



REPUBLIC OF KENYA



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**Manyonyi & another v Lugalia (Environment and Land Appeal
E006 of 2023) [2025] KEELC 4466 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND APPEAL E006 OF 2023**

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

BETWEEN

JACKSON MANYONYI 1ST APPELLANT

EDWARD KISIA 2ND APPELLANT

AND

ALFRED KASSIM LUGALIA RESPONDENT

*(Being an appeal from the judgement dated 6th April
2023 in VIHIGA SPMC ELC Case No 106 of 2018)*

JUDGMENT

1. Vide the amended Memorandum of Appeal dated 31st January 2023, the appellants who appear in person, stated that they were appealing against the ruling delivered on 6th April, 2023 in Vihiga SPMC ELC Case No. 106 of 2018. Perusal of the record of appeal and the lower court file however shows that what was delivered by the trial court on 6th April 2023 was judgement in the suit and that the appeal is against the said judgement. The appeal is brought on the grounds that: -
 1. The court denied the appellants justice even after proving fraud, the forgery involved the procedural process applied to acquire plot No. North Maragoli/Mbale/1661 and the lies that was said by the plaintiff and his witnesses to mislead the honourable court.
 2. That the appellant's argument about the case of their defence was based on the plaintiff's forged evidence on his list of documents which they presented with their written submissions but was neither put on record nor considered for the determination of the matter.
 3. That witnesses that the plaintiff produced did not met the criteria of a witness but they were brought to lie and mislead the honourable court.



4. That plaintiff and his witnesses misled the court that Daudi Kademi subdivided plot No. North Maragoli/Mbale/344 and allocated his sons with a portion each yet only 2 portions emerged from the subdivision that gave the plaintiff a portion.
5. That the title deed for plot No. North Maragoli/Mbale/1661 presented in court by the plaintiff is fake title issued to him on 20th March 2022 contrary to the search records which shows that the title deed for this particular plot was issued on 20th August 2001.
6. That the plaintiff grabbed a portion that measures 0.207 Ha from Plot No. North Maragoli/Mbale/1662 the plot that he lied to the court belongs to 3 people namely: - Edward, Jackson and their late brother Samuel.
7. That reinstatement of the dismissed suit on 16th September 2021 was unprocedural and a violation of the appellants' rights before the court of law.
8. That court proceedings were edited to omit the appellant's major points.

Background

2. A brief background of the appeal is that the appellants were the Defendants in Vihiga SPMC L& E Case No. 106 of 2018 (the suit herein) in which they had been sued by the Respondent herein vide the amended plaint dated 15th October 2014. The Respondent claimed in the suit that he was the absolute proprietor of land Ref. No. North Maragoli/Mbale/1661 (the suit land) whose title he had acquired on 20th August 2001. That the appellants had unlawfully invaded the suit land and started building a house and gathering materials thereon ready to start construction of a building without the consent of the Respondent. That the appellants had frustrated the Respondent's right to a quiet enjoyment and use of the suit land and were unlawfully planting trees thereon. The Respondent therefore prayed for; -
 - a. general damages for denial of Plaintiff's right to quiet enjoyment and profitable use of the land.
 - b. Eviction of the two Defendants from the suit land.
 - c. Permanent injunction restraining the defendants, their agents, servants and other person(s) claiming under them from tilling, cultivating and any other manner or way from cultivating, constructing or in any way interfering with or trespassing upon land parcel No. North Maragoli/Mbale/1661.
 - d. Costs of this suit
 - e. Interest on (a) and (d) above Any other relief this honourable court may deem just to grant.
3. The record of appeal shows that the appellant's filed joint Statement of Defence and Counterclaim dated 3rd December 2014 denying the Respondent's claim and praying for dismissal of the Respondent's suit, entry of judgement in favour of the appellants, cancellation of the Respondent's registration as proprietor of the suit land and an order that the land reverts to the name of the deceased Daudi Kademi.
4. The suit was heard by the trial court which vide the judgment dated 6th April, 2023 found in favour of the Respondent.
5. Dissatisfied with the judgement, the appellants filed the present appeal on the grounds of appeal first herein above listed.



