

STRATEGIC FRAMEWORK FOR STRUCTURING AND RESOLVING LAND DISPUTES: Lessons from Kuria Mbugua Vs Dick Waweru



INTRODUCTION

The Court of Appeal's decision in **Kuria Mbugua vs. Dick Waweru (Civil Appeal No. 667 of 2019)** provides a compelling case study on the intersection of legal compliance, equitable conduct, and strategic approach in land transactions. The judgment, which upheld the trial court's findings, offers critical insights into structuring agreements, managing disputes, and navigating regulatory frameworks in agricultural land matters.

Codifying Agreements

The court's validation of the agreement dated 27th February 2001 underscores the importance of formalizing land transactions. Section 3(3) of the Law of Contract Act mandates that contracts for the disposition of land must be in writing, signed by all parties, and attested by witnesses. The trial court found that the agreement met these requirements, noting that it was signed by both parties and witnessed by their siblings.

The judgment highlights the importance of ensuring agreements are not only legally compliant but also precise in their terms. As the court observed, "The formality of a written, signed, and witnessed document constituted a legally binding contract." This clarity mitigates the risk of disputes arising from verbal or informal arrangements.

Regulatory Compliance

The role of the Land Control Board (LCB) in agricultural land transactions was central to this case. **Section 6(1) of the Land Control Act** renders void any transaction involving agricultural land that lacks LCB consent within six months of the agreement. The court noted that consent was obtained within the statutory period, ensuring the transaction's validity. Timely engagement with the LCB and adherence to statutory timelines are not merely procedural necessities—they are critical safeguards against invalidation.

Partial Performance: Balancing Equity and Legal Precision

The court's recognition of partial performance reflects the complexities of land transactions that are not fully executed. While the appellant had transferred a portion of his land to the respondent, the reciprocal transfer was limited to 0.076 hectares, as evidenced by Mutation Form Serial No. 115452. The appellant's claim for an equal portion of land was dismissed, with the court affirming that "the appellant cannot now seek to invalidate the agreement and proceed to claim more land."

This finding highlights the importance of aligning actions with agreed terms and documenting compliance. Partial performance, while offering some legal protection, must be managed carefully to avoid disputes over scope or entitlement.

Trespass and Property Rights

The award of Kshs. 100,000 in general damages for trespass reflects the financial and reputational risks associated with unauthorized occupation. The court's issuance of a permanent injunction restraining the appellant from further trespass underscores the importance of safeguarding property rights.

The judgment reinforces the need for proactive measures to prevent encroachment, such as regular boundary audits and leveraging geospatial technology for real-time monitoring. As the court noted, "The measure of damages for trespass is the difference in the value of the plaintiff's property immediately before and immediately after the trespass or the cost of restoration."

Equity and Consistency

The application of Section 120 of the Evidence Act, which prevents a party from benefiting from an agreement and later seeking to invalidate it, was pivotal in this

case. The appellant, having occupied the agreed portion since 2001, was estopped from claiming additional land. The court emphasized that “courts do not aid a party who has failed to honour their side of an obligation.”

This principle underscores the importance of equitable conduct in land transactions. Documenting actions that demonstrate compliance with agreements not only strengthens legal positions but also builds trust among stakeholders.

Strategic Implications for Stakeholders

The lessons from *Kuria Mbugua vs. Dick Waweru* are clear: success in land transactions is not just about legal compliance—it is about strategic mastery. Stakeholders must think beyond the immediate transaction, anticipating challenges, fortifying positions, and leveraging every tool at their disposal to create resilient outcomes.

The judgment delivered on **9th May 2025** by the Court of Appeal at Nairobi, comprising **Musinga (P.), Sichale, and Ochieng, JJ.A.**, serves as a wake-up call for property managers, legal advisors, and investors operating in jurisdictions plagued by opportunism to adopt a vigilant and proactive stance. It is not enough to merely react to disputes during litigation; one must

anticipate and neutralize them before they arise. It is not enough to comply with regulations; one must strategically leverage them as tools to fortify their position. And it is not enough to execute agreements; one must craft, implement, and monitor conduct for statutory and contractual compliance, ensuring every detail is impervious to exploitation by opportunistic actors.

On 2nd December 2024, the High Court of Kenya dismissed *Gichuhi & 2 others v Data Protection Commissioner* at a preliminary stage. The applicants sought a mandamus order to compel the Data Protection Commissioner (DPC) to reconsider a dismissed data breach complaint, only to encounter a procedural barrier: the absence of leave to file and the improper choice of judicial review (JR) over a statutory appeal. Justice Ngaah deemed the application misconceived, upholding traditional procedural requirements over claims under Articles 47 and 50 of the Constitution. By contrast, on 28th January 2025, in *Hassan alias Geeley v National Police Service & 2 others*, Justice Aburili dismissed a leave-seeking application, citing the Fair Administrative Action Rules, 2024 (Koome Rules), which eliminate such a requirement, signaling a shift toward procedural reform.

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