



**Anumo v Asoi & another (Environment and Land Appeal  
E010 of 2024) [2025] KEELC 5248 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5248 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAAYA  
ENVIRONMENT AND LAND APPEAL E010 OF 2024**

**AE DENA, J**

**JULY 10, 2025**

**BETWEEN**

**PETER OKENDI ANUMO ..... APPELLANT**

**AND**

**GORDON OYUGI ASOI ..... 1<sup>ST</sup> RESPONDENT**

**LUDVICUS OTIENO ANUMO ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the Judgment and Decree of Hon. E. Malesi (Principal Magistrate) Dated and delivered on the 13th day of March 2024, in the original MADIANY PMELC NO. E009 OF 2023)*

**JUDGMENT**

1. This judgement arises from an appeal against the judgement and decree of Hon. E. Malesi (Principal Magistrate) dated and delivered on 13/03/2024 in Madiany PMELC No. E009 of 2023.
2. The grounds of appeal are outlined in the Memorandum of Appeal dated 8/4/2024 as follows; -
  1. ThatT the learned magistrate erred in law and fact by not finding that the 1<sup>st</sup> Respondent could not lay a claim over a sale of land agreement between him and the 2<sup>nd</sup> Respondent when the 2<sup>nd</sup> Respondent was neither the Proprietor nor Representative of the Proprietor at the time of the Agreement.
  2. ThatT the learned magistrate erred in law and fact in the manner which he considered the evidence before him and by considering falsified, doctored and/or altered evidence brought forth by the 1<sup>st</sup> Respondent in terms of the acreage of the portion to be entitled to.
  3. ThatT the learned magistrate erred in law and fact by failing to consider the disparities in the Respondents' assertion of the manner in which they come to the possession of the said portion, and that Section 6 of the Land Control Act demanded that parties in a sale of land in a controlled



transaction are obligated to apply for Land Control Board consent within six months of the transaction without which the agreement is null and void.

4. That the learned magistrate erred in law and fact by failing to consider the defence, affidavits and witness statements of the Appellant which expressly stated that the documents by the 1<sup>st</sup> Respondent were altered.
3. Based on the above grounds the Appellant sought for the following orders:
  1. The Appeal be allowed
  2. The judgement of the learned Magistrate be set aside and substituted with an order dismissing the suit in the lower court
  3. The costs of the Appeal and of the suit in the lower court be granted to the Appellant
  4. The Appeal upon admission was by order of the court canvassed by way of written submissions

### **Appellants Submissions**

5. The appeal was dispensed by way of written submissions. Parties also had an opportunity to highlight on the same orally on 20/2023.
6. The appellants submissions are dated 11/2/2025. The appellants collapsed the grounds of appeal to i) Whether the Honourable Trial Magistrate erred in validating the Agreement for Sale dated 17th September, 2017 ii) Whether the Honourable trial magistrate misdirected himself by not considering the provisions of Section 6, 7 and 8 of the *Land Control Act*.
7. The Appellant submitted that the 2nd Appellant did not have capacity to enter into the sale agreement with regards to the property of the deceased where they had not undertaken succession proceedings. That Section 24 of the *Land Registration Act*, gives such rights only to the proprietor. Reliance is placed on In re Estate of Benson Maingi Mulwa (Deceased) [2021] eKLR and In Re Estate Of Peter Mudonyi (Deceased) [2021] eKLR.
8. That the 2nd Appellant did not have the authority nor the capacity to dispose off the property before obtaining grant. Reliance is placed in the case of Mwangi Stephen Muriithi v Equity Building Society & Another [2014] eKLR. The appellants' urge that the Agreement be voided as the Appellants were amenable with a refund after a thorough taking of accounts
9. Citing the provisions of section 107 of the *Evidence Act* on the burden of proof and where it lies, it is submitted that the Respondent did not prove how the characters 0.4Ha were added onto the agreement for sale. The Honourable trial magistrate was therefore at fault in establishing that he indeed purchased the 0.4Ha as alleged without sufficient proof and or evidence. The legal position is that a party who fails to adduce evidence in support of his case, those pleadings remain mere statements as reiterated in the case of Stephen Gachau Githaiga.V. Margaret Wambui Weru & Attorney General 2015 Eklr.
10. Citing the provisions of section 6 of the *Land Control Act* it is submitted that the transaction undertaken by the Appellants and the Respondent pertains to an agricultural land. The parties were therefore mandated to apply for the Land Control Board consent within six months of the transaction. The failure by the parties to perform this critical step rendered the transaction void. The Respondent's remedy was under Section 7 of the *Land Control Act*. The court is referred to the case of David Ole Tukai v Francis Arap Muge & 2 Others [2014] eKLR



