



**Wesonga v Bukoma (Environment and Land Appeal E007 of 2025)  
[2025] KEELC 6796 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6796 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND APPEAL E007 OF 2025**

**EC CHERONO, J**

**OCTOBER 2, 2025**

**BETWEEN**

**GEORGE J SIFUNA WESONGA ..... APPELLANT**

**AND**

**GERISHOM SAURER BUKOMA ..... RESPONDENT**

**JUDGMENT**

1. This appeal arises from the judgment of Hon M.A Onyango in Bungoma CM-ELC Case No. 670 of 1999 in which George J. Sifuna Wesonga the Appellant herein was the Plaintiff while GERISHOM SAURER Bukoma, the Respondent herein, was the Defendant.
2. The suit before the trial court was instituted by the Appellant vide an undated plaint seeking the following orders;
  - a. That a declaration be issued that the portion of land measuring 86ft X 69ft X 83ft X 80 feet be hived out of parcel No. E. Bukusu/S. Kanduyi/2672 is the lawful property of the plaintiff-herein.
  - b. That an injunction be issued against the defendant stopping him, his personal representatives, heirs, or agents in the Estate of Fred Wetala Bukoma - deceased from evicting the plaintiff from the parcel of land known as E.Bukusu/S.Kanduyi/2672.
  - c. An order directing that the portion of land measuring 86ft X 69ft X 83ft X 80f to be hived out of the land parcel no. E.Bukusu/S.Kanduyi/2672 be registered in the full names of the plaintiff herein.
  - d. That the defendant be ordered to sign all relevant transfer documents on execution of the agreement dated the 30/7/1997 in default the court Admin to do so.
  - e. Costs and interest of the suit.



- f. Any other order that this Honorable court may deem fit and just in the circumstances of this suit.
3. The Appellant's case was that the Respondent is the Administrator of the Estate of the late Fred Wetala Bukoma-hereinafter referred to as "the Deceased". That on 30/07/1997, he purchased land measuring 86ft x 69ft x 83ft x 80ft to be hived out of E.Bukusu/S.Kanduyi/2672 measuring approximately 0.20 Ha belonging to the deceased for a consideration of Kshs. 415,000/=. That he paid Kshs. 408,568.95 leaving a balance of Kshs.6,435.05/= which was settled on 19/02/1998 and took occupation of the land. That prior to his death, the deceased had begun the transfer process. That the deceased had in the abovementioned sale agreement disposed of land parcel no. EAST Bukusu/SOUTH Kanduyi/3129 for Kshs. 84,000/=.
4. That for this particular transaction, he paid Kshs. 45,000/= on 27/07/2001 and defaulted in paying the remainder of the consideration leading to the deceased instituting a suit against him i.e. Bungoma Civil Case No. 670 of 1999 FRED Wetala Bukoma VS George J. Sifuna Wesonga which was settled vide a consent. That it was also agreed that in the event of default the remedy would be for execution of the unpaid amount and not rescission of the agreement. That he defaulted on his payments and eventually made the final payment for the agreement dated 30/07/1997 on May 2021. That the monies paid were received by the deceased's advocate J.S Khakula & Company Advocates.
5. He averred that as a result, he is a bonafide purchaser of parcel of land measuring E.Bukusu/S.Kanduyi/2672 measuring approximately 0.10 and a creditor for the estate of the deceased and ought to be recognised as such. That a judgment was delivered in respect of P & A No. 814 of 2018- Estate Of The Late Fred Wetala Bukoma-deceased on the 25th day of April, 2022 and the Court made no order as to parcel of land known as E.Bukusu/S.Kanduyi/2672. That he was dissatisfied with the said decision and preferred an appeal against the said judgment vide Bungoma H.c Civil Appeal No. E044 Of 2022 George J. Sifuna Wesonga Versus Gerishom Sauren Bukoma.
6. The Respondents filed his statement of defence and counter-claim dated 02/08/2024 where he denied the Appellant's claim and averred that the Appellant breached the terms of the agreement by disposing of land parcel no. EAST Bukusu/SOUTH Kanduyi/3129 to a third party hence breaching the agreement. That the Appellant did not have any attachable assets hence it was difficult to execute against the said breach. In his counter-claim the Respondent sought for the following orders;
- An order for eviction of the plaintiff from land parcel No. E.Bukusu/S.Kanduyi/24634
  - Mesne profits as the plaintiff has been receiving rent from the rental houses since 2004 the deceased passed on at a rate of Kshs. 10,000/= per month.
  - Removal of caution placed on land parcel No. E.Bukusu/S.Kanduyi/24634.
  - Permanent injunction against the plaintiff, assignees, agents or workers in any manner interfering with the rental houses on land parcel No. E.Bukusu/S.Kanduyi/24634.
  - Cost of the suit and interest.
7. The suit before the trial court proceeded by way of viva voce evidence with both the Appellant and Respondent calling one witnesses each.
8. PW1, George J. Sifuna Wesonga, sought to adopt his witness statement as his evidence-in-chief and produced the documents contained in his list of documents dated 10/09/2021as P-Exhibit1-11. He reiterated the averments contained in his plaint as summarized above and added that he had paid the purchase price in full as confirmed by the deceased's advocate. On cross examination, the witness stated



