



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ekuwom v Lorgoi & another (Environment and Land Appeal  
E002 of 2024) [2025] KEELC 8335 (KLR) (26 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8335 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT LODWAR  
ENVIRONMENT AND LAND APPEAL E002 OF 2024**

**CK NZILI, J**

**NOVEMBER 26, 2025**

**BETWEEN**

**EKADELI ANDREW EKUWOM ..... APPELLANT**

**AND**

**CHARLES LORGOI ..... 1<sup>ST</sup> RESPONDENT**

**MOHAMMED MUODID BULLE ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment of Hon. D. Orimba (CM)  
delivered on 09/10/2024 in Lodwar CMC ELC No. E004 of 2022)*

**JUDGMENT**

1. The appellant, as the plaintiff at the lower court, sued the respondents as the defendants by a plaint dated 2/4/2022 seeking:
  - a. Declaration to be entitled to exclusive and unimpeded right of possession and occupy land known or located at Kenyatta Line opposite Police Division (Lodwar Town), measuring 50 by 100 metres.
  - b. Permanent injunction.
  - c. General damages for trespass.
2. It was the appellant's case, based on a witness statement dated 20/6/2023, which at the hearing he used as his evidence-in-chief, as PW1, that he purchased the plot from one Lazaro Ekeno Eyangani vide sale agreement dated 30/7/2004 and it was only until 24/8/2021 when the respondents served him with a letter requesting him to appear at the land office on 19/4/2022, following a complaint lodged therein, claiming ownership of the same, which he intended to sell to a third party.



3. PW1 said that he attended the said meeting only to be told that the plot did not belong to him. PW1 said that a few days thereafter, the defendants sent goons or agents to attack him or forcefully evict him from the land, occasioning him bodily harm and damage to the property, including his car. The plaintiff termed the defendants' acts as not only unlawful but also greatly prejudiced to his individual and family rights and interests over the suit property.
4. The plaintiff testified that efforts to settle the matter amicably were in vain, and the defendants have persisted and continued to unlawfully claim the land, issue threats of violence on him and his family, hence occasioning him loss and damage, hence this suit. PW1 relied on the sale agreement dated 30/7/2004 and the letter from the Ministry dated 24/8/2021.
5. In cross-examination, PW1 told the court that the suit land is not registered under his name and whoever had sold the land to him was still alive, though he had not listed him as a witness. PW1 said that the land office had demanded that he surrender the portion to be allocated another portion.
6. PW1 said that the seller had attended the meeting at the land office and said that the plot was not the one he had sold to him, leading to the land office ordering him to vacate the portion and move out to another land, as stated in the minutes of the meeting.
7. In re-examination, PW1 said that the land office was unfair to him; otherwise, the seller had turned to a hostile witness, for he had attempted to resell the land twice to third parties.
8. Kolitieng Ngimusung Kapokol testified as PW2. Relying on a witness statement as his evidence-in-chief. PW2 confirmed that he was a witness to the sale agreement produced as P. Exhibit. No. (1), which was signed at the police station, where the plot is next to the police headquarters.
9. PW2 said that the plot had no parcel number or identification. PW2 confirmed attending a meeting before the village elders and the councilors in an attempt to amicably settle the dispute.
10. Bernard Lomali testified as PW3. Replying to a witness statement dated 20/6/2023 as his evidence in chief. PW3 told the court that while a student in 2004, PW1 took him to the suit land, which he had purchased, now being claimed by the defendants.
11. The defendants opposed the suit through a statement of defence dated 0/8/2022 and a preliminary objection dated 28/10/2022. It was the defendant defence that the description of the alleged suit land is vague and ambiguous, it is non-existence, he never attempted any out of court settlement at the lands office to settle the dispute, he was merely summoned to the meeting to confirm the alleged plot was registered in the name of Mohammed Muodid Bulle according to the records at the land office and therefore he had not trespassed onto the suit land as alleged or at all.
12. The defendant averred that he was among the mediators who tried to resolve the dispute between the plaintiff and Lazaro Ekeno Eyangana, in vain, after the plaintiff was offered an alternative land.
13. At the hearing, the defendant testified as DW1, relying on a witness statement dated 20/7/2023. He told the court that he used to be the mayor of the defunct Lodwar County Council. DW1 said that the plaintiff had encroached on a plot that did to belong to him; otherwise, he had allocated the plot to Mama Kosia, before the plaintiff started laying claim on it.
14. DW1 said that the plaintiff had threatened him with a gun, leading to a report at the police station. DW1 said that as the chairman and mayor in 1993 and 1994, he had powers at the time to allocate plots after which an allottee would process his documents. DW1 confirmed that the plot belongs to the interested party.



