



**Reuben v Saisi & 2 others (Environment and Land Appeal  
E001 of 2021) [2023] KEELC 62 (KLR) (19 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 62 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND APPEAL E001 OF 2021**

**MN MWANYALE, J  
JANUARY 19, 2023**

**BETWEEN**

**MICAH ISIYE REUBEN ..... APPELLANT**

**AND**

**WINNY WAMULA SAISI ..... 1<sup>ST</sup> RESPONDENT**

**ALEXANDER ISIYE SAISI ..... 2<sup>ND</sup> RESPONDENT**

**JACKLINE GALO ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**BACKGROUND**

1. The Appellant Micah Reuben Isiye been dissatisfied with the judgment of Hon J Orwa – SPM appealed to this Court penning 11 grounds of Appeal, as here follows;
  - i) That the Learned Trial Magistrate grossly erred in fact and in law by failing to appreciate that the Appellant herein is the registered proprietor of land parcel number Nandi/kapkangani/522.
  - ii) That the Learned trial Magistrate materially erred in fact and in law by failing to appreciate that the Respondents herein unlawfully and/or without any lawful justification entered the Appellant’s land and erected structures in a bid to settle in the same.
  - iii) That the learned Trial Magistrate erred in fact and in law by find that 1<sup>st</sup> Respondent was sold a portion of land by Patrick Kins Mulavi measuring 1.0 acres in number Nandi/kapkangani/522.
  - iv) The trial magistrate erred in law and fact in finding that the Appellant witnessed the agreement for sale on the December 13, 2008 on behalf of the 1<sup>st</sup> Respondent.



- v) The trial Magistrate erred in law and fact by finding that Appellant fraudulently caused transfer of land parcel numbers Nandi/kapgangani/522 measuring 1.2 Hectares acre in his name when there was no evidence pointing to the alleged fraud.
  - vi) The trial Magistrate erred in law and fact in finding that the transactions executed between the Appellant, 1<sup>st</sup> Respondent and Patrick Kens Mulavi in respect of land parcel number Nandi/kapgangani/522 were legal when the Appellant has never been a party to any transactions.
  - vii) The trial Magistrate erred in law and fact by finding that the Appellant held one acre of land out of parcel number Nandi/kapgangani/522 in trust of 1<sup>st</sup> Respondent in terms of Section 28 of the Land Registration Act with no legal basis.
  - viii) The trial Magistrate erred in law and fact in dismissing the Appellant's claim as against the Respondents and allowing the Respondents' claim as against the pleadings, submissions and the law.
  - ix) The learned trial Magistrate failed to adjudicate the dispute impartially and was influenced by extraneous matters hence the erroneous decision.
  - x) That the learned trial Magistrate erred in failing to evaluate and analyse the evidence in support of the Appellant's case.
  - xi) That the learned trial Magistrate materially erred by failing to exclude the Respondent's fabricated evidence in a bid to wade into the Appellant's land with the resultant miscarriage of justice to the Appellant.
2. On the strength of the above grounds of appeal, the Appellant prayed for orders that;
- a) That appeal herein be allowed and the decision of the lower Court be set aside and/or reversed.
  - b) A declaration that the Appellant herein is the registered proprietor of land parcel number Nandi/kapgangani/522.
  - c) That the costs of this appeal be borne by the Respondents herein.
  - d) Any such and/or further orders that the Honourable Court shall deem just and expedient to grant.
3. Vide a Ruling delivered on February 15, 2022 the Court conditionally allowed a stay of execution application pending hearing and determination of this appeal.
4. Parties took direction to canvass the Appeal by way of filing of written submissions.

**Appellant's Submissions: -**

5. The Appellant in his submissions has identified 5 issues for determination;
- i. Whether there was a valid land sale agreement.
  - ii. Whether the Plaintiff/Appellant proved his case as against the Respondents.
  - iii. Whether fraud and illegality was proved by the Respondents
  - iv. Whether the counterclaim by the Respondents was proved.
  - v. Whether the learned Magistrate was influenced by extraneous matters.



