



**Asangu (Suing as the administrator of the Estate of Samuel Azangu - Deceased) v Josephine (As the administrator of the Estate of the Late Benedict Kivihya Aligula - Deceased) (Environment and Land Appeal 1 of 2023) [2025] KEELC 8551 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8551 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND APPEAL 1 OF 2023  
GMA ONGONDO, J  
DECEMBER 3, 2025**

**BETWEEN**

**HENRY MBAYA ASANGU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF SAMUEL AZANGU - DECEASED) ..... APPELLANT**

**AND**

**ZIPORAH JOSEPHINE (AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE BENEDICT KIVIHYA ALIGULA - DECEASED) ..... RESPONDENT**

*(Being an appeal arising from the Judgement of the Learned Magistrate Hon. D. Ocharo, PM) delivered on the 2nd day of November, 2022 at Kapsabet CMC Environment & Land case No. 86 of 2019)*

**JUDGMENT**

1. This appeal arose from the judgment of the Trial Court where it was opined that the Plaintiff's assertion was an allegation without proof. Thus, the suit was dismissed with costs.
2. The Appellant, Henry Mbaya Azangu who was the Plaintiff in the suit, being dissatisfied with the judgment of the Learned Trial Magistrate filed the appeal through Ben Aduol Nyanga and Company Advocates on the grounds infra;
  - a. That the learned Trial Magistrate erred in law and fact in finding that the Appellant's plaint dated 12<sup>th</sup> August 2021 lacked merit.
  - b. That the learned Trial Magistrate erred in fact and in law in failing to appreciate and consider the evidence tendered by the Appellant orally.
  - c. That, the learned Trial Magistrate erred in fact and in law by failing to appreciate the evidence tendered and produced by the Appellant during the hearing.



- d. That the learned Trial Magistrate erred in fact and law by failing to regard the written submissions tendered by the Appellant
  - e. That the learned Trial Magistrate erred in law and fact and misdirected himself in totally disregarding the legal issues raised by the Appellant mainly the Respondent registered the whole parcel of land in their names well knowing that there was a pending case in Court that was yet to determine the question of ownership of the parcel of land.
  - f. That the learned Trial Magistrate erred in law and fact by not addressing his mind to the issues in controversy and arriving at a wrong judgment.
  - g. That the learned Magistrate erred in fact and in law in failing to consider that the Appellant herein has been and is in occupation of the land in dispute
  - h. That the learned Magistrate erred in law and fact and misdirected himself in the Application of the principles of the law applicable in all the circumstances of the case and therefore failed to exercise his discretion judiciously.
  - i. That the learned Magistrate erred in law and in fact in failing to notice that the Appellant's evidence was not contradicted and uncontroverted by the Respondent.
  - j. That the learned Magistrate erred in law and fact in awarding costs to the Respondent.
3. So, the Appellant is seeking that the Appeal herein be allowed and the judgment delivered on the 2<sup>nd</sup> day of November 2022 be set aside and, in its place, there be an order ordering the cancellation of the title deed for land parcel No. NANDI/KOIBARAK "A"/121 (The suit land herein) that is in the name of the Respondent and the Appellant be registered as the legal proprietor of the said land.
  4. In the original suit, the Plaintiff sued the Defendants for, inter alia, a declaration to show that the Plaintiff is the exclusive owner of the suit land and the title deed issued to the Defendant be cancelled and a correct one be issued in the names of the Plaintiff.
  5. By her statement of defence of December 2019, the Defendant stated in part, that upon paying for the suit land, her late husband, Samuel Azangu (The Deceased) took possession of the suit land and has been in possession thereof to date. That the Deceased failed to pay the purchase price for the suit land and thereby the deceased was offered the land for sale for which he fully paid for.
  6. By the submissions dated 1<sup>st</sup> October 2025, learned Counsel for the Appellant referred to the pleadings and submissions of the respective parties, the hearing of the suit, the impugned judgement, the grounds of appeal and three issues for determination including whether the suit land was illegally registered in the name of the Respondent and whether the Plaintiff is entitled to the remedies sought. In the resolution of the issues, it was submitted in part, that the suit land is registered in the name of the respondent and that her deceased husband was awarded the suit land vide a suit, Land case No. 1 of 1976 against the Appellant. That on appeal No. 2 of 1982, it was ordered that the whole matter be heard afresh.
  7. It was, therefore, the submission of the Appellant's Counsel that the suit land was transferred to the Respondent's deceased husband illegally knowing that there was a matter that was still pending determination on the question of its ownership as the case had been remitted back for fresh hearing. Counsel cited, inter alia, section 26 of the [Land Registration Act](#) 2016 (2012) and the case of *Munyu Maina -vs- Harun Gathiha Maina* (2013) eKLR. That the Respondent is holding the title to the suit land in trust for the Appellant and that the appeal be allowed accordingly.



