



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Maina (Civil Appeal E092 of 2024)
[2025] KEHC 18238 (KLR) (2 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E092 OF 2024
PJO OTIENO, J
DECEMBER 2, 2025**

BETWEEN

STANLEY NGANAG KAMAU APPELLANT

AND

HANNAH WANGECHI MAINA RESPONDENT

JUDGMENT

1. (Being an Appeal from the Judgment of the Chief Magistrate’s Court at Naivasha in CMCC No 287 of 2020, delivered by Hon. Y. M. Barasa, dated the 25th July, 2024)

JUDGMENT

2. The suit before the trial court which has provoked this appeal was fairly straight forward. In it the appellant, as defendant there, sued the Respondent, for a liquidated sum of Kshs. 7,800,000/= being purchase price of parcel of land Reference No. Nyandarua/Olaragwa/847 and Kshs. 1,560,000/- being damages for breach of contract.
3. The basis of the claim as pleaded by the appellant was that having paid to purchase price in full, the transfer was effected, he was put into possession but later the title was cancelled by a court of law.
4. In defense of the claim, the Respondent filed a statement of defense in which the contract between the parties was admitted unequivocally together with the price thereof and mode of payment of the purchase price.
5. Even the fact of legal challenge and cancellation of the title was tacitly admitted with a without prejudice pleading that at the time of sale, she had a title for the property in her name and that she ought not be held accountable for the subsequent litigation and its outcome because the plaintiff admitted having conducted due diligence. The Respondent added that she was also a purchaser for value from one Mary Mumbi Njoroge who she gave notice to be later joined to the suit.



6. Even in evidence, embodied in the witness statement and evidence in chief and upon cross examination, the position of the Respondent remained that she sold the land to the Appellant after the appellant had done due diligence, effected a transfer and document of title issued to the appellant hence she did all she could do and not liable for the later cancellation of the title by the Environment and Land Court.
7. After the parties had given evidence, the trial court dismissed the suit primarily on the basis that even though the Appellant had filed a list of documents, he did not avail and produce such documents.
8. The judgment aggrieved the appellant who then filed the current appeal and put forth seven grounds of appeal. Even when split into those seven grounds, the challenge on the judgment is essentially that the trial court ran into an error in dismissing the suit for reasons of lack of documentary proof when the same documents had been produced in the presence of the court following an earlier default judgment following a formal proof in which the said documents were relied upon. The judgment is equally faulted for failure by the trial court to notify the parties of absence of the documents in court file.
9. The court has read the record filed and the submissions offered by the two counsel for the parties. The court notes that while there is no record that any documents were ever pleaded by the Appellant, the pleadings and evidence by the respondent admitted sale to the Appellant of a title that was later cancelled and nullified by the court on account of the Respondents having not passed a valid title. The court equally notes that in cross examination, the respondent was referred to documents listed as no 1 and 5 in the appellant's list of documents and the records show that she saw same and commented thereon. On the same breath the appellant equally referred to his exhibit No 4 without any protestation from the respondent. For the court, the judgment records that the plaintiff adopted his witness statement and produced his documents as exhibits.
10. The parties having produced documents and referred to the same documents which reference was then captured by the court; it would not have been just to dismiss the suit on account of want of the documents. That fact coupled with the fact of unqualified admission of the transaction and cancellation of the title by a court order runs affront the conclusion by the court that the appellant was not entitled to the remedy sought.
11. The record as it is, suggests and points to the fact that at the hearing, the appellants documents were on record and parties ought to have been prompted by the trial court to address it on the whereabouts of the documents when the court discovered that none was in the court file. That the court did not do which failure is explicable on the explanation by counsel that the documents were filed during the pandemic by way of email and the evidence was equally adduced virtually with the witnesses and counsel not being in the same locus with the court.
12. The court and its systems exist for the administration of substantial justice by resolving disputes. Where there is no dispute, the court must not appear to infer any.
13. Here, it would appear that the legal system failed to protect the truth and its sisters; justice and fairness. It is a scenario that would have been avoided had the legal minds in that courtroom for the days the appellants case was mentioned and heard, applied their minds to the pleadings filed, by way of case conference, and noted that something was amiss. The court views such a miscarriage of justice to have resulted from a mistrial. For the mistrial the court direct that the judgment dismissing the suit be set aside and the matter remitted to the lower court for fresh trial.
14. Because the two counsel would have done more, on their obligation and duty to court, to avoid the injustice disclosed here, the court directs that each party shall bear own costs because it would be unjust to burden any of the parties for mistakes of law that the legal mind should have avoided.



15. Dated, Delivered and Signed at Naivasha this 2nd day of December, 2025.



Patrick J O Otieno

Judge

In the presence of;

Mr. Oyondi for Appellant.

Mr. Ooga for the Respondent

Ms. Hannah – Court Assistant

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