



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Keli v Matuku (Environment and Land Appeal E022 of 2022)
[2025] KEELC 8025 (KLR) (20 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8025 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E022 OF 2022
EO OBAGA, J
NOVEMBER 20, 2025**

BETWEEN

TELESIA MUNEE KELI APPELLANT

AND

BERNARD MUTUKU MATUKU RESPONDENT

*(Being an appeal from the judgment of Hon. B. Ileri Senior Principal
Magistrate delivered on 24th October, 2022 in Makindu PMCC No. 85 of 2013)*

JUDGMENT

**(Being an appeal from the judgment of Hon. B. Ileri Senior Principal Magistrate delivered on 24th
October, 2022 in Makindu PMCC No. 85 of 2013)**

JUDGMENT

1. The suit property that is plot No. 1421 at Kaunguni Settlement Scheme belongs to the Respondent. This suit property comprises of various parcels of different sizes which the Respondent purchased from various people including the Appellant on diverse dates between 1982 and 1984.
2. Kaunguni Settlement Scheme was established in the 1990's to settle squatters who had settled on the land which was initially government land. In or around 1991, government surveyors through the Land Adjudication and Settlement went to the ground and recorded interests of the occupants as they had settled on the ground. Maps were drawn and the various parcels were given parcel numbers.
3. It later turned out that the maps as drawn did not tally with the position on the ground. In the year 2013 the Ministry of Lands decided to do re-plotting in order to stem the many disputes which arose from the scheme.
4. In 1996, the Appellant filed a complaint against her brother in law Mbithuka Ngolanie before Mbai ya Mule Itema clan. Mbithuka Ngolanie was one of the persons who sold land to the Respondent. The



clan ruled on 24th April, 1996 that the land which Mbithuka Ngolanie sold to three persons belonged to the husband of the Appellant. It is on this basis that the Appellant started trespassing on to the suit property prompting the Respondent to file a suit against him at Makindu in which he sought restraining orders against the Appellant's trespass including mesne profits.

5. After a full hearing, the trial magistrate found in favour of the Respondent who was the Plaintiff before the lower court. This is what prompted the Appellant to file an appeal to this court in which she raised the following grounds:
 - i. The honourable trial court erred in law and facts when it upheld the Plaintiff/Respondent purchased the disputed portion on plot No. 1421 Kaunguni Settlement Scheme when the same was not strictly proved.
 - ii. The honourable trial court erred in law and fact when it upheld an agreement existed where the Plaintiff's/Respondent's claim was anchored when the same is not privy to the Defendant/Appellant.
 - iii. That the honourable court erred in law and facts when it failed to consider the suit had offended Section 30 of *Land Adjudication Act* Cap 284 law of Kenya.
 - iv. The trial court erred in law and facts by holding the Plaintiff/Respondent was entitled to the entire plot No. 1421 Kaunguni Settlement Scheme without considering that same had a portion belonging to the Defendant/Appellant which had not been purchased and formed part of plot 1799 Kaunguni Settlement Scheme.
 - v. That the trial court erred in law and facts by not considering the weight of evidence tendered by the Appellant thus dismissing her defence.
 - vi. The trial court erred in law and facts when it held the Plaintiff/Respondent proved his case on the balance of probability without considering the inconsistency of the evidence on record.
6. The parties were directed to dispose of the appeal by way of written submissions. The Appellant did not file any submissions. The Respondent filed his submissions dated 7th June, 2025.
7. The Respondents submitted on grounds 1, 2 and 4 together. He submitted that the Respondent's evidence was clear on the land he was claiming. He was claiming plot 1421 Kaunguni Settlement Scheme. He demonstrated who his neighbors were. He submitted that he had no interest in plot 1799 which is being claimed by the Appellant.
8. On ground 3, the Respondent submitted that Kaunguni Settlement Scheme was not governed by the *Land Adjudication Act*. He submitted that as such, there was no requirement for getting consent of the Land Adjudication and Settlement Officer as required under Section 30 of the *Land Adjudication Act*.
9. This is a first appeal to this court. My duty as a first Appellate court was well settled in the case of *Selle and Another –vs- Associated Motor Boat Co. Ltd & Others* EA 123 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 allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either it has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence



of if the impression based on the demeanor of a witness is inconsistent with the evidence in the cases generally”.

10. I have re-evaluated the evidence which was adduced before the trial magistrate. There are two issues which emerge for determination. The first is whether plot No. 1421 solely belonged to the Respondent. The second is whether Kaunguni Settlement Scheme was governed by the provisions of the Land Adjudication Act. The Respondent adduced evidence on how he purchased various portions from various people including the Appellant. All the parcels he purchased were bordering each other. He produced sale agreements and called a witness who was present when the agreements were signed. The witness was James Mutio Ndolo.
11. When surveyors came to the ground, they recorded each occupant’s interest as he/she occupied on the ground. The Respondent’s portion was given plot No. 1421. This exercise was carried out in 1991. The Respondent called Maloba Waema who was chairman of Mbai ya Mule Itema clan who was involved in demarcating and planting boundary marks to show the extent of the Respondent’s land.
12. The Respondent also called James Kyalo Kitaka, a land Adjudication and Settlement Officer who testified that according to the records held by their office, the Respondent was owner of the suit property.
13. The evidence which came from the Appellant’s side is that the plot being claimed by the Appellant is plot No. 1799. This plot did not exist in 1991 when the Respondent’s plot was created. Sarah Mueni, a Land Adjudication Assistant who was called by the Appellant testified that plot 1799 was created in 2016. Even when the re-plotting exercise was mooted in 2013, plot 1799 was nonexistent.
14. It is clear from the evidence which was adduced that the Appellant’s plot No. 1799 was created from the Respondent’s land and that is why the Appellant started trespassing on to the suit property in 2013. The Appellant’s trespass was based on the verdict of the Mbai ya Mule Itema which rule that the land which Mbithuka Ngolanie had sold to the Respondent and two other persons belonged to the Appellant’s husband and that the money the purchasers paid was to be refunded to them.
15. The Appellant claimed that her plot No. 1799 borders plot 1421. Plot 1799 which was created in 2016 was actually created from plot 1421 and that is why the Appellant in ground 4 of the Memorandum of Appeal blames the trial magistrate that that he failed to find that plot No. 1799 was contained in plot NO. 1421. It is therefore clear that plot 1421 solely belonged to the Respondent and did not form part of plot 1799. On this score, I find that the trial magistrate did not err in his analysis of the evidence. Ground 1, 2, 4, 5, 6 and 7 are therefore dismissed.
16. On the second issue, the District Land and Adjudication and Settlement officer Kibwezi had written a letter to the Appellant’s advocate on 31st October, 2013 in which he stated that Kaunguni Settlement Scheme was not an adjudication section and therefore the Land Adjudication Act did not apply. He went on to state that Kaunguni Settlement Scheme was a squatter Settlement Scheme which was meant for settlement of squatters. This being the case, the Respondent did not need consent of the Land Adjudication and Settlement Officer to file the suit before the lower court.
17. From the above analysis, I find that the Appellant’s appeal is devoid of merit. The appeal is dismissed with costs to the Respondent.

.....
HON. E. O. OBAGA
JUDGE



JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF NOVEMBER, 2025.

IN THE PRESENCE OF:

Mr. Mutuku for Respondent.

Court assistant - Nelima

ELC APPEAL NO. E022 OF 2022 2 | Page