Submissions

6. The appeal was heard by way of written submissions.
7. The appellants filed written submissions dated 3rd October 2024. They submitted that the evidence produced was unreliable and not sufficient for the court to rule in favour of the Respondent. That this is because documents 1, 2, and 3 were documents that the Respondent used to service his own loan with AFC in respect of A/C No. 053654997. That the Respondent impersonated the parties' late father and forged application for consent using Nairobi postal address and secretly sub-divided the parties' father's land while the appellants were in occupation and the Respondent allocated himself a portion.
8. That transfer was un-procedural because mutation had not been registered. That there was cheating in the registration process, that the issuance of title deed to the Respondent on 28th March 2002 made him to have 2 title deeds for the same land. That the Respondent presented a fake title deed in respect of land parcel No. North Maragoli/Mbale/344 in court as evidence.
9. The appellants submitted that their late father Daudi Kademi did not sub-divide his land plot No. North Maragoli/Mbale/344 and give his sons portions as alleged. That it was agreed at the parties' father's commemoration ceremony known as "Lovego" that plot No. North Maragoli/Mbale/344 was to be sub-divided among the four sons of Daudi Kademi on a later date with the help of the elders. That the Respondent had filed the suit with the intention of causing destruction to the lives of the appellants and their families.
10. That the Respondent had cheated at the lands office and registered himself on a portion that was not applied for and transferred to him. That on 28th February 2002 the Respondent illegally cancelled land description number North Maragoli/Mbale/1662 on the transaction forms and wrote 1661 in their place to make it appear that the parcel that was transferred to him was North Maragoli/Mbale/1661 yet the parcel does not match the applied for and transferred measurements of 0.83 Ha.
11. The Respondent filed written submissions dated 24th November 2024. He pointed out that some time back the late Samuel Majani who used to coordinate with the appellant's sued him in Vihgia PM ELC No. 68 of 2018 seeking among other orders for nullification of title No. North Maragoli/Mbale/1661 and 1662 and that the same be restored in the name of Daudi Kadema in which the suit was dismissed and the court ordered for the eviction of the said Samuel Majani from North Maragoli/Mbale/1661 within 9 months from the date of the judgement. That an appeal preferred against the judgement was dismissed for lack of merit. That the matter pertaining to ownership of land parcel No. North Maragoli/Mbale/1661 has been finally determined by a court of competent jurisdiction.
12. That the appellants have not proved the grounds of appeal.

Issues for determination

13. Having read and considered the grounds of appeal as contained in the Memorandum of Appeal dated 31st January 2024, the record of appeal generally and the written submissions filed by the parties, I find that the following emerge as the issues for determination in this appeal.
 - a. Whether or not the appellants were denied justice by the trial court failing to put on record or consider the evidence and submissions presented before it by the appellants.



- b. Whether the appellants proved before the trial court that the subdivision of land parcel No. North Maragoli/Mbale/ 344 and subsequent transfer of the resultant land parcel No. North Maragoli/Mbale/1661 in favour of the Respondent was fraudulent.
- c. Whether or not reinstatement of the suit on 16th September 2021 was unprocedural and a violation of the appellants' rights.
- d. Whether or not the proceedings were edited to omit major points.
- e. Who pays the costs of the appeal?

Analysis and Determination

14. This being a first appeal the court has a duty to reconsider the whole evidence produced before the trial court, re-evaluate it and arrive at its own independent conclusion. While doing so, the court keeps in mind the fact that the trial court had the advantage, which this court does not have, of seeing and hearing the parties and their witnesses first hand. In the case of *Gitobu Imanyara & 2 others –vs- Attorney General* [2016] e KLR the court held that the principles upon which a first appellate court proceeds are well settled and stated that:-

"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 allowances in this respect".

