

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELCLA NO. E039 OF 2024.**

JOHN OGOLA OWANGE.....1<sup>ST</sup> APPELLANT  
LUCAS AKUMU OGONYO.....2<sup>ND</sup> APPELLANT  
SAMWEL HANDA LIECH..... 3<sup>RD</sup> APPELLANT  
ELZA AOKO JUMA ..... 4<sup>TH</sup> APPELLANT

**VERSUS**

WILLIAM NYUMBA MATENGO ..... RESPONDENT

***(An appeal from the judgement and decree by Hon Cheruiyot Senior Principal Magistrate dated 4<sup>th</sup> June 2024 in the original KISUMU CMC EL CASE NO. 56 OF 2019)***

**BETWEEN**

WILLIAM NYUMBA MATENGO ..... PLAINTIFF

**VERSUS**

JOHN OGOLA OWANGE.....1<sup>ST</sup> DEFENDANT  
LUCAS AKUMU OGONYO.....2<sup>ND</sup> DEFENDANT  
SAMWEL HANDA LIECH..... 3<sup>RD</sup> DEFENDANT  
ELZA AOKO JUMA ..... 4<sup>TH</sup> DEFENDANT  
LAND REGISTRAR, KISUMU ..... 5<sup>TH</sup> DEFENDANT

## **JUDGEMENT**

### **Introduction**

Vide the Memorandum of Appeal dated 25<sup>th</sup> June 2024, the appellant appealed against the judgment and decree dated 4<sup>th</sup> June 2024 in KSM CMC ELC NO. 56 of 2019 and sought that the appeal be allowed the judgement dated 4/6/2024 be set aside and be substituted with a judgment dismissing the entire suit and an order that the Respondent pays the costs of both the appeal and the suit.

A brief background of the appeal is that the appellants were the 1<sup>st</sup> to 4<sup>th</sup> Defendants in Kisumu CMC ELC CASE NO. 56 of 2019 (herein referred to as the suit). The Land Registrar Kisumu, who is not a party in this appeal was the 5<sup>th</sup> Defendant. They had been sued by the respondent herein vide the plaint dated 14<sup>th</sup> May 2019 who sought for orders of:-

- (a) A declaration that the suit land Kisumu/BUOYE ADJUDICATION SECTION P/NO. 2598 and the portions hived off being numbers 5235, 5236 and 2612 all belong to the plaintiff.
- (b) The revocation of titles held by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in respect of parcel numbers 5235, 5236 and 2612 and the rectification of the register appropriately by the 4<sup>th</sup> Defendant upon such revocation.
- (c) An order of permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants of their own, agent, servants and/or employees from alienating, disposing of or in any other way interfering with the plaintiff's quiet and peaceful use and

occupation of the entire suit parcels herein designated as Kisumu/BUOYE ADJUDICATION SECTION P/NO. 2598 and the hived portions numbers 5235, 5236 and 2612.

(d) Costs of the suit.

The respondent's case was that he was the owner of the suit land. That the Defendants' hiving off of portions of the suit land was fraudulent and unlawful.

In response to the claim, the appellants filed a Statement of Defence dated 26<sup>th</sup> July 2019 denying the claim.

The suit was heard by the trial court which, vide the judgement dated 4<sup>th</sup> June 2024, found that the respondent proved his case on a balance of probabilities and entered judgement in his favour as prayed in the plaint with costs and interest.

### The appeal

Dissatisfied with the judgment, the Appellants preferred the present appeal.

### Submissions

Pursuant to directions given on 23<sup>rd</sup> June 2025, the appeal was heard by way of written submissions.

On behalf of the appellants written submissions dated 21<sup>st</sup> October 2025 were filed by Enock Anyul O. Dickson Advocate. Counsel submitted that the respondent's suit before the trial court was hinged on the fact that the suit parcels of land are still under adjudication.

That the defence by the appellants was that if there were any disputes, the Adjudication Act has provisions for settlement of such disputes.

That there was objection case No. 21 of 1991 which was allowed and the respondent given 60 days to appeal. That the respondent confirmed that he did not appeal.

