Munyao v Uku & another (Environment and Land Appeal E026 of 2023) [2026] KEELC 410 (KLR) (3 February 2026) (Judgment)

Neutral citation: [2026] KEELC 410 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ENVIRONMENT AND LAND APPEAL E026 OF 2023

AY KOROSS, J

FEBRUARY 3, 2026

BETWEEN

PHIBIAN KAMENE MUNYAO .... APPELLANT

AND

RUTH JOSEPH UKU .... 1ST RESPONDENT

ROSE NDINDA KIVUVA NZEKI .... 2ND RESPONDENT

(Appeal from the judgment of Hon. Ole Keiwua K. D. CM, delivered on 28/09/2023 in Kangundo CM's Court, ELC Case No. 20 of 2019 (Phibian Kamene Munyao V Ruth Joseph Uku And Rose Ndinda Kivuva))

JUDGMENT

Background of the appeal

1. To provide context for the appeal, it is important to outline the dispute that was previously before the trial court and is now before this court. In the lower court, the appellant filed a suit against the appellants by way of a plaint dated 9/07/2017.

2. In it, appellant asserted that on 8/09/2010, she purchased a portion of land to be delineated from land parcel number Machakos/Nguluni/771 ("disputed portion") from Joseph Mukima Uku ("Joseph"), the late spouse of the 1st respondent. Nevertheless, the sale agreement, witnessed by the 1st respondent and her son, described the purchased land as plot number Mitaboni/Mitaboni/2634 ("purchased land"). She remitted the full purchase price as agreed, and during an on-site visit, the 1st respondent's husband, the 1st respondent, and their son pointed out the disputed portion to her.

3. After Joseph died in 2012, the 1st respondent tried to resell the disputed land to Paul Maundu David ("David"). The appellant reported this to the area chief, who, on 14/04/2012, resolved that David be compensated with another land parcel and vacate the disputed land. The appellant

remained in possession, and Machakos/Nguluni/771 was subdivided, creating parcel no. Machakos/Nguluni/3975 (which is the disputed land), for which a title was issued to the 1st respondent, who agreed to transfer it to the appellant.

4. The 2nd respondent trespassed into the disputed land, demolished the fence, removed beacons, and fenced it off. Since the 1st respondent failed to transfer the disputed land, she lodged a caution over it to protect her rights. This led the 1st and 2nd respondents to request its removal, but the Machakos Land Registrar ruled it should stay to safeguard the appellant's rights. Consequently, she sought the following reliefs before the trial court: -

    a. A permanent injunction restraining the respondents, whether by themselves or their agents, employees, servants or subjects, from entering, evicting, sub -dividing, constructing, trespassing, interfering, residing, selling, subletting, transferring, charging, alienating or in any way whatsoever dealing with land parcel number Machakos/Nguluni/3975.

    b. A declaration that the appellant is the legal owner of land parcel number Machakos/Nguluni/3975.

    c. Cost of this suit.

5. Upon being presented with the pleadings, the respondents contested them. In a defence and counterclaim dated 19/12/2018, the 1st respondent stated that Joseph had agreed to sell one acre of land to the appellant for Kshs. 300,000/-, with the purchase price to be paid to Ngumbau Mutua, a doctor. However, these payments were never made, and thus, the agreement for sale dated 8/09/2010 was a forgery.

6. Further, the plaintiff took possession of the one acre and fenced it, but upon discovering that no payment had been made to the doctor, Joseph, who was critically ill, advised her to sell this one acre to settle the doctor's bill, which had since been incurred for the treatment of their son. Consequently, she sold it to Patrick Wambua ("Patrick"), the husband of the 2nd respondent.

7. The decision to relocate David from title no. Machakos/Nguluni/3975 to title no. Mitaboni/Mitaboni/2634 was therefore not to acknowledge the claim by the plaintiff, but to move him to another parcel of land where his 3 acres could be excised as a whole. The caution that had been placed over her land should be removed, and she prayed for the plaintiff's suit to be dismissed with costs, and for judgment to be entered in her favour for the following reliefs:

    a. A declaration that the 1st respondent is the absolute legal owner of all that land parcel known as title no. Machakos/Nguluni/3975.

    b. A declaration that the caution registered on 17/07/2017 in favour of the appellant against title no. Machakos/Nguluni/3975 was illegally and wrongfully registered on the basis of the forged agreement dated 8/09/2010; therefore, the same be removed.

    c. The costs of this suit.

