



REPUBLIC OF KENYA



**Maajabu Ni Wendo Ininvest Co Ltd & 4 others v Maaki Commercial
Co.Ltd & 3 others (Environment and Land Appeal 4 of 2023)
[2025] KEELC 846 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 846 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 4 OF 2023
JO OLOLA, J
FEBRUARY 27, 2025**

BETWEEN

**MAAJABU NI WENDO INIVEST CO LTD 1ST APPELLANT
WATSON WAMBUGU GITHAIGA 2ND APPELLANT
ISAAC WANGAI 3RD APPELLANT
CECILIA WANGARI MACHOMBA 4TH APPELLANT
JENNIFER WANGARI NDIRANGU 5TH APPELLANT**

AND

**MAAKI COMMERCIAL CO.LTD 1ST RESPONDENT
DANIEL WAMBUGU WANGOMBE 2ND RESPONDENT
SIMON WANJOHI MURAGE 3RD RESPONDENT
WELLINGTON KURIA KIBUTHU 4TH RESPONDENT**

JUDGMENT

1. This is an Appeal arising from the Judgment of the Hon W. Kagendo, Chief Magistrate delivered on 27th July, 2018 in Nyeri CMCC No.59 of 2008.
2. By their Plaint dated 14th February, 2008 as amended on 9th July, 2008 and further amended on 6th June, 2011, the four (4) Respondents had sought orders against the five (5) Appellants as follows:-
 - a. An order to restrain the Defendants jointly and severally from using the name of the 1st Plaintiff in the affairs of the 1st Defendant and also to restrain the Defendants, their servants and agents from interfering or trespassing onto the 1st Plaintiff's portion of land known as Kibirirti



Farm within Land Reference No. 12908 along Kiganjo- Nanyuki Road which portion the 1st Plaintiff has allocated to its members;

- b. Costs of this suit with interest thereon;
 - c. Any further or better relief the Honourable Court may deem fit to grant.
3. Having heard the parties and in her judgement delivered on 27th July 2018, the Learned Trial Magistrate granted the prayers as sought by the Respondents and decreed as follows:-
1. That Judgment be and is hereby entered against the Defendants in terms of prayer (a) of the further Amended Plant dated 6th June, 2011 and filed in court on 6th July, 2011;
 2. That the Defendants jointly and severally be and are hereby restrained from using the name of the 1st Plaintiff in the affairs of the 1st Defendant;
 3. That the Defendants, their servants and agents be and are hereby restrained from interfering or trespassing onto the 1st Plaintiff's portion of land known as Kibiriti Farm within Land Reference No. 12908 along Kiganjo-Nanyuki road which portion the 1st Plaintiff has allocated to its members and
 4. That the costs of this suit be and are hereby awarded to the Plaintiffs as against the Defendants herein.
4. Aggrieved by the said determination the Appellants who were the Defendants in the lower court proceedings moved to this court vide a Memorandum of Appeal dated 14th August, 2018 urging this court to set aside the Judgement on some six (6) grounds listed therein as follows:
1. That the Learned Trial Magistrate erred in law and in fact in not appreciating that the issue of locus standi was extremely critical in none of the 2nd, 3rd and 4th Respondents (sic) were lawful directors of the 1st Plaintiff the Directors of the 1st Plaintiff having died long before the suit was instituted.
 2. That the Learned Trial Magistrate erred in law and fact by not appreciating that M/s Brookside Dairy were not party to the suit and (that) if they had purchased the Suitland, then the Respondents suit from the onset was misplaced;
 3. That the learned Trial Magistrate erred in law and fact by not appreciating the importance of the agreement entered into between the 1st Appellant and the 1st Respondent on 4th January, 1995;
 4. That the Learned Trial Magistrate erred in fact by not appreciating that by the Appellants verifying the genuine members of the persons who purchased shares pursuant to the agreement of 4th January, 1995 (Joint Venture Agreement) in itself cannot amount to interfering (sic);
 5. That the Learned Trial Magistrate having found that the land had been auctioned erred by awarding costs to persons who purportedly sued on what the court said was an academic exercise; and
 6. That the findings of the Trial Magistrate are not supported by the evidence and documentary exhibits.
5. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and to make its own conclusion thereon. It must however, bear in mind the fact that the trial court, unlike the appellate



court had the advantage of observing the demeanor of the witnesses and hearing their evidence first hand [see *Selle & Another –vs- Associated Motor Boat Co. Ltd & Others* (1968) EA 123].

