

KENYA / JUDGMENT

Onyango v Awino & another

[2026] KEELC 5435 (KLR)

[2026] KEELC 5435 (KLR)**COURT**

Environment and Land Court

BEFORE

FO Nyagaka

CASE / FILE NUMBER

Environment and Land Appeal E027 of 2025

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

Onyango v Awino & another (Environment and Land Appeal E027 of 2025) [2026] KEELC 5435 (KLR) (16 September 2026) (Judgment) Neutral citation:

[2026] KEELC 5435 (KLR) Republic of Kenya In the Environment and Land Court at Migori Environment and Land Appeal E027 of 2025 FO Nyagaka, J September 16, 2026 Between Aloice Ooko Onyango Appellant and Grace Awino 1 st Respondent Teresia Auma Angwen 2 nd Respondent (Being an appeal against the Judgment and/or decree of Hon. Naomi Wairimu delivered on 21/8/2025 in Migori Magistrate Court ELