



REPUBLIC OF KENYA



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**Rebagi Enterprises v Muiruri & another (Environment and Land Appeal
E021 of 2022) [2025] KEELC 327 (KLR) (3 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E021 OF 2022
BM EBOSO, J
FEBRUARY 3, 2025**

BETWEEN

REBAGI ENTERPRISES APPELLANT

AND

MARY NJERI MUIRURI 1ST RESPONDENT

WAWAGE INVESTMENT COMPANY 2ND RESPONDENT

JUDGMENT

Introduction

1. This appeal challenges the Judgment rendered by Hon C K Kisiangani, Senior Resident Magistrate, on 24/2/2022 in Ruiru SPMC E & L Case No. 74 of 2020. The key question that fell for determination in the suit was whether the appellant had proved his claim of ownership of a piece of land described as Plot No. 227 Ruiru Block 126 [referred to in this Judgment as “the suit land”]. This is also the key question that falls for determination in this appeal. Before I analyse and dispose the issue, I will outline, in brief, the background to the appeal; the grounds of appeal; and the parties’ respective submissions in the appeal.

Background

2. Through a plaint dated 27/7/2020, the appellant instituted Ruiru SPMC E&L Case No. 74 of 2020 against the respondent, seeking:
 - (i) a declaration that they were the rightful and/or bonafide owner of the suit land;
 - (ii) a declaration that the share certificate issued to the 1st respondent over the suit land was invalid, null and void;



- (iii) an order compelling the 2nd respondent to rectify their records and register and/or restore the appellant as the owner of the suit land;
 - (iv) a permanent injunction restraining the two respondents against entering, occupying, leasing, transferring, charging, selling or dealing with the suit land
 - (v) general damages; and
 - (vi) costs of the suit.
3. The case of the appellant was that they purchased the suit land from one Samson Kabera Andrew at KShs. 220,000 through a sale agreement dated 7/5/2010. They contended that they were subsequently “registered as the absolute and indefeasible owners of the property and were issued with a copy of a share certificate from Muruka General Agencies, a subsidiary company of the 2nd defendant [the 2nd respondent in this appeal]” They added that they took possession of the land but they did not develop it. They contended that when they decided to fence the land in 2019, they discovered that the 1st respondent was in occupation of the land and had built a dwelling house on it. They termed the 1st respondent as a trespasser and they alleged collusion and/or fraud on part of the two respondents in the “registration” of the 1st respondent as the owner of the suit land.
 4. The two respondents filed separate statements of defence in which they contested the appellant’s claim. The 1st respondent’s case was that she purchased the suit land from one Wilson Njoroge Ndungu at KShs. 500,000 in 2014 and erected a permanent dwelling house on the land between 2014 and 2016. She started residing in the house in 2016. The 2nd respondent’s case was that Samson Kabera Andrew who was alleged to have sold the suit land to the appellant was a stranger to them, adding that his name had neither been entered in their records nor the records of M/s Mikjos Enterprises. The 2nd respondent added that the sale agreement which the appellant relied on did not relate to the suit land. They contested ownership of the suit land by Samson Kaberia Andrew and by the appellant. Their case was that the share certificate held by the 1st respondent was genuine and that the 1st respondent was the legitimate beneficial owner of the suit land.
 5. Upon receiving evidence and submissions, the trial court reached a finding that the appellant had failed to prove, on a balance of probabilities, that they were the owner of the suit land. The trial court dismissed the appellant’s case with costs.

Appeal

6. Aggrieved by the findings and decree of the trial court, the appellant brought this appeal, advancing the following nine (9) grounds of appeal;
 1. That the decision of the Learned Magistrate was manifestly unjust as it was based on insufficient evidence by the respondents.
 2. That the Learned Magistrate erred in law and in fact in finding that the defendant/respondent was the lawful owner of the subject matter against the evidence.
 3. That the Learned Magistrate erred in law and in fact in finding that the share certificate issued by Mikjos Enterprises was valid.
 4. That the Learned Magistrate erred in law and in fact in finding that the respondent had traced the root of their interest when they had not
 5. That the Learned Magistrate erred in law and in fact in failing to appreciate the fact that the initial sellers of the subject land were not the registered owners of Mikjos Enterprises.



