

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC APPEAL NO. E032 OF 2025

RAEL JEPSONGOK KISORIO
(SUING THROUGH A NEXT
FRIEND PEREZ CHEPKORIR.....APPELLANT

-VERSUS-

STEPHEN MURIITHI MUNENE &
DAVID GACHANI MAINA
T/A FIRMLAND COMPANY LIMITED.....
RESPONDENT

J U D G E M E N T

1. The Appellant herein did file a Memorandum of Appeal dated 09.06.2025 (hereinafter referred to as **“the present Appeal”**) against the Judgement pronounced on the 30.04.2025(hereinafter referred to as **“the Trial Court Judgement”**) in favour of the Respondent in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC CASE NO. E097 OF 2024 (hereinafter referred to as **“the Trial Court proceedings”**) by HON K.GWENO, SRM (hereinafter referred as **“the Trial Court”**) seeking the following Orders;-

A. The Appeal herein be allowed with costs.

B. The Judgement and Order of Refund of Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-) being the deposit paid for the sale of Land Parcel MOIBEN/LOLKINYEI BLOCK 3 (ITET)/107 be set-aside and/or disregarded.

C. The Honourable Court does award General damages and Punitive damages for breach of contract.

D.The Honourable Court makes any further orders it finds just and pleases to do so and as pleaded.

2. The prayers sought hereinabove are premised on the following grounds; -
 - i. That the Learned Magistrate erred in law and in fact by ordering a refund of Kshs.1,200,000/= which amount was paid as deposit for the sale of the land parcel MOIBEN/LOLKINYEI BLOCK 3 (ITET) 107 (hereinafter referred to as **“the suit property”**)
 - ii. That the Learned Magistrate erred in law and in fact in disregarding the Plaintiff’s arguments in her submissions together with her evidence on record.
 - iii. That the Learned Magistrate erred in law and in fact in failing to award general and punitive damages for breach of contract which award was duly pleaded in the Plaint.
3. The Appellant did file and serve a Record of Appeal dated 25.06.2025 as well as a Supplementary Record of Appeal dated 10.11.2025.
4. On 10.11.2025, both the Record of Appeal dated 25.06.2025 and the Supplementary Record of Appeal dated 10.11.2025 were duly admitted for hearing by this Court.
5. Upon admission of this Appeal, the Court did direct that the same be canvassed by way of written submissions.
6. In compliance with the above direction, the Appellant did file the submission dated 19.11.2025 while the Respondent did not file any submissions thereof.
7. The scope and jurisdiction of this Court as the first Appellate Court was discussed in the case of **SELLE & ANOTHER-VERSUS- ASSOCIATED MOTOR BOAT CO. LIMITED & OTHERS (1968) EA 123** where the Court stated as follows; -

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”

8. In essence, this Court is required to relook and re-evaluate the pleadings that were filed before the Trial Court, the testimonies of the witnesses, the documentary evidence and the submissions thereof with a view of identifying the issues for determination and thereafter make its own conclusions keeping in mind the fact that it did not have the opportunity to see or hear the witnesses at first hand.
9. Consequently, in line with the above mandate, this Court will now proceed to relook and re-evaluate the pleadings, testimonies and documentary evidence adduced before the Trial Court so as to identify the issues for determination and drawn its own conclusions.

APPELLANT’S & RESPONDENT’S PLEADINGS BEFORE THE TRIAL COURT

10. The Appellant (herein was also the Plaintiff before the Trial Court) did file an Amended Plaint dated 30.09.2024 against the Respondent (who was also the Defendant before the Trial Court) seeking the following Orders; -
 - a. **An Order of eviction to issue against the Defendants to immediately vacate the Plaintiff’s Land Parcel No. MOIBEN/LOLKINYEI (ITET)/107 measuring 2.02 Hectares.**

b. General and Punitive Damages for breach of Contract.

c. Costs and interests of this suit.

d. Any other relief(s) this Court may deem just and fit to grant.

