



REPUBLIC OF KENYA



KENYA LAW
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**Adidi & 2 others v Nyamala (Environment and Land Appeal
E025 of 2023) [2025] KEELC 5323 (KLR) (8 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5323 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E025 OF 2023**

FO NYAGAKA, J

JULY 8, 2025

BETWEEN

MARGARET AKINYI ADIDI 1ST APPELLANT

FLORENCE ATIENO ODOYO 2ND APPELLANT

BEATRICE ACHIENG MWOMBO 3RD APPELLANT

AND

BOAZ ODIWOUR NYAMALA RESPONDENT

*(Being an appeal from the judgment of the Chief Magistrate Hon. J.M. Nangea
(CM) delivered on the 19th April, 2023 in Homabay ELC No. E014 of 2022)*

JUDGMENT

Introduction

1. This is an appeal arising from the judgment of Honourable J. N. Nangea, Chief Magistrate (as he then was), delivered on 19th April, 2023 in Homabay ELC No. E014 of 2023.
2. The Appellants filed a Memorandum of Appeal dated 9th May, 2023 appealing against the said judgment on the following grounds: -
 1. The Learned Trial Magistrate erred in Law by conducting hearing and delivering judgment that made him a party to the suit and not impartial umpire.
 2. The Learned Trial Magistrate erred in Law by delivering judgment that treated the plaintiff as representative of Samuel Odoyo and William Nyamala and delivered judgement in their favour although they were not a party to this suit.
 3. The Learned Trial Magistrate erred in Law by failing to realize that the Respondent's parcel of land was none existence at the time of the filing of this suit.



4. The Learned Trial Magistrate erred in Law by failing to consider the fact that the Respondent's claim if any was against Samwel Odoyo Nyamala and not the Appellants herein.
 5. The Learned Trial Magistrate erred in Law by failing to realize that the Respondent lacked locus standi to institute the said Suit.
 6. The Learned Trial Magistrate erred in Law by delivering judgment in favour of the Respondent even in respect to the reliefs that were not sought.
 7. The Learned Trial Magistrate erred in Law by delivering a judgment that declared the sale of land between 1st Appellant and Samwel Odoyo and William Nyamala valid without considering the fact that the letters of Grant issued to her had since been revoked and/or cancelled.
 8. The Learned Trial Magistrate erred in Law by delivering a judgment that failed to consider that the suit land No. Kanyada/kanyabala/654 was jointly registered in the names of the Appellants jointly as the beneficiaries.
 9. The Learned Trial Magistrate erred in Law by delivering judgment in favour of the Respondent whose interest in the Suit land had since expired and was not proved.
 10. The Learned Trial Magistrate erred in Law by delivering judgment that failed to appreciate the fact that there was no transaction between the Respondent and the Appellants.
 11. The Learned Trial Magistrate erred in Law by failing to realize that the Respondent's claim did not form part of liability against the estate of Joseph Obonyo (Deceased) and even if it did it could only be compensated by monetary terms but not land.
 12. The Learned Trial Magistrate erred in Law by delivering judgment that was bias and improper on the face of records.
 13. The Learned Trial Magistrate erred in Law by delivering judgment that failed to consider the fact that parcel of land in respect to the estate of Joseph Obonyo (Deceased) namely parcels No. Kanyada/kanyamwa/654,657 and 659 had since been shared to the three houses leaving no land to 3TM party as at the time of the Suit.
3. The Appellants seek orders setting aside the trial magistrate's judgment and an order that they are the registered owners of the suit property holding in trust for the beneficiaries.

Brief Facts

4. The Respondent had filed a suit against the Appellant vide a plaint filed on 29th March, 2022 alleging that the Appellants had fraudulently acquired the suit property. He sought for an order of injunction against the Appellants.
5. The Appellants in response filed their Statement of Defence dated 18th May, 2022 where they denied the Respondents allegations.
6. The suit was heard and the trial magistrate in his judgment dated 19th April, 2023 allowed the Respondent's case as prayed.
7. The Appellants being dissatisfied with the judgment filed the present appeal which was canvassed by way of written submissions.



