



REPUBLIC OF KENYA



KENYA LAW
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**Gor v Ochieng & 3 others (Environment and Land Appeal
E032 of 2023) [2025] KEELC 5340 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5340 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E032 OF 2023**

FO NYAGAKA, J

JULY 2, 2025

BETWEEN

JOSEPH AJUOGA GOR APPELLANT

AND

RICHARD OKETCH OCHIENG 1ST RESPONDENT

SUSAN AWUOR OOKO 2ND RESPONDENT

CHARLES ONYANGO ORONDO 3RD RESPONDENT

DIDACUS OBUNGA MAGOLO 4TH RESPONDENT

(Being an appeal from the judgment of the Principal Magistrate Hon. E. M. Onzere (PM) delivered on the 30th May, 2023 in Ndhiwa ELC No. E022 of 2021)

JUDGMENT

Introduction

1. This is an appeal arising from the judgment of Honourable E. M. Onzere, Principal Magistrate delivered on 30th May, 2023 in Ndhiwa ELC No. E022 of 2021.
2. The Appellant filed a Memorandum of Appeal dated 7th June, 2023 appealing against the said judgement on the following grounds: -
 1. That the Honorable Court misdirected herself on several matters of the law and facts.
 2. That the learned trial magistrate erred in law and fact by failing to find that the appellant's parents had a piece of land prior to their demise and had left the appellant while still a minor.
 3. That learned trial magistrate erred in law and fact by failing to find that the appellant was the child of Hermanus Gor and ought to be entitled to what belonged to his parents.



4. That the learned trial magistrate erred in law and fact by not finding that originally land parcel number Kanyamwa/K/Kwandiku/1866 belonged to Hermanus Gor (Deceased), the father of the appellant.
 5. That the learned trial magistrate erred in law and fact by failing to find that the appellant was a minor by the time of his parents' death and was left in the hands of one Margaret Adida Omolo together with all the properties belonging to his parents and was not able to know all the properties left by his parents.
 6. That the learned trial magistrate erred in law and fact by not considering the weight of evidence on record produced by the appellant and by failing to find that land parcel number Kanyamwa/K/Kwandiku/1866 where the appellant has exactly erected his homestead is part of his father's estate to which he is entitled to.
 7. That the learned magistrate erred in law and fact by deciding against the water tight evidence produced by the appellant to the extent that the appellant is entitled to land parcel number Kanyamwa/K/Kwandiku/1866 where his homestead is.
 8. That the learned trial magistrate erred in law and fact by misdirecting herself that the appellant never proved that the respondents were holding the suit land parcels in trust and that they acquired their titles fraudulently.
 9. That the learned trial magistrate erred in law and fact by not finding that George Hezron Omollo Salmon Ondiek never bought land from Hermanus Gor but was holding in trust to the appellant since the appellant was left in his care while a minor together with his wife Margaret Adida Omollo but George Hezron Omollo illegally registered the appellant father's land in his name and later Margaret Adida Omollo carried out succession and transferred the land to herself and later sold the same to the respondents.
 10. The Learned Trial magistrate erred in law and facts by not considering that really the father of the appellant had parcels of land and where exactly the said parcels are if not parcels Kayamwa/K/Kwandiku/19, 1565 and 1866 which are being occupied by the Respondents.
 11. The learned trial magistrate erred in law and facts by not finding that by giving the appellant only thirty days to vacate and relocate his homestead from the suit land is an abuse of his rights and considering that he has no any other place to relocate.
 12. The learned trial magistrate erred in law and facts by not considering that the appellant has been cultivating the suit land and now in these hard-economic times his food crops are still not harvested and the thirty days may lapse before the crops are ready.
 13. The learned trial magistrate erred in law and facts by not allowing the appellants to call the other beneficiaries including the 2nd wife of the deceased who had resurfaced after his death to testify in court.
 14. The learned magistrate erred in law and procedure in failing to find that the appellant is a poor person and is feeling the burden of the mighty pockets of the respondents who are out to infringe his rights.
3. The Appellant seeks orders quashing the trial magistrate's judgment and for an order that he is the rightful owner of the suit parcels and that the parcels be merged and registered in his name.



