

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELC APPEAL NO. E020 OF 2025

PHYLLIS MUTHONI MWAURA.....

APPELLANT

=VERSUS=

FAUSTINE MWANYOLO MGHENDI.....1ST

RESPONDENT

GABRIEL LOMBO LENJO.....2ND

RESPONDENT

JUDGMENT

1. This judgment is in respect to an appeal against the decision of Hon. A. M. Obura (Mrs.) CM delivered on 14th March 2025 wherein the Learned Magistrate dismissed the Appellant's suit before her.

2. The Appellant being aggrieved by the said decision lodged the instant Appeal vide a Memorandum of Appeal dated 10th April 2025. The Memorandum of Appeal raised the following grounds:-

(a) That the learned Honourable Magistrate erred in law and facts in totally ignoring and/or failing to take into accounts the oral evidence and

documentary evidence by the Appellant despite the suit being undefended.

(b) That the learned Honourable Magistrate erred in law and facts by failing to appreciate that since the filing of the suit on 21st September 2023 and despite the Defendant being represented never filed a statement of defence to challenge the Plaintiff's suit until judgement was delivered and thus the facts remained uncontroverted.

(c) That the Honourable learned Magistrate erred in law and facts by Ruling on the 2nd Respondent's application during the delivery of the judgement in the main suit which application was filed after formal proof hearing was done.

(d) That the Honourable learned Magistrate erred in law and facts by usurping the powers and mandate of a document examiner by insinuating that there is disparity between the signature used to sign the impugned authority o act by the 2nd Respondent who was the 1st Plaintiff in the main suit and his own signatures on the supporting affidavit and further affidavit.

(e) That the Honourable learned Magistrate erred in law and facts by failing to appreciate that during the subsistence of the suit, the 2nd Respondent did not file any application seeking leave to have the authority to act and plead be subjected to examination for the alleged forgery.

(f) That the Honourable learned Magistrate erred in law and facts by allowing the 2nd Respondent's application on allegations of forgery without any expert evidence adduced.

(g) That the Honourable learned Magistrate erred in law and facts by failing to find that the Appellant had proved her case on a balance of probability and further that there was no evidence by the Respondent to defend the suit.

(h) That the Honourable learned Magistrate erred in law and facts and misdirected herself by acting on wrong and unsound principles and provisions of the law.

3. The Appellant thus sought the following prayers:-

(i) THAT the Appeal be allowed.

(ii) THAT the Judgement/Decree/Order of the Chief Magistrate Voi dated 14th March 2025 in CC No. E193 of 2023 be quashed and/or set aside entirely with costs to the Appellant both in lower court and in this Honourable Court.

(iii) THAT the Appellant's prayers in the lower court be granted and/or as the Honourable Court may direct in the interest of justice.

4. The Appeal was contested by the Respondents and pursuant to the directions issued by this court, it was directed that the same be canvassed by way of written submissions. The Appellant filed her written submissions dated 22nd October 2025 while the 1st Respondent filed written submissions dated 16th January 2026 and the 2nd Respondent Gabriel Lombo Lenjo filed written submission dated 23rd January 2026.

The Appellants submissions.

5. The Appellant submitted on the following issues:-

(a) Failure to particularize allegations of fraud.

(b) Failure to prove allegations of fraud to the required standard.

(c) The Learned Magistrate erred in relying on unsubstantiated allegations.

6. It was submitted that the Respondent made general allegations of fraud without providing any specific details as to how the alleged fraud was perpetuated, by whom and when and therefore such vague and unparticularized allegations do not meet the threshold required by law. Reliance was placed on the case of **Wanjiru & Another =Versus= Mutune (Civil Appeal E026 of 2023 (2025) KEHC 12701 (KLR).**
7. It was also submitted that even if the allegations of fraud had been particularized, a fact which was denied the Respondent bore the heavy burden of proving them to a higher standard. The cases of **Kariuki Kawa & 2 Others (2024) KEHC 9066 (KLR)** and **Patel & Another =Versus= MJC (2022) KECA 264** were cited in support.
8. On the aspect of the Learned Magistrate relying on unsubstantiated allegations, it was argued that the Learned Magistrate relied heavily on unsubstantiated allegations and had she properly applied the principles governing the pleadings and proof of fraud then she would have arrived at a different conclusion.

