



**Onyango v Wanjala (Civil Appeal E045 of 2021)  
[2024] KEHC 3369 (KLR) (22 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3369 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E045 OF 2021  
WM MUSYOKA, J  
MARCH 22, 2024**

**BETWEEN**

**JOSEPH JUMA ONYANGO ..... APPELLANT**

**AND**

**JOSEPH ONGORO WANJALA ..... RESPONDENT**

*(An appeal arising from the judgment of Hon. RN Ng'ang'a, Resident Magistrate,  
RM, delivered on 1st November, 2021, in Busia CMCCC No. 436 of 2013)*

**JUDGMENT**

1. The appellant had sued the respondent in the primary court, for Kshs. 46,000.00 and costs. It was alleged that the appellant had given to the respondent his oxen and ox-plough, on the understanding that the respondent would plough the appellant's land in return, 6 times a year for free. It was alleged that the respondent breached that understanding, by not ploughing the land, and by retaining the appellant's oxen and ox-plough, all valued at Kshs. 46,000.00.
2. The respondent resisted the claim. He averred that he had paid for land that the appellant had bought from George Charles Ongoma, in lieu of him, the respondent, returning the oxen to the appellant. Regarding the ox-plough, he pleaded that the appellant took it away from the respondent once he, the appellant, settled at his newly acquired land. He made a counter-claim, which was independent of the claim by the appellant, for Kshs. 25,000.00, which was the balance of Kshs. 50,000.00 that the respondent had allegedly given to the appellant for custody.
3. A trial was conducted. The appellant testified and called 3 other witnesses. The respondent testified, but did not call a witness.
4. The appellant adopted his statement, where he stated that he gave the respondent 2 bulls and a plough on the understanding that the respondent would plough his land. The respondent dutifully ploughed for him 6 times in the first year, but refused to plough thereafter, after he, the appellant, took 1 bull



from the respondent. He stated that the respondent retained the 1 bull and the plough. He wanted the value of the 1 bull, and the plough, which he estimated at Kshs. 46,000.00, without documentation to support. PW2, Gaitano Omonich, did not testify on the arrangement, but he said he was given 2 bulls by the appellant, which he took to the respondent. PW3, Joseph Ouma, also did not testify on the agreement between the parties, but he said he drove 2 bulls to the home of the appellant, where the 2 animals were put together with a herd belonging to the respondent. PW4, Herbert Okote Kataka, was not party to the exchange of cattle, but was part to a meeting which discussed the return of the bull and the plough.

5. The respondent adopted his statement. He testified that he assisted the appellant pay for land that the appellant was buying. He paid Kshs. 30,000.00 for him, and in exchange the appellant gave him 1 ox valued at Kshs. 30,000.00. He denied being given oxen to plough the respondent's lands. He also stated that he gave appellant Kshs. 48,000.00 for safekeeping. He said he was given 2 bulls by the appellant, PW 3 brought to him the 2 bulls, and he paid for them.
6. In the end, the trial Court was not convinced that both sides had proved their respective cases, and dismissed the suit and the counter-claim.
7. There are 3 grounds of appeal:
  - a. that the evidence was not properly analysed,
  - b. that the statements were not considered, and
  - c. that the evidence was not evaluated.
8. I have carefully considered the pleadings, the written statements and the recorded testimonies. The cases mounted by both sides were vague. The appellant did not lead adequate evidence to support the allegation that there was an arrangement between him and the respondent, where he would give the respondent 2 bulls and a plough, and the respondent would plough for him 6 times in a year. None of the witnesses for the appellant bespoke that arrangement. I agree with the trial Court, he did not adduce evidence to justify his being paid Kshs. 46,000.00 by the respondent. Equally, the respondent gave vague evidence on his claim for Kshs. 25,000.00, or whatever the amount was, from the appellant. He did not establish a case on a balance of probability.
9. I find no merit in the appeal herein, and I do hereby dismiss the same, with costs.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 22<sup>ND</sup> DAY OF MARCH 2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Wanyama, instructed by Wanyama & Company, Advocates for the appellant.

Mr. Jumba, instructed by Balongo & Company, Advocates for the respondent.

