



**Khaniri v Amugotso & 5 others (Environment and Land Appeal E010 of 2023) [2025] KEELC 4562 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4562 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT AND LAND APPEAL E010 OF 2023**

**E ASATI, J  
JUNE 12, 2025**

**BETWEEN**

**WILSON KHANIRI ..... APPELLANT**

**AND**

**RAEL AMUGOTSO ..... 1<sup>ST</sup> RESPONDENT**

**FREDRICK LIDAVA ..... 2<sup>ND</sup> RESPONDENT**

**NIXON MUNYASA ..... 3<sup>RD</sup> RESPONDENT**

**JOHNSON MARTINI ..... 4<sup>TH</sup> RESPONDENT**

**MICHAEL MODULE ..... 5<sup>TH</sup> RESPONDENT**

**EMILY KIDAGWA ..... 6<sup>TH</sup> RESPONDENT**

*(Being an appeal from the judgement of the Honourable S.O. Ongeri SPM at Vihiga Law Courts in MELC No. E029 of 2021 Delivered on 31st October, 2023)*

**JUDGMENT**

**Background**

1. A brief background of the appeal herein is that the Appellant was the Defendant in VihigaPMC ELC NO. E029 of 2021 wherein he had been sued by the Respondents herein vide the Complaint dated 16<sup>th</sup> February, 2021.
2. The subject matter of the suit was a parcel of land known as L.R. NO. Tiriki/Serem/951 which the Respondents claimed was registered in the name of the 1<sup>st</sup> Respondent as proprietor and on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents pursuant to a Grant issued and confirmed in Hamisi PMC SUCC C. NO.19 OF 2017.



3. The Respondents' complaint against the Appellant in the suit was that the Appellant had entered and remained in the premises on the permission and license of the original registered owner one Joash Aduvaga Muhavani deceased husband to the 1<sup>st</sup> Respondent and father to the other Respondents and had forcefully retained the premises with the intention of dispossessing the Respondents and appropriating the property in a manner not known to the law.
4. The Respondents therefore sought for orders of eviction of the Appellant from the suit land, a permanent injunction restraining him from interfering with the suit land, costs of the suit and mesne profits.
5. The record shows that in response to the claim, the Appellant filed a defence and counterclaim dated 22<sup>nd</sup> July, 2021. The Appellant denied the Respondents' claim and vide the counter claim claimed that he had acquired title to the suit land by adverse possession. He sought for a declaration that the 1<sup>st</sup> Respondent held title to the suit land in trust for him, an order that registration of the 1<sup>st</sup> Respondent as proprietor of land parcel No. Tiriki/Serem/951 be cancelled, that the Respondents be ordered to transfer the suit land to him and costs of the suit.
6. The record of appeal shows that the suit was heard before the trial court which vide the Judgement delivered on 31<sup>st</sup> October, 2023 found that the Plaintiffs had proved their case, allowed the prayers they sought and dismissed the counterclaim.

### **The Appeal**

7. Aggrieved by the Judgement, the Appellant filed the present appeal vide the Memorandum of Appeal dated 3<sup>rd</sup> November, 2023 seeking for orders that;
  - i. The appeal be allowed;
  - ii. The decision of the trial Magistrate delivered on 31<sup>st</sup> October, 2023 be set aside and/or varied.
  - iii. The Appellant's counterclaim be allowed.
  - iv. The Respondents be condemned to pay the costs of this appeal and the costs in the lower court.

### **Submissions**

8. Vide directions given on 10<sup>th</sup> March, 2025 the appeal was heard by way of written submissions.
9. Written submission dated 25<sup>th</sup> March, 2025 were filed on behalf of the Appellant by the firm of Nandwa & Company Advocates, Counsel submitted that the Appellant had pleaded that the original owner of the land being Joash Aduvaga Muhavani committed fraud by fraudulently presenting the title deed of land parcel number Tiriki/Serem/151 instead of Tiriki/Serem/951.
10. That the 1<sup>st</sup> Respondent confirmed a grant and acquired title to a parcel of land that she does not use and had not been in the deceased's use or occupation for over 20 years. That this was an illegality and a corrupt scheme as the Appellant was not invited to the Succession Cause.
11. That the 1<sup>st</sup> Respondent's knowledge of the loan and subsequent sale of the property is too overwhelming to simply consider her as a current bona fide proprietor. That she was aware and participated in the fraud.
12. That the Appellant met the requirements upon which a title to land can be impeached. That the purchasers on the commercial property were all bona fide purchasers for value as the auction and subsequent sale were all lawful processes.



13. The Appellant invited the court to apply the maxim that equity will suffer no loss without a remedy and submitted that the fraud perpetrated by the Respondents and one Joash Aduvaga Muhavani should be remedied once and for all. That the court was asked to quash the illegalities, fraud, corrupt scheme through which Joash Aduvaga Muhavani retained his name on the title which has subsequently been transferred to his heirs.

