



**Mathew & another v VK (Minor Suing Through Guardian and Next Friend SGI) (Environment and Land Appeal E025 of 2023) [2026] KEELC 674 (KLR) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 674 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E025 OF 2023  
BM EBOSO, J  
FEBRUARY 9, 2026**

**BETWEEN**

**DAVID MWIRIGI MATHEW ..... 1<sup>ST</sup> APPELLANT**

**GERALD NCHEBERE ALIAS GERALD MUCHENA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**VK (MINOR SUING THROUGH GUARDIAN AND NEXT FRIEND  
SGI) ..... RESPONDENT**

*(An Appeal against the Judgment of the Senior Principal Magistrate Court at Tigania [Hon. F.K. Munyi - SPM] rendered on 15/8/2023 in Tigania SPMC E & L Case No. 200 of 2018)*

**JUDGMENT**

**Introduction**

1. This appeal challenges the judgment of the Senior Principal Magistrate Court at Tigania [Hon F K. Munyi – SPM] rendered on 15/8/2023 in Tigania SPMC E & L Case No 200 of 2018. Some of the key issues that arose for determination in the suit were:
  - (i) Whether Florence Kathambi had legal authority to sell land parcel number Kianjai/ Kianjai/2905 [the suit land] to the appellants;
  - (ii) Whether the appellants acquired legitimate ownership interests in the suit land; and
  - (iii) Whether the appellants were entitled to an order cancelling the registration of VK [the respondent] as proprietor of the suit land. Invariably, these are some of the issues that fall for determination in this first appeal. Before I analyse and dispose the issues, I will outline a brief background to the appeal, setting out the parties’ respective cases in the trial court. I will also outline the grounds of appeal and the parties’ respective submissions in the appeal.



## Background

2. At all material times, the respondent was a minor. Vide a plaint dated 1/11/2018, through his next friend, SGIu, the respondent sued the appellants in Tigania SPMC E & L Case No 200 of 2018 seeking a permanent injunction restraining the appellants against entering, changing boundaries, cutting trees, building on, digging trenches on or interfering with land parcel number Kianjai/Kianjai/2905 [the suit land]; (ii) an order decreeing demolition of the appellants' structures and eviction of the appellants from the suit land; and an order awarding him costs of the suit.
3. The case of the respondent was that, he was the registered proprietor of the suit land. The land initially belonged to his maternal grandfather who gifted the land to him during land adjudication. He was subsequently registered as proprietor of the suit land on 28/11/2014 while still a minor. He averred that in October 2018, the appellants entered into the suit land, cut trees, dug trenches, poured building materials and started erecting permanent structures on the land.
4. In his evidence during trial, he testified that he lived with his late grandfather. His late grandfather gifted him the suit land and similarly gave his mother, Florence Kathambi, a different piece of land. Upon the death of his grandfather, he went to live with his aunt in Makueni. While living with his aunt in Makueni, he was informed that his mother, Florence Kathambi, had sold his land. He added that his aunt [SGIu] was the one who used to pay his school fees.
5. The appellants filed a joint statement of defence and counterclaim dated 12/11/2018 in which they contested the allegation that the respondent was the registered proprietor of the suit land, adding that if the registration existed, the same was a mistake that arose due to the incompetence of the Lands Department. They further averred that they lawfully bought land parcel number Kianjai/Kianjai/12905 (sic) from the respondent's mother with the concurrence (sic) of the respondent's father. They pleaded that the purchases were as follows:
  - (i) the 1st appellant purchased 0.10 acres on 4/4/2014 at Kshs 200,0000; and
  - (ii) the 2nd appellant purchased 1.10 acres on 28/7/2015 at Kshs 250,000. They termed the suit an abuse of the process of the court.
6. By way of counterclaim, they reiterated their case as outlined above and prayed for an order decreeing rectification of the land register to reflect them as the proprietors of parcel number Kianjai/Kianjai/2905 (sic).
7. In his evidence during cross-examination, the 1st appellant testified that he bought part of the suit land from Florence Kathambi who sold it on behalf of the respondent. He added that the respondent's father, Benard Mutegi Kithinji, was alive at the time. He added that the land he bought was assigned parcel number 10190 by the Lands Office.
8. The 2nd appellant, similarly, testified that he purchased 0.10 acres from Florence Kathambi, adding that when he bought the land, it was already registered in the name of the respondent.
9. Upon concluding trial, and upon receiving submissions, the trial court rendered the impugned judgment in which it found that: (i) the respondent had proved his claim against the appellants; and (ii) the appellants had failed to prove their counterclaim. The trial court entered judgement in favour of the respondent and dismissed the appellants' counterclaim.



