



**Sonkoe & 5 others v Nayioma (Environment and Land Appeal  
E003 of 2025) [2026] KEELC 145 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 145 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND APPEAL E003 OF 2025**

**MN MWANYALE, J  
JANUARY 22, 2026**

**BETWEEN**

**SALIM SONKOE ..... 1<sup>ST</sup> APPELLANT  
KITUNGATI SONKOE ..... 2<sup>ND</sup> APPELLANT  
JULIUS SONKOE ..... 3<sup>RD</sup> APPELLANT  
LEMISO SONKOE ..... 4<sup>TH</sup> APPELLANT  
SAMUEL SONKOE ..... 5<sup>TH</sup> APPELLANT  
DICKSON ONKOE ..... 6<sup>TH</sup> APPELLANT**

**AND**

**SAMSON NAYIOMA ..... RESPONDENT**

**JUDGMENT**

1. The six Appellants namely Salim Sonkoe, Kitungati Sonkoe, Julius Sonkoe, Lemiso Sonkoe, Samuel Sonkoe and Dickson Sonkoe, aggrieved by the judgment delivered on 30<sup>th</sup> September 2024, by Hon. W.C Waswa SRM in Kilgoris CM E022/2021 penned 8 grounds of Appeal; against the said decision, after obtaining leave to file this Appeal out of time.
2. The grounds of Appeal in respect of the Appeal are as follows; -
  - a. That the Learned Magistrate erred in law and in fact by ignoring that the Respondents have been residing in the Land Registration number Transmara/Shartuka/324 for many decades.
  - b. That the Learned Magistrate totally disregarded material evidence on record hence arrived at a wrong decision.



- c. That the Learned Magistrate failed to appreciate that, the Land Registrar and the surveyor visited the ground and filed reports that showed that the Respondents are in occupation of both Land registration number Transmara/Shartuka/324 and Transmara/Shartuka/147.
  - d. The Lower court erred in fact and in law by failing to take into account the credibility of evidence of the Respondents during trial.
  - e. That the Learned Magistrate erred in law and fact he did not exercise his discretion properly and judiciously.
  - f. The Learned Magistrate erred in law and fact when his decision was manifestly wrong in the circumstances of the case.
  - g. The impugned ruling delivered on 30<sup>th</sup> September 2024 was therefore illegal, unlawful, irregular and uncalled for and thus ripe for setting aside.
  - h. That the Learned Magistrate erred in law and in fact in failing to analyse the evidence presented by the Appellant in its entirety and the submissions filed thereto and in essence arriving at a wrong conclusion.
  - i. On the strength of the above grounds of Appeal, the Appellant sought the following reliefs; -
    - i. The Appeal be allowed.
    - ii. The ruling and subsequent orders of Magistrate court in ELC Case No. E022 of 2021 be set aside/vacated/and/or lifted.
    - iii. Costs of this Appeal be borne by the Respondents.
3. Directions in respect of the Appeal were issued, admitting the Appeal for hearing by way of written submissions.

### **Appellant's Submission**

4. The Appellant framed and submitted on two issues for determination; to wit,
  - i. whether the appeal is merited?
  - ii. What are the appropriate orders to be issued?
5. On issue number 1 the Appellants submit that they discharged their duty under section 107 of the *Evidence Act* by proving occupation of the entire land to wit Transmara/Shartuka/324, while the Respondents did not occupy any of it.
6. Thus, the Appellant proved a customary Trust which was an overriding interest under the repealed section 30(g) of the Repealed Registered *Land Act*, which provisions of the law are reflected at section 28 of the *Land Registration Act*.
7. The Appellant place reliance on Kiebia Vs. M'Lintari and Another on the customary rights, which customary rights the Appellants submit override proprietorship of the parcel.
8. On the second issue, it is the Appellant's submission that the Appeal should thus be allowed as prayed.

### **Respondent's submission**

9. The Respondent did not frame any issue for determination but submitted generally on the Appeal



10. It was the Respondent's submission that the title issued to the Registered Owner was protected under sections 24, 25 and 26 of the [Land Registration Act](#). The said sections provide as follows; -
11. Reliance was placed on the decisions in the cases of Jackson Nyamweya Teskin and Others versus Charles Muyala Makhoha and Others; as well as Ali Wanje Ziro versus Abdul Basit Abeid Said and Another.
12. The Respondent further submitted that the Appeal was frivolous and that the Learned trial Magistrate did not err in law and fact and that his decision ought to be upheld.

### **Issues for Determination**

13. Arising from Record of Appeal, the rival submissions and consideration of the law, the court frames, the following as issues for determination; -
  - i. Whether or not, the Appeal is merited; in deciding this issue the court shall equally determine whether the impugned Judgment should be upheld?
  - ii. What orders ought to issue?
  - iii. Who bears the cost of the Appeal?

