



REPUBLIC OF KENYA



KENYA LAW
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**Angwenyi v Sakawa (Environment and Land Appeal E014 of 2024)
[2025] KEELC 8313 (KLR) (26 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8313 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND APPEAL E014 OF 2024**

M SILA, J

NOVEMBER 26, 2025

BETWEEN

ANDREW MOKAYA ANGWENYI APPELLANT

AND

THOMAS MORIANGO SAKAWA RESPONDENT

*(Being an appeal from the ruling of Hon. C.A. Ocharo, Senior Principal
Magistrate, delivered on 17 April 2024 in the suit Kisii MCELC No.E052 of 2023)*

JUDGMENT

1. The suit from which this appeal emanates was commenced through a plaint filed by the appellant on 15 May 2023. The appellant pleaded that on 21 November 2014 the respondent sold to him the land parcel West Kitutu/Bogeka/2700 and he paid the purchase price in full. He complained that the respondent was yet to supply him with completion documents. He asked for orders of specific performance and general damages.
2. The respondent filed defence. He admitted entering into a sale agreement with the appellant but contended that what was being sold was the land parcel West Kitutu/Bogeka/2701. He averred that he gave out the title deed to the appellant's daughter.
3. On 1 November 2023, the matter came up for hearing when Mr. Nyaberi, learned counsel for the appellant, applied for adjournment on the basis that his client is yet to sign the witness statement and that another one of his witnesses was outside the country. The application for adjournment was resisted by Mr. Onguti, learned counsel for the respondent, but granted with the court giving the appellant 45 days to file and serve his documents. The next time the matter came up for hearing was on 13 March 2024. Yet again counsel for the appellant applied for an adjournment stating that he was unable to contact his client and his daughter who were outside the country. He asked for time to file an application to cease acting. Counsel for the respondent again opposed the application for



adjournment. The court agreed to adjourn and directed that the application to cease acting be filed and be served within 14 days and it be heard on 17 April 2024. The court ordered the appellant to pay court adjournment fees and witness expenses of Kshs. 3,000/= to the defendant 'in the cause' (sic).

4. On 17 April 2024 both Mr. Nyaberi and Mr. Onguti were in court. Mr. Nyaberi stated that he filed an application to cease acting, dated 15 March 2024, and he attempted to serve the appellant through his daughter but the process server was informed that she is out of the country. He submitted that the process server could not trace the appellant in Kisii and he prayed to be allowed to serve through substituted service through post. Mr. Onguti opposed the application for adjournment. He submitted that he had 3 witnesses and that the appellant had not paid the court adjournment fees.
5. The court put the file aside apparently to confirm the filing of the application. On resumption, the trial Magistrate expressed as follows :

“From the system, the application is not yet filed. Application for adjournment is denied.
Suit is dismissed with costs to the defendant.”

6. Mr. Nyaberi then asked for leave to appeal, which was granted, and this appeal was subsequently filed on the following grounds :

1. The trial Magistrate erred in dismissing the suit on the basis that the application dated 15 March 2024 had not been paid for yet no invoice had been generated by the court for the appellant to pay for it.
2. The trial Magistrate erred in dismissing the appellant's suit while aware that the appellant could not be reached and he was not aware of the hearing date.
3. The trial Magistrate erred by failing to grant a hearing date to the motion dated 15 March 2024 which had been properly and timeously filed in the e-filing portal.
4. The trial Magistrate erred in failing to appreciate that the appellant was a purchaser and dismissal complicates his right to ownership documents.
5. The appellant is the rightful purchaser and owner of the suit land and dismissal complicates his right to ownership documents.

The appellant seeks that the suit be reinstated and heard on merit.

7. The appeal was argued through written submissions and I also allowed counsel opportunity to highlight. I have taken into consideration the submissions filed.
8. I am persuaded to allow the appeal because I am convinced that the trial court fell into a procedural error.
9. It will be observed that what the court scheduled for hearing on 17 April 2024 was the application to cease acting by counsel for the appellant. I have had to look into the e-filing portal of the lower court. I see that it shows the application dated 15 March 2024 uploaded but the amount of Kshs. 1,500/=, being the filing fees, is not paid. The view of the trial court was that the application was not filed. It is correct that a document will only be considered filed upon payment, but I observe that the trial Magistrate did not give counsel for the appellant opportunity to explain himself on the lack of payment, or even give him some time to ensure that the money was paid. In this e-filing system, there can be lapses and courts should not rush to issue extreme orders without first hearing an explanation. There could have been a plausible reason for the non-payment which I think counsel ought to have been given opportunity to explain.



10. But more importantly for me, even assuming that no application to cease acting had been filed at all, that was no reason to dismiss the suit, because what was coming up on that day was not the hearing of the main suit but the hearing of the application to cease acting. There was no basis to dismiss the suit merely because no application to cease acting had been filed. At worst, the court could simply have considered that no application was going to be filed and then proceed to give a hearing date for the main suit. 17 April 2024 was not the date for hearing of the main suit and I am at a loss as to why Mr. Onguti submitted before court that he had three witnesses. They were never going to be heard on that day for the simple reason that this was not the day for the hearing of the main suit but only a day for hearing of an application by counsel to cease acting. There was clearly no basis for the court to dismiss a suit because counsel has not filed an application to cease acting as directed.
11. For the above reasons, this appeal is allowed. The decision of the trial court made on 17 April 2024 dismissing the appellant's suit is set aside together with all consequential orders. The appellant shall have the costs of this appeal.
12. Before I close, I am aware that within this appeal, it was raised that there is another related suit, being the suit Kisii MCELC No. E006 of 2025. I make no orders on that suit. It is for the parties to see how best to move the court if at all the suit is related to this one.
13. Judgment accordingly.

DATED AND DELIVERED THIS 26 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Onguti for the respondent

No appearance on part of Mr. Nyaberi for the appellant

Court assistant – Michael Oyuko

