



**Odhoch v Raburu & 2 others (Environment and Land Appeal  
E002 of 2024) [2025] KEELC 6630 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6630 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND APPEAL E002 OF 2024**

**E ASATI, J**

**OCTOBER 2, 2025**

**BETWEEN**

**AMELEA TABITHA ODHOCH ..... PLAINTIFF**

**AND**

**JARED OCHIENG RABURU ..... 1<sup>ST</sup> RESPONDENT**

**PHILIP TITO OKOTH RABURU ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR KISUMU ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the Judgement of Hon. V. Ogutu (Senior Resident Magistrate)  
delivered on 16th February, 2024 in Chief Magistrate's Court Case No.ELC.475 of 2018)*

**JUDGMENT**

1. Vide the Memorandum of Appeal dated 6<sup>th</sup> March, 2024, the Appellant challenged the decision of Honourable V. Ogutu – Senior Resident Magistrate dated 16<sup>th</sup> February, 2024 in Kisumu CMCC NO.ELC 475 OF 2018 (the suit) and sought for orders that the appeal be allowed with costs, the judgement be set aside entirely and be replaced with a judgement allowing the claim of the Appellant as framed in Kisumu CMC ELC Number 475 OF 2018.
2. A brief background to the appeal as can be gathered from the record of appeal is that the Appellant was the Plaintiff in the suit wherein she filed the suit in her capacity as the legal representative and administratrix of the estate of one Edward Kangah Anyumba, deceased. She claimed that while the suit land parcel number Kisumu/Kochieng/2884 belonged to the deceased she had discovered that the suit land had long been fraudulently transferred in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The appellant therefore sought for orders of;
  - a. A declaration that the suit land Kisumu/Kochieng/2884 measuring 0.10 Hectare entirely belongs to the Plaintiff.



- b. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acquired the parcel of land No. Kisumu/Kochieng/2884 measuring 0.10 Ha fraudulently and unlawfully and the title thereof in their names be revoked.
  - c. An order of permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants of their own, their agents, servants and/or employees from trespassing onto, developing, alienating, disposing of, or in any other way interfering with the Plaintiff's quiet and peaceful use and occupation of the suit land herein designated as Kisumu/Kochieng/2884 measuring 0.10 Ha.
  - d. Costs of the suit.
3. The record shows that a Statement of Defence dated 23<sup>rd</sup> January, 2019 was filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants (Respondents herein). They denied the Appellant's claim and averred that they acquired the suit land lawfully.
  4. For the 3<sup>rd</sup> Defendant (the District Land Registrar, Kisumu) the record shows that a Statement of Defence dated 9<sup>th</sup> June, 2015 was filed vide which the 3<sup>rd</sup> Defendant/Respondent denied the Plaintiff's claim and averred that if any transfer and/or transaction was carried out in respect of the suit land, the same was done with utmost good faith and the laid down procedures were followed.
  5. The record shows that the suit was heard before the trial court which vide the judgement dated 2<sup>nd</sup> February, 2024 found no evidence of fraudulent activity by the Defendants in obtaining registration of the suit property. The court further found that the Appellant failed to prove her claim and consequently dismissed the suit with costs to the Respondent.

### **The appeal**

6. Aggrieved by the judgement, the Appellant filed the present appeal on the grounds that;
  - i. The learned trial Magistrate erred in law and fact in failing to find that the Respondents processed and secured title to the suit property Kisumu/Kochieng/2884 measuring 0.10 Hectares fraudulently when there was overwhelming evidence and material placed before her that sufficiently demonstrated that the title was obtained without due regard to the law.
  - ii. The trial Magistrate erred in law and fact in completely disregarding the evidence and material placed before her that clearly demonstrated that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purported to acquire the suit property herein unlawfully from a person who had no capacity to dispose off the property to them.
  - iii. That the learned trial Magistrate erred in fact and in law by failing to finally determine that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents grossly and unlawfully trespassed into and unlawfully interfered with the Appellant's quiet and peaceful use of the suit property and appropriate restraining orders ought to have been granted.
  - iv. The trial judge occasioned a travesty of justice by misapprehending the law and facts placed before her and failing to take into account the submissions placed before her by the Appellant.
7. Directions were taken by consent on the 4<sup>th</sup> March, 2025 that the appeal be heard by way of written submissions and timelines given for the parties to file and exchange their respective submissions.
8. On 26<sup>th</sup> May, 2025 when the date for judgement was given, time for filing submissions was extended for the parties. However, none of the parties filed their written submissions.



