



**Njagi v Gachua & 2 others (Legal Representatives of the Estate
of Gachuma Gacheru - Deceased) (Environment and Land Appeal
E029 of 2022) [2025] KEELC 6231 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6231 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E029 OF 2022
EM WASHE, J
SEPTEMBER 18, 2025**

BETWEEN

GATIMU LINUS NJAGI APPELLANT

AND

HENRY MWANGI GACHUMA 1ST RESPONDENT

MAINGI GACHUA GACHERU 2ND RESPONDENT

GERALD KARIUKI GACHUMA 3RD RESPONDENT

**LEGAL REPRESENTATIVES OF THE ESTATE OF GACHUMA GACHERU -
DECEASED**

JUDGMENT

1. The Appellant herein being aggrieved by the Judgement and Decree delivered on the 18.08.2022 by Hon. D. Mikoyan, Chief Magistrate (hereinafter referred to as “the Trial Court”) in Eldoret Chief Magistrates Court ELC Case No. 96 of 2020, filed a Memorandum of Appeal dated 15.09.2022 and amended on 12.06.2025 (hereinafter referred to as “the present Appeal”) on the following grounds: -
 - i. That the Learned Trial Magistrate erred in law and facts by failing to appreciate and find that the Appellant deserved the orders sought in the Plaintiff in the best interest of justice.
 - ii. That the Learned Trial Magistrate erred in law and facts in finding that the Sub-ordinate suit was based on enforcement of a contract which is time barred and thus the Court lacked jurisdiction yet the suit is all about a land sale agreement.
 - iii. That the Learned Trial Magistrate erred in law and facts in striking out the suit with costs yet the Appellant had sought leave to file the suit out of time prior to the institution of the Sub-Ordinate suit.



- iv. That the Learned Trial Magistrate erred in law and facts by failing to appreciate and find that the Appellant had already invoked the *Limitation of Actions Act* so as to enlarge time for recovery of land vide Eldoret CMC Misc. Suit No. 138 of 2019 and the same was allowed by Hon. S. Wewa (then as she was) on the 26th day of November, 2019 (26.11.2019) prior to filing the present suit and as such the claim before the subordinate court wasn't for enforcement of normal contract between individuals as such not time barred as alleged by the trial magistrate thus an erroneous decision on him.
- v. That the Learned Trial Magistrate erred in law and facts by categorizing the Sub-Ordinate Court suit by the Appellant to be an enforcement of contract whose limitation is capped at six (6) years yet the law states that a suit on recovery of land is its time limitation capped at twelve (12) years thus led to an erroneous decision against the Appellant.
- vi. That the Learned Trial Magistrate erred in law and facts in failing to appreciate the enlargement of time order issued by Hon. S. Wewa (then as she was) had in actual sense enlarged the time to file the subordinate suit for recovery of land after the expiration of the time limitation capped at twelve (12) years thus his allegations of the subordinate suit being statute barred since it was for enforcement of contract whose time limitation is capped at six (6) years is misplaced and misinterpretation of the law and to some extent the order.
- vii. That the Learned Trial Magistrate erred in law and facts by failing to take into account that the Court had already enlarged time for filing the suit thus the claim of recovery of land was valid.
- viii. That the Learned Trial Magistrate erred in law and facts by claiming that the Appellants claim of recovery of land is time barred yet the court had earlier extended the same vide a valid Court Order through Eldoret CMC Misc Suit No. 138 of 2019 which was produced as evidence in court as PEX4.
- ix. That the Learned Trial Magistrate erred in law and facts by failing to appreciate and find that neither has there been an appeal preferred nor the said order of enlargement of time for recovery of land in the said Eldoret CMC Misc Suit No. 138 of 2019 set aside by the appellate court as such the said court order is valid and therefore the trial magistrate assertion of the court order being time enforcement (sic) of a contract is total misconception, distortion and/or misunderstanding of the law between recovery of land and normal contract.
- x. That the Learned Trial Magistrate erred in law and facts by claiming that the said land sale agreements were contractual transaction in nature and not on land and as such ought to have been brought for action within six (6) years and not twelve (12) years from the date of execution of the said land sale agreements and thus refusal to enforce the claim yet the same court had earlier extended the limitation period for the Appellant to file the suit for recovery of land vide a court order through Eldoret CMC Misc Suit No. 138 of 2019.
- xi. That the Learned Trial Magistrate erred in law and facts by failing to recognize that the claim for recovery of land before the subordinate court wasn't limited and/or time barred as the same court had extended time to the Appellant to file suit and claim for the said lands in question.
- xii. That the Learned Trial Magistrate erred in law and facts in using the wrong principle when striking out the Appellant's suit for want of jurisdiction.
- xiii. That the Learned Trial Magistrate erred in law and facts by failing to give its detailed findings and/or decisions with reasons therefore when striking out the Appellant's suit for want of jurisdiction.