That the Appellant was entitled to the prayers in the counterclaim.

No submissions were filed by the Respondents.

#### **Grounds of Appeal/Issues for determination**

14. From the entire record and grounds of appeal and the submissions made, the following emerge as the issues for determination;
- a. Whether or not the trial court erred in dismissing the counterclaim
  - b. Whether or not the trial court failed to analyse the evidence placed before it correctly.
  - c. Whether the trial Court failed to consider the submissions and authorities placed before it.
  - d. Whether or not the Respondents' claim was time-barred.
  - e. Whether or not the decision of the trial court was contrary to natural justice or has led to miscarriage of justice.

#### **Analysis and Determination**

15. This being a first appeal, this court is under a duty to reconsider and analyze the evidence adduced before the trial court and arrive at its own independent conclusion as in the case of *Selle and another vs Associated Motor Boat Company Ltd and others* 1968 E.A 123 that:

“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 that it has never seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not- necessarily bound to follow the trial court's findings of fact if it appears either that 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 in the case generally.”

16. The record shows that the evidence placed before the trial court by the Appellant comprised of his own testimony, the exhibits he produced and the testimony of DW.2.
17. The Appellant adopted the contents of his witness statement dated 22<sup>nd</sup> July, 2021 as his evidence in chief. He had stated in the witness statement that land parcel number Tiriki/Serem/951 was subject of a charge by M/S Kenya Commercial Bank – Kericho Branch. That the land was initially registered in the name of Joash Aduvaga Muhavani – deceased.
18. That Joash Aduvaga Muhavani took a loan but misled the Bank in presenting the property as land parcel No. Tiriki/Serem/151. That while the charge document indicated land parcel No. Tiriki/Serem/151, the actual property on the ground was land parcel number Tiriki/Serem/951. That the



bank valuation for the loan was done on land parcel No. Tiriki/Serem/951 which has the structure that was actually valued.

19. The bank sold the property to Ezekiel Indeje Aluhoyo, deceased, who later on sold the same property to the Appellant's father one Newton Nicodemus Khaniri. That when the mistake was discovered, M/s Mukele Advocates wrote a letter to Joash Aduvaga Muhavani requesting that he relinquishes the correct property.
20. That since he purchased the property, the Appellant's father used the land till his death when the Appellant took over. That the suit land was commercial land at Serem Market while land parcel No. Tiriki/Serem/151 is a residential land where the Respondents stay. That he had used the suit land from the year 1996 to date.
21. The record shows that the Appellant produced certificate of sale, letter dated 14<sup>th</sup> April, 1998, letter dated 5<sup>th</sup> June, 1994, valuation report, Agreement of sale and Grant of Letters of Administration as exhibits.
22. On cross-examination he stated that he was not aware whether there were any legal proceedings instituted by Ezekiel Indeje and Kenya Commercial Bank regarding the suit property. That he did not know who the registered owner of the suit land was in 2017 when he took over the land. That Ezekiel had bought the land from the bank in the year 1984.
23. DW2 one Fred Alukungu Indeche testified that his father bought the land from Kenya Commercial Bank which he later sold to Khaniri. That the property was at Serem Market. That parcel number Tiriki/Serem/151 had been in his father's name.
24. The record shows that on behalf of the Respondents, only the 1<sup>st</sup> Respondent testified as PW1. She adopted the contents of her witness statement dated 16<sup>th</sup> February, 2021 as her evidence in chief. She had stated in the witness statement that Joash Aduvaga Muhavani deceased was her husband. That he was the registered owner of land parcel known as LR NO. Tiriki/Serem/951 situated at Serem Market in Hamisi sub-county. That the land had an old building constructed by her husband in 1980.
25. That through succession cause No.19 of 2017 at Hamisi Court, she succeeded the estate of her husband subsequent to which she was registered as proprietor of the suit land in trust for the 2<sup>nd</sup> to 6<sup>th</sup> Respondents who are her children with the deceased.
26. That the Appellant is in occupation of the premises where he runs bar business. That her husband told her that he allowed Khaniri family to use the premises because Khaniri was his brother-in-law.  
That nobody raised objection to the succession proceedings.
27. That as Administrator of the estate of her deceased husband and current proprietor of the land over which she holds a title deed, she wants the Appellant out of the land. That she had served the Appellant with the required notice but he had ignored.
28. That the Appellant had even started constructing extensions to the building and within the premises as if the land belongs to him.
29. The record shows that the 1<sup>st</sup> Respondent produced documents as exhibits including certificate of Confirmation of Grant in Succession Cause No.19 of 2017, copy of the deed and copy of search.
30. The record shows further that the 1<sup>st</sup> Respondent testified further and stated that her late husband had secured a loan with parcel numer Tiriki/Serem/951, that the loan was Kshs.100,000/- that there was a balance of Kshs.40,000/-. That the bank claimed the balance was Kshs.70,000/- and sold the shop



which is Tiriki/Serem/951 to Ezekiel Indeche in 1984. That then Ezekiel sold to Nicodemus Khaniri who was the father of the Appellant.