Brief Facts

4. In the trial Court the Appellant, then Plaintiff, filed a suit against the Respondents vide a Plaint filed on 21st April, 2017. He alleged that the Respondents had fraudulently acquired the suit property. He sought for an order that the Respondents held the suit land in trust for him and an order of rectification of the register. He also sought for an order of adverse possession as an alternative.
5. The Defendants, in response, filed their Statement of Defence dated 22nd May, 2017 wherein they denied the Plaintiff's allegations.
6. The suit was heard and the trial magistrate, in her judgment dated 30th May 2023, dismissed the Appellant's case for failure to prove his case on a balance of probabilities. The Appellant being dissatisfied with the judgment filed the present appeal. It was canvassed by way of written submissions.

Submissions

7. Counsel for the Appellant filed her submissions dated 24th March, 2025 where she gave a background of the case and identified two issues for determination. The first issue was whether the Appellant proved his case on a balance of probability. She submitted that Appellant's evidence was that at the time of his father's demise, the original land parcel number Kanyamwa/Kabonyo/Kwandiku/19 was still under adjudication process and he (the Appellant) was still a minor.
8. She submitted further that the Appellant testified that when the time for demarcation came sometime in the year 1971, the original suit land Kanyamwa/Kabonyo/Kwandiku/19 was sub divided into three portions currently in the Respondents' names.
9. She added that the means through which the 1st and 2nd respondents acquired Land Parcel Number Kanyamwa/Kabonyo/Kwandiku/19 was questionable as the Green Card disclosed that they (the 1st and 2nd Respondents) bought the land from the Appellant's father at a consideration of Kshs. 17,500/= while in the application for consent for transfer form it is indicated the same was transferred by way of gift, hence raising suspicion as to whether the same was acquired genuinely.
10. It was his submission that since the 3rd Respondent could not explain how they acquired the land the said registration was therefore fraudulent. He submitted that the Respondents (now) hold title to the said land parcel numbers Kanyamwa/Kabonyo/Kwandiku/19, 1569 and 1866 in trust for the Appellant.
11. She cited the case of *Mtana Lewa V Kahindi Ngala Mwagandi* [2015] eKLR, and submits that the Appellant testified that he has lived and cultivated the land for a period of more than 12 years.
12. The second issue on whether the decision of the trial magistrate was wrongful, she submits in the affirmative. He urged the court to allow the appeal as prayed.
13. Counsel for the 1st, 2nd and 3rd Respondents filed his submissions dated 24th April, 2025 by which he contended that the fact that the Respondents failed to produce the sale agreement for the purchase of the suit land, that did not in itself negate the sale of the land.
14. They submitted that the Appellant failed to enjoin other land officers to the suit in a bid to prove fraud. They added that the alleged errors on the part of the trial magistrate have not been effectively demonstrated to allow the present appeal.
15. They urged the court to dismiss the appeal.



16. Counsel for the 4th Respondent filed his submissions dated 24th March, 2025. He began by giving a summary of the case. Then he identified three issues for determination. The first issue was whether the 4th Respondent was the lawful owner of LR Kanyamwa/K/Kwandiku/1866.
17. On this he submitted in the negative. He added that the Appellant failed to provide any evidence in support of the said claim. He relied on the case of *Munyu Maina V Hiram Gathiba Maina Civil Appeal No. 239 of 2009*
18. He further submitted that the Appellant relied on long occupation to claim interest on one part of the 4th Respondent's parcel of land.
19. The second issue was whether the Appellant should be granted the prayers sought against the 4th Respondent. Counsel also submits in the negative since the Appellant failed to prove his interest in the land.
20. The third issue was whether the appeal had merit. He submitted in the negative and urged the court to dismiss the same with costs.

Analysis and Determination

21. 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.
22. 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 ...”
23. 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.”
24. It was the Appellant's case that he filed the suit in the trial court on behalf of his father Herminus (deceased) who owned Kayamwa/Kabonyo/Kwandiku/19.
25. During cross examination, he admitted that he had met with the 1st Defendant together with his late father Herminus in 1993.
26. He also admitted that George Omollo owned parcel no. 1866 and that his wife Margaret took out letters of administration and sold the land parcel to the 4th Respondent.