that he had agreed to purchase plot no. 1547 at Kshs. 60,000/= which amount he paid plus interest. That he also settled a loan amount that was secured using title to the said land and the deceased was to repay and discharge before he would transfer to him.

9. DW1 Gerishom Sauser Bukoma. The witness referred to his witness statement dated 30/09/2021 which he sought to adopt as his evidence-in-chief. He also referred to his list of documents of even date and produced as Exhibits. He testified that plot no.1547 was not included in the succession proceedings since it was not in the deceased name at the time. The defendant further stated that the plaintiff's agreement before court had been altered and that he had not stated how he made payment as per the said agreement. It was his contention that the deceased acknowledged receipt of transfer documents signed in his favour from the plaintiff for Land parcel No. 3129 but the plaintiff sold the said parcel of land to a third party while the said land was part of the consideration for the purchase of land parcel No. 2672. The defendant stated that the agreement between the plaintiff and his deceased father was null and void since the plaintiff breached the said agreement and this was confirmed in Bungoma CM 670 of 1999 where the plaintiff defaulted in payment.
10. Upon consideration of the issues before it, the trial court struck out the Appellant's case on the ground of want of jurisdiction and further dismissed the Respondent's counterclaim for want of proof.
11. Aggrieved by the trial court's decision, the Appellant preferred this appeal on the following grounds;
  - a. That the learned magistrate erred in law and in fact by striking out the case for lack of jurisdiction when, in fact, the court had jurisdiction to determine the matter it being a land dispute involving ownership of land parcel NO E.Bukusu/S.Kanduyi/2672
  - b. That the learned trial magistrate erred in fact and in law when she held that the right forum for the appellant to lay his claim to the suit land against the estate of FRED Watala Bukoma was in the succession cause no 814 of 2018 yet in an appeal emanating from the same, being high court appeal no E044 of 2022,it was held that the court with the requisite jurisdiction to determine the legal ownership of the suit land is the Environment And Lands Court.
  - c. That the learned trial magistrate erred in fact and in law when she failed to appreciate that succession cause no E814 of 2018 had dealt with the appellants claim over the suit land LR NO E Bukusu/S Kanduyi/2672 but failed to make any orders in respect to the same thereby affording him an opportunity to lodge a fresh suit over the same in accordance with the decision in civil appeal no E044 of 2022.
  - d. That the learned trial magistrate erred in fact and in law when she failed to consider the merits of the case which had overwhelming evidence demonstrating that the appellant is the legal owner in possession/beneficial/legal owner of the suit land LR NO E.Bukusu/S.Kanduyi/2672 or land formerly known as such.
  - e. That the learned trial magistrate misdirected herself when she failed to evaluate evidence on record thereby arriving at a wrong decision for the reason that she lacked jurisdiction over the dispute.
  - f. That the learned trial magistrate erred in fact and in law by abdicating her jurisdiction thereby infringing on the appellant's right to the suit land as the legal and or beneficial owner who has been in possession and user of the suit land LR NO E.Bukusu/S.Kanduyi/2672.
  - g. That the learned trial magistrate's finding that the appellant should have sought to be enjoined in the succession cause as an interested party in order to prove his interest in the suit land LR



NO E.Bukusu/S.Kanduyi/2672 was a misdirection since the appellant was a party to the said cause as an objector.

