



**Wambugu & another v Kyongo (Environment & Land Case
65 of 2019) [2025] KEELC 2936 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 2936 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 65 OF 2019**

**EO OBAGA, J
MARCH 27, 2025**

BETWEEN

BENSON NJUE WAMBUGU 1ST PLAINTIFF

JOSEPH WARUIRU MACHARIA 2ND PLAINTIFF

AND

JOYCE KATHINI KYONGO DEFENDANT

JUDGMENT

1. The Plaintiffs brought this suit against the Defendant in which they sought for the following reliefs:
 - a. An order of specific performance against the Defendant compelling her to honour the terms of the agreements entered between her and the Plaintiffs and in particular transfer the said land parcel Makueni/Nguu Ranch/3691 to the Plaintiffs with the 1st Plaintiff getting 5.1 acres and the 2nd Plaintiff getting 4 acres of land parcel Makueni/Nguu Ranch/3691 respectively.
 - b. An order compelling the Defendant to execute the necessary application for consent of Land Control Board forms and to appear before the said board to obtain consent to subdivide and transfer the said land parcel Makueni/Nguu Ranch/3691 to the Plaintiffs with the 1st Plaintiff getting 5.1 acres and the 2nd Plaintiff getting 4 acres of land parcel Makueni/Nguu Ranch/3691 respectively and to execute the requisite transfer documents and to surrender the original title and such other documents as may be necessary to effect the said transfer including the original letters of consent to subdivide, consent to transfer, duly completed mutation forms, executed transfer of land forms, copies of the Defendant's income tax pin certificate, identity card and there colour pass port size photos and any other document in the custody of the Defendant pertaining to the said land parcel Makueni/Nguu Ranch/3691 necessary to transfer the same to the Plaintiffs with the 1st Plaintiff getting 5.1 acres and the 2nd Plaintiff getting 4 acres of land parcel Makueni/Nguu Ranch/3691 respectively.



- c. In the alternative to prayer (b) above, an order authorizing the Deputy Registrar of this court to execute such documents as may be necessary to transfer land parcel Makueni/Nguu Ranch/3691 to the Plaintiffs with the 1st Plaintiff getting 5.1 acres and the 2nd Plaintiff getting 4 acres of land parcel Makueni/Nguu Ranch/3691 respectively.
 - d. Further and or without prejudice to the generality of the foregoing, an order extending the time within which the parties herein ought to seek and obtain the consent of the Land Control Board for the subdivision and transfer of the said land parcel Makueni/Nguu Ranch/3691 belonging to the Plaintiffs.
 - e. A permanent injunction restraining the Defendant by herself, her agents, servants, employees and/or their assignees from entering, occupying, alienating, cultivating, leasing, mortgaging, transferring, alienating or otherwise disposing of land parcel Makueni/Nguu Ranch/3691.
 - f. Any other relief that this honourable court may deem just and fit to award.
 - g. Costs and interest of the suit.
2. The Defendant who was served through registered post by sanction of the court neither entered appearance nor filed defence. The case therefore proceeded by way of formal proof.
 3. The 1st Plaintiff testified that on 26th March, 2012, he entered into a sale agreement with the Defendant in which the Defendant agreed to sell to him LR No. Makueni/Nguu Ranch/3691 at a consideration of Kshs.1,017,000/=. He made a down payment of Kshs.600,000/= on the date of signing the agreement and was to pay the balance of Kshs.417,000 within three months.
 4. The 1st Plaintiff was however unable to raise the balance. It was agreed that the Kshs.600,000/= which he had paid entitled him to 5.1 acres. The 1st Plaintiff then approached his nephew, the 2nd Plaintiff to purchase the remaining 4 acres.
 5. On 18th June, 2013, the 2nd Plaintiff entered into a sale agreement with the Defendant in which the Defendant agreed to sell to him 4 acres at a consideration of Kshs.500,000/=. The 2nd Plaintiff paid Kshs.300,000 on signing the agreement and the balance was paid within 30 days later.
 6. The Plaintiffs testified that the Defendant has been evasive after she received payment and is unwilling to transfer the suit property to them, hence the filing of this suit.
 7. I have considered the evidence of the Plaintiffs which is uncontroverted. Though the Plaintiffs were given 7 days to file their submissions from 17th February, 2025, as at the time of writing this judgment on 21st March, 2025, no submissions had been filed. Though the evidence of the Plaintiffs was not controverted, this court is under a duty to ensure that they have proved their case on a balance of probabilities.
 8. In the case of the 1st Plaintiff, there is evidence of an agreement which was signed on 26th March, 2012. This agreement was witnessed by the area assistant chief one Jackson Musyoki Kiamba. In this agreement, the Defendant acknowledged receipt of Kshs.600,000/=. There is also evidence that the 1st Plaintiff withdrew Kshs.160,000/= on the same day and he applied for transfer of Kshs.500,000/= from his account to the Defendant's account.
 9. The transfer of the Kshs.500,000/= was reflected in the account of the Defendant on 27th March, 2012 and the 1st Plaintiff's account was debited for the same amount. A debit advice was produced in evidence. The area assistant chief who witnessed the payment also wrote a letter confirming that the Defendant had been paid Kshs.600,000/=.



10. On the part of the 2nd Plaintiff, there is evidence that he signed an agreement on 18th June, 2013. The agreement was witnessed by the children of the Defendant. The Defendant acknowledged receipt of KShs.300,000 on signing the agreement. The balance was to be paid within 30 days. As there is no evidence to controvert that of the 2nd Plaintiff, I take it that the balance was paid within the 30 days or thereafter.
11. Though the Plaintiffs had indicated in their list of documents that they had a copy of an official search of the suit property, none was attached or produced before court. This notwithstanding, the two agreements are clear on the acreage of the respective portions purchased by the Plaintiffs. I therefore find that the Plaintiffs have proved their case on a balance of probabilities. Consequently, I enter judgment for them against the Defendant as follows;
 - a. An order of specific performance against the Defendant compelling her to honour the terms of the agreements entered between her and the Plaintiffs and in particular transfer of LR No. Makueni/Nguu Ranch/3691 to the Plaintiffs with the 1st Plaintiff getting 5.1 acres and the 2nd Plaintiff getting 4 acres respectively.
 - b. An order compelling the Defendant to execute all the necessary documents to facilitate the subdivision and transfer of the respective portions from LR No. Makueni/Nguu Ranch/3691.
 - c. If the Defendant does not comply by providing the necessary documents to facilitate subdivision and transfer within 60 days, the Deputy Registrar of this court is empowered to sign all necessary documents on her behalf to facilitate the subdivision and transfer of the respective portions to the Plaintiffs.
 - d. A permanent injunction is hereby issued restraining the Defendant by herself, her agents, servants, employees and/or their assigns from entering, occupying, alienating, cultivating, leasing, mortgaging, transferring or otherwise disposing of LR No. Makueni/Nguu Ranch/3691.
 - e. Costs and interest of the suit.

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HON. E. O. OBAGA

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF MARCH, 2025.

In the presence of:

Mr. Hassan for Mr. Muthama for Plaintiff.

Court assistant - Steve Musyoki

