



**Kanyua v Munene & 2 others (Civil Appeal 291 of 2019)  
[2026] KECA 94 (KLR) (30 January 2026) (Judgment)**

Neutral citation: [2026] KECA 94 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL 291 OF 2019  
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA  
JANUARY 30, 2026**

**BETWEEN**

**NYAGA KANYUA ..... APPELLANT**

**AND**

**CHARLES KINYUA MUNENE ..... 1<sup>ST</sup> RESPONDENT**

**CHARLES MUKUTHU KAMUGANE ..... 2<sup>ND</sup> RESPONDENT**

**ASSOCIATION OF JEHOVAH'S WITNESSES IN EAST AFRICA  
TRUSTEES – SAMUEL MWANGI, KIALA MWANGI & ROBERT**

**KAWALA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from judgment of the ELC of Kenya at Embu (Y. M. Angima J.) dated 20th June, 2019 In ELC Case No. 70 of 2015)*

**JUDGMENT**

1. This is an appeal arising from the judgment of the Environment and Land Court (ELC) at Embu (Y.M. Angima, J.) delivered on 20<sup>th</sup> June 2019 in ELC Case No. 70 of 2015, wherein the ELC dismissed the claim by Nyaga Kanyua (the appellant) for proprietorship rights over land parcel number Kyeni/Mufu/4345 (parcel No. 4345), later subdivided into parcels Kyeni/Mufu/4971 - 4976 (the suit properties). The appellant, dissatisfied with that decision, lodged the instant appeal.

Charles Kinyua Munene, Charles Mukuthu Kamugane and Association of Jehovah's Witnesses in East Africa Trustees – Samuel Mwangi, Kiala Mwangi & Robert Kawala are the 1<sup>st</sup> to 3<sup>rd</sup> respondents herein.

2. By an amended plaint dated 1<sup>st</sup> August 2018, the appellant approached the ELC asserting that he was the son of Monica Gicuku Simon (Monica) (deceased), who was a daughter of Simon Njiru Njauke (Simon) (deceased). He averred that he and his siblings, namely Simon Njiru Njauke, Esther



Wachuka and Festus Ireri were beneficiaries of the estate of Monica. He claimed that his mother, Monica inherited parcel No. 4345 from her father, Simon and held it in trust for her children but subdivided and transferred it to the respondents without their consent.

3. The respondents denied the claim, stating that they were bona fide purchasers of the suit properties for value. After considering the pleadings and the evidence before it, the ELC found no fraud or illegality and held that the appellant had failed to prove his claims to the required standard against the respondents. Consequently, the appellant's suit was dismissed with costs to the respondents. In the impugned judgment the ELC held in part at paragraph 23 that:

“In those circumstances the court is unable to appreciate how the defendants could be faulted for purchasing the suit properties. There was, clearly, no evidence of fraud or illegality on their part in the acquisition of the suit properties. If there was any irregularity in Monica's acquisition of the suit properties from the estate of Simon during succession proceedings, the defendants have nothing to do with it. If, Monica's co-administrator did not sign or counter sign any relevant statutory forms, that can only be an issue between the concerned administrators and the beneficiaries of the estate of Simon. As indicated before, the plaintiff is neither an administrator or beneficiary of the estate of Simon. He has no legal standing to complain on how his estate was administered or distributed.”

4. Aggrieved by the said decision, the appellant filed the instant appeal. The appellant challenged the decision of the ELC on seven (7) grounds challenging findings on trust, fraud, capacity, and title.
5. The appellant filed a memorandum of appeal contending that the ELC erred in law and fact by:
  - i. Failing to find that the appellant had proved his case on balance of probabilities to warrant judgment being entered in his favour;
  - ii. Dismissing the appellant's case against the weight of evidence and failing to find that the appellant was entitled to the relief sought in the plaint;
  - iii. Failing to find that parcel No. 4345 was a clan land and that Monica, now deceased, was holding it in trust for herself and her children including the appellant and that Monica did not have the right to sell or transfer the suit properties to the respondents to the detriment of the appellant and his siblings;
  - iv. Failing to find that Monica caused parcel No. 4345 to be subdivided into the suit properties and be transferred to the respondents without the appellant and his siblings' consent and in breach of the trust held by the said Monica for the appellant and his siblings in the parcel No. 4345;
  - v. Failing to find that Monica, now deceased had no capacity to transfer the suit properties to the respondents as she was not the absolute proprietor of the suit properties but a Trustee whose powers were limited;
  - vi. Failing to find that the transfers of the suit properties which are sub- divisions of parcel No. 4345 by Monica to the respondents was unprocedural, illegal, fraudulent and irregular and that no consideration passed to Monica from the respondents and similarly no titles passed to the respondents from Monica;
  - vii. Failing to find that Monica did not have any and/or any legal, valid or proper title in the suit properties capable of being transferred to the respondents or any other person and that the



respondents never acquired any and/or any legal title to the suit properties and the purported transfers to the respondents were therefore null and void and of no legal effect.

6. The appellant sought orders:
  - a. That the instant appeal be allowed;
  - b. That the impugned Judgment/Decree be quashed and or set aside;
  - c. That judgment be entered for the appellant against the respondents as prayed in ELC Case Number 70 of 2015 in the ELC at Embu; and
  - d. That the appellant be awarded costs of the instant appeal and in the ELC Case Number 70 of 2015.

