



REPUBLIC OF KENYA



Gitua t/a Peter's Plots v Maundu alias Juliana Horn (Environment and Land Appeal E018 of 2025) [2026] KEELC 150 (KLR) (21 January 2026) (Judgment)

Neutral citation: [2026] KEELC 150 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E018 OF 2025
MD MWANGI, J
JANUARY 21, 2026**

BETWEEN

PETER GITUA T/A PETER'S PLOTS APPELLANT

AND

JULIANA MWONGELI MAUNDU ALIAS JULIANA HORN RESPONDENT

(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Kajiado (Hon. Roseline A. Oganyo, CM) delivered on 8th April 2025 in Claim No. MCELC Suit No. E140 of 2022)

JUDGMENT

Introduction

1. This is an appeal preferred by the Appellant, Peter Gitua t/a Peter's Plots, against the whole of the judgment and decree delivered by the learned Chief Magistrate, Hon. Roseline A. Oganyo, on the 8th of April 2025, in Kajiado MCELC Suit No. E140 of 2022.
2. The suit in the subordinate court was initiated by the Respondent herein, Juliana Mwangeli Maundu alias Juliana Horn, against the Appellant regarding a dispute over land parcel Reference Kajiado/Kaputei Central/8235. The trial court found in favor of the Respondent, issuing orders that, inter alia, found the Appellant in breach of contract and awarded a refund of the monies paid to the Respondent.
3. Aggrieved by the said decision, the Appellant filed a Memorandum of Appeal dated 8th April 2025, lodging twenty-three (23) grounds of appeal (marked a-w). The Appellant seeks to have the judgment of the lower court set aside and substituted with an order dismissing the Respondent's suit with costs, alongside a determination on the ownership of the suit property.
4. The Appellant's complaints against the judgement of the learned Trial Magistrate can be broadly categorized as follows:



- a. Procedural Irregularities: The Appellant contends that the trial court erred by granting prayers not sought in the Plaint, specifically regarding commercial bank interest rates (Ground i) and issuing refund orders in a currency (US Dollars) other than Kenya Shillings, which was not pleaded (Grounds j and k).
 - b. Evaluation of Evidence: The appellant faults the trial court for admitting hearsay and uncorroborated evidence (Ground f), disregarding the Appellant's unchallenged documentary evidence (Ground o), and failing to consider the Respondent's admission of negligence (Ground l).
 - c. Contractual Interpretation: The Appellant argues that the trial court erred in law by rewriting the implied and proven contracts between the parties (Ground p), failing to uphold the strict terms of the contract regarding specific performance and subdivision (Ground s), and disregarding the Counterclaim filed by the Appellant (Grounds d and c).
 - d. Bias and Unfairness: It is the Appellant's contention that the decision was biased, occasioned a miscarriage of justice, and failed to apply the equitable "clean hands" doctrine (Ground w).
5. The Appellant seeks to have the appeal allowed and the trial court's judgment set aside and substituted with an order dismissing the Respondent's suit with costs, alongside a determination on the ownership of land parcel Kajiado/Kaputei Central/8235 and an award of costs for both the appeal and the lower court proceedings.

Background of the litigation

6. At this juncture, it is important to provide the history of the dispute as it was placed before the trial court. The litigation commenced before the Chief Magistrate's Court at Kajiado vide a Plaint dated 22nd November 2022 and filed on 8th December 2022 in MCELC Suit No. E140 of 2022.
7. The suit was instituted by the Respondent herein (then Plaintiff), Juliana Mwongeli Maundu alias Juliana Horn, describing herself as a resident of the United States of America, against the Appellant (then Defendant), Peter Gitua t/a Peter's Plots.
8. The Plaintiff's cause of action was founded on an alleged breach of contract and fraud. She averred that in the year 2017, the Defendant approached her with a representation that he was in a position to sell her three (3) acres of land situated within the Konza area at a consideration of Kshs. 730,000/= per acre.
9. It was pleaded that the parties mutually agreed that, given the Plaintiff's residence in the United States, she would pay the purchase price in reasonable installments pending the preparation of a formal sale agreement. The Plaintiff contended that she proceeded to make various payments amounting to USD 10,185 based on invoices raised by the Defendant.
10. The dispute crystallized when the Plaintiff allegedly conducted due diligence and discovered that the land offered was not situated in Konza as represented, but in an area known as Kaputei Central, where land prices were significantly lower than the Konza area. The land further did not belong to the Defendant.
11. The Plaintiff averred that the Defendant initially forwarded a copy of a title for Kajiado/Kaputei Central/8235 and a mutation form for Kajiado/Kaputei Central/2291, both of which belonged to a third party, one Anna Ntitai Nkuya. The Defendant later changed his narrative to indicate that he was selling land on behalf of a third party.



12. The Plaintiff further averred that in October 2022, the Defendant sent her a copy of a Title Deed for Kajiado/Kaputei Central/2291 surprisingly registered in her name. The Plaintiff contended that this transfer was fraudulent as she had never signed any transfer documents and had indeed previously issued a demand for the refund of her monies.
13. Consequently, the Plaintiff prayed for judgment against the Defendant for:
 - a. A declaration that the title Kajiado/Kaputei Central/2291 was fraudulently transferred to the name of the Plaintiff.
 - b. An order directing the Defendant to refund all the money paid to him as purchase price for the land described as "Three acres in Konza Kenya" (being the sum of USD 10,185).
 - c. Interest on the refund at court rates from the date of filing suit until payment in full.
 - d. Costs of the suit.

Directions by the court

14. The court directed that the appeal be dispensed off by way of written submissions. Both parties duly complied with the said directive.

Analysis of Submissions

Appellant's Submissions

15. The Appellant, through the firm of Kithinji Mutembei & Associates Advocates, filed his written submissions dated 29th August 2025. The Appellant raised several legal and factual contestations.
16. The Appellant submitted that the learned Trial Magistrate committed a gross error by failing to appreciate the weight of evidence on record. Counsel argued that while the Respondent (Plaintiff) alleged fraud and lack of consent regarding the transfer of the suit property, she failed to call any witness to corroborate her testimony or substantiate her claims.
17. The Appellant relied on the authority of *Trust Bank Limited v Paramount Universal Bank Limited & 2 Others* [2009] eKLR, for the proposition that where a party fails to call evidence in support of its case, the pleadings remain mere statements of fact .
18. It was further submitted that the trial court completely disregarded the Appellant's documentary evidence, specifically a Forensic Report detailing the communication between the parties. The Appellant contended that this report, which was unchallenged, proved that the Respondent was not a passive victim but was actively involved in the transaction and had, in fact, insisted that the title be transferred to her name before she could release further payments.
19. The Appellant took issue with the trial court's finding that he misrepresented himself as the owner of the land. He submitted that he had consistently maintained his status as an agent and had shared the "Mother Title" with the Respondent at the very beginning of the transaction, thereby disclosing the true ownership. Counsel argued that the trial court ignored the Appellant's defense that the Respondent's invoices explicitly included "transfer fees," indicating her knowledge and authorization of the conveyance process.
20. Relying on the case of *Caswell v Powell Duffryn Associated Collieries Ltd* [1939] 3 All ER 722, the Appellant submitted that the court resorted to speculation rather than drawing inferences from objective facts.



21. A significant limb of the Appellant's submissions challenged the trial court's decision to order a refund in United States Dollars (USD 10,185). The Appellant argued that the transaction was conducted in Kenya Shillings and that the prayer for refund in USD was not sought in the Plaint; The order is prejudicial due to the massive fluctuation in the exchange rates over the eight years since the transaction commenced. Counsel termed this decision "unlawful" and an attempt by the court to rewrite the contract between the parties.
22. The Appellant submitted that the trial court erred in law by failing to make any determination on his Counterclaim for services rendered, despite the Respondent's admission that she had received invoices. Furthermore, the Appellant argued that the judgment created a scenario of unjust enrichment where the Respondent would potentially retain the land (registered in her name) while simultaneously receiving a full refund of the purchase price.
23. Finally, the Appellant drew the Court's attention to specific paragraphs in the lower court's judgment which he claimed contained factual misdirection's:
 - Paragraph 24: The Appellant argued that the court misquoted DW2 regarding how the parties were introduced .
 - Paragraph 30: The Appellant took issue with the court's finding that DW3 (the land owner) was dishonest for not remembering exact figures paid over five years, arguing that such a lapse in memory by an elderly witness regarding staggered payments did not amount to dishonesty .
24. The Appellant therefore urged this Court to allow the appeal, set aside the judgment of the Chief Magistrate, and dismiss the Respondent's suit with costs.

