



**Karanu & another v Titus Thuku Mbugua, Patrick Muhoro Mumbura and Philip Njau Wainaina
(Sued as the Officials of Kioneki Investment Self-Help Group) & 3 others (Environment
and Land Appeal E099 of 2022) [2025] KEELC 3114 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3114 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E099 OF 2022**

BM EBOSO, J

APRIL 3, 2025

BETWEEN

JOHN CHEGE KARANU 1ST APPELLANT

JOHN MWANGI 2ND APPELLANT

AND

**TITUS THUKU MBUGUA, PATRICK MUHORO MUMBURA AND PHILIP
NJAU WAINAINA (SUED AS THE OFFICIALS OF KIONEKI INVESTMENT
SELF-HELP GROUP) 1ST RESPONDENT**

NYAKINYUA INVESTMENT CO. LTD 2ND RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

*(Being an Appeal against the Judgment of Hon. J.A Agonda, Principal Magistrate, delivered
on 7/11/2022 in Ruiru Senior Principal Magistrate Court MC L & E Case No E016 of 2021)*

JUDGMENT

Introduction

1. This appeal challenges the Judgment rendered by Hon J A Agonda, Principal Magistrate, on 7/11/2022 in Ruiru SPMC E&L Case No. E016 of 2021. The dispute in the trial court revolved around the question of beneficial ownership of what was described as land parcel number Ruiru/ Ruiru East Block 2 (Nyakinyua)/ 2646 located in Ruiru [hereinafter referred to as “the suit land” or “the suit property”]. There was common ground that the land is located in a subdivision scheme that was owned by M/s Nyakinyua Investment Company Limited [the 2nd respondent]. There was also common ground that the 2nd respondent allotted the land to the late Regina Wambui Muhia and the



land was denoted by Ballot No. 954 and Share Certificate No. 3732, issued to Regina Wambui Muhia. The land measures approximately one (1) acre.

2. The key issue that fell for determination in the suit in the trial court was who, between Kioneki Investment Self-help Group [the 1st respondent] and John Mwangi [the 2nd appellant], was the beneficial owner of the suit land. Invariably, that is the key issue that this first appellate court is expected to answer. Before I analyse and dispose the issue, I will briefly outline the parties' respective cases in the trial court, the grounds of appeal, and the parties' respective submissions in the appeal.

Background

3. The suit in the trial court was initiated by Kioneki Investment Self-help Group [hereinafter referred to as "the Self-help Group" or "the 1st respondent"] through its abovenamed three officials vide a plaint dated 5/2/2021. They sought: (i) a declaration that the suit land belonged to the Self-help Group; (ii) an order directing Nyakinyua Investment Co. Ltd [the 2nd respondent] to transfer the suit land to the Self-help Group; (iii) an order directing the executive officer of the trial court or any other relevant official of the trial court to execute all documents necessary to vest the suit land in the Self-help Group; (iv) an order awarding the Self-help Group costs of the suit.
4. The case of the Self-help Group was that, they purchased the suit land from Regina Wambui Muhia in 2004 at a purchase price of Kshs. 130,000. The purchase was through a sale agreement dated 23/7/2004. Regina Wambui Muhia was a shareholder of Nyakinyua Investment Co Ltd and was the beneficial owner of the suit land. The Self-help Group contended that, upon paying the purchase price, they took possession of the suit land in 2004 and subdivided it into 10 plots which they allocated to their 10 qualifying members, with each member getting a plot. Some of the members developed their plots and have lived on their respective plots since 2004. They added that, some of the allottees have interred their loved ones on the suit land.
5. It was the case of the Self-help Group that Regina Wambui Muhia surrendered her original share certificate as well as her original ballot card to the Self-help Group. They added that Nyakinyua Investment Co Ltd [the 2nd respondent] promised to process a title in the names of the officials of the Self-help Group. However, before they could do so, John Chege Karanu [the 1st appellant] who was the Chairman of the Self-help Group and who had been entrusted with the custody of the original share certificate and the original ballot card, which were still bearing the name of Regina Wambui, made a false representation that the said original documents had been misplaced by him.
6. The Self-help Group [the 1st respondent] added that subsequently, the 2nd appellant surfaced with the said documents at Juja Police Station on 2/11/2020 where he made a report that he was the bona-fide owner of the suit land and alleged that the Self-help Group members who had been in occupation of the land since 2004 were trespassers on the land.
7. The 2nd respondent was the 1st defendant in the trial court. It filed a statement of defence dated 20/4/2021 in which it denied the averments made by the 1st respondent. The 2nd respondent's case was that it had no knowledge regarding matters between Regina Wambui Muhia and the Self-help Group. The 2nd respondent contended that it had no interest in the suit land and that it did not issue title deeds to its members, adding that issuance of titles to its members was the mandate of the Land Registrar.
8. The 1st appellant was the 2nd defendant in the trial court. He filed his defence dated 28/6/2021 and denied all the averments made in the plaint except the description of the parties in the suit and the jurisdiction of the trial court to determine the dispute. His case was that he was previously the Chairman of the Self-help Group. During his tenure as the Chairman, and while he was away in



