



**Njagi v Njeru (Environment and Land Appeal E005 of 2025)  
[2025] KEELC 5997 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5997 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E005 OF 2025  
AK BOR, J  
SEPTEMBER 11, 2025**

**BETWEEN**

**THOMAS NYAGA NJAGI ..... APPELLANT**

**AND**

**EVANS NYAGA NJERU ..... RESPONDENT**

**JUDGMENT**

1. Through the Amended Memorandum of Appeal dated 12/2/2025, the Appellant challenges the findings in the judgment of Hon. J. W. Gichimo, Senior Principal Magistrate, delivered on 15/6/2023 in Runyenjes MC ELC Case No. 8 of 2019 vide which the court entered judgment for the Respondent for the sum of Kshs. 720,000/=. The background to this case is that the Respondent and the Appellant entered into an agreement through which the Appellant sold the land known as Kyeni/Mufu/7235 to the Respondent at the agreed consideration of Kshs. 1,700,000/= with costs and interest at court rate.
2. The grounds of appeal are that the Learned Magistrate erred by determining that the Appellant was liable to pay Kshs. 720,000/= to the Respondent without sufficient evidence and that the trial court failed to find that there was breach of contract on the part of the Respondent. Further, that since the Appellant's wife was not a party to the contract, there was no basis for some of the instalments to be paid through her phone.
3. The other grounds are that the Learned Magistrate failed to analyse the two agreements dated 17/7/2018 and 28/11/2018, and that the latter should have been an addendum to the initial agreement; and that the trial court did not take cognizance of the fact that the Respondent stated in his testimony that he paid Kshs. 615,880/= and not Kshs. 720,000/= which the court awarded in its judgment including a sum of Kshs. 27,000/= which is alleged to have been given in bar in Nairobi.
4. The Appellant went further to urge that the trial court should have recognized that he signed the agreement dated 17/7/2018 and had no reason to sign the second one dated 28/11/2018. He faulted



- the Respondent for renegeing on the agreement and paying the balance of the purchase price through instalments. He emphasized that the allegations regarding Mpesa payments were not proved at the trial.
5. The court directed parties to file and exchange written submissions on the appeal, which it has considered. The Appellant submitted that the agreement dated 28/11/2018 was at variance and not related to the agreement dated 17/7/2018. He faulted the Learned Magistrate for abandoning the plaintiff's claim for specific performance and awarding him Kshs. 720,000/= as a civil debt. The Appellant argued that there was no prayer in the plaint seeking a refund.
  6. The Appellant submitted that parties to a contract are bound by the terms of the contract and faulted the Learned Magistrate for failing to determine that the agreement dated 28/11/2018 was properly executed by both parties and not making a determination on the agreement dated 17/7/2018 with some payments having been backdated to June 2018. He emphasized that the agreement dated 17/7/2018 did not mention that it incorporated the terms contained in any addendum instrument outside of that agreement.
  7. The Appellant urged that the Respondent did not give reasons as to why he failed to pay the balance of the purchase price but sought specific performance with an alternative prayer for a refund for an unspecified amount as if he did not know the amount he had paid as a deposit towards the purchase price. The Appellant argued that the trial court gave orders outside the prayers sought by the Respondent yet parties are bound by their pleadings and that the Respondent should have indicated the exact amount that he seeks a refund of.
  8. The Appellant contended that the agreement dated 17/7/2018 constituted the whole contract on the sale of Kyeni/Mufu/7235. He maintained that there was no sufficient evidence to support the findings that the agreement dated 28/11/2018 was an addendum to the agreement dated 17/7/2018. He denied signing the agreement dated 28/11/2018. According to the Appellant, if any payments were made before the agreement including the payment of 340,000/= alleged to have been made before 28/11/2023, then they would not have been with respect to the agreement dated 28/11/2018.
  9. He stated that the signatures on the payment voucher dated 20/7/2018 for Kshs. 340,000/= and the one dated 10/1/2019 for Kshs. 747,000/= were different. He maintained that the receipts dated 3/8/2018 and 26/6/2018 were not relevant to this claim because in total they add up to Kshs. 1,127,000/= which does not feature anywhere in the Respondent's pleadings. He was categorical that the mpesa statement did not support the sum of Kshs. 68,000/=, which the Respondent claimed to have paid towards the purchase price.
  10. The Appellant submitted that the only just remedy for the Respondent according to the plaint dated 26/3/2019 was to dismiss the case. He went further to add that the Respondent's recourse under Section 7 of the *Land Control Act* would have been to institute debt recovery proceedings subject to Section 22. He maintained that the Learned Magistrate should have established if there was a breach of contract and by whom. He maintained that the trial court did not analyse the documents placed before it for determination and that the Respondent sought a refund, which was vague.
  11. The Respondent submitted that the issues for determination were whether the trial court erred when it found that the existence of the sale agreement had been proved and whether the court wrongly awarded the Respondent the sum of Kshs. 720,000/=. The Respondent submitted that it was not in dispute that the parties in this suit entered into a sale agreement on 17/7/2018 with respect to the land known as Kyeni/Mufu/7235 at the agreed consideration of Kshs. 1,700,000/=. Further, that the Appellant received Kshs. 300,000/= prior to the signing of the agreement, which he confirmed during cross-examination, and the balance was to be paid through instalments. The Respondent's case is that he paid a total sum of Kshs. 814,910/= through bank transfer, cash and mpesa. He pointed out that the



Appellant denied signing the sale agreement dated 28/11/2019 and that if at all he signed it, then it constituted an addendum to the initial agreement.

