



**Kemei v Kemei & another (Environment and Land Appeal E013 of 2024)  
[2025] KEELC 7419 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7419 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND APPEAL E013 OF 2024  
LA OMOLLO, J  
OCTOBER 30, 2025**

**BETWEEN**

**LEONARD KIPLANGAT KEMEI ..... APPELLANT**

**AND**

**KENNETH KIBET KEMEI ..... 1<sup>ST</sup> RESPONDENT**

**KEMEI KIPNGETICH MICHAEL ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal arising from the ruling of Hon. Japhet Bii delivered on  
12<sup>th</sup> September, 2024 in Kericho CM ELC Case No. E003 OF 2023)*

**JUDGMENT**

**Introduction.**

1. By a Memorandum of Appeal dated 24<sup>th</sup> September, 2024 the Appellant challenges the decision of Hon Japheth Bii delivered on 12<sup>th</sup> September, 2024 in Kericho CM ELC Case No. E003 of 2023.

**Factual Background.**

2. In the subordinate Court, the Appellant filed the Complaint dated 4<sup>th</sup> January, 2023 against the Respondents herein seeking the following prayers;
  - a. A declaration that the registration of the Defendants’ as the proprietors of parcel No. Kericho/ Kapsuser/1813, 2442/2258 & 1821 is fraudulent, illegal, null and void and that the said registration, together with the title deeds issued in favour of the Defendants to be cancelled. (sic)
  - b. An eviction order do issue ejecting the Defendants themselves or their agents and or servants from parcel No. Kericho/Kapsuser/1813, 2442/2258 & 1821. (sic)



- c. Costs and interests.
3. The 1<sup>st</sup> Respondent filed a Statement of Defence on 6<sup>th</sup> March, 2023 where he denies the averments in the Plaintiff and seeks that the suit be dismissed with costs.
4. The 2<sup>nd</sup> Respondent filed his Statement of Defence on 25<sup>th</sup> April, 2023 where he also denies the averments in the Plaintiff and seeks that the suit be dismissed with costs.
5. The Appellant then filed a Notice of Motion application dated 21<sup>st</sup> September, 2023 and sought the following prayers;
  - a. That the confirmed Defendants obtained the title deeds secretly, discreetly and fraudulently without the knowledge and consent of all beneficiaries and obtain transfer and registration of deceased's property at the time (deceased) was ailing and incapable of giving consent for any transaction in question. (sic)
  - b. That the title deeds issued on 15<sup>th</sup> October 2018 and 7<sup>th</sup> May 2019 be annulled/revoked and urgent conservatory orders be issued, restraining any dealing to non beneficiaries on parcel Nos Kericho/Kapsuser 1813, 2258, 2442 and 1821 for beneficiaries inherit the estate of their late father Simion Kipkemoi Maru (deceased) as required in the law. (sic)
  - c. That the stranger/invaders of the estate have not made disclosure on their entrance and be issued with orders of evictions. (sic)
  - d. That the Honourable Court do annul/revoke title deeds issued on ground that the Defendants have not made disclosure on their submission on how they obtain as required by the law and be dismissed with cost and loss of property. (sic)
6. The 1<sup>st</sup> Respondent filed a Replying Affidavit to the said application on 6<sup>th</sup> November, 2023 while the 2<sup>nd</sup> Respondent filed his Replying Affidavit on 15<sup>th</sup> November, 2023.
7. On 12<sup>th</sup> September, 2024 the Learned Trial Magistrate delivered his ruling and dismissed the application dated 21<sup>st</sup> September, 2023 with costs.
8. The Appellant being aggrieved by the said ruling approached this Court by way of appeal.
9. The Appeal was admitted for hearing on 19<sup>th</sup> March, 2025 and the Court issued directions that the appeal be heard by way of written submissions.
10. The Appeal was mentioned severally to confirm filing of submissions and on 7<sup>th</sup> May, 2025 it was reserved for judgement.
11. This Court notes that a document titled "1<sup>st</sup> Respondent's Replying Affidavit to the Appellant's Memorandum of Appeal dated 24<sup>th</sup> September, 2024" was filed by the 1<sup>st</sup> Respondent on 24<sup>th</sup> March, 2025. It is sworn by Kenneth Kibet Kemei the 1<sup>st</sup> Respondent on 25<sup>th</sup> February, 2025.
12. The said document has been filed without leave of the court. The law and procedure pursuant to which it has been filed is also unknown. I shall, therefore, not consider it.