11. The facts in support of the above prayers in the Plaint dated 28.03.2024 can be summarised as follows; -

- i. The Appellant did plead that he had been and is still the registered owner of the property known as MOIBEN/OLKINYEI BLOCK 3 (ITET)/107 measuring 2.02 Hectares (hereinafter referred to as **“the suit property”**)
- ii. On or about 25.03.2021, the Appellant did enter into an Agreement For Sale with the Respondent over the suit property for a consideration of Kenya Shillings Four Million Two Hundred and Fifty Thousand (KShs.4,250,000/-).
- iii. The Completion period of the Agreement For Sale dated 25.03.2021 was on or before 25.06.2021.
- iv. Upon execution of the Agreement For Sale dated 25.03.2021, the Respondent did make a payment of Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-) leaving a balance of Kenya Shillings Three Million and Fifty Thousand (KShs.3,050,000/-).
- v. Unfortunately, the Respondent did fail to complete the balance of Kenya Shillings Three Million and Fifty Thousand (KShs.3,050,000/-) by the date of completion 25.06.2021.
- vi. Despite various notices to complete by the Appellant, the Respondent did fail to comply.

- vii. The Appellant in the Plaint did provide the Terms of Breach of Contract by the Respondent under Paragraph 6 therein.
 - viii. In conclusion thereof, the Appellant sought the Trial Court to grant the prayers sought therein.
12. The Appellant's Amended Plaint dated 30.09.2024 was duly served on the Respondent.
13. The Respondent upon service of the Amended Plaint dated 30.09.2024 did rely on the Statement of Defence dated 29.07.2024 to oppose the Orders sought therein.
14. In the Statement of Defence dated 29.07.2024, the Respondent did plead the following facts in opposition of the Appellants case;-
- a) The Respondent did admit that there was an Agreement For Sale dated 25.03.2021 over the suit property with the Appellant.
 - b) The Respondent however did deny that the outstanding amount due to the Appellant was the sum of Kenya Shillings Three Million and Fifty Thousand (KShs.3,050,000/-).
 - c) According to the Respondent, various amounts of the consideration were paid to the Appellant through PW1.
 - d) The Respondent further did state that it was the Appellant who had failed to hand over the title deed of the suit property so that a loan facility would be processed to enable full payment of the purchase price.
 - e) The Respondent did also plead that the failure by the Appellant to hand over the title deed to the suit property made the selling of the same to third parties impossible

and therefore there were no revenues that could be raised to clear the balance of the purchase price.

- f) In conclusion thereof, the Respondent did plead that the Appellant's Amended Plaintiff dated 30.09.2024 was malicious, vexatious, an abuse of the court process and an afterthought hence should be dismissed.
15. The Statement of Defence dated 29.07.2024 was duly served on the Appellant who did file a Reply to Defence dated 13.08.2024.
16. In the Reply to Defence dated 13.08.2024, the Appellant did join issues with the Respondent's Defence dated 29.07.2024 in so far as there was an admission of the Agreement For Sale dated 25.03.2021 and the fact that there were outstanding amounts owing from the Respondent.
17. After the filing and service of the Reply to Defence dated 13.08.2024, the pleadings did close and the matter was set down for hearing before the Trial Court.

APPELLANT'S TESTIMONIES & DOCUMENTARY EVIDENCE BEFORE THE TRIAL COURT.

18. The first witness called by the Appellant before the Trial Court was one PEREZ JEPKORIR who was marked as PW 1.
19. PW 1 did inform the Trial Court that he was a resident of Uasin Gishu.
20. PW 1 then did proceed to adopt the Witness Statement dated 27.03.2025 as his evidence in chief.
21. In addition to the above testimony, PW 1 did proceed to produce the documents contained in the Bundle of Documents dated 28.03.2024 which were then marked as PLAINTIFF'S EXHIBIT 1 TO 4.

22. PW 1 thereafter did seek the Trial Court to grant the prayers sought in the Amended Plaint dated 30.09.2024.
23. Due to the absence of the Respondent, there was no cross-examination of PW 1.
24. Consequently, PW 1 was discharged from the witness box and the Appellant's did close their case.

