



**Kamor v Waweru (Environment and Land Appeal E010 of 2023)
[2024] KEELC 1412 (KLR) (18 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1412 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL E010 OF 2023
PM NJOROGE, J
MARCH 18, 2024**

BETWEEN

EZEKIEL KAMOR APPELLANT

AND

GEORGE MAINA WAWERU DEFENDANT

JUDGMENT

1. The Memorandum of Appeal in this suit is reproduced here below:

Memorandum Of Appeal

1. That the learned magistrate erred in fact and law in and fact by conceding that the appellant is in occupation of land parcel referred as ISI/117/97/2010 and No Plot 'F' Isiolo township without any evidence from the department of land government surveyor.
2. That the learned magistrate erred in law and fact by concluding that the appellant is in occupation of the respondents land without any evidence.
3. That the learned magistrate erred in law and fact by dismissing that the appellant owns any land in Isiolo Town despite such evidence of ownership produced in court.
4. That the magistrate erred in law and fact by dismissing appellant's evidence of ownership and occupation of plot 'F' Isiolo.
5. That the learned magistrate erred in law and fact by ignoring defendant's defence and submissions.



6. That the learned magistrate erred in law and fact by holding that the respondents' ownership documents are superior to the appellants documents without calling for makers of such documents.
7. That the learned magistrate erred in law and fact by allowing the respondent's case against the weight of the evidence.
8. That the learned magistrate failed to take account of several cases affecting Mwangaza area of Isiolo County challenging the entire registration in deciding the case at hand with finality without considering possibility of future changing.

Dated At Maua This 5th Day Of June, 2023

For: Ms Mutembei & Kimathi

Advocates For The Appellant

2. The appeal was canvassed by way of Written Submissions.
3. In his submissions the Appellant's Advocate reiterates that the appeal is based on 8 Limbs as enunciated in the grounds contained in the Memorandum of Appeal (Op.Cit). As they have already been reproduced at the beginning of this Judgment, there is no need to regurgitate them.

The Appellant asserts that the parties in this appeal have different numbers and different documentation concerning the disputed land. He submitted the trial court was out rightly erroneous to decide on who was in occupation of what land without making a scene visit. He also says that the respondent should have called the testimonies of the County Government or Land Officials. The Appellant also says that Land Parcel No. ISL/117/97/2010 which is claimed by the respondent was non-existent and that its existence was only via a PDP number. The appellant also submits that his evidence and exhibits were ignored by the Honourable Chief Magistrate. He also says that the makers of the documents the respondent relied upon did not produce the said documents and therefore says that those documents did not properly constitute evidence. He placed reliance on the case of *SYT v TA* [2019] eKLR I, however, do note that the documents the appellant produced as his exhibits were also not produced by their makers.

4. I do note that ground number 8 in the Appeal complains "that the learned Magistrate failed to take account of several cases affecting Mwangaza area of Isiolo County challenging the entire registration in deciding the case at hand with finality without considering possibility of future changing". I wish to dismiss this ground peremptorily, albeit judiciously.

A court of law cannot be expected to consider issues which were not the subject of the apposite proceedings. A court of law relies on evidence tendered by the parties and, on a balance of probability, decides which party's evidence is more weighty and hence preponderant.

5. The Respondents Advocate addressed the court regarding all the eight grounds of appeal. He demonstrated how the lower court had considered and decided on the issue of occupation, and ownership of the disputed land. He also asserted that the claim that the appellant's defence and submissions had been ignored by the trial court could not be sustained as the court took the totality of the evidence tendered by the parties, into account. He also asserts that the court rightly considered the documents tendered by the parties as exhibits and upheld the respondent's documents after taking into account that there were material inconsistencies in the appellant's documents which revealed dishonesty on the part of the appellant.



6. Regarding the alleged failure of the trial court not to take into account other cases involving Mwangaza area where the suit land is situated, the respondent submits that the lower court could not decide on issues which were not part of the pleadings. The respondent proffered the case of *Chalicha F.C.S LTD v Odhiambo & 9 Others* [1987] KLR 182 as cited in the court of Appeal Case of *Cooperative Bank Of Kenya Ltd v Washington Otieno Ogingo* [2012] eKLR which found as follows: “Cases must be decided on the record. The court has no power to make an order, unless it is by consent, which is outside the pleading. In this instance, the issues raised by the Judge and the order thereon was a nullity”.
7. I have perused the proceedings in the lower court. I have also considered the submissions filed by the parties. I find that the Learned Chief Magistrate, properly analyzed the evidence presented by the parties before her and, on a balance of probabilities, arrived at a Judgment which deserves to be upheld. I also find that the respondent’s submissions are cogent and deserve upholding. Conversely, I do not find merit in the Appellant’s submissions.
8. In the circumstances, the following orders are issued:
 - a. This appeal is dismissed.
 - b. Costs shall follow the event and are awarded to the respondent.

DELIVERED IN OPEN COURT AT ISIOLO THIS 18TH DAY OF MARCH, 2024 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Nelima holding brief for Malanya for the Appellant.

Miss Kaaria holding brief for Kirimi for the Respondent.

HON. JUSTICE P.M NJOROGE

JUDGE

