



**Chepsergon v Kelyo (Environment and Land Appeal E006 of 2023)
[2025] KEELC 5462 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5462 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL E006 OF 2023**

**L WAITHAKA, J
JULY 18, 2025**

BETWEEN

ROSELYNE CHESOI CHEPSERGON APPELLANT

AND

PAUSIAH JEPCHUMBA KELYO RESPONDENT

(Being an Appeal from the Judgement of Hon. Judith Wanjala (CM) dated 7th September 2023, delivered by Hon. Purity Kosgei (SPM) in Kabarnet ELC No. 17 of 2020)

JUDGMENT

Introduction

1. The uncontroverted/undisputed facts of the case giving rise to this appeal are that the appellant purportedly entered into an agreement for sale of a portion of the respondent's parcel of land known as Mochongoi Block II, plot number 442, hereinafter referred to as the suit property.
2. The negotiations for the sale of a portion of the suit property were done at a time when the respondent was away in Germany.
3. The negotiations were spearheaded by Stanley Chepchieng (DW1) allegedly on instruction of the respondent. Upon agreeing on the purchase price and the size of the portion of the suit property that was being sold/bought, a sale agreement dated 17th January 2017 was prepared and executed by the appellant. The agreement was witnessed by Messrs Julius Liamusana, Benjamin Chebon, Stanley Chepchieng and Derick Kemboi.
4. Whilst it was expected that the respondent would sign the agreement, after being submitted to her for signing, the respondent denied having been party to the agreement. Nevertheless, the respondent admitted/acknowledged having received the money deposited in her bank account by the appellant as consideration in respect of the portion of the suit property allegedly bought/sold by the appellant.



5. Terming the actions of the appellant that resulted in preparation and execution of the sale agreement a fraudulent scheme hatched by the appellant and fraudulent residents of her village working in cahoots with some members of the provincial administration, the respondent denies having been party to the sale agreement and explains that upon learning about the appellant's fraudulent intention, she made arrangements to refund to the appellant the money received.
6. It is the respondent's case that despite having had the intention to refund the whole amount of money deposited in her account by the appellant in respect of the purported sale agreement, she was frustrated by the appellant from refunding the whole purchase price by closing her bank account thereby making it impossible to refund the balance of the amount she received from the appellant.
7. Terming the activities of the appellant on the suit property complained of trespass to land, the respondent lamented that efforts to get the appellant stop her illegal activities in the suit property were futile.
8. In the suit before the lower court, the respondent sought judgment against the appellant for inter alia an eviction order against the appellant and an order of permanent injunction restraining the appellant from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the suit property.
9. The appellant filed a statement of defence and counterclaim denying the plaintiff's contention that she was leasing a portion of the suit property and contending that she was a buyer of a portion of the suit property, measuring 2 ½ acres.
10. By way of counterclaim, the appellant sought judgment against the respondent for damages for breach of contract; that the plaintiff be ordered to execute transfer documents and facilitate registration of the portion she bought as the legal owner; costs of the counterclaim and interest thereon.
11. Upon considering the case urged before her, the learned trial magistrate inter alia held:-

“.....The transaction failed because the plaintiff did not sign the agreement. It is my view that the defendant is not guilty of trespass because the plaintiff is still holding part of her money.....She did not enter the plaintiff's land through fraud. The claim for damages on account of trespass must fail since the plaintiff acknowledges that she has the defendant's money.

As for the prayer that the plaintiff be allowed to refund the money she still has for the defendant since she refunded part of the money she can go ahead and refund the balance.

From the evidence on record and pleadings, I find the plaintiff to have proved her case on a balance of probability....”

The Appeal

12. Dissatisfied by the decision of the lower court, the defendant (now appellant) appealed to this court) on the grounds that the learned trial magistrate erred by:-
 - i. Finding that the respondent had proved her case against the appellant whereas there was overwhelming evidence to the contrary;
 - ii. Ordering for the eviction of the appellant from the 2.5 acres she had bought in total disregard of clear and undisputed facts that the appellant had been in occupation and owner of the portion and had done extensive development;



- iii. Not allowing the defendant's prayers in the counterclaim;
 - iv. Improperly misrepresenting the provisions of section 25 of the *Land Registration Act*;
 - v. Misguiding herself by misrepresenting the provisions of Section 3(3) of the *Law of Contract Act*;
 - vi. Ignoring her pleadings, submissions and evidence and wholly relying on the respondent's pleadings and submissions.
 - vii. Ignoring her overwhelming evidence and by failing to hold that she had executed her part of the bargain.
 - viii. Ignoring the evidence tendered by her witnesses and the intention of the parties;
 - ix. Expressing outright bias against her and disregarding her evidence;
 - x. Ignoring the evidence she tendered that the respondent should be held in breach.
13. Directions were given on 13th March 2025 that the appeal would be disposed of by way of written submissions. The Appellant did not file submissions although given time to do so. The respondent filed submissions on 26th June 2025 dated 14th June 2025.

