

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA
ELC APPEAL NO. E006 OF 2025

EMILY NEKESA BARASA.....
.....APPELLANT

VERSUS

EZEKIEL WAKHOMBA NAMBILI.....
.....RESPONDENT

JUDGMENT

1. This appeal was lodged against the decision of Hon. C. Maundu, Chief Magistrate delivered on 27/2/2025 in Bungoma CMCCC No. 143 of 2016 vide which the Learned Magistrate entered judgment against the Appellant and directed that she would be evicted from the land known as Kimilili/Kimilili/211 (the suit land) and awarded the Respondent costs. The trial court found that the Appellant could not provide a lawful justification for being on the suit land and that it had been proved that she was a trespasser on the land.
2. The grounds of appeal are that the trial court misdirected itself and based its findings on wrong principles of law and that the court lacked jurisdiction to hear the matter. Further, the trial court was faulted for failing to find that the Respondent had sold the suit and that his estate had no further interest in the land and for failing to find that the Appellant was not a trespasser but a purchaser for value of the suit land. It was

also contended that the Learned Magistrate failed to consider the Appellant's evidence and erred when he awarded costs to the Respondent.

3. The appeal was canvassed through written submissions. The Appellant submitted that the trial court lacked jurisdiction to hear the matter because the suit was instituted as a civil suit and not as a land court dispute before a magistrates' court with pecuniary jurisdiction. She explained that she purchased the suit land from Wilfred Tindi Makokha from whom the Respondent had initially sold the land.
4. The Appellant faulted trial court for awarding the Respondent costs without taking into account the circumstances of the case and added that she was a victim of circumstances and lost money after being "*washed*" or conned out of money. She urged that the court should have directed that each was to meet its costs.
5. The Appellant urged the court to find that the trial court lacked jurisdiction to determine the suit and have this court re-evaluate the evidence and make its own findings. She submitted that it was evident that the Respondent initiated this suit as a civil suit and not a land case. She argued that the case should have been filed in the ELC or Magistrates' court with the pecuniary jurisdiction based on the value of the land.
6. It was contended that the trial court by itself or upon being moved by an application should have transferred the matter to a court with jurisdiction or struck it out. The Appellant contended that the proceedings and judgment were void

because the Learned Magistrate sat heard and determined a land case without jurisdiction.

7. On the claim of being a purchaser for value, the Appellant contended that the trial court should have been cognizant of the fact that she was a purchaser even if she was not the owner of the suit land. She pointed out that the Respondent admitted having sold the land to Ayub Makali Sivona before selling it to Winfred Tindi Makokha.
8. The Respondent submitted that the Learned Magistrate applied the right legal principles in arriving at his decision. He maintained that the trial court had the jurisdiction to hear and determine the matter because when the suit was filed in 2016 disputes over land were not been separated from the civil suits.
9. The issue for consideration is whether the appeal has merit. It is not in dispute that the Respondent entered into sale agreements dated 16/7/2013 and 7/10/2013 with Wilfred Tindi Makokha for the sale of 1 acre and a plot measuring 50 by 100 feet out of Kimilili/Kimilili/211 and paid the agreed consideration. It is also not in dispute that the Respondent had previously sold the land to Wilfred Tindi Makokha, although the Respondent contended that that purchaser did not complete payment.
10. The Appellant urged that the trial court lacked jurisdiction to hear the land case, the suit having been filed as a civil suit. This issue was never canvassed before the Learned Magistrate. No material has been placed before this to prove that the Learned Magistrate was not gazetted by the

Honourable Chief Justice to handle land matters. This court finds no merit in that argument.

11. It is not contested that the Respondent sold portions of the land registered in the name of the late Nambili Wekhomba before the assets of the estate were distributed and the land was transmitted to the beneficiaries of the estate the late Nambili Wekhomba. In this dispute, he seeks to use the fact that Kimilili/Kimilili/211 is still registered in the name of the late Nambili Wekhomba as a shield against the Appellant's claim that she bought the portion that the Respondent sold to Wilfred Tindi Makokha.
12. From the judgment of the trial court, it is apparent that the court did not consider the Appellant's counterclaim, which in effect was that she purchased the suit land from Wilfred Tindi, whom the Respondent had previously sold the same land. The Respondent did not deny the fact that he had sold the same portion of land to Wilfred Tindi.
13. Although the suit land was still registered in the name of the late Nambili Wekhomba, the certificate of confirmation of grant dated 28/11/2011 showed that the Respondent was the legal representative of the Estate of the late Nambili Wekhomba. At the hearing, the Respondent told the court that he sold the land to Wilfred in 2015 after he had obtained letters of administration. He did not proffer any reasons as to why the land was still registered in the late Nambili Wekhomba's name.
14. The judgment of the trial court delivered on 27/2/2025 is set aside. The file is remitted back to the Bungoma Chief

Magistrates' Court for hearing afresh of the Respondent's claim and Appellant's counterclaim against Wilfred Tindi Makokha before any other Learned Magistrate with jurisdiction other than Hon. Cosmas Maundu, CM. The Respondent will pay the Appellant's costs for the appeal.

Delivered virtually at Bungoma this 29th day of April 2026.

K. BOR

JUDGE

In the presence of: -

Mr. Ezekiel Wekhomba Nambili- the Respondent

Court Assistant- Josephat Bett

No appearance for the Appellant