



**Santur v Ogle (Environment and Land Civil Appeal E005 of 2024)  
[2025] KEELC 6223 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6223 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT AND LAND CIVIL APPEAL E005 OF 2024  
JM MUTUNGI, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**ABDI ADOW SANTUR ..... APPELLANT**

**AND**

**AMINA SALAT OGLE ..... RESPONDENT**

*(An Appeal from the Judgment/Decree of the Chief Magistrate's Court Garissa, Hon. T. M. Mwangi (CM) delivered on 17th October 2024 in Garissa ELC No. 12 of 2021)*

**JUDGMENT**

1. This Appeal is against the Judgment/Decree of Hon. T. M. Mwangi, Chief Magistrate delivered on 17<sup>th</sup> October 2024 in Garissa C. M. ELC No. 12 of 2021. In the suit before the Magistrate's Court the Respondent who was the Plaintiff had sought inter alia an Order of Permanent injunction against her former husband, the Appellant [Defendant] with whom she had divorced in July 2021, restraining him from selling and/or alienating or trespassing on plot No. Bulla Bashal measuring 50ft by 100ft also known as plot No. 162 situated in Ishadek location, Garissa County. The Respondent contended the plot was matrimonial property on which she and the Appellant had resided with their children for 20 years. The Appellant in his defence admitted he and the Respondent had been married but they divorced on 18<sup>th</sup> July 2021 and that during their marriage they were blessed with 5 children. He however denied the Respondent's allegations as per the Plaintiff.
2. After hearing evidence from the parties, the Learned Trial Magistrate held that the suit property was joint matrimonial property of the Appellant and the Respondent the same having been acquired during the subsistence of the marriage. The Trial Magistrate entered Judgment in favour of the Respondent in the following terms:-
  1. A declaration is made that Plot No. Bulla Bashal also known as Plot No. 162 situated in Ishadek location, Garissa County is matrimonial property of both Plaintiff and Defendant.



2. An order of permanent injunction is granted to restrain the Defendant, his servants or agents from selling, disposing off, evicting or from in any other way interfering with the Plaintiff's possession, use and enjoyment of Plot No. Bulla Bashal also known as Plot No. 162 situated in Ishadeg location, Garissa County.
  3. There shall be no orders as to costs.
3. The Appellant dissatisfied and aggrieved by the Judgment has appealed to this Court and has vide the Memorandum of Appeal dated 5<sup>th</sup> November 2024 set out 6 grounds of Appeal as follows:-
1. The Learned Magistrate had no jurisdiction to hear and determine ELC No. 12 of 2021 commenced by a Plaint dated 4<sup>th</sup> August 2021.
  2. The Learned Magistrate should have struck out the Plaint and dismissed the suit as the Plaint disclosed no reasonable cause of action against the Appellant.
  3. The Plot No. Bulla Bashal also known as Plot No. 162 situated at Ishadeg Location, Garissa County neither belong to the Respondent as alleged by the Learned Magistrate nor was it a family land as it is the Appellant who bought it single handily.
  4. The Learned Magistrate should not have ignored the evidence which was to be given by the Land Surveyor who was not given any opportunity to address the Court on rightful owner of the land in question.
  5. That the Learned Magistrate erred in law and in facts by ignoring the facts that a divorcee with children from another man cannot inherit the land from a former husband as per Islamic Sheria Law.
  6. That according to the evidence of the Respondent that the said land is matrimonial home is immaterial and baseless and consequently the Respondent had no locus standi in the suit land and her claim should have been dismissed.
4. The Appellant thus prayed that the Appeal be allowed and that the Judgment be set aside and the Respondent be ordered to pay the costs of the Appeal.
5. This being a first Appeal this court is obligated to reevaluate the evidence adduced before the Lower Court to satisfy itself whether or not the decision reached by the Lower Court was justified having regard to the evidence. This was in keeping with the principle established by the Court of Appeal in the Case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123 where the Court stated:-
- “An Appeal to this Court from a trial by the High Court is by way of a retrial and the principles upon which this Court acts in such an Appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound to follow the Trial Judge's findings of fact if it appears that either, he clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence on the case of generally [*Abdul Hameed Saif v Ali Mohamed Shalon* [1955]22 EACA 270]”
6. The Appellant and the Respondent argued the Appeal through written submissions. The Appellant argued the Learned Magistrate erred in his evaluation of the evidence and faulted the Learned



Magistrate for failing to find the suit property belonged to the Appellant as he is the one who held the plot card in his name. The Appellant further submitted the Learned Magistrate erred in assuming jurisdiction in a matter where it was the Kadhi's Court that had jurisdiction. The Appellant further argued the land had never been matrimonial property and the Trial Magistrate erred in finding it was and issuing a permanent injunction restraining him from dealing with his own property.

7. The Respondent for her part submitted the Lower Court properly appraised the evidence and rightly held the suit property constituted matrimonial property. She argued the grant of a permanent injunction against the Appellant was justified and urged that the Appeal be dismissed.
8. In the suit before the Magistrate's Court there was no dispute that the Appellant and the Respondent were married and were husband and wife until 18<sup>th</sup> July 2021 when they divorced. The Appellant and the Respondent had children and they were living together with the children in the plot the subject matter of the suit until they separated after the divorce. The Appellant's evidence before the Lower Court affirms this position. Inter alia the Appellant stated in his evidence as follows:-

“ --- We bought plot in year 2001. We have lived in the suit plot from 2002 to 2021 as a man and wife. While living in the suit plot we begot two children one of them died but one is alive. Currently it is the Plaintiff and our child who is in Form three who are living in the suit plot. I am the one who bought the suit plot. I separated with the Plaintiff in year 2021. I stopped living with the Plaintiff in year 2021 when she filed this suit.”

9. It is therefore clear and evident that before the divorce the Appellant and the Respondent were using the suit property as their matrimonial home. The Appellant has argued that the Magistrate's Court lacked jurisdiction and that it was the Kadhi's Court that had jurisdiction. The jurisdiction of the Kadhi's Court is limited to the determination of questions of Muslim Law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim Religion and submit to the jurisdiction of the Kadhi's Courts. In the instant matter the suit was filed after the parties had divorced and it was not an issue of inheritance that was before the Court but rather the ownership and/or distribution of what was otherwise matrimonial property. It is my finding that the Magistrate's Court was properly seized of jurisdiction and rightly entertained the matter.
10. Section 6[1] of the *Matrimonial Property Act*, 2014 defines matrimonial thus:-
  1. For the purposes of this Act, Matrimonial property means:-
    - [a] the matrimonial home or homes;
    - [b] household goods and effects in the matrimonial home or homes; or
    - [c] any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
11. The property the subject matter of this Appeal was without doubt acquired by the Appellant and the Respondent during the subsistence of their marriage and therefore constituted matrimonial property within the meaning of Section [1][c] of the Act. The property was therefore a joint matrimonial property and pending distribution no one party had the right to exclude the other from the property. The Appellant in the premises had no right to sell the suit property without the concurrence of the Respondent and in the same vein could not evict the Respondent from the property as she had a proprietary interest in the property. Section 93 of the *Land Registration Act*, 2012 provides as follows:-
  93. Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the Co-ownership and use of both spouses, such property shall be



deemed to be matrimonial property and shall be dealt with under the *Matrimonial Property Act* [cap 152].

12. The Learned Trial Magistrate in my view correctly evaluated the evidence and the applicable Law and there is no basis upon which I could fault his decision. I accordingly uphold his decision and dismiss the Appeal for lack of merit. Considering this was a family dispute between husband and wife [now divorced], I make no order for costs and consequently each party shall bear their own costs of the Appeal.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

