



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC APPEAL NO. E014 OF 2024.

DAVID OLE SAMATE
APPELLANT

VERSUS

JACKSON KALEBU SEMPELE.....
.....RESPONDENT

(Being an Appeal from the Judgment and Decree of Hon. H. M. Nyaberi (CM) delivered pm 29th October 2024 in NAROK CIVIL CASE NO 177 OF 2017 between Jackson Kalebu Sempele vs David Ole Samante).

JUDGMENT

1. This is an Appeal arising from the Judgment of **Hon. H. M. Nyaberi(CM)**, which was delivered on **29th October 2024**, in **Narok CMELC NO.177 of 2017**, wherein the trial court allowed the Plaintiff (now Respondent's) case and dismissed the Defendants'(Appellants) case with costs.
2. In his claim, vide a Plaint dated **22nd December 2017**, the Plaintiff(Respondent) had sought for Judgment against the Defendants (Appellants herein), among the prayers sought; - a *declaration that the Plaintiff is the bona fide registered owner of Plot No Narok Township /113 Block 4 ,which has now been*

changed to Plot No 236, Narok Township measuring approx. 0,0665 ha located within Narok Town , County and that the Defendant's claim thereto by himself, his agents, servants and/or authorised representatives is fraudulent and unlawful and therefore null and void ab initio; a prohibitory order of injunction; costs of the suit and any other relief the court may deem fit to grant.

3. The Appellant as the Defendant filed his Statement of Defence dated **13th February 2018**, through **Ochengo Onduso Advocates**, and denied all the allegations made by the Plaintiff/ Respondent therein, and averred that the suit Plot **No 113** belongs to the Plaintiff/Respondent, while Plot **No 109**, which is the same as Plot **No 236**, belonged to the Defendant/Appellant.
4. He also averred that he had not trespassed on the Plaintiff/Respondent's plot, and had urged the court to direct the **Narok County Government** to visit the ground and ascertain the two plots, and identify the owners. He claimed that he had all the documents pertaining to Plot **No 236, Narok Township**, and he urged the court to dismiss the Plaintiff/Respondent's suit.
5. After the inter-parties hearing wherein the Plaintiff(Respondent) **Jackson Ole Sempele**, gave evidence for himself and called three more witness to support his case, and the Defendant(Appellant) **David Ole Samante**, gave evidence for himself and called no witness in support of his case, the trial court found for the Plaintiff (Respondent herein)

and held that “ ***In view of the foregoing and noting that the plaintiff lease and certificate of lease presents a clear details and measurement of plot 113 and considering that the two reports which affirms that Plot 113 is one and the same as Plot No 236, and corroborated with the minutes of the meeting held on 26th January 2017, this court is satisfied on a balance of probabilities that the plaintiff has proved his case..... I enter judgment for the plaintiff as against the defendant as prayed in terms of paragraphs (a) and (b) with costs.*** ”

6. The Appellant as the Defendant thereon was aggrieved by the said Judgment of the trial court, and consequently, he filed this Appeal vide ***Memorandum of Appeal*** dated ***21st November 2024***, drawn by ***Ochengo -Onduso Advocates*** being ***ELCAPPEAL No E014 OF 2024***, and urged the court to allow the appeal, and have the matter heard a fresh, and judgement in favour of the Respondent be set aside/and or reviewed.
7. The grounds of Appeal are;
 - i) ***That the Learned magistrate erred in law by disregarding the defendants evidence which was well presented in terms of documents and evidence as it regards the suit property.***
 - ii) ***The learned magistrate erred in law by dismissing the evidence of the appellant which did satisfy a balance of probabilities in the case***

- iii) That the learned magistrate erred in law by relying on evidence of the respondent's witnesses which was contradicting**
- iv) That the learned magistrate erred by relying on the evidence of the respondents of which in paragraph 21 of the judgment clearly indicated that there was no standard of proof.**
- v) That the learned magistrate erred in law in not taking into consideration the appellant's submissions.**
- vi) That the learned chief magistrate erred in fact and in law by failing to properly and judicially consider evidence on record.**

