REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC LAND APPEAL NO. E033 OF 2025

GRACE NGIMA IKUA……

APPELLANT

VERSUS

TERESIA MUMBI WANIANIA……1ST

RESPONDENT

JOSEPH KARANJA MWAURA……2ND

RESPONDENT

JUDGMENT

[Appeal from the Judgment of Hon. Daffline Nyaboke Sure, PM, Delivered On 26 May 2025 in Kangundo PM's Court, ELC Case No. E001 of 2022 (Teresia Mumbi Waniania & Joseph Karanja Mwaura v Grace Ngima Ikua)]

Background of the appeal

1. For some background on the appeal, it is helpful to understand the dispute that was previously addressed by the trial court and is now being reviewed by this court on appeal. In the lower court, the 1st respondent, who filed an amended plaint on 24 July 2019, sued both the appellant and the second respondent. Before this amended plaint was filed, the case had been ongoing since 2015, experiencing several administrative transfers to different courts, and was eventually transferred to Kangundo PM's court.

2. In her amended plaint, the first respondent averred that the appellant, who was then the registered owner of the land parcel number **Title No. Mavoko Town Block 3/6821 ("suit property"),** entered into a written agreement for sale with her dated 20 July 2012 that sold the suit property to her for KSh 230,000, of which she fully paid the purchase price. Nevertheless, the appellant and second respondent, in collusion, caused the suit property to be registered in the second respondent's name on 4 August 2014. According to her, their actions constituted fraud and misrepresentation, which she particularised against them and sought the following reliefs: -

a) A declaration that the transfer and eventual registration of the suit property in the 2nd

respondent's name was irregular, fraudulent and illegal ab initio.

b) An order that such aforesaid registration of the respondent as proprietor of the suit premises, having been fraudulently/illegally procured, be and is hereby revoked.

c) An order for specific performance against the appellant compelling her to specifically perform the express terms of the agreement dated 20 July 2021.

d) Costs and interest of the suit.

3. When the appellant was served with pleadings, she entered an appearance dated 8 June 2015. Although there is no record of her filing a defence in the court file or the record of appeal, the record shows that she filed one on the hearing date of 17 March 2025, without leave. By the trial court's ruling on that same date, the court declined to admit her defence, finding it an abuse of court process. This decision was never set aside or overturned. She also did not testify.

4. Regarding the second respondent, he filed his defence dated 16 June 2021, in which he notified the trial court that he was unfamiliar with some of the allegations in the plaint, contested others, particularly those concerning fraud and

misrepresentation, and demanded that the first respondent provide strict proof. He also asserted that he was an innocent purchaser for value and without notice of the first respondent's proprietary claim over the suit property. He urged the court to dismiss the claim of the first respondent. Although represented by counsel during the hearing, he closed his case without presenting evidence. Consequently, his assertions remained unsubstantiated.

5. Only the first respondent testified on the hearing date. The amended plaint was adopted as her evidence in chief, and she produced several documents in support of her case: the sale agreement dated 20 July 2012, an undertaking by the appellant dated 2 July 2014 indicating her commitment to transfer the suit property to the first respondent, a caution application dated 23 September 2014, official search certificate, and green card among others. Her testimony remained unrefuted during cross-examination.

6. Subsequently, judgment was delivered in the matter whereby the learned trial magistrate found that the appellant had proved her case, found that the suit property was not available for transfer to the second respondent as it had already been sold to the first respondent and granted the first respondent the reliefs sought in the plaint.

Appeal to this court and the hearing

7. Aggrieved by the orders, the appellant appealed to this court and filed a memorandum appeal dated 24 June 2025 and filed on 26 June 2025, where she questioned the impugned judgment on several grounds, and maintained that the learned trial magistrate erred in law and fact in: -

    a. ***Holding that she had the capacity to rewrite the contract between the parties herein, notwithstanding that the 1st respondent did not discharge her obligation pursuant to the sale agreement dated 20th July 2012.***
    b. ***Failing to find that if indeed there was a sale agreement between the appellant and the respondent, and that the same had lapsed, by virtue of the exclusion of time and or operation of law.***
    c. ***Failing to appreciate that the respondent did not perform her contractual obligation as per the sale agreement dated 20th July, 2012.***
    d. ***Making the findings in disregard of the weight and evidence of the appellant and/or her submissions.***
    e. ***finding that the respondent had proved her case on a balance of probabilities when there were several lacunae in her evidence.***

8. Accordingly, the appellant urged this court to allow the appeal, overturn the contested judgment, with the costs of the appeal to be in the cause, and to issue any other order it may deem just and fit in the interests of justice.

