



REPUBLIC OF KENYA



**Yego v Kemei & another (Environment and Land Appeal E004 of 2023)  
[2025] KEELC 8528 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8528 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND APPEAL E004 OF 2023  
GMA ONGONDO, J  
DECEMBER 3, 2025**

**BETWEEN**

**MARCELA JEPKOROS YEGO ..... APPELLANT**

**AND**

**PAUL KEMEI ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR - NANDI ..... 2<sup>ND</sup> DEFENDANT**

*(Being an appeal from the Judgment of the Hon. D. Ocharo (Principal Magistrate)  
delivered on the 15th February, 2023 at Kapsabet EMCEL Case No. 32 of 2019)*

**JUDGMENT**

1. The present appeal was precipitated by the Trial Court’s Judgment delivered on 15<sup>th</sup> February 2023 where the Learned Trial Magistrate (Hon D. Ocharo, PM) reasoned;

‘.....The Plaintiff has simply not proved her case against any of the defendants on a balance of probabilities and the consequence is that I dismiss the suit with costs to the Defendants.’
2. The Appellant who was the Plaintiff in the original suit being dissatisfied with the entire Judgment filed the appeal through Ledishah J.K Kittony and Company Advocates by the memorandum of appeal dated 9<sup>th</sup> March 2023 on the following grounds;
  - a. The learned Magistrate erred in law and fact in dismissing the Plaintiff suit.
  - b. That, the Honourable learned Trial Magistrate erred in law and fact in failing to consider the weight of the issues raised in the pleadings
  - c. The Honourable learned Trial Court erred in law and fact in failing to put into consideration the weight of the evidence tendered by the Plaintiff and her witnesses, and the evidence against that of the Defendants.



- d. The Honourable learned Trial Magistrate erred in law and fact in failing to evaluate the Defendants evidence and to find that he had interest over the subject parcels of land (infra).
    - i. The Honourable learned Trial Magistrate erred in law and fact in failing to put into consideration the report by the land surveyor that there was no demarcation done to distinguish the two parcels of land known as No. Songhor/songhor Block 4/243 and Songhor/songhor Block 4/532 (The 1<sup>st</sup> and 2<sup>nd</sup> subject parcels of land respectively)
  - e. That the Honourable learned Trial Magistrate erred in law and fact by failing to consider that the Plaintiff is the rightful owner of the 1<sup>st</sup> and 2<sup>nd</sup> subject parcels of land.
  - f. The learned Trial Magistrate equally erred in law and in fact in failing to uphold the doctrine of precedent.
3. So, the Appellant seeks that this appeal be allowed and that the Subordinate Court's judgment set aside with costs.
  4. The Appellant's submissions 24<sup>th</sup> September 2025 referred to the grounds of appeal, the parties' respective pleadings, the impugned judgment, the evidence before the trial Court, the surveyor's report and that the Respondent fraudulently acquired the 2<sup>nd</sup> subject parcel of land. Counsel for the Appellant framed one issue for determination namely whether the Appellant is the rightful owner of the 2<sup>nd</sup> subject parcel of land. It was submitted that there was collusion between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the sub division and registration of the 2<sup>nd</sup> subject parcel of land thus, reducing the appellant's portion from 10.5 acres to 5.96 acres in area. That the Respondent purported to have bought the suit from Henry Cheruiyot Tuwei who has never been in actual possession of the same and the title deed exhibited in the suit does not confirm him as the proprietor thereof.
  5. To buttress the submissions, counsel relied on the case of Alice Chemutai Too -vs- Nickson Kipkurui Korir & 2 others (2015) eKLR and the case of Mwanja & 3 others -vs- Kitenye (2025) eKLR on absolute and indefeasible rights. Counsel thus, implored the Court to allow the appeal as prayed in the memorandum of appeal and set aside the impugned judgment with costs.
  6. The 1<sup>st</sup> Respondent through Duncan Tallam filed submissions dated 12<sup>th</sup> November 2025 referring to the record inclusive of the parties' respective pleadings, grounds of appeal and proceedings especially pages 25 and 26 that show that the Plaintiff gave evidence which was considered by the court. Reliance was made on the case of M'Riungu-vs-Republic (1983) KLR 455 that appeal be confined to questions of law and only interfere with the trial court's decision if it is bad in law. It was submitted that the 1<sup>st</sup> Respondent is the rightful registered owner of the 2<sup>nd</sup> subject parcel of land which was proved by the certificate of title and the certificate of official search under section 26 of the [Land Registration Act 2016](#) (2012).
  7. It was therefore, submitted that the impugned judgment is solid as upon evaluation of the evidence on record, the trial Court found no merit in the Appellant's suit. That there is nothing to prompt this court to overturn the trial court's decision which should be upheld. That the appeal is not well structured, lacks merit and that the same should be dismissed with costs.
  8. The 2<sup>nd</sup> Respondent did not participate both in the original suit and this appeal.
  9. Notably, the instant appeal being the first one from the trial Court in the matter, I am obliged to review the record of the trial court, evaluate it and make independent determination whether the conclusion originally reached upon that evidence should stand. However, this is a jurisdiction which should be