(Also see *Selle & another vs Associated Motor Boat Company Ltd & Another* (1968) IEA 123 and *Peter M. Kariuki vs attorney General* [2014]eKLR)

15. The first ground of appeal is whether or not the trial court failed to consider the evidence and submissions of the appellants.
16. The record of appeal shows that the evidence placed before the trial court by the appellants comprised of the testimony of the 1st and 2nd appellants, Samuel Majani and one Babali Kivali. The record shows that the 1st appellant who testified as DW1 adopted the contents of his witness statement dated 3/12/2014 as his evidence in chief. The witness statement is on page 30 to 31 of the record of appeal. He stated that the parties herein and others were the children of Daudi Kademi and Dinah Doris Kademi. That their father Daudi Kademi died in the year 2005 and left behind a land Parcel No. North Maragoli/Mbale/344. That at his father's commemoration, they mentioned that the father had not sub-divided the land. That the elders decided that the family was to decide on a convenient time when they were ready so that they sub-divide the land amongst themselves.
17. That it was upon purchase of certificate of official search for that purpose that they discovered that parcel No. North Maragoli/Mbale/344 had been sub-divided and new numbers issued. That their brother, the Respondent, had already got a parcel on the original land.
18. That efforts at amicable settlement before the area Assistant Chief failed. That later they received summons in respect of the present suit as they were planning to file suit. That where he lives is where his father had allowed him to put up a structure. That his father's land had never been sub-divided and that his brother's claim was illegal.
19. On cross examination he stated inter alia that the house built on parcel No. North Maragoli/Mbale/1661 was in the name of the plaintiff. That they discovered the land was in the name of the plaintiff in the year 2007. That after discovering this, it is Samuel who filed suit which was later



- dismissed. That they filed the counter claim as sons of Kademi. That they did not have Letters of Administration in respect of the estate of their father.
20. DW2 was the 2nd appellant. He also adopted the contents of his witness statement dated 3/12/2014 which were more or less the same as those of the statement by DW1. He stated that he bought materials to build a permanent house but was stopped that the land belonged to Alfred. That looking at Alfred's documentation, he objected that the land belonged to Alfred. That Alfred had taken $\frac{3}{4}$ of the land leaving only $\frac{1}{4}$ near the stream.
 21. DW3 Samuel Majani Kademi also adopted the contents of his witness statement dated 3/12/2014 as his evidence in chief. He added that he filed a case No., 68 of 2018 to nullify the No. 1661 in Vihiga Court which case he lost as he did a consequent appeal.
 22. DW4 was Babali Kivali an uncle to the parties. The totality of his evidence was that he did not know that the parties' father had given land to the Respondent.
 23. A reading of the Judgement by the trial court shows that the court summarized the evidence of the appellants. It has not been pointed out which aspects of the appellants' evidence or submissions were omitted and how this disadvantaged the appellants or caused a miscarriage of justice. This ground of appeal has not been proved.
 24. The second issue for determination is whether or not sub-division of land parcel number North Maragoli/Mbale/344 and subsequent transfer of resultant parcel number 1661 in favour of the Respondent was fraudulent.
 25. The appellants claim that the transaction leading to the sub-division of land parcel number 344 and transfer of one of the resultant parcel number 1661 in favour of the Respondent was fraudulent.
 26. They pleaded in paragraph 6 of the joint Statement of Defence and Counterclaim that the Respondent obtained title secretly, illegally, fraudulently and without regard to the appellants' interests thereon. The appellants itemized the particulars of fraud thereunder. These particulars include impersonating the deceased Daudi Kademi, forging application for consent, deceiving officers of the Land Control Board and at the Lands office and presenting to them forged document.
 27. DW1 testified that the land was acquired irregularly using fraud and cheating. He stated that there was no application for consent done. That the Respondent impersonated their father who was from Mukaywa village P.O Box 10 Maragoli. That on 26th March 2001 the Respondent compiled an application address to the Land Control Board at Sabatia. That the Respondent got Letter of Consent the same day and that the land was transferred to him as per transfer documents. That the Respondent cancelled No. 1662 on consent form and transfer form. That consent was obtained in one parcel but changed to another parcel. That the signatures on the mutation form, transfer forms were not signed by one person and that the DCI have not been helpful to verify.
 28. The trial court in its judgement pointed out that the standard of proof for cases based on fraud is higher than proof on a balance of probabilities. That the Land Registrar and a member of the Land Control Board were called and that all confirmed that the procedure was correct. The trial court found that in the circumstances, the allegation of fraud failed.
 29. I have keenly considered the evidence by both parties on the issue of fraud. The Respondent's case was that the sub-division of land parcel No. 344 and the subsequent transfer of the resultant parcel was done by the parties' father and that the same was not fraudulent.