Sudan, the Self-help Group raised money and bought the suit land. He contended that when they subsequently visited the offices of the 2nd respondent for verification of the documents which they held in relation to the suit property, they were informed that their documents were fake. They were further informed that the 2nd respondent did not have any records pertaining to the Self-help Group. The 1st appellant contended that one Mr John Mwangi [the 2nd appellant] had a copy of the share certificate issued by the 2nd respondent while they did not have any.

9. The 2nd appellant was the 3rd defendant in the trial court. He filed his statement of defence and counterclaim dated 20/5/2021. His case was that he bought the suit property from the original allottee, Regina Wambui Muhia, and that he had all the original documents relating to the suit land. The 2nd appellant contended that when the 1st respondent claimed ownership of the suit land, they all met at the 2nd respondent's office, where the ballot held by the 1st respondent was found to be fake. The 2nd appellant further contended that the investigations carried out by the DCIO- Juja established that the suit property belonged to him.
10. Upon conducting trial and receiving submissions, the trial court rendered the impugned Judgment in which it found that the 1st respondent [the Self-help Group] was the legitimate owner of the suit land. The trial court granted the Self-help Group the reliefs that they sought in the plaint.

Appeal

11. Aggrieved by the Judgment of the Lower Court, the appellants brought this appeal, advancing the following thirteen (13) verbatim grounds:
 1. That the Honourable Court erred in fact in failing to appreciate the evidence of DW1 (2nd defendant) which showed that he being the chairman of the 1st respondent/plaintiff was not there when the property was bought by the plaintiff's representatives as he was in South Sudan.
 2. That as a consequence DW1 (2nd defendant) did not sign the sale agreement dated 23/7/2004 and there is no proof that any documents pertaining to the suit land were ever in his possession or any got lost.
 3. That the Honourable Magistrate erred in law in failing to appreciate the fact that the 2nd appellant (3rd defendant) had entered into a sale agreement over the purchase of the suit land with the original allottee on 9/7/2004 whereas the 1st respondent's [plaintiff] agreement is for 23/7/2004 way after.
 4. That the Honourable Magistrate erred in law in failing to appreciate the legal maxim that the first in time takes priority
 5. That the Honourable Court erred in fact in disregarding the evidence tendered which showed that the 2nd appellant and the 1st respondent each presented its own sets of documents at the office of Nyakinyua (2nd respondent herein), and before the DCI Juja, and the 1st respondent had just a copy whereas the 2nd appellant had the original of: (i) sale agreement; (ii) ballot; (iii) share certificate; and (iv) receipts, [sic]
 6. All which were tendered in court which he still has to date [sic]
 7. The Honourable Court erred in fact in failing to appreciate the evidence on record which clearly shows that the 1st respondent has no single document to the suit land and thereby court went against the DCI's findings and Nyakinyua's position as it is mandatory to have the aforementioned documents to lay a claim on land [sic]