Respondent's Submissions

25. The Respondent, Juliana Mwangeli Maundu, through the firm of Kamwaro & Associates Advocates, filed written submissions dated 15th October 2025. The Respondent opposed the appeal in its entirety, urging the Court to affirm the trial magistrate's decision.
26. The Respondent commenced by reminding this Court of its jurisdiction as a first appellate court. Citing the decision in *Gitobu Imanyara & others vs. Attorney General (Civil Appeal No. 98 of 2014)* and *Selle vs. Associated Motor Boat Company Ltd [1968] EA 123*, counsel submitted that this Court is duty-bound to reconsider and re-evaluate the evidence on record to draw its own conclusions, while bearing in mind it neither saw nor heard the witnesses.
27. The Respondent submitted that the trial court correctly found that the Appellant had breached the contract. The core of this argument was that the Appellant expressly represented that he was selling "three acres in Konza" for Kshs. 2,190,000/=. However, the land eventually offered was situated in Kaputei Central, a different locality with significantly lower values.
28. On the issue of fraud, the Respondent refuted the Appellant's contention that the standard of proof was not met. She argued that fraud was pleaded and strictly proved by the fact that the suit property (Title No. Kajiado/Kaputei Central/2291) was transferred to her name without her knowledge, consent, or execution of transfer documents. Counsel emphasized that at the material time the transfer was allegedly signed, the Respondent was resident in the United States, rendering it impossible for her to have executed the documents in Kenya.
29. The Respondent challenged the Appellant's defense of agency. Relying on the case of *Luka Mwaura Njuguna vs. James Maina Njoroge [2003] eKLR*, it was submitted that an agent who acts for a



disclosed or undisclosed principal but enters into a contract in their own name is personally liable. The Respondent pointed out that the invoices were issued by "Peter's Plots" and the Appellant dealt with him directly, only introducing the third-party owner (Anna Nkuya) much later after the dispute had arisen.

30. Regarding the award of USD 10,185, the Respondent submitted that the trial court did not err. She argued that since the payments were made in United States Dollars, the refund should naturally be in the same currency to restore her to the position she was in before the failed transaction. Counsel dismissed the Appellant's argument regarding exchange rate fluctuations as lacking legal merit, noting that a refund in Kenya Shillings at the historical rate would significantly prejudice the Respondent given the depreciation of the currency.
31. Addressing the Appellant's fear that the Respondent seeks to retain both the land and the money (unjust enrichment), the Respondent made a specific concession in Paragraph 35 of her submissions. She explicitly stated that she "does not claim the property and does not intend to keep the same."
32. She submitted that upon the finding that the transfer was fraudulent, the proper remedy is for the Court to order the cancellation of the title deed held in her name and for the property to revert to the previous owner. She averred that she has no interest in the land, as it was not what she had bargained for.
33. The Respondent concluded by asserting that the Appellant had failed to demonstrate any error in principle by the trial Magistrate. She prayed that the appeal be dismissed with costs to the Respondent.

Issues for Determination

34. This Court has carefully considered the pleadings, the proceedings before the lower court, the Judgment and Decree appealed against, and the rival submissions filed by the parties.
35. While the Appellant has listed twenty-three (23) distinct grounds of appeal in the Memorandum of Appeal dated 8th April 2025, ranging from alleged procedural irregularities and errors in evidentiary evaluation to the disregard of the counterclaim, this Court opines that these grounds are intertwined and can be crystallized into a single substantive issue for determination and can be addressed as one issue; whether the appeal is merited.
36. While at it, I must state that numerous and repetitive grounds of appeal do not enhance the chances of success of an appeal rather they tend to cloud the key issues in dispute. A memorandum of appeal ought to be precise, concise, and brief as stated by Court of Appeal in KPA –vs- Three-ways Shipping Services (K) Limited (2019) eKLR. The court state that,

“We abhor repetitiveness of grounds of appeal which tend to cloud the key issues in dispute for determination by the court. In William Koross –VS- Hezekiah Kiptoo Kimue & 4 others Civil Appeal No. 223 of 2013, this court stated;

“The Memorandum of Appeal contains some thirty –two grounds of appeal, too many by any measure and serving only to repeat and obscure. We have said it before and will repeat that memorandum of appeal need to be more carefully and efficiently crafted by counsel. In this regard, precise, concise and brief is wiser and better”.



37. In the case of *Robinson Kiplangat Tuwei –vs- Felix Kipchoge Limo Langat (2020) eKLR*, the Court of Appeal (differently constituted) had this to say in regard to rule 86 of the Court of Appeal Rules which is *pari materia* with Order 42 rule 1 of the Civil Procedure Rules;

“We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of arguing only two or three issues on the myth that he has condensed the grounds of appeal. This court has repeatedly stated that counsel must take time to draw the memorandum of appeal in strict compliance with the rules of court. (see *Abdi Ali Deer – vs – Fivos Hussein Tundal and 2 others (2013) (eKLR)* and *Nasri Ibrahim –vs- IEBC & 2 others (2018) eKLR*.)