### **The Appeal**

13. The grounds of appeal are as follows;
  - a. That - I filed a Notice of Intention to act in person on 28<sup>th</sup> day of March, 2024 and cease representation of M/s Motanya & CoAdvocates (sic) and plea before Court for amendments



of statement and filed submissions on 19<sup>th</sup> day of April, 2023. Even though being in all Court proceedings I have been denied hearing according to notice of intention to act in person. (sic) Attached and marked copy 1 (sic).

- b. That – Despite the order in Notice of Motion under Certificate of emergency (sic) dated 21<sup>st</sup> September, 2023 before Hon. C Obulusta – Chief Magistrate that the application be served for hearing on 4<sup>th</sup> October 2023 but it was not undertaken for hearing when Hon. Japhet Bii ignore appellant hearing and grant Defendant’s advocates ruling and delivered virtually and dismissed my application. (sic) Attached and marked copy 2 (sic).
  - c. That – the ruling delivered virtually on 12<sup>th</sup> day of September 2024 is based on submissions filed then by my former advocate Motanya & Co. Advocates on 4<sup>th</sup> day of January, 2023 be dismissed.(sic) And urged to collect the ruling copy at the Court registry. (sic) Attached and marked copy 3. (sic)
  - d. That – I urge the Honourable Court to review the legal process and how dependents and person’s involved illegally on obtaining registration and transfer of properties and re-evaluate the submission filed and document in Court. (sic)
  - e. That – Title deed issued on 15/10/2018 and 7/5/2019 be annulled/revoked and urgent conservatory orders be issued and restraining any dealings to non-beneficiaries on parcel numbers Kericho/Kapsuser 1813, 2442, 2258 and 1821 for beneficiaries to inherit the estate of their late father Simion Kipkemoi Maru (deceased) as required in the law. (sic)
14. The Appellant prays for orders that:-
1. The appeal be allowed.
  2. The ruling issued by Hon. Japhet Bii be dismissed.
  3. That Honourable be pleased to consider application and documents filed before in the Chief Magistrates Court at Kericho and re – evaluate the evidence and legal process at its own independent conclusion. (sic)
  4. Costs of this appeal be awarded to Appellant. (sic)

#### **Issues For Determination.**

15. The Appellant filed his submissions on 22<sup>nd</sup> April, 2025, the 1<sup>st</sup> Respondent filed his submissions on 23<sup>rd</sup> April, 2025 while the 2<sup>nd</sup> Respondent filed his submissions on 9<sup>th</sup> May, 2025.
16. The Appellant submits that he is the legal representative of the estate of the late Simion Kipkemoi Maru.
17. The Appellant also submits that he was issued with a Grant of letters of administration in Kericho CMCC Succession Cause No. 166 of 2022 on 15<sup>th</sup> September, 2022.
18. The Appellant then sets out the grounds of appeal and the prayers sought in the Memorandum of Appeal.
19. The 1<sup>st</sup> Respondent submits on the following issues;
  - a. Whether the Appellant is entitled to the reliefs sought in the Memorandum of Appeal.
  - b. Who bears the costs of this application? (sic)