8. Consequently, the Appellant sought for the following orders;

- a) That the Appeal be allowed;**
- b) That the judgment of the trial court delivered on 29th October 2024, be set aside, and the matter be heard afresh.**
- c) That the judgement and decree in favour of the Respondent be set aside and reviewed.**
- d) That the appellant be awarded costs of this Appeal.**

9. Briefly, the facts of the case according to the Respondent as the Plaintiff before the trial court are; that at all material facts, he was the bonafide registered owner of Plot **No. Narok Township/ 113 Block 4**, which was changed to **236**, Narok Township measuring about **0.0665 Hectares**.

10. He averred that he enjoyed quiet and peaceful possession of the said parcel of land after erecting a wire and post fence thereon, while waiting for the County Government to commence permanent development thereon; he claimed that in the month of **November 2017**, the Defendant, and/ or his servants or agents unlawfully and forcefully trespassed upon the suit land, destroyed his wired fence and commenced construction, while using the Plaintiff's building materials.
11. He contended that the Defendant persistently interfered with his peaceful and quiet possession of the suit plot, threatened violence upon him and his authorised servants, and that the defendant is in **fraudulent** and **unlawful possession** of the suit plot, and ready to provoke the plaintiff into retaliation, and break the law.
12. Therefore, the Defendant/Appellant's action has caused loss and damages upon the Plaintiff, and he prayed for the Defendant's possession of the suit land be declared **unlawful, null** and **void**.
13. The brief facts according to the Defendant (Appellant herein) are; he is the owner of **Plot No 109, Narok Township**, which is the same as Plot **No 236**. He denied that he is a trespasser, since he has all the documents confirming his ownership of Plot **No 236, Narok Township**. He had urged the court to dismiss the Plaintiff's suit.
14. After the admission of the Appeal, the parties were directed to canvass the Appeal by way of written submissions, which

directions were complied with by the parties herein. The Appellant/ Defendant filed his written submissions through **Ochengo-Onduso & Co Advocates**, dated **15th December 2025**, and after setting out the background of the case, he submitted on various issues. The appellant urged the court to allow the appeal with costs to himself.

15. The issues set out for determination by the Appellant are;

- i) ***Whether the learned Chief Magistrate properly and judicially evaluated the Appellant's evidence and documents in relation to plot No 109 and its renumbering to plot No 236;***
- ii) ***Whether the Respondent discharged the legal burden of proof under section 107 -109 of the Evidence Act, to establish ownership of plot No 236;***
- iii) ***Whether the trial court erred in law and fact by relying on the contradictory and inconsistent evidence tendered by the Respondent and his witnesses;***
- iv) ***Whether the learned magistrate misapplied precedent and legal principles governing proof of ownership of land;***
- v) ***Whether the judgment and decree of the trial court can stand in light of procedural and evidentiary shortcomings and whether the appellant was subjected to miscarriage of justice.***

16. On *issue No 1*, of whether the trial magistrate properly evaluated the evidence before him in relation to Plot **No 109**, later renumbered **236**, it was submitted that the trial court fell in grave error by disregarding his documentary evidence and testimony thereby arriving at a conclusion unsupported by the record. Therefore, the said judgment was not an evaluation of the evidence but a selective endorsement of contradictions
17. *Further*, the appellant submitted that the Respondent's evidence was riddled with gaps, his allotment letter was conspicuously missing, his receipt bore **No 238**, and **PW1**, the **Municipal Manager** could not confirm ownership of Plot **236**, and despite the glaring contradictions, the trial court believed the Respondent's claim.
- 18.** It was his claim that the trial court misapplied the precedent while citing the case of **Mohammed Dagane vs Hakar Alshir & 3 Others (2021) eKLR**, which held that *ownership must be traced through the legal prescription of allotment letter; but the respondent herein had no allotment letter, yet the court still declared him the owner of the suit land*. He argued that proper application of Dagane case would have favoured the appellant, whose documents traced his entitlement from plot **No 109** to plot **No 236**.
19. *Further*, reliance was sought in the case of **Koinange vs Koinange (1986) KLR 23**, where the court held; **contradictions in evidence must be resolved against the party bearing the burden of proof**. It was his argument that had this principle been applied, the Respondent's case would have collapsed.