8. That the Honourable Court erred in law in holding that the 1st respondent had an acknowledgement from the land seller on top of the agreement and that the 2nd appellant had just an agreement plus the original documents to the land. An acknowledgement cannot take precedence over an agreement as it is only furtherance to an agreement. It cannot pre-suppose any better entitlement to a claim. On that the court erred in law.[sic]
9. That the Honourable Court erred in law in holding “where are two titles” yet the suit parcel of land never had title therefore court made the wrong inference. [sic]
10. The Honourable court erred in law in reaching a conclusion that the 1st respondent was in possession of the suit land whereas the evidence tendered showed there was only one small house and immediately the 2nd appellant found it in 2020 he reported the matter to the DCI Juja and to the offices of Nyakinyua Investments Limited.
11. That the Honourable court failed to appreciate the evidence of DW1 (John Chege/Chairman of the 1st respondent) which showed that the only documents he had were the copies he was given to present at the offices of Nyakinyua and the 2nd appellant/3rd defendant had his set both in that office and at the DCI’S office
12. That the Honourable Court reached at the wrong finding that the 1st respondent had the genuine agreement with the initial allottee, dated 23/7/2004 yet the 2nd appellant had an earlier agreement for 9/7/2004 plus all the land documents to it from the allottee.
13. That the Honourable court erred in replying an authorities where there are two titles and reference to Section 26(1) *Land Registration Act* as the suit land has no title and the inference departs from the circumstances of this case hence inapplicable.
12. The appellants sought the following reliefs from this court: (i) an order allowing the appeal; (ii) an order setting aside the Judgment of the lower court and substituting it with a Judgment in favour of the 2nd appellant declaring him the legal owner of the suit land as sought in the counter-claim; and (iii) an order condemning the respondents to bear costs of this appeal.

Appellants’ Submissions

13. The appeal was canvassed through written submissions dated 19/7/2024, filed by M/s Wangui Kuria & Co. Advocates. On grounds 3, 4 and 12, counsel faulted the trial court for failing to appreciate the maxim “where there are two equal equities, the first in time prevails.” Counsel relied on the decision in the case of *Mcloy v Kiniaru & another* [2023] eKLR and *Wangui & 2 others v Wangui & another* [2022] eKLR. Counsel submitted that the 2nd appellant’s agreement for sale was first in time, hence it should prevail. Counsel relied on the decision in the case of *Muchungo vs Gitau* [2022] eKLR where the court stated that:

“The circumstances applicable to the maxim are: absence of fraud; two equities are equal, mistake is admitted; titles are both apparent and are issued regularly and procedurally without fraud save for mistake then the first in time prevails.”
14. Counsel contended that the DCI Officer confirmed in his testimony during trial that the results of their investigations were that the 2nd appellant was the genuine owner of the suit property. Counsel further contended that the suit property was not available for sale at the time the 1st respondent purported to have purchased it. Counsel relied on the Supreme Court decision in *Arvind Shah & others s Mombasa Bricks Tiles Limited & others* [2023] eKLR.



15. On grounds 5, 6, 7 and 11, counsel relied on Sections 107 and 112 of the *Evidence Act*. Counsel also relied on the decision in the case of SYT v TA [2019] eKLR and Kenya Akiba Micro Financing Limited v Ezekiel Chebii & 14 others [2012] eKLR. Counsel contended that the trial court failed to appreciate the weight of the evidence tendered by the appellants. Counsel argued that the trial court erred in holding that the 1st respondent had proved their case.
16. On grounds 9 and 13, counsel faulted the trial court for making an inference that the 2nd appellant and the 1st respondent both had title deeds to the suit property, adding that no title deed to the suit property exists. Counsel urged the court to set aside the trial court's decision and allow the appeal.