- xiv. That the Learned Trial Magistrate erred in law and facts by misapprehending and/or misinterpreting the authority in the cases of *Bosire Ogero vs Royal Media Services (2015) eKLR* and *YH Wholesalers Limited vs Kenya Revenue Authority (2021) eKLR* since in both the said suits Bosire Ogero the Plaintiff and YH Wholesalers Limited the Applicant had first filed the suits respectively out of time and they were now seeking for extension of time in an existing suit whereas in the subordinate court suit the Appellant had sought leave to file the suit out of time vide Eldoret CMC Misc Suit No. 138 of 2019 prior to filing the said subordinate court suit Eldoret CMC MC ELC No. 96 of 2020 which was allowed by Hon. S. Wewa (then as she was) thus the said two (2) precedents didn't relate at all with the matter at hand.
 - xv. That the Learned Trial Magistrate erred in law and facts in failing to take into account, and consider the Appellant evidence on record, submissions, the applicable law and judicial precedents hence erroneous decision.
2. Based on the above grounds, the Appellant sought the following Orders in the present Appeal: -
 - a. The aforesaid part of the Judgment and/or decision delivered in the Sub-Ordinate Court on the 18.08.2022 be set aside and in lieu thereof, there be an order allowing the Appellant's appeal.
 - b. The Orders sought by the Appellant in the Sub-Ordinate Court by the Plaintiff be issued as prayed.
 - c. The Respondents to pay costs in both this appeal and the subordinate court.
 3. The present Appeal was duly served on the Respondents who expressed their intention to oppose it.
 4. The Record of Appeal was filed on 28th April, 2025 with a Supplementary Record of Appeal filed on 12th June, 2025.
 5. This being the first Appellate Court, the Court's jurisdiction was outlined through the case of *Selle & Another-versus- Associated Motor Boat Co. Limited & Others (1968) EA 123* where the Court stated as follows; -

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”
 6. As such, this Court is required by law to re-evaluate the evidence before the Trial Court and draw its own conclusions of the issues raised therein to enable it make a finding on whether the conclusions arrived at by the Trial Court were based on the correct facts of the case and application of the law or not.
- The Appellant's Pleadings Before The Trial Court
7. The Appellant (who was the Plaintiff before the Trial Court) with leave of granted on the 26.11.2019 filed a Plaint against the Respondent seeing the following Orders; -
 - a. An order of permanent injunction restraining the Defendant by himself, his agents, servants, employees and/or otherwise whosoever from entering, trespassing and/or occupying the suit properties land parcels number Eldoret Municipality/Block 21 (King'ong'o)/671 and



Eldoret Municipality/Block 21 (King'ong'o)/670 each measuring approximately ¼ of an acre or thereabouts respectively.

