



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Waka v Arori (Environment and Land Appeal E033 of 2024)
[2026] KEELC 1160 (KLR) (24 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 1160 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND APPEAL E033 OF 2024**

M SILA, J

FEBRUARY 24, 2026

BETWEEN

DAVID OSIEMO WAKA APPELLANT

AND

ELIJAH NYANDORO ARORI RESPONDENT

(Being an appeal against the judgment of Hon. Mugendi Nyaga, Principal Magistrate, delivered on 8 August 2024 in the case Etago MCELC No. 3 of 2023, formerly Ogembo PMCC No.58 of 2018 and formerly Kisii ELC No.225 of 2016)

JUDGMENT

1. The suit from which this appeal emanates was commenced by the respondent through a plaint filed on 29 August 2016 at the superior Environment and Land Court in Kisii and registered as Kisii ELC No.225 of 2016. That suit was transferred on 21 November 2018 to Ogembo Principal Magistrates' Court and registered as Ogembo PMCC No. 58 of 2018. It was later transferred to Etago Principal Magistrates' Court and registered as Etago MCELC No.225 of 2016.
2. In the plaint, the respondent pleaded that he is the registered owner of the land parcel South Mugirango/Nyataaro/456 measuring 5.5 acres or thereabouts. He pleaded that sometimes in the year 2015, without his consent, the appellant encroached into the suit land, cut down sugar cane, destroyed the fence, and tilled the land. He pleaded that he (defendant) even instituted a criminal case against him being Ogembo Criminal Case No. 833 of 2015 for illegal grazing on private land. He averred that he made attempts to have the matter addressed administratively without avail thus necessitating the suit. In the plaint, he asked for an order of eviction, permanent injunction against the appellant, and costs.
3. The appellant filed defence wherein he pleaded that the registration of the respondent as proprietor of the suit land was done irregularly, illegally, unlawfully, and unprocedurally. He denied encroaching into the respondent's land. He pleaded that he planted eucalyptus trees and sugarcane on the suit land



which his father bought from Caleb Arori Nyandori, the father of the respondent, and they have been in possession of that portion of the suit land.

4. The respondent testified as the sole witness in support of his case. He relied on a brief witness statement which was more or less a replica of what he pleaded in the plaint. He exhibited the green card, search and title deed, to demonstrate ownership of the suit land. Cross-examined, he testified that he was born in 1970 thus about 14 years in 1984. He stated that his father was alive and that he inherited the land from him but he was not going to call him as a witness as he has nothing to do with the inheritance. The alleged sale agreement between his father and the father of the appellant was put to him and he stated that he has never asked his father about the appellant. With that evidence, the respondent closed his case.
5. The appellant also relied on a pre-recorded witness statement which he adopted as his evidence. In it he stated that his father Gwaka Mogwasi, purchased the disputed land from the respondent's father, Caleb Arori Nyandoro, through a written agreement which he produced as an exhibit. He stated that his father was on the suit land from 1985, and since his parents were old, they allowed him to cultivate this portion that they had bought. He stated that he has been growing crops such as maize. In 2015, he was surprised to find the respondent grazing the sugarcane that he had planted. He reported to the police and the respondent was arrested and charged in Ogembo Criminal Case No.883 of 2015. He denied being a trespasser given that his father had bought the land from the respondent's father. Apart from the sale agreement, he also produced as exhibits an application for Land Control Board consent and a Land Control Board consent dated 7 January 1988. Cross-examined, he conceded that the sale agreement he produced does not have the title number of the land that his father was purchasing. He also asserted that the Land Control Board consent he exhibited was for sale of land and not rectification of names.
6. DW-2 was Joel Makori Mbongi. His evidence was that in 1985, he witnessed the father of the respondent selling land to the father of the appellant, and the purchase price of Kshs.6,000/= was paid. On top of that, the father of the appellant added a cow worth Kshs. 7,000/= to seal the transaction. The appellant's father then took possession, and the appellant was the one working on the land to feed his aged parents. This was until the respondent chased him away from the land. Cross-examined, he testified that he did not know the parcel number of the land that was being sold.
7. With that evidence the appellant closed his case.
8. In his judgment, the trial Magistrate found that the suit land was indeed registered in the name of the respondent and therefore his title was protected by Section 24 and 26 of the [Land Registration Act](#), 2012. He could see that the land was previously registered in the name of the respondent's father prior to the respondent becoming the registered proprietor on 18 March 2014. He did not find any evidence to support the allegation of the appellant that the respondent's registration was obtained illegally, irregularly, or unprocedurally. On the claim that the appellant's father had bought the land from the father of the respondent, he could see from the exhibited sale agreement dated 26 April 1985, that Caleb Arori sold some land to Gwaka Mogwasi but the agreement did not state the registration particulars of the land that was the subject of the sale. On the Land Control Board consents, what he saw was that the consent was for correction of the name of the registered owner, from Arori Nyandoro to Calebu Arori Nyandoro, and the same does not prove any sale of land. He concluded that the respondent was entitled to the orders sought and entered judgment in his favour.
9. Aggrieved, the appellant has now preferred an appeal to this court on the grounds inter alia that the trial Magistrate erred in holding that the respondent had a right to the suit land despite evidence showing that the appellant's father bought the land, and further that the respondent fraudulently obtained title