15. DW1 told the court that he is a businessman and the chairman of Council of Elders, Turkana, a retired reverend with Kenya Assemblies of God Church, a former elected councilor for 15 years, and the former mayor and chairman of Lodwar Urban and Municipal Council between 1997 - 2002, and 2002-2007. During that time, DW1 said that as a councilor, he had powers to allocate town plots and issue allotment letters for his Kenyatta ward.
16. DW1 said that one would apply for the same with the council. In this case, he said one Atabo Kosiyae, a widow, approached him and requested a plot in 1998, to put up a dwelling house, whereof he showed her a plot at Soweto B, Lodwar Town. DW1 said that he put up a temporary makuti structure. Later on, he said that the lady gave the plot to his son, Lawrence Etorong Lowaya.
17. Further, DW1 said that in March 2022, he learned that Lawrence had been arrested and was at Lodwar Police Station, only to learn that he had sold the plot to the interested party. DW1 said that he was summoned to the land offices of the County, to which the committee was constituted, and went with Lazaro Ekeno Eyangan, who showed them a different plot which he had sold to the plaintiff, who declined to use or develop it for many years and was subsequently fenced off as part of the Divisional Police Headquarters.
18. The suit was opposed by a third party who, by an application dated 13/2/2023, sought leave to join the suit. By an order granted on 8/3/2023, the court directed him to join as a 2<sup>nd</sup> defendant. He filed a statement of defence and counterclaim dated 2/6/2023. The 2<sup>nd</sup> defendant averred that he was a bona fide owner of the suit land bought from Lawrence Etorong on 27/9/2021. He averred that after purchasing the land, he visited the County Survey office on 29/9/2021, paid government fees for survey work, and obtained survey records for a plot measuring 24x30x30 meters as L.R. No. LWD/Township (Soweto)/2021/066, for which to date he has been paying county land levies.
19. By way of a counterclaim, the 2<sup>nd</sup> defendant averred that in March 2022, the plaintiff trespassed onto the plot, fenced off the plot, and erected iron sheets, made a structure thereon, hence infringing on his proprietary rights.
20. The 2<sup>nd</sup> defendant averred that he made a report to the Land Adjudicator, Turkana Central Sub-County, who issued him a letter dated 4/4/2025 confirming ownership of the plot.
21. The 2<sup>nd</sup> defendant averred that on 15/4/2022, the parties were summoned by Turkana County officers for a land dispute between the plaintiff and Lazaro Ekeno Eyangan, who had allegedly sold the land to the plaintiff.
22. The 2<sup>nd</sup> defendant averred that during the said meeting, it was established that the plaintiff did not own the plot; otherwise, his alleged plot had become part of the divisional police headquarters.
23. Despite the foregoing, the 2<sup>nd</sup> defendant averred that the plaintiff was still trespassing onto his plot, hence the relief of:
  - a. Declaration that he lawful owner of the plot.
  - b. Eviction and vacant possession.
  - c. Permanent injunction.
  - d. OCS Lodwar Police Station to ensure compliance with the orders.
  - e. Costs of the counterclaim.