9. Direction 43 of the Court's practice directions provides for sanctions for non-compliance with, inter alia, directions given by a judge. The sanctions include dismissal of a matter for want of prosecution. As the parties herein failed to comply with the directions given by the court, and given that there are no submissions at all in support or in opposition of the appeal, the appeal herein is fit for dismissal for want of prosecution.
10. Be that as it may, if the court were to consider the merits of the appeal on the basis of the record of appeal dated 19<sup>th</sup> February, 2025, the issues for determination in the appeal are;
  - a. whether the trial court erred in failing to find that the Respondents processed and secured title to land parcel number Kisumu/Kochieng/2884 measuring 0.10 Ha fraudulently.
  - b. whether or not the trial Magistrate erred in failing to find that the Respondent had trespassed onto the suit land and interfered with the Appellant's quiet possession thereof.
  - c. whether or not the trial court misapprehended the facts and law placed before it by the Appellant.
  - d. costs of the suit.

### **Analysis and determination**

11. This being a first appeal the court has a duty to re-examine and reanalyse the evidence placed before the trial court in order to arrive at an independent conclusion. See *Gitobu Imanyara & 2 others –vs- Attorney General* [2016] e KLR.
12. The first issue for determination is whether the trial court erred in failing to find that the Respondent processed the title to the suit land fraudulently.
13. The Appellant's case as contained in paragraphs 4 to 9 of the plaint was that the suit land measuring 0.10 Ha was bought by the Appellant's father by the name of Edward Kangah Anyumba deceased from one Oswe Otieno also deceased. That the Plaintiff's father took possession of the purchased land and developed it with commercial buildings which were leased to third parties. That the Appellant later discovered that the suit property had long been transferred in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. That the transfer was fraudulent.
14. The Appellant pleaded the particulars of fraud in paragraph 9 of the plaint as;
  - a. acquiring Kisumu/Kochieng/2884 without any historical basis as all;
  - b. acquiring Kisumu/Kochieng/2884 through unlawful process;
  - c. Acquiring the suit land herein to be registered in their names unlawfully and irregularly;
  - d. Acquiring ownership of the suit land without any basis or foundation in law
  - e. Altering the relevant land register and document without following the proper procedure.
15. The proceedings taken before the trial court show that the Appellant testified as PW1. She relied on the contents of her witness statement as her evidence. On cross-examination, she stated that she had no sale agreement between Oswe and her father. That the agreement she had which was dated 27<sup>th</sup> November, 2014 was between the family of Oswe and herself and that she did not know whether they had Letters of Administration. She further stated that she did not know when Oswe died. The documents produced by the Appellant according to the list of documents dated 24<sup>th</sup> March, 2015 were Limited Grant of Letters of Administration, Death Certificate, agreement dated 27<sup>th</sup> November, 2014,



certificate of official search, green card, letters dated 11<sup>th</sup> November, 2014, 6<sup>th</sup> January, 2015 and 14<sup>th</sup> April, 2011, tenancy agreement dated 2<sup>nd</sup> February, 2013 and letter dated 14<sup>th</sup> November, 2006.

16. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents on their part the record shows that vide the statement of defence dated 3<sup>rd</sup> January, 2019 denied the claim. They also denied the allegation that the Plaintiff's father had ever had occupation of the suit land and averred that they occupied the land lawfully.
17. The trial court upon considering the pleadings and evidence placed before it found that the burden of proof that the Plaintiff and Appellant herein bore to prove fraud was not discharged. The trial court noted that there was no evidence tendered before court to prove that Oswe Otieno did not transfer the land to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or that the transfer was obtained by fraud.
18. Having read the entire record of appeal and particularly the testimony and exhibits of the Appellant, I agree with the trial court that there was no evidence placed before the court to prove fraud. The Plaintiff did not know when Oswe Otieno who is said to be the previous owner died. There was no evidence to prove or substantiate the particulars of fraud pleaded. The standard of proof for cases based on fraud is higher than proof on a balance of probabilities. See *Vijay Morjaria vs Nansingh, Madhusingh Darbar & another* [2000]eKLR where it was held that:

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”

19. The second issue for determination is whether or not the trial Magistrate erred in failing to find that the Respondent had trespassed onto the suit land and interfered with the Appellant's quiet possession thereof.
20. Having read the entire pleadings and evidence placed before the trial court, I find that trespass was not pleaded and not proved. Hence there was no basis for the trial court to find that the Respondents had trespassed onto the suit land and interfered with the Appellant's quiet possession thereof. It was not demonstrated how the 1<sup>st</sup> and 2<sup>nd</sup> respondents trespassed onto land registered in their names.
21. Regarding the third issue for determination which is whether or not the trial court misapprehended the facts and law placed before it by the Appellant, it has not been pointed out what aspects of the evidence or submissions the trial court misapprehended and whether or how that caused a miscarriage of justice.
22. I find no reason to interfere with the findings and decision of the trial court. The appeal lacks merit. The same is hereby dismissed.
23. As the Respondents filed no submissions, each party to bear own costs of the appeal.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:



Maureen - Court Assistant.

No appearance for the appellant.

Awuonda for the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