6. That the Learned Magistrate erred in law and in fact in finding by ignoring the evidence of PW 2.
 7. That the Learned Magistrate erred in law and in fact in finding that the respondents had proved their case even when critical facts were not proved.
 8. That the Learned Magistrate erred in law and in fact by basing the construction of a house on the subject matter as the basis for her finding
 9. That the Learned Judge [sic] erred in law and in fact in failing to take into consideration evidence by the appellant by disregarding it while appreciating evidence by the respondent.
7. The appellant urged this court to set aside the impugned Judgment in its entirety and decree the respondents to bear costs of the appeal. They did not, however, pray for any substitute order in place of the order of the trial court.

Appellant's Submissions

8. The appellant filed written submissions dated 18/1/2024 through M/s David N. Muriuki Advocates. They submitted on only six grounds. On the contention that the trial court failed to consider evidence by the appellant and disregarded the appellant's evidence while appreciating the evidence by the respondents, counsel contended that despite the appellant adducing sufficient evidence to prove that they were the rightful owners of the suit land, all their evidence was ignored by the trial court. Counsel made reference to and recited the evidence of PW1 and submitted that despite the said evidence, the trial court ignored it and made a finding against them.
9. On the contention that the trial court ignored evidence by PW2 – Moses Munene, counsel submitted that PW2 was a critical witness who had been called by the appellant to trace the root of the "title" to the suit land. Counsel recited the evidence of PW2 and argued that the testimony of PW2 was a clear demonstration of the full history of the root of title relating to the suit land and proved to the court how the suit land had moved until it got into the lands of the appellant.
10. On the allegation that the trial court failed to appreciate the fact that the purported initial sellers of the suit land were not the registered owners of Mikjos Enterprises, counsel argued that whereas the 1st respondent stated that the seller's share certificate had been issued by Mikjos Enterprises, she contradicted herself by stating that she went to the 2nd respondent for completion of the purchase. Counsel added that the 1st respondent was a "passive buyer" who did not carry out due diligence to establish whether or not the 2nd respondent was allowed to deal with the suit land. Counsel faulted the formal sale agreement between the two respondents, contending that it was entered into in 2021 to try and defeat justice.
11. On the contention that the 1st respondent did not prove the root of their title and did not prove their case, counsel submitted that it was not possible to prove the root of the 1st respondent's title without calling a witness who would testify and explain the movement of the property from Mikjos Enterprises to Wilson Njoroge Ndungu and finally to the 1st respondent. Counsel contended that the people who sold land to Wilson Njoroge Ndungu were con people and therefore Wilson Njoroge Ndungu did not have a good title to pass to the 1st respondent.
12. On the contention that the trial court erred in basing its finding on the construction of a house on the suit land, counsel contended that the construction of a house on the suit land did not negate the fact that the 1st respondent acquired the suit land illegally, adding that the land belonged to the appellant. Counsel faulted the 1st respondent for calling DW2 – Wilson Njoroge Ndungu as her only



corroborating witness, adding that through his evidence, DW2 destroyed the 1st respondent's case. Counsel urged the court to allow the appeal.

1st Respondent's Submissions

13. The 1st respondent filed written submissions dated 30/1/2024. Counsel for the 1st respondent submitted that the key issue for determination in the appeal was whether the trial court disregarded the appellant's evidence while appreciating that of the respondents. Counsel submitted that both the appellant and the 1st respondent were expected to demonstrate their ownership of the suit land, stating that in addition, the appellant was expected to demonstrate fraud on part of the 1st respondent. Counsel argued that the appellant failed to demonstrate that they were the proprietor of the suit land. Counsel submitted that the appellant did not tender evidence proving purchase of the suit land. Counsel added that whereas the appellant's case was that they purchased the suit land from one Samson Kabera Andrew, they did not tender any evidence demonstrating that Samson Kaberia Andrew owned the suit land through shareholding or otherwise. Counsel further submitted that there was no proof of receipt of purchase price nor clearance and internal transfer by M/s Muruka General Agencies.
14. Counsel argued that it was improbable that having purchased the suit land in 2010, the appellant only thought of fencing the land in 2019 and never objected to the construction of a dwelling house on the land by the 1st respondent in 2014. Counsel faulted the appellant for not calling Samson Kabera Andrew as a witness and for not calling a representative of Muruka General Agencies as a witness. Counsel urged the court to dismiss the appeal.