1st Respondent's Submissions

17. The 1st respondent opposed the appeal through written submissions dated 27/9/2024, filed by Kamwaro & Associates Advocates. On grounds 1, 2, 8 and 12, counsel argued that the 1st appellant's testimony that the 1st respondent held fake documents was not convincing. Counsel further argued that the sale agreement between the 1st respondent and Regina Wambui Muhia was valid even without the signature of the 1st appellant. Counsel added that the absence of the 1st appellant's signature on the sale agreement was not proof of his absence from the country at the time.
18. Counsel submitted that the 1st appellant confirmed having written the memorandum dated 15/10/2008 titled "Sale of Land", adding that the said document contained Regina Wambui Muhia's thumbprint. Counsel added that the 1st appellant confirmed being present when Regina Wambui Muhia appended her thumbprint on the agreement dated 15/10/2008. Counsel observed that the two agreements for sale in contention were signed by Muhia Mutura as the vendor, adding that, Regina Wambui Muhia validated the sale to the 1st respondent through the memorandum dated 15/10/2008. Counsel further submitted that the trial court correctly made a finding that the "acknowledgment" dated 15/10/2008 by the original allottee of the suit property (Regina Wambui Muhia) confirmed that the 1st respondent was the legitimate owner of the suit property.
19. On grounds 3 and 4 which focus on the trial court's failure to find that the 2nd appellant's agreement was entered into before the 1st respondent's agreement, counsel submitted that the appellants came up with the agreement dated 9/7/2004 in an attempt to defraud the 1st respondent. Counsel further argued that even though the two agreements relied on by the parties demonstrate that Muhia Mutura was selling the suit property on behalf of his wife, Regina Wambu Muhia, none of the parties produced a power of attorney to show that Muhia Mutura had the authority to transact on behalf of Regina Wambui Muhia. Counsel added that Regina Wambui Muhia later validated the transaction between her husband, Muhia Mutura, and the 1st respondent through the acknowledgement/memorandum dated 15/10/2008.
20. On grounds 5, 7 and 11, counsel submitted that the 1st respondent only produced copies of the documentary evidence because the 1st appellant had purportedly misplaced the original documents given to him for safe custody during his tenure as the Chairman of the 1st respondent. Counsel further submitted that the trial court noted that the 2nd appellant did not produce an acknowledgement from the original allottee, Regina Wambui Muhia, to confirm that he was a legitimate purchaser of the suit property. Counsel added that the findings by the Directorate of Criminal Investigations were neither binding on the trial court nor on this court. Counsel argued that the findings by DW3 were flawed. Counsel argued
21. that DW3 admitted that no forensic examination was done on the two sale agreements relied on by the parties and that it was not possible to determine which of the two agreements was genuine.



22. On grounds 9,10 and 13, counsel submitted that the trial court was right in finding that the parties had to demonstrate the root of their titles. Counsel further submitted that the trial court correctly found that the sale agreement in Kikuyu language and the acknowledgment dated 15/10/2008 demonstrated that the 1st respondent acquired title from Regina Wambui Muhia. Counsel added that the trial court found that the 2nd appellant had not demonstrated that he acquired a genuine title to the suit property.
23. Counsel argued that the trial court correctly made a finding that the 1st respondent's original documents were lost while in the custody of the 1st appellant, a fact the 1st appellant admitted. Counsel further submitted that the evidence before the trial court showed that the suit property had been subdivided into plots and members of the 1st respondent had taken possession of the various plots. Counsel added that the appellants had not demonstrated that the trial court erred in making a finding in favour of the 1st respondent. Counsel urged the court to dismiss the appeal and award costs of the appeal and the suit to the 1st respondent.

Analysis and Determination

24. I have read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. As observed in the introductory part of this Judgment, the key issue that falls for determination in this appeal is the question as to who, between Kioneki Investment Self-help Group and John Mwangi, is the beneficial owner of the suit land. Before I analyse and dispose the issue, I will outline the principle that guides this court when exercising appellate jurisdiction.
25. This is a first appeal. The task of a first appellate court was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani (2013) eKLR as follows;

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusion.
26. The principle was similarly outlined in Abok James Odera t/a A J. Odera & association v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR as follows-;

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”
27. Besides the 1st respondent's primary suit, the 2nd appellant had a counterclaim. Under the law of evidence, the two parties bore an equal burden of proving their rival ownership claims over the suit property. Neither of them sued the estate of Regina Wambui Muhia and the estate of Muhia Mutura. Neither of them led evidence by the two estates.
28. The 1st respondent contended that they were the legitimate beneficial owners of the suit land because they purchased it from the late Regina Wambui Muhia and were given possession and the original ownership documents upon purchase. They further contended that their former Chairman [the 1st appellant] colluded with the 2nd appellant and handed to the 2nd appellant the original share certificate and the original ballot card which the late Regina Wambui Muhia had given to them. It was their case that the 2nd appellant was waving those same documents as evidence of his ownership of the suit land.



