



REPUBLIC OF KENYA



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**Munya v Musyoka & 2 others (Environment and Land Appeal
E024 of 2022) [2025] KEELC 7113 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7113 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E024 OF 2022
EO OBAGA, J
OCTOBER 21, 2025**

BETWEEN

CATHERINE NDINDA MUNYA APPELLANT

AND

MAINGI MUSYOKA 1ST RESPONDENT

KANINI JOHN 2ND RESPONDENT

KIOKO JOHN 3RD RESPONDENT

(Being an appeal from the Judgment of the Honourable J. O. Magori Senior Principal Magistrate delivered on 4th May, 2021 in Makundu SPMCC No. 142 of 2015)

JUDGMENT

1. The Appeal herein relates to a plot measuring 20ft x 100ft at Kinyambu Market within Makueni County (suit property). The suit property was purchased by the Appellant from one Fundi Mulei Kilonzo on 4th August, 2008 at a consideration of Kshs.50,000/=. As at the time of purchase, the Appellant was cohabiting with John Muia Musyoka who later passed away on 1st March, 2015 (deceased).
2. The Deceased had his wife who died and was mother to the 2nd and 3rd Respondents. The 1st Respondent is elder brother to the deceased. During the Appellant's cohabitation with the deceased, there were two issues of the union. There arose differences between the Appellant and the deceased and it was mutually agreed that the two separate and any property which was jointly acquired by the two was to be shared between the two.
3. In the year 2011, a meeting was held at the offices of the chief Kinyambu location in the presence of relatives and elders from both sides. There were two sittings at the chief's camp at Kinyambu. On 20th



August, 2011 the Appellant and the deceased shared all that they had acquired jointly. The two were then allowed to live their separate ways.

4. After the demise of the deceased on 1st March, 2015, the Respondents came and prevented the Appellant from completing construction of the suit property. This prompted the Appellant to file a suit against them in which she sought the following reliefs:
 - i. A permanent injunction restraining the Defendants, their agents, servants or howsoever from interfering with the suit property or howsoever interfering with the Plaintiff's quiet enjoyment of the same.
 - ii. A declaration that the suit property belongs to the Plaintiff.
 - iii. Costs of this suit and interest.
5. The suit was heard before the lower court and in a judgment delivered on 4th May, 2021, the Appellant's suit was dismissed with costs. This is what triggered this appeal in which the Appellant raised the following grounds of appeal:
 1. The learned magistrate erred in law and in fact in making a decision which was not supported by evidence and making a judgment which was not properly reasoned.
 2. The learned magistrate erred in law and in fact in making findings on matters of marriage, when no witness was produced to prove the said existence of marriage and when neither the Kamba customary law nor the other forms of marriage recognized under the Kenyan laws were pleaded and proved.
 3. The learned magistrate erred in law and in fact in failing to take into account the provisions of the Law of Contract in regards to sale of land, as to who has the good title to the property between the buyer and the witness.
 4. The learned magistrate erred in law and in fact in making a decision based on the evidence of minutes of a meeting held at the Chief's office, in which the said evidence was not corroborated by the area Chief in question.
 5. The learned magistrate erred in law and in fact in admitting inadmissible evidence in the form of a chief's meeting minutes, purporting to distribute matrimonial property between the Plaintiff and the deceased.
 6. The parties present at the chief's office, lacked jurisdiction to hear and determine a divorce between the Plaintiff and the deceased.
 7. The findings of the meeting at the chief's office do not warrant to be termed as divorce proceedings.
 8. The learned magistrate erred in law and in fact in failing to take into account, the filing of a photocopy of the minutes taken down at the chief's office.
 9. The learned magistrate erred in law and in fact in making an order as to the cost of the suit be borne by the Plaintiff.
6. During the hearing before the lower court, the Appellant testified that she was the owner of the suit property having purchased it from Fundi Mulei Kilonzo. The Appellant stated that the Respondents had invaded the suit property and prevented her from accessing it with a view to carrying out