### **Analysis and Determination?**

14. Although the Memorandum of Appeal states the Appeal to be against the Ruling and order dated 30<sup>th</sup> September 2024, the record of Appeal reveals on pages 122 – 135, that what was delivered on the said date was actually a judgment.
15. It must be deemed thus that the Appeal herein is in relation to the said judgment; as the orders for extension of time were sought and issued in relation to the said judgment, and decree.
16. It is the court's duty as a first Appellate court to  

“reconsider the evidence, evaluate it and draw its own conclusion”, as was stated in *Selle and Another Vs. Associated Motor Boat Limited and 3 Others*.
17. The Respondent as the plaintiff before the trial court had pleaded in his plaint dated 3<sup>rd</sup> of May 2021 appearing at pages 27-28 of the record of Appeal. He pleaded that Kono Ole Nayioma had been allocated through demarcation adjudication and subsequent registration parcel No. Transmara/Shartuka/324 which had formed part of Shartuka Group Ranch; and that the Defendants trespassed thereon in May of 2021.
18. The Respondent testified and produced a copy of title, copy of official search both in respect of Transmara/Shartuka/324, copy of letters of administration and death certificate in respect of the late Kono Ole Koyioma, in support of his case.
19. The Appellants' as defendants' before the trial court filed a defence denying having trespassed on Transmara/Shartuka/324 and that there was a pending suit before ELC Court staying all matters relating to Shartuka Adjudication sections.
20. The Defendant denied that the plaintiff or his late father had been allocated land in Shartuka Adjudication section; and that they had lived in Transmara/Shartuka/940 and sought for the dismissal of the plaintiffs suit.



21. In their testimony the witnesses all claimed that the Defendant had visited the property in May 2021 and claimed the same threatening them with eviction.
22. The Defendants Amended their defence and essentially pleaded that Transmara/Shartuka/940 and Transmara/Shartuka/147 referred to the same parcel.
23. The trial court found at paragraph 51 of its judgment, that the plaintiff was claiming parcel No. Transmara/Shartuka/324 while the Defendants were claiming Transmara/Shartuka/147, which they claimed was also known as Transmara/Shartuka/940 where they resided.
24. The above finding emanated from the testimony of the Land Registrar and Land surveyor who testified as PW1 and PW2 and it was their testimony that both parcels Transmara/Shartuka/147 and Transmara/Shartuka/324 existed on the ground and were registered to two different persons, that the plaintiff was the Bonafide registered owner of Transmara/Shartuka/324, while the Defendants' father's property was Transmara/Shartuka/147.
25. Indeed, the trial court was right in making the above finding since the plaintiffs in the plaint pleaded ownership of Transmara/Shartuka/324 while the Defendants pleaded in the counter-claim pleaded ownership of Transmara/Shartuka/147.
26. Indeed, DW1 stated in his evidence in chief that they did not know the boundaries between the parcels Transmara/Shartuka/324 and Transmara/Shartuka/147. DW1 was categoric in cross examination that he lived on Transmara/Shartuka/940 and not on Transmara/Shartuka/324.
27. The trial court having found that Transmara/Shartuka/324 was registered in the name of Konoï Ole Nayioma on whose Estate the plaintiff had sued made a finding that the Defendants had trespassed on the said parcel of land. the said finding was consistent with the evidence adduced and facts as pleaded before the trial court; it follows that the plaintiff before the trial court had proven his case, while the Defendants counter-claim was rightly dismissed by the trial court.
28. In answer to issue number 1, the court finds that the trial court reached the correct finding based on the pleadings and the evidence adduced, and that in so far as Konoï Ole Nayioma was registered as proprietor of Transmara/Shartuka/324 through the adjudication process, he was rightfully registered as proprietor thereof, and that in so far as the Defendants did not lay a claim to the said parcel through objections proceedings as provided for section 26 of the *Land Adjudication Act*,

“Section 26. Objections to adjudication register.

- i. Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.
- ii. The adjudication officer shall consider any objection made to him under subsection(i) of this section and after such consultation and inquiries as he thinks fit shall determine the objection” and further did not plead a claim of ownership of the same before the trial court, their occupation of the same remains trespass and the appeal is thus not merited.



29. On issue number 2, having found the appeal not merited, it follows that the same is destined to fail, as it hereby does by being dismissed with costs to the Respondent, costs in trial court are equally awarded to the plaintiff now Respondent.

**DATED AT KILGORIS 22<sup>ND</sup> DAY OF JANUARY, 2026**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of

CA – Sylvia/Sandra/Clara

Mr. Ochwangi for Respondent

Mr. Kiprotich for Appellant