6. I have accordingly carefully perused and considered the Record of Appeal and the impugned Judgment. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
7. By their Memorandum of Appeal dated 14th August, 2018, the Appellants have faulted the Judgement of the Learned Trial Magistrate on some six (6) grounds upon which they urge that the judgment be set aside.
8. In their first ground of Appeal, the Appellants assert that the trial court erred in fact and in law in failing to appreciate that the issue of locus standi was extremely crucial as the 2nd, 3rd and 4th Respondents were not the lawful directors of the 1st Plaintiff.
9. At page 24 of the Judgment of the trial court, the Learned Trial Magistrate did consider the Appellants submissions on this issue. The court then came to the conclusion that the Appellants could not challenge the issue of locus as they had expressly admitted that the 2nd, 3rd and 4th Respondents were directors of the 1st Respondent.
10. From a perusal of the pleadings filed in the Lower Court, it was apparent that the Appellants had not challenged the capacity upon which the Respondents had instituted the suit in the name of Maaki Commercial Co. Ltd. (the 1st Respondent). A perusal of the Record herein reveals that the said issue was first introduced in the Appellant's closing submissions dated 6th June, 2018 (pages 217 and 218) wherein the Appellants submitted that the real directors of the 1st Respondent had passed on and that given the 2nd, 3rd and 4th Respondents had not complied with the 1st Respondent's Articles of Association, they had no locus standi to institute the suit.
11. With respect, this was clearly evidence that was being introduced from the Bar. That issue neither featured in the Appellant's pleadings nor was it raised at the trial. In their Further Amended Plaint dated 6th June 2011 (pg. 62 of the Record), the Respondents pleaded as follows at Paragraph 3 thereof:
 - “3. The 2nd, 3rd and 4th Plaintiffs are the Chairman, Secretary, and Treasurer of the 1st Plaintiff and they are directors of the 1st Plaintiff.”
12. The Appellants admitted that fact in their Statement of Defence dated 18th March, 2008 (page 33 of the record). At Paragraph 2 thereof, the Appellants pleaded as follows:
 - “2. Save that the defendants admit the contents of Paragraph 1, 2 and 3, the Defendants aver that they are not aware of the 2nd, 3rd and 4th Defendants relationship to the 1st Defendant.”
13. Arising from the foregoing, it was evident that the Appellants had not contested the 2nd, 3rd and 4th Respondents assertions that they were officials and directors of the 1st Respondent.
14. Indeed, from the material placed before the court, the Appellants were themselves very much aware of the relationship. By their own admission, the Appellants had earlier on instituted Nyeri CMCC No. 710 of 2008 against the 4 Respondents in the manner they are listed herein. At Paragraph 3 of their



Plaint dated 23rd December, 2008 as filed in the said suit (page 151 of the Record), the Appellants aver as follows:

“3. The 2nd, 3rd and 4th Defendants are male adults of sound mind and are the Chairman, Secretary and Treasurer of the 1st Defendant. Service of summons to be effected through their office to be pointed out.”

