



REPUBLIC OF KENYA



KENYA LAW
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**Waswa v Mala (Environment and Land Appeal E027 of 2025)
[2026] KEELC 1979 (KLR) (17 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1979 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E027 OF 2025**

AK BOR, J

MARCH 17, 2026

BETWEEN

CORNELIUS MAKOKHA WASWA APPELLANT

AND

VICK NAFULA MALA RESPONDENT

JUDGMENT

1. Being dissatisfied with the judgment of the Principal Magistrate (PM), Honourable W.K. Onkunya delivered on 28/5/2025 in Kimilili SPM ELC Case No. E024 OF 2021, the Appellant lodged this appeal seeking to have that judgment set aside and in its place, the Respondent's claim dismissed. The Appellant faulted the Learned Magistrate for allowing the Respondent's claim when it was clear that he was a bona fide liability to the estate of the late Ibrahim Mala who until his demise was the absolute registered owner of the land known as Kimilili/Kimilili/2248 (the suit land).
2. In addition, the Learned Magistrate was faulted for allowing the Respondent's claim based on a customary trust yet the suit land was not ancestral land. Further, that the trial court erred in allowing the Respondent's claim yet evidence was adduced to show that the Appellant bought the suit land from Ibrahim Mala on 28/5/2001 and was granted vacant possession. The Appellant contended that the Learned Magistrate did not fairly analyze the evidence adduced by the parties and therefore arrived at a wrong finding.
3. The background to this appeal is that Vincent Wanjala Mala sued the Appellant in Kimilili PM ELC Case No. E24 of 2021 claiming that he was the legal representative of the estate of Ibrahim Mala who was the legal owner of the suit land. He averred that in 2018, the Appellant trespassed on the suit land and was illegally staying on it and operating a business on the land. He sought an order of eviction against the Appellant from the suit land at Bituyu Market.



4. The Appellant denied the claim and averred that he purchased the suit land from Ibrahim Mala when he was still alive on 28/5/2001. He also averred that the suit land was among the assets of the estate of the late Ibrahim Mala which was pending for succession by the administrator of his estate.
5. The trial court heard the case and in its judgment, it found that the Respondent had proved his case on a balance of probabilities. The trial court found that there was no dispute that Ibrahim Mala held the title over the suit land in trust for his son, Vincent Wanjala Mala. Vincent Wanjala Mala died on 3/6/2021 while the suit was pending before the trial court. Vick Nafula Mala substituted Vincent Mala as the plaintiff in the suit before the trial court.
6. The trial court observed that the sale agreement dated 12/7/1971 confirmed that Vincent Wanjala bought the plot from Julius Wanasi at a consideration of Kshs. 800,000/=. The trial court contradicted itself when it observed that Ibrahim Mala's widow confirmed that he bought the land in 1971 for his own use before she got married to him in 1972. The Learned Magistrate concluded that there was no dispute that Vincent Mala bought the suit land and that Ibrahim Mala held the land in trust for Vincent Mala.
7. The Learned Magistrate found that the Respondent had met the threshold for a claim of a customary trust. Further, the court found that the Appellant's actions of operating a business on the suit land amounted to intermeddling with the estate of a deceased person contrary to Section 45 of the [Law of Succession Act](#).
8. The appeal was canvassed through written submission. The Appellant submitted that prior to his demise, the Respondent's grandfather, Ibrahim Mala sold him the suit land measuring 0.05 hectares at the agreed consideration of Kshs. 40,000/=. That upon the purchase, he was granted vacant possession of the portion he had purchased. Ibrahim Mala died before executing the transfer documents and the Appellant cited the widow to take out letters of administration with the respect to the estate of Ibrahim Mala.
9. The Appellant submitted that the sale agreement dated 12/7/1971 which the trial court relied on in its determination of the suit did not give the particulars of the land that was being sold. He submitted that the suit land was created from the subdivision of parcel no. 1164 in 1996 and the title deed issued in 1998. He added that the certificate of death for Vincent Wanjala Mala showed that he was 67 years when he died in 2021 which meant he was 17 years in 1971 and was unlikely to have purchased the suit land as the Respondent claimed. The Appellant faulted the trial court for finding that the agreement dated 12/7/1971 established that Ibrahim Mala held the suit land in trust for Vincent Wanjala Mala. He maintained that the suit land was not ancestral land.
10. The Appellant relied on Sections 24 and 25 of the [land Registration Act](#) on the protection accorded by registration of a person as a proprietor of land. The Appellant maintained that he had proved that he purchased the suit land from Ibrahim Mala vide the sale agreement dated 28/5/2001. Further, that during cross-examination, the Respondent admitted that the Appellant occupied the suit land prior to the death of her grandfather, Ibrahim Mala. The other point taken up by the Appellant was that the trial court was expected to resolve the question as to whether the Respondent was suing on behalf of the estate of Vincent Wanjala Mala or she was suing on behalf of the estate of Ibrahim Mala, the registered proprietor of the suit land. The Appellant pointed out that in the plaint, Vincent Mala was representing the interest of the estate of Ibrahim Mala.
11. In her submissions, the Respondent gave a background to the dispute and the details of the succession causes vide which grant of letters of administration were issued to Vincent Wanjala Mala and to her with respect to the administration of the estate of the late Ibrahim Mala and Vincent Wanjala



Mala respectively. The Respondent maintained that it was proved beyond reasonable doubt that Ibrahim Wanjala Mala held the suit land in trust for Vincent Wanjala Mala. Further, that the Learned Magistrate correctly found that there was no valid sale agreement between Ibrahim Wanjala Mala and the Appellant because Ibrahim Mala held the land in trust for Vincent Wanjala.

12. The issue for consideration is whether the appeal has merit and should be allowed. The plaint filed by Vincent Wanjala Mala shows that he was pursuing the claim as the legal representative of the estate of Ibrahim Mala who was the owner of the suit land. There was no claim of a customary trust pleaded. Parties are bound by their pleadings. This court is unable to find the basis for the Learned Magistrate's finding that Ibrahim Wanjala Mala held the suit land in trust for Vincent Wanjala Mala. The title deed tendered in evidence showed that Ibrahim Mala was registered as the owner of the suit land on 28/1/1998. The court agrees with the submission of the Appellant that the agreement of 1971 does not bear any land reference and there was therefore no basis for the trial court to find that the land in that agreement is the suit land. The Appellant's contention that he occupies the suit land during the lifetime of Ibrahim Mala was not controverted.
13. The court is satisfied that the Respondent failed to prove his claim before the trial court on a balance of probabilities. The court allows the appeal. The judgment of the Learned Magistrate delivered on 28/5/2025 in Kimilili PM ELC Case No. E024 of 2021 is set aside and substituted with an order dismissing the Respondent's suit before the trial court. The Appellant is awarded the costs of the appeal and the suit before the trial court.

DELIVERED VIRTUALLY AT BUNGOMA THIS 17TH DAY OF MARCH 2026.

K. BOR

JUDGE

In the presence of: -

Ms. J. wakasa holding brief for Mr. G. Murunga for the Appellant

Court Assistants- Bett/Metrine

No appearance for the Respondent

