



**Obunga v Obunga (Environment and Land Appeal 31 of 2021)
[2022] KEELC 2309 (KLR) (27 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2309 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 31 OF 2021
GMA ONGONDO, J
APRIL 27, 2022**

BETWEEN

BENARD OTIENO OBUNGA APPELLANT

AND

LAWRENCE OGUDA OBUNGA RESPONDENT

(Being an appeal from the ruling and orders of the Chief Magistrate Court at Homa-Bay law Courts (Hon. Maloba) delivered on the 25th day of September 2018 in land Case No. 6 of 2016)

RULING

1. The appellant, Benard Otieno Obunga through the firm of Nyauke and company Advocates commenced the instant appeal by way of a Memorandum of appeal dated 25th March 2019 and lodged in court on even date. The same is anchored on the following grounds;
 - a) The learned trial Magistrate erred in law and fact by finding that the plaintiff is the rightful proprietor of land parcel number East Kanyada/Kanyadier/3465.
 - b) The learned trial Magistrate erred in law and fact in dismissing the plausible defence of the appellant and holding that the plaintiff proved his case on a balance of probability.
 - c) The learned trial magistrate erred in fact by awarding the plaintiff general damages.
2. Wherefore, he prays that:
 - a) This appeal be allowed and the orders of R.B.N Maloba (SRM) issued on 25th September, 2018, be set aside.
 - b) Costs of this appeal and for the main suit be awarded to the appellant.



3. Mr. Owade learned Counsel for the respondent is aware of this date. He was in court on 2nd February 2022 when the parties through their respective counsel requested time to confirm the status of the proposed settlement. Today, the said counsel is absent without any reason.
4. Ms Odera learned counsel for the appellant has informed this court that the matter has been settled out of court. Therefore, she has sought to withdraw the appeal with no orders as to costs.
5. The application for the withdrawal of this appeal is made in the spirit of Article 159 (2) (b) and (c) of *the Constitution* of Kenya, 2010 and section 3 of the *Environment and Land Court Act*, 2015 (2011).
6. In the premises, I find that the appellant's prayer has merit.
7. The net effect is that I hereby allow the appellant's withdrawal of this appeal with no order as to costs.

DATED, DELIVERED AND SIGNED AT HOMA-BAY THIS 27TH DAY OF APRIL 2022.

G.M.A ONG'ONDO

JUDGE

Present:

- a) Ms Odera, learned counsel for the appellant.
- b) Terrence, Court Assistant.