- b. An order of eviction against the Defendant by himself, his agents, servants, employees and/or otherwise whosoever from the suit property Eldoret Municipality/Block 21 (King'ong'o)/670 measuring approximately ¼ of an acre or thereabouts respectively.
 - c. An order of vacant possession of the suit property land parcel number Eldoret Municipality/Block 21 (King'ong'o)/670 measuring approximately ¼ of an acre or thereabouts respectively.
 - d. A mandatory order of specific performance compelling and/or directing the Defendant to effect transfer of the suit properties land parcels number Eldoret Municipality/Block 21 (King'ong'o)/671 and Eldoret Municipality/Block 21 (King'ong'o)/670 each measuring approximately ¼ of an acre or thereabouts respectively to the Plaintiff.
 - e. In default of the order (d), an order directing the executive officer or Eldoret Chief Magistrate's Court to sign the transfer documents in respect of the suit properties land parcels number Eldoret Municipality/Block 21 (King'ong'o)/671 and Eldoret Municipality/Block 21 (King'ong'o)/670 each measuring approximately ¼ of an acre each or thereabouts respectively to the Plaintiff.
 - f. Damages for mesne profits in respect of land parcel Title No. Eldoret Municipality/Block 21 (King'ong'o)/670 which the Plaintiff has yet to take vacant possession.
 - g. Costs of this suit and Interest thereof.
 - h. Any other relief this Honourable Court deems fit to grant.
8. The facts in support of the above prayers by the Appellant can be summarised as follows; -
- i. The Appellant entered into two Agreements For Sale with the Respondent for two properties namely LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and LR.NO.Eldoret Municipality Block 21 (Kingongo)/670 for a Purchase Price of Kenya Shillings Five Hundred and Fifty Thousand and Kenya Shillings Five Hundred Thousand respectively.
 - ii. The Appellant pleaded that the full purchase price agreed with the Respondent was fully settled in line with the two Agreements for Sale.
 - ii. Consequently, the Appellant was granted possession and use of two properties namely LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670.
 - ii. Based on the terms and conditions for Sale provided in the Agreements For Sale, the Respondent was to prepare, execute and ensure procurement of all Transfer documents of the two properties known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670 to the Appellant.
 - ii. However, the Appellant has failed to procure the Consent to Transfer the two properties known as LR.NO.Eldoret Municipality Block 21 (Kingongo) 671 and 670 thereby negating the terms and conditions of the two Agreements For Sale and frustrating the transfer of the said properties to the Appellants name.
 - ii. Based on the above omission by the Respondent, the Appellant sought the Trial Court to grant the Orders sought in the Plaint therein and costs of the suit.



9. The Appellant's pleadings were duly served on the Respondent who filed a Statement of Defence and Counterclaim in opposition.

Respondent's Pleadings Before The Trial Court

10. In the Statement of Defence, the Respondent pleaded the following facts in opposition of the Appellant's facts and prayers sought; -
- a. The Respondent in his Defence stated that the leave granted to the Appellant to file the Trial Court proceedings after expiry of the statutory time limit was undeserved.
 - b. According to the Respondent, an Order extending time within which to file a claim out of time can only be granted with consent of all the parties concerned.
 - c. In essence, the Respondent was of the view that the Appellant's suit before the Trial Court was time barred and should be struck out.
 - d. In addition to the foregoing, the Respondent denied any written or oral Agreement For Sale with the Appellant herein and in particular relating to the two properties known as LR.NO.Eldoret Municipality Block 21(Kingongo)/671 and 670.
 - e. As such, the Respondent denied any intention to transfer any of the two properties namely LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670 to the Appellants.
 - f. The Respondent further denied the allegation that he had failed to procure the Land Control Board Consent to facilitate the transfer of the two properties known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670 as there was no intention to sale the same to the Appellant.
 - g. In essence thereof, the Respondent pleaded that the Appellant had no ownership rights to occupy, use and/or be registered as the lawful owner of the two properties namely LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670.
 - h. Similarly, the claim for damages by the Appellant was baseless and without merit hence cannot be allowed.
 - i. In conclusion, the Respondent sought the Trial Court to dismiss the Appellant's suit before the Trial Court.
11. The Respondent together with the Statement of Defence filed a Counter-Claim against the Appellant seeking the following Orders; -
- a. An order for the removal of caution from land parcel numbers Eldoret Municipality/Block 21 (King'ong'o)/671 and 670.
 - b. General damages for illegal caution.
 - c. An order of eviction against the Plaintiff, his servants and/or agents, livestock and structures from land parcel numbers Eldoret Municipality/Block 21 (King'ong'o)/671 and 670.
 - d. General damages for trespass.
 - e. The Costs of the Counter-Claim
 - f. Interest



