

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC APPEAL NO. E014 OF 2021

CHRISTINE KATOTO MASILA.....APPELLANT
-VERSUS-

NZEI MAWEU..... RESPONDENT
(Being an appeal from the judgment of the Senior Principal Magistrate
Hon. Z. J. Nyakundi delivered on 17th May, 2019 in Makindu Civil Suit No.
141 of 2010)

JUDGMENT

1. The Respondent had filed a suit before Makindu Principal Magistrates court against the Appellant in which she claimed the following reliefs:
 - a. **A declaration that the Plaintiff is the legal owner of plot No. 83 Kiboko “B” settlement scheme.**
 - b. **An order that the Defendants name be cancelled from the register to plot No. 83 Kiboko “B” forthwith.**
2. The Appellant filed a defence in which she generally denied the Respondent’s claim and maintained that plot No. 83 Kiboko “B” Settlement Scheme (suit property) was registered in her name.
3. After a full hearing the trial magistrate in a judgment delivered on 17th May, 2019 found that the suit property belonged to the Respondent. This is what prompted the Appellant to file an appeal to this court in which she raised the following grounds:
 - i. **The learned magistrate erred in law and facts by dismissing the entire Defendant’s claim/defence with costs to the Plaintiff.**
 - ii. **That the learned magistrate erred in law and facts by disregarding weight of evidence in favour of the Defendant/Appellant.**
 - iii. **That the learned magistrate erred in law and facts by holding the Plaintiff proved her case on the balance of probability where each party had genuine documents to the land.**

- iv. **That the learned magistrate erred in law and facts by applying wrong principles of law to arrive at a wrong judgment.**
 - v. **That the learned magistrate erred in law and facts by not appreciating the doctrine of competing equities between the parties.**
4. The parties were directed to dispose of the appeal by way of written submissions. The Respondent filed her submissions dated 1st July, 2025. Though the Appellant had indicated to court that she filed submissions those submissions are not on the CTS system of the court.
 5. I have carefully considered the proceedings before the trial court, the judgment, the submissions by the Respondent as well as the grounds of appeal. There is only one issue which emerges for determination. This is who between the Applicant and the Respondent is the lawful owner of plot No. 83 Kiboko “B” settlement scheme.
 6. The duty of a first appellate court was stated 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”.

7. At the hearing both the Appellant and the Respondent produced their own version of letter of offer and letter of acceptance. The Appellant's letter of offer was dated 23rd October, 2002. The Respondent letter of offer was dated 20th May, 2003.
8. The Appellant's letter of acceptance of the offer was dated 28th November, 2008. The Respondent's acceptance of letter of offer was dated 20th February, 2006.
9. The Appellant's letter of acceptance of the offer emanated from the Land Adjudication and Settlement Department Kibwezi. The Respondent letter of acceptance of the offer emanated from the Land Adjudication and Settlement Office Makueni.
10. The Appellant's claim to the suit property is based on outright purchase whose payment was made to Kibwezi office. The Respondent's claim to the suit property is based on a charge to the Settlement Fund Trustee (SFT) whose payment was made in Nairobi.
11. I have carefully scrutinized the ownership documents produced by both the Appellant and the Respondent. There is no doubt that the letters of offer were processed in Nairobi and sent to Makueni for further documentation. Both letters of offer were signed by the Land Adjudication and Settlement officer one A. Shariff of Nairobi. Though I may not be a document examiner, a look at the two letters show that the signatures on the two documents are quite different.
12. The offer letter produced by the Appellant did not have the heading "Settlement plot – Letter of offer". The one produced by the Respondent had the heading.
13. Whereas both letters of offer were copied to the District Land Adjudication and Settlement Officer Makueni, the Applicant's letter of acceptance was processed from Kibwezi office whereas that of the Respondent was processed from the Makueni office. The Appellant's letter of acceptance was

not signed by the officer who issued it. He instead stamped it using a stamp bearing his names. This is not a signature and was deliberately put there to avoid responsibility in case the letter of acceptance was questioned.

14. The Respondent had accepted the allotment on 20th February, 2006. She was shown the suit property's boundaries and settled on it. The Appellant came later on on 28th November, 2008 and purported to accept the offer which was allegedly issued on 23rd October, 2002 and paid for the same at Kibwezi office on the same day of acceptance that is 28th November, 2008.
15. The Appellant would not have been offered a plot which had already been offered to the Respondent who had already taken possession. The Appellant's documents particularly the letter of offer and letter of acceptance were questionable for the reasons pointed out hereinabove. The payment was purportedly made at Kibwezi office when all documentation had been sent to Makueni.
16. The Appellant produced a letter dated 5th May, 2010 which was written by one Githunguri Kennedy N. N. the District Land and Adjudication and Settlement Officer Kibwezi. This letter shows that it is the Respondent who was in possession of the suit property. On 11th May, 2010, the chief Kiboko location purported to issue an order to the Respondent to vacate the suit property.
17. The Chief of Kiboko location was called by Appellant as her witness. This witness claimed that the verification officers from the National Land Commission came to the ground and that they did not clear the Respondent. There was no evidence from National Land Commission to support the claim by this witness. This witness was acting on documents from the Kibwezi Land Adjudication Officer which were questionable.
18. I have demonstrated hereinabove that the documents held by the Appellant were questionable. The Respondent had accepted the offer ahead of the Appellant and was put in possession. There is no evidence which was

adduced to show that the Respondent's offer was withdrawn to pave way for the Appellant to make an outright purchase of the same.

19. The letter of offer by the Appellant was not on the basis of outright purchase. She was required to pay 10% deposit within 90 days. She did not do this. She instead purported to make an outright purchase on 28th November, 2008 six years after an offer had been made to her.

20. The Respondent accepted the offer and executed a charge over the suit property. She paid for the charge as per the charge document. Her documentation were proper and had no questions. I therefore find that the suit property belongs to the Respondent. Consequently, I find the Appellant's appeal devoid of any merit. The same is dismissed with costs to the Respondent.

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HON. E. O. OBAGA

JUDGE

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 13TH DAY OF NOVEMBER, 2025.**

IN THE PRESENCE OF:

Mr. Mutua for Mr. Onyancha for Respondent.

Court assistant – Steve Musyoki