



**Macharia v Mutungi (Being an Administrator of the Estate of the
Late Maina Koine) (Environment and Land Appeal 6 of 2023)
[2023] KEELC 21397 (KLR) (9 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 6 OF 2023**

JA MOGENI, J

NOVEMBER 9, 2023

BETWEEN

JOHN MACHARIA APPELLANT

AND

**MARGARET MBATHA MUTUNGI (BEING AN ADMINISTRATOR OF THE
ESTATE OF THE LATE MAINA KOINE) RESPONDENT**

*(Being an Appeal from the Judgment of Hon. P. Muboli, Senior Resident
Magistrate, delivered on 23/10/2019 in Milimani CMCC No. 4379 of 2012)*

JUDGMENT

Introduction

1. The Appellant herein John Macharia was the Plaintiff in Milimani CMCC No. 4379 of 2012. The Respondent herein, Maina Koine deceased is represented by his widow one Margaret Mbatha Mutungi, one of the Administrators of his Estate was the Defendant in the above stated suit. The Appellant/Plaintiff had via a Plaint dated 3/08/2012 sought for the following orders against the Respondent/Defendant: -
 - a. A declaration order declaring that the plaintiff is the rightful and absolute owner of Kamukunji Jua Kali Association Shade No. 28.
 - b. A mandatory order for specific performance compelling the defendant to forthwith transfer and do all acts and fulfill all conditions required to effect transfer of ownership of Kamukunji Jua Kali Shade No. 28 into the name of the plaintiff and in default the deputy registrar/executive officer of this honourable court be empowered to do so.



- c. A permanent Injunction restraining the defendant, his employees, agents and/or any other person whatsoever from interfering with the plaintiff's ownership of the said property Kamukunji Jua Kali Shade No. 28 in any manner whatsoever.
 - d. General damages.
 - e. Costs of this suit
 - f. Interest on (d) and (e) above
 - g. Any other relief
2. It was the Appellant/Plaintiff's case that he is the rightful owner of Plot No. 28 Jua Kali Kamkunji. The Respondent/Defendant on the other hand alleged that he did not sell the plot to the Appellant/Plaintiff. The matter proceeded to full hearing and judgment was delivered on 23/10/2019.
3. The trial court found that what was entered between the parties was a landlord-tenant relationship. The Appellant/plaintiff is not the owner of the plot, there is no evidence that he complied with the orders of the court and consequently, he is only but a tenant to the respondent/defendant. The trial court also held that the appellant/plaintiff had not convinced him that he is the owner and his case must fail in that front. The suit was dismissed with costs to the defendant. The Learned Magistrate added that the defendant was at liberty to use legal means to recover his rent and the Kshs.100,000 be deposited in court be released to the defendant since it was security for costs.

The Appeal

4. The Appellant being dissatisfied with the lower court's decision preferred this appeal and thereby filed the Memorandum of Appeal dated 30/10/2019 which sought for the following orders: -
 - a. An order setting aside the Honourable Magistrate's Judgment and decree dated 23/10/2019 and substitute it with an order allowing the appellant's/plaintiff's suit.
 - b. That the Respondent do pay the costs of this appeal.
 - c. Any other relief the court deems fit.
5. The Memorandum of Appeal raises 8 grounds of appeal as follows: -
 1. The learned magistrate erred in law and fact by failing to find that the appellant had purchased the Kamukunji Juakali Shade 28.
 2. The learned magistrate erred in law and fact by finding that appellant is not the owner of the Kamukunji Juakali Shade 28.
 3. The learned magistrate erred in law and fact in finding that a landlord-tenant existed.
 4. The learned magistrate erred in law and fact in finding that the plaintiff was tenant.
 5. The learned magistrate erred in law and fact by failing to find that there was a sale transaction between the appellant and the respondent.



6. The learned magistrate erred in law and fact by failing to find that there was a valid agreement between the appellant and the respondent.
 7. The learned magistrate erred in law and fact by failing to hold that the respondent was in breach of the agreement dated 10/07/2009.
 8. The learned magistrate erred in law and fact by failing to consider the appellant's evidence.
6. When the Appeal came up for directions on 12/07/2023, the parties' advocates agreed that the Appeal be disposed by way of written submissions which they dutifully filed and cited various authorities. The Appellant filed his submissions dated 21/08/2023 on 24/08/2023 and the Respondent filed her submissions dated 30/08/2023 on the even date. The Respondent also filed statement of facts dated 26/07/2023 in response to the Appeal.

