



REPUBLIC OF KENYA



**KENYA LAW**  
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**Awuor v Awuor (Environment and Land Case Civil Suit  
E007 of 2023) [2025] KEELC 5285 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 5285 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E007 OF 2023**

**MN KULLOW, J**

**APRIL 7, 2025**

**BETWEEN**

**SILAS OTIENO AWUOR ..... PLAINTIFF**

**AND**

**JOSEPH ODAMO AWUOR ..... DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 20/2/2023, the Plaintiff had prayed for a declaration that the Plaintiffs had acquired a portion of Land Reference Kanyamkago/Kawere/1/3002 by virtue of a constructive trust and consequently the Plaintiff hold titles of such portion measuring 0.4 Hectares in trust of the Plaintiffs and should transfer the same to the Plaintiff and in default, the Deputy Registrar of the court to execute the instrument of subdivision to the said land
2. The Plaintiff further sought for an order that the Defendant do pay the sum of Kshs. 270,000/- being the purchase price and value of the damaged properties together with costs and interest.
3. It is the Plaintiff's case that he had entered into a valid Sale Agreement with the Defendant on 31/8/2011 where the Defendant together with Phista Owino Otieno sold to him a portion of Land Title Kanyamkago/Kawere/1/3002 for a price of Kshs.160,000/- which was fully paid and acknowledged by the defendant.
4. The Plaintiff further stated that the Defendant on 142/1/2012 offered to sell to him another portion of the land measuring 0.2 Hectares for a price of Kshs.60,000/- before the Defendant changed his mind and refused to conclude the sale.
5. The Plaintiff contended that on or about the month of May 2021, the Defendant together with another person invaded the land destroying a fence and a house therein and they were consequently charged before Migori Chief Magistrate Court vide criminal case No. E541 of 2021 and subsequently. Convicted and fined Kshs. 10,000/- each or to serve 6 months in prison.



6. The Defendant did not file a defence and/or enter appearance and consequently the suit herein had proceeded for hearing without his participation for formal proof.
7. In his evidence in chief, the Plaintiff stated that he is an Auditor in the State Department of Co-operation and that he purchased an acre of land from the Defendant for consideration of Kshs.160,000/- which he paid in full and states that he also purchase another ½ of an Acre of the said land for a consideration of Kshs. 60,000/- which he also paid in full. However, despite performing his part of the agreement, the Defendant had refused to transfer the land to him. He produced the Sale Agreements marked PE1 dated 31/8/2011 and PE2 dated 12/2/2012.
8. He further stated that on/or about 7/5/2011, the Defendant invaded the suit land and destroyed the fence and the temporary house that he had built on the sad land. He had reported the matter to the Police leading to the arrest of the Defendant where he was formally charged at the Migori Chief Magistrates Court in Criminal Case No. 541/21 and was convicted. He produced the proceedings before the said court which were marked as PE3.
9. The Plaintiff prayed for the court to declare that he has purchased the suit land and an order be made to transfer the same to him.
10. I have considered the Plaintiff, the Plaintiff's testimony and the exhibits produced before me and I must state that this is an undefended suit and the singular issue for determination before me is whether the Plaintiff had a constructive trust over the said property.
11. It is not contested that the Plaintiff has purchased the suit land from the Defendant for a consideration of Kshs. 270,000/- and that the Defendant had refused to transfer the suit land having obtained the full Purchase Price and consequently, it is my finding that the Plaintiff had proved his claim on a balance of probabilities and thus he has a constructive trust and thus I make the following orders:-
  - a. That a declaration is hereby issued that the Plaintiff had acquired a portion of LR Kanyamkago/Kawere/1/3002 by virtue of a constructive trust and the Defendant holds a portion measuring 0.4 Hectares in trust for the Plaintiff and should transfer the same within sixty (60) days of this Judgement.
  - b. That in default of Order (1) above, the Deputy Registrar of the court is hereby ordered to execute instruments of subdivision and consequent transfer of the suit parcel in favour of the Plaintiff.
  - c. That Costs of the case be borne by the Defendant

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF APRIL 2025.**

**MOHAMMED N KULLOW**

**JUDGE**

In the presence of:

No appearance for the Respondent

No appearance for the Appellant

Philomena Mwangi (Court Assistant)

