



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kubo & another v Kamau (Civil Appeal E044 of 2024)  
[2025] KEHC 603 (KLR) (17 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 603 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E044 OF 2024  
AN ONGERI, J  
JANUARY 17, 2025**

**BETWEEN**

**JORAM KUBO ..... 1<sup>ST</sup> APPELLANT**

**MALONZA MAANDA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOHN MWANGI KAMAU ..... RESPONDENT**

*(Being an appeal from the Ruling and Orders by Hon. Musili Steven Maluki  
(ADJ/RM) in Taveta SCCC No. E024 of 2024 delivered on 30th April 2024)*

**JUDGMENT**

1. The trial court dismissed the Appellant’s claim on 30<sup>th</sup> April 2024 citing lack of proper service.
2. The Appellant filed a claim against the Respondent in the sum of Kshs. 300,000/= in respect of land purportedly sold to the Respondent.
3. The trial court found that the certificate of service dated 17<sup>th</sup> April 2024 averred that the Respondent signed on the mention notice yet upon a cursory look at the notice there was no such signature
4. The trial court dismissed the claim for failure to effect proper service.
5. The Appellant has appealed to this court on the following grounds:-
  - i. That the Learned Magistrate erred in Law by dismissing the Appellants claim citing lack of proper service.
  - ii. That the Learned Magistrate erred in law and in fact by failing to exercise discretion in favor of the Appellants.



- iii. That the Learned Magistrate erred in Law and in fact by disregarding the certificate of service and dismissed the Appellant's claim.
6. I have considered the submissions by the Appellant which are as follows:-
- The appellant submitted that the appellants on the 6/3/2024 filed a claim against the respondent. There were difficulties in tracing the respondent for service but was later traced and served. The appellant argued that the trial court disregarded the service and dismissed the claim on a technicality. The process server erroneously indicated that the respondent signed the mention notice but the attached mention notice had no signature.
7. The appellant further submitted that the court in interpreting Article 159 (2) (d) of *the Constitution* held in *James Mangeli Musoo v Ezeetec Limited* {2014} eKLR that;
- “ A technicality, to me is a provision of law or procedure that inhibits or limits the direction of pleadings, proceedings and even decisions on court matters. Undue regard to technicalities therefore means that the court should deal and direct itself without undue consideration of any laws, rules and procedures that are technical and or procedural in nature. It does not, from the onset or in any way, oust technicalities. It only emphasizes a situation where undue regard to these should not be had. This is more so where undue regard to technicalities would inhibit a just hearing, determination or conclusion of the issues in dispute.”
8. The appellant argued that the mention notice was duly and properly served within the prescribed time under the law and an omission in the return of service cannot be the basis for dismissing the appellant's case. The case can be cured through Article 159 (2) (d) of *the constitution*.
9. I find that the Claimant failed to prove service.
10. This claim is also based on sale of land and the proper court is the Environment and Land Court. Section 13 of the Environment and Land court provides;
13. Jurisdiction of the Court
- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.
11. I find that this appeal lacks in merit and I accordingly dismiss it.



**DATED, SIGNED AND DELIVERED THIS 17<sup>TH</sup> DAY OF JANUARY 2025 VIRTUALLY AND IN OPEN COURT AT VOL.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Maina/Trizah