Submissions

7. The Appellant's case is that he had filed a suit at the lower court in Milimani Commercial Courts seeking inter alia to be declared the owner of Kamkunji Juakali Association Shade No. 28. This was allegedly based on a sale agreement between the appellant and the respondent entered into on 10/07/2009. The suit was heard and determined by a dismissal of the plaint dated 3/08/2012 thus leading this appeal.
8. The Appellant's main argument is that the trial court made errors in its judgment regarding the ownership of the suit premises. The Appellant claimed to have purchased the shade and argued that the sale agreement was never challenged during the trial court hearing. The Respondent had acknowledged receiving money from the Appellant but couldn't recall the agreement's specific terms. The Appellant believes that the trial court didn't adequately consider this admission or provide reasons for departing from it.
9. Additionally, the Appellant argued that the trial court erred by disregarding the written contract between the parties by purporting to ignore the terms of the contract merely because it was not specific about the shade number. The trial court found the agreement unenforceable due to unpaid rent and lack of a specified stall number. The Appellant seeks a reversal of the lower court's judgment, asserting that the sale agreement was proper and enforceable, and that the Respondent should comply with its terms. The Appellant asks the court to recognize their ownership of Kamkunji Juakali Association Shade no. 28 and grant the prayers sought in their plaint.
10. In summary, the Respondent addressed the grounds stated in the Appellant's memorandum of appeal in her submissions as follows:
 - a. The Appellant claimed to be the owner of the suit property but failed to provide evidence of a conversion from lease to sale. The Respondent argued that there was no contract showing the sale of the property and that the alleged agreement in July 2009 did not absolve the Appellant from paying rent.
 - b. The Respondent contended that the law of contract provides that all contracts of sale should be in writing, and the alleged agreement was ambiguous and unenforceable due to missing details regarding the date of payment and default.



- c. On whether the trial court erred in finding that the appellant is not the owner of the suit property, the Respondent contended that the trial court had already considered the arguments, and the Appellant's witnesses didn't clarify if the terms of the agreement were honored. That the judgment of the lower court manifestly contains reflection and analysis of the appellant's arguments and rejected the same on merit.
 - d. The agreement of 10/07/2009, allowed for advances on a need basis, and the Appellant failed to provide evidence that the money paid after November 2009 was for the sale of the property or that the Respondent defaulted in repaying the advanced amount.
 - e. The Respondent argued that the trial court rightly determined a landlord-tenant relationship, and the Appellant's appeal could disrupt ongoing matters at the BPRT regarding unpaid rent.
 - f. The Respondent believed that the trial court correctly found that there was no sale transaction because the alleged lease agreement was not converted into a sale agreement, and there was no evidence of an actual sale.
 - g. The Respondent emphasized that the trial court was right in concluding that there was no sale agreement between the parties regarding the suit property.
11. In essence, the Respondent contended that the trial court made appropriate findings based on the evidence and legal principles, and there was no sale agreement between the parties.

Analysis and Determination

12. Before dealing with the issues in contention in this appeal, I must bear in mind the principle that the first appellate Court must reconsider the evidence, assess it and make its own independent conclusions on the evidence, subject to the cardinal fact that it did not have the advantage singularly enjoyed by the trial magistrate, of seeing and hearing the witnesses as they testified. (See *Seascapes Ltd v. Development Finance Company of Kenya Ltd* [2009] KLR, 384). I also remind myself that this Court will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Magistrate is shown demonstrably to have acted on wrong principle in reaching the findings he did. (See *Ephantus Mwangi & Another v Duncan Mwangi Wambugu* [1982-88] 1 KAR 278).
13. This is an appeal against a judgment wherein the trial court dismissed the Appellant/Plaintiff's case having found that the Appellant/Plaintiff was a tenant and not the owner of the suit property known as Kamukunji Jua Kali Shade 28 and that a landlord-tenant relationship existed.
14. This Court has considered the record of appeal in totality, the Respondent's statement of facts, the judgment by the trial magistrate and the rival written submissions together with the court record generally. The Appellant has raised 8 grounds of appeal which can be compressed into the following issues for determination:
- a. Whether the Respondent's statement of facts should be expunged from the court record.



- b. Whether or not the Appellant is the owner of Kamukunji Jua Kali Shade No. 28.

Whether the Respondent's statement of facts should be expunged from the court record.