11. In conclusion it is submitted that the Learned trial magistrate made errors of fact and law by considering altered documents and giving them probative value. The decision of the trial court can also be impeached for reason that the alleged contract or agreement for sale was over a parcel of land that did not belong to the vendors thus they could not transfer any interest in the property which they did not have. Further, the Appellants' have detailed how the transaction could not be enforced as the parties did not comply with the mandatory requirements of the Land Control Act with regard to Agricultural Land. The Learned trial magistrate misdirected himself by determining that the Respondent had partially proven his case on a balance of probabilities without calling the necessary witnesses and producing documents. The Learned Trial Magistrate further misdirected himself by ordering specific performance on the part of the Appellants without considering the full facts of the matter.

### **1<sup>st</sup> Respondents Submissions**

12. The 1<sup>st</sup> Respondents submissions are dated 17/03/2025 addressing three issues namely 1) Whether the learned trial Magistrate erred in validating/enforcing agreement for sale entered into dated 17<sup>th</sup> September 2017 2) whether the Appellant is the registered owner of suit parcel number Uyoma/Ragengni/2062, 3) Whether the learned Magistrate misdirected himself by not considering the provisions of sections 6, 7 and 8 of Land Control Act. 4) Whether the appellants introduced new issues and evidences that were never pleaded in trial court without seeking leave of the court.
13. It is submitted that the 1st respondent was able to produce evidence of written agreement for the purchase of portion of the suit parcel which agreement met the requirements Section 3(3) of Law of Contract Act accordingly discharging the burden of proof as required under sections 107 and 109 of the Evidence Act.
14. It is contended that failure to make an application for Land Control Board consent in favor of 1st respondent without any justifications is a mistake on the appellant and the 2nd respondent part and not the 1st respondent. That the learned Magistrate did not err in validating/enforcing agreement dated 17<sup>th</sup> September 2017 in respect of the suit property.
15. It is asserted that it was the duty of the appellant to apply for the Land Control Board consent which they deliberately refused to do. The appellant acted with impunity and thus has not come before this court with clean hands and Equity cannot aid a wrong doer. They could not explain to the court their failure to do so.
16. It is submitted that the appellant holds the portion of the suit parcel in trust for the 1st respondent, having granted the 1st respondent vacant possession of the suit parcel. That the appellant having confirmed receipt of full payments of sold portion of suit parcel of land herein cannot escape from their obligation on order of specific performance, based on the principle of constructive trust. It is clear and we submit that the value of the suit parcel has increased due to improvements/developments made by the 1st respondent.
17. Having acknowledged full payment for the 0.4 Ha land sale and granted the 1st respondent vacant possession. Their failure to justify the lack of a land control board application at the magistrate's court warranted the court's order for specific performance, the only viable remedy. Therefore, the magistrate correctly disregarded sections 6, 7, and 8 of the Land Control Act as argued by the appellant. The court is referred to the case of Caroline Cheron Kirui Vs. Liner Cheron Towett (2018) eKLR where Oundo J. Cited the case of Gharib Sulema Gharib. Vs. Abdulrahman Mohamed Agil. LLR NO. 750(CAK) Civil Appeal No. 112 of 1998.



18. It is urged that a party cannot introduce new issues at the appeal stage that were not pleaded and not canvassed before without leave of the court. Specifically, no evidence regarding sections 6, 7, and 8 of the Land Control Board Act was presented at trial. There was equally no argument as to the appellant capacity to enter into the agreement.
19. It is submitted the appellant through the back door filed documents on 12th February 2025 at 20:32:22 labelled “list of documents” containing letters of administration intestate dated 26th April 2022, certificate of confirmation of grant dated 6th October 2022 and death certificate. The said documents did not form part of documents filed before the trial court and cannot be brought/filed on appeal in that manner and without leave of the honourable court. The court is invited to expunge these documents from the records. Reliance is placed upon the court of Appeal’s decision in Kenya Hotels Limited VS. Oriental Commercial Bank Limited[2018] eKLR which cited with approval the case of Thomas Openda VS. Martin Ahn[1982]eklr and Nyangau .Vs. Nyakwara[1986] KLR 712.
20. The court is tasked to re-evaluate the evidence presented at the trial court only and find in favour of the 1st respondent as submitted.