- g. Any further or better relief this court may find just.
12. In response, the Appellant filed a Reply to Defence and Defence to counterclaim reiterating that he had purchased the two properties namely LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670 for value through the Agreements For Sale dated 15th April, 2004 and 19th September, 2004.
 13. The Appellant denied being a trespasser and averred that he occupied the two properties namely LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670 rightfully and legally by virtue of the two Agreements For Sale and is entitled to the Order for Specific Performance.
 14. The Appellant averred that the Respondent was not entitled to the prayers sought in the Counter-Claim and asked that the Defence and Counterclaim be dismissed with costs and that the Plaint be allowed as prayed.

Appellant's Testimony & Evidence Before The Trial Court

15. The hearing in the Trial Court commenced on the 24.05.2022 with the testimony of Appellant who was marked as PW 1.
16. The Appellant upon introduction adopted his statement dated 29.07.2020 as his evidence in chief.
17. The Appellant in particular stated that he purchased the property known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 on the 15.04.2004 at a Purchase Price of Kenya Shillings Five Hundred and Fifty-Five Thousand (KShs.555,000/-) which was settled vide a Banker's Cheque on the date of execution and cash of Kenya Shillings Forty-Five Thousand (KShs.45,000/-) in cash.
18. The Appellant further stated that the second property known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/670 was purchased through an Agreement For Sale dated 19.09.2004 for a consideration of Kenya Shillings Five Hundred Thousand (KShs.500,000/-) which was fully settled by way of a Cheque.
19. According to the Appellant, upon execution of the two Agreements For Sale and payment of the Purchase Price in full, the Respondent handed over possession of the same to him.
20. The Appellant admitted that he had placed a caution on the land.
21. The Appellant confirmed before the Trial Court that leave to enlarge time had been obtained for filing the suit before the Trial Court.
22. The Appellant averred that on the property known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/671, he was in occupation and use of 0.5 Acres although his rightful portion is 0.25 of an Acre while the other 0.25 Acres belongs to one Wanyeki.
23. The Appellant testified that they applied for LCB Consent and the Respondent signed but he disappeared, and he produced the following documents in support of his case:-

Plaintiff's Exhibit 1(a) - Sale Agreement Dated 15.04.2004

Plaintiff's Exhibit 1(b) - Last Payment Dated 30.05.2004

Plaintiff's Exhibit 2 - Sale Agreement Dated 19.09.2004

Plaintiff's Exhibit 3 - Caution Dated 04.12.2018

Plaintiff's Exhibit 4 - Order For Enlargement Of Time

Plaintiff's Exhibit 5(a) - Application For Consent



Plaintiff's Exhibit 5(b) - Official Search

Plaintiff's Exhibit 5(c) - Chiefs Letter

Plaintiff's Exhibit 5(d) - Defendant's Id

Plaintiff's Exhibit 5(e) - Kra Pin

Plaintiff's Exhibit 6 - Mutation Form

Plaintiff's Exhibit 7 - Demand notice

24. On cross-examination the Appellant testified that the Respondent took the cheques but he had no evidence that they were banked.
25. The Appellant testified that there is a church on the property known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 although there was no Application to the Land Control Board to procure the Consent to sell.
26. The Appellant reiterated that he had registered a Caution on the property known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/670.
27. The Appellant admitted before the Trial Court that he never took possession of the property known as LR.NO. Eldoret Municipality Block 21 (Kingongo)/670 from the Respondent.
28. On re-examination, the appellant averred that the dispute before the Trial Court was the ownership of the two properties before the Trial Court.
29. At the end of this brief re-examination, the Appellant was discharged from the witness box.
30. The Appellant's second witness was one Charles Ichira Kivuka who was marked as PW2.
31. PW 2 was duly sworn and upon introduction adopted his witness statement dated 29.07.2020 as his evidence-in-chief.
32. PW 2 testified that he was a witness in the Agreement For Sale dated 14.04.2004 between the Appellant and the Respondent and was no involved in the second Agreement For Sale.
33. On cross-examination, PW2 testified that was the author of the Agreement For Sale dated 14.04.2004.
34. PW 2 admitted that the particulars of the parties and their identification card numbers were missing as well as the particulars of the property on sale.
35. On being re-examined, PW2 testified that the first Agreement For Sale dated 14.04.2004 had his name at the back.
36. At the end of this re-examination, PW 2 was discharged from the witness box and the Appellant closed their case before the Trial Court.

