interest.
  - e. Any other or further relief that this Honourable Court may deem fit and just to grant.
2. The Circumstances leading to the prayers are that the Respondent's employer, the late James Kiarie Muikia bought 2 Acres of land out of Nyandarua/ Ol'aragwai / 1255 in 1994 then owned by the 1<sup>st</sup> Appellant Kamau Mbogo Mucheke and did gift the same to the Respondent herein in addition to another 2 ½ Acres from the same land but substituted the former with the latter. The Respondent developed the land and even buried his late sister Lucy Wambui Rarai on the suit land in 1994. On it a perimeter fence and houses were put up and he also planted eucalyptus and cypress trees around the perimeter fence as well as within the suit land. He has been carrying out farming activities on the land and has settled his family thereon including his mother, his brother, his later sister's children and other relatives. He paid the sum of Kshs. 1,800/= to the 1<sup>st</sup> Appellant in 2003 as survey fees for the excision of the 2 Acres. But the 1<sup>st</sup> Appellant refused to transfer the 2 Acres to the Respondent where he was forced to file North Kinangop Land Disputes Tribunal Case No. 056 of 2006 and an Award was made on 27/6/2006 conferring the suit land to the Respondent which Award was adopted in Nyahururu Principal Magistrate's Court Land Dispute Case No. 32 of 2006. But to his surprise, the 1<sup>st</sup> Defendant subdivided the land and transferred the resultant Titles Nyandarua/ Ol'aragwai/4897 and 4902 to his wife, the 2<sup>nd</sup> Appellant, disregarding the Award adopted by the Court. The Appellants are also alleged to have moved into the land without the Respondent's authority and or consent and violently cut down the Respondent's trees numbering 17 and worth Kshs. 52,700/=and who took possession of the suit land and constructed a structure thereon. On their part, the Appellants, in a joint statement of Defence dated 28/6/2013, denied all the averments contained in the Plaintiff save the description of the parties and in particular denied that Nyandarua/Ol'aragwai/1255 is contained in Nyandarua/ Ol'aragwai /4897, the property of the 2<sup>nd</sup> Appellant. They also averred that there was a similar Suit filed by the Appellants in Nakuru High Court Civil No. 19 of 2011 against the Respondent and that the same was still pending in court as at the time of filing this suit. However, in Reply to Defence, the Respondent reiterated the contents of his allegations.
  3. On 28/6/2012 the Respondent testified and said that he was promised by his employer James Kiarie who had employed him as a mechanic that if he worked hard the said Kiarie would buy land for him. He made his promises real by buying 2 Acres from the 1<sup>st</sup> Appellant's Nyandarua/Ol'aragwai/4897 which was to be excised from Nyandarua/ Ol'aragwai /1255. He even buried his sister on the land. He paid Kshs. 2,800/= as survey fees at the request of the Appellants. He has stayed in the land since 1994 and still resides thereon to date. Undisturbed. He also reiterated the averments contained in the Plaintiff. He testified that the Appellants cut down his trees which they sold as timber and also burned charcoal. The felled trees which were valued at Kshs. 52,700/=. The Respondent has also said that the Executive Officer of Nyahururu CM's Court executed the Application for consent from the Land Control Board, subdivision and transfer forms. But the 1<sup>st</sup> Appellant transferred the entire land to the 2<sup>nd</sup> Appellant who further sub-divided the same into Nyandarua/ Ol'aragwai/4897 and 4902 in order to defeat the Decree.
  4. The suit land was within the former. He produced the following documents to prove his case;
    - a. Proceedings in RMCC No. 52 of 1990 Joseph Karumi Iringu V Kamua Mbogo
    - b. Application and Consent dated 30/10/1998
    - c. Letter dated 16/8/2003 and the translation thereof.
    - d. Photographs for the Funeral of the Late Lucy Wanjiru Rarai