9. Turning to the proceedings of this matter, the appellant had been dragging her feet in complying with court directions and had never served a memorandum of appeal. Consequently, on 23 September 2025, the court directed, **Mr. Njugi** for the first respondent and **Mr. Muriuki** for the second respondent, to access it via the Court Tracking System ("CTS"). **Mr. Njugi,** being familiar with the appellant's conduct in the lower court, where she had persistently delayed proceedings, and likely considering the age of the matter in the lower court, sought to expedite the process and assist the court in its objective of ensuring the efficient and timely disposal of the appeal by voluntarily filing the record of appeal.

10. Notwithstanding this assistance, **Miss. Anyiela** insisted that the appellant ought to have filed the record of appeal and maintained that the record served upon her only contained the lower court submissions. This assertion was incorrect, as the appeal record filed by **Mr. Njugi** on 22 August 2025 was complete. Nonetheless, the court directed **Miss. Anyiela** to file the appellant's record of appeal, together with

submissions, notwithstanding the existence of the record filed by **Mr. Njugi.** These were to be filed within specified timelines.

11. However, similar to previous instances, she did not adhere to the directions by filing the necessary submissions. When the matter was brought before this court on 20 January 2026, **Miss. Anyiela** sought a five-day extension to file submissions. At the time of penning this judgment, which is obviously being written after the 5-day extension period, no submissions have been filed. Apparently, in light of this, the respondents have not filed written submissions (as at the time of writing this judgment), as they require the appellants' submissions to determine how to respond; pointedly, most of the grounds of appeal are evidently new grounds on appeal that were not canvassed before the lower court. If at all, they will be filed; this court will consider them to be filed out of time.

12. Flowing from this conduct of the appellant, the Supreme Court decisions that are binding on this court have consistently affirmed that parties must file submissions as directed by the court. In **Kenya Airports Authority v Otieno, Ragot & Company Advocates [2023] KESC 104 (KLR),** it held:

> ***"i. This court has in several of its decisions reiterated that compliance with its orders and***

directions on filing and service of documents is imperative. As we stated in the Okiya Omtatah case (supra) compliance with court orders goes to the root of the rule of law as well as the dignity of the court.

ii. We note that from the directions issued by the Hon. Deputy Registrar on August 7, 2023 the appellant ought to have filed and served its submissions on or before August 28, 2023. It was not until September 22, 2023 that the appellant filed its submissions online, and filed its hardcopies on September 25, 2023 thus delaying to comply with the court's directions by over 25 days. As noted in rule 12(1) of the Court's Rules, filing is deemed complete when the document is submitted both electronically and physically."

13. In an earlier decision in **Okoiti & 3 others v Cabinet Secretary for the National Treasury and Planning & 10 others [2023] KESC 69 (KLR),** the apex court stated:

"Neither the Supreme Court Act nor the Supreme Court Rules or this court's Practice Directions permit the applicants to file written submissions in the manner that they did. Rule 31 of this court's Rules stipulates that an

interlocutory application, such as the applicants', should be filed together with written submissions. Therefore, we find it irregular for parties to file joint submissions as well as separate submissions at the same time. Not only would it be repetitive but also unnecessary and a waste of precious judicial time. In any event, based on the directions issued, the applicants' submissions were to be served together with the motion. In the end and without belabouring the point, we hereby strike out the four sets of the applicants' written submissions. In addition, we caution litigants to adhere to the court's practice directions relating to the length of written submissions lodged before the court, as explained in the preceding paragraph."

14. Utmost, the appellant has failed to comply with court directions or to seek an extension of time for the second time. Accordingly, guided by case law and the provisions of **Practice Direction No. 43** of the **Environment and Land Court (ELC),** as published in **Gazette Notice No. 5178**, which grants extensive authority to the court to impose sanctions, including the striking out of pleadings, and taking into account the principle of expeditious disposal of court cases, this court

hereby strikes out the appeal with costs awarded to the respondents which the appellant shall bear.

Judgment accordingly.

Delivered and Dated at Machakos this 14th day of April, 2026.

HON. A. Y. KOROSS
JUDGE
14.04.2026

Judgment delivered virtually through Microsoft Teams

Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Miss Aniela for appellant.

Mr. Muriuki for 2nd respondent.

Mr. Njugi for 1st respondent.