Respondent's Testimony & Evidence Before The Trial Court

37. The Respondent's first witness before the Trial Court was Respondent himself who was marked as DW 1.
38. Upon being sworn in and a brief introduction, the Respondent adopted his witness statement as his evidence in chief.
39. The Respondent produced as Defence Exhibit 1 an Application dated 11.11.2019.



40. The Respondent sought for an Order for removal of a caution placed by the Appellant on the property known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/670 and costs.
41. On cross-examination, the Respondent testified that he did not know about the two Agreements For Sale and had never sold any property to the Appellant.
42. There was no re-examination and the Respondent was discharged from the witness box and closed their case.
43. The Trial Court then directed parties to file their submissions which directions were compiled by the Appellant filing his submission dated 17.06.2022 while the Respondent's submissions are dated 22.06.2022.

Proceedings Of The Present Appeal

44. The Appeal was certified ready for hearing on 9th June, 2025 and parties were directed to canvass the same through written submissions.
45. The parties complied with the Appellant filing his submissions dated 26th June, 2025 while the Respondents had filed their written submissions dated 3rd July, 2025.
46. The Court has perused the pleadings filed by the parties, the testimonies of the parties and their witnesses, the documentary evidence and the final submissions herein and identify the following issues for determination: -

Issue No. 1 - Whether The Trial Court Was Justified In Dismissing The Suit For Being Time Barred Despite Leave Having Been Issued To Enlarge Time Prior To Filing Of The Suit?

Issue No. 2-whether There Was A Valid Agreement For Sale Of The Suit Properties To The Appellant?

Issue No. 3-whether The Appellant Is Entitled To The Orders Sought In The Plaint?

Issue No. 4 - Whether The Appeal Is Merited Or Not?

Issue No. 5 - Who Shall Bear The Costs?

47. This being the first appellate court, the extent of this Court's jurisdiction in handling the present Appeal was explained in the case of *Selle & Another vs Associated Motor Boat Co. Ltd & Others* (1968) EA 123 as follows:-

“ A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”

48. This Court therefore is under a duty to look into the pleadings filed before the Trial Court, the testimonies tendered by the witnesses as well as the evidence adduced therein and make its own conclusion, but it must bear in mind that it did not have the opportunity of seeing and/or hearing the witnesses first hand.



Issue No. 1 - Whether The Trial Court Was Justified In Dismissing The Suit For Being Time Barred Despite Leave Having Been Issued To Enlarge Time Prior To Filing Of The Suit?

49. The Appellant has averred that he filed an application for leave to file suit out of time and obtain said leave prior to instituting the suit in the Sub-Ordinate court.

50. The Appellant produced the order dated 26th November, 2019 which reads:-

“ 1. Leave to enlarge time be and hereby granted to the Applicant to file suit for specific performance, eviction and injunction on land parcel numbers Eldoret Municipality/ Block 21 (King’ong’o)/671 measuring approximately ¼ of an acre and Eldoret Municipality/Block 21 (King’ong’o)/670 measuring ¼ of an acre respectively.

2. Costs be in the cause.”

51. The law permits for enlargement of time for filing suits which are statute barred and on conditions that must be fulfilled before leave to file suit out of time can be granted which conditions can be found from Sections 22 to 28 of the Limitation of Actions Act.

52. This power to extend time is discretionary and not fettered save that it should be exercised judiciously and upon defined principles of law.

53. The argument by the Respondent the extension of time can only be done with consent of the parties is erroneous and misleading.

