



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muthusi v Mutiso (Environment and Land Appeal E005 of 2023)  
[2025] KEELC 7698 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7698 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND APPEAL E005 OF 2023**

**EO OBAGA, J**

**NOVEMBER 6, 2025**

**BETWEEN**

**BERNARD MWENDWA MUTHUSI ..... APPELLANT**

**AND**

**PHILIP KATIKU MUTISO ..... RESPONDENT**

*(Being an appeal from the Judgment of the Honourable Geno Okwengu dated 25th July, 2023 in Principal Magistrate's court at Kilungu PMELC E016 of 2021)*

**JUDGMENT**

1. This appeal relates to a plot measuring 40x12 metres (the plot) comprised in LR No. 1712 Makueni/Wautu Adjudication Section. Parcel No. 1712 is owned by Esther Wayua Kata, Daniel Mailu Kata and Nyamasyo Kata who were the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively before the lower court. The Appellant was the 4<sup>th</sup> Defendant in the case.
2. The plot was purchased during the time the Appellant was working as a pastor at Christian Church International (CCI) Wautu. There arose differences between the Appellant and the overseer of the CCI church which led the Appellant to leave CCI church for another different church.
3. The Appellant at the time of leaving CCI church claimed that the plot was his personal property which he purchased. The CCI church on the other hand claimed that the plot belonged to the CCI church which plot was purchased through funds raised by the CCI church and the Appellant was only a trustee of the CCI church.
4. At the hearing before the trial court, the trial magistrate found in favour of the Respondent who was the Plaintiff in the suit. This is what prompted the Appellant to file an appeal to this court in which he raised the following grounds:



1. That the learned trial magistrate erred in law and in fact by failing to put in to consideration the proceedings and evidence on record in advancement of the appellant case and thereby ignoring relevant guiding facts to enable him reach a fair and reasoned determination in his judgment hence prejudicing the Appellant.
  2. That the trial magistrate erred in both law and fact when he failed to consider the evidence adduced by the Appellant herein and submissions filed thereto.
  3. That the learned trial magistrate erred in law and fact by failing to give concise statement of the case, points of determination, decision thereon and reasons for his judgment.
  4. That the learned trial magistrate erred in law and in fact by failing to incorporate the findings he gathered on the grounds during the hearig on the disputed land vis-à-vis the court records and evidence and thereby proceeding to deliver judgment by applying principles which are not relevant in land proceedings in his determination.
  5. That the learned trial magistrate erred in law and in fact by failing to appreciate the spirit behind the provisions of Article 159 of *the Constitution* of Kenya 2010 and ignored important facts by dismissing Appellant’s arguments summarily without consideration of distinctive nature of the case before him for consideration.
  6. That the learned trial magistrate erred in law and in fact by failing to consider the oral evidence of the Appellant pertaining to the fact that the suit property land parcel No. LR No. 1712 Makueni/Wautu Adjudication Section measuring 40 by 12 metres was bought by the Appellant the fact the trial magistrate ignored completely.
  7. That the failure by learned trial magistrate to enforce the contract and/or agreement signed by the parties in the suit amounted to miscarriage of justice.
5. The parties were directed to file written submissions. The Respondent filed his submissions dated 24<sup>th</sup> April, 2025. As at the time of writing this judgment on 5<sup>th</sup> November, 2025, the Appellant had not filed his submissions.
  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. I have carefully considered the evidence adduced in the lower court, the judgment of the trial magistrate, the submissions filed as well as the grounds in the memorandum of appeal. The only issue which emerges for determination is whether the plot is property of the CCI church or whether it is personal property of the Appellant.