9. The court was urged to allow the Appeal, set aside the judgment delivered by the Learned Magistrate and allow the Appellant's claim as filed before the trial court.

The 1st Respondent's submissions

10. It was submitted that the Learned Magistrate did not err in law and in fact in dismissing the Appellant's case. It was argued that she never entered into any contract with the Appellant thus had no locus standi to seek the prayers sought against him. The Appellant was not a party to the sale agreement. The cases of **Law Society of Kenya =Versus= Commissioner of Lands & Others Nakuru High Court Civil Case No. 464 of 2000 and Noor =Versus= Kisilu & Antoher (2025) KEELC 3774 eKLR** were cited in support.

11. The court was urged to dismiss the Appeal with costs since the Appeal was not merited.

The 2nd Respondent's submissions

12. The 2nd Respondent submitted on the following issues:-

(i) Whether the Appellant had the legal capacity and locus standi to institute and maintain the suit in respect of Title No. Majengo/3489.

(i) Whether the Appellant had valid authority to plead, act or institute proceeding on behalf of the 2nd Respondent.

(ii) Whether the trial court erred in law and fact in striking out the 2nd Respondent from the proceedings and dismissing the suit as against the Appellant.

(iii) Costs.

13. On his first issue, it was argued that the Appellant was not a party to the agreement. She did not execute the same nor did she contribute to it. She failed to demonstrate any legal or equitable interest in the matter and hence therefore the trial court arrived at a correct finding.

14. On the issue of authority to plead and institute the suit, reliance was placed on Order 1 Rule 13(1) and 13(2) of the Civil Procedure Rules together with the case of **Simon Wachira Kagiri =Versus= County Government of Nyeri & Another (2019) eKLR**, it was argued that the purported authority was disowned and the trial court arrived at the right decision when it struck out the names of the 2nd Respondent from the proceedings.

15. The court was urged to dismiss the Appeal with costs.

Analysis and Determination

16. This being a first appeal, the power of this court is set out in **Order 42 Rule 32** of the **Civil Procedure Rules**. Being steered by the principles enunciated in the well-cited case of **Selle v Associated Motor Boat Company Ltd [1968] EA 123**, this court will not interfere with the impugned judgment unless this court satisfies itself the learned trial magistrate misdirected herself thus arrived at an erroneous decision, undoubtedly exercised her discretion wrongly and occasioned injustice by such erroneous exercise.

17. Having considered the entire record of appeal and written submissions filed, the main issues for determination are as follows:-

(i) Whether the Appellant had the legal capacity and locus standi to institute and maintain the suit in respect to Title No. Majengo/3489.

(ii) Whether the trial court erred in law and fact in arriving at its decision.

(iii) Whether the Appellant is deserving of the reliefs sought.

18. The court shall now consider and address itself on the said issues sequentially.
19. The Respondents attacked the Appeal on the grounds that the Appellant had no locus standi to institute the suit before the trial court.
20. Before I consider the said issue, it is important to evaluate the Appellant's claim that had been filed at the trial court.
21. It was the Appellant's case that sometime in the year 2014 together with the 1st Respondent entered into a sale agreement with the 2nd Respondent for purchase of land measuring 100 by 100 ft at a considerate of Kshs. 350,000/= Upon which Kshs. 200,000/= was paid as a deposit. Later the 1st Respondent failed to transfer the land and hence their claim before court.
22. The 1st Respondent on the other hand did not participate on the trial nor call any witness. However, the 1st Respondent denied the Plaintiff's claim as he had been wrongly joined as a Co-Plaintiff. He also denied authorizing the Appellant to institute the claim.
23. Even if the Respondents did not testify in the matter, the burden of proof remained with the Appellant to prove her claim before the trial court on a balance of probabilities as

required by the law. **In Karugi & Another v Kabiya & 3 Others [1987] KLR 347** noted that:

“The burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof....The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim.”