38. In the latter case, this court lamented:-

“We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric ...A surfeit of prolixious grounds of appeal do not in any way enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs”

Analysis and Determination

39. The gravamen of this appeal rests on the Appellant’s contention that a valid sale occurred and that the Respondent is bound by the transaction.
40. The starting point of this analysis is the undisputed fact that the transaction between the parties which was a transaction for sale of land, was not reduced into a written agreement. The Appellant, in his testimony before the trial court, explicitly admitted to this omission. This admission is fatal to the Appellant’s case as it contravenes the mandatory statutory requirements for land transactions in Kenya.
41. Section 3(3) of the *Law of Contract Act* (Cap. 23) is unambiguous in its stipulations. It provides verbatim as follows:

“No suit shall be brought upon a contract for the disposition of an interest in land unless — the contract upon which the suit is founded—is in writing; is signed by all the parties thereto; and the signature of each party signing has been attested by a witness who is present when the contract was signed by such party: Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the *Auctioneers Act* (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”

42. This statutory command is reiterated in almost identical terms in Section 38 of the *Land Act*, 2012, which states:

“(1) No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—



- (i) is in writing;
 - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”

43. The legal effect of these provisions is that the absence of a formal, written, and attested contract renders any purported transaction for the sale of land unenforceable. The law does not recognize an oral agreement for the sale of land. As such, the transaction herein was void ab initio.
44. Litigants must be guided that the execution of a transfer is contingent upon the existence of a valid sale agreement between the parties. The sale agreement acts as the foundation upon which the conveyance stands; without it, the transaction cannot be said to have been completed in law. Consequently, the Appellant cannot rely on an implied contract or a "gentleman's agreement" to enforce rights or retain monies paid under a void transaction.
45. The Appellant contends that the transfer of title confirms the validity of the sale. However, the record reveals that the transfer was effected without the Respondent's consent, or presence and most importantly without an executed sale agreement. This constitutes a grave procedural impropriety.
46. Under Section 26 of the *Land Registration Act*, a certificate of title is generally prima facie evidence of ownership, but this indefeasibility is not absolute. Section 26(1) provides that a title may be challenged on specific grounds i.e. on the ground of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
47. The Courts have consistently held that a title procured without adherence to the statutory procedures is null and void. In the leading case of *Munyu Maina v. Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held verbatim:

“We state that 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. The registered proprietor must go beyond the instrument of title and prove the legality of how he acquired the title and show that the acquisition was legal, formal and regular.”

48. Applying this principle to the instant case, the evidence shows that the Respondent, who was in the United States, did not execute the transfer forms as required by law. A transfer of land cannot occur unilaterally; it requires the active participation and execution of instruments by both the transferor and the transferee.
49. Furthermore, regarding the Appellant's initial representation concerning land parcel Kajiado/Kaputie Central/8235, and the subsequent purported transfer of a different title, the entire process is suspect; it was unprocedurally obtained. Since the transaction was founded on a nullity (the lack of a written contract), the resulting instrument of title is equally a nullity. As eloquently stated by Lord Denning in *Macfoy v. United Africa Co. Ltd* [1961] 3 All E.R. 1169:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every



proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

50. In view of the foregoing, this Court finds that the Trial Magistrate was correct in her findings. The transaction was void for want of a written contract in accordance with Section 3(3) of the *Law of Contract Act* and the purported transfer in favour of the Respondent is a nullity. There was nothing particularly wrong in the court ordering a refund of the monies paid in the currency in which they were paid in orders to restore the Respondent to her pre-transaction position and to prevent unjust enrichment on the part of the Appellant.
51. The Appellant’s counter-claim for settlement of his accounts and the refund of his supposed expenditure and costs for services rendered in his capacity as an agent in the transaction have no factual or legal basis. The Appellant had represented himself as the owner of the land and the vendor. The Respondent had no legal obligation to indemnify him for any purported services rendered, and or any expenditure or expenses incurred.
52. In any event, the Appellant did not present evidence confirming that he was a registered estate agent authorized to practice as such under the *Estate Agents Act* which under section 18(1) thereof explicitly bars an unregistered person from practicing as an estate agent.
53. Accordingly, for the reasons set out above, I proceed to make the following orders:
- a. The Appeal dated 8th April 2025 is hereby dismissed in its entirety.
 - b. The Judgment and Decree of the Chief Magistrate’s Court at Kajiado in MCELC Suit No. E140 of 2022 is upheld.
 - c. The purported transfer and issuance of title in respect of Kajiado/Kaputie Central/8235 in the name of the Respondent is hereby declared null and void and the Land Registrar is ordered to cancel the same and rectify the register accordingly.
 - d. The Appellant shall bear the costs of this Appeal and the costs of the suit in the lower court.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 21ST DAY OF JANUARY 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kamwaro for the Respondent

N/A by the Appellant

Court Assistant: Mpoye