### **Issues For Determination**

21. Having analysed the Record of Appeal the rival submissions and considered the law, the court frames the following issues for determination: -
  1. Whether the learned trial Magistrate erred in validating/enforcing agreement for sale entered into dated 17<sup>th</sup> September 2017
  2. Whether the learned Magistrate misdirected himself by not considering the provisions of sections 6, 7 and 8 of Land Control Act.
  3. Whether the Appellant is the registered owner of suit parcel number Uyoma/Ragengni/2062,
  4. Whether the appellants introduced new issues and evidences that were never pleaded in trial court without seeking leave of the court.
  5. What orders ought to issue.
  6. Who bears the costs of the Appeal and the case.

### **Analysis And Determination**

22. The jurisdiction of this court to determine this appeal is not in dispute. This being a first appeal the court is enjoined to re-evaluate the facts and the evidence that was led before the trial court and come up with its own conclusions. In doing so this court will bear in mind that the trial court had a greater advantage having seen and heard the witnesses. I will therefore make due allowance in this respect, see *Selle Vs. Associated Motor Boat Co.* (EA.123).
23. Section 78 of the Civil Procedure Act which states as follows

“Subject to such conditions and limitations as may be prescribed, an appellate court shall have power;

- (a) to determine a case finally;
- (b) to remand a case;
- c. to frame issues and refer them for trial;



- d. to take additional evidence or to require the evidence to be taken;
  - (e) to order a new trial.
- (2, ) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.”

**Whether the appellants introduced new issues and evidences that were never pleaded in trial court without seeking leave of the court.**

24. This issue arises from the 1<sup>st</sup> ground of appeal herein where the trial court is faulted for failing to find that the 1<sup>st</sup> Respondent could not lay a claim over a sale of land agreement between him and the 2<sup>nd</sup> Respondent when the 2<sup>nd</sup> Respondent was neither the Proprietor nor Representative of the Proprietor at the time of the Agreement. I find it necessary to first deal with the allegation that the appellant has introduced new issues in this appeal without prior leave of the court for the reason that some grounds of appeal could be dependent upon the determination of this ground.
25. The two new issues are appellants capacity to enter into the agreement and absence of Land Control Board consent.
26. On the issue of the 2<sup>nd</sup> appellants capacity to enter into the sale agreement the plaintiff states that 1<sup>st</sup> defendant was holding the suit lands title in trust for the 2<sup>nd</sup> defendant (see prayer b) of the plaint. The plaintiffs in their submission dated 5/02/2024 at the trial court did not argue on the issue of capacity in this regard but addressed the point under the doctrine of bonafide purchaser and compliance of the sale agreements to the provisions of section 3(3) of the *Law of Contract Act*.
27. The defendants on the other hand in their statement of defence do not plead the issue of capacity to enter into the sale agreements. Infact they admit to the existence of both agreements save for the fact that there was breach on the part of the plaintiff. My review of their submissions dated 26/02/2024 reveals that none of the sale agreement are impugned on the basis of capacity. I have also combed through the defendants submissions and the issue of lack of LCB consent did not feature.
28. On the issue of capacity it is asserted by the appellants that the 2<sup>nd</sup> appellant did not have authority nor capacity to dispose of the property before obtaining grant. This was never pleaded neither did it arise during the hearing or submissions.
29. This court has also reviewed the proceedings, the oral testimonies of the parties and their witnesses and none of the above issues arose. I also perused the judgement and none of these issues arose. Both parties proceeded from the premise that there were two agreements and the main contention was whether there was breach of the terms, whether the 2<sup>nd</sup> portion was paid for fully and the remedies available with emphasis on whether the remedy for specific performance should issue.
30. Then there is also the issue of the documents allegedly filed on 12/2/2025 being letters of administration intestate dated 26th April 2022, certificate of confirmation of grant dated 6th October 2022 and death certificate which did not form part of documents filed before the trial court. These documents were annexed to the appellants submissions dated 11/2/25 and filed on 12/2/2025. The defendants list of documents dated 28/8/2023 (see page 54 of ROA) it is true does not bear these three documents meaning they were not produced during trial court proceedings.



31. Having confirmed that the two issues are new should the court entertain the grounds arising therefrom? The plaintiff's case is that in the absence of leave to introduce the new issues then the same should be disregarded.
32. What is the law? It is trite that parties are bound by their pleadings. I have already observed hereinbefore that indeed the issue of capacity to enter into agreement and lack of LCB consent and even absence of grant of letter of administration to confer capacity were never raised in the pleadings. I will not reinvent the wheel the Court of Appeal decision in *David Sironga Ole Tukai Vs Francis Arap Muge* buttresses this position. Also see *Raila Amolo Odinga & Another vs. IEBC & 2 others* (2017) eKLR.
33. Moreover a document unless it is formally admitted as evidence by the court, see the Court of Appeal dictum in *Kenneth Nyaga Mwigie v Austin Kiguta & 2 others* [2015] eKLR it cannot be introduced in submissions. Submissions can never take the place of evidence a position taken by the court in *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another* [2014] eKLR.
34. The appellant did not lead this court to any provisions of the law in regard to introduction of the three documents or new issues. Infact I note from the submissions filed that the said annexures feature nowhere in the trial proceedings. Clearly this is mischievous of counsel when as a lawyer he clearly must know better.
35. The respondents referred the court to the decisions of the Court of Appeal in the case of *Kenya Hotels Limited Vs Oriental Commercial Bank Limited* (2018)eKLR. I find the following dictum instructive and resonate with the circumstances of this case ;-

‘Due to these fundamental concerns, the Courts has developed fairly elaborate principles that guide it in determining whether or not to allow a new point on appeal. In *Openda v. Ahn*, (supra) this Court identified some of the principles to include that all grounds of appeal must arise from issues that were sufficiently pleaded, canvassed, raised or succinctly made issues at the trial; that the point sought to be introduced must be consistent with the applicant's case as conducted in the trial court, not changing it into a totally different case; the matter must have be properly pleaded and the facts in support of the new point must have come out in the trial court; a new point which has not been pleaded or canvassed in the trial court should not be allowed to be taken on appeal, unless the evidence establishes beyond reasonable doubt that the facts before the trial court, if fully investigated, would support the point; where the question is one of law turning on the construction of a document, the new point may be allowed but only if the facts when fully investigated support the new plea.

36. The Court of Appeal above upon reviewing various decisions on the subject held thus:-

‘Turning to the matter at hand, it is common ground that the applicant's intended new ground of appeal was not pleaded before the High Court, no evidence was led on it, the parties did not address the court on the matter, and the learned judge did not pronounce himself on the issue. I think in light of that observation, the applicant is being less than candid when it claims that the new ground of appeal is supported by the evidence on record and does not raise any dispute of fact. No evidence was on record before the learned judge on the status of the suit properties as agricultural lands and the respondent vehemently denies that those properties, being the grounds on which the Naivasha Country Club stands, are indeed agricultural lands within the meaning of the *Land Control Act*.



As I earlier stated, the dispute in the High Court was fought on the grounds whether the applicant had received the money secured by the equitable mortgage, whether the equitable mortgage was valid (on grounds other than lack of consent from the Land Control Board) and whether the originating summons was competent. The issue of consent from the land control board was never raised by any of the parties and was not considered by the learned judge. In a surprising submission, the applicant claims that the learned judge ought to have raised the issue of the land board consent on his own motion. It is however not lost to be me that since it is the applicant who claims that the transaction was contrary to the provisions of a statute; it was its duty under the rules of pleadings to specially plead the alleged illegality. It did not do so and as a result there is no evidence on record on the basis of which this Court can decide whether the suit properties are commercial or agricultural.’

37. The foregoing therefore buttresses this courts analysis and findings in hereinbefore. I further remind myself that it is the responsibility of this court to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in their pleadings and evidence. See *Abok James Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR.
38. The upshot of the foregoing therefore is that it is the finding of this court that the appellants introduced new issues and evidences that were never pleaded in trial court without seeking leave of the court.
39. Consequently, it is the finding of this court that the learned Magistrate did not misdirect himself by not considering the provisions of sections 6, 7 and 8 of *Land Control Act*.
40. Moreover it would be against equity given the circumstances of this case to invalidate the agreement on the basis of lack of LCB consent when the defendants did not submit completion documents. Moreover, it is unconscionable for parties to enter an agreement which they admit to have entered into, allowed possession and then use the law to defeat the agreement. Equity is also law and will not suffer a wrong without a remedy.
41. The word equity broadly means a branch of law denoting fundamental principles of justice. Black’s Law Dictionary, Ninth Edition defines equity as,  

‘The body of principles constituting what is fair and right; The recourse to principles of justice to correct or supplement the law as applied to particular circumstances; The system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law (together called “Law” in the narrower sense) when the two conflict’
42. Moreover *the Constitution* of Kenya 2010 has by virtue of Article 10(2)(b) elevated equity as a principle of justice to a constitutional principle and requires the courts in exercising judicial authority to protect and promote that principle, amongst others. Also see the Supreme Court of Kenya in this regard in the case of *Shah & 7 Others Vs Mombasa Bricks & Tiles Ltd Limited & 5 Others* (Petition 18 (E20) of 2022) (2023) KESC 106 KLR; *Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 others* [2023] KESC 106 (KLR), the Supreme Court of Kenya pronounced itself thus;-  

‘74. Vide Section 3(1) of the *Judicature Act*, Cap 8 Laws of Kenya, the doctrines of equity are applicable in Kenya and form part of our laws. It states that common law, doctrines of equity and statutes of general application shall apply in so far as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.’



### **Whether the learned trial Magistrate erred in validating/enforcing agreement for sale entered into dated 17<sup>th</sup> September 2017**

43. The basis of this ground of appeal is the capacity of the 2<sup>nd</sup> appellant to enter into the sale agreement on the basis of want of LCB consent and disposal of the suit property before obtaining grant. This issue has already been addressed in the foregoing discussion. It cannot be entertained by this court.
44. But there was another limb to this ground on the evidentiary value that was given to the Agreement for sale produced by the respondent vis a vis the agreement for sale produced by the Appellants (see pages 38 and 70 respectively of the ROA). The grounds of appeal state further that the trial court erred by failing to consider the defence, affidavits and witness statements of the Appellant which expressly stated that the documents by the 1<sup>st</sup> Respondent were altered.
45. It is submitted that the sale agreement produced by the plaintiffs is doctored to influence the trial court since the copy produced by the appellants did not have such inclusion. That the insertion is not countersigned. That the trial court erred in taking probative value of this alteration thus granting the plaintiff 0.4Ha which had not been demarcated for sale. That the witness could not explain whether the demarcation and how the 0.4 was inserted. According to counsel the absence of sufficient proof or evidence in this regard the trial court was at fault. That the plaintiff did not call any other witness to corroborate the evidence.
46. The trial court at paragraph 9 of the judgement observed on the agreement dated 17/9/2017 that
- ‘Looking at the agreement it does not specify the acreage being purchased. However in between there is an inscription with the words 0.4 Ha. The plaintiff is said to have taken possession of the portion of the suit property and commenced working on it. The defendants also acknowledge the same. With this acknowledgement, it will be safe to assume that the plaintiff vide the agreement dated 19/9/2017, purchased 0.4Ha of the suit land.....’
47. At paragraph 14 of the judgement the trial court held that the plaintiff had been able to prove the purchase of 0.4 Ha of the suit land. The trial court found that the second agreement was not proved.
48. I have perused the plaint and the defence filed. None of these pleadings refer to a precise acreage sold they consistently refer to a portion of the land. Even during cross examination the plaintiff confirmed he occupies a portion of the land out of the entire land which measured 1.1Ha. Ludvicus the 2<sup>nd</sup> defendant is the only witness who gave the size purchased in his evidence in chief as ½ an acre. I have also seen the inserted figure of 0.4Ha in the agreement produced by the plaintiff. But I note that the copy produced by the defendants is also faded in some parts and I cannot state with confidence that the insert is missing, though it appears to be missing.
49. I also noted that while the two agreements look like counterparts of the same document there are some areas that suggest they are not. They seem to have been filled separately unlike where a carbon copy would be used – see 3<sup>rd</sup> instalment in both agreements page 38 gives a figure of Kshs 3000/- while page 70 gives 2000 + 1000 to make Kshs.3000/-.
50. From my review of the plaint, defence and proceedings it would appear none of the parties had taken time to demarcate the portion sold except where we see a mention of Carolyne Okello a third purchaser who wanted her portion surveyed. On the other hand PW1 confirmed in evidence that he occupies only a portion. The Sale of Land Agreement Form is a contract which is in writing. It appears to me to be a form designed where the details of the agreements are inserted against the spaces given. I note