20. It was his conclusion that the trial court erred in law and fact in failing to properly evaluate the appellant evidence, since the Respondent did not discharge his burden of proof, and the trial court's judgement was a miscarriage of justice.
21. On whether the Respondent discharged the burden of proof under **Section 107 -109** of the **Evidence Act**, the Appellant submitted that the Respondent failed to discharge that burden, as his allotment letter was missing, and his receipt read Plot No. **238**, and not Plot No. **236**. Reliance was sought in the cases of **Kinyanjui Kamau vs George Kamau (2015) eklr**, where the Court of Appeal held that *proof lies on the person who would fail if no evidence at all were tendered*. He submitted that the Respondent did not tender such evidence, but the appellant produced documents tracing his entitlement to Plot **No. 109** to Plot **No. 236**.
22. Further reliance was sought in the Case of **Munyu Maina vs Hiram Gathiha Maina(2013) eklr; and Miller vs Minister of Pensions (1947) 2 ALL ER 372**, and submitted that the Respondent did not discharge the burden of proof as required under the Evidence Act.
23. On whether the trial court relied on contradictory and incomplete evidence tendered by the Respondent, the appellant submitted that the evidence of the Respondent was inconsistent, incomplete and self-defeating. Reliance was sought in the case of **Palace Investment Ltd vs Kestrel Capital (Kenya) Ltd (2012) eklr; Mbutia vs Jimba Credit Finance Corporation Ltd (1988) KLR and Kenya Ports**

Authority vs Kusion (Kenya) Ltd (2009) 2 EA212, where the Court of Appeal stressed that a trial court must confront inconsistencies and weigh them against the burden borne by the claimant.

24. It was therefore, the Appellant's submissions that the trial court erred in law and fact by making a declaration of ownership on the basis of contradictory, incomplete and inconclusive evidence.
25. On whether the trial court misapplied the precedents governing proof of ownership, he submitted that the judgment of the trial court vitiated both the procedural lapses and evidentiary infirmities. That the trial court fell short of judicial evaluation, since the Respondent's evidentiary trail was broken, as his allotment letter was missing, and the receipt bore a different **No 238** instead of **236**.
26. It was his submissions that the cumulative effect of these shortcomings is miscarriage of justice, and the Judgment and decree of the trial court were fatally flawed. Accordingly, the Appellant prayed for the appeal to be allowed, and the Respondent's suit in **Narok CMELC NO.177 of 2017**, be dismissed with costs to the appellant, and for any other relief the court may deem fit to grant.
27. On his part, the Respondent filed his submissions dated **30th January 2026**, through **Murunya Lemein & Co Advocates**, and after setting the background of the case, he set out three issues for determination being;

- i) Whether the learned trial magistrate properly evaluated and appreciated the evidence on record;***
- ii) Whether the appellant has demonstrated any error of law or fact warranting appellate interference;***
- iii) Whether the appeal should be dismissed with costs.***

28. On the first issue, the Respondent submitted that the trial court properly evaluated the available evidence, and it is trite that a court is not bound to accept evidence merely because it has been tendered; it must assess its probative value. Reliance was sought in the case of ***Charterhouse Bank Ltd vs Frank N. Kamau (2016) eklr***, where the court held;

“an appellate court will not interfere with the findings of facts unless they are based on no evidence, or on a misapprehension of the evidence or where the trial court acted on the wrong principles.”

