



Oyoo & another (Suing as the Legal Administrators of the Late Okelo Ochiel) v Ahanga & 3 others (Environment and Land Appeal E005 of 2024) [2026] KEELC 396 (KLR) (30 January 2026) (Judgment)

Neutral citation: [2026] KEELC 396 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND APPEAL E005 OF 2024
AE DENA, J
JANUARY 30, 2026**

BETWEEN

**SOSPETER ATUNDO OYOO 1ST APPELLANT
JACKSON OMONDI OYOO 2ND APPELLANT
SUING AS THE LEGAL ADMINISTRATORS OF THE LATE OKELO OCHIEL**

AND

**JAMES OLIEWO AHANGA 1ST RESPONDENT
WILLIAM OYOO AHANGA 2ND RESPONDENT
THE LAND REGISTRAR 3RD RESPONDENT
THE LAND ADJUDICATION OFFICER 4TH RESPONDENT**

JUDGMENT

1. The subject of this appeal is the judgement delivered by Hon. B. Limo (PM) sitting at Siaya on 20th February, 2024 appeals. In a Memorandum of Appeal dated 7/3/2024 the appellant raises the following grounds that ;-
 1. The learned Trial magistrate misdirected himself in law and in fact by relying on untranslated documents as evidence of the 1st to 4th respondents which was in dholuo a language the trial court is unfamiliar with.
 2. The learned Trial Magistrate misdirected himself in law and in fact by failing to consider that the untranslated document was not executed by the donee.
 3. The learned Trial Magistrate misdirected himself in law and in fact by failing to consider that the submissions of the appellant herein and even they submitted orally.



2. On the strength of the above grounds the Appellants sought that the findings and orders of the Trial Court be set Aside and the court be pleased to grant any other orders deems fit to meet the circumstances of the case.
3. Upon admission of the Appeal the court directed that the Appeal proceeds by way of written submissions. The parties filed and exchanged the said submissions and which are summarized as follows:-

Appellants Submissions.

4. The Appellants submissions filed by Kagna & Advocates framed the following issues for determination. i. Whether the failure to have the key documents pertaining to the matter before Court amounted to a miscarriage of justice. ii. Whether the failure of the Court to appreciate the oral submissions of the appellant resulted into a wrong finding. iii. Whether to order the cancellation of the 1st and 2nd defendant title and register and iv. Who bears the costs of the suit.
5. On the 1st issue referring to article 7 of *the Constitution* and section 48 ,49,80-90 of the *Evidence Act* it was submitted that any document produced in evidence must be in English or Kiswahili, the official languages of Kenyan Courts. If the original document is in another language, it Must be translated by a certified translator before being admitted. That the appellants approached the Court as laymen and failed to emphasis on the foreign document in Court, that needed to be translated to give the Court a clean picture of the ongoings hence a miscarriage of justice.
6. On the 2nd issue it was submitted that the allegation by the appellant that the record is deficient of some information presented to Court in a recipe for a retrial, to enable the Court appreciate all the issues in dispute. That the entire Judgement should be made to give their submissions in writing for appreciation by the Court.
7. On the 3rd issue, it is contended that based on the rule on indefeasibility of title except by fraud the issue of abused trust and misrepresentation arose against the 1st registered owner, and the adjudication office resulted into connivance to defeat the Appellant title which is a recipe of Fraud. Reliance is placed on the case of Wakaimba Vs Registrar & 3 others (Environment and land case 617 of 2011 (2025) KEELC 1058 (KLR) where the court cancelled the erroneous entries and directed the register to be rectified. The appellant invites the court to grant the as prayed in the original suit.

Respondents Submissions

8. The Respondent submissions are dated 18/09/2025 filed by Ooro & Co. Advocates. Counsel did not frame any issues for determination but rather submitted wholesomely on the grounds of Appeal.
9. On grounds 1 and 2 of the appeal it was submitted that based on the documents listed in the Defendants List of documents (page 35 of the ROA) it is submitted all the documents are in English language. The same applied to the plaintiffs documents admitted as exhibits 1-6. Referring to the appellants submissions above it is observed that the specific documents alluded to have been in dholuo have not been specifically disclosed. That the judgement if the court was not stemmed on any such document.
10. On ground 3 it was submitted that after the hearing parties elected to file written submissions which during a mention the parties confirmed compliance. The court is referred to page 69 and 70 of the record of appeal where it was submitted the trial court captured the plaintiffs submissions. That there was therefore no miscarriage of justice.



11. Additionally it was urged that the trial court properly found on absence of locus standi. That moreover the appeal has been brought on behalf of the deceased but with no authorisation and therefore has no legs to stand on. That the succession cause was never challenged. It is submitted that the question of ownership of the land was properly determined by the trial court as per the law and the facts.

Analysis and Determination

12. Having analyzed the Record of Appeal the submissions and considered the law, it is my view that the main issue for determination is Whether the appeal is merited. In deciding this question I will analyse the grounds of appeal.

13. The duty of an appellate court is stipulated under Section 78 of the *Civil Procedure Act* which reads;-

“Subject to such conditions and limitations as may be prescribed, an appellate court shall have power;

1.

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require the evidence to be taken;
- (e) to order a new trial.

2. Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.”

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SUBPARA (2)

Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.



