



**Ayore v Kivuva (Civil Appeal E021 of 2023)
[2025] KEELC 7889 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CIVIL APPEAL E021 OF 2023
EK MAKORI, J
NOVEMBER 4, 2025**

BETWEEN

RICHARD AYORE APPELLANT

AND

EUNICE NDITIVA KIVUVA RESPONDENT

*(An appeal from the judgment of Hon. J.M. Kituku delivered on
October 18, 2023, in Kilifi CMCC Civil Suit No. 279 of 2015)*

JUDGMENT

1. The appellant, dissatisfied with the judgment issued by Hon. J.M. Kituku in Kilifi CMCC No. 279 of 2015, filed his appeal before this Honorable Court on November 17, 2023. The grounds in the appeal can be summarized as highlighting the following main issues for determination:
 - i. Did the Learned Magistrate err in law or fact by failing to notice the defective land sale agreement?
 - ii. Did the learned magistrate overlook the defective and unauthentic verdict from the chairman of the committee dated February 7, 2014?
 - iii. Did the Learned Magistrate err in law and fact by failing to apply the principles relevant to a claim for a permanent injunction?
 - iv. Did the Learned Magistrate err in granting permanent injunction orders against the appellant when the respondent has no superior title over the appellant and failed to consider that the respondent has never had possession of the property?
 - v. Who should cover the costs of this appeal?



2. In summary, the learned trial magistrate permitted the case at the lower court by endorsing the plaintiff's claim and granting a permanent injunction as requested in prayer one. Regarding evictions, the defendant was allotted 60 days to remove his structures. Should he fail to do so, the plaintiff was authorized to commence eviction proceedings in accordance with the law.
3. The appeal was canvassed through written submissions. I received submissions from the learned counsel for the appellant, Mr. Olendi. By the time I was writing this judgment, I had not seen the appellant's submissions, although I had been informed that they had been filed.
4. The authority of this court to review evidence from the lower court should be exercised carefully when necessary. In *Peters v Sunday Post Limited* [1958] EA 424, the court stated as follows:

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”
5. The duty of this court in the appeal is therefore to reassess the evidence, evaluate it independently, and reach its own conclusions. This meticulous process, as outlined in *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, ensures that all aspects of the case are thoroughly examined and considered.

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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 allowance in this respect...”
6. From the appeal record, the appellant states that he purchased a 50 by 100-foot property on December 19, 2013, from a vendor named Simon Yego Mateb for Kshs. 380,000. The plot was vacant. He took possession by erecting a perimeter wall around it and installing a nearby toilet. The plot was later transferred to him, and Mwanzo Mpya Kiwandani Management issued a transfer certificate. The appellant vehemently denied appearing before the said Management Committee, which decided to award the land to the respondent.
7. On the part of the respondent, she testified that she bought the land on February 20, 2005, from Solomon Titio Kamau for Kshs 10,000. It was Plot No. 55, Kiwandani, measuring 50 by 100 feet. She took possession of the property by planting crops on it from 2005 to 2023, when a dispute arose between her and the appellant. The matter was referred to the area chief and the Kiwandani Management Committee, which decided she was the bona fide purchaser, a claim she strongly maintains.
8. The issues I mentioned earlier can be quickly resolved by determining which interest is more significant, since we are dealing with two competing interests of buyers, neither of whom has called as witnesses the vendors who sold them their respective interests in the unregistered land in question.
9. I have reviewed the appeal record and conclude that, in analyzing the evidence before him, the trial magistrate correctly determined that he was dealing with a claim involving unregistered land owned by two individuals. He stated in paragraphs 17 and 18 of the judgment that when a court is faced with two competing interests in registered or unregistered land, the first in time takes precedence. He referenced



the decision in *Joseph Kiprotich Bor v Tabutany Chepkoech Chebusit* [2022] KEELC 1440 (KLR), which articulates this principle as follows:

“I find that the Respondent’s title was the first in time and, as equity teaches in its maxim that “when two equities are equal, the first in time prevails”, then the Respondent’s title deed was the first in time and should prevail the evidence called by the Respondent, having been cognate and not displaced by the Appellant. No evidence was called to confirm how the 2nd title deed came into being and whether the title deed held by the Appellant was genuine or not. In fact of interest to note is that the Appellant’s title had been registered after the death of the original proprietor of the suit land and without any probate proceedings conducted.

68. Ordinarily, no land should be registered more than once, and having two separate title deeds held by separate persons. Therefore in this case, there must be one title deed which is genuine and one which was issued either unlawfully or through mistake and thus double allocation, that was for a new title to be issued the older title has to be surrendered to the lands office for cancellation. No evidence was tendered by the Respondent that she had surrendered her title, which had been issued earlier than the Appellant’s title, for cancellation.”

10. In this matter, as stated, the trial court found that the respondent acquired her interest in the suit property in 2005, while the appellant acquired his in 2013. Since the appellant obtained his interest later, he had a duty to verify that no other person was claiming an interest in it before his. The respondent’s claim is further supported by the Kiwandani Management Committee, which resolved that she was the bona fide purchaser of the suit property.

11. Ultimately, I find no merit in the appellant’s appeal; it is hereby dismissed with costs.

DATED, SIGNED, AND VIRTUALLY DELIVERED IN MALINDI ON 4TH NOVEMBER, 2025.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Nyachiro for the Appellant

Mr. Olendi for the Respondent.

Happy: Court Assistant