29. On his part, the 2nd appellant contended that the late Regina Wambui Muhia sold to him the suit property through an agreement dated 9/7/2004 and gave him the original share certificate and the original ballot card. He contended that because his sale agreement was the first in time, it ought to prevail.
30. In the absence of evidence by the estate of the late Regina Wambui Muhia, the court has to try and establish, based on the available evidence and the law, who between the two rival claimants, is the legitimate beneficial owner of the suit land. The court has, in this regard, considered the evidence that was placed before the trial court.
31. The evidence on record reveals that Regina Wambui Muhia and Muhia Mutura were wife and husband. Both of them are said to be deceased. Neither of the parallel claimants sued their estates and neither of them led evidence by the two estates.
32. Secondly, both claimants relied on sale agreements that were signed by Muhia Mutura on behalf of Regina Wambui Muhia. Neither of them tendered evidence of a duly registered power of attorney authorizing Muhia Mutura to transact on behalf of Regina Wambui Muhia. Besides their respective sale agreements, the Self-help Group relied on a memorandum/acknowledgement dated 15/10/2008 in which Regina Wambui Muhia acknowledged that she had sold the suit land to the Self-help Group. Through the memorandum dated 15/10/2008, Regina Wambui Muhia authorized Nyakinyua Investment Company Limited to “let the title deed bare (sic) the name of KIONEKI INVESTMENT SELF HELP GROUP”. The acknowledgment bears what is said to be Regina Wambui Muhia’s thumbprint. It also bears the 1st appellant’s signature. Indeed, the 1st appellant acknowledged during cross examination that he was privy to the memorandum and further confirmed that he was the author of the memorandum on which Regina appended her thumbprint
33. The two appellants contended that the beneficial owner of the suit land is the 2nd appellant because his sale agreement bore an earlier date and that he [the 2nd appellant] held the original share certificate and the original ballot card bearing the name of Regina Wambui Muhia. The case of the Self-help Group was that, as Chairman of the Self-help Group, the 1st appellant was entrusted with the two documents which the 2nd appellant was waving to the trial court; and that the 1st appellant subsequently informed the Self-help Group that he had misplaced the documents, only for the 2nd appellant to emerge with the documents in November 2020 and lodge a complaint at Juja Police Station in an endeavor to enlist the assistance of the Police to evict allottees of the Self-help Group who had been in occupation of the suit land since 2004.
34. The 1st appellant denied the allegation and contended that he was in South Sudan when the suit land was purchased by the Self-help Group hence he did not have custody of the two documents. The 1st appellant conceded in his evidence that the Self-help Group purchased the suit land but insisted that the party who had genuine documents was the 2nd appellant hence the 2nd appellant was the legitimate owner of the land.
35. Who between the 2nd appellant and the 1st respondent acquired the suit land from Regina Wambui Muhia? Evidence was adduced before the trial court demonstrating that upon the Self-help Group purchasing the suit land in 2004, it subdivided the land into 10 plots and allotted the 10 plots to its 10 qualifying members. Some of the allottees developed their respective plots and have been in occupation of the houses since 2004. Some have interred their deceased kins on the suit land. There was no evidence of any action initiated by the 2nd appellant between 2004 and 2020 to evict members of the Self-help Group from the suit land. There was no evidence of any action initiated by the 2nd appellant to object to the burials that took place on the suit land between 2004 and 2020. The conduct of the 2nd appellant over the period of 16 years that preceded the suit by the 1st respondent is clearly inconsistent