12. The Appellant sought to have the appeal allowed, the judgment of the trial court set aside and a judgment entered in terms of the plaint plus costs of both the primary suit and the appeal.
13. When this appeal came up for directions, the parties agreed to have disposed of by way of submissions.
14. The Appellant filed written submissions dated 31st May 2025, while the Respondent filed his submissions on 30th June 2025. I have duly considered the said submissions together with the facts and evidence as set out in the record of appeal.

#### **Analysis and determination.**

15. It is not in dispute that the Appellant herein entered into an agreement with the Respondent's father, one Fred Wetala Bukoma dated 30/07/1997 for the sale of 86ft x 69ft x 83ft x 80ft to be hived out of E.Bukusu/S.Kanduyi/2672 measuring approximately 0.20 Ha at a consideration of Kshs.415,000/= . It is also not in dispute that the said consideration was paid in two instalments with the final payment being made on 19/02/1998 as shown in P-Exhibit 1 and 3 and D-Exhibit 1.
16. It also emerges that in the said agreement, there was a further sale of land parcel no. EAST Bukusu/ SOUTH Kanduyi/3129 for Kshs. 84,000/= wherein a consideration of Kshs. 45,000/= was paid in advance. It is also not disputed that the Respondent's deceased father sued the Appellant for breach of the sale of the abovementioned piece of land vide Bungoma SPMCC NO.670 OF 1999 (see DExhibit 4) which suit terminated with a consent dated 05/08/2003 for payment of the balance plus interest by 09/09/2004 as per P-Exhibit 9. It is also not contested that the final payment for the said sale was made in May 2021 as seen in P-Exhibit 5. From my examination of the pleadings and facts, the breach of this particular sale is the root of contention between the parties herein.
17. Further, it is not contested that the estate of Fred Wetala Bukoma conducted succession proceedings vide Bungoma CM Succ. Cause No. 814 of 2018 wherein devolved to beneficiaries of the estate (DExhibit 5 and PExhibit 2). The Appellant herein filed for revocation and annulment of the said grant claiming that he was entitled to L.R No.E.Bukusu/S.Kanduyi/2672 and 3129 and LR No. W.Bukusu/N.MATEKA/1548 and he ought to have been included in the succession proceedings as a liability of the estate. The court in making a determination of his application directed that LR No. W.Bukusu/N.MATEKA/1548 be transferred to the Appellant and refrained from issuing direction on L.R No.E.Bukusu/S.Kanduyi/2672 and 3129 on grounds of sub judice in relation to Bungoma SPMCC NO.670 OF 1999 as seen in P-Exhibit 10. Aggrieved by this decision, the Appellant appealed against the said decision vide Bungoma HCCA No. E004 of 2022 wherein the appellate court in dismissing the appeal was of the view the issues raised can only be determined by the Environment and Land Court (P-Exhibit 11).
18. Having reviewed the pleadings that were filed before the subordinate court; the evidence tendered both oral and documentary; the record of appeal and upon consideration of the written submissions filed by and on behalf of the parties, the determination of the instant appeal turns on three (3) pertinent issues, namely
  - a. Whether the Appellant lawfully acquired proprietary rights over the portion excised from L.R No.E.Bukusu/S.Kanduyi/2672.
  - b. Whether the trial court erred in declining jurisdiction on the ground that ownership ought to have been addressed by the succession court.



- c. Whether the Respondent proved his counter-claim in respect of parcel No. 24634.

**Whether the Appellant lawfully acquired proprietary rights.**

19. The agreement produced dated 30/07/1997 was reduced into writing, signed by the parties and duly attested. Section 3 (3) of the Law of contract reads as follows;-

No suit shall be brought upon a contract for the disposition of an interest in land unless-