- to it; that they were on the land since 1984; that the trial Magistrate erred in failing to appreciate that the said agreement was binding in law; and that the trial Magistrate relied on a forged title deed and issued adverse orders to the appellant. The appellant seeks that the judgment of the lower court be set aside and the respondent's suit be dismissed with costs.
10. The appeal was argued through written submissions and I have taken into consideration the submissions filed by Mr. Ondika, learned counsel for the appellant, and Mr. Mosota, learned counsel for the respondent.
 11. The case of the respondent was fairly simple. He claimed to be the owner of the suit land and wished to have the appellant evicted and permanently restrained from it. The appellant's defence was that he was on the land curtesy of his father, on the basis that his father purchased the suit land from the father of the respondent vide a sale agreement entered into on 20 April 1984. He also contended that the registration of the respondent as proprietor of the suit land was obtained illegally.
 12. It was not disputed that it is actually the respondent who is the registered proprietor of the suit land. The green card that was exhibited demonstrated that the suit land was first registered in name of Calebu Arori Nyandoro (father of the respondent) on 17 January 1970 and title deed issued on 4 March 2014. On 18 March 2014, the respondent obtained registration and a title deed was issued to him on the same day. The appellant of course claims that this registration was obtained illegally, but just like the trial Magistrate, I see absolutely no evidence whatsoever to support this allegation. Indeed, apart from merely stating that the registration was obtained illegally, no particulars of the illegality were ever pleaded in the defence, and there was also no concrete evidence produced to elaborate on what this illegality was. Moreover, there was no evidence that the father of the respondent, who was the erstwhile registered proprietor, had any complaint over the transfer of title from himself to the respondent. In those circumstances, I am unable to hold that the registration of the suit land in the name of the respondent was fraudulently obtained.
 13. In any event, even if there was a holding that the registration was illegally obtained, it wouldn't held the appellant, because what that would mean is that the title would revert to the name of the respondent's father and not the appellant or his father. In addition to the foregoing, the appellant filed no counterclaim against the respondent or against the father of the respondent to seek orders of transfer of the suit land to himself. Neither was there any case presented by the father of the appellant against the respondent and/or his father, to assert title to the suit land by virtue of the purported sale agreement.
 14. Now that I am on the sale agreement, I have looked at it. There is a copy of the sale agreement which is in Swahili language and there is a translation in English. It records that on 26 April 1984, Calebu Arori Nyandoro has sold to Gwaka Mogwasi some land for Kshs. 6,000/= which is fully paid. There is another document dated 21 April 1985 which is in Ekegusii language which I cannot understand but there is a translation in English. From the translation, it is said that Calebu Arori has sold to Gwaka Mogwasi a piece of land for Kshs. 6,00/=; that Kshs. 3,300/= is paid and the balance is Kshs. 2,700/= ; and that on 21 April 1985 this balance was cleared. It is correct that the documents do not have any indication of the land that is subject to the sale and it cannot be imposed that it is the suit land that was the subject of the sale agreement.
 15. The appellant also exhibited a Land Control Board consent dated 4 January 1988 which he claimed to be the consent for the sale of the land, but if you look at the application for consent and the consent itself, it is very clear that the consent is only issued for purposes of change of name from Arori Nyandoro to Calebu Arori Nyandoro. There is absolutely no evidence whatsoever of any application being made to the Land Control Board to issue consent for sale of land from Calebu Arori Nyandoro to



Gwaka Mogwasi. In other words, there is no proof of sale of the suit land to the father of the appellant. In light of that, the appellant cannot succeed in his allegation that his father purchased the suit land and that by virtue of that he has a right to be on it.

16. The appellant of course claimed that his parents were on the suit land from 1985 and he continued their possession, but even assuming that was true, it does not help him, for he never lodged any claim for the land by way of adverse possession.
17. From the foregoing, it will be seen that I am unable to fault the trial Magistrate in arriving at the conclusion that the respondent had proved his case and was entitled to the orders that he sought. I find no merit in this appeal and it is hereby dismissed with costs.
18. Judgment accordingly.

DATED AND DELIVERED THIS 24 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

Delivered in the presence of :

Mr. Mosota for the respondent

No appearance on part of Mr. Ondika for the appellant

Court Assistant – Michael Oyuko

