



**Mwaura v City Council of Nairobi & 2 others (Civil Appeal
658 of 2019) [2026] KECA 825 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KECA 825 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 658 OF 2019
PO KIAGE, AO MUCHELULE & WK KORIR, JJA
APRIL 30, 2026**

BETWEEN

ZACHARY NG'ANG'A MWAURA APPELLANT

AND

CITY COUNCIL OF NAIROBI 1ST RESPONDENT

GCK KATSOLEH 2ND RESPONDENT

ROSE MUTINDA 3RD RESPONDENT

*(An appeal from the judgment and decree of the Environment and Land Court
at Nairobi (K. Bor, J.) dated 30th August, 2018 in ELC Case No. 138 OF 2009)*

JUDGMENT

1. By this appeal, the appellant seeks to overturn the verdict of the Environment and Land Court at Nairobi (Bor, J.) dated 30th August 2018, by which the court decreed that the appellant had failed to prove his case on a balance of probabilities and dismissed the suit with costs to the respondents.
2. Vide a plaint amended on 24th April 2009 and further amended on 3rd December 2012, it was claimed that on or about the year 2001, the appellant purchased from one Michael Masinde Plot No. NS-09 in Umoja 1 Cornershop. The said plot was later found to have been allegedly allocated to another person and the 1st respondent therefore allocated the appellant another plot being No. 50, in Umoja II, Zone 8. This second plot was however found to be much smaller and of lower value than the previous one and hence the 1st respondent allocated the appellant Plot. No. NS-09 in Umoja 1 Cornershop. However, during the hearing it emerged that the plot he was allocated the first and third time were one and the same. It was averred that the 1st respondent duly executed all the relevant title documents in favour of the appellant and the assignment was signed by the Mayor and the Town Clerk. The appellant



- thereafter started excavating the land with the intention of constructing flats thereon. He claimed to have expended Ksh.400,000 for that purpose.
3. Further, he averred that on or about 17th March 2009, the City Council Inspectorate department officials went to the plot and arrested his employee who was working thereon. The appellant alleged that the 2nd respondent was misusing his position as the deputy town clerk with the intention of illegally acquiring the property and transferring it to his wife, the 3rd respondent. He asserted that by virtue of being the legal and bona fide owner of the property, he was entitled to its enjoyment and the 2nd respondent should be declared a trespasser. In the end the appellant prayed for judgment against the respondents jointly and/or severally in terms of orders for;
 - a. A declaration that Plot No. NS-09 Umoja 1 Cornershop belongs to the plaintiff.
 - b. Demolition of the building illegally constructed on Plot No. NS-09 Umoja 1 Corneshop.
 - c. Special damages in the sum of Ksh.400,000.
 - d. General damages.
 - e. Aggravated damages.
 - f. Costs of the suit.
 - g. Interest on c), d) and f).
 4. By way of a defence dated 15th March 2013, the 2nd respondent denied the allegations contained in the plaint. The 3rd respondent also denied the said claims vide a defence of equal date.
 5. The trial of the suit commenced on 11th March 2015, when the appellant testified as PW1, affirming the averments in his plaint. Joseph John Wahome, a professional valuer, testified as PW2. He explained that he was retained to inspect and advise on the current value of a plot in Umoja Inner core. He assessed the market value of the plot to be Ksh.4 Million as of the year 2012, and that restoring it would cost Ksh.1.2 Million. PW2 stated that he prepared a report of the valuation and charged Ksh.20,000.
 6. For the defence, Abiud Ocholla, Assistant Director, Site and Service Schemes, within the Lands Department in Nairobi City County, gave testimony as DW1. He confirmed that in the year 2001, the appellant bought Plot No. NS/09 Umoja 1 Corner Shop, from Michael Masinde and in 2009, an assignment was made in his favour by the City Council. The 2nd and 3rd respondents (DW2 and DW3) adopted the statements they recorded on 9th June 2014 as their evidence in chief. The 2nd respondent asserted that the appellant was not known to him and neither did the property in question belong to him. He averred that as much as he worked at the Nairobi City Council as a Deputy Town Clerk, he was a stranger to the allegation that he used his position to illegally acquire the property. The 3rd respondent as well claimed that she had been wrongly enjoined to the suit since the property in issue had never belonged to her and neither had the 2nd respondent transferred it to her.
 7. At the end of the trial, the learned Judge found that the appellant had not proved that the plot in issue was allocated to the 2nd and 3rd respondents and thus she dismissed the suit with costs to the respondents.
 8. Aggrieved by that decision, the appellant in his memorandum of appeal raised fifteen (15) grounds of appeal, too many in all respects, considering that an appeal seldom turns on more than a few of issues and repetition of grounds adds no real value to an appeal. In summary, the appellant's complaint is that the learned Judge erred by;