15. The Appellant is seeking to have the Respondent's statement of facts expunged from the record in the final submission appears to be an afterthought. He submitted that the Respondent's statement of facts should be expunged from the court record. He has contended that the respondent has annexed documents to the statement which annexures were not documents filed in the lower court nor do they form part of the record. That the respondent is in effect introducing new evidence at this stage without having sought leave to introduce new evidence. That the strange document is not provided for by the civil procedure rules and as such, it cannot be allowed to form part of this court's record. He relied on the case of *Otieno, Ragot & Co. Advocates v National Bank of Kenya Limited* [2020] eKLR to support his argument that at the appellate stage a party cannot be allowed to introduce new evidence. That if at all a party wishes to introduce new evidence at the appellate stage then it can only be with leave of court. The appellant submitted that the respondent did not seek leave of court to file the statement of facts and the documents annexed to it.
16. The Respondent on the other hand submitted that the Appellant seeks the documents annexed in the Respondent's response to be expunged from the court record without giving clear legal grounds for the same. She submitted that the said documents came to the knowledge of the respondent in this matter when the impugned judgment had already been rendered and the Respondent had moved back to the tribunal to recover the rent arrears. That the matter came for mention for directions on 12/07/2023 where the court granted leave to the respondent to file a response to the memorandum of appeal thus the appellant was not obligated to seek another leave of this court thus the decision of *Otieno, Ragot & Co. Advocates v National Bank of Kenya Limited* [2020] eKLR has no basis on the appellant's appeal before this court.
17. The Respondent further submits that the additional documents will probably have important influence on the result of this appeal if it was available at the time of taking directions since the evidence therein is credible, though it need not have to be incontrovertible. He relied on the case of *Dorothy Nelima Wafula vs Hellen Nekesa Nielsen & Paul Fredrick Nelson* [2017] eKLR. It was expressed that under rule 29 (1) (a), additional evidence will be introduced on appeal in the discretion of the Court, "for sufficient reason".
18. It is her submission that the said documents are from the court proceedings at the BPRT which were filed by the Appellant's wife which parties in this appeal including the appellant heavily relied upon during the trial thus the material documents will assist this court at the appeal stage to clearly demonstrate how the appellant has choreographed a scheme to unlawfully take the ownership of the material shade from the respondent.
19. Further, the Respondent invited the Court to Section 78(1) (d) of the *Civil Procedure Act* which clothes this court with powers to take additional evidence or to require the evidence to be taken. The appellate court shall have powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Act on courts of original jurisdiction in respect of suits instituted therein. She relied on the case of *Mohamed Abdi Mohamed Vs Ahmed Abdullahi Mohamed and 3 others* [2018] eKLR, where the Supreme Court further laid out guidelines on admission of additional evidence before Appellate Courts in Kenya.



20. With regard to whether the Court should allow the introduction of new/additional evidence on appeal, Section 78(1) of the *Civil Procedure Act* affords an appellate court discretion to take additional evidence. This is what that section provides: -

- “(1) 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;”

21. It was the Respondent’s argument that the court granted leave to the respondent to file a response to the memorandum of appeal thus the appellant was not obligated to seek another leave of this court.

22. It is trite law that for a party to adduce additional evidence on appeal, leave ought to be granted by the said court. The Court of Appeal in the case of *Kibos Sugar & Allied Industries Limited & Another v Benson Ambuti Adegga & 6 Others*, Civil Appeal (Application) No. 153 of 2019 (unreported) quoted with approval the English case of *The National Guild of Removers & Storers Limited v Bee Moved Limited & Others* (2018) EWCA Civ. 1302 that:

“In determining whether an appellate court can admit additional evidence, the court must seek to give effect to the overriding objective of doing justice and, in doing so, attempt to strike a fair balance between the need for concluded litigation to be determinative of disputes and the desirability that the judicial process should achieve the right result.”

23. In the present appeal, the Respondent indeed admits that the Court granted her leave to file a response to the appeal. It is my considered view that the Respondent’s counsel is misleading the Court when he submitted that the Respondent was not obligated to seek another leave of this court in relation to adducing additional evidence.