- exercised with caution; see *Mwanasokoni -vs Kenya Bus Services Ltd 1982-88 1KAR 278* restated in the case of *Titus Ong'ang'a Nyachieo -vs- Martin Okioma Nyauma and 3 others 2017 eKLR*.
10. The genesis of the dispute is that at the trial Court, the Appellant sued the Respondents and one Henry Cheruiyot Tuwei (3<sup>rd</sup> Defendant therein) by way of an amended plaint dated 26<sup>th</sup> April 2020 for the following principal orders;
- a. A declaration that the title deed purported to have been issued in favour of the 3<sup>rd</sup> Defendant over the 2<sup>nd</sup> subject parcel of land was obtained illegally, irregularly, unprocedural, was fraught with fraud and therefore the 1<sup>st</sup> Defendant had no legitimate proprietary right over the same.
  - b. A declaration order to confirm that the Plaintiff is the absolute owner of the 1<sup>st</sup> and 2<sup>nd</sup> subject parcels of land and that the title in respect of the 2<sup>nd</sup> subject parcel of land in favour of the 1<sup>st</sup> Defendant is null and void.
  - c. An order directing the land Registrar, Nandi Land Registry, to expunge from the record and/or rectify the register by cancellation of all entries relating to the issuance of title deeds of the 2<sup>nd</sup> subject parcel of land in favour of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.
  - d. There be a permanent injunction orders against the 1<sup>st</sup> Defendant/Respondent, his servants, agents and or assignee from in any way dealing with and or interfering with the Applicant's/ Plaintiff's quiet possession, use and or in any way engaging in acts inconsistent with the Plaintiff's/Applicant's rights as the owner of whole 1<sup>st</sup> and 2<sup>nd</sup> subject parcels of land
11. By the statement of defence and counter claim dated 3<sup>rd</sup> April 2019, the 1<sup>st</sup> Defendant stated that the Appellant is the owner of the 1<sup>st</sup> subject parcel of land and in occupation of the 2<sup>nd</sup> subject parcel of land. That the Appellants claim is a boundary dispute and the 1<sup>st</sup> respondent sought that the same be determined.
12. In the counter claim, the 1<sup>st</sup> Respondent prays that the Appellant's the suit be dismissed on the following grounds;
- a. The plaint on adverse possession does not disclose a cause of action and the same ought to have been filed by way of originating summons under Order 37 rule 7 and Section 38 of Limitation of Action Act.
  - b. The Plaintiff's plaint is barred by *limitation of Actions Act* Cap 22 as the cause of action is alleged to have occurred in 1982 more than 30 years ago.
13. Further, the 1<sup>st</sup> Defendant prayed that the suit be dismissed with costs and the judgment be entered in terms of the counterclaim thus; -
- a) There be orders of this Court directing the County Surveyor and the Lands Registrar to determine the disputed boundaries between 1<sup>st</sup> and 2<sup>nd</sup> subject parcels of land and the Defendant be declared legal owner of the 2<sup>nd</sup> subject parcel of land.
  - b) Costs of the counterclaim to the Defendant
14. The Appellant (PW1) relied on her statement dated 21<sup>st</sup> March 2019 and a list of documents dated 25<sup>th</sup> March 2020 except number 4, the green card (P Exhibits 1 to 4) alongside the valuation report dated 4<sup>th</sup> June 2019 (P Exhibit 5) in her testimony. In his evidence, the 1<sup>st</sup> respondent (DW1) relied on his statement dated 23<sup>rd</sup> September 2021 as well as a list of documents dated 28<sup>th</sup> February 2020 (D Exhibits 1 to 8) and called a witness, Joyce Kazira Shabaya (DW2) who relied on her statement dated 23<sup>rd</sup> September 2021.