54. However, the fact remains that leave was granted to the Appellant to file his suit out of time, and the bar on limitation could not therefore act as a Defence since the Court had before the commencement of the suit in the Trial Court granted leave to the Appellant to file it.

55. The leave so granted was very clear as to the relief the Appellant had been allowed to seek which is what the Appellant actually sought before the Trial Court.

56. The Trial Court however struck out the Appellant’s suit for being time barred despite leave having been granted to file the suit out of the time limit prescribed in the Limitation of Actions Act.

57. There are no reasons given in the Judgment of the Trial Court explaining why it had decided to ignore the order enlarging time given by Hon. S. Wewa on 20th December, 2019.

58. Consequently, the substantive claim before the Trial Court having been filed with leave was properly before Trial Court and should not have been dismissed as time barred.

Issue No. 2 - Whether There Was A Valid Agreement For Sale Of The Suit Proeprieties To The Appellant?

59. On whether the there was a valid agreement for the sale of the suit property, Section 38 of the Land Act has this to say on validity of contracts for sale of land:-

38. Validity of contracts in sale of land

1. Other than as provided by this Act or by any other written law, no suit shall be brought upon a contract for the disposition of an interest in land—

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 to by a witness who was present when the contract was signed by such party.
60. This provision is a replica of Section 3(3) of the *Law of Contract Act*, which also requires that a suit based on a contract of disposition of interest in land can only be entertained if the contract is written, executed by the parties and attested.
61. The Appellant in his pleadings before the Trial Court sought to rely on the Agreements for Sale dated 15.04.2004 and 19.09.2004.
62. The Court has taken a keen interest in the Agreement for Sale dated 15.04.2004 and 19.09.2004 between the parties herein and notes that the properties which were being sold have not been prescribed in both Agreements.
63. In the Agreement for Sale of 15.04.2004, it describes the Plot for sale to be in Kahoya while the Agreement for sale dated 19.09.2004 describes the Plot to be at Kahoya Shopping Center.
64. It is common knowledge that the area known as Kahoya is different from the area known as King'ong'o within Uasin Gishu County.
65. This Court therefore has no basis to connect the purported Agreement for Sale dated 15.04.2004 and 19.09.2004 to the suit properties before the Trial Court.
66. The Appellant sought to further rely on a letter from the chief dated 29.07.2008 together with an Application Form to the Land Control Board as one of the grounds in granting ownership to the Respondent.
67. However, Court having made a finding that the Agreements for sale dated 15.04.2004 and 19.09.2004 did not describe the suit properties to be those on sale, then the letter dated 29.07.2008 done by the Assistant Chief Kapsaos Sub-location was misleading in terms of the properties being transacted and in particular LR.NO. Eldoret Municipality Block 21 (Kingongo)/671.
68. Similarly, the Application for Consent presented to the Land Control Board which the Appellant also sought to rely upon was misleading in terms of the description of the property to be transferred as there is no Agreement for Sale between the two parties relating to the property known as LR.NO.Eldoret Municipality Block 21 (Kingongo)/671.
69. In other words, this Court is of the considered view and finding that there were no legal Agreements for Sale relating to L.R. No. Eldoret Municipality Block 21(Kingongo)/671 and 670 between the parties herein.

Issue No. 3 - Whether The Appellant Is Entitled To The Orders Sought In The Plaint?

70. The next issue for consideration is to determine whether the Appellant herein is entitled to the reliefs sought in the Plaint.
71. The Appellant sought for an order of Permanent Injunction restraining the Respondent from entering, trespassing and/or occupying the suit properties known LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670.