29. It was his submissions that the trial court acted properly and judiciously, and should not be faulted.

30. On whether the trial court erred on relying on contradictory evidence, the Respondent maintained that he is the bona fide proprietor of Plot ***No Narok Township/113 Block 4***, now plot ***No. 236***, and that the Appellant has trespassed unto the said plot and commenced construction thereon. Further that the Appellant did not produce valid ownership documents for plot

No. 236, but the Respondent's evidence was corroborated by witnesses from the County Government of Narok.

31. Therefore, it was his evidence that there were no contradictions in his evidence, and the trial court was right to rely on the said evidence.
32. On whether the trial magistrate properly evaluated the evidence, he submitted that the trial court correctly found that the Respondent is the registered owner of the suit plot, which were firmly grounded on his **Certificate of Lease** issued in **1983**, official search conducted in **2016**, Rates Clearance Certificates, and evidence of independent witnesses. He relied on the case of **Munyu Maina vs Hiram Gathiha Maina (supra)** to support his submissions.
33. On whether the trial court failed to consider the appellant's submissions, it was submitted that the court was not supposed to reproduce each and every submission in its decision to demonstrate that it considered the same. Reliance was sought in the case of **Kenya Ports Authority Vs Kuston (Kenya) Ltd (2009) 2 EA 212**.
34. On whether the trial magistrate erred on the standard of proof, the Respondent reiterated that he did prove his case on the balance of probabilities by tendering a valid certificate of lease, Official Search, Rates clearance certificates and expert reports identifying the suit property. He submitted that the trial court correctly found that the Respondent had discharged

his burden of proof under **Section 107** and **109** of the **Evidence Act**.

35. In conclusion, the Respondent submitted that the trial court properly directed himself on the law, carefully evaluated the available evidence, and arrived at a sound and reasoned decision. Further, that the Appellants failed to demonstrate any of the misdirection, or misapprehension of the law and facts, which would justify interference by this court.
36. For the above reasons, the Respondent urged the court to dismiss the instant Appeal in its entirety, and uphold the Judgment and Decree of the trial court in **NAROK CMCEL No 177 of 2017**. He also sought for costs of the Appeal.
37. The court has considered the above grounds of Appeal as contained in the **Memo of Appeal**, the available evidence as contained in the **Record of Appeal**, and the rival written submissions, which this court has carefully read and considered and renders itself as follows;
38. This is a first Appeal, and therefore, the court is bound to consider both facts and law as provided by **Section 65** of the **Civil Procedure Act**. Further **Section 78** of the same Act, allows this court to **re-consider, re-evaluate, re-assess** and **re-analyse** the evidence as presented before the trial court, and then forms its own independent decision, while taking into account that it never saw, nor heard the witnesses as did the trial court. See the case of **Equity Bank Limited v Mungai & 2 others [2025] KEHC 10891 (KLR)**

39. The court will also be guided by the case of of **Selle & Another vs Associated Motor Boat Ltd & Another (1968) EA 123**, where the Court of Appeal held: -

“An appeal to this Court from a trial by the High Court is by way of a retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

40. Further, the court will rely on the case of **Abok James Odera T/A A.J. Odera & Associates -Vs- John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR** where the court held;

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze 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.”

41. This court will **re-consider** and **re-evaluate** the evidence before the trial court, and also gives deference to the trial

court's determination, while considering that it is the said court that saw the **demeanour** of the witnesses, and further, that the trial court has equal discretion to make determinations on matters before it, just like this court. This court will not set aside the trial court's determination, just because it has been moved on appeal, or simply because it would have held otherwise. See the case of **Mbogo vs Shah (1968) EA 93**.

“[A] Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice.”

42. Being guided as above, the court finds the issues for determination are;

- i) Whether the instant appeal is merited;**
- ii) Who should bear costs of this appeal and proceedings at the lower court.**

43. At the core of the dispute herein is ownership of **Plot No 113**, which was allegedly re numbered as **236**, or **109**, which was also allegedly re-numbered **236**. The Respondent and the Appellant raised claim over the said Plot No. **236**. The trial

magistrate found in favour of the Respondent, and thus this Appeal.

