



**Miencha v Maima & another (Environment and Land Appeal  
E018 of 2024) [2025] KEELC 8079 (KLR) (19 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8079 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND APPEAL E018 OF 2024**

**M SILA, J**

**NOVEMBER 19, 2025**

**BETWEEN**

**SAMSON MOCHAMA MIENCHA ..... APPELLANT**

**AND**

**JOHN MAIMA ..... 1<sup>ST</sup> RESPONDENT**

**ELYON PREPARATORY SCHOOL ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. P.K. Mutai, delivered  
on 13 May 2024 in the suit Kisii MCELC No. E050 of 2022)*

**JUDGMENT**

1. The suit from which this appeal emanates was commenced by the appellant through a plaint filed on 30 June 2022 in the Chief Magistrates' Court at Kisii. In the plaint, the appellant pleaded that he is the registered proprietor of the leasehold tenure comprised in the land parcel Kisii Municipality/Block I/925. He averred that he purchased the said title from the previous proprietor one Wilfred Monyenye Yoge in 2008 and the title was transferred to him. He pleaded that in January 2022, the respondents trespassed into the suit land and erected structures comprising of a school. In the suit, he wished to have an order of eviction, permanent injunction, mesne profits and costs against the respondents.
2. The respondents filed a joint statement of defence. It was pleaded that on 1 January 2021, the 1<sup>st</sup> respondent leased the property Kisii Municipality/Block I/134 from one Sandy Mokeira Morara for purposes of establishing the 2<sup>nd</sup> respondent, which is a school. They pleaded that due to huge numbers, they needed more space and they were referred to Jelidah Mary Morara who owned the next parcel of land. This land shown to them is the suit land. According to the respondents this land is registered as Kisii Municipality/Block I/1029 in name of Jelidah Mary Morara and that they entered into a tenancy agreement with her. They asked that the suit be dismissed.



3. The appellant testified as PW-1. He asserted that the suit land is Kisii Municipality/Block I/925. The only exhibit that he produced was a photocopy of an extract of the register for the title Kisii Municipality/Block I/925. He was cross-examined on whether he has a certificate of lease and his response was that he gave it to his lawyer. Neither did he have the Registry Index Map nor the sale agreement. He called one Dawn Nyamache as his witness. He was the Director of Land Administration Kisii County Government. His evidence was that they have a land parcel Kisii Municipality/Block I/925 in name of the appellant and that he is the one who pays land rent. Cross-examined, it emerged that he did not carry any documents.
4. With that evidence the appellant closed his case.
5. DW-1 was the 1<sup>st</sup> respondent. The school sued as the 2<sup>nd</sup> respondent is his school. His evidence mirrored his pleadings i.e that he leased the suit land as Kisii Municipality/Block I/1029 from Jelida and that the parcel No. 925 does not exist. Cross-examined, he testified that he has never met Jelida and that he was told that she is deceased. He testified that Mokeira was her administrator and that he entered into the lease with her. Among the exhibits he produced was the Certificate of Lease in name of Jelidah Mary Morara issued on 12 March 2019 and a search bearing the same information.
6. DW-2 was David Lemaiyan, a Surveyor working with the National Government and stationed at Kisii. His evidence was that the land parcel Kisii Municipality/Block I/925 is not in the registry index map. The parcels of land that he could see were Kisii Municipality/Block I/1029 and Kisii Municipality/Block I/134. He had the survey plans for both these parcels which he produced. Cross-examined he testified that the parcels of land (not sure which) can be seen in different sheets.
7. With that evidence the respondents closed their defence. Counsel filed their final submissions culminating in the impugned judgment.
8. In his judgment, the trial Magistrate found that all that the appellant had produced was a green card but he saw that the same had alterations and he could not therefore take it as prima facie proof of ownership. He thought that it is a suspicious document. He also found that the appellant had not produced any Certificate of Lease. He was thus not persuaded that the appellant had proved that he is the owner of the land parcel Kisii Municipality/Block I/925. He found this to be a key issue and since it was not proved the case of the appellant had to collapse. He dismissed his case with costs.
9. Aggrieved, the appellant has preferred this appeal on the following grounds :
  1. That the learned trial Magistrate erred in law and fact by failing to appreciate the law and evaluate the evidence placed before him before arriving at the impugned decision.
  2. That the learned trial Magistrate erred in law and fact by failing to take into account the evidence tendered in court and the submissions brought before him before arriving at the impugned decision.
  3. That the learned trial Magistrate erred in law and fact by failing to appreciate the pleadings filed in court before arriving at the impugned judgment.
  4. That the learned trial Magistrate erred in law and fact by failing to appreciate that the appellant was the registered owner and a purchaser for valuer of the suit property LR No. Kisii Municipality/Block I/925 from the head lessee Wilfred Monyenye Yoge.
  5. That the learned trial Magistrate erred in law and fact by determining that the registration documents in respect to the suit property LR No. Kisii Municipality/Block I/925 were not authentic and yet nobody claimed over the same title.