- with his claim of ownership of the suit land and is an indication that he did not have the alleged ownership documents between 2004 and 2020. If he had them, he would not have remained quiet as intruders developed the suit land and buried human bodies on it.
36. Secondly, the 1st appellant confirmed that he was a witness to the memorandum dated 15/10/2008 in which Regina Wambui Muhia personally acknowledged selling the suit land to the Self-help Group. This is the only personal acknowledgment that was placed before the trial court to confirm that Regina sold the suit land. The trial court properly observed that the 2nd appellant did not have any such personal acknowledgement. Given the fact that both parties did not avail evidence of any power of attorney authorizing Muhia Mutura to transact on behalf of Regina,, the fact that the 1st respondent had the personal memorandum/acknowledgment dated 15/10/2008 and had been in uncontested occupation of the suit land from 2004 to 2020 formed a proper basis for finding that the 1st respondent acquired the suit land from Regina in 2004.
37. Was the 1st appellant given the original share certificate and ballot card which the 2nd appellant is now waving? Patrick Muhoro Mumbura testified as PW1. His evidence was that he was an official of the Self-help Group. He stated that initially, he was the custodian of all documents relating to the suit land. He added that the Chairman of the Self-help Group [the 1st appellant] subsequently asked to be given all documents relating to the suit land “to have them in his custody” and he [Patrick Muhoro] handed the documents to the Chairman [the 1st appellant]. He stated that in 2020, they received summons from Juja Police Station indicating that members of the Self-help Group were occupying the suit land illegally and that the 2nd appellant was the owner of the land. At that point, he discovered that the 1st appellant had given to the 2nd appellant the documents which he [Patrick Muhoro] had handed to him. [This is contained in the witness statement dated 5/2/2021.]
38. Phillip Njau Wainaina testified as PW2. His evidence was that in 2018, the Secretary of the Self-help Group PW1 gave to the Chairman [1st appellant] ownership documents relating to the suit land. Subsequent to that, the Chairman [1st appellant] “started claiming that the documents had been misplaced.”. Subsequently, he “got to see the documents that had been given to Mr John Chege Karanu [the 1st appellant] at the Director of Criminal Investigations Offices at Juja”. [This is contained in the witness statements dated 29/7/2021.]
39. The 1st appellant testified as DW1. Towards the end of his evidence in-chief, he stated as follow:
- “I was sent to Secretary Nyakinyua to verify the land documents but I misplaced the said documents.”
40. It is clear from the above evidence that the appellant was not truthful in his pleadings and written statement when he denied having been given the Self-Help Group’s original land ownership documents. Whereas he denied having custody of the documents, he contradicted himself by admitting that he had custody of the documents and he misplaced them.
41. The conclusion which the court draws from the totality of the evidence on record is that, the original ownership documents which the Self-help Group received from Regina Wambui Muhia were handed to the 1st appellant by the Secretary of the Group. The 1st appellant falsely alleged that the documents had been misplaced but passed the documents to the 2nd appellant to enable the 2nd appellant lay a claim of ownership over the suit land. These are the same documents which the 2nd appellant was waving before the trial court. The 2nd appellant could not have been a genuine owner and a genuine holder of the said documents yet from 2004 when the land was sold to the Self-help Group and was subdivided and occupied by members of the Self Help Group he neither objected to the occupation



nor objected to the burials that took place on the suit land. He only emerged with the stolen documents in 2020 hoping to use the Directorate of Criminal Investigations to advance their scheme.

42. The totality of the evidence that was placed before the trial court is that, on a balance of probabilities, the 1st respondent proved that Kioneki Self-help Group was the beneficial owner of the suit land. Further, based on the evidence before the trial court, the 2nd appellant did not prove his counterclaim.
43. For the above reasons, this court has not found merit in this appeal. The appeal is rejected and dismissed for lack of merit. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the appellants shall bear costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF APRIL 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Ms Wanjiru holding brief for Ms Wangui Kuria for the Appellant

Mr Kamwaro for the 1st Respondent

Mr Tupet -Court Assistant

