



**Nyamdari & another v Okore (Environment and Land Appeal
E026 of 2021) [2025] KEELC 3688 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3688 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E026 OF 2021**

M SILA, J

MAY 6, 2025

BETWEEN

ODONGO NYAMDARI 1ST APPELLANT

NELSON OCHIENG ODONGO 2ND APPELLANT

AND

JOHN ONDIALA OKORE RESPONDENT

*(Being an appeal from the judgment of Hon. P. Areri, Principal Magistrate,
delivered on 29 April 2021, in the suit, Migori CMCC No. 128 of 2019)*

JUDGMENT

(Respondent suing the appellants for being on his land; appellants filing defence claiming to be on other land; trial Magistrate calling for a report of the Land Registrar and Surveyor; report indicating that indeed the appellants are on the suit land; judgment entered in accordance with the report; appellants now filing appeal; court not finding any substance in the appeal as the report was clear that the 2nd appellant was on the suit land; nothing to contradict this filing; appeal dismissed)

1. The appellants are aggrieved by the judgment delivered on 29 April 2021, whereby they were ordered to vacate the land parcel Suna West/Wiga/2460. In the course of hearing this appeal, it was mentioned that the 1st appellant is deceased. The appeal is therefore only being pursued by the 2nd appellant.
2. The background is that through a plaint filed by the respondent on 28 October 2019, the respondent pleaded to be the registered owner of the land parcel Suna West/Wiga/2460 measuring approximately 0.62 Ha (the suit land) . He pleaded that in January 2019, he learnt that the appellants (sued as the 1st and 2nd defendants) had trespassed into the suit land , constructed structures and illegally cultivated it. In the suit, he sought an order of eviction of the appellants and costs of the suit.



3. The appellants filed a joint statement of defence in person. They contended that they are in occupation of a land parcel Suna West/Wiga/381 and not Suna West/Wiga/2460 and therefore the suit should be dismissed. On 30 March 2021, the trial court issued an order for the County Surveyor and County Land Registrar to visit the suit land, establish its boundaries and file a report in court.
4. The suit land was duly visited on 9 April 2021 and a report dated the same date was filed. The significant findings in the report were that the suit land inter alia borders a parcel No. 1663. The report states that the defendants (now appellants) are occupants and beneficiaries of the land parcel No. 1663. The officers went on to record the following findings :
 1. The common boundaries of this parcel against parcels number 2040, 2459, and 380 are intact on the ground.
 2. At the time of the visit, there was no boundary features separating parcel numbers 2460 (the suit land) against 1663 on the ground.
 3. The homestead of Nelson Ochieng Odongo (defendant No. 2) is within parcel number 2460 (the suit land).
 4. Parcel number 2460 (the suit land) is currently partly under maize plantation.
5. The officers stated that they determined the boundaries of the suit land and demarcated it on the ground by a total of 27 sisal plants. I note that the site visit was done in the presence of the 2nd appellant herein. The court did not hear the parties but adopted the report of the Land Registrar and surveyor and pronounced judgment based on that. He found that the respondent had proved his case and ordered the 2nd appellant to vacate the suit land within 30 days and no later than 30 May 2021.
6. Aggrieved, the appellants filed this appeal. There are seven grounds listed. From what I see the appellants claim inter alia that the judgment was against the weight of evidence and that the trial court failed to consider the contents of the statement of defence which ventilated that the appellants only occupy the land parcel Suna West/Wiga/381 and not the suit land.
7. I directed the appeal be heard through written submissions. The 2nd appellant, who is the only surviving appellant, filed his submissions. I have given the same due consideration. The respondent did not participate in the hearing of the appeal despite being duly served.
8. It is very clear to me that there is no substance in this appeal and I will be pretty brief in my disposition.
9. The case of the respondent was that the appellants had trespassed into his land. The appellants' defence was that they were not on the suit land but were occupying the land parcel Suna West/Wiga/381. The report of the Land Registrar and Land Surveyor speaks for itself. It states clearly that the 2nd appellant was in occupation of the suit land. Indeed, the report avers that the homestead of the 2nd appellant is within the suit land and there are photographs of his house exhibited. Nowhere in that report is it mentioned that the appellants were occupying the land parcel Suna West/Wiga/381 as they alleged in their defence. The report does not even mention this parcel Suna West/Wiga/381 as sharing a boundary with the suit land. The appellants themselves never filed any contrary survey report to demonstrate what they were alleging in their defence, and had nothing to contradict what the County Land Registrar and County Surveyor reported.
10. In any event, if their interest is in the land parcel Suna West/Wiga/381, and the 2nd appellant believes that this is where he is resident, then he should have no issue with orders made in respect of the land parcel Suna West/Wiga/2460 for he has no pleadings claiming any right over the suit land. In light of that, I wonder why he is complaining if it has been adjudged that he should vacate the land parcel Suna



West/Wiga/2460. And there should be no issue regarding the boundaries of the suit land for the Land Registrar and County Surveyor planted sisal to demonstrate its boundaries.

11. This appeal clearly has no merit and it is hereby dismissed with costs to the respondent.
12. Judgment accordingly.

DATED AND DELIVERED THIS 6 DAY OF MAY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

MIGORI

Delivered in the presence of :

2nd appellant – Acting in person

Respondent – Absent

Court Assistant – Tom Otieno