6. On issue number 1, the Appellant submits that there was no valid agreement for sale, since it did not specify the land in question; and they submit that the agreement contravened Section 3 of the [Law of Contract Act](#).
7. On issue number 2, it is the Appellants submission that the Appellant proved his case before the trial Court; and placed reliance on Sections 24, 25 and 26 of the [Land Registration Act](#).
8. The Appellant further places reliance on the decision in the case of [Margaret Njeri Wachira v Eliud Waweru Njenga](#) eKLR; and submit that the Respondents have failed to demonstrate that the title to the suit land was acquired fraudulently or illegally and thus their title to the suit land Nandi/kapkangani/522 remains.
9. On issue number (iii) whether fraud and illegally was proved by the Respondents. The Appellant submits that the Respondent did not prove any of the allegations of fraud and illegality. It is their submissions that the Appellant took part in the succession proceedings in the Estate of Ibrahim Ngoro Mulavi the father to the vendor Patrick Kins Mulavi and followed to the later where he was appointed as a co-administrator in the Estate of Patrick Kins Mulavi and thus he followed the process and there was thus no fraud.
10. On issue number 4, whether the counterclaim by the Respondent was proved. The Appellant submits that it indeed the Respondent has bought the property from Patrick Kins Mulavi then they ought to have sued the estate of late Patrick Kins Mulavi and cite the case of [Matha Njoki Muturura v Gatanga Constituency Development Fund](#) [2019] eKLR where the Court held that allegations of fraud must be strictly proved.
11. On issue number v on whether the learned Magistrate was influenced by extraneous matters. The Appellant submit that the Learned Magistrate took into account the protocol to the [African Charter on Human and People's Rights on the Rights of Women in Africa \(Maputo Protocol\)](#) and the [convention on the Elimination of all forms of Discrimination against women](#) (CEDAN) and thus in reaching her decision, the Magistrate was influenced by external factors.

**Respondent's Submission: -**

12. The Respondent has submitted under four heads which the Court considers as the Respondents issue for determination.  
The first issue is whether there was a valid sale Agreement between the deceased Patrick Kins Mulavi and the Plaintiff.
13. The Respondent submits that the Agreement for sale was produced by the consent of the parties. The identity card number as appearing in the Agreement for sale as well as the title is well captured and is identical and belongs to the Appellant.
14. The Respondent submits that in the agreement complies with Section 3 of the [Law of Contract Act](#). On disposition of an interest in land.
15. The Respondent further submits that the vendor Patrick Kins Mulavi gave her possession of the suit property in 2008 after she had purchased, hence the Respondents submits that she is the beneficial owner and by virtue of the occupation she has overriding interests over the suit property.
16. It is the Respondents further submissions that a constructive trust was created by the deceased vendor when he put the purchaser in possession.



The Respondent has in support of the above submissions cited, the *Yaxley v Golts* (200) which was cited in the decision in Macharia Mwangi Maina.

17. On the second issue; whether fraud and illegality was proved by the Respondents. The Respondents submit relying on the decision in the case of *Elijah Makrei Nyangwara v Stephen Mungai Njuguna and Another*; where the Court stated that “It needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein, which are that the title was obtained illegally, unprocedurally or through corrupt scheme. The protection from an innocent purchaser innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors.”
18. It is the Respondent submission thus that the Appellant was a witness to the Agreement for sale and thereafter registered the whole property to himself yet the Respondent had already taken possession.
19. On whether the counter claim was proved by the Respondents;  
Under this head the Respondent submits placing reliance on the Court of Appeal decision in *Munyu Maina v Hiram Gathiba Maina*, that the Appellant ought to have demonstrated how he acquired the title which he failed to do, hence the counterclaim was proved.
20. On whether the learned Magistrate was influenced by extraneous matters, the Respondent submits that an appellate Court should not interfere with the findings of fact of the trial Court unless they are based on evidence at all, or on misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings.
21. Finally the Respondent submits placing reliance on the decision on *Sele and Another v Associated Motor Boat Company and Others* [1968] EA 123, that an appellate Court can review the evidence, evaluate it itself and draw its conclusions.
22. Having summed up the grounds of Appeal, the record of Appeal and submissions by the Counsels on record, the Court shall now determine the grounds of appeal as filed; in light of the following issues for determination.
  - i) Whether the Appellant is entitled to the whole of Nandi/kapgangani/522 by virtue of being the title holder.
  - ii) Whether the Respondent proved her counterclaim and purchase of 1 acre in Nandi/kapgangani/522.
  - iii) Whether the learned Magistrate was influenced by extraneous circumstances in reaching her decision.
  - iv) Whether the Appeal is merited.
  - v) Who bears the costs of the appeal?