2nd Respondent's Submissions

15. The 2nd respondent filed written submissions dated 13/5/2024 through M/s Kimani Kahete & Co. Advocates. On the contention that the trial court's decision was based on insufficient evidence, counsel for the 2nd respondent submitted that both the appellant and the 1st respondent were obligated to demonstrate how they acquired the suit property, adding that the appellant failed to demonstrate the root of their title.
16. On the contention that the trial court erred in its finding on the question of ownership of the suit land, counsel contended that the appellant did not prove purchase of the suit land, adding that they neither proved payment of purchase price nor led evidence by the alleged seller. Counsel argued that there was no evidence demonstrating that the alleged seller, Samson Kabera Andrew, was a shareholder of Muruka General Agencies.
17. On the share certificate issued by Mikjos Enterprises, counsel submitted that DW2 Wilson Njoroge Ndungu confirmed that he sold the suit land to the 1st respondent and that he had previously purchased the suit land from M/s Mikjos Enterprises at Kshs 100,000 in 2006.
18. On the contention that the trial court ignored the evidence of PW2, counsel submitted that PW2 had categorically stated that he was not testifying on behalf of M/s Muruka General Agencies, hence his testimony had no probative value on the question of ownership of the suit land. Counsel added that DW3, the proprietor of Wawage Investment Company, denied the allegation that M/s Muruka Agencies purchased the suit land from them. Counsel faulted the appellant for not calling Mr Wakahiu as a witness. Counsel also faulted the appellant for failing to produce the sale agreement between them and M/s Muruka General Agencies. Counsel urged the court to dismiss the appeal.



Analysis and Determination

19. I have read and considered the original record of the trial court and the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. The key question to be answered in this Judgment is whether the appellant proved their case to the required standard. Before I analyse and dispose the issue, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.
20. 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 conclusions.”
21. The principle was similarly outlined in *Abok James Odera t/a A J Odera & Associates 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.”
22. Did the appellant prove their case? The appellant's case was contained in their plaint dated 27/7/2020. There was no counterclaim against them. Consequently, the burden of proof under Sections 107 and 109 of the [Evidence Act](#) was on the appellant.
23. The appellant pleaded as follows in paragraphs 4 and 5 of their plaint:
 4. The plaintiff avers that it purchased all that parcel of land known as Plot No. 227 Ruiru BTL Block 126 Situated in Ruiru within Kiambu County (hereinafter referred to as “the suit property”) for valuable consideration of Two hundred and Twenty thousand only (Kshs. 220,000/=) from one Samson Kabera Andrew of Id No. 8483599 vide a sale agreement dated 7th May 2010.
 5. The plaintiff avers that after the said purchase, it was registered as the absolute and indefeasible owner of the property and was issued with a copy of a share certificate for Muruka General Agencies a subsidiary company of the 2nd defendant
24. It subsequently emerged from the evidence on record that Plot No. 227 Ruiru BTL Block 126 was not a registered piece of land. It therefore emerges in this appeal that the appellant misled the trial court that they were “registered as the absolute and indefeasible owner” of the suit land. This was a significantly misleading plea because the appellant had an obligation to tender evidence to the court relating to the survey and registration status of the suit land, which the appellant described as plot number 227 Ruiru BTL Block 126. Up to the time the appellant closed their case, that evidence had not been tendered by the appellant. Indeed, in this appeal, this court does not know the registered proprietor of the bigger parcel within which the plot which is the subject of this dispute falls. Failure to tender the above crucial evidence was not the only omission.



25. Given the factual circumstances of the case, the appellant was required to demonstrate that they were the beneficial owners of the land and that the 1st respondent had no right to be on the land. Did the appellant discharge their evidentiary burden in that regard?
26. The case of the appellant was that they purchased the suit land from one Samson Kabera Andrew. The exhibited agreement which the appellant relied on did not, however, bear any mention of the plaintiff, Rebagi Enterprises, as a purchaser. The vendor in the agreement was Samson Kabera Andrew while the purchasers were P.N Kabogo, Silas Nyoro Njoroge, Teresia Wangari Ndungu and Francis Mwangi Njugu. Clearly, Rebagi Enterprises was not a purchaser under the said sale agreement. Further to that, there was no evidence of payment of purchase price to the said Samson Kabera Andrew by Rebagi Enterprises.
27. Secondly, while aware that they were claiming beneficial ownership of the suit land through purchase from Samson Kabera Andrew, the appellant did not bother to lead evidence by the said Samson Kabera Andrew. While also aware that it was their case that Samson Kabera Andrew acquired the land from M/s Muruka General Agencies, and that the share certificate they [the appellant] were relying on as proof of ownership was expressed as issued by M/s Muruka Agencies, they did not lead evidence by a representative of Muruka General Agencies despite them exhibiting a certificate showing that Muruka General Agencies was owned by John Irungu Njoka, Joseph Njuguna Njoka and Ezra Herman Njoka.
28. Further, despite the appellant knowing that it was their case that M/s Muruka General Agencies acquired the suit land from Kamuso Self Help Group who had purchased the land from one Wakahiu, they did not lead evidence by a representative of Kamuso Self Help Group. Neither did they lead evidence by Wakahiu. The appellants treated the aspects of registered ownership and acquisition of beneficial ownership of the plot casually.
29. The aspect of possession or occupation of the suit land is the other area that raises serious doubts about proof of the appellant's case. Having acquired the suit land in 2010 as they alleged, the appellant did nothing in terms of taking actual exclusive possession of the land. Indeed, from 2014 to 2016, the 1st respondent undertook construction on the land without any objection or resistance from the appellant. The 1st respondent subsequently resided in the constructed dwelling house for three years without any objection or resistance from the appellant. The appellant was unable to explain their inaction for the period of close to six years.
30. It is also noted that whereas the appellant challenged the legitimacy of the 2nd respondent as the custodian of the internal records that relate to the suit land, they at the same time acknowledged them as the custodian of the relevant records and invited the court to issue an order compelling them to "rectify their records and to register and or restore the plaintiff [the appellant in this appeal] as the owners of the suit land. Prayer number (c) in itself is an admission or acknowledgment that the 2nd respondent is the custodian of internal records that relate to the suit land.
31. On her part, the 1st respondent tendered and led evidence on how she acquired beneficial ownership of the suit land. She demonstrated that upon acquiring the suit land, she took possession of the suit land and that she developed a permanent residential house on the suit land in which she resides. She led evidence by the person who sold to her the suit land. Their evidence was corroborated by DW3- Francis Njogu Ngugi, the proprietor of the 2nd respondent. DW3 gave testimony explaining the link between the 2nd respondent and Mikjos Enterprises. He stated that the 2nd respondent was the custodian of all the internal records relating to the suit land. He testified that the 1st respondent was the beneficial owner of the suit land.



32. It is clear from the evidence that was before the trial court that the appellant failed to discharge their burden of proof. It is also clear from the totality of the presented evidence that as between the appellant and the 1st respondent, the 1st respondent demonstrated beneficial ownership and possession of the suit land. This court, therefore, has no basis upon which to fault the trial court.
33. The result is that this appeal fails. The appeal is rejected and dismissed for lack of merit. In tandem with the principle in Section 27 of the *Civil Procedure Act*, the appellant shall bear costs of the appeal.
34. Lastly, it is clarified that the date for delivery of this Judgment was reserved while the Presiding Judge was still stationed at Thika ELC. Effective from 13th January 2025, the Judge was transferred to Meru ELC and Chuka ELC. It is for this reason that this ruling is being rendered virtually at Meru ELC. The relevant original court file shall be returned to Thika ELC forthwith and the Court Registry at Thika ELC shall upload the ruling onto the CTS immediately.

DATED SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 3RD DAY OF FEBRUARY, 2025

B M EBOSO [MR]

JUDGE

In the Presence of:

Court Assistant - Tupet