8. As for the 2nd respondent, she filed a defence dated 10/02/2019, denying the allegations and putting the appellant to strict proof. She stated that she was the owner of the disputed land, having purchased it from the 1st respondent under a sale agreement dated 20/06/2014, and that she had paid the full agreed purchase price of kshs 1,900,000/-. Therefore, she was not a trespasser.

9. Subsequently, the matter was heard, with the parties calling their respective witnesses, relying on witness statements, oral testimonies, and produced documents as the case may be. In the appellant's

case, she testified alone, whereas the respondents both testified, and Patrick (DW 3) and Alex Mwongera, an expert document examiner (DW 4), led their evidence.

10. Subsequently, judgment was delivered in the matter whereby the learned trial magistrate found that the appellant had bought the purchased land and had paid for it and awarded the purchase price of kshs. 300,000/- with interest. The 1st respondent's counterclaim was dismissed, and she was condemned to pay the costs of the suit and counterclaim.

Appeal to this court and the hearing

11. Dissatisfied, the appellant appealed to this court and filed a memorandum appeal dated 26/10/2023 and filed on the instant date, where she questioned the impugned judgment on 8 grounds, and maintained that the learned trial magistrate erred in law and fact in: -

    a. Misdirecting himself by failing to consider that the appellant had discharged her burden of proof in proving that she had acquired the suit property lawfully.

    b. Failing to enter judgment for the appellant even though the appellant's pleadings and evidence on record had established a strong case to warrant the grant of the reliefs sought.

    c. Ignoring the evidence and the submissions adduced by the appellant.

    d. Failing to appreciate the core evidence of DW4 and misapplying the same.

    e. Ignoring the pleadings and the evidence adduced by the appellant and thereby substituting his own position, and thus arrived at a wrong decision.

    f. Failing to consider all the issues arising from the suit.

    g. Misdirecting himself by relying on extraneous matters and or factors to dismiss an otherwise legally tenable claim by the appellant.

    h. Rendering a judgment against the evidence.

12. Accordingly, the appellant urged this court to grant the appeal, overturn the contested judgment, enter a judgment in her favour as claimed in the plaint, and award her the costs of the appeal and the lower court suit.

13. Despite service, the respondents did not participate in these proceedings. The appeal was canvassed through written submissions by the appellant’s counsel, Ms. Nzuki Nzioka & Co. Advocates, dated 30/05/2025, in which counsel appeared to have consolidated the grounds and submitted that, after establishing that the appellant had lawfully purchased the disputed land and paid the full purchase price, and given that she was the first purchaser, the order that recommended itself was a declaration that she was the lawful owner.

14. Furthermore, it was argued that subsequent transactions by the 1st respondent were unlawful and void ab initio. Counsel also contended that the award of damages by the trial court in favour of the appellant was not an appropriate remedy, particularly where the appellant had demonstrated and proved a clear legal right or violation. In support of these arguments, counsel relied on Section 3(3) of the Law of Contract.

Issues for determination, Analysis and Determination

15. As this is a first appeal, the authority of this court is set out in Order 42 Rule 32 of the Civil Procedure Rules. Additionally, the court shall be guided by the principles articulated in the well-cited case of Selle

v Associated Motor Boat Company Ltd [1968] EA 123, which encapsulates the guiding principles as follows: an appellate court shall not interfere with the challenged judgment unless it is convinced that the learned trial magistrate misdirected himself and consequently arrived at an erroneous decision, exercised his discretion improperly, and thereby caused injustice through such an erroneous exercise.

16. Regarding the matter at hand, this court has carefully reviewed the records, the impugned judgment, and the appellant's submissions, and it is the considered view of this court that the grounds of appeal can be effectively evaluated by examining the singular issue of whether the appellant proved her case and was entitled to the reliefs sought.