### **Submissions by Counsel**

7. The appeal was disposed by way of written submissions. M/S Duncan Muyodi & Co. Advocate represented the appellant while M/S Kidenda Onyango Anami & Associates represented the 3<sup>rd</sup> respondent. The 1<sup>st</sup> and 2<sup>nd</sup> respondents appeared in person.
8. Learned counsel for the appellant submitted that Monica held parcel No. 4345 in trust, that the transfers in favour of the respondents were fraudulent for lack of consideration, and that the respondents were aware of the trust existing in favour of the appellant.
9. Counsel for the appellant cited the case of Dina Management Ltd vs County Government of Mombasa & 5 others, Petition 10 (E010) of 2021 where the Supreme Court cited the decision of this Court with approval in Funzi Development Ltd & Others v County Council of Kwale, Mombasa Civil Appeal No. 252 of 2005 (2014) eKLR that:

“A registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or give its seal of approval to an illegal or irregularly obtained title ...”
10. Counsel for the appellant also cited the Supreme Court decision of Isack M’inanga Kiebia v Isaaya Theuri M’Lintari & Another (2018) eKLR on the elements of trust. Counsel submitted that the appellant proved his claim under customary trust by establishing his relationship with the original proprietor of parcel No. 4345. Counsel submitted that the sale transactions to the respondents were marred with illegalities and irregularities pointing to the existence of fraud as no reason was adduced to indicate why the transfers were being registered as a gift instead of a sale. Counsel further submitted that the sale transaction between Monica and the 3<sup>rd</sup> respondent is null and void for lack of proper attestation as required under section 3(3)(b) of the *Law of Contract Act*. Conclusively, the appellant prayed that the appeal to be allowed.
11. The respondents did not file written submissions, despite service.

### **Determination**

12. This Court is called upon to exercise its duty as a first appellate court by reassessing the evidence produced during trial, evaluate it and arrive at its own independent findings considering that the Court neither heard or saw the witnesses as they testified. See Rule 31 (1) of the Court of Appeal Rules, 2022



and this Court's decision in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR. See also *Selle & Another vs Associated Motor Boat Co. Ltd & Others* (1968) EA 123.

13. Further, in exercise of its appellate jurisdiction, this Court is guided by the decision of its predecessor, the Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA page 424 that:

“It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.”

14. We have considered the record, the submissions filed, the authorities cited and the law. We discern the following issues for determination:

- a. Whether Monica held parcel No. 4345 in trust for the appellant;
- b. Whether Monica had capacity to transfer parcel No. 4345; and
- c. Whether the transfers in respect of the suit properties were fraudulent or illegal.

15. The contention by the appellant is that Monica inherited parcel No. 4345 from her father, Simon, through Succession Case No. 20 of 1993 and she was to hold the same in trust for herself and her children. That in breach of the said trust, Monica subdivided parcel No. 4345 into six (6) parcels and transferred five (5) of them to the respondents. The appellant sought an order declaring that his mother, Monica, held parcel No. 4345 in trust for herself and her children.

16. \_\_\_\_\_The Supreme Court decision in *Isack M'inanga Kiebia v Isaaya Theuri M'Lintari & Another* (supra) outlined the elements of a customary trust in the following terms:

1. “The land in question was before registration, family, clan or group land;
2. The claimant belongs to such family, clan or group;
3. The relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous;
4. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances;
5. The claim is directed against the registered proprietor who is a member of the family, clan or group.”

17. Counsel for the appellant cited the above decision and submitted that the appellant's claim fell within the above qualities of a customary trust. On the issue of trust, in the impugned judgment the ELC held that:

“... the plaintiff has made serious allegations of breach of trust, fraud and illegality against Monica. He did not join her personal representative, if any, to respond to those allegations. Monica was the main actor in all the transactions on the basis of which the filed the suit. ... in the premises, the court finds and holds that the plaintiff has failed to demonstrate the



existence of a trust to the required standard as the alleged wrongdoer was not made a party to the suit.”

18. The elements of trust outlined above requires inter alia that:  

“(6) The claim is directed against the registered proprietor who is a member of the family, clan or group.”
19. The appellant’s claim was made against the respondents who were purchasers of the suit properties leaving out Monica or her personal representative. As such, we find that the claim did not fit within the qualities of a customary trust since it was not directed to the family member who was at the material time the registered owner. In view of the foregoing, we see no fault in the finding of the ELC that the appellant failed to prove existence of a trust to the required standard.
20. On the question whether Monica had capacity to transfer the suit properties to the respondents, we note that the appellant admitted that Monica was issued with a confirmed grant in respect of the estate of his father, Simon. By virtue of the said succession, Monica rightfully acquired parcel No. 4345 which was subdivided into the suit properties which she then legally disposed them off. We find no material to support the appellant’s contention that Monica lacked capacity to transfer the suit properties. Further, having failed to sue Monica or her personal representative, the allegation that Monica fraudulently, illegally and unprocedurally transferred the suit properties to the respondents cannot stand.
21. In the circumstances of this case, we find that the alleged trustee was not sued; thus, trust cannot stand. Monica held a confirmed grant and had capacity to dispose of the suit properties. Further, from the record, fraud was not proven against Monica.
22. The upshot is that the appeal lacks merit and is dismissed with no order as to costs.
23. Orders accordingly.

**DATED AND DELIVERED AT NYERI THIS 30<sup>TH</sup> DAY OF JANUARY, 2026**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

**A. O. MUCHELULE**

I certify that this is a True copy of the original

Signed

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**JUDGE OF APPEAL**

**DEPUTY REGISTRAR**