That in bringing the suit, the respondent did not comply with the provisions of section 30 of the Land Adjudication Act hence the suit was prematurely lodged in court.

That the trial court lacked jurisdiction hence the judgment, decree and all consequential orders should be set aside.

Counsel relied on the case of *Njeru Mairani & 2 others vs Director of Land Adjudication and Settlement and 3 others (2025) KECA 400 (eKLR)* to support the submissions.

Counsel submitted further that once a party has lodged objection proceedings under Section 29 of the Land Adjudication Act, the parties must await the final decision of the Minister.

That the trial court failed to consider that the persons sued as the owners of land parcel BUOYE/ADJUDICATION/ P/No. 5235, 5236 and 2612 were long dead even before the filing of the suit and were not parties in the suit. That the people sued (the Appellants herein) are not the registered owners of the suit lands as the registered owners are deceased.

That land parcel BUOYE/ADJUDICATION P/ No. 5235, 5236 and 2612 are all product of adjudication process, hence are original parcels yet to be subjected to sub-divisions.

Counsel faulted the trial court for failing to appreciate the issues before it and therefore arrived at a wrong decision.

Counsel urged the court to allow the appeal.

Written submissions dated 13/1/2026 were filed on behalf of the respondent by Bruce Odeny & company Advocates. Counsel submitted that the parcels of land in the dispute were subject of adjudication records hived off from the original parcel Kisumu/Buoye/Adjudication Section/2598. That the suit was properly instituted against the appellants as they are the registered owners of parcel No.s 5235, 5236 and 2612,

That the respondent proved that his land measured 8 acres before subdivision. That the respondent did not attend any Land Control Board for subdivision and that the process was illegal and fraudulent.

Counsel submitted further that it was proper that the titles that resulted from the illegal subdivision be revoked and the register be rectified. That the respondent was entitled to injunctive orders in line with section 24(a) of the Land Registration Act.

That the appellants were trespassers on the respondent's land. That hence the appeal lacks merit and should be dismissed.

Analysis and determination.

This being a first appeal, this court is obligated to re-analyse the evidence/material placed before the trial court and draw its own conclusions. In Selle & Another vs Associated Motor Boat Company Limited and Others [1968] EA 123 it was held that a court handling a first appeal is not necessarily bound to accept the findings of fact by the court below. It stated

“an appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusion though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect.”

The first ground of appeal raises the issue of whether the respondent’s claim was subject to the provisions of the Land Adjudication Act and whether the provision of section 30 of the Act were complied with.

In paragraphs 4 and 5 of the plaint, the respondent claimed that he was the owner of Land Parcel number Kisumu/BUOYE ADJUDICATION SECTION P/NO. 2598 which he acquired from his father and that the 1<sup>st</sup> to 4<sup>th</sup> Defendants had unlawfully and fraudulently caused parcel

Nos. BUOYE/ADJUDICATION Nos 5235, 5236 and 2612 to be hived off his land and transferred to their names.

In his testimony, the respondent adopted the content of his witness statement as his evidence. He had stated in the witness statement that the Defendants connived and conspired to irregularly and unlawfully hive off portions of his land and had them registered in the names of the 1<sup>st</sup> to 4<sup>th</sup> Defendants.

The respondents produced a certificate of official search dated 23<sup>rd</sup> July 2018 which showed that as at that date land parcel No. KISUMU/BUOYE/2598 measuring 1.70 Ha was registered in the name of respondent. That the registration of the land in the name of the respondent took place on 18/8/2010.

The plaintiff also produced certificate of official search for Kisumu/Buoye/5235 dated 9<sup>th</sup> October 2018 showing that the said parcel of land was registered in the joint names of Jacob Owange Nyumba and Arkilus Ogonyo Nyumba on 15/7/2010 and certificate of official search for Kisumu/Buoye/5236.

The Appellants on their part pleaded in paragraphs 2 and 5 of their Statement of Defence that parcel numbers KISUMU/BUOYE/ADJUDICATION P/No. 5235, 5236 and 2612 were legally registered in the names of other people. That if there existed any disputes, the same must have been settled as per the requirements and provisions of the Land Adjudication Act.