The appellant seeks that the appeal be allowed and the judgment of the trial court be substituted with orders allowing his claim as prayed. He also seeks costs.

10. The appeal was argued through written submissions and I have taken note of the submissions filed by Mr. Nyambati, learned counsel for the appellant, and Mr. Mulisa, learned counsel for the respondent. I take the following view :
11. The case of the appellant was one of trespass into the land parcel Kisii Municipality/Block I/925 which he claimed to own. The defence of the respondents was that they are on the parcel Kisii Municipality/Block I/1029 owned by a third party. In my opinion, there are two things that the appellant needed to prove being :
  - i. That there exists the land parcel Kisii Municipality/Block I/925 and that he is the proprietor thereof.
  - ii. That there has been trespass by the respondents into this land parcel Kisii Municipality/Block I/925.
12. On the first issue all that the appellant produced was an extract of the register to the parcel Kisii Municipality/Block I/925 and nothing else. I think in the circumstances of the case, this was not good enough as there was raised considerable doubt as to whether this land parcel No. 925 actually exists. The appellant did not produce a Certificate of Lease nor a Certificate of Official Search. Neither did he produce a map to show that this land exists. In his submissions, Mr. Nyambati inter alia submitted that the existence of the parcel No. 925 was proved by the evidence of PW-2. I am not persuaded. PW-2 came armed with nothing but his word of mouth. Proof of existence of land is not done by chit chat that is not backed up by any document. PW-2 did not present a single document to demonstrate that indeed the appellant pays land rents as claimed and that it is him (appellant) who is recognized in the records of the County Government of Kisii as the proprietor of the suit land. In my view, the evidence of PW-2 amounted to nothing but gossip. The appellant came with very weak evidence given the nature and circumstances of the case. I am afraid that given the doubts raised as to the existence of the land parcel No. 925, a lot more than a photocopy of the white card was needed.
13. That aside, even assuming that he proved that there indeed exists the parcel No. 925, and that he owned it, what was critical in the case was proof that the respondents have trespassed into no other land but the land parcel No. 925. I wonder how the appellant was going to prove that with casual talk especially given that the respondents asserted that they were in occupation of a parcel No. 1029. The only way that the appellant would have proved that the land which the respondents are in occupation of is a land parcel No. 925 and not a land parcel No. 1029 was through a survey report. The appellant did not engage any surveyor and produced no survey report or indeed any other report. He availed no expert. There was nothing tangible to demonstrate that what the respondents occupy is the land parcel No. 925. In his submissions, Mr. Nyambati submitted that the burden shifted to the respondents. Absolutely not. It is the appellant who came to court as plaintiff claiming that the respondents were in occupation of the parcel No. 925. It is him who asserted that they were in the parcel No. 925 and the burden of proof was on him. It never shifted to the respondents. What the appellant needed to provide was an expert and an expert report showing that indeed the respondents are occupying the parcel No. 925 given their denial. Again the appellant hopelessly failed in providing any tangible evidence of the land that the respondents were actually in occupation of.
14. I wonder whether the appellant was not properly advised or he simply had no evidence to offer. Whatever the case, what he presented to court was so miniscule that no reasonable court could have held in his favour. I mean, he did not even exhibit his Certificate of Lease. This was very basic evidence



that he never availed. And how was he expecting the court to rule that the respondents are in the parcel No. 925 without a survey report ? I am tongue-tied. This is very basic evidence that any reasonable litigant would be expected to table because there is denial by the other party of being in the land that is claimed. There is nothing before this court that would suggest that the respondents are occupying a land parcel No. 925.

15. I cannot fault the trial Magistrate for dismissing the appellant's case. The appellant casually walked into court claiming ownership of land that he could not even avail a certificate of title to. He walked into court claiming a person is on his alleged parcel of land without a shred of evidence. You do not just saunter into a court of law without evidence and hope to walk out with a judgment in your favour. It does not work that way; you must provide evidence to prove your case to the required standard if you are to expect a judgment in your favour. Cases are won and lost on the quality of evidence and I am afraid that in this case the evidence presented by the appellant could not have amounted to evidence on a balance of probabilities.
16. For the avoidance of doubt, this judgment has made no determination on the existence of the suit land i.e the parcel Kisii Municipality/Block I/925 or whether the other parcel i.e Kisii Municipality/Block I/1029 is superimposed on it. That will need a different level of determination between the proprietors of the two titles.
17. I find no substance in this appeal and it is dismissed with costs.
18. Judgment accordingly.

**DATED AND DELIVERED THIS 19 DAY OF NOVEMBER 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Nyambati for the appellant

Mr. Langat for the respondent

Court Assistant – Michael Oyuko