24. **Similarly, in the case of Gichinga Kibutha v Caroline Nduku, (2018) eKLR, the court held that: -**

“It is not automatic that instances where the evidence is not controverted the claimant shall have his way in court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

25. In the instant case and as earlier stated the 2nd Respondent filed an application and contested the Appellants locus standi in the matter. Locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

26. From a perusal of the record of appeal and proceeding before the Learned Magistrate, it was evident that the 2nd Respondent denied being a party to the suit, he denied giving any authority or consent to the Appellant to file the instant suit. This denial meant that now it was upon the Appellant to prove otherwise. The burden rest with her and she failed to discharge that burden. She failed to controvert that position. A court of law is bound to consider the evidence before it and apply the law on the same and in the circumstances the Learned Magistrate did not err when she held that the Appellant did not have locus to institute the instant suit and proceeded to strike out the name of the 2nd Respondent from the proceeding.

27. The evidence that was produced during trial including the sale agreement and bank slips do not demonstrate any role and or name of the Appellant and as such it is impossible to ascertain any interest of the Appellant to the transaction and or purchase of the property. Without any documentation linking her to the transaction and or the property, the Appellants did not discharge the burden of proof.

28. As to whether the Appellant is entitled to the reliefs sought in this appeal, in her memorandum of appeal dated 10th April 2025, the Appellant prayed for the appeal herein to be allowed and the judgement of the trial court be set aside together with costs of the Appeal.

29. Whatever the sentiments, beliefs and position held by the Appellant, it is imperative to reiterate that the burden of proof laid on the Appellant. Unfortunately, as earlier stated the Appellant failed to discharge the burden before the trial court.

30. Flowing from the foregoing; and having taken into account the guiding principles espoused in the decisions in **Mwanasokoni vs Kenya Bus Service Ltd [1985]eKLR;** **and Jabane vs Olenja [1986]eKLR,** I come to the

conclusion that the decision of the trial court was solid; sound and well grounded. Simply put, I come to the same conclusion as the trial court, namely; the Appellant did not prove her claim.

31. In respect to costs, the principles for awarding costs are governed by section 27(1) of the Civil Procedure Act, which grants the court full discretion, with the proviso that costs shall follow the event unless the court, for good reason orders otherwise. However, upon considering the circumstances of the appeal herein, this court directs each party to bear own costs of the appeal.

32. From the analysis of the issues outlined herein in line with the grounds raised in the memorandum of appeal, this court can only arrive to the conclusion that the appeal is devoid of merit. In view of the foregoing, it is the finding of this court that the trial magistrate did not commit any error of principle of law. It is therefore not open for this court to interfere with the same.

33. The upshot is that after careful review and analysis of all the grounds of appeal and the entire record, I find no fault with the decision of the learned magistrate. Consequently, the appeal fails and is hereby dismissed.

Final Orders

34. In conclusion, the following orders are hereby issued in respect to this appeal:

- (i) The Appeal is unmerited and is hereby dismissed.**
- (ii) The Judgment of the trial court; and the consequential decree arising therefrom be and is hereby affirmed.**
- (iii) Each party to bear own costs of the appeal.**

Dated, Signed and Delivered Virtually at Voi this 12th day of February 2026.

**E. K. WABWOTO
JUDGE**

In the presence of:-

Phylis Muthoni Mwaura the Appellant acting in person.

Faustine Mwanhyolo Mghendi the 1st Respondent acting in person.

Ms. Wanjiru Njihia for the 2nd Respondent.

Court Assistant: Mary Ngoira.