- renovations and finishing areas which had not been completed. The Appellant called Katili Makau who testified that he had been approached by Fundi Mulei Kilonzo to look for a buyer of the suit property.
7. On 4th August, 2008, he took the Appellant to the seller and an agreement was entered between the seller and the Appellant. One of the witnesses of the Appellant was the deceased. The seller acknowledge receipt of the purchase price. The sale agreement was also signed by the chief of Kinyambu Location.
 8. The Respondents' evidence during the hearing was that the Appellant and the deceased were cohabiting and had two children. When their cohabitation became untenable, the two agreed to go their separate ways and share what the two had acquired jointly. The 2nd Respondent testified that when the deceased was ailing, he called her and gave her copies of minutes which were recorded during the meetings at the chief's camp. The deceased told her that the suit property had been given to him during the sharing of the properties jointly owned with the Appellant.
 9. The parties were directed to file written submissions. The Appellant filed her submissions dated 19th March, 2025. As at the time of writing this judgment on 15th October, 2025, the Respondents had not filed their submissions.
 10. I have carefully gone through the proceedings before the lower court, the memorandum of appeal as well as the submissions by the Appellant. The duty of a first appellate court was set out in the case of *Selle –vs- Associated Motor Boat Company (1968) EA 123* as follows:

“An appeal to this court from a trial by the High Court is by way of 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 neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has 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”.
 11. There is no contention that he Appellant and the deceased were cohabiting and as a result of the cohabitation, there were two children born. There is also no contention that there was an agreement for the two to go their separate ways and share out what was jointly onwed by the two. The deceased had intended to convert the union into a marriage by paying dowry but this did not happen as there arose irreconcilable differences between the two.
 12. The only issue which arises for determination in this appeal is whether the suit property belongs to the Appellant. The Appellant was categorical during the meeting at the chief's camp that the properties which were being shared are the ones which had been jointly acquired during the cohabitation period. The Appellant produced a sale agreement dated 4th August, 2008 which shows that she was the sole purchaser of the suit property.
 13. During the meeting at the chief's office, the Appellant had stated that if there is any property which was jointly acquired with the deceased the same was to be shared equitably so that each could go their separate ways. The trial magistrate was alive to the fact that the agreement produced during the hearing showed that it is the Appellant who purchased the suit property but he went ahead to hold that as the Appellant had not raised any issue over that; then the same was properly given to the deceased.



14. The trial magistrate argued that the Appellant and the deceased were given opportunity to list the properties which were acquired jointly. He stated that both the Appellant and the deceased listed the suit property as having been acquired jointly. This was a misdirection by the trial magistrate. A look at the minutes shows that both the Appellant and the deceased listed four plots each. There was nowhere it was stated that all the properties listed were the ones which had been jointly acquired.
15. The Appellant was clear during the meeting that it is only properties which were found to have been acquired jointly which were to be subject of sharing. There is no evidence which was adduced before the elders that the sale agreement of 4th August, 2008 was brought to their attention. When the Respondents started interfering with the suit property, the Appellant filed a suit against them. In her evidence, she produced a sale agreement showing that she is the one who purchased the suit property. The deceased was only a witness.
16. It is therefore clear that the trial magistrate was wrong to find that the Appellant had not proved her case. There was absolutely no basis for the trial magistrate finding that despite the production of sale agreement of 4th August, 2008, the Appellant and the deceased had agreed that the suit property had been acquired jointly. The trial magistrate found that in all properties purchased by either, one of the partners became a witness of the other. It is therefore beyond comprehension why the trial magistrate ignored the fact that the deceased was a witness and not a co-owner holding that that was an arrangement between them.
17. The mere fact that the deceased moved to the suit property and lived there upon irregular allocation by the elders did not make it a property jointly acquired by the two.
18. Grounds 5, 6, 7 touch on the issue of marriage and distribution of matrimonial property. There is nothing which arose as to whether the Appellant and the deceased were married. The evidence which emerged is that they were cohabiting and that they had mutually agreed to separate and share properties jointly acquired.
19. The second Respondent in cross examination stated that the deceased gave her minutes of the proceedings before the chief on 26th December, 2014. He subsequently died on 1st March, 2015 and it is soon after the deceased's demise that the Respondents started interfering with the suit property.
20. I therefore find that the trial magistrate was wrong to dismiss the Appellant's suit. I allow the Appellants appeal, set aside the judgment of 4th May, 2021 and in place thereof make an order allowing the Appellant's suit as prayed in the plaint dated 30th April, 2015.

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF OCTOBER, 2025.

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HON. E. O. OBAGA

JUDGE

In The Presence Of:

Mr. Kasyoka for Appellant.

Mr. Mathuva for Respondent.

Court assistant Steve Musyoki