Submissions

8. Counsel for the Appellant filed his submissions dated 16th January, 2025 where he identified two issues for determination as enunciated in the grounds of appeal. The first issue being that the Respondent did not have the locus standi to file Homabay ELC No. 14 of 2022.
9. It was his submission that the suit property being the subject matter of the instant appeal was registered in the names of Samuel Odoyo Nyamala and William Onyango Nyamala and not the Respondent.
10. He submits that from the pleadings, the Respondent seemed to be acting on behalf of Samuel Odoyo and William Onyango.
11. He further submits that there was no evidence of any power of attorney from either of them and thus lacked the locus to institute the proceedings.
12. The second issue was whether land parcel no. Kanyanda/Kanyabala/3111 and Kanyanda/Kanyabala/3112 were in existence at the time of filing Homabay CM ELC No. E014 of 2022.
13. He submits that on 1st July, 2020 the court by virtue of a consent directed that the grant issued to the 1st Appellant be revoked, that the estate be shared equally and any subdivision revoked.
14. He further submits that the said orders were yet to be set aside and until then they remained binding.
15. It was his submission that the trial magistrate did not appreciate the above orders when he declared that the sale of land valid.
16. Counsel further submits that by the time the lower court matter was filed, Kanyanda/Kanyabala/3111 and Kanyanda/Kanyabala/3112 were a subdivision of Kanyanda/Kanyabala/654 did not exist.
17. He submits that the trial magistrate lacked the jurisdiction to give orders in ELC No E014 of 2022 when there existed other orders over the same subject matter.
18. He urges the court to allow the appeal.
19. Counsel for the Respondent filed his submissions dated 3rd March, 2025 where he submits on three issues as raised in the memorandum of appeal.
20. The first issue was whether the trial court was marred with partiality and biasness. He submits in the negative and argues that at no point was it ever raised that the trial court was a party to the suit to warrant his judgment be clouded. He relied on the unreported case of Tuff Bitumen Limited V SBM Bank (Kenya) Ltd & Another 2023.
21. The second issue was whether the Respondent has a legitimate claim. He also submits in the negative and argues that the Appellants are on a fishing expedition.
22. He submits that in ELC 18 of 2015, the 1st Appellant sued the Respondent's brothers in a bid to challenge the sale agreements between herself and them. He added that the court dismissed the suit since they had been using the land even prior to the agreement.
23. He relied on Section 3(3) of the Law of Contract Act and submits that the 1st Appellant did not execute the contract under any duress and that she had the capacity to sell.
24. He argues that the Appellants are pegging their defence on actions of revoking the grant with the intention of nullifying the interest accrued to Samuel who transferred the same to the Respondent. He cited Section 24 of the Land Registration Act and Article 40 of the Constitution of Kenya.



25. He further submits that the Appellants proceeded to revoke the grant without considering that Samuel already had an interest in the land.
26. The final issue was whether the Appellant represented the interest of Samuel Odoyo and William Nyamala. He submits that the Appellant only sought to protect her interest arising from the sale agreement dated 10th March, 2015.
27. He urged the court to dismiss that appeal with costs.

Analysis and Determination

28. Upon consideration of the grounds of appeal, pleadings, submissions and the authorities cited, the following issues are for determination:
 1. Whether the appeal is merited.
 2. Who should bear the cost of the appeal.
29. Being a first appeal, the court relies on a number of principles as set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ...”
30. Further, in the case of *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] KECA 208 (KLR) the court held that:

“This being a first appeal, this court’s mandate is to re-evaluate, re-assess and re-analyze the record and then determine whether the conclusions reached by the learned trial magistrate are to stand or not and to give reasons either way. I also bear in mind that I have neither seen nor heard the witnesses and I will therefore give due allowance in that respect.”
31. This court has keenly perused the record of appeal and it is not in contention that the 1st Appellant as the Administrator of the Estate of Joseph Obonyo (Deceased) sold parcel No. Kanyada/Kanyabala/654 to Samuel Odoyo and William Nyamala.
32. From the evidence adduced, the above property was later sub-divided into two, Kanyada/Kanyabala/3111 and Kanyada/Kanyabala/3112. It is a fact that on 1st July, 2020 another magistrate’s court in Homabay vide a consent between the Appellants and estate of the deceased entered judgment declaring the subdivisions as null and void.
33. This was by virtue of the revocation of the 1st Appellant as the Administrator of the deceased’s estate thus annulling any subdivisions. Parties agreed to have the property shared equally among all the deceased’s beneficiaries.
34. It is noteworthy that the 1st Appellant confirmed that she indeed sold parcel number Kanyada/Kanyabala/654 up to and until when her relatives discovered the said sale which she later cancelled yet the purchasers had already settled.



35. The trial magistrate in his judgment also noted the fact that the said sale agreement was proper. The trial magistrate went into great lengths in analyzing the evidence especially of the Plaintiff and how untruthful she was at various points, together with PW2. I have carefully read through her evidence. I also so find that the seller used half truths to put forth and further her case and evidence. She was an unreliable witness.
36. In his findings, he only granted prayers (a) and (b) of the Plaint which was an injunction and appreciated the fact that there was an initial sale by the 1st Appellant to Samuel Odoyo and William Nyamala, a fact admitted by the 1st Appellant.
37. It is this court's view that the trial magistrate did not err since that was the position at the time and as a result of the consent judgment, there was a stalemate wherein he advised parties to only await succession to conclude after which they can proceed accordingly.
38. I am of the opinion that by the court allowing prayer (a) of the Respondent's claim, it would only assist in preserving the suit property pending the succession matter since it is not in contention that the Respondent has been in occupation.
39. It is my view that the trial magistrate did not misdirect himself but only sought to determine the matter on merit and this court shall not interfere with the said judgment.
40. The upshot of the above is that the appeal lacks merit and is hereby dismissed with costs to the Respondent.
41. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 8TH DAY OF JULY 2025.**

HON. DR. IUR NYAGAKA

JUDGE

In the presence of,

Mr. Oluoch Advocate for the Appellant

(Appellants: Margaret, Florence present but Beatrice unwell and hospitalized)

Ms. Kimberly Advocate for the Respondent