24. The Respondent relied on the case of *Dorothy Nelima Wafula Versus Hellen Nekesa Nielsen and Paul Fredrick Nelson* (2017) eKLR where it was expressed that: “under Rule 29(1) (a), additional evidence will be introduced on appeal in the discretion of the Court, “for sufficient reason.” The Court further stated that: “Though what constitutes “Sufficient reason” is not explained in the rule, through Judicial practice, the Court has developed guidelines to be satisfied before it can exercise its discretion in favour of a Party seeking to present additional evidence on appeal. Before this Court can permit additional evidence Under rule 29, it must be shown, one, that such evidence could not have been obtained by reasonable diligence before and during the hearing, two, the new evidence would probably have had an important influence on the result of the case if it was available at the time of the trial, and finally, that the evidence sought to be adduced is credible, though it need not be incontrovertible.”

25. Being granted leave to file a response is not a blanket order granting the Respondent the go ahead to file additional evidence that was not part of the record in the trial court. The said leave that was granted on 12/07/2023 did not in any way mean that the Respondent had leave to adduce additional evidence. The Respondent filed a document named “statement of facts” and supplementary documents wherein she purported to introduce new evidence.



26. No additional evidence could be produced before the learned Judge unless they formed part of the record before the Chief Magistrate's Court. The Judge only deals with what was on record before the trial magistrate. In the case of *Wanga & Co. Advocates v Pan Africa Insurance Co. Ltd*, Civil Appeal No. 78 of 2009 (unreported), the court stated that allowing a party to introduce new evidence at the appellate level was not only prejudicial to the opposing party but also against public policy and the law.
27. I note that the Respondent has also relied on the case of *Mohamed Abdi Mohamed Vs Ahmed Abdullahi Mohamed and 3 others* [2018] eKLR where the Supreme Court further laid out guidelines on admission of additional evidence before Appellate Courts in Kenya.
28. An Appeal is the Judicial Examination of the Decision of an inferior Court and is not a forum to argue a matter on the basis of different or additional parameters. If that was not so then there would be no end to litigation because parties would be arguing and presenting their cases in piece-meal.
29. That said, Statute often permits the calling of additional evidence at the Appeal stage, see for instance Order 42 Rule 27 of the Civil Procedure Rule which reads,
- “(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the court to which the appeal is preferred; but if—
- a. the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or
- b. the court to which the appeal is preferred requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the court to which the appeal is preferred may allow such evidence or document to be produced, or witness to be examined.
- (2) Wherever additional evidence is allowed to be produced by the court to which the appeal is preferred the court shall record the reason for its admission.”
30. I take a view that different sets of rules must apply when the Court itself is calling for additional evidence and when the parties to the Appeal are seeking to call the evidence. Where the Court finds it necessary to admit further evidence necessary for determination of the Appeal and on its own Motion calls for that evidence, then the only fetter to that Power is that it should not call and receive the evidence in a manner that prejudices the parties or recasts or changes the scope of the Dispute. If, however, it is a party which wishes to call additional evidence then the latitude must be more restrictive so as to avoid the process being used to re-litigate a case on altered parameters.
31. There is no application before me for the Respondent to adduce additional evidence in appeal and therefore I cannot apply the governing principles laid down by the Supreme Court on allowing additional evidence in Appellate Court. See *Petition No. 7 of 2018, Hon. Mohamed Abdi Mahamud and Ahmed Abdullahi Mohamad & 3 others*.
32. Given that the Respondent did not seek leave of this Court to file additional evidence, I am of the opinion that such additional evidence ought not to be entertained. To this end, this Court rejects the Respondent's statement of facts purporting to introduce additional evidence as it is misplaced and misconceived.



33. In any case, the Court made an order for the BPRT file to be availed before it for consideration on 12/07/2023. Therefore, the Respondent need not worry that the Appellate Court is not privy to the proceedings of the BPRT case no. 579 of 2011.

Whether or not the Appellant is the owner of Kamukunji Juakali Shade No. 28.

34. Essentially, the suit in the lower court was for the enforcement of the agreement dated 10/07/2009. The Appellant/Plaintiff was seeking for specific performance of the agreement dated 10/07/2009. It was the Appellant's case that the agreement dated 10/07/2009 purportedly turned their oral lease agreement into a sale of the suit shade. That the parties have acknowledged that the Respondent/Defendant has received Kshs. 165,000.00 from the Appellant and that there is allegedly a balance of Kshs. 15,000.00 that the Appellant is ready and willing to pay.

35. On the other hand, the Respondent denies having agreed to sell the suit premises to the Appellant. The trial court found that the agreement that cannot be enforced as it was not specific. The trial magistrate found that the agreement did not make reference to the exact shade as it only states "kiwanja changu" my shade in translation.