24. Mohamed Mourid Bulle testified as DW2 and relied on a witness statement dated 20/7/2023 as his evidence in chief.
25. DW2 told the court that he bought the vacant plot, measuring 50 by 100ft, for Kshs. 600,000/=, by an agreement dated 27/9/2021, before the firm of Daniel O. Ondabu & Co. Advocates, to which he paid in two instalments.
26. DW2 said that the chief gave him a letter dated 27/9/2021, which he took to the survey office on 29/9/2021, paid county survey levies of Kshs. 15,000/=, who proceeded to the plot with both the seller and the purchaser, Derrow Kario Abdi. Survey forms APP 1 and 2 were filled by the county surveyor, and on 22/10/2021, he was issued with a demarcation survey plan showing the exact measurements of his plots, and the coordinates were captured in the demarcation survey sheet. DW2 said that on the same day, he was issued a land survey confirmation letter, Ref. No. LDW/Township (Soweto)/2021/066.
27. DW2 said that in March/April 2022, the plaintiff started disturbing him, made a report at the DCIO Lodwar, fenced off the plot, and the seller was locked in, only for DW1 to come and confirm the allocation to him was genuine.
28. DW2 said that the plaintiff is a police officer based in Muranga who had fenced off the land and erected a temporary iron sheet structure. DW2 said that after the seller was released, they all went to the lands office, which convened a land dispute meeting on 15/4/2022, concluding that his ownership was genuine; otherwise, the plaintiff had bought a totally different plot from the seller, now part of the divisional police headquarters.
29. DW2 relied on a two sale agreements dated 27/9/2021, an acknowledgment of final payment, letter of the area assistant chief dated 27/9/2021, bundle of payment receipts by the County, Survey Forms PPA 1 and 2, Demarcation Survey dated 29/9/2021, confirmation letter by the Survey Department dated 19/10/2021, letter dated 4/4/2022 by the Land Adjudicator, land disputes minutes dated 21/4/2022 and a letter by the Director Land and Physical Planning, Turkana County dated 21/4/2022, as D. Exhibits. No. (1) – (10) respectively.
30. DW2 told the court that he had visited the plot before buying it, visited the village elder and the area chief. DW2 said that the acts of trespass and encroachment happened after buying the plot.
31. Lazaro Ekeno testified as DW3. He relied on a witness statement dated 20/7/2023 as his evidence-in-chief. He told the court that the plaintiff approached him seeking a plot in Kenyatta Line, before a police station was erected thereon, and agreed on a plot measuring 50ft by 100 ft for Kshs. 50,000/=, paid a deposit of Kshs. 20,000/= in July 2004, and cleared the balance on 31/7/2004.
32. DW3 said that in April 2022, he heard that the plaintiff had fenced off someone's plot, which was not the case. DW3 said that he sold a different plot to the plaintiff from that of the 2<sup>nd</sup> defendant, which on one side was taken up by the road and the other part taken up by the police headquarters.
33. DW3 said that the plaintiff failed to develop the plot. Equally, DW3 said that when the land office told him to offer the plaintiff an alternative plot, as well as DW1, he declined and instead fenced off the one belonging to the 2<sup>nd</sup> defendant and erected a temporary structure thereon. DW3 said that it took the plaintiff 19 years to move to the plot and develop it.
34. Lawrence Etorong Lowaya testified as DW4. He relied on a witness statement dated 20/7/2023 as his evidence in chief. He confirmed the evidence of DW1 as to how his mother, the late Atabo Kosiyae, was allocated the plot in 1998 at Soweto B, by the then mayor. DW4 confirmed selling the land to the