## Appeal

10. Aggrieved by the judgment and decree of the trial court, the appellants brought this appeal advancing the following grounds:
  1. The learned trial magistrate erred in law and fact in that she misunderstood the law before her and wrongly applied the same and also did wrong interpretation and came to a wrong conclusion that the appellants had not proved their counterclaim and that the respondent had proved his case.
  2. The learned trial magistrate erred in law and in fact in that she misunderstood the law before her and wrongly applied the same and also did wrong interpretation and came to a wrong conclusion that the respondent's mother Frolence Kathambi, had no capacity to sell land L.R No. Kianjai/Kianjai/2905 for the best interests of the respondent.
  3. The learned trial magistrate erred in law and in fact in failing to address the weight of the pleadings in favour of the appellants that the title deed of L.R No. Kianjai/Kianjai/2905 was issued after the appellants had purchased the land.
  4. The decision of the trial court is against the weight of the overwhelming evidence before court.
  5. The entire judgment of the trial magistrate is bad in law.
11. The appellants prayed for an order allowing the appeal and setting aside the judgment of the trial court with costs to them.

## Appellants' Submissions

12. The appeal was canvassed through written submissions dated 29/7/2025 filed by M/s Maitai Rimita & Co Advocates. Counsel for the appellants submitted that the appellants purchased two equal portions of the suit land from the respondent's mother, one Florence Kathambi, vide two separate agreements dated 4/4/2014 and 28/7/2015, adding that they paid the agreed purchase prices of Kshs 200,000 and Kshs 250,000 respectively. Counsel argued that the suit land was subdivided to create parcel number Kianjai/Kianjai/10190 which was the portion sold to the 1st appellant while the original parcel number was retained for the remaining portion of the suit land. Counsel emphasized that the minor did not remain with any land but through mistake, the title came out in the name of the minor.
13. Counsel argued that the appellants bought the suit land for value without any notice of the respondent's interest, adding that their ownerships were protected by "the relevant Land Acts and the Doctrines of Equity". Counsel contended that the appellants were bonafide purchasers for value who paid purchase price which the minor's mother used to pay school fees for the minor.
14. Counsel further submitted that the respondent was a minor at the time the appellants purchased the suit land and was therefore not eligible to enter into a contract but he did so through his mother, Florence Kathambi, who needed funds to sort out financial problems involving the minor. Counsel added that the appellants purchased the suit land in good faith and without any knowledge of fraud.
15. Counsel for the appellants argued that the appellants tendered evidence of purchase. He faulted the trial court for failing to consider the appellants' evidence which revealed that the respondent's mother sold the suit land for the best interest of the respondent who was a minor. Counsel urged the court to allow the appeal.



## Respondent's Submissions

16. The respondent filed written submissions dated 8/10/2025 through M/s M G Kaume & Company Advocates. Counsel submitted that the appellants' defence and counterclaim lacked credibility. Counsel argued that the appellants failed to demonstrate that Florence Kathambi had the requisite capacity to sell to them the minor's land. Counsel added that the appellants failed to prove fraud in the registration of the respondent as proprietor of the suit land. Counsel argued that if the appellant and Florence Kathambi wanted to dispose the minor's land, they ought to have obtained leave of the court. Counsel urged the court to dismiss the appeal.