72. Based on the determination in issue no. 2 hereinabove, the Court made a finding that there were no Agreement for Sale between the Appellant and the Respondents as regards the two disputed properties.
73. Consequently, in the absence of any legal rights lawfully acquired by the Appellant, the Court has no basis to issue a permanent injunction against the Respondent who is the lawful owner of the suit properties.
74. The Appellant's second prayer in the Plaint is an order of eviction against the Respondent from LR.NO.Eldoret Municipality Block 21(Kingongo)/670 while the third prayer is for an order of vacant possession over the said portion of land.
75. As to the prayer of eviction and vacant possession, the Court is of the considered view and finding that there is no basis to issue an eviction order against the lawful owner who is the Respondent and/or interfere with the Respondent's occupation and use which he is entitled to under Section 24 of the [Land Registration Act](#), No. 3 of 2012.
76. Prayer (d) is for a mandatory order of specific performance compelling and/or directing the Defendant to effect transfer of LR.NO.Eldoret Municipality Block 21 (Kingongo)/671 and 670 in his favour, and in default thereof, he sought at prayer (e) for an order directing the executive officer or Eldoret Chief Magistrate's Court to do so.
77. As to prayer (d) of the Plaint, the Appellant failed to establish any legal rights based on the two Agreements for sale dated 15.04.2004 and 19.09.2004 as relates to the suit properties capable of being enforced by this court through a mandatory order of specific performance against the Respondents.
78. In essence therefore, there is also no basis within which this Court can direct the Executive Officer, Eldoret Chief Magistrates Court to execute any transfer documents alienating the property from the Respondents to the Appellant based on the two Agreements for Sale dated 15.04.2004 and 19.09.2004.
79. The Appellant also sought for damages in the nature of mesne profits in respect of LR.NO.Eldoret Municipality Block 21 (Kingongo)/670 which he claims is yet to take vacant possession of.
80. On the issue of damages by way of mesne profits due to unlawful occupation by the Respondent on the suit properties, the Court is of the view that this claim is unjustified and misplaced as the Appellant has no proprietary rights over the suit properties which can be deemed to have been interfered with hence and award of mesne profits.

Issue No. 4 - Whether The Appeal Is Merited Or Not?

81. The first issue regarding the present appeal is whether the Trial Court was correct in dismissing the entire suit on the basis that it was time barred.
82. In Issue No. 1 hereinabove, this Court confirmed that the Appellant had obtained leave to file his claim out of time.
83. The Trial Court was never served with any Order Setting Aside that leave and there was no demonstration that the Appellant filed the proceedings outside the terms and conditions of the leave granted.
84. Consequently, the issue of whether the claim was time barred or not was not for determination by the Trial Court as this had already been settled.



85. The Trial Court therefore misdirected itself by issuing a conflicting decision to the effect that the suit was time barred yet there was a valid order which had granted leave to the Appellant to file the suit out of time.
86. On that basis, this Court therefore exercises its supervisory jurisdiction and sets aside the Judgment dated 18.08.2022 in the proceedings known as Eldoret Chief Magistrates Court Elc No. 96 OF 2020 forthwith.
87. The second issue is whether the Appellant case against the Respondent contained in the Plaint dated 29th July, 2020 is merited or not.
88. Based on the determination in Issued No. 2 hereinabove, this Court is of the considered view that the Plaint dated 29th July, 2020 is not merited and the orders therein cannot be granted.
89. The Appeal therefore partially succeeds.

Issue No. 5 - Who Shall Bear The Costs?

90. With regards to costs, the general rule is that costs follow the events.
91. The Appellant has partially succeeded in setting aside the dismissal order but has failed to prove his claim under the Plaint dated 29th July, 2020.

Conclusion

92. In conclusion, this Court hereby makes the following final orders in determination of the present Appeal; -
 - A. The memorandum of appeal dated 15th september, 2022 is partially allowed.
 - B. That the judgement and decree pronounced on 18.08.2022 in the proceedings known as eldoret chief magistrates court elc no. 96 of 2022 be and is hereby set aside.
 - C. That the plaint dated 29th july, 2020 be and is hereby dismissed with costs in favour of the respondent.
 - D. That appellant is granted costs of this appeal only.

DATED, DELIVERED & SIGNED VIRTUALLY AT ELDORET ELC ON THIS 18TH DAY OF SEPTEMBER 2025.

EMMANUEL.M. WASHE

JUDGE

In The Presence Of:

Court Assistant: Mr. Brian

Advocates For The Appellant: Mr. Isiji

Advocates For The Respondents: Mr. Ndonga Holding Brief For Mr. Mbuthia For Respondent