36. The material on record indicates that the Appellant/Plaintiff's Plaint dated 3/08/2012 filed in the trial court sought for the following reliefs:

- a. A declaration order declaring that the plaintiff is the rightful and absolute owner of Kamukunji Jua Kali Association Shade No. 28.
- b. A mandatory order for specific performance compelling the defendant to forthwith transfer and do all acts and fulfill all conditions required to effect transfer of ownership of Kamukunji Jua Kali Shade No. 28 into the name of the plaintiff and in default the deputy registrar/executive officer of this honourable court be empowered to do so.
- c. A permanent Injunction restraining the defendant, his employees, agents and/or any other person whatsoever from interfering with the plaintiff's ownership of the said property Kamukunji Jua Kali Shade No. 28 in any manner whatsoever.
- d. General damages.
- e. Costs of this suit
- f. Interest on (d) and (e) above
- g. Any other relief

37. In his defence, the Respondent/Defendant contended that the appellant/plaintiff indeed leased Kamukunji Jua Kali shop No. 28 (hereinafter referred to as the suit premises) from the defendant. He averred that the rent payable was Kshs. 10,000/= . That the defendant borrowed some money from the plaintiff. From the time the loan was given out, the plaintiff refused, failed and or neglected to pay the agreed rent. The defendant thereafter filed a case in the Business Premises Rent Tribunal.

38. He further averred that the plaintiff has been his tenant from the month of April, 2009. The plaintiff defaulted in making payment of rent as required and he filed a complaint against him in the Business Premises Rent Tribunal in case No. 579 of 2011. The Tribunal ordered for valuation of the suit premises with a view of determining the rent payable. The Tribunal gave the defendant leave to levy



- distress for the outstanding rent. The amount of rent outstanding as at July, 2012 was Kshs. 260,000/= . The plaintiff is still in the suit premises and the rent which has accrued from the month of July, 2012 to date is Kshs. 130,000/= . The amount of Kshs. 10,000/= continues to accrue as long as the plaintiff remains in the suit premises. The defendant is not indebted to the plaintiff in any way and the fact he got a loan from him did not absolve him from paying the agreed rent. Most of the amounts received from the plaintiff were for rent arrears and not loans. It is not true that the lease agreement entered into was converted into a sale agreement or that the plaintiff on paying Kshs. 15,000/= would be entitled to the suit premises. Lastly, he deponed that the plaintiff has no propriety interest in the suit premises.
39. In order to make a finding as to whether or not the Appellant/Plaintiff is the absolute owner of Kamukunji Juakali Shade No. 28, I have to consider both the oral evidence as well as the documentary evidence herein produced to find out whether the agreement dated 10/07/2009 entered into by the parties herein was valid or not.
40. What is clearly not in dispute is that the Respondent/Defendant is the owner of the suit property. The material on record indicates that the Respondent/Defendant leased Kamukunji Juakali Shade No. 28 to the Appellant/Plaintiff sometime in the year 2009 vide an oral lease agreement. That during the pendency of the landlord-tenant relationship, the Respondent/Defendant required a loan and approached the Appellant/Plaintiff who agreed to loan him some money subject to a loan agreement dated 10/07/2009. The said agreement was purportedly handwritten by the wife of the late Maina Koine.
41. A perusal of the loan agreement dated 10/07/2009 demonstrates that it was entered into between Maina Koine (deceased) together with his wife and John Macharia (the appellant/plaintiff). Mr./Mrs. Maina Koine were to receive Kshs. 65, 000.00 from Mr./Mrs. John Macharia in three or four installments depending on their needs. Further, the parties to that agreement agreed that the loan will be refunded after 4 months, failure to which, he will give John Macharia “Kiwanja changu cha Juakali” which means “his shade at Juakali” when loosely translated, for Kshs. 180,000.00. They agreed that they would deduct Kshs. 65,000.00 + Kshs. 20,000.00 from the Kshs. 180,000.00 which he had borrowed earlier. Therefore, the balance would be Kshs. 95,000.00. The agreement included a schedule of payments made. Notably, the loan agreement dated 10/07/2009 was signed by Maina Koine, John Macharia and Margaret Maina. It was only witnessed by one Wilson Mwangi.
42. Section 3 (3) of the *Law of Contract Act* provides as follows:
- “(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—
- a. The contract upon which the suit is founded—
- i. is in writing;
- ii. is signed by all the parties thereto; and
- b. The signature of each party signing has been attested by a witness who is present when the contract was signed by such party:”
43. Further, Part v of the *Land Act* deals with the administration and management of private land. Section 38 of that Act as amended by Section 55 of the Land Laws (Amendment) Act No. 28 of 2016 deals with the validity of a contract for sale of land. Section 38 (1) provides, in essence, that no suit shall be brought upon a contract for disposition of an interest in land unless the contract on which the suit is founded is in writing, is signed by all parties thereto and the signature of each party has been attested by a witness who was present when the contract was signed.



