



**Muindi v Lopuru & 4 others (Environment and Land Appeal
15 of 2023) [2024] KEELC 3338 (KLR) (22 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3338 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL 15 OF 2023**

PM NJOROGE, J

APRIL 22, 2024

BETWEEN

MARY WANJIKU MUINDI APPELLANT

AND

AULO ELEMANA LOPURU 1ST RESPONDENT

ENOCH KALO TADI 2ND RESPONDENT

BANTE DIBA GALGALO 3RD RESPONDENT

ABDI ASURAN ELEMAN 4TH RESPONDENT

LAND ADJUDICATION OFFICER MARSABIT COUNTY ... 5TH RESPONDENT

*(Being an appeal against entire judgment of Honourable Mbayaki
Wafula sitting in Marsabit Chief Magistrates' Court ELC No. 8 of 2019)*

JUDGMENT

1. The Memorandum of Appeal in this Suit states as follows;

Being an appeal against entire judgment of Honourable Mbayaki Wafula sitting in Marsabit Chief Magistrates' Court ELC No. 8 of 2019

The Appellant herein being dissatisfied with the judgment of the trial court delivered on the 30th June, 2021 appeals against the said judgment and puts forth the following grounds of appeal.

1. That the trial court erred in law and in fact by ignoring the evidence that the existence of the suit land was not an issue for determination.



2. That the trial court judgment was as a result of misapprehension of the facts, evidence and the law.
3. That the trial court ignored the substantive issues raised by the parties and instead used trivial technicalities to rule against the Appellant.
4. That the trial deliberately ignored the issue of fraud despite the same being specifically pleaded and strictly proved.
5. That the trial completely ignored the Appellant's a submission leading to an erroneous judgment.
6. That the trial court ruled on issue which was never raised in the statement of defense. To wit, alleged discrepancy between what was in the original sale agreement and in the final payment acknowledgment.
7. That the trial court erred in law and in fact in not finding that he Appellant had proved her case to the required standard of proof.

Reasons Wherefore The Appellant prays for:

- i. That the judgment dated 30th June, 2021 be set aside.
- ii. That the Appeal herein be allowed with costs to the Appellant.

Dated At Nairobi This 2nd Day Of August 2021

Komu & Kamenju Advocates

Advocates For The Appellant

2. The appeal was canvassed by way of written submissions.
3. The appellant framed the issues for determination in this appeal as
 - i. Whether the trial court arrived at the right decision based on the evidence and submissions tendered on behalf of the Appellant.
 - ii. Whether the trial court relied on extraneous issues in arriving at its decisions.
4. The Appellant's Advocate has submitted that the Appellant's evidence had proved fraud BUT the court ignored this evidence. He says that since the registrations of the land in the names of other people other than the appellant, such registration was a nullity. To buttress this assertion the appellant's advocate proffered the Case of Omega Enterprises (K) Ltd Versus KTDC & Others, Civil Appeal No. 59 of 1993.
5. The appellants advocate says that the appellant's evidence was uncontroverted and as such should have been upheld by the trial court. For this assertion the appellant's advocate proffered the case of Cornel Rasanga Versus William Adhiambo Oduol & Others [2014] eKLR. The advocate further says that the court did not appreciate the fact that the 1st and 4ths defendants held titles did not limit the power of the court to order an amendment and/ or cancellation of the apposite registration. To buttress this assertion, the appellant's advocate proffered the case of Alberta Mae Gacei Versus Attorney General and 4 Others [2006] eKLR.



6. The Appellant's Advocate has said that the learned trial magistrate in coming to his decision relied on extraneous issues and irrelevant consideration. He argues that this conduct should not be allowed to stand. To support this assertion, the appellant's advocate proffered 2 cases as follows;
 - i. Zachariah Wagunza & Another Versus Office of the Registrar Academic Kenya University & 2 Others [2013] eKLR.
 - ii. R Versus the Public Procurement Administration Review Board Ex Parte Kenya Medical Supply Agency, Crown Agents, Deutsche Gessellachaft and John Snow Inc [2020] eKLR.
7. The appellants advocate says that the evidence of the 1st and 4th defendants should not have been relied as they had committed fraud. For this assertion the case of Ndung'u Kimani Versus R, [1976] KLR 1444 was proffered. I however wish to point out the trial court did not find that the 1st and 4th defendants has acted fraudulently.
8. For the above reasons, this court is urged to allow the appeal with costs to the Appellant.
9. A conspectus of the 1st, 3rd and 4th written submissions is that the trial court rightfully arrived at its decision and point out that the appellant's evidence was riddled with inconsistencies such as the sale agreement relating to Parcel No. 386 which was inexplicably changed to 368 (9). Even after this change, they point out that the final payment agreement refers to Parcel No. 386. This, they submit, impeaches the Integrity of the description of the suit land and says that ownership of suit land cannot be vested upon a litigant where its description is nebulous. The advocate proffers the case of Evans Njoroge Kimani Versus Maina Muriuki [2018] eKLR.

The 1st, 3rd and 4th respondents says that as the appellant only visited the suit land only once to plant trees, there was no way of knowing the land the appellant planted trees on is the suit land.
10. Regarding the claim that the court ignored the fact that the appellant had proved fraud, the respondent have cited Section 109 of the *Evidence Act* and assert that it was the duty of the Appellant to prove the existence of the facts the appellant alleged. They say that this one was not successfully carried out by the appellant.
11. The respondents advocate says that the plaintiff had bought land from Askon Runguria the claimed owner of the suit land, that transaction lacked consent of the Land Control Board. The respondent to support their assertion that lack of control Board Consent rendered the agreement void proffered the cases of;
 - i. Cheboe Versus Mary Cheboe Gimnyigel, Civil Appeal No. 40 of 1978, and
 - ii. Willy Kimutai Kitilit Versus Michael Kibet [2018] eKLR.
12. The Respondents Advocate says that the respondents had demonstrated the existence of a long tussle over the suit land between the family and Askon Runguria which dated from 1985, which the appellant from her oral evidence was unaware of.
13. The respondents conclude that the learned magistrate in the lower court did not err in law and in fact in arriving at his decisions and ask the court to dismiss the appeal.
14. This being a fist appeal, I am entitled to consider all the evidence tendered in the subordinate court, analyze it and arrive at my own decision. This I have done.
15. This Origin of this dispute was an adjudication process. The appellant's suit was filed many years after the adjudication process was completed. The appellant and her husband did not employ the safeguards



established by adjudication law to prosecute a claim to the suit land. Indeed none of the timelines prescribed by adjudication law was observed by the appellant and/or her deceased husband. I will, however, confine myself only to the issues raised in this appeal.

16. I have carefully and exhaustively considered the pleadings and submissions filed by the parties in this appeal. I have juxtaposed the lower court's proceedings with the judgment delivered by the learned trial magistrate. I find that none of the grounds of Appeal impeach the Integrity of the lower court's judgment. Specifically I find that the allegation of fraud had not on a balance of probability been proved. I have also not found proof of extraneous considerations. In conclusion, I find that the Appellant has not proved any of her grounds of appeal.
17. In the circumstances, I issue the following orders;
 - a. This appeal is dismissed.
 - b. Costs shall follow the event and are awarded to the 1st, 3rd and 4th respondents.

DELIVERED IN OPEN COURT AT ISIOLO THIS 22ND DAY OF APRIL, 2024 IN THE PRESENCE OF:

HON. JUSTICE P.M NJOROGE

JUDGE

Court assistant: Balozi/Rahma