44. From the available evidence, it is evident that the trial court did uphold the Respondent's claim (Plaintiff) and allowed prayers No **(a) and (b)** of the Respondent's claim. It is also evident that the bone of contention is Plot **Narok Township No 113 Block 4**, which the Respondent as the Plaintiff had alleged was re-numbered as **236**, whereas the Appellant as Defendant averred that he was allocated the said Plot as **No. 109 Narok Township**, and it was later re-numbered Plot No. **236**, and is the same plot on the ground claimed by the Respondent(Plaintiff).

45. The Respondent as the Plaintiff is the one who had alleged, and the burden of proof rested upon him as provide by **Section 107-109**, of the **Evidence Act**, which states;

"107..1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

109..The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is

provided by any law that the proof of that fact shall lie on any particular person.”

- 46.** With the above background wherein this Appeal is predicated on, the issues for determination are; ***whether the trial court erred in finding and holding as it did, whether the impugned Judgment should be set aside and/ or overturned;*** and ***who should bear costs of this Appeal?***
47. While answering the above questions, the court will consider all the issues framed by the parties herein, together with the Grounds of Appeal as set out in the Memo of Appeal. Therefore, the court will, scrutinize the documents produced as exhibits and evidence in support, ***re-analyse*** and ***re-consider*** them together with the findings and holding of the trial magistrate, and come up with its own independent determination, while taking into consideration, the relevant laws and the principles of double allocation.
48. The trial court correctly pointed out that, *he who alleges must prove* as provided by ***Section 107*** of the Evidence Act. The Respondent herein as the Plaintiff before the trial court is the one who had alleged, and the ***onus*** of prove was upon him. He had the burden of calling sufficient evidence to prove his case on the required standard of balance of probabilities. See the case of ***Abdul Vs. Mokuia (Civil Appeal E077 of 2023) [20225] KEHC 4105 (KLR)***.
- 49.** However, the Appellant in paragraph 4 of his statement of Defence, he averred that he was allocated plot ***No 109, Narok***

Township which is one and the same as plot **No 236**, which plot was also being claimed by the Respondent. Though the Respondent is the one who had alleged, and had the legal burden of proof as provided by **Sections 107 -109** of the **Evidence Act**, once the Appellant alleged and averred too, the evidential burden of proved shifted to him. See the case of **Evans Nyakwana v Cleophas Bwana Ongaro [2015] eklr**

50. Further in the case of **Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another [2005] 1 EA 334**, the court held that:

“As a general proposition under Section 107 (1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

51. Having re-**considered** and re- **analysed** the available evidence before the trial court, did the Respondent herein (Plaintiff thereon) meet the above threshold of proving his case on the required standard of balance of probabilities?

52. From the impugned judgment, it is evident that the trial court upheld the Respondent’s claim, by allowing prayer **No (a)** of the Respondent’s **Plaint**, which was to the effect that the Respondent as the Plaintiff was the bonafide owner of **Narok**

Township Plot No 113 Block 4, which was later changed to **Plot No 236**; Further, the Appellant was prohibited by an order of injunction from trespassing on the said suit plot.

53. It is evident that the Respondent as the Plaintiff before the trial court had alleged that he was allocated this suit Plot by Narok **County Council** in **1982**, and he produced a Lease document to that effect. The Defendant(appellant) challenged this allotment, and claimed that the Respondent had not produced a Letter of allotment.
54. However, there was no claim from the defunct **County Council** of Narok or the Ministry of lands, that the **Lease documents** produced by the Respondent was not a genuine one, since it was not supported by a Letter of allotment. Further, courts have severally held that Letters of Allotment are not prove of ownership, until the conditions in the letter of allotment are met, and the land is registered. See the case of.
55. Registration of land could be either through Certificate of title or lease. The Respondent produced a Certificate of lease, which has not been impeached.
56. On the other hand, the Appellant denied the Respondent's claim, and contended that this suit **Plot No 236, Narok Township** was allocated to him Appellant(Defendant) in **1984**, by the County Council of Narok; that he paid all the necessary charges, and took possession thereon. He produced a Letter of Allotment to that effect. His **Lease document** was

issued in **2017**, so many years after the letter of allotment was issued to him(appellant).