RESPONDENT'S TESTMONIES AND DOCUMENTARY EVIDENCE BEFORE THE TRIAL COURT

25. The Respondents despite entering appearance and filing a Defence did not appear before the Trial Court for the hearing of the Trial Court proceedings.
26. Consequently, the Respondents case was closed thereafter.
27. The parties were then directed to prepare, file and serve their final submissions for the Trial Court.
28. The Appellant did file her closing submissions dated 15.04.2025 while the Respondent did not file any closing submissions thereof.
29. Based on the above pleadings, testimonies and documentary evidence, the Court is of the considered view and finding that the issues for determination are as follows; -

ISSUE NO.1- WAS THERE A BINDING AGREEMENT FOR SALE BETWEEN THE APPELLANT AND THE RESPONDENT?

ISSUE NO.2- WAS THERE A BREACH OF CONTRACT OCCASIONED BY THE RESPONDENT?

ISSUE NO.3- IF YES, WAS THE APPELLANT ENTITLED TO AN ORDER OR EVICTION AGAINST THE RESPONDENT?

ISSUE NO.4- IF YES, WAS THE APPELLANT ENTITLED TO AN ORDER OF GENERAL AND/OR PUNITIVE DAMAGES AGAINST THE RESPONDENT?

ISSUE NO. 5- WAS THE APPELLANT ENTITLED TO THE PRAYERS SOUGHT IN THE AMENDED PLAINT DATED 30.09.2024?

ISSUE NO.6- IS THE PRESENT APPEAL MERITED OR NOT?

ISSUE NO.7- WHO BEARS THE COSTS OF THE PRESENT APPEAL?

30. This Court having identified the above-mentioned issues for determination, the same will now be discussed hereinbelow.

ISSUE NO.1- WAS THERE A BINDING AGREEMENT FOR SALE BETWEEN THE APPELLANT AND THE RESPONDENT?

31. The first issue for determination is whether or not there was a binding Agreement For Sale between the Appellant and the Respondent.

32. According to the Appellant, there was an Agreement For Sale dated 25.03.2021 with the Respondent over the suit property.

33. The existence of this Agreement For Sale dated 25.03.2021 was never denied by the Respondent.

34. The Agreement For Sale dated 25.03.2021 was also tabled before the Trial Court as Plaintiff's Exhibit 2.

35. The Court has carefully looked at the Agreement For Sale dated 25.03.2021 and is satisfied that it complies with the

Law of Contract and therefore binding on the Appellant and the Respondent.

36. As such, this Court hereby makes a finding that the Agreement For Sale dated 25.03.2021 was binding between the Appellant and the Respondent.

ISSUE NO.2- WAS THERE A BREACH OF CONTRACT OCCASIONED BY THE RESPONDENT?

37. The second issue for determination is whether or not there was a breach of contract by the Respondent as alleged by the Appellant.
38. According to the Appellant, the Respondent herein did not meet the terms and conditions provided in the Agreement For Sale dated 25.03.2021.
39. In particular, the Appellant did plead and testify that the Respondent failed to settle the full purchase price provided in the Agreement For Sale.
40. The Appellant in her Amended Plaintiff dated 30.09.2024 did give the particulars of Breach of Contract by the Respondents under paragraph 6 therein.
41. The Respondents on the other hand in their Defence dated 29.07.2024 denied that the outstanding amount owing to the Appellant was a sum of Kenya Shillings Three Million and Fifty Thousand (KShs.3,050,000/-).
42. The Respondents did plead that various amounts of payments were made through PW 1 but did not give an account of the same.
43. In the same Defence dated 29.07.2024, the Respondents did admit that the full purchase price had not been settled due to the inability to procure the title from the Appellant so that a

loan facility could be processed to clear the balance of the purchase price.