- (a) The contract upon which the suit is founded:
- (i) is in writing;
  - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party; provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the [Auctioneers Act](#) (Cap 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.
20. A perusal of the said sale agreement confirms that the above requirements of the law were complied with at the point of drafting. The effect of the compliance therefore being that the sale agreement is valid, legal and binding on the parties and can be relied upon by the Court. In the case of *Nelson Kivuvani v Yuda Komora & Another*, Nairobi HCCC No 956 of 1991, the Court held that: -
- “the agreement for sale of land which contains the names of the parties, the number of the property, the purchase price and the conditions attached thereto, the obligations, express or implied, of each of the parties and signed and witnessed by two witnesses who signed against their names amount to a valid contract”.
21. The Appellant tendered receipts and acknowledgments evidencing payment of the entire purchase price for the agreed portion of LR No.E.Bukusu/S.Kanduyi/2672. This court finds that once a purchaser pays the purchase price and takes possession of the demised property, an equitable interest in the land is created in his favour. Further, it is trite that equity treats as done that which ought to have been done and a purchaser who pays the full purchase price acquires an equitable interest capable of protection by a court of law. (See the decision of the court of appeal in the case of *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR).
22. While the said agreement is also referenced as L.R No. E.Bukusu/S.Kanduyi/3129, this Court finds no correlation between the two transactions. The consideration for L.R No. E.Bukusu/S.Kanduyi/2672 was separately agreed, fully paid, and acknowledged by the vendor. Any dispute relating to L.R No. E.Bukusu/S.Kanduyi/3129 cannot impeach the Appellant’s rights under the contract for the portion of land measuring 86ft X 69ft X 83ft X 80 feet forming part of L.R No.E.Bukusu/S.Kanduyi/2672.

**Whether the trial court erred on jurisdiction.**

23. The trial court held that questions of ownership ought to have been addressed in the succession cause. This court finds that the trial court fell into error regarding its jurisdiction to determine the issue of ownership as raised. The jurisdiction of the Probate and succession court under the [Law of Succession Act](#) is limited to identifying heirs, distribution of the estate, and administration thereof. Ownership disputes as between third parties and the administrators of the estate lie within the Environment and



Land Court and magistrates' courts gazetted to handle ELC matters, as provided for under Article 162(2)(b) of *the Constitution* as read with Section 13 of the *Environment and Land Court Act*, 2011.

24. The High Court in *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR reiterated that the Succession Court cannot determine disputes on ownership of property as between the estate and third parties. Likewise, in Bungoma HCCA No. E044 of 2022 (*GEORGE J. SIFUNA WESONGA v GERISHOM SAUREN Bukoma*), the Court expressly held that it lacked jurisdiction to determine the Appellant's claim over L.R No. E.Bukusu/S.Kanduyi/2672 and directed that the same ought to be ventilated before the proper forum being the ELC or duly gazetted magistrate's court.
25. The trial court herein was duly gazetted to hear and determine Environment and Land disputes and was seized with pecuniary jurisdiction. The trial Court therefore had jurisdiction to pronounce itself on the ownership of the disputed portion. Its failure to do so amounted to an abdication of jurisdiction.

#### **Whether the counter-claim was proved**

26. It is trite that the Respondent bear the evidentiary burden of proof under Sections 107–109 of the *Evidence Act*, Cap 80 to establish his counter-claim. In his evidence, he alleged that the Appellant was in unlawful possession of LR No.E.Bukusu/S.Kanduyi/24634 and was collecting mesne profits. However, no documentary evidence in terms of title deed, surveyors report, valuation reports, tenancy agreements, or rent receipts were produced as proof of the said claims. In his evidence as correctly held by the trial court, no reference was made with regards to LR No.E.Bukusu/S.Kanduyi/24634. It was as if the entire counter-claim had been abandoned
27. Having failed to tender credible evidence, the trial court was correct in dismissing the Respondent's counter-claim with costs.
28. In light of the foregoing analysis, this Court finds that the Appellant lawfully purchased and paid for 86ft X 69ft X 83ft X 80 feet forming part of L.R No.E.Bukusu/S.Kanduyi/2672 therefore, the agreement complied with the *Law of Contract Act* and that the trial court erred in declining jurisdiction. Conversely, the Respondent's counter-claim was unsupported by evidence and was rightly dismissed.
29. The upshot of my finding is that this appeal succeeds and the order of the trial Court declining jurisdiction is hereby set aside substituted with judgment being entered in favour of the Appellant as prayed in the undated plaint. The Appellant shall have the costs of this appeal.
30. Orders accordingly.

**DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 02<sup>ND</sup> DAY OF OCTOBER, 2025.**

..... ..

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of;

1. Appellant-present.
2. Respondent-absent.
3. Bett C/A.