- e. Proceedings in Tribunal Case No. 56 of 2006 [North Kinangop]
- f. Application in Nyahururu PMC Land Dispute No. 32 of 2006.
- g. The Decree in Nyahururu PMC land Dispute No. 32 of 2006 and the Application for the Decree.
- h. Application for Consent to subdivide original Title No. Nyandarua/ Ol'aragwai /1255 dated 15/02/2011.
  - i. Mutation relating to subdivision of Nyandarua/ Ol'aragwai /1255.
  - j. Payment and search on Nyandarua/ Ol'aragwai 1255 dated.3/9/2007.
  - k. Payment and search on Nyandarua/ Ol'aragwai 1255 dated.21/2/2011.
  - l. Treatment Card for Hannah Wanjiru Rarai.
  - m. Photographs showing destructions of trees.
  - n. Payment and Green Cards [Abstracts of title] for Nyandarua/ Ol'aragwai/4897-4902 both inclusive
  - o. Forester's report dated 14/3/2011
  - p. Photographs showing house under construction on the plaintiff's land by the defendants.
- 5. On cross examination Michael Muraya said that he was not even there when the 1<sup>st</sup> Appellant and his former employer got into the agreement for the purchase of the land for him.
- 6. The said employer, Kiarie died in 2003. The Appellants never disputed that they had been paid the purchase price. Not even at the Tribunal. He was given the land by the Tribunal. He is the one who paid for the sub-division. In re-examination, the Respondent said he was only claiming 2 Acres on which he was residing.
- 7. PW 2 Wanjiru Muraya Rarai, mother to the Respondent said the Appellants were her neighbours and that her son had put her on the suit land in 1994 where she lived with her daughter Lucy Wambui Rarai. There was a home thereon and a perimeter wall around the suit land. She also started developing the land and also did farming on the same. She settled on the land together with her late daughter's children.
- 8. On cross-examination she said that her son got the land from his former employer and that she stayed on the land for 12 years before she left, after falling sick. On re-examination the witness said that she was never chased away from the land.
- 9. The 3<sup>rd</sup> Plaintiff's witness Joseph Karumi Irungu said that all the parties were known to him and that he had also bought land from the 1<sup>st</sup> Appellant in 1995- Nyandarua/ Ol'aragwai 1256 and that the 1<sup>st</sup> Appellant disputed it until the matter was resolved in his favour by the same Land Disputes Tribunal. He said that the Respondent's land was No. 1255 and that it is 2 Acres. He said that he knew the late James Kiarie Muikia who bought the 2 Acres for the Respondent from the Appellants and that the Respondent had put up a house on the suit land and planted trees thereon and the Respondent's mother had settled on the land together with his children.
- 10. On cross -examination he said he had bought 3 Acres.