57. The Appellant and Respondent relied on various documents specifically Lease documents to confirm ownership of their specific plots, receipts to show different payments, and at the end of the trial, the learned trial magistrate believed the Respondent's evidence, and rejected the Appellant's claim that this suit Plot **No. 236 Narok township Block 4**, belongs to Respondent.
58. The Respondent(Plaintiff) averred and adduced evidence to the effect that he was allocated **Plot No 113, Narok Township**, and a Lease was registered in his favour on **22ND December 1982**. This plot was allegedly allocated to him by the defunct County Council of Narok. He produced the above Lease, registered under the repealed "**The Registered Land Act' CAP 300 Laws of Kenya** and a further **Certificate of Lease** dated **15th December 2017**, under **the Land Registration Act**, which confirmed the title of the Plot as **Narok Township/113**.
59. Primaficely, with the above Certificate of Lease, then the court was right to hold and find, that the Respondent was the owner of Plot **No 113, Narok Township**. The bone of contention is whether this **Plot No 113 Narok Township** is one and the same as **Plot No 236**, Narok Township, which was the disputed Plot before the trial court.

60. The Respondent(Plaintiff) also produced various receipts to confirm payments of various amounts of money to **Narok Town Council**. However, some of the receipts showed payments for **Plot No113/ 238**. The Plaintiff/Respondent testified that the Plots within Narok Township were re-numbered in the year **2010**, and his Plot **No 113**, became Plot **No 236**. There are two **REPORTS** in the **Record of Appeal**, one dated **31st March 2021**, which indicated Plot **No 236**, shown in the Development Plan and Survey was also shown as **Narok Township /113**.
61. There is also another Report by **Stanley Koriata** dated **26th October 2020**, which indicated that plot **No Narok Township/113** and Plot **No 236 Block 4** refers to the same property. From the available evidence, **Stanley Koriata** was PW1, for the Respondent, and during cross examination, he testified that he could not tell who the owner of the Plot No. 236 was. He could also not tell when the plots were allegedly re-numbered, and he indicated that only the **District surveyor** could answer that question.
62. This court has also seen another letter dated **12th June 2018**, written by **M.E.O Ositima, (For County Director of Planning Narok County)** which letter indicated that as per the Approved Narok Development Plan, **Plot No 113 and 236**, are **two distinct plots**, and are far apart. Proper evidence then needed to be availed on whether **Narok Township** were re-numbered, and whether plot **No 236**, was the former **113 or 109**, since both the Appellants and Respondent are claiming ownership.

63. However, from the some of the receipts produced by the Appellant, it is evident that he paid some monies, to the **Narok Town Council**, and which receipts indicated that he paid for Plot **No 236**. There is also a letter dated from which confirmed that **Plot No 236**, belonged to the appellant. The **Clearance to pay Plot Rent/Rates** dated **17th December 2012**, shows plot **109/ 236 Block 4**, and several other receipts indicated that **David Tonkei Samante**, the Appellant herein made payments in respect of plot **No 236/ Block 4** to Town Council of Narok.
64. There is no doubt that the Appellant herein was allocated **Plot No 109 Narok Township** vide a **Letter of ALLOTMENT**, issued on **10th February 1983**. He was later issued a lease dated **8th November 2017**. However, several other documents and receipts show that **Plot No 109**, was also indicated as **Plot No. 236, Block 4 Narok Township**.
65. There is no doubt that the Respondent was also allocated Plot **No 113** by the **Narok Town Council**, and he has a Certificate of Lease issued to him on **15th December 2017**. There is no doubt too that the Appellant was also allocated **Plot No 109**, vide an allotment letter of **10th February 1983**. Further, there is no doubt that both the Respondent and Appellant are claiming that their respective plots were later **re numbered 236**, and therefore this plot on ground being **Plot No 236**, is claimed by both of the Respondent and the Appellant herein, and thus the suit before the trial court.

