



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Sambai v Nyaitimu (Environment and Land Appeal 25 of 2022)  
[2024] KEELC 3435 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3435 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL 25 OF 2022**

**JM ONYANGO, J**

**APRIL 30, 2024**

**BETWEEN**

**HENRY KIRWA SAMBAI ..... APPELLANT**

**AND**

**AGNES ROBI NYAITIMU ..... RESPONDENT**

**JUDGMENT**

1. The Court has been called upon to determine an appeal against a judgment of from the Chief Magistrates Court (Hon. R. Odenyo) delivered on 27<sup>th</sup> February 2021. The Appellant herein filed a Memorandum of Appeal dated 19<sup>th</sup> August 2022 against the aforementioned judgment on the grounds that:
  1. The learned Magistrate erred in dismissing the Plaintiff's entire suit after Formal Proof hearing.
  2. The learned Magistrate erred in holding that there was no legally binding contract for sale of land between the Appellant and the Respondent as per Section 3(3) of the Law of Contracts Act and proceeded to dismiss the suit at the same time, notwithstanding that the proceedings were premised on the aforesaid statute.
  3. The learned Magistrate erred in law and fact by failing to appreciate the fact that the Appellant was the registered owner of the suit property known as LR No. Eldoret Municipality Block 20 (Kapyemit) 410.
  4. The learned Magistrate erred in law and fact by failing to appreciate that the Respondent is a trespasser on the suit property known as LR No. Eldoret Municipality Block 20 (Kapyemit) 410 hence her subsequent occupation of the suit was illegal.
2. The Appeal essentially seeks to set aside the judgment delivered by Honourable Magistrate on 27<sup>th</sup> February 2021.



3. The Appeal is unopposed with the Respondent having failed/neglected to file submissions in the matter.

### **Background**

4. It is imperative to examine the genesis of the case before considering the legal issues set for determination.
5. The Appellant herein instituted the suit vide a Plaint dated 20<sup>th</sup> February 2019 alleging that he had entered into a verbal agreement with the Respondent in February 2016 or thereabouts for the sale of the suit property known as LR No. Eldoret Municipality Block 20 (Kapyemit) 410 (hereinafter the suit property).
6. It was the Appellants case that the Respondent herein had breached the verbal agreement and consequently he sought a declaration from the court endorsing his assertion. Additionally, the Appellant herein sought an eviction Order against the Respondent.
7. The Respondent herein failed to enter appearance and file a Defence against the plaint and consequently an interlocutory judgment was entered by Court on 21<sup>st</sup> May 2019.
8. Thereafter, the Court fixed the matter for Formal Proof on 4<sup>th</sup> July, 2019. The formal proof hearing was ultimately conducted on 22<sup>nd</sup> August 2019 and the judgment was delivered on 27<sup>th</sup> February 2021 dismissing the suit.
9. Aggrieved by the judgment, the Appellant brought the instant appeal before this court.

### **Issues For Determination**

10. Having considered the Appeal, Memorandum of Appeal, the Record of Appeal dated 13<sup>th</sup> October 2022, and having analyzed the Appellants Submissions dated 4<sup>th</sup> December 2023 and filed on 13<sup>th</sup> December 2023, the following issues emerge for determination:
  - i. Whether the trial magistrate erred in dismissing the Appellant's entire suit.
  - ii. Who should bear the Costs of the Appeal.

### **Analysis and Determination**

11. This being a first appeal, it is imperative to underscore the parties' entitlement to a thorough re-examination, re-evaluation, and a fresh analysis of the evidence, culminating in a well-reasoned decision by this court.
12. As espoused in *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968) EA 123, a first appeal essentially mirrors a retrial, placing upon this court, as the primary appellate authority, the responsibility to meticulously re-examine the evidence, form independent conclusions, and substantiate its determinations with a clear rationale.
13. It is important to acknowledge that this court did not have the opportunity to observe or hear the Appellant testify firsthand. Therefore, I must approach this task with a nuanced understanding and make appropriate allowances for the lack of firsthand observation. This entails a comprehensive consideration of the evidence on record while maintaining fairness and impartiality in reaching a reasoned finding.



14. I have carefully scrutinized the appeal, the evidence on record and the submissions filed by the Appellant herein. I will now proceed to determine whether the trial magistrate erred in dismissing the Appellant's entire suit.
15. The crux of the appeal is that the Appellant's suit dated 20<sup>th</sup> February 2019 was erroneously dismissed by the trial magistrate. The Appellant contends that crucial facts were overlooked thus warranting a reevaluation by this Court.
16. The trial magistrate dismissed the suit on account of an interpretation and application of Section 3(3) of the Law of Contract Act (Cap. 23) which provides that:
  - (3) 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 parties thereto; and
    - b. the signature by 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 the 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.
17. Section 3 (3) of the Law of Contract Act essentially delineates the cardinal features inherent in contracts related to the disposition of an interest in land. This provision serves as the cornerstone upon which all contracts relating to the conveyance of land are built.
18. In their written submissions, counsel for the Appellant argued that there was no valid land contract between the Appellant and the Respondent. He further argued that consequently, the Appellant was entitled to take possession of the land and further that the Appellant was entitled to an eviction Order.
19. In essence, counsel for the Appellant acknowledged that the suit instituted by the Appellant was in contravention of Section 3 (3) of the Law of Contract Act.
20. It is pertinent to emphasize that in their pursuit of orders pertaining a contract for a disposition of an interest in the suit property, the Appellant was obligated to present a written agreement signed by all parties and duly attested as stipulated in Section 3 (3) of the Law of Contract Act.
21. Upon a meticulous scrutiny of the trial court's record, and by the Appellants own admission in their evidence in Chief, it becomes apparent that no contract satisfying the prerequisites specified in Section 3(3) of the Law of Contract Act was established by the Appellant.
22. Corollary to the foregoing, I am inclined to concur with the trial magistrate and find that the dismissal of the plaint dated 20<sup>th</sup> February, 2019 was warranted. The upshot is that the appeal herein lacks merit and the same is consequently dismissed.
23. On the issue of costs, since the appeal was un-defended, I make no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 30<sup>TH</sup> DAY OF APRIL, 2024**

.....  
**J. M. ONYANGO**



## **JUDGE**

In the presence of;

Miss Jeruto for the Appellant

No appearance for the Respondent

Court Assistant: Mr. Brian K.

