



Olunge & 4 others (Suing on Their Behalf and Also as Office Bearers of Ufanisi Investment Group, and Also on Behalf of Members of Ufanisi Investment Group) v Urithi Houseing Co-operative Society Limited (Environment and Land Case E116 of 2024) [2025] KEELC 6968 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6968 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E116 OF 2024**

**EK MAKORI, J
OCTOBER 9, 2025**

BETWEEN

**EZEKIEL OBANDA OLUNGE 1ST PLAINTIFF
JULIUS NDOME KARINA 2ND PLAINTIFF
JANET WAIRIMIU NYANGATHIRI 3RD PLAINTIFF
GRACE GATHONI NGUGI 4TH PLAINTIFF
DAVID MWOYA KAMANGA 5TH PLAINTIFF
SUING ON THEIR BEHALF AND ALSO AS OFFICE BEARERS OF UFANISI
INVESTMENT GROUP, AND ALSO ON BEHALF OF MEMBERS OF UFANISI
INVESTMENT GROUP**

AND

URITHI HOUSEING CO-OPERATIVE SOCIETY LIMITED DEFENDANT

JUDGMENT

1. The matter proceeded through a formal proof because the Defendant, despite being served with the pleadings, failed to either enter an appearance or file a defense against the Plaintiffs' suit.
2. The Plaintiffs called their sole witness, Grace Gathoni Ngugi, PWI, who adopted the Statement dated November 8, 2024, as her evidence in chief and submitted additional documents listed in her list of documents dated November 8, 2024, as exhibits 1 to 7, to further support their case against the Defendant.



3. The brief testimony of the witness, PW 1, stated that they agreed with the Defendant through the agreement dated December 5, 2022, to transfer 81.5 acres of land to the Plaintiffs. This transfer was based on various Sale Agreements previously signed between the Plaintiffs and the Defendant—specifically, the agreement dated December 5, 2022, particularly clause 2.2, which specifies the acreage to be transferred within 90 days, as noted on page 15 of the Plaintiffs' pleadings. PW 1 also testified that the Defendant has failed to transfer the 81.5 acres owed to the Plaintiffs despite multiple demands. The witness further indicated that the parcels of land listed in their claim are registered in the Defendant's name. They have placed caveats on these parcels to protect the Plaintiffs' interests, except for two plots, Fundisa/Adu/Kanagoni/Kambicha/122 and Fundisa/Adu/Kanagoni/Kambicha/283, which have already been transferred to the Plaintiffs.
4. The Plaintiffs are thus claiming the remaining parcels of land to be transferred to them for further distribution among Ufanisi Investment Group members.
5. The witness further requests the Court to grant the relief sought in their plaint dated November 8, 2024.
6. The Defendant has neither filed a Defense nor a Memorandum of Appearance despite being served with the Plaintiffs' pleadings; as a result, the suit proceeded without defense.
7. The main issue this court must decide is whether the plaintiffs have proven their case on a balance of probabilities, especially considering that the Defendant, despite being properly served, failed to appear or defend, and who should bear the costs of the suit.
8. As stated, this matter underwent formal proof as held by Emukule J. in *Samson S. Maitai & Another v African Safari Club Limited and Another* [2010] KEHC 595 (KLR):

“I have not seen judicial definition of the phrase "Formal Proof". "Formal" in its ordinary Dictionary meanings - refers to being "methodical" according to rules (of evidence). On the other hand according to Halsbury's Laws of England, Vol. 15, para, 260, "proof" is "that which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry."

Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed is true, the burden passes to the other party who will fail unless sufficient evidence is adduced to rebut the presumption. In civil cases the court makes its decision on the "balance of probabilities". In criminal cases, a case must be proved "beyond reasonable doubt." For instance, to prove a debt is to establish a debt is due from a debtor, whether contractual as in this case, or out of bankruptcy.”

9. As shown through the Plaintiffs' pleadings and evidence at the formal proof hearing, the Plaintiff entered into agreements to sell land with the Defendant. The Plaintiffs paid the full consideration, but the Defendant has failed or neglected to transfer the suit properties to the Plaintiffs. The burden shifted to the Defendant to controvert the Plaintiffs' claim, but the Defendant was unable to enter an appearance or present a defense – leaving the Plaintiffs' claim unchallenged.
10. I am therefore satisfied from the evidence and documentary evidence presented at the hearing that the Plaintiffs have proved, on a balance of probabilities, their case as pleaded in the plaint, and the same is hereby granted as prayed.



DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 9TH DAY OF OCTOBER, 2025.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Okanga for the Plaintiffs

Happy: Court Assistant

In the Absence of

Defendant