66. The matter was not made easy by the **defunct Narok Town Council**, given that at some stage, they issued the Respondent with receipts bearing **Plot No 238**, and the Appellant receipts bearing **Plot No 236**. Further, there is a letter dated produced by PW1, who was a witness for the Respondent, and it indicated that **Plot No 113** was the same as Plot **No 236**, whereas, there is another letter from the same Narok County Council indicating the two plots are distinct.
67. Further, when this PW1 was being cross examined by counsel for the Appellant, he testified that he was not able to tell who owns Plot **No 236**, whereas the dispute in court was over the ownership of this suit plot.
68. Bearing in mind that this court as an appellate court has a duty to **reconsider and re evaluate** the evidence before the trial court, and then comes up with its own independent conclusion, the court finds and holds that the evidence before the trial court was **not adequate** to confirm with certainty whether **Plot No 113** was **RE-NUMBERED** to Plot **No 236**, or whether Plot **No 109**, was the one **RE-NUMBERED** to read **Plot No 236**. Who indeed owns Plot **No 236**? Is **Plot No 236** the same as **Plot No 113 or 109**?
69. The above questions can only be answered adequately by an officer from the **Narok County Physical Planning**, who should avail all the necessary documentations to confirm the **re numbering of the plots**, within this Block 4. He should also be accompanied to the ground by the **County Surveyor**

to pick out the exact positions of **Plots No 113 and 109** respectively.

70. Having **re-evaluated and reconsidered** the available evidence before the trial court, this court in its appellate jurisdiction finds that it is not possible to confirm whether **Plot No113** is the same as **Plot No 236 or 238 in Block 4** of Narok Township, which the Respondent had paid for several times, and whether **Plot No 109** is the same as **Plot No 236**, which the appellant had paid for several times.

71. The above dilemma can only be resolved by evidence from witnesses from the **Narok County Physical Planning Department** and **County Survey**. For the above reasons, and as provided by **Section 78(1)(d)** of the **Civil Procedure Act**, this Court will suspend the Judgement of the trial Court dated **29th October 2024**, until when the two officers from Narok County Government visit the disputed plots, and prepare a **GROUND REPORT** as above stated by the court. Therefore, this court calls for additional evidence from the two officials of the **Narok County Government**, before making a final determination herein.

72. The Appellant and the Respondent to cater for the logistics for such ground visit. The above orders are issued in accordance with **Section 3A** of the **Civil Procedure Act**, which mandates the court to issue orders that are necessary for the end of justice to be met. The Court is also guided by the provisions of **Sections 1A and 1B** of the **Civil Procedure Act**, on the **Overriding Object** of the Act.

73. The **Narok two County Officials** to visit the ground and prepare the **Ground Report** within a period of **14 days** from the date hereof.
74. Judgment of the trial court dated **29th October 2024**, is hereby suspended until the Ground visit and Ground Report is availed in court on **18th March 2026**.
75. Today's directions upon the two **Narok County Officials** to be served by the **ELC Registry** through the **Deputy Registrar** of this Court.
76. Further, any party is at liberty to apply.
It is so directed.

Dated, signed and delivered virtually at Narok this 5th March 2026.

**L. Gacheru
Judge.**

**Delivered online in the presence of
Elijah Meyoki - Court Assistant
Mr Onduso for the Appellant
Mr Okinyi H/B for Mr Murunya for Respondent.**

**L. Gacheru
Judge.**