27. This court, while in agreement with the trial court's finding, is of the view that the deceased had intentionally transferred number 19 to the 1st and 2nd Respondents while he was still alive. Further, it was evidence from the Appellant's evidence that by the time the father died, he, the appellant was still a minor and the parcel in issue was still under the adjudication process. That was his submission too. It then goes without saying that since the entire adjudication process continued and was concluded in favour of the Respondents by being registered as owners, and not as trustees for the then minor, the Appellant is not legally permitted to introduce claims and evidence to the contrary through conjecture and imagination to challenge the adjudication process since Section 29 of the *Land Adjudication Act* is clear about the conclusion of the process of adjudication final. Moreover, under Section 7 of the *Limitation of Actions Act*, even if the Appellant was to be the legal owner of the parcel, which I still do not agree with, he could not purport to recover land that had been in possession of the Respondents continuously, and without his permission, for over twelve years. His title would have been lost. In any event and lastly, before I move to another point, the submission by the appellant about the possibility of the present parcels occupied by the Respondents being the parcels that the Appellant's father had is nothing but a fallacy. In law, it is about evidence and not guesswork. He raised and ground to the effect that the "Trial magistrate erred in law and facts by not considering that really the father of the appellant had parcels of land and where exactly the said parcels are if not parcels Kayamwa/K/Kwandiku/19, 1565 and 1866 which are being occupied by the Respondents" and submitted on it. With respect, this ground of appeal was not only argumentative but based on guesswork, which the Court cannot rely on to deprive true owners of land their rightful proprietorship.
28. It is also noteworthy that the Appellant never challenged the authenticity of the green cards for the suit properties produced as evidence by the Defendants. These show clearly the process through which their legal ownership came about, and it tallies with the evidence of the Appellant that indeed the root of the parcels was lawful through the adjudication process. This is not open to challenge by way of a suit, and too late in the day, as when the suit was brought.
29. It is this court's view that the Respondents' evidence was consistent and flowed from the beginning to the end as to how they acquired the suit parcel(s), and it was clear that it was a lawful process, of adjudication as owners. Further, it was backed by documentary evidence, which the trial magistrate noted. I also echo it. For instance, there was
30. Furthermore, I have keenly perused the court record. There was evidence adduced of process of transfer through the Land Control Board (LCB) which yielded a consent and transfer of the suit land from Herminus to the 1st and 2nd Defendants. It is noteworthy that the Appellant never disputed these documents were genuine and or proved that the whole sale/ transaction was wrought with fraud or illegality, in general. Thus, it was valid. Thus, the transaction was valid. It progressed in the proper manner in which dispositions of land occur.
31. In the circumstances, this court is inclined not to interfere with the magistrate's court finding. It was sound and focused to the point. I would find no fault in it despite the avalanche of grounds of appeal.
32. As a parting shot, the habit of litigants pouring a containerful of 'accusations', put differently, enumerating a bit number of grounds of appeal does not of itself avail anything to them. For instance, this is why argumentative statements, such as, the "Trial magistrate erred in law and facts by not considering that really the father of the appellant had parcels of land and where exactly the said parcels are if not parcels Kayamwa/K/Kwandiku/19, 1565 and 1866 which are being occupied by the Respondents", find their way into grounds of appeal. If anything, it often demonstrates a party who is groping in the dark or seeking to clutch on any reed so as not to drown. Even if a Judge or judicial



officer errs, unless he is extremely incompetent I doubt if he/she can err fourteen times or more and not even seven times without realizing his folly.

33. The upshot of the above is that the entire appeal lacks merit. It is hereby dismissed with costs to the Respondents.

34. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 2ND DAY OF JULY 2025

HON. DR. IUR NYAGAKA,

JUDGE

At 12:15 PM, in the presence of,

Ms. Ochieng Advocate holding brief for Ms. Mimba for the Appellant

Mr. Ouko Advocate for 4th Respondent