44. Similarly, the Respondents were of the view that if the title deed would be released by the Appellants, then they would be able to sub-divide the suit property and sell it off with the proceedings going to clear the balance of the purchase price.
45. Once again, the Court did look at the Agreement For Sale dated 25.03.2021.
46. In this Agreement For Sale dated 25.03.2021, the Consideration of the suit property was declared to be Kenya Shillings Four Million Two Hundred and Fifty Thousand (KShs.4,250,000/-).
47. The Completion date was 25.06.2021 when all the consideration ought to have been paid.
48. According to the Appellant, a sum of only Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-) was paid by the Respondent to the Appellant.
49. Thereafter, the balance of Kenya Shillings Three Million and Fifty Thousand (KShs.3,050,000/-) was never paid on or before the 25.06.2021 as provided in the Agreement for Sale dated 25.03.2021.
50. The Respondents in their Defence did plead that there were various amounts paid to PW 1 towards the Consideration of the Purchase price.
51. However, Section 107 of the Evidence Act, Cap 80 provides that he who alleges must prove.

52. The Respondents were under an obligation to prove the amount which they had paid to the Appellant and/or PW 1 towards clearing the consideration herein.
53. Unfortunately, the Respondents did not make any effort to attend court or provide any documentary evidence to prove the monies they had paid over and above that acknowledged by the Appellant being Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-).
54. Looking at the above facts, it is clear that the Respondents herein did not honour or settle the balance of Kenya Shillings Three Million and Fifty Thousand (KShs.3,050,000/-) owing to the Appellant on or before the 25.06.2021.
55. As such, this Court hereby makes a finding that the Respondents herein were in breach of the Agreement For Sale dated 25.03.2021 by failing to liquidate the full purchase price on or before the 25.06.2021.

ISSUE NO.3- IF YES, WAS THE APPELLANT ENTITLED TO AN ORDER OR EVICTION AGAINST THE RESPONDENT?

56. The Court having made a finding that the Respondents were in breach of the Agreement For Sale dated 25.03.2021, the next issue is whether or not the Appellants are entitled to an order of eviction against the Respondent.
57. According to Clause 3 of the Agreement For Sale dated 25.03.2021, the same reads as follows;-

“ 3. The parties agree that the Purchaser have seen the land sold and shall take possession immediately”

58. It is true based on the above Clause in the Agreement For Sale dated 25.03.2021 that the suit property herein would be handed over to the Respondents upon execution of the Agreement For Sale dated 25.03.2021.

59. The Appellant in her pleadings and the reliefs sought in the Amended Plaintiff admits that the Respondents are in possession and occupation of the suit property in line with the Agreement For Sale dated 25.03.2021.
60. The Appellant nevertheless is of the view and position that the Respondents failure to complete the purchase price on the agreed date amounted to a breach of contract and therefore the Respondents should not benefit from the suit property which they have not paid for.
61. The Respondents on the other hand do not deny the fact that the full purchase price has not been settled in line with the Agreement For Sale dated 25.03.2021.
62. The Respondents did plead that the failure to settle the purchase price on time was based on the Appellant's failure to release the Title Deed to them for purposes of either procuring a loan to clear the purchase price or sub-divide the suit property for sale to third parties and the proceeds used to clear the purchase price.
63. Under Clause 7 of the Agreement For Sale dated 25.03.2021, the Appellant and the Respondent consent to the following term; -
- “The parties hereby agree mutually that the original title deed shall remain in safe custody with the attesting counsel herein and the same shall be handed over to the purchaser upon full payment of the consideration price”***
64. Looking at the above Clause in the Agreement For Sale dated 25.03.2021, it is clear that the payment of the balance of the Purchase Price to the suit property was never tied to the release of the Title Deed in the name of the Appellant.
65. The expectation and understanding of the Agreement For Sale dated 25.03.2021 was that the full purchase price would

be paid on or before the 25.06.2021 by the Respondents to the Appellant.

66. Clearly therefore, this never happened in line with the terms and conditions of the Agreement For Sale dated 25.03.2021.
67. The impact of the Respondents none compliance with the terms and conditions of the Agreement For Sale dated 25.03.2021 was to rescind the same and return the parties to the positions they were before the Agreement For Sale dated 25.03.2021 was entered.
68. In essence, in terms of occupation and use of the suit property, the same should be returned to the Appellants herein.
69. As such, this Court is of the considered view and finding that the Appellant was entitled to the Order of Eviction against the Respondents due to the breach of the Agreement for Sale dated 25.03.2021.