15. In the foregone, the issues for determination are contained in the grounds of appeal which are condensed to whether;
  - a. Is the Appellant or the 1<sup>st</sup> Respondent the lawful owner of the 2<sup>nd</sup> subject parcel of land and
  - b. The appeal is meritorious.
16. The Trial Court stated the parties' respective claims as per the pleadings in brief at pages 1 and 2 of the judgment. The same is shown in page 6 of the record of appeal.
17. Further, the Trial Court considered the evidence adduced by the respective parties. That the burden of proof was upon the party who alleges to prove the existence of facts as stipulated under section 106 of the Evidence Act Chapter 80 Laws of Kenya.
18. By the consent order of 26<sup>th</sup> June 2019 between the parties before the Trial Court, the Land Registrar and the County Land Surveyor were directed to visit the 1<sup>st</sup> and 2<sup>nd</sup> subject parcels of land within forty-five (45) days from that date to determine the position on the ground in presence of both parties and prepare and file a comprehensive report in court. This was in consonant with Sections 18 and 19 of the Land Registration Act 2016 (2012) as boundary was raised in the 1<sup>st</sup> respondent's statement of defence and counter claim.
19. It is notable that Nandi County Surveyor's Report dated 7<sup>th</sup> January 2020 contained at page 124 of the record of appeal was never an exhibit before the Trial Court. Nevertheless, upon consideration of the observations and findings in the report, there is no physical boundary separating the 1<sup>st</sup> and 2<sup>nd</sup> subject parcels of land.
20. exhibit 5 reveals that the 2<sup>nd</sup> subject parcel of land is approximately 1.2006 hectares in area. That it is unoccupied and registered in the name of the 1<sup>st</sup> respondent.
21. Further, D Exhibits 1, 2 and 8 being title deed, green card and certificate of official search in respect of the 2<sup>nd</sup> subject parcel of land respectively show its area to be approximately 1,2006 hectares. That the same is registered in the name of the 1<sup>st</sup> Respondent as at 5<sup>th</sup> April 2012.
22. In paragraph 13 of the amended plaint, particulars of fraud including alleged grabbing of the appellant's land, are set out. However, PW1 did not present any material evidence to distinctly prove fraud to the requisite standard as I subscribe to the Court of Appeal decision in the case of Kuria Kiarie & 2 others-vs-Sammy Magera (2018) eKLR and Ndolo -vs- Ndolo (2008) 1 KLR (G & F) 742.
23. During cross examination, PW1 stated as follows;

“The defendant encroached over my land. I bought 10.5 acres but I do not have anything to show.....”
24. In arriving at the impugned judgment, the learned trial magistrate observed, inter alia;

“The Plaintiff has not adduced any solid evidence to support her oral allegation. That the Defendants are his neighbors and that their parcels of land are larger than she anticipated is not evidence that they stole her land.”



25. Also, the Learned Trial Magistrate noted that;
- “She (PW1) did not avail evidence from the company in which they all had shares to buttress her allegations.”
26. Indeed, DW2 testified that she was married to the late Henry Tuwei Cheruiyot under customary law. That her deceased husband was a shareholder in Nandi Hills Farmers Ltd Maraba Estate which distributed shares to its members.
27. Clearly, DW1 stated that he bought the 2<sup>nd</sup> subject parcel of land from the deceased husband of DW2 after due diligence and confirmation of registration as regards owner thereof. DW2 did affirm that the land was sold to DW1 to raise school fees for their children.
28. In re-examination, DW1 succinctly stated;
- ‘I obtained my title lawfully through sale.’
29. Consent to transfer (D Exhibit 5), minutes of Tinderet Land Control Board (D Exhibit 6) and transfer (D Exhibit 7) reveal that the 2<sup>nd</sup> subject parcel of land got transferred lawfully and procedurally and without any encumbrances from the deceased husband of DW2 to DW1. They all fortify the title (D Exhibit 1) that the 1<sup>st</sup> respondent is the lawful owner of the said land; see *Munyu Maina-vs-Hiram Gathiha Maina* (2013) eKLR and *Katende-vs-Haridar & Company Ltd* (2008) 2 EA 173.
30. Having considered the entire record of appeal, I find that the counter claim succeeds to the extent that the 1<sup>st</sup> Respondent proved to the requisite standard that he is the lawful owner of the 2<sup>nd</sup> subject parcel of land. Further, the appellant failed to prove her claim including fraud to the requisite standard. So, the Trial Court’s judgment is legally valid and hereby upheld accordingly.
31. Thus, the present appeal originated by way of the memorandum of appeal dated 9<sup>th</sup> March 2023 lacks merit. The same is hereby dismissed with costs of the original suit together with the counter claim and this appeal to the 1<sup>st</sup> Respondent.
32. 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;

Mr Kibichii instructed by Kipsei learned Counsel for the Appellant

Mr D Tallam learned Counsel for the 1<sup>st</sup> Respondent

Walter, Court Assistant