15. That being the case, there was absolutely nothing critical about the question of locus standi and the trial court cannot be faulted for arriving at the finding that the raising of the issue was belated and that the Appellants had expressly admitted that the 2nd, 3rd and 4th Respondents were officials of the 1st Respondent with locus to sue and be sued as such.
16. The second ground of Appeal was the contention that the Learned Magistrate failed to appreciate that M/s. Brookside Dairy were not a party to the suit and that if they had purchased the Suitland, then the Respondents' suit was misplaced from the onset.
17. In support of this position, the Appellants submitted that the Trial Court failed to appreciate that none of the parties herein had any land as the land belonged to a party that was not sued. The Appellants asserted that the Respondents were only promised that the owner would sell to them some 65 acres and that the same remained a mere promise and hence the Respondents were fighting for what they did not own.
18. In their suit as filed in the Lower Court, the Respondents had sought an order to restrain the Appellants jointly and severally from using the name of the 1st Respondent in the affairs of the 1st Appellant and also an order to restrain the Appellants, their servants and/or agents from interfering or trespassing onto the 1st Plaintiff's portion of land known as Kibiriti Farm along Kiganjo-Nanyuki Road.
19. In my considered view, those prayers did not require the joinder of any third party to be effected. As the Learned Magistrate did find, the Respondents were concerned that the Appellants were using the name of the 1st Respondent claiming they were also part of those who had purchased the said Kibiriti Farm and that members of the 1st Appellant were equally entitled to the portion of the land.
20. In that respect, the Court did find, correctly in my view, that the initial agreement between the 1st Appellant and the 1st Respondent had been overtaken by events after the land was sold in a public auction to Messrs. Brookside Dairy Ltd. It was further the Court's finding that after the initial agreement had collapsed, the Respondents had produced evidence that they did thereafter pursue the new buyers who agreed to sell to the Respondents the 65 acres.
21. While the 1st Respondent may not have been registered as the owner of the 65 acres of land, there was evidence that they had entered into an agreement and paid for a portion of the land in which they had settled their members. Given the Appellant's admission that they had moved into the land, and were carrying on a verification exercise to establish those who had been rightfully given the land, the court was right in granting the injunction orders as the Appellants had no right to engage in such an exercise on the suit property.
22. In Ground No. 3, the Appellants' faulted the Learned Magistrate for failing to appreciate the importance of the agreement entered into between the 1st Appellant and the 1st Respondent on 4th January, 1995.
23. From the material placed before the court (pages 158 to 166 of the Record), it was apparent that the said Agreement was the subject of Nyeri CMCC No. 710 of 2008 that had been filed by the Appellants



against the Respondents. In a Judgment delivered on 6th March, 2012 the Honorable K. Cheruiyot, SRM dealt with the issue of the validity of that agreement and determined as follows:

“My finding is that the agreement dated 4.1.1995 was overtaken by events that meant that their intended purchase of land parcel number 12908 (became) impossible the land having been sold to a third party (Brookside Dairy Limited) by public auction by the Chargees (KCB) in exercise of its right.”

24. There was no evidence from the Appellants that the said finding had been reviewed and/or set aside. It was clear that in entering the agreement, the two sides had intended to purchase a piece of land from its then owners – East African Match Company Ltd. Thereafter, it turned out that the land had been charged to Kenya Commercial Bank and the Bank later sold the land by public auction to M/s Brookside Dairy Co. Ltd.
25. Arising from the foregoing and as the Learned Magistrate did rightfully find, the agreement dated 4th January, 1995 became null and void and the same cannot be relied upon by the Appellants.
26. It was also clear to me that Grounds 4, 5 and 6 of the Appeal could not stand. Having purchased the 65 acres of land from the said Brookside Dairy Ltd, the Respondents had an obligation to safeguard their investment. In light of the admission by the Appellants that they had moved onto the land to carry out a verification exercise in reliance of the agreement dated 4th January, 1995, the Respondents could not be faulted for moving to court to seek orders to secure their property.
27. It follows that I did not find any merit in this Appeal. The same is dismissed with costs to the Respondents

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 27TH DAY OF FEBRUARY, 2025

J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Kebuka Wachira Advocate for the Appellants

Mr. S.K. Njuguna Advocate for the Respondents