#### **Analysis and determination: -**

23. On issue number 1, from the pleadings and evidence before Court, it is not in doubt that the Appellant is the registered owner of Nandi/kapgangani/522, and that by virtue of being the registered owner his title is protected under Section 26 of the *Land Registration Act*. His title over Nandi/kapgangani/522, was challenged by virtue of counterclaim before the trial Court; and as was observed by the Court of Appeal in the case of *Manyu Maina v Hiram Gathiba Maina* 2013] eKLR “We state that when a



registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title as proof of ownership. It is this instrument of title, that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not to be noted in the register.”

24. The occupation of the suit property by the Respondent created an overriding interest on the suit land; hence the Appellant ought to have demonstrated before the trial Court, how he acquired his title.

I have perused the record of Appeal and the testimony of PW1 the Appellant appears at pages 40 and 41 of the record of Appeal, the witness statements which form part of PW1's testimony appears at page 10 of the record of appeal.

25. The Appellant other than testifying to be the registered owner did not testify as to how he obtained her title, other than in cross – examination, where the Appellant indicated that he purchased property from the mother of Patrick, Mulavi; and he had bought the same in 2002, paying KShs 720,000 for 1.2 Hectares. In her judgment at page 68, the learned Magistrate found that the suit property belonged to the Appellant by virtue of transmission through succession as part of her issues for determination.
26. Ground 1 of the appeal thus fails as the learned Magistrate indeed found that the suit property had been transmitted to the Appellant and the Court finds no merit in ground No. 1 of appeal.
27. As to whether the Appellant was entitled to the whole of Nandi/kapakangani/522, an agreement for sale was produced by the Respondent as the Defendant in the trial Court, which indicated the Defendant purchased a portion of property belonging to Patrick Kins Mulavi. That Agreement was actually witnessed by the Appellant whose identity card number was indicated in the agreement, and two witnesses indicated under oath that the Appellant indeed executed the Agreement as a witness for Patrick Kins Mulavi.
28. The learned Magistrate found the agreement credible, as this Court does find. Hence it follows that the Respondent purchased a portion of Nandi/kapakangani/522 which belonged to Patrick Kins Mulavi before it was transferred to the Appellant.
29. Thus in answer to issue number 1, the Court finds by virtue of the existence of an agreement for sale for disposition of land by Patrick Mulavi to the Respondent and by virtue of occupation by the Respondent of the portion she purchased before the demise of Patrick Mulavi that the Appellant was not entitled to the whole parcel of Nandi/kapakangani/522.
30. On the issue number 2, in her counterclaim before the trial Court, the Respondent pleaded that she was entitled to 1.0 acres in Nandi/kapakangani/522 having purchased the same from Patrick Kins Mulavi and the Appellant having been a witness thereto.
31. While addressing issue number 1 above, the Court made a finding of the existence of the Agreement for sale as had been found by the trial Court. It thus follows that the counterclaim as pleaded having been founded on the agreement for sale, was thus proved, consequently the Court finds no merit on grounds 4, of the appeal and the same is dismissed.
32. Similarly having found that the agreement for sale existed, it follows that the Respondent purchased 1 acre from the late Patrick Kins Mulavi in Nandi/kapakangani/522, and ground 3 of the appeal is thus not merited.
33. Issue number 2 is thus answered in the affirmative that the counterclaim was proved and merited, with the consequence that grounds 6, 7 and 8 of the appeal equally fail.



34. On issue number 3, whether the learned Magistrate was influenced by extraneous circumstances in reaching her decision, the Appellant submits that the learned Magistrate did place reliance on the Maputo protocol.
35. I have perused the record of appeal, and whereas the Maputo protocol was quoted by the learned Magistrate, the evidence on record was enough to allow the counterclaim, and thus the Maputo Protocol did not influence the decision arrived at by the learned Magistrate. As can be seen from this judgment, the learned Magistrate having found the existence of the agreement for sale for 1.0 acre by the Respondent she was right then to find merit in the counterclaim, without invocation of the Maputo Protocol.
36. I find no merit in ground 9 of the grounds of appeal, and accordingly the appeal lacks merit in totality and the judgment of Hon. Jacinta Orwa (SPM) delivered on August 30, 2021 in Kapsabet SPMCC No. 7 of 2018 is hereby upheld as this appeal is dismissed with costs.
37. The orders issued vide the Ruling dated 18/2/2022 as a consequent of dismissal of this appeal are hereby vacated.

**DATED AT KAPSABET THIS 19<sup>TH</sup> DAY OF JANUARY, 2023.**

**Hon. M.N. Mwanyale,**

**JUDGE**

**In the presence of**

Mr. Choge for

No appearance for Appellant duly notified.