- 2<sup>nd</sup> defendant on 27/9/2021 for Kshs. 600,000/=, receiving the total purchase price in two instalments of Kshs. 60,000/= and Kshs. 540,000/=, and having the land surveyed on 19/10/2021.
35. After the close of the 4<sup>th</sup> defendant's case, the trial court delivered its judgment on 9/10/2024, dismissing the suit and allowing the 2<sup>nd</sup> defendant's counterclaim, now appealed against by the plaintiff.
  36. Through a memorandum of appeal dated 25/10/2024, the trial court is blamed for dismissing the suit, relying on extraneous or immaterial matters; finding the appellant had not supported his claim through documents on ownership or purchase, unlike the 2<sup>nd</sup> respondent; failing to appreciate the facts on the scene/site after visiting the same or misapprehended the same especially who was in occupation; ignoring his evidence, submissions and the authorities cited, and lastly, misapplying the evidence and relying on wrong principles of law to reach a wrong decision.
  37. The appellant relies on written submissions dated 21/11/2025. Reliance is placed on the case of Naftali Ruthi Kinyua -vs- Patrick Thuita Gachure, & Another [2015] KECA 911 KLR, on the principle that the first in time entitles him to superior rights.
  38. The first appellate court's role is to review the findings and evidence from the lower court and determine if there is sufficient evidence to support the determination made by the lower court, while giving credence to it, as it had an opportunity to hear and see the witnesses testify. See Peter -vs- Sunday Post Ltd (1958) EA 424 and Selle & Another -vs- Associated Motor Boat C. Ltd & Others [1968] E.A 123.
  39. Having looked at the lower court record and the grounds of appeal, this appeal turns on whether the appellant, unlike the respondents, proved that he had bought, taken possession, and was the bona fide owner of the undefined parcel of land allegedly said to have been trespassed upon by the respondents.
  40. The appellant's cause of action, as captured in the plaint dated 22/4/2022, is that the "respondent", without any colour of right, illegally and unprocedurally trespassed and laid a claim over land measuring 50ft by 100ft located at Kenyatta Line opposite Police Station, Lodwar Town. He sought for declaration that he is the owner of the parcel, a permanent injunction, and general damages for trespass.
  41. The claim was opposed by the defendants and especially the 2<sup>nd</sup> defendant, based on a statement of defence and counterclaim dated 2/6/2023, who denied the alleged trespass for land parcel Ref. No. LDW/Township (Soweto)/2021/066 belonged to him, and that it was the appellant who had allegedly trespassed into it, claiming that one Lazaro Ekeno Eyanghan had sold the same portion to him, which was eventually surveyed and recorded under his name, by the county government of Turkana.
  42. The 2<sup>nd</sup> respondent sought for declaration that he owns parcel No. LDW/Township (Soweto)/2021/066, eviction of the appellant from the portion, and permanent injunction.
  43. Trespass is defined by Black's Law Dictionary 10<sup>th</sup> Edition as an unlawful act committed against on property of another or wrongful entry into another's property, permanent invasion of another's rights. To prove trespass, a party has to establish immediate and exclusive possession of the property.
  44. The burden of proof was on the appellant to prove immediate exclusive possession of the land and the wrongful entry to it by the 2<sup>nd</sup> respondent. In Muthiora -vs- Marion Muthama Kiara (Suing on behalf of the Estate of Erastus Muthamia Kiara - Deceased) [2022] KECA 28 (KLR), the court cited Section 3 of the *Trespass Act* as entry, remainder, or erection of structures on private land without the consent of the owner.



45. In *Vaz -vs- Oyatsi & 2 others* (Civil Appeal E035 of 2022) [2025] KECA 251 (KLR) (21 February 2025) (Judgment), the court said that every continuance of a trespass is a fresh trespass of which a new cause of action arises from day to day as long as the trespass continues and that any unauthorized entry, whether present or continuous, is trespass.
46. In *Torino Enterprises -vs- Attorney General SCOK* Petition No. 5 (EOO6) of 2020, the court said that it is the act of registration that confers a transferable title to the registered proprietor and not a possession of an allotment letter, and that an innocent purchaser is aware of what they are purchasing by inspecting the suit premises.
47. Kevin Gray & Susan Francis Gray's: "Element of Land Law"; 5<sup>th</sup> Edition, says that evidence in title to an unregistered estate on land usually exists only in the form of a chain of documentary records. In *Danson Kimani Gacina & Another -vs- Embakasi Ranching Co. Ltd* [2014] eKLR, the court said that proof of ownership in unregistered land is found on documentary evidence, which leads to the root of title, which should be an unbroken chain for the holder of the documents to be entitled to the protection of the law.
48. In *Caroline Awinja Ochieng & Another -vs- Jane Anne Mbithe Gitau & Others* [2015] eKLR, the court said that in determining the issue of ownership of a plot, the first stage is to trace ownership of the unregistered land through history and documentation.
49. In *Mundia M'Nabea -vs- David M. Wachira* [2016] eKLR, the court observed that the standard of proof in civil liabilities means that the court will assess the oral, documentary, and real evidence advanced by each party and decide which case is more probable, or which occurrence of the event was more likely to have happened than not.
50. Both the appellant and the 2<sup>nd</sup> respondent were laying claim to the portion of land as purchasers for value. Land sale agreements are governed by Section 3(3) of the [Law of Contract Act](#) and Section 38 of the [Land Act](#). The subject land forms part of the community land. Articles 62, 63, and 64 of [the Constitution](#) define what private, community, and public land. An unregistered county land under Section 6(1) of the County [Land Act](#) is held by the County Government in trust for communities ordinarily resident in the county.
51. In *Mohamed -vs- Duba & Another* 2022 KECA 442 [KLR], the court said that when dealing with an unregistered suit property, a determination of the respective parties' entitlement can only be made based on an analysis of the various indentures produced by the parties. In *Benja Properties Ltd -vs- Syedna Mohammed Burhannudin Sahmed & Others* [2015] KECA 457, the court said that the maxim is that possession is nine-tenths of ownership. In *Wandaka & Others -vs- Mwangi* Civil Appeal No. 39 of 2019 [2025] KECA 83 [KLR] (24<sup>th</sup> January 2025) (Judgment), the court said that every case stands or falls on the evidence that is adduced at the trial to support the cause of action as pleaded, and that at the end of the day, even the best submissions that are not supported by evidence will amount to an academic exercise.
52. A scrutiny of the evidence provided by the appellant shows that he was tracing his root of title to the seller, one Lazaro Ekeno Eyangan, via a sale agreement dated 30/7/2004. He did not call him as a witness to sustain his cause of action. Instead, the respondent called him DW3. Though he admitted the sale, he said that the appellant took 19 years before developing the plot until it was taken up by the police station.