11. The 4<sup>th</sup> Plaintiff's witness Moses Ndungu Mbogo said that the 1<sup>st</sup> Appellant was his brother and the 2<sup>nd</sup> Appellant his sister-in-law. He testified that it was true that the late Kiarie had bought for and gifted 2 Acres to the Respondent from the 1<sup>st</sup> Appellant and that the Respondent, his mother and siblings had settled on the suit land.
12. On cross-examination he admitted that the Respondent's mother resided on the suit land after her daughter was buried there.
13. Gabriel Njoroge the 5<sup>th</sup> Witness testified that he was a member of the Land Disputes Tribunal at North Kinangop and that they ordered that the 1<sup>st</sup> Appellant do transfer to the Respondent the 2 Acres. He did produce the proceedings of that Tribunal case.
14. PW 6 Reuben Mungai working with Kenya Forest Services as a Forester at Mutitu Forest Station testified and produced the Report on the destroyed trees.
15. Having closed the Respondent's case, the 1<sup>st</sup> Appellant testified and said that he had a dealing with the late James Kiarie in 1992. The late Kiarie was to build him a house. In return Kiarie was to get 2 Acres. But Kiarie to do so. The deceased in 1994 paid him 33,000/= leaving a balance of 27,000/=. He produced the following documents in support of his case
  - a. A copy of Title deed for Nyandarua/Ol'aragwai/4897
  - b. A copy of official search for Nyandarua/Ol'aragwai/4897
  - c. Demand letter dated 10/4/2010
  - d. Court proceedings for Nakuru HCC NO. 19 FO 2011 duly filed in court on 23<sup>rd</sup> February, 2011.
16. He said that the Respondent's mother came to stay on the land as a Tenant.
17. On re-examination he said that the Tribunal did not order him to transfer the land to the Respondent. And that he did not file an appeal.
18. Mary Wanjiru Kamau the 2<sup>nd</sup> Appellant testified that she now owns Nyandarua/Ol'aragwai/1255 and that the Tribunal never ordered otherwise. She did not sell the Respondent her land and that the trees thereon were planted by her husband and herself. She said they were chased away from the Tribunal. She claimed that the 2 were selling the land to the late Kiarie and not to the Respondent. But that Kiarie did not pay the full purchase price.
19. The case was then closed and Judgment followed. In the Judgment, the court decided in favour of the Respondent and delivered Judgment as prayed also granting him the costs of the suit as a consequence of which the Appellants filed their appeal with the following grounds.
  - a. The trial court erred in law and fact by failing to find that it lacked jurisdiction to hear and determine on account of the matter being res judicata.
  - b. The trial court erred in law and fact by failing to find that there was no privity of contract between the Respondent and the Appellants.
  - c. The trial court erred in law and fact by failing to find that the Respondent had not acquired any interest of whatsoever nature in L.R Nyandarua/ Ol'aragwai/4897.
  - d. The trial court erred in law and fact by failing to find that the Respondent did not have a tenable cause of action against the Appellant.



- e. The trial court erred in law and fact by failing to find that the Respondent had proved his case against the Respondent, thus decreeing that he .....to a portion of 2 Acres in L.R Nyandarua/ OL'aragwai/4897.
20. They therefore made the following prayers.
- a. The appeal be allowed and the judgment delivered on 6<sup>th</sup> December 2022 in Nyahururu CMS ELC 226 for 2018 be set aside.
  - b. The Respondent 's claim in Nyahururu ELC 226 of 2018 be dismissed with costs.
  - c. The Respondent be ordered pay the costs of this appeal.
21. It is quite clear that the Respondent has been living on the suit property -2 Acres out of Nyandarua/ Ol'aragwai/1255 since 1994. The same was initially the property of the 1<sup>st</sup> Appellant. The Respondent even buried his sister in the suit property which he has developed with a perimeter fence, houses and has also planted Eucalyptus and Cypress trees and developed the suit land. He has carried out farming activities on the land and also paid survey fees of Kshs.1,800/= to the 1<sup>st</sup> Appellant in 2003. There was an Award in Nyahururu R.M.C.C. Land Disputes Civil No. 32 of 2006 in favour of the Respondent but which was not appealed against nor set aside. However, the Appellants went against the Decree of the court and transferred the land to one another, moved to the land and felled down 17 trees worth Kshs.52,700/=. The sub-division, transfer and consent forms were executed by the Executive Officer of Nyahururu PM's Court. But the 1<sup>st</sup> Defendant transferred to the 2<sup>nd</sup> Defendant the land before the Decree was executed by the Executive Officer. The latter sub-divided the land into 4897 and 4902 in order to defeat the Decree. The 1<sup>st</sup> Appellant does not deny that he entered into a transaction for the sale of the 2 Acres with the late James Kiarie in 1992 who was to build the 1<sup>st</sup> Appellant a house in order to get 2 Acres but he failed to do so. And that he paid him Kshs.33,000/= for the 2 Acres but was left with a balance of Kshs.27,000/=. This was also echoed by the 2<sup>nd</sup> Appellant. This court has been told there was a case in Nakuru over the same dispute being High Court Civil Suit No. 19 of 2011 and was even shown the pleadings thereon but was not told of the fate of the case. The court can, therefore, not tell whether this case is *Res Judicata* or not.
22. Determination of who was or was not the proprietor of, in other words "Title to land" was not within the powers of the Tribunal in accordance with the repealed Land Disputes Tribunal Act No. 18 of 1990. What did the Tribunal determine?
1. Mr. Kamau Mbogo [the 1<sup>st</sup> Appellant herein] is hereby Ordered to transfer the said land to Mr. Michael Mbugua [the Respondent] without further delay.
  2. Mr. Muraya to meet costs of transferring.
  3. Mr. Mbogo to pay the costs of this suit.
  4. The Executive Officer to sign the necessary documents.
  5. Both parties have 30 days to Appeal if not satisfied by the Ruling.
23. By ordering that the 1<sup>st</sup> Appellant do transfer to the Respondent the suit land, the Tribunal was conferring upon itself the powers to determine Title to land which it did not possess. Section 3. [1] of the deleted Land Disputes Tribunal Act No. 18 of 1990 limited the Jurisdiction of the Tribunal to:

Subject to this Act, all cases of a civil nature involving a dispute as to—



- [a] the division of, or the determination of boundaries to land, including land held in common;
- [b] a claim to occupy or work land; or
- [c] trespass to land,

shall be heard and determined by a Tribunal established under section 4.

24. The North Kinangop Land Disputes Tribunal in Tribunal case Number No. 056 of 2006 of 2004 acted “ultra vires” the parent statute when it purported to deal with disposition of Land which the court termed a nullity and to that extent I would add that jurisdiction is everything. In *James Alukoye Were...v...Lurambi Division Land Disputes Tribunal*, Misc. Civil Appl. No.165 of 2005, the Court held that:-

“The Land Disputes Tribunal has no powers to arbitrate on matters involving title to land or give such order to grant specific performance to rectify the register”

25. Whether challenged or not challenged, this court cannot act upon and give validity to an order granted by a Court void of jurisdiction. The said Award was a nullity “ab initio”.

26. The Appellants contended that the Respondent’s employer, James Kiarie bought the 2 Acres out of Nyandarua/ Ol’aragwai/1255 for the Respondent before he died in 2003 and which is now “L.R Nyandarua/OL’aragwai/4897.” He even paid the sum of Kshs.33,000/= but was left with a balance of Kshs.27,000/= to settle. Dead folks tell no tales and the late Kiarie is not alive to tell whether he did pay the entire consideration or not. The Respondent did pay the survey fees of Kshs.1,820/= which was not disputed by the Appellants. He then settled on the land and started developing it. Section 3[3] of the Law of Contract Act provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is in writing, executed by the parties and attested. Section 3[7] of the Law of Contract Act excludes the application of Section 3[3] of the said Act to contracts made before the commencement of the subsection. Section 3[3] of the Law of Contract Act, came into effect on 1st June, 2003. Prior to the amendment of Section 3[3] of the Law of Contract Act in 2003, the subsection read as follows: -

- [3] No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which, the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it;

Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-

- [i] Has in part performance of the contract taken possession of the property or any part thereof; or
- [ii] Being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.

27. The Contract of sale was in 1994.

28. In the instant case even if there was no sale agreement, the Plaintiff, and his family have been in occupation of L.R. NO. Nyandarua/ Ol’aragwai/1255. The only serious objection to the transaction



by the Appellants is the non-payment of Kshs.27,000/= by the late James Kiarie. It may look meagre but bearing in mind at the time the transaction took place [in 1994], Kshs.50,000/= was adequate value for 2 Acres. It is not easy to tell whether the late Kiarie paid the balance or not. But this admission makes it clear that there was a sale transaction and payment was made. The parties are bound by their pleadings. The Appellant, in their Defence, did not indicate that they were demanding the balance of Kshs.27,000/=. This Appeal can therefore not stand and the same is hereby dismissed with costs to the Respondent.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 27TH DAY OF MARCH 2025.**

**MUGO KAMAU**

**JUDGE**

In the Presence of:

Court Assistant: Eric.

Mr. Komu..... for the Appellants

Mr. Mugo..... for the Respondents