30. What is alleged by the Appellants is forgery of documents, cancellation and replacement of parcel numbers on the documents, impersonation and uttering of false documents by the Respondent. These are matters that require the evidence of an expert particularly a handwriting expert to confirm that indeed this happened. No such evidence was availed.
31. On the other hand, there is evidence on record of a member of the Land Control Board that issued the Letter of Consent and evidence from the Land office all of which confirmed that the transaction was genuine. The mother of the parties also testified in support of the Respondent's case. Further it was not denied that the transactions complained of happened in the lifetime of the parties' father.
32. As correctly held by the trial court the standard of proof for the tort of fraud is higher than proof on a balance of probabilities in civil cases as held in in *Vijay Morjaria vs Nansingh, Madhusingh Darbar & another* [2000]eKLR that:
33. 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."
34. This standard was not attained in the present case.
35. I find that the tort of fraud was not proved to the required standard.
36. The third issue for determination is whether or not the reinstatement of the suit on 16th September 2021 was unprocedural and a violation of the Appellant's rights.
37. The court record shows that on 16th September 2021 the 1st Appellant informed court that the matter was coming up for counterclaim only as the suit had been dismissed on 8th July 2021. Both the Appellants urged the court to proceed and decide the case as it had taken long.
38. The record further shows that on the same day Counsel for the Respondent informed the court that he was not aware that the case had been in court on 8th July 2021. That after perusal of the file he realized the matter had been scheduled for mention on 8th July 2021. That no Notice had been issued to them and that, that is why they were absent when the matter was dismissed for want of prosecution.
39. The record shows that after hearing the Respondent's advocate's explanation for non-attendance, the court set aside the dismissal order and set down the suit for hearing on merit.
40. The law allows the court to set aside dismissal orders and to hear the case on merit where sufficient cause is shown for non-attendance.
41. I find that the reinstatement of the suit was not unprocedural or in violation of the Appellants' rights.
42. The next issue for determination is whether or not the proceedings were edited to omit major issues.
43. It was not pointed out which issues were edited out in the proceedings and by who. I have read both the handwritten and the typed proceedings by the trial court and not found any editing as claimed by the Appellants.

Conclusion

44. From the evidence on record, it is clear that the suit land was transferred in favour of the Respondent in the lifetime of the parties' father. That the said land does not form part of the estate of their father



and hence not available for distribution. The Appellants who challenged the Respondent's title had no Letters of Administration in respect of the estate of their late father and hence lacked capacity to do so.

45. The evidence of PW2 and PW4 who were the member of the Land Control Board and the Land Registrar respectively was that the transactions leading to the registration of the suit land in favour of the Respondent were genuine.
46. The Registration of the suit land in favour of the Respondent gave him absolute rights as espoused in Sections 24 and 26 of the *Land Registration Act* as there was no indication that the registration was in trust for his siblings or any other person.
47. The trial court did not therefore err in its findings and decision.
48. I find no reason to interfere with the judgment.
49. The appeal is hereby dismissed. Since the parties are siblings each party to bear its own costs of the appeal.
50. Orders accordingly.

JUDGEMENT DATED AND SIGNED AT VIHIGA AND DELIVERED THIS 12TH DAY OF JUNE 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

1st appellant present in person.

Respondent present in person.