12. The Respondent pointed out that it was noteworthy that there was no allegation before the trial court that the signatures were forged nor was there any indication that the Appellant reported to the law enforcement agencies that a document bearing his purported signature had been created with the intention to deprive him of land. The Respondent submitted that he tendered in evidence before the trial court the spousal consent, the sale agreement dated 28/11/2018, and the acknowledgement receipts dated 28/3/2018, 2/6/2018 and 30/6/2018. He also relied on one bundle of mpesa statement and the application for consent.
13. The Respondent relied on clause 2 of the Special Conditions in the agreement dated 28/11/2018, which according to him superseded the former agreement and urged that he paid a deposit of Kshs. 720,000/= prior to the signing of the agreement, which the vendor acknowledged. Further, that he testified that between November 2018 and March 2019, the Appellant received an additional payment of Kshs. 94,910/= bringing the sum paid to Kshs. 814,910/= and leaving a balance of Kshs. 885,090/= . He urged that the Appellant's intention in denying the existence of the agreement was to avoid repaying the amount, which he received from the Respondent.
14. The Respondent submitted that the trial court was a court of law and a court of equity. Further, that some of the principles of equity are that equity will not suffer a wrong without a remedy; no man should benefit from his own wrongdoing; and that equity detests unjust enrichment. He urged that the Appellant's attempt to renege on his contractual obligations was a clear effort to evade legal responsibility, which must not be condoned. He urged the trial court did not err on the findings it made.
15. The Respondent submitted that during the trial, the Appellant confirmed that he received Kshs. 300,000/= from him; that it was true that the Respondent sent him Kshs. 200,000/= to finalize on his wedding plans; and that he sent Kshs. 160,000/= to his bank account. The Appellant claimed that the latter sum was intended to pay workers but did not have proof of this allegation. The Respondent maintained that the principles of equity, good faith and contractual obligations dictated that a party cannot disown commitments made under an agreement simply to evade accountability. The Respondent was emphatic that he proved his case on a balance of probabilities and that the trial court cannot be faulted for rendering justice.
16. Regarding the issue of the trial court awarding the refund of the purchase price which was not prayed for, the Respondent pointed out that the amended plaint included an alternative prayer for a refund. The Respondent reiterated that the Appellant signed the agreement, which he now wishes to disown after receiving a portion of the purchase price.
17. The Respondent submitted that the trial court acted justly because specific performance could not issue because the suit land had ceased to exist after the Appellant subdivided it into parcel numbers 1048 and 1049 and sold parcel number 1048. That the only viable remedy therefore was a refund of the purchase price. He maintained that the trial court was well within its mandate when it ordered a refund of the purchase price, which had been proved on a balance of probabilities.
18. He was of the view that requiring him to file another suit to seek a refund of the purchase price would have been an anomaly and contrary to the overriding objectives of the *Civil Procedure Act*. He relied on Rose Nyachongi Osinde (Suing through her attorney Truphena Nyagara Osinde v Ann Njoki Wachira [2019] eKLR where the court found that allowing the Appellant to hold the land and the purchase price was inequitable and that the justice of the case was that the Appellant must refund the purchase price together with interest.



19. The Respondent submitted that the grounds of appeal were prolixious and unseemly contrary to Order 42 Rule 1 of the Civil Procedure Rules, which stipulates that a memorandum of appeal shall set forth concisely the grounds of objection to the decree under distinct heads without any argument or narrative. He added that the grounds were repetitive and obscure the real issues. He urged the court to dismiss the appeal and award him the costs.
20. The issue for determination is whether the court should allow the appeal and set aside the trial court's judgment vide which it awarded the Respondent Kshs. 720,000/= being a refund of the purchase price.
21. It is helpful to go over the payments made towards the purchase price. The Respondent produced copies of the deposit slips for Kshs. 200,000/= paid into the Appellant's account on 14/06/2018, Kshs. 160,000/= paid into his account on 03/08/2018 and Kshs. 40,000/= paid on 26/6/2018. The Appellant produced his bank statements reflecting these payments which add up to Kshs. 400,000/= and not Kshs. 300,000/= which the Appellant admitted that he had received from the Respondent.
22. He also produced a copy of the agreement dated 17/7/2018 in which the land reference is inserted by pen while the rest of the document is typed. In that agreement, the Appellant acknowledged that he had already received a deposit of Kshs. 300,000/= and the balance was Kshs. 1,400,000/=. The payment of Kshs. 160,000/= made on 03/08/2018 into the Appellant's account certainly came after the agreement dated 17/7/2018 had been executed, which would bring the purchase price to Kshs. 460,000/=.
23. The court notes that the Respondent amended the plaint pursuant to leave granted on 18/2/2020. The significant amendment was that of adding an alternative prayer for the refund of all the monies advanced to the Appellant for the purchase of Kyeni/Mufu/7235 together with interest accumulated. Based on this, the trial court did not err by awarding the Respondent the sum of Kshs. 720,000/= in light of the fact that the Appellant had already subdivided the suit land and sold one of the portions to a different person.
24. In the plaint and the amended plaint, the Respondent pleaded that he entered into an agreement dated 28/11/2018 with the Appellant and that the Appellant acknowledged receipt of Kshs. 720,000/= at the time of executing the agreement. The Appellant denied that there was any agreement and went on to plead that if such an agreement existed, then it was the Respondent who breached it when he failed to honour its terms. The Appellant did not raise the issue in his pleadings that he and the Respondent were bound by a different agreement other than the one of 28/11/2018.
25. The court is not satisfied that the trial court arrived at a wrong decision. The Respondent proved his case before the trial court on a balance of probabilities. The appeal fails and is dismissed with costs to the Respondent.

**DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. James Mugane for the Respondent

No appearance for the Appellant