8. The evidence which was adduced during the hearing and which is not controverted is that at the time of purchase of the plot, the Appellant was a pastor at CCI church Wautu. The plot was purchased at Kshs.40,000/=. A deposit of Kshs.10,000/= was made from funds raised by the CCI church. The evidence by the Respondent was that there was a sale agreement which was signed between the vendors and the Appellant on behalf of the CCI church but that agreement was never made available as the Appellant later claimed that he purchased the plot as a personal property.
9. The Respondent produced an extract of minutes of the CCI church which showed that the church had made a decision to buy a plot for CCI church Wautu. A sum of Kshs.10,000/= was raised and was paid to a vendor but the sale did not go through. A refund of the Kshs.10,000/= was made after which the plot was purchased through instalments. A deposit of Kshs.10,000/= was made. Further payments were made totaling to Kshs.37,000/=. The balance of Kshs.3,000/= was to be paid upon obtaining title.
10. The CCI church operated from the plot from the time the property was purchased until later when the Appellant changed the name from CCI Wautu to Agape Church. The change was made after differences arose between the Appellant and the Respondent as the overseer of the CCI church.
11. The Appellant resigned as pastor of CCI church and claimed that the plot was his personal property which he purchased from the vendors. The differences were so deep that the area chief of Wautu Location had to direct that the plot be used by the CCI church supported by the Respondent in the mornings during worship day and by the Appellant in the evenings.
12. When the Appellant was a pastor at CCI Wautu church, there never arose any issue as to the ownership of the plot. The ownership dispute arose when the Appellant had ceased to be a pastor for CCI church. The CCI church was not paying rent to the Appellant for the plot during the period the church was operating from the plot.
13. The Appellant produced a sale agreement dated 9<sup>th</sup> July, 2011. If indeed the Appellant had purchased the plot as a personal property, why was he allowing the CCI church to use it for free without paying any rent to him? The Respondent filed a further list of documents in support of his case. The documents included harambee invitation card scheduled for 12<sup>th</sup> September, 2010. The harambee was to be for purchase of building materials for the church. The pastor then was the Appellant. If he wants the court to believe that the plot was his own property, why was he calling for a harambee to build a church on his own property using CCI church?
14. The Appellant started to lay claim to the plot after he resigned as pastor of CCI church. On 20<sup>th</sup> October, 2020, he wrote a letter to the Respondent in which he claimed that the CCI church members should not to access the plot. This letter was copied to the area chief who had apparently taken sides with the Appellant. The chief wrote a letter dated 7<sup>th</sup> May, 2021 addressed to the Land Registrar confirming that the Appellant was the owner of the plot which had no dispute and that he had a sale agreement.
15. On 13<sup>th</sup> December, 2020, the same chief had summoned the Appellant and the Respondent to go to his office with their respective ownership documents. This followed an incident which had happened on 12<sup>th</sup> December, 2020.
16. The chief of Wautu location was Robert Matano Kimuli. This chief testified as PW3 before the lower court. He stated that in 2015 the Appellant had gone to his office and claimed that he purchased the plot. The chief asked him to come to the office on 15<sup>th</sup> May, 2015 with the vendors. When the agreement was taken to him, he endorsed it on 15<sup>th</sup> May, 2015. If indeed the chief was aware that the



property belonged to the Appellant, he would not have again summoned the parties to bring their ownership documents in the year 2020.

17. It is clear the Appellant was trying to look for evidence to claim that the plot belonged to him. When he resigned as pastor in 2020, he copied a letter to the chief that he was going to give the plot to any organization.
18. Grounds 1 to 5 of the memorandum of appeal attack the manner in which the trial magistrate considered the evidence. The trial magistrate considered the evidence adduced by the Respondent and the Appellant and arrived at a conclusion that the Appellant purchased the plot on behalf of the church. He did not dismiss the Appellant's evidence without due consideration.
19. The Appellant did not file any counterclaim. The trial magistrate cannot therefore be accused of failing to enforce the agreement entered into by the parties or find that the Appellant purchased the plot. Grounds 6 and 7 fail for this reason.
20. The trial magistrate properly applied the doctrine of trust after taking the circumstances surrounding the purchase of the plot. I therefore find that the Appellants appeal is devoid of merit. The same is dismissed with costs to the Respondent.

.....

**HON. E. O. OBAGA**

**JUDGE**

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

In the Presence of:

Mr. Kyalo for Appellant.

Mr. Mugambi for Respondent