Submissions

Respondent's submissions

14. In his submissions, the respondent identified two issues for determination. These are:-
- i. Whether the trial magistrate erred in holding that the subject land sale agreement did not meet the threshold as per section 3(3) of the Law of Contract;
 - ii. Whether the trial magistrate erred in holding that the respondent had proved her case on a balance of probability.
15. On the first ground, the respondent submitted that no valid agreement of sale was fully executed between the appellant and the respondent from which the appellant's rights can accrue as the respondents details were not entered, parcel of land details were not correct, the respondent did not sign the agreement and the appellants witnesses could not confirm what they were signing. He made reference to Section 3(3) of the Law of contract Cap 23, Section 38(1) of the *Land Act* 2012 and the case of *Leo Investment Ltd vs. Estuarine Estate Limited* (2017)e KLR.
16. On the second ground, the respondent submitted that the respondent after judgement refunded to the appellant the balance of the purchase price, the appellant vacated the suit property. The appellant did not apply for stay orders pending appeal and fully complied with the trial court judgement. It is his contention that the appeal was an afterthought and this is why the appellant withdrew her instructions from her advocate on record.

Analysis and determination

17. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In



that regard, see *Selle & another vs. Associated Motor Boat Co. Ltd* (1968) E.A 123 and *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga vs. Kiruga & Another* (1988) KLR 348.

18. Since it is not in dispute that the sale agreement purportedly entered into between the appellant and the respondent was not signed by the respondent, an issue of law arises concerning the agreement, namely whether the sale agreement can form the basis of the appellant's claim to the portion of the suit property she allegedly purchased from the respondent.
19. Concerning that issue, based on the provisions of Section 3(3) of the Laws of Contract and the decisions in the cases of *Leo Investment Ltd vs. Estuarine Estate Limited* (2017)e KLR and *Kukal Properties Development Ltd v Tafazzal H. Maloo & 3 others* (1993)e KLR, the respondent submitted that the sale agreement was invalid hence incapable of forming the basis of the appellant's claim to the portion of the suit property allegedly bought/sold.
20. On whether the sale agreement can form the basis of the appellant's claim to the portion of the suit property she allegedly purchased from the respondent, Section 3(3) of the [Law of Contract Act](#), which came into force on in 2003 is instructive on that issue. The section provides as follows:-

“No suit shall be brought upon a contract for the disposition of an interest in land unless-

- a. The contract upon which the suit is founded-
 - i. Is in writing;
 - ii. is signed by all the parties thereto; and
 - iii. the signature of each party signing has been attested by a witness who is present when the contract was signed by such party

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the [Auctioneers Act](#) (Cap.526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

21. In *Leo Investment Limited supra*, the Court inter alia observed/held:-

“There is ample jurisprudence on the legal validity of a land sale contract that is signed by only one party. In *Kukal Properties development Ltd vs. Tafazzal H Maloo & 3 others* (1993)e KLR the Court of Appeal pronounced itself on similar dispute where only one party had signed the agreement for the sale of the land. Commenting on the legal framework in section 3(3) of the [Law of Contract Act](#), Muli JA held as follows:-

“With the greatest respect, the learned trial judge misdirected himself completely. In the first place it matters not what the parties or one of them believed or was made to believe. The real issue was whether the agreement was duly executed by the parties, and if not, was the agreement binding and enforceable against any of the parties...It is trite law on this point and is made beyond doubt under Section 3(3) of the [Law of Contract Act](#) (Cap 23) Laws of Kenya).

I hold that the intended agreement between the appellant and the Portundarwallas was inoperative and therefore unenforceable for lack of execution by the appellant; the sum total was that there was no valid agreement in law....”

22. As pointed out herein above, it is not in dispute that the sale agreement relied on by the appellant does not comply with the mandatory provisions of Section 3(3) of the [Law of Contract Act](#). The contract



having been entered into at a time when that section of the law was in force, the contract is not savable under section 98 of the *Evidence Act*, Cap 80 Laws of Kenya.

23. The trial magistrate had binding authorities on applicability of the law on the facts before her, agreement for sale of land signed by only one party to it.
24. The respondent had not pleaded existence of the circumstances contemplated by the court in *Leo Investment (supra)*, when it held:-

“I would, however, add that the validity or otherwise of a suit arising from a scenario of non-compliance with the mandatory formal requirements of Section 3(3) of *Law of Contract Act* does not depend on the precise plea made to the court and the actual relief sought from the court by the plaintiff. In this regard, whereas a suit specific performance or damages for breach of a non-compliant contract is a nullity, a suit for restitution (recovery of money paid in furtherance of a non-compliance contract) or suit for declaration of a constructive trust arising from the none compliant relationship would be valid...”

25. The upshot of the foregoing is that the appeal has no merits. Consequently, I dismiss it with costs to the respondent.

DATED, SIGNED AND PUBLISHED AT KABARNET THIS 18TH DAY OF JULY, 2025

L. N. WAITHAKA

JUDGE

In the absence of

The Appellant

The Respondent

The Court Assistant

