



REPUBLIC OF KENYA



**Lamai v Nganai (Environment and Land Appeal 3 of 2022)  
[2022] KEELC 13642 (KLR) (19 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13642 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND APPEAL 3 OF 2022  
MN MWANYALE, J  
OCTOBER 19, 2022**

**BETWEEN**

**EZEKIEL KIPRONO LAMAI ..... APPELLANT**

**AND**

**LAWRENCE KIBOR NGANAI ..... RESPONDENT**

**JUDGMENT**

1. The Appellant Ezekiel Kiprono Lamai, filed an appeal against the Judgment of the Chief Magistrates Court at Eldoret delivered on January 22, 2019, in Environment and Land Court No. 16 of 2018 between Lawrence Kibor Nganai as the Plaintiff and Ezekiel Kiprono Lamai as a Defendant.
2. The suit was initially filed at the Environment and Land Court in Eldoret being Eldoret Environment and Land Case No. 481 of 2013 before being transferred to the Chief Magistrate's Court Eldoret where it was registered as Eldoret CM Environment and Land No. 16 of 2018.
3. In his Memorandum of Appeal, the Appellant penned a total of 8 grounds of Appeal to wit,
  - i. The learned Magistrate erred in law and in fact by holding that the suit property belonged to the Respondent's deceased father when the truth was that the property belonged to the Appellant.
  - ii. The Learned Magistrate erred in law and in fact in failing to determine the authenticity of the signature of the Appellant in the alleged sale agreement of the suit land.
  - iii. The Learned Magistrate erred in failing to consider the issue of occupation and possession of the suit property by the appellant as evidence of title under commons law and statute.
  - iv. The Learned Magistrate erred in failing to raise, consider and determine all the issues raised in the pleadings and evidence as provided by the Appellant.



- v. The Learned Magistrate erred in law and fact in failing to interpret and apply express provisions of the law and by doing so, split all that title deed Nandi/kamoiywo/2133 into two part of 6.5 acres in the Respondents name and 0.4 acres in the Appellant's name.
- vi. The Learned Magistrate erred in law in failing to find that the award by Kapsabet Division Land dispute Tribunal was void in law and thus a nullity and incurably bad.
- vii. The Learned Magistrate erred in Law and fact in failing to address herself to the status of their lack of Land Control Board consent even when evidence laid before her confirmed that due process and statutory provisions was not followed.
- viii. The Learned Magistrate erred in law by failing to consider the oral submissions of Counsels for the Appellant while making her decision.

The Appellant sought that;

- a. The Appeal be allowed
  - b. The judgment and orders of the Honourable Magistrate be vacated and the Respondents suit be dismissed with costs.
  - c. The Court does substitute the judgment and orders of the trial Magistrate with a proper finding.
  - d. Costs of the appeal be granted to the Appellant.
  - e. Any further and/or other alternative reliefs and /or orders that this Court may deem fit and just to grant.
4. The Appellant filed written submissions on the appeal and condensed arguments for grounds 1, 2, 3 and 5 of the Appeal and framed an issue; as to whether who is the lawful owner of parcel known as Nandi/kamoiywo/632.
- Ground number 7 – whether the transaction was legally binding in line with the *land Control Act* and Whether the Trial Court used its discretion wisely (being ground number 4 and 8).
5. The Respondent equally submitted on the issues framed by the appellants in their submissions.
- I have perused the record of Appeal, the submissions filed in this appeal and considered the law and I shall analyse the grounds of Appeal and issues as framed by the Appellant.
6. Ground five of the appeal, as framed fails because it does not arise from the decree; whereas ground number 5 suggests that Nandi/kamoiywo/2133 was split into two parts 6.5 acres for Respondents name and 0.4 acres in the Appellant's name, a look at the decree appearing at page 154 of the Record of Appeal states that the Defendant was to transfer 0.4 acres to the Plaintiff and to vacate the said acres. The said ground of appeal is not based on the decree and therefore fails.
7. With regard to grounds 1, 2 and 3 and issue number 1 generally. The Appellant submit based on freehold title produced as D Exhibit 2 that he is the absolute owner and as such his rights are protected under Section 26 (1) of the *Land Registration Act*.
8. In reply to this submissions the Respondent submits that the Appellant admitted to selling 6.5 acres to the Plaintiff's and the only contention was 0.4 acres, which the Court found he had sold to the Plaintiff.



9. I have looked at the record, of Appeal and at page 149, the Appellant admitted selling land to the Plaintiff's father a Mr. Ngania, and hence the only issue in contention was 0.4 acres and not the entire 6.9 acres.
10. So whereas the Appellant was still the registered owner, having admitted selling 6.5 acres to Ngania, the Plaintiff's father, and the certificate of title he holds cannot no longer enjoy the protection of the law as he no longer has any interest capable of being protected by the Law and therefore ground 1, 2 and 3 of the Appeal, are not meritorious.
11. On issue number 2 of the issues as to whether there was Land Control Board consent. The Appellant submits that there was no Land Control Board consent. The Respondent had not submitted on this ground. Ground No. 7 of the Appeal, suggests that this issue of Land Control Act was raised before the trial Court in evidence by the Appellant. The issue of Land Control was raised in the pleadings particularly the defence. I have looked at the Defendants submission appearing on pages 105 to 111 of the Record of Appeal, and the issue of Land Control Act was not raised, neither was it raised in the evidence of the Appellant appearing as DW1 on pages 148 – 153 of the Record of Appeal. The said issue does not equally appear in the impugned judgment.
12. Thus ground 7 of the Appeal though arose in the pleadings did not stem out of the proceedings and the impugned decision of the Learned Magistrate. The Court of Appeal in the case of Republic vs Tribunal of Inquiry to investigate conduct of Tom Mbaluto and others Ex parte Tom Mbaluto observed as follows, “as has been stated time and again, there is philosophy and logical reason behind our appellate system, which except in exceptional cases and proper adherence to the prescribed procedure restricting the appellate Court to consideration of the issues that were canvassed before and decided by the trial Court. If that were not the case, the appellate Court would become a trial Court in disguise and make decisions without the benefit of the input of the Court of first instance.”  
Since ground 7 was not canvassed and is not founded on the decision of the Trial Court thus ground equally fails.
13. On grounds 4 and 8 of the appeal, the Appellant submits that the Learned Magistrate did not record any analysis of the factors considered in arriving at the decision and in the said decision the Learned Magistrate took into account irrelevant factors at arriving at his (sic) decision.
14. In response to this Limb of submission and ground of Appeal, the Respondent submits that the Learned Magistrate considered all factors and issues during trial by both parties and arrived at her decision.
15. I have perused the impugned decision appearing on pages 59 to 72 of the Record of Appeal, and the Learned Magistrate did summarise the evidence before her and gave reasons for the decision she arrived at. I find no fault in the way the learned Magistrate arrived at her decision which was based on the evidence on record; and applicable law.
16. Accordingly there is no merit whatsoever in the Appeal before this Court and the same is dismissed with costs to the Respondents and the judgment delivered by the Learned Magistrate is hereby upheld.
17. Judgment accordingly

**DATED AT KAPSABET THIS 19<sup>TH</sup> OCTOBER OF 2022.**

**Hon. M. N. MWANYALE,**

**JUDGE**



Delivered in presence of;  
Ms. C. Karuga for Appellant  
Mr. Wanyonyi for the Respondent.