53. DW3 confirmed that the plot that he sold to the appellant was in a different locality from the one the 2<sup>nd</sup> respondent had pleaded to be his. DW3 even suggested that he could take the court to where the plot he sold to the appellant. At that juncture, his lawyer on record applied for a scene visit.
54. On the other hand, the respondents were able to define the land parcel, produce a paper trail, in terms of D. Exhibit No. 1-10. When a registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof without showing that the process leading to it was regular, procedural, lawful, formal, and free of any encumbrances. See *Munyu Maina -vs- Hiram Gathiha Maina* [2003] KECA 94 [KLR].
55. In *Dina Management Ltd -vs- County Government of Mombasa & Others* SCOK Petition No. 8 [E010] of 2021, the court held that there are processes for allocating unalienated government land to be followed before the issuance of a title.
56. In *General & Another -vs- Hussein & Others* Civil Appeal 100 Eldoret No. 32 of 2018 [2025] KECA 1022 [KLR] (5<sup>th</sup> June 2025) (Judgment), the court cited *African Line Transport Co. Ltd -vs- Attorney General Mombasa* HCCC No. 216 of 2003 [2007] eKLR, that planning comes first, then surveying.
57. In this appeal, the 2<sup>nd</sup> respondent tendered authenticated and approved documents from the County Government of Turkana showing the history of the land to its current status. Other than the sale agreement, the appellant had nothing from the County Government to show that he had notified them when he was sold the land by DW3, and also to show that he conducted due diligence before purchasing unregistered community land.
58. A bona fide purchaser, as held in *Shemi & another -vs- Tarabana Company Limited & 5 others* (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment), has to prove the three essentials of bona fide value and legal estate. As held in *Said -vs- Shume & 2 others* (Civil Appeal E050 of 2023) [2024] KECA 866 (KLR) (26 July 2024) (Judgment). Lands are not vegetables that are bought from unknown sellers, and buyers have to make thorough investigations before purchasing them.
59. The appellant blames the trial court for dismissing his suit when he had not proved both ownership and possession of a defined parcel of land, which the 2<sup>nd</sup> respondent had trespassed into by way of cogent and tangible oral and documentary evidence since 30/7/2004.
60. The record shows that the trial court made an order for a site visit. Though the record does not contain the field site visit notes, the trial court cannot be faulted for the decision that it made based on both the respective parties' pleadings, oral, and documentary evidence. Cases succeed or fail based on pleadings, the availability, and the quality of evidence tendered to support the cause of action.
61. Written submissions, however convincing, cannot amount to pleadings and replace evidence. In *D.T. Moi -vs- Stephen Muriithi* [2014] KECA 642 [KLR], the court said that facts are to be proved by way of evidence to support their existence as pleaded by the party. The court said that submissions are generally parties' marketing language, each side endeavoring to convince the court that their case is a better one.
62. DW3, who sold the alleged portion claimed by the ground, refuted its locality as alleged by the appellant. The appellant's two witnesses' testimony, as compared to that of the seller, appeared more consistent and credible. DW3 took the trial court to the spot where the appellant should have taken possession of in 2004, which unfortunately was taken up by the police station. Efforts to offer the appellant an alternative plot were refuted by the appellant as per the minutes of 15/4/2022.
63. The upshot is I find the appeal lacking merits. It is dismissed with no order as to costs.



64. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT  
AT KITALE ON THIS 26<sup>TH</sup> DAY OF NOVEMBER 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

No appearance