31. That when Ezekiel realized that he had bought the wrong land, he sold it to Nicodemus. That the sons of Nicodemus used force to occupy the land. That they only paid Kshs.15,000/- to the bank and that they used the police to dispossess them and that police evicted them from the property.
32. That she was not happy that they had taken the shop from her. That she offered to give them money but that they rejected it. That land parcel No.151 was in the name of Nicodemus Khaniri that the Appellant should be evicted from parcel No.951.
33. On cross-examination, the Respondent stated that her husband secured the loan with parcel Number 151. That she stays on parcel No.236.

That her husband did not give title deed to No.951 as security.

**The first Issue for determination is whether or not the trial court erred in dismissing the Counterclaim**

35. The counterclaim sought for a declaration that the 1<sup>st</sup> Respondent held land parcel No.951 in trust for the Appellant, an order that the registration of the 1<sup>st</sup> Respondent be proprietor of land parcel No.951 be cancelled, that the 1<sup>st</sup> Respondent as ordered to transfer land parcel No.951 to the Appellant and in default the Executive Officer of the court to execute all transfer documents to effect the transfer and costs of the suit.
36. The record of appeal shows that the trial court found that the Defendant was telling court to rewrite the certificate as done on 4<sup>th</sup> June, 1984 and find that the land sold was No.951. That the court could not amend the certificate of sale.

The Appellant faults the trial court for this finding.

37. In Kenya, land is described and identified by parcel number as registered and proof of ownership is by production of title documents. Under section 26 of the *Land Registration Act*, certificate of title issued by the Land Registrar upon registration is prima facie evidence of ownership. The certificate of title that the appellant holds is in respect of land parcel No. 151. Certificate of sale dated 4<sup>th</sup> June, 1984 showing the sale of the land by the Auctioneers on behalf of the bank to Hezekiah Indeje Aluhoyo was in respect of land parcel No. Tiriki/Serem/151. There is no dispute that parcel No.151 was subsequently registered in the name of said Ezekiel Indeje who subsequently transferred it to Nicodemus Khaniri the father of the Appellant.
38. If there was any deception or misleading, it happened at the time of charging the property. The same was never corrected. The bank filed no suit against its borrower the deceased. The certificate of sale remained intact to date as the document that divested the deceased of the land and transmitted it to the buyer and ultimately to the appellant's father.
39. I find that on the basis of the evidence placed before the trial court, there was no basis for allowing the counterclaim. The Appellant's father bought parcel No.151 which is the land still registered in his name.



**The next ground of appeal is whether or not the trial court failed to analyse the evidence placed before court correctly.**

40. It was not pointed out what aspects of the evidence were left out. In respect of the 1<sup>st</sup> Respondents' evidence, the record shows that she clarified on re-examination that the charged property was No.151 which is registered in the Appellant's father's name. That she lives on land parcel No.236.
41. The valuation report showed that the land parcel No.151 belonged to Alubaka S/O Muhavani as at the time of the valuation.
42. In regard to the last issue that the decision of the trial court was against natural justice and that it led to miscarriage of justice, the documentation produced in court did not support the Appellant's claim for land parcel number 951. The valuation report relied upon by the Appellant to show that the land his father bought was the commercial property at Serem Market with a permanent building thereon being land parcel No.151. The valuation report indicated that the parcel measured 0.5 of an hectare.
43. The title deed held by the 1<sup>st</sup> Respondent for land parcel No. Tiriki/Serem/951 dated 4<sup>th</sup> October, 2018 produced by the 1<sup>st</sup> Respondent shows that parcel number 951 measure 0.05 Hectare.
44. I find that the Appellant did not prove his counterclaim before the trial court on the other hand, the 1<sup>st</sup> Respondent proved that parcel No.951 was part of the estate of her deceased husband that she undertook succession to that estate and the land was transmitted in her favour on behalf of the other Respondents.

I find that the trial court did not err in its findings and decision.

45. The appeal lacks merit and it hereby dismissed. The Appellant should pursue parcel No.151 in accordance with the documents he holds.

Each party to bear own costs of the appeal.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT VIHIGA AND DELIVERED THIS 12<sup>TH</sup> DAY OF JUNE, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Ajevi: Court Assistant.

Idi for the Appellant

Malanda for the Respondents.