## Analysis and Determination

17. I have read and considered the entire original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions in the appeal. The following are the issues that fall for determination in the appeal:
- (i) Whether Florence Kathambi had legal authority to sell the suit land to the appellants;
  - (ii) Whether, through purchase, the appellants acquired legitimate ownership interests in the suit land;
  - (iii) Whether the respondent was entitled to the reliefs sought in the primary suit; and
  - (iv) Whether the appellants were entitled to the reliefs sought in the counterclaim. I will analyse and dispose the four issues sequentially in the above order. Before I do that, I will outline the principle that guides this court when exercising appellate jurisdiction.
18. The task of a first appellate court was summarized by the Court of Appeal in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR as follows:
- “As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.”
19. The principle was similarly outlined in *Abok James Odera t/a A J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:
- “This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”
20. Did Florence Kathambi have authority to sell the suit land to the appellants? In April 2014 and July 2015, the time the two appellants allege to have purchased portions constituting the suit land, the respondent was a minor. From the evidence on record, the suit land previously belonged to the late Pancras Nabea who is the deceased maternal grand-father of the respondent. Nabea was father to Florence Kathambi [the alleged vendor]. He was also the father to Susan Gacheri [PW1], Kobia Alex Benjamin [PW2] and Joan P M'Nabea [PW3]. He died in 2010. PW1, PW2 and PW3 testified that the respondent lived with his maternal grand-father [Pancras M'Nabea] up to the time of his demise in 2010. Prior to his death, M'Nabea shared out his land. Among the beneficiaries of the land was the respondent who was a grandson to the late M'Nabea. The respondent was given 0.2 acres [0.09



hectare]. The transfers of the shared portions were effected at the Land Adjudication Office. The three witnesses were emphatic that the suit land belonged to the respondent and that their sister, Florence Kathambi, had no authority to sell the respondent's land.

21. . In his evidence during cross-examination, the 1st appellant [DW1] acknowledged that the suit land belonged to the respondent. He stated thus:

“I bought land from Florah Kathambi. She sold it on behalf of VK.”

22. . On his part, the 2nd appellant [DW2] conceded during cross-examination that at the time he purchased a portion of the suit land from Florence Kathambi in July 2015, the suit land was already registered in the name of the respondent.

23. . The appellants having conceded in their respective testimonies that the suit land belonged to the respondent who was a minor at all material times, it was their obligation to tender evidence demonstrating that the procedure for entering into a binding land sale contract relating to land belonging to a minor was followed.

24. . Section 27 of the *Land Act* and Section 47 of the *Land Registration Act* permit the registration of a minor as proprietor of land. Land that belongs to a minor, whether registered in the name of the minor or held in trust in the name of a third party, cannot be sold without the involvement of a duly appointed guardian or trustee. Where there exists a deed of trust, it is expected that the trustee will be appointed and identified in the deed. Where no deed exists, an application must be made to the appropriate court for the appointment of a guardian ad litem. Once appointed, the trustee or the guardian ad litem is expected to comply with the provisions of the *Trustee Act*, including Section 56. One of the essential requirements of Section 56 is the obtention of a court order authorizing disposal of the minor's land which, under the law, is trust property managed or administered by the guardian ad litem or the trustee.

25. . In this appeal, the appellants conceded in their respective evidence that the suit land belonged to the respondent who, at all material times, was a minor. They both contended that they purchased the two portions of the suit land from the respondent's mother. They did not, however, tender evidence demonstrating that they complied with the law and the legal procedure for buying land that belonged to a minor. Put differently, the appellants did not prove that Florence Kathambi who allegedly sold to them the suit land had the legal authority to sell the land on behalf of the minor. Consequently, the finding of the court on the first issue is that the appellants failed to prove that Florence Kathambi had the legal authority to sell to them the suit land.

26. . In default of compliance with the law on creation of a binding land sale contract relating to land that belongs to a minor, it follows that the appellants did not acquire legitimate ownership interests in the suit land through their respective agreements with Florence Kathambi. Their agreements with Florence Kathambi were illegal. The agreements did not and does not bind the respondent who was a minor at all material times. It also follows that the appellants' plea for an order rectifying the land register to cancel the name of the respondent and to register them as proprietors of the suit land was unmerited and unavailable.

27. Given the above evidence, it is clear that the suit land belonged to the respondent and the respondent was entitled to the reliefs that were sought in the plaint.

29. On costs, the general principle in Section 27 of the *Civil Procedure Act* is that costs follow the event. No special circumstances have been demonstrated to warrant a departure from the general principle.

30. In the end, for the above reasons, this appeal is rejected and dismissed for lack of merit. The appellants shall bear costs of the appeal.



**DATED, SIGNED AND DELIVERED AT MERU THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**