From the documents and testimony placed before the trial court, I find no evidence that the suit lands were still subject to the provisions of the Land Adjudication Act.

There appears to have been proceedings under the Land Adjudication Act as evidenced by documents produced by the respondent at pages 23 and 24 of the record of appeal and documents produced by the appellants including the adjudication record exhibited 3 (a) in respect of Kisumu/Buoye/5236, exhibit 3 (b), Letter dated 21<sup>st</sup> September 1992 by Senior Land Adjudication/Settlement Officer Kisumu District.

From the exhibits produced, these were proceedings before the lands were finally registered as they currently exist and in the names of the respective owners.

The requirement for the consent of the Land Adjudication Officer under section 30 of the Act was therefore not applicable in the circumstances of the suit.

The Second ground of appeal raises the issue of capacity *locus standi* of the appellants to be sued.

According to the pleadings and testimony of the respondent, the 1<sup>st</sup> to 4<sup>th</sup> Defendants ( the appellants herein ) were the persons who conspired and colluded with the 5<sup>th</sup> Defendant to cause portions of land parcel No. Kisumu/Buoye/2598 to be unlawfully and fraudulently hived off and registered in the names of the 1<sup>st</sup> to 4<sup>th</sup> Defendants.

The appellants denied these allegations and averred that the suit lands were registered in the names of other persons as a result of a lawful land adjudication process.

A reading of the certificates of official search produced as exhibit show that land parcel No. Buoye/5235 is registered in the joint names of Jacob Owange Nyumba and Arkilus Ogonyo Nyumba to hold in ½ share each.

This is supported by the adjudication record dated 16/3/1992.

Certificate of official search for parcel No. Kisumu/Buoye/5236 shows that the land is registered in the name of Lucas Akumu Ogonyo.

This information is also supported by the contents of the adjudication record produced as exhibit 3 (a).

Certificate of official search for parcel No. Kisumu/Buoye/2612 shows that it is registered in the name of Cleopa Onyango Liech.

Apart from Lucas Akumu Ogonyo who was sued as the 2<sup>nd</sup> Defendant, the other Defendants are not the registered owners of the suit lands. There is no indication that the said defendants were sued in any representative capacity or as personal representatives of the deceased registered owners.

The respondent's testimony on cross-examination reveals that he was aware that the said registered persons had died long before he filed the suit. He stated on cross-examination that;

“The registered owner is Jacob Owange Nyumba. He passed on in the 90s..... The other parcel No. 2612 in the name of Cleopa Onyango who died in 1994.”

As the suit lands were still registered in the names of deceased persons, only their personal representatives duly appointed in accordance with the provisions of the Law of Succession Act could be sued. In the absence of evidence of such appointment of the Defendants, the suit was filed against persons who had no locus standi to be sued save for the 2<sup>nd</sup> appellant

The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> grounds of appeal are related to the 2<sup>nd</sup> ground of appeal and I find that the orders made by the trial court in respect of parcels of land that were registered in the names of deceased persons, whose estate were not parties in the suit, were wrongful.

The 6<sup>th</sup> ground of appeal faults the trial court for failing to consider the evidence presented by the appellants.

The respondent’s complaint was that his land which originally measured 8 acres had been unlawfully reduced by reason of the Defendants’ hiving off part of it and registering it in their names. However, I find no evidence on record adduced by the respondent or at all to support this allegation. There is no evidence that land parcel number 2598 ever measured 8 acres.

On the other hand, the documents produced by the appellants show that there were adjudication proceedings which included case No. 21of 1991 in which the plaintiffs therein (who are the current

registered owners) were awarded portions of the land where they lived vide the decision dated 17/9/1991.

I find that the trial court erred in allowing the respondent's claim. I further find that the appeal herein has merit.

The appeal is allowed as follows:

1. The judgement and decree of the trial court is set aside and substituted with an order dismissing the respondent's suit with costs.
2. Costs of the appeal to the appellants.

Orders accordingly.

**Judgement dated and signed at Kisumu and delivered virtually this 22<sup>nd</sup> day of January 2026.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

Maureen Court Assistant.

Anyul for the appellants.

Akinyi h/b for Odeny for the respondent.