14. I will also be guided by the case of *Selle Vs. Associated Motor Boat Co.* (EA.123) where the court stated thus; -

“.....Briefly put this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.’
15. Whether the Trial magistrate misdirected himself in law and in fact by relying on untranslating documents? as evidence of the 1st to 4th respondents which was in dholuo a language the trial court is unfamiliar with.
16. I think my first responsibility is to first identify the said documents which the appellants have failed to identify and which the respondents contend do not exist. From the above ground the said documents are noted to have emanated from the 1st to 4th respondents. Firstly, I must clarify the appellant must be referring to the 1st and 2nd respondents as the 3rd and 4th respondents never participated in the trial court proceedings.
17. From the proceedings produced in the Supplementary Record of Appeal DW1 James Nathan Oyoo Ahanga produced 3 documents which were produced as P-Exhibit 1-3 and proceedings in a criminal case. The Defendants List of Documents is dated 27/6/2022 and is available at page 35 of the Record of Appeal. The documents listed therein are Copy of Green Card for Land Parcel North Gem/Ndere/607; Copy of Certificate of Official Search for Land Parcel North Gem/Ndere/607; Copy of Certificate of Official Search for Land Parcel North Gem/Ndere/432; Copy of Certificate of Confirmation of Grant issued vide Siaya Principal Magistrates Court Succession Cause No. 60 of 2018 and copy of proceedings in Siaya Criminal Case No. 443 of 2019.
18. I took time to look at the said documents and they are all in the English Language. The court also perused through the entire record of appeal and did not come across any documents written in Dholuo language. Additionally for the comfort of the court I went through the entire trial court file which was already availed as part of the pretrial directions and I did not come across any documents written in dholuo.
19. Moreover I keenly read the appellants submissions, the impugned documents have not been identified.
20. Having noted the foregoing there is no basis upon which the first and 2nd grounds in the Memorandum of Appeal can stand for analysis by this court. They must fail.
21. Whether the learned Trial Magistrate misdirected himself in law and in fact by failing to consider the submissions of the appellant both written and orally.
22. It is submitted on behalf of the appellants that the trial court failed to appreciate the oral submissions of the appellant resulting into wrong findings. It is alleged that the record is deficient of some information presented to court. It is not clear which information this is but based on the issue as presented it is stated that they even submitted orally.
23. Again it is the record that speaks for itself. My review of the proceedings indicate that on 7/11/2023 the defence case was closed. The trial court fixed the case for Mention on 28/11/2023 for submission. On the said 28/11/2023 the record bears that the plaintiff was present and stated ‘we have filed submissions. I pray for a judgement date.’ The court obliged.



24. The record shows no record of oral submissions. However, it bears 1st and 2nd Plaintiffs written submissions filed on 27/11/2023 and which are dated 20/11/2023. The judgement indicates at page 4 that the same were considered.
25. But assuming there were oral submissions the same as a matter of practice are merely expected to have highlighted the written submissions. But the question that lingered in my mind is should a failure to consider submissions if at all be the basis upon which a court should make a finding of a miscarriage of justice?
26. It has now been established that submissions are not evidence. The court is guided by the evidence of the pleadings, the evidence led in support and proof of the case during the hearing and the test in cross examination and the law. See the case of Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR where the Court of Appeal held that submissions cannot take the place of evidence. They are generally parties' "marketing language", each side endeavoring to convince the court that its case is the better one.
27. I have looked at the judgement and what I must note is whether the court analysed the evidence that was placed before it. The trial court analysis starts at page 7 of the judgement where the law on indefeasibility of title is referred to being section 26 (1)(a) and (b), the burden of proof is discussed, the plaintiffs case is analysed at page 8 of the judgement where it is noted the plaintiffs did not controvert the defendants narration of events leading to them being awarded title. The mode of how the counterclaimers obtained their title is also recognised as by transmission and a conclusion reached that the plaintiffs ought to have challenged the title before the succession court.
28. I have reviewed the documents presented by the respondents in the trial court being certificate of Confirmation of Grant which confirms the suit property as having been apportioned to the defendants on 50% share basis. I must add that I respectfully agree that the trial court as constituted was not the proper forum to challenge the transmission.
29. But the above notwithstanding I have also noted that the plaintiffs did not file a defence to the Counterclaim. This is pertinent for the reason that in the counterclaim they appear to have been sued as trespassers in their personal capacity. A counterclaim is a stand alone suit. I will leave this at that.
30. I have noted the appellants submissions on the indefeasibility of title and this being the crux of the appellants main suit and that there was connivance and abuse of trust. However the suit was dismissed for lack of locus standi. The plaint which is available at page 3 – 6 of the record of appeal clearly states at paragraph 1 that 'The plaintiffs are male adult persons of sound mind and administrators of the estate of the Late Okelo Ochiel' and who is also indicated at paragraph 6 of the plaint to have been the owner of the suit property . As long as there were no letters of administration or a limited grant adlitem produced in evidence then indeed the suit was headed nowhere in law. I have seen the analysis and the authorities cited by the trial court at pages 5 and 6 of the judgement and I see no reason to differ. Moreover, it is not a ground raised in the Memorandum of Appeal.
31. I think I have said enough to demonstrate that this appeal is not merited and must be dismissed.
32. The Appeal is hereby dismissed.
33. Since parties appear to be relatives, I will not order any costs as to this appeal. Let each party bear its own costs of this appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF JANUARY, 2026



HON. JUSTICE A. E. DENA

JUDGE

30/1/2026

Judgement delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

Ms Nanungi for the Appellant

Mr. Ooro E. for 1st and 2nd Respondents

Court assistant: Ishmael Orwa

