



**REPUBLIC OF KENYA
THE SUPREME COURT OF KENYA**

**ERIC KIBINU KINUTHIA (Suing as the Legal/Personal Representative of the Estate of
Loise Gachiku Kinuthia(deceased)) Vs JOSEPHAT GACHERU RUGIRI & 3 OTHERS
SC PETITION NO. E047 OF 2024
DATE OF JUDGMENT: 15TH MAY 2026
MEDIA SUMMARY**

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Final Orders: *The Court partially allowed the appeal*

Background

The dispute concerns ownership of L.R. No. Kabete/Lower Kabete/47, later subdivided into parcels 3162, 3163, and 3164 (*the suit property*). It arose from an award issued by the Kikuyu Land Disputes Tribunal, in which it inadvertently stated that the suit property had been purchased by *Kang'ethe Mbithi* instead of *John Kinuthia Mbithi* (deceased). Although the Tribunal thereafter rectified this error, several transactions were undertaken on the suit property based on the erroneous award, culminating in its eventual sale to the 4th respondent. The 4th respondent subdivided it into three parcels and sold them to the 1st respondent, who was issued with title deeds in 2017. The 4th respondent subsequently instituted proceedings against Loise Gachiku Kinuthia (now deceased), the widow of John Kinuthia Mbithi, before the Environment and Land Court at Thika, seeking injunctive and eviction orders.

At the ELC, the 4th respondent claimed lawful ownership of the suit property and accused the appellant of unlawful occupation. In response, the appellant filed a counterclaim challenging the validity of the titles held by the 4th respondent and eventually transferred to the 1st respondent, on grounds of fraud and misrepresentation. In allowing the appellant's claim, the ELC found that the transfer and subsequent subdivisions of the suit property were unlawful. It held that the 1st and 4th respondents were not innocent purchasers, and declared the appellant the rightful owner of the suit property. Consequently, the court cancelled all titles and subdivisions relating to the suit property and ordered that it be restored and registered in the appellant's name.

On appeal, the Court of Appeal overturned the trial court and held that the appellant lacked the legal capacity to institute the counterclaim because she had not obtained a confirmed or limited grant of

representation in respect of her late husband's estate. The appellate court consequently struck out the counterclaim as a nullity, and granted the appellant leave to file fresh proceedings upon regularizing her legal capacity. In effect, it upheld the respondents' claim.

In the appeal before the Supreme Court, the Court framed the following issues for determination:

- i. *Whether this Court has jurisdiction to hear and determine this appeal;*
- ii. *Whether the appellant lacked the requisite Locus Standi to prosecute the Counterclaim at the trial court.*

Upon consideration, the Supreme Court has partially allowed the appeal for the following reasons:

1. **Issue 1:** The appeal falls squarely within the appellate architecture of Article 163 (4) (a) of the Constitution.
2. **Issue 2:** The appellant had the requisite *locus standi* to institute the counterclaim before the Environment and Land Court.

Upon considering the appeal, the Supreme Court determined as follows:

- i. ***The Appeal dated 23rd December 2024 is hereby partially allowed in view of the finding in paragraph 69 of this Judgment.***
- ii. ***The Judgment of the Court of Appeal dated 8th November 2024, is hereby set aside.***
- iii. ***The case is hereby remitted to the Court of Appeal for hearing and determination on merits, on a priority basis, before a differently constituted bench.***
- iv. ***The Costs of this appeal shall be borne by the respondents.***
- v. ***We hereby direct that the sum of Kshs. 6,000 deposited as security for costs upon lodging of this appeal be refunded to the appellant.***