20. On the first issue, the 1<sup>st</sup> Respondent submits that the Learned Trial Magistrate did not err in dismissing the application dated 21<sup>st</sup> September, 2023.
21. The 1<sup>st</sup> Respondent also submits that the Learned Trial Magistrate dismissed the said application on the ground that the orders it sought were similar to the prayers in the Complaint.
22. The 1<sup>st</sup> Respondent further submits that the grounds set out in the Memorandum of Appeal are false and meant to mislead this Court. This is because all parties were given an opportunity to file their responses and submissions before the Court delivered its ruling.
23. It is the 1<sup>st</sup> Respondent's submissions that the prayers sought in the Appellant's Notice of Motion application dated 21<sup>st</sup> September, 2023 could not be granted at the interlocutory stage because they required evidence to be adduced.
24. The 1<sup>st</sup> Respondent relies on the judicial decision of Kenya Commercial Finance Co. Ltd vs Afraha Education Society (2001) IEA 86 as was cited in Joseph Wambua Mulusya vs David Kitu & another [2014] eKLR in support of his submissions.
25. The 1<sup>st</sup> Respondent also relies on the judicial decision of Kenya Consortium to Fight Aids, Tb & Malaria & another v Brigitte Mukui Kitenge & 4 Others [2013] eKLR and submits that the Learned Trial Magistrate emphasized on the importance of allowing the substantive suit to proceed for hearing.
26. The 1<sup>st</sup> Respondent further submits that the Learned Trial Magistrate stated that the prayers the Appellant sought in his application would have effectually determined the suit at the interlocutory stage.
27. The 1<sup>st</sup> Respondent relies on the judicial decisions of Giella vs Cassman Brown & Company Limited [1973] EA, Nguruman Limited vs Jane (sic) Bonde Nielson and 2 Others [2014] eKLR and submits that the Appellant failed to establish a prima facie case to warrant the Court to issue an injunction.
28. The 1<sup>st</sup> Respondent also submits that since the Appellant failed to establish a prima facie case, it was no longer necessary for the Court to consider whether he had demonstrated that he would suffer irreparable injury and/or whether the balance of convenience tilted in his favour.
29. The 1<sup>st</sup> Respondent relies on the judicial decision of Mbutia vs Jimba Credit Finance Corporation & another [1988] KLR 1 and submits that Courts should avoid making final determinations on matters of fact on the basis of conflicting affidavit evidence.
30. The 1<sup>st</sup> Respondent submits that he is the registered owner of land parcel No's Kericho/Kapsuser/1813, 2442 and 2258. The 1<sup>st</sup> Respondent also submits that in the Complaint, the Appellant is seeking amongst other orders, orders of cancellation of his title deeds together with eviction orders.
31. The 1<sup>st</sup> Respondent reiterates that the Appellant's application dated 21<sup>st</sup> September, 2023 sought similar prayers.
32. The 1<sup>st</sup> Respondent relies on Sections 24 and 26(1) of the *Land Registration Act*, the judicial decisions of John Kipkorir Ruto (suing as the personal representative of the estate of Kipruto Arap Maina (deceased) vs County Government of Kericho & 3 Others [2021] eKLR, R.G Patel vs Lalji Makanji [1957] EA 314 and submits that he followed the due process including getting the land control board consent before being registered as the owner.
33. The 1<sup>st</sup> Respondent concludes his submissions by urging the Court to dismiss the appeal with costs.
34. The 2<sup>nd</sup> Respondent submits on the following issue;



**a. Whether the Appellant is entitled to the orders prayed for in the Memorandum of Appeal (sic).**

35. The 2<sup>nd</sup> Respondent submits that the prayers sought by the Appellant in his application dated 21<sup>st</sup> September, 2023 were similar to the prayers sought in the Plea.
36. The 2<sup>nd</sup> Respondent also submits that the determination of the said application would have had the effect of determining the matter at the interlocutory stage.
37. The 2<sup>nd</sup> Respondent relies on Order 40 Rule 1 of the Civil Procedure Rules, the judicial decision of *Airland Tours & Travel Limited vs National Industrial Credit Bank Nairobi (Milimani)* HCCC No. 1234 of 2022 and submits that the Court exercises its discretion in considering applications seeking injunctive reliefs.
38. The 2<sup>nd</sup> Respondent relies on the judicial decision of *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 and submits that the Appellant has to first establish a prima facie case, demonstrate irreparable injury which cannot be adequately compensated by an award of damages and that the balance of convenience must tilt in his favour.
39. It is the 2<sup>nd</sup> Respondent's submissions that the Appellant's Memorandum of Appeal is incurably defective that neither Article 159 (2)(d) of *the Constitution* of Kenya nor the oxygen principles can cure it.
40. The 2<sup>nd</sup> Respondent relies on the judicial decision of *James Ndung'u Kero v Chief Land Registrar & 2 Others* [2022] eKLR and urges the Court to dismiss the Appellant's appeal with costs.

**Analysis And Determination.**

41. The only issue that arises for determination is whether the Appellant's appeal has merit.
42. The role of the Appellate Court was stated by the Court of Appeal in the judicial decision of *Gitobu Imanyara & 2 others Vs Attorney General* [2016] eKLR. It was held 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 allowances in this respect.” (Emphasis mine)
43. In *Abok James Odera T/A A.J Odera & Associates Vs John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR the Court held as follows;

“This being a first appeal, we are reminded of our primary role as a first Appellate Court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.” (Emphasis mine)
44. The role of the Appellate Court is reproduced by the Appellant in his ground (d) wherein he urges this Court as follows;
  - a. That – I urge the Honourable Court to review the legal process and how dependents and person's involved illegally on obtaining registration and transfer of properties and re-evaluate the submission filed and document in Court. (sic)



45. It is important to note that the Appellant is self-representing. The Memorandum of Appeal as filed by him is for the most part difficult to comprehend. This difficulty was also expressed by the Trial Magistrate who heard and determined the application that is subject of this Appeal.
46. For the reason of the rather unintelligible nature of the Memorandum of Appeal, I shall reproduce each ground, provide my understanding of them and make my determination.