in both copies supplied there is no provision of space to insert the size being purchased. Both copies state the sale is 'for the whole parcel of land/per acre/hectare.'

51. The trial court by dint of possession acknowledged by the defendants found it safe to assume the size as 0.4Ha. Based on paragraph 8 of the defence the sell of the 1<sup>st</sup> portion does not appear to have any issues. What seems to be in contention is the size of the portion that was sold and occupied under the first agreement of sale. This is what needed to be resolved and appears not to have been resolved by the trial court. There was no evidence to support the conclusion or assumption reached that 0.4Ha is what was purchased. The trial court needed to look at the provisions of sections 97, 98 and probably 71 of the *Evidence Act*.
52. In view of the above this court cannot constitute itself into a trial court to resolve the above issue. It can only be resolved by the trial court.
53. I will now come to the remedy of specific performance which was the substantive prayer in the plaintiffs claim. The trial court dealt extensively with this issue at paragraph *para\_15 15* to *para\_21 21* guided by principles set out in the case of Reliable Electrical Engineers (K) Ltd Vs. Mantrac Kenya Limited (2006) eKLR. the principles are summarized at paragraph 16 of the judgement namely Existence of a valid enforceable contract; Absence of an adequate alternative remedy; absence of undue influence and if specific performance would cause any hardship to the defendant.
54. The trial court did analyse each of the above parameters vis vis the evidence placed before it. The contract of sale was analysed vis a vis the provisions of section 3(3) of the *Law of Contract Act*. In this regard the learned Magistrate found that the agreement produced meets these legal thresholds. I have reviewed the agreement indeed it is in writing, both the vendor and purchasers have signed and their signatures duly witnessed. On undue influence the trial court noted it was a willing participant undertaking. This is very clear in the entire proceedings. Moreover, no allegation of undue influence were raised based on the pleadings. I'm in total agreement with this finding based on the 1<sup>st</sup> portion sold and which I have already noted is admitted save for the size sold.
55. . On the requirement for an alternative remedy the trial court noted that the plaintiff took vacant possession and has enjoyed the same which was not disputed by the defendants. I agree on this finding but I will add that there were allegations raised that the plaintiff had given indications that he would accept a refund of his money and which was said to have been left with the chief. No evidence in proof of these allegations was placed before the court by the defendants.
56. In the premises I find and hold that the learned trial magistrate reached and or arrived at the correct conclusion when she found that the threshold for the remedy of specific performance has been met.
57. Having considered the entirety of the proceedings against the judgement of the trial court I see no reason to overturn the judgement of the trial court except on the issue of ascertaining the size of the portion occupied by the Plaintiff pursuant to the sale agreement dated 17/09/2017.
58. The upshot of the foregoing is that the judgement of the trial court dated 13/03/2024 is hereby upheld subject to ascertainment of the portion of land occupied by the plaintiff pursuant to the agreement dated 17/9/2017.
59. Arising from the above the matter is hereby remitted to the Principal Magistrates Court at Madiany for purposes of a determination on the singular issue of the exact size of the portion occupied by the Plaintiff. I make no orders as to costs of this appeal.

**JUDGEMENT DATED SIGNED AND DELIVERED THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**HON. LADY JUSTICE A.E. DENA**



**JUDGE**

**10/7/2025**

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of: -

Mr. Ogenga for the Appellant

Mr. Ochieng for the Respondents

Ismael Orwa – Court Assistant