8. In the submissions dated 20<sup>th</sup> November 2025, the Respondent through Kitiwa & Partners Advocates, referred to the evidence of PW1, DW1 and DW2, the seven grounds of appeal and issues for determination being on proof on a balance of probabilities in line with sections 107, 109 to 112 of the Evidence Act Cap 80 Laws of Kenya, Kirugi & another -vs- Kabiya & 3 others (1987) KLR 387 cited in Eastern Produce (K) Ltd Chemoni Tea Estate -vs- Bonfas Shoya (2018) eKLR on burden of proof. That missing of Court file not a basis for filing of fresh suit as it amounts to an abuse of the Court process. That the Respondent produced a copy of title confirming that her husband bought the land which is not challenged and reference made to section 26 of the Land Registration Act 2016 (2012). The Appellant's case is that his father bought the land and did not complete payment of purchase price and judgment in case number 9 of 1966.
9. To reinforce the submissions, counsel cited the case of Katende -vs-Haridar & Company Ltd (2008) 2 EA 173 and Black's Law Dictionary and the case of Henry Mwangi Gatai -vs- Margaret Wanjiku Godwin (2018) eKLR on the bona-fide purchaser for value without notice. That the Appellant failed to prove his claim as required by the law hence, the appeal be dismissed with costs.
10. This appeal is the first one from the original suit thus, I am obliged to review the record of the Trial Court, evaluate it and make own conclusion on whether the impugned judgment should stand, a jurisdiction which should be exercised with caution; see Peters -vs-Sunday Post (1958) EA 424 at 429.
11. In the foregone, the issues for determination are contained in the grounds of appeal which boil down to the Trial Court's assessment of the Appellant's pleadings, evidence on ownership of the suit land, submissions and award of costs in the original suit.
12. The Trial Court made reference to the parties' respective pleadings at pages 1 and 2 of the impugned judgment. Clearly, the said pleadings inclusive of the plaint were considered before reaching at the judgment.
13. On the evidence of the parties, the Learned Trial Magistrate referred to the testimonies of the Appellant, the Respondent and DW1 including P Exhibits 1 to 8 therein as disclosed in the last three paragraphs of page 2 of the impugned judgment. The Court noted that the Respondent denied the Appellant's claim and stated that the suit land is registered in the name of her late husband. The evidence of the Appellant as regards ownership and occupation, was controverted by the Respondent (DW1) who under cross examination stated;
 

“...I use the land. I have constructed.....We bought the suit land from the late Maritim Arap Ngeny in 1965 and obtained the title deed in 2015. The Plaintiff has trespassed into the land.”
14. Moreover, it was the Respondent's position that the registration of the suit land is in the name of her deceased husband. No doubt, the Court is not unaware of Section 26 of the Land Registration Act (supra) on the essence of certificate of title and the limitations thereto.
15. In addition, the appellant did not distinctly plead and prove illegality or fraud in the suit as held in the case of Kuria Kiarie & 2 others -vs- Sammy Magera (2018) eKLR.
16. Furthermore, in the case of Munyu Maina case (supra), the Court of Appeal held thus;
 

“.....when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and



free from any encumbrances including any and all interests which need to be noted on the register.”

17. Regarding non consideration of the Appellant’s submissions, I subscribe to the Court of Appeal decision in the case of Daniel Toroitich Arap Moi -vs- Mwangi Stephen Muriithi & another (2014) eKLR that legal submissions are not evidence but rather arguments based on evidence presented in court. Essentially, such submissions are a persuasive tool which each side uses as a form of ‘marketing language’ to convince the Court that its case is the better one.
18. Besides, The Trial Court took into account the submissions of the respective parties. This is disclosed at paragraph 4 in page 25 of the Trial Court’s proceedings contained at page 125 of the record of appeal.
19. It is worth to note that the Trial Court held, inter alia, that the Appellant repeatedly claimed that his father, deceased entered into an agreement with the Respondent’s deceased husband to purchase land from a person called Martin Arap Ngeny 1962. Notably, the Court observed;

“.....These allegations have not been proved. The Plaintiff does not disclose the source of his information. He who alleges must prove, see Section 107 and 108 of the *Evidence Act*.....”
20. In the premises, the Learned Trial Magistrate examined the parties’ respective pleadings, evidence and applied correct legal principles in arriving at the impugned judgment. Having noted the entire record including the evidence, the impugned judgment, the grounds of appeal and the all the authoritative pronouncements herein, I find no reason to disturb the Trial Court’s well-informed finding and proceed to uphold the decision.
21. It is plain that the Trial Court bore in mind the proviso to Section 27 (1) of the *Civil Procedure Act* chapter 21 Laws of Kenya that costs follow the event within the discretion of the Court; see Rai & 3 others -vs- Rai & 4 others {2014} KESC 31 (KLR).
22. Ultimately, the instant appeal is devoid of merit. The same is hereby dismissed with costs to the Respondent.
23. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 3<sup>RD</sup> DAY OF DECEMBER 2025**

**HON G M A ONGONDO**

**JUDGE**

In the presence of;

Ms Willie Learned Counsel for the Appellant

Ms Wambani Learned Counsel for the Respondent

Walter, Court Assistant