**Ground No. (a)**

That - I filed a Notice of Intention to act in person on 28<sup>th</sup> day of March, 2024 and cease representation of M/s Motanya & CoAdvocates (sic) and plea before Court for amendments of statement and filed submissions on 19<sup>th</sup> day of April, 2023. Even though being in all Court proceedings I have been denied hearing according to notice of intention to act in person. (sic) Attached and marked copy 1 (sic). (Emphasis mine)

47. In my understanding, the Appellant states that he was denied an opportunity to be heard despite filing a notice of intention to act in person on 28<sup>th</sup> March, 2024 (sic). The Court record shows that the Appellant was represented by counsel and soon after the suit was filed, the Appellant filed a notice of intention to act in person. As at the time of hearing the application which is subject of this ruling, the Appellant was acting in person. Directions were issued on 20<sup>th</sup> December, 2023 that parties file submissions. On 28<sup>th</sup> March, 2024 the Appellant informed the Court that he had filed submissions dated 28<sup>th</sup> November, 2023. The Court observed that the Plaintiff was referring to a replying affidavit sworn on 28<sup>th</sup> November, 2023. On 4<sup>th</sup> April, 2024 the 2<sup>nd</sup> Respondent confirmed that he had filed submissions and the matter reserved for ruling.
48. It is evident that the Appellant participated in the hearing of the application and his statement that he was denied opportunity to be heard is not correct. This ground of appeal fails.

**Ground No. (b)**

That – Despite the order in Notice of Motion under Certificate of emergency (sic) dated 21<sup>st</sup> September, 2023 before Hon. C Obulusta – Chief Magistrate that the application be served for hearing on 4<sup>th</sup> October 2023 but it was not undertaken for hearing when Hon. Japhet Bii ignore appellant hearing and grant Defendant’s advocates ruling and delivered virtually and dismissed my application. (sic) Attached and marked copy 2 (sic). [Emphasis Mine]

49. My understanding is that the Appellant is aggrieved for the reason that the Chief Magistrate Hon. Obulutsa issued directions that the Respondents be served and that the application would be heard on 4<sup>th</sup> October, 2023 and that on the said date Hon. Bii proceeded to hear the application in the absence of the Appellant and reserved it for ruling.
50. A perusal of the Court record shows that there were no proceedings for 4<sup>th</sup> October, 2023. However, on 8<sup>th</sup> November, 2023 the matter was before Honourable Bii when both the Appellant and the Respondents were present. The Court stated that the application dated 21<sup>st</sup> September, 2023 was to come up for hearing on 4<sup>th</sup> October, 2023 but the Court was not sitting. The 2<sup>nd</sup> Respondent then requested for more time to file his response to the application and he was granted seven days. The matter was given a further mention date for 8<sup>th</sup> November, 2023.



51. On 8<sup>th</sup> November, 2023 the Court issued directions that the application be heard by way of written submissions. The matter was mentioned for submissions on 28<sup>th</sup> March, 2024 before it was reserved for ruling on 4<sup>th</sup> April, 2024.
52. It is evident that the matter did not proceed for hearing on 4<sup>th</sup> October, 2023 as alleged and it was instead mentioned several times before it was reserved for ruling.
53. This ground of appeal fails.

**Ground No. (c)**

That – the ruling delivered virtually on 12<sup>th</sup> day of September 2024 is based on submissions filed then by my former advocate Motanya & Co. Advocates on 4<sup>th</sup> day of January, 2023 be dismissed.(sic) And urged to collect the ruling copy at the Court registry. (sic) Attached and marked copy 3. (sic)

54. In my understanding, the Appellant states that in the ruling delivered on 12<sup>th</sup> September, 2024, the Learned Trial Magistrate relied on submissions that had been filed by his former advocates on 4<sup>th</sup> January, 2023. He also states that upon delivery of the ruling, he was asked to get a copy at the Court registry.
55. A perusal of the Court record shows that the suit was filed on 17<sup>th</sup> January, 2023 and the Appellant filed a Notice of Intention to Act in person on 28<sup>th</sup> March, 2023.
56. It is evident that at the time the Appellant's former advocates are alleged to have filed the said submissions, neither the suit nor the application dated 21<sup>st</sup> September, 2023 had been filed. In any event, there are no submissions on the Court record that were filed by the said firm of advocates.
57. The Appellant's contention that the Learned Trial Magistrate relied on submissions filed by his former advocates on record is therefore not correct.
58. This ground of appeal fails.

**Ground No. (e)**

That – Title deed issued on 15<sup>th</sup> October, 2018 and 7<sup>th</sup> May, 2019 be annulled/ revoked and urgent conservatory orders be issued and restraining any dealings to non-beneficiaries on parcel numbers Kericho/Kapsuser 1813, 2442, 2258 and 1821 for beneficiaries to inherit the estate of their late father Simion Kipkemoi Maru (deceased) as required in the law. (sic)

59. My understanding is that the Appellant is seeking that the Court revokes the title deeds issued on 15<sup>th</sup> October, 2018 and 7<sup>th</sup> May, 2019. The Appellant also seeks that the Court issues conservatory orders to stop any activities on land parcel No's Kericho/Kapsuser 1813, 2442, 2258 and 1821 that are being undertaken by persons who are not beneficiaries of the estate of his late father Simion Kipkemoi Maru. He adds that the said orders if granted, would be for the benefit of the beneficiaries of his deceased father's estate.
60. Both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submit that generally, the prayers sought in the application dated 21<sup>st</sup> September, 2023 were similar to the prayers sought in the Plaint. They also submit that the consideration of the said orders would have had the effect of determining the suit at an interlocutory stage.



61. In the ruling delivered on 12<sup>th</sup> September, 2024, the Learned Trial Magistrate held as follows;

“The Plaintiff brought a case against the Defendants through a Plaint dated 4<sup>th</sup> January, 2023 seeking for the following orders;

- a. A declaration that the registration of the Defendants as proprietors of parcel number Kericho/Kapsuser/1813, 2442, 2258 and 1821 (sic) is fraudulent, illegal, null and void and that the registration together with title deeds issued in favour of the Defendants be cancelled.
- b. An eviction order do issue ejecting the Defendants themselves or their agents and/or servants from parcel Kericho/Kapsuser/1813, 2442, 2258 and 1821.
- c. Costs and interests.

The case has not been set down for trial. In the pendency of trial, the Plaintiff has brought an application dated 21/09/2023 which, though wanting in form, seeks for the following orders...

I have considered the application as brought. I find that either the Applicant is reinventing the prayers being sought in the Plaint, or is introducing a whole new suit. The Applicant has done so wonderful a blend of the prayers contained in the Plaint with those in the instant application that this Court, being at a loss, may be turned into a dual carriage way, one for the land Court, the other for the probate Court, each moving in the opposite direction.

The application was opposed anyway. The Respondent filed a Replying Affidavit...(sic) November 2023 sworn by the 1<sup>st</sup> Defendant...

I must then say, the application brought by the Plaintiff is so bad in law and in fact that it should be dealt a Coupe de grace.

The application dated 21/9/2023 is hereby dismissed with costs.” (Emphasis mine)

62. It is evident that the Learned Trial Magistrate dismissed the Appellant’s application dated 21<sup>st</sup> September, 2023 for being bad in law. In his obiter dictum, the Learned Trial Magistrate observes that the prayers sought in the application are the same prayers sought in the Plaint and further observes that the application has other prayers which are intended for a court sitting as a probate and administration court.

63. A perusal of the application dated 21<sup>st</sup> September, 2023 shows that the Appellant under prayer no. (2) sought the following order;

“That the title deeds issued on 15<sup>th</sup> October 2018 and 7<sup>th</sup> May 2019 be annulled/revoked and urgent conservatory orders be issued, restraining any dealing to non-beneficiaries on parcel Nos Kericho/Kapsuser 1813, 2258, 2442 and 1821 for beneficiaries inherit the estate of their late father Simion Kipkemoi Maru (deceased) as required in the law.” (sic)

64. In the present appeal, the Appellant is seeking that this Court issues a similar order.

65. I have also noted that the Plaint, under prayer (a), the Appellant seeks a declaration that the registration of the Respondents as owners of land parcel No’s Kericho/Kapsuser/1813, 2442, 2258 and 1821 was fraudulent and the title deeds should, therefore, be cancelled.

66. The suit is yet to be heard and determined.



67. The issue whether or not the said title deeds should be cancelled cannot be considered by this Court on an appeal filed from a ruling on an interlocutory application. It is a question for determination by the trial court.

68. Consequently, this ground of appeal fails.

**Disposition.**

69. In the result, I find that this Appeal lacks merit and it is hereby dismissed with costs.

70. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Kipyegon for the 2<sup>nd</sup> Respondent

The Appellant appearing in person (present).

Miss Chebet for Amaya for 1<sup>st</sup> Respondent

Court Assistant; Mr. Joseph Makori.