17. In this case, this court has really agonised over the impugned judgment that ignored the 1st respondent's evidence on her signature being forged, which was corroborated by an expert witness who affirmed that, upon considering the known and specimen signatures of Joseph and the 1st respondent, they could not have signed the agreement dated 8/09/2010 but be that as it may, this court must remind itself on its role and must not delve into the arena of litigation.

18. Turning to the issue at hand, before the trial court, the appellant presented an agreement for sale dated 8/09/2010, which showed that she bought from Joseph one acre of the purchased portion. The appellant insisted that this agreement referenced the wrong parcel of land. However, this line of argument is not permissible, as the parol evidence rule forbids the introduction of extrinsic evidence to modify the terms of a written contract between the parties. This court aligns itself with the decision of Fidelity Commercial Bank Limited v Kenya Grange Vehicle Industries Limited [2017] eKLRCivil Appeal 61 of 2013, which stated: -

> " So that where the intention of parties has in fact been reduced to writing, under the so called parol evidence rule, it is generally not permissible to adduce extrinsic evidence, whether oral or written, either to show the intention, or to contradict, vary or add to the terms of the document, including implied terms. Courts adopt the objective theory of contract interpretation, and profess to have the overriding aim of giving effect to the expressed intentions of the parties when construing a contract. This is what sometimes is called the principle of four corners of an instrument, which insists that a document's document meaning should be derived from the document itself, without reference to anything outside of the party (extrinsic evidence), such as the circumstances surrounding its writing or the history of the party or parties signing it."

Respecting the conduct of parties to an agreement, this court adopts the dicta in Eldo City Limited v Corn Products Kenya Ltd & another [2013] KEHC 5916 (KLR) where the court stated:-

> " It is trite law that in deciding disputes, it is the court's duty to give effect to the intention of the parties. The parties' intention is discernible from the documents and conduct of the parties. However, onerous a document or contract may be, the court's duty is to give effect to it. In the case of Smith –vs- Cook (1891) AC 297 at 303 the court held: -
>
> > " The duty of the court is to give the natural meaning to the language of the deed unless it involves some manifest absurdity or would be inconsistent with some other provision of the deed and would therefore be contrary to the intention of the parties as appearing upon the face of the deed."
> >
> > In the case of Rose and Frank Co. –vs- J.R Crompton and Brothers Ltd (1923) 2 KB 261, the court held that there was nothing wrong in having clauses in an

agreement where parties agree not to be bound in law but subject to a contract being drawn up."

18. In the instant case, the parties entered into the agreement, which substantively states in part:

> " I Joseph Mukima Uku, the seller is the beneficial owner of the property situated along Kang'undo-Nairobi Road right hand side at Stage Kwa Uku. The property is registered under Uku Mukima Plot No. 2631. The seller has agreed to dispose [sell one acre of the mentioned property from the border of Mbaa Mbai boundary along the maraum (sic) road at agreed price of three hundred thousand shillings only (300,000). The buyer has paid the full agreed amount."

19. This agreement is very specific because it details the location, size, current status, and registered owner of the land being sold. Guided by the parol evidence rule, the appellant was not permitted to argue that the parties intended to transfer a different parcel of land, which was nine times the size of the purchased land and located in a different locality, as evidenced by the registration details of the two parcels.

20. If any error had occurred as she contends, it would have been expected that the parties would have entered into a different written agreement; however, no such document was adduced as evidence. Notably, she submitted another agreement, allegedly between the 1st respondent, David, and Bernard; however, she was not a party to it. The terms of the agreement bound the parties, and since the disputed land was not the subject of the contract between the appellant and Joseph, the 1st respondent was entitled to dispose of it to the 2nd respondent. In the circumstances, this court finds that the appellant was not entitled to the reliefs sought in the plaint. It also finds that the appeal fails.

21. Therefore, for the above reasons and findings, the appeal is dismissed, and this court upholds the orders issued in the judgment rendered on 28/09/2023. Since it is a trite law that costs follow the event, and for reasons the appeal was unopposed, the appellant shall bear her costs of this appeal.

    Judgment accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 3RD DAY OF FEBRUARY, 2026.

HON. A. Y. KOROSS

JUDGE

03.02.2026

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Mr. Nzioka for Appellant

No appearance for Respondents