



**Hassan v Ministry of Lands Mander County & 4 others (Environment and Land Appeal E003 of 2024) [2025] KEELC 6155 (KLR) (23 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6155 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT AND LAND APPEAL E003 OF 2024  
JM MUTUNGI, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**BASHIR FARAH HASSAN ..... APPELLANT**

**AND**

**MINISTRY OF LANDS MANDERA COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**LANDS ADMINSTRATOR – MANDERA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**NOOR YUNIS ..... 3<sup>RD</sup> RESPONDENT**

**ALI HASSAN ..... 4<sup>TH</sup> RESPONDENT**

**OMAR MOHAMED ..... 5<sup>TH</sup> RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Senior Principal Magistrate at Mander County in SPMCC No. 12 of 2015 by Hon. Peter Wasike (SRM) Delivered on 11th July 2024)*

**JUDGMENT**

1. This Appeal is against the Judgment of Hon. Peter Wasike (SRM) in Mander County SPMCC No. 12 of 2015 delivered on 11<sup>th</sup> July 2024. By the Judgment the Learned Magistrate found that Appellant who was the Plaintiff before the subordinate Court had failed to prove his case on a balance of probabilities and dismissed the same. The 3<sup>rd</sup> Respondent’s Counterclaim was equally dismissed by the Court as the 3<sup>rd</sup> Respondent did not attend at the hearing to prosecute and prove the Counterclaim.
2. The Appellant aggrieved and dissatisfied with the Judgment has appealed to this Court and by the Memorandum of Appeal dated 22<sup>nd</sup> July 2024 raises the following grounds of Appeal:-
  1. That the Learned Trial Magistrate erred in fact and in law in failing to appreciate the evidence on record adduced by the Appellant.



2. That the Learned Trial Magistrate erred in fact and in law in failing to seriously interrogate and analyze the evidence tendered by the Plaintiff herein and therefore reached at a wrong decision.
  3. That the Learned Trial Magistrate erred in fact and in law and facts by discrediting the Appellant's exhibits tendered during trial which exhibits proved that plot 2701 belonged to the Appellant, where rates and rent had been paid to the allocating authority.
  4. That the Learned Trial Magistrate erred in facts by believing the Respondents yet there was no evidence tabled by Respondents and no witnesses were called to prove ownership of Plot No. 2701.
  5. That the Learned Trial Magistrate failed to appreciate the evidences of the Appellant and his witnesses and the Submissions of the Learned Counsel for the Appellant.
  6. That the Learned Trial Magistrate erred in failing to consider the evidence, legal arguments and Judicial authorities presented by the Appellant.
  7. That the Learned Trial Magistrate erred in both law and fact by failing to give reason for his Judgment.
  8. That the Learned Trial Magistrate erred in law in finding for the 3<sup>rd</sup> Respondent. This finding occasioned grave in justice to the Appellant.
  9. That the Learned Trial Magistrate erred by failing to appreciate that the Plaintiff had proved his case on a balance of probabilities which was uncontroverted by the Defendants.
  10. That the Judgment of the Court was against the weight of evidence and law placed before the Court.
3. The Appellant consequently prays that the Appeal be allowed, the Judgment be set aside and be substituted with an order for the eviction of the 3<sup>rd</sup> Respondent from Plot No. 2701, and an order for payment of mense profits for trespass and costs of the Appeal.
  4. The Appellant filed a Plaint dated 23<sup>rd</sup> July 2015 against the Respondents which he amended on 7<sup>th</sup> September 2015. The Plaintiff/Appellant claimed he was the legal registered owner of Plot No. 2701 Shafshafey location in Mandera County. He alleged that the property had been registered in his name for 14 years before the institution of the suit and that he had been paying the rates for the property all along. He averred that he had learnt that the 3<sup>rd</sup> Respondent had illegally and unlawfully been allocated the same plot by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and had sold the plot to persons who were unknown to the Appellant and that in or about February 2015 some persons unlawfully entered onto the suit land and began constructing a perimeter wall and houses on the land without the authority and/or permission of the Appellant. The Appellant in the Plaint prayed for orders:-
    - i. That he be declared as owner of plot No. 2701 at Duse Sub location in Shafshafey location of Mandera County.
    - ii. That a permanent injunction be issued against the Respondents restraining them from in any manner interfering with or dealing with the suit property.
    - iii. An order of eviction of the Respondents and demolition of all unlawful and illegal structures erected on the suit land by the Respondents.
    - iv. Costs of the suit.



5. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a joint statement of Defence while the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed individual Defences. All the Respondents in their respective defences generally denied the Appellant's allegations. The 3<sup>rd</sup> Respondent however averred the suit property belonged to him having been allocated the plot and that had resided on the plot since 1994. He contended the Appellant was not entitled to an order of injunction as the land belonged to him (3<sup>rd</sup> Respondent). He pleaded a Counterclaim and prayed for an order of injunction against the Appellant to restrain him, his servants and agents from trespassing or in any manner interfering with the 3<sup>rd</sup> Respondent's occupation of the suit land.
6. Before the Trial Court, the Appellant testified as PW1 and called one witness, Ismael Ahmed Lakicha (PW2) in support of his case. The Respondents did not offer any oral evidence and sought to rely on their written statements and documentary evidence filed in Court and submissions.
7. The Learned Magistrate upon analyzing and evaluating the evidence came to the conclusion that the Appellant had not proved his case on a balance of probabilities and in particular observed that the case the Appellant presented at the trial was not supported by his pleadings. The Learned Magistrate noted that while the Appellant had pleaded that he was the legal and registered owner of the suit land, the evidence and the submissions pointed to a claim founded on trust while there was no plea of trust direct or implied as per the Appellant's pleadings. The Trial Magistrate in the premises dismissed the Appellant's case and equally dismissed the 3<sup>rd</sup> Respondent's Counterclaim on the basis that the same was not prosecuted.
8. The Appeal was canvassed by way of Written Submissions. The Appellants submissions are dated 20<sup>th</sup> May 2025 and those of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are dated 16<sup>th</sup> June 2025. The Appellants in their submissions have rehashed the evidence adduced before the Trial Court in considerable detail and contended that as the land was unsurveyed where the plot was located, the land belonged to the Local Community and could not be allocated to other people. The Appellant in support of his submission that the land was trust/community land relied on the case of Bahola Mkahndi –vs- Michael Seth Kaseme & 2 Others (2013) eKLR where the Court stated inter alia:-
 

“For as long as Trust land remained un adjudicated and unregistered, it belonged to the local tribes, groups of the area. Once adjudicated and registered, Trust land is transformed into private land. That is what the provisions of Sections 114, 115 and 116 of the repealed Constitution provided. Indeed, Section 115(2) of the repealed Constitution provided that Trust Land could only be dealt with in accordance with the African Customary Law vested in any tribe, group, family or individual ---”
9. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents for their part submitted that the Appellant had not proved he was the owner of the suit property. They contended that the Appellant had not discharged the evidential burden of proof bestowed on him under the provisions of Sections 107, 108 and 109 of the *Evidence Act*, Cap 80 Laws of Kenya. To support their submission, the Respondents placed reliance on the case of Anne Wambui Nderitu –vs- Joseph Kiprono Ropkoi & Another (2005) 1 EA 334 and Evans Nyakwama –vs- Cleophas Bwana Ongaro (2015) eKLR. They contended the Appeal was devoid of merit and prayed that the same be dismissed with costs.
10. This being a first Appeal this Court is obligated and indeed under a duty to reevaluate the evidence that was before the Learned Trial Magistrate to satisfy itself whether or not the decision arrived at by the Trial Magistrate was justified. The Court in doing so is not bound by the findings of fact reached by the Trial Court and is free to come to its own conclusions based on the facts and the applicable law.



That is in keeping with the principle established by the Court of Appeal in the case of *Selle & Another –vs- Associated Motor Boat Company Ltd & Others* (1968) EA 123.

11. The Appellant in the instant matter pleaded he was at all material times the legal and registered owner of Plot No. 2701 Shafshafey. The Court has reviewed the evidence adduced before the Lower Court and finds no evidence that could support such pleading. In particular no letter of allotment was exhibited and neither was any Part Development Plan (PDP) produced to assist in identifying the alleged plot and its location. The Court on scrutinizing the Record of Appeal has noted the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a bundle of documents before the Lower Court as per list dated 28<sup>th</sup> March 2024 which included a letter dated 25<sup>th</sup> March 2024 by the County Attorney addressed to the Chief Officer Lands seeking information regarding:-
  - i. The registered owner of plot No. 2701 Shafshafey as per the Lands Records Registry.
  - ii. The authenticity of the receipt dated 20<sup>th</sup> April 2016 issued by the Land Ministry bearing the name of Bishar Fara Hassan.
12. The County Chief Officer of Lands responded to the letter vide a letter dated 28<sup>th</sup> March 2024 and the content of the letter inter alia was as follows:-
  - i. As per our records, held in the Registry, Plot No. 2701 Shafshafey is situated within informal settlement and the exact location of the said plot cannot be ascertained by our office or the County Survey Office.  
Further the plot detail is not captured in our digital system.
  - ii. Regarding the authenticity of the receipt dated 20<sup>th</sup> April 2016 issued to an individual bearing the name of Bashir Farah Hassan, I cannot with certainty confirm its authenticity as the receipts are issued by the revenue department. They are the custodian of all records concerning revenue payment and collection.  
Signed.  
County Chief Officer Land.
13. The burden to prove the ownership of plot No. 2701 at Shafshafey, Mandera rested on the Appellant. He did not in my view discharge that burden. In the case of *Evans Nyakwana –vs- Cleophas Bwana Ongaro* (2015) eKLR the Court held:-

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act* Chapter 80 Laws of Kenya, which provides:-

107(1) whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
14. In the instant case the Appellant failed to prove that he was the legal registered owner of plot No 2701 Shafshafey by a long short. The exact location of the plot is not clear and the Court in the premises cannot declare ownership of a plot whose origin has not been established. Having failed to prove ownership the order of injunction and eviction could not properly issue in favour of the Appellant.



15. I am in the premises satisfied the Learned Magistrate properly evaluated the evidence that was before him and that he reached the right decision. The Appeal is without any merit and is dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