44. In the cases of Jane Catherine K. Karani vs Daniel Mureithi Wachira [2014] eKLR and Charles Mwirigi Miriti vs Thananga Tea Growers Sacco Ltd & Another [2014] eKLR, the Court of Appeal of Kenya held that a contract which did not meet the formalities as to attestation as required under section 3(3) of the Law of Contract Act was not enforceable.
45. For a sale agreement to be enforceable, it has to give description of the parcel of land, the purchase price and must be signed by all the parties. See the case of Nelson Kivuvani vs Yuda Komora & Another, Nairobi HCCC No.956 of 1991, where the Court held that: -
- “The agreement for sale of land which contains the names of the parties, the number of the property, the purchase price and the conditions attached thereto, the obligations, express or implied, of each of the parties and signed and witnessed by two witnesses who signed against their names amount to a valid contract.”
46. The agreement in issue is the one dated 10/07/2009. I have considered the agreement between Maina Koine (deceased), Margaret Koine and the Appellant herein produced at page 102 of the record of appeal made on 10/07/2009 and I find that the agreement did not conform to the requisite of a valid contract as per the law herein above stated and was therefore not a valid sale agreement enforceable by the parties.
47. The loan agreement of 10/07/2009 in my view does not satisfy the requirement of Section 3(3) of the Law of Contract Act to be the foundation of the Appellant/Plaintiff's claim against the Respondent/Defendant. Section 3 (3) of the Law of Contract Act is indeed couched on mandatory terms, requiring contracts for a disposition of interest in land to be in writing, signed by all parties to the transaction and the signatures attested in relevant part. In the instant agreement, the same is in writing and is signed by the parties. The signature of each party to the said agreement was to be attested to by a witness however the entire agreement was only witnessed by one person. The said agreement cannot possibly be said to be valid and enforceable. Want of attestation voids and/or invalidated this agreement that purported to sell the suit property to the Appellant/Plaintiff. Attestation is necessary in agreements for disposition of interest in land.
48. Further to that, it is evident that the description of the suit property that was allegedly being sold was a general or rather a vague description. The number of the property was not indicated. It is my humble view that the description of the property which the Respondent was purportedly selling and which the Appellant was purportedly buying was not explicit, express and devoid of any ambiguity with regard to the shade that was being sold. Clearly, there was no meeting of minds as to the terms and details of the description, extent and scope of the property under consideration.
49. In the end, legal relations regarding the agreement dated 10/07/2009 could only be presumed once the existence of a valid agreement was established. See Wallis v Learonal (UK) PLC [2003] EWCA Civ 98. No valid and enforceable agreement could be established in the instant case and therefore it goes without saying that the Appellant/Plaintiff is not the rightful and absolute owner of Kamukunji Juakali Shade No. 28.
50. This Court's own evaluation of that question of law leads to the conclusion that there was no error or misdirection on the part of the trial court. The Court finds that the Judgement of the learned trial Magistrate was based on the weight of the available evidence as adduced by both the Appellant and the Respondent. The said Judgement was not against the weight of the evidence adduced by the Appellant, but was arrived at after weighing all the available evidence as adduced by both parties.



51. After analyzing and evaluating the evidence adduced before the trial Court and after considering the Judgement that was arrived by the said learned trial magistrate, this Court finds no reasons to fault his analysis of the evidence before him and further the Court finds that the trial Magistrate did not err in both in law and fact in arriving at the decision that he did arrive at. This Court finds that the learned trial Magistrate made a correct determination.

52. The upshot is that none of the grounds of appeal have been proved. I find and hold that there is no justification to interfere with the findings of the trial magistrate. In the premises, I do not find any merit in this appeal and the same is dismissed with costs to the Respondent.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF NOVEMBER, 2023.

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MOGENI J

JUDGE

In the virtual presence of :-

Mr. Ayora for the Respondent

Mr. Karwanda for the Appellant

Ms. C. Sagina: Court Assistant

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MOGENI J

JUDGE