1. Being biased and introducing issues which were not before the court.
 2. Finding that in order to determine the dispute, it was necessary that either party adduces expert evidence.
 3. Trying to pass off clear and unmitigated fraud as mere omission.
 4. Attempting to unprocedurally overturn the city council's procedural mechanism to allocate and transfer plots.
 5. Failing to find that the 2nd and 3rd defendants committed perjury.
 6. Misdirecting herself in unilaterally raising the issue of rectification of the register under s.142 of Registered Land Act.
 7. Finding that the plaintiff did not prove the plot that he was allocated by the 1st defendant.
 8. Misdirecting herself by stating that the plaintiff did not prove the plot from which he excavated soil.
 9. Finding that it was not clear whether the plaintiff accepted allocation of plot No. 50 Umoja II Zone 8.
 10. Finding that the plaintiff did not lead evidence on the value of the second plot.
 11. Failing to find that the plaintiff was a purchaser for value without notice.
 12. Concluding that the transfer had not yet been done.
 13. Dismissing the plaintiff's claim despite corroborative evidence from DW1.
9. In the end the appellant implored us to allow the appeal with costs.
 10. At the plenary hearing, learned counsel Mr. Nyaga appeared for the appellant, Mr. Nyakoe holding brief for Mr. Karisa for the 1st respondent, and Mr. Kaingu for the 2nd and 3rd respondents. Counsel had filed written submissions which they briefly orally highlighted.
 11. Mr. Nyaga faulted the learned Judge for finding that the appellant had not proved his case to the standard of a balance of probabilities. He asserted that his claim was supported by DW1. Referring to Philip K. Tunoi & Another Vs. Judicial Service Commission & Another [2016] eKLR, on the test to be applied in determining the existence or otherwise of bias, counsel contended that the learned Judge was biased in favour of the respondents when she brought up the involvement of the 3rd respondent, who was the wife to the 2nd respondent. He submitted that the 2nd and 3rd respondents committed perjury by making false statements in regard to the beacon certificates issued to the appellant. Citing Katende Vs. Haridar & Company Limited [2008] 2 E.A. 173, on the description of a bona fide purchaser, counsel urged that the appellant was a bona fide purchaser for value without notice. Mr. Nyaga faulted the learned Judge for dismissing the appellant's claim, when in his view, there was corroborative evidence including, receipts showing that the appellant had been paying rates to the 1st respondent since the year 2005; and, the testimony of DW1 which was in support of his claim. In the end counsel urged us to allow the appeal with costs and set aside the impugned judgment.
 12. We probed Mr. Nyaga whether the plot which his client was allocated the third time was different from the one that he was assigned the first time, and he confirmed that the two were one and the same plot. He contended that the confusion had been created by the 2nd respondent who was the deputy town clerk.



13. For the 1st respondent, Mr. Nyakoe indicated that he was entirely relying on their written submissions. In the very brief submissions, counsel asserted that the 15 grounds that the appellant was relying on were unsubstantiated and therefore untenable. He argued that the appellant had not clearly demonstrated to the court which plot he was talking about. Counsel submitted that the appellant's testimony was overly contradicted by DW1 who stated that there was an irregularity in the allocation of the plot to him. The irregularity was to the effect that when one bought a plot, the 1st respondent's committee meeting would approve the transfers and if an alternative was to be given, there would have to be a Council resolution to that effect, which was not the case herein.
14. Addressing us on behalf of the 2nd and 3rd respondents, Mr. Kaingu submitted that the 2nd and 3rd respondents had been categorical right from the trial court that the plot in issue, being plot No. NS09, did not belong to them and neither did they have a claim over it. We then inquired from counsel why the parties were in court, to which he replied that it is the appellant who had dragged the 2nd and 3rd respondents to court.
15. Having given due consideration to the concessions made by the parties that the plot which the appellant was allegedly assigned the third time was the same one that he was originally allocated, and that the respondents had no claim over the property, it would seem that this matter has all along been in court for no purpose. It is confounding why the appellant had to pursue this matter all the way to this Court, when there were clear averments by the 2nd and 3rd respondents, that they had no claim over the property. We, like the learned Judge, find that the appellant has failed to prove his case on a balance of probabilities. In fact, in our view, there is no case at all.
16. This appeal is therefore devoid of merit and we dismiss it with costs.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

P. O. KIAGE

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