ISSUE NO.4- IF YES, WAS THE APPELLANT ENTITLED TO AN ORDER OF GENERAL AND/OR PUNITIVE DAMAGES AGAINST THE RESPONDENT?

70. On the issue of general and punitive damages, the Appellant sought the same based on the fact that the Respondents had been in occupation of the suit property from 25.03.2021 when the Agreement for Sale was executed.
71. The Respondents did not any response to the Appellant's claim for general and punitive damages raised by the Appellant.
72. To begin with, the Agreement For Sale did not provide for any penalties if the Respondents failed to comply with the Agreement For Sale.
73. Consequently, the Appellant had a duty to first and foremost provide any evidence to the effect that the Respondents had

taken over the suit property and were benefiting from the same.

74. In the alternative, the Appellant was to demonstrate the use of the suit property prior to the Respondents taking possession based on the Agreement For Sale dated 25.03.2021.
75. If any of the two scenarios above would have been proved, then the Court would have considered whether any general and/or punitive damages would accrue against the Respondents.
76. Unfortunately, even the witness statement relied upon by the Appellant dated 28.03.2024 never talked about the general or punitive damages.
77. As such, this Court is of the considered view and finding that the Appellant did not prove her claim of general and/or punitive damages against the Respondents.

ISSUE NO. 5- WAS THE APPELLANT ENTITLED TO THE PRAYERS SOUGHT IN THE AMENDED PLAINT DATED 30.09.2024?

78. Based on the Court's findings in Issues No. 1,2 3 and 4 hereinabove, this Court is of the considered view and finding that the Appellant herein was entitled to Prayer No. A and C of the Amended Complaint dated 30.09.2024.
79. There was no evidence or basis upon which the Appellant would be granted Prayer No.B.

ISSUE NO.6- IS THE PRESENT APPEAL MERITED OR NOT?

80. Based on the Court's findings in Issue No. 1,2,3 ,4 and 5, this Court is of the finding that the Appellant was entitled to the

reliefs sought in the Amended Plaintiff dated 30.09.2024 save for Prayer No.B therein.

81. However, in the Trial Court in its Judgement did further Order that the Appellant refunds the deposit of Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-) received from the Respondents.
82. Unfortunately, the issue of a refund of the deposit amounting to Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-) was never pleaded by the Appellant and/or the Respondent in their Defence.
83. As such, this Court is of the considered view that the Trial Court did make a finding on an issue that had not been pleaded by the parties and was not before the Trial Court for determination.
84. Consequently, this Court is of the finding that the Order directed to the Appellant to refund the deposit of Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-) to the Respondents was incorrect and outside the issues before the Trial Court.
85. In essence thereof, this Court is of the considered view that the present Appeal is partially merited.

ISSUE NO.7- WHO BEARS THE COSTS OF THE PRESENT APPEAL?

86. Costs are usually awarded to a winning party.
87. In this Appeal, the Appellant has only succeeded in one prayer of the Appeal and therefore each party will bear its own costs.

CONCLUSION

88. In conclusion, this Court hereby makes the following Orders in determination of the present Appeal; -

A. THE MEMORANDUM OF APPEAL DATED 09.06.2025 IS PARTIALLY MERITED.

B. THE ORDER NO.2 IN THE JUDGEMENT PRONOUNCED ON 30.04.2025 IN THE TRIAL COURT PROCEEDINGS DIRECTING THE APPELLANT TO REFUND THE RESPONDENTS THE SUM OF KENYA SHILLINGS ONE MILLION TWO HUNDRED THOUSAND (KSHS.1,200,000/-) BE AND IS HEREBY SET-ASIDE AND/OR VACATED.

C. THE PRAYER OF GENERAL AND PUNITIVE DAMAGES FOR BREACH OF CONTRACT IS DENIED.

D. EACH PARTY WILL BEAR ITS OWN COSTS OF THIS APPEAL.

DATED, SIGNED and DELIVERED in ELDORET this 12TH DAY OF FEBRUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: vBrian

Plaintiff: Ms. Ngala for the Appellant

Defendant: 1st and 2nd Respondents in person (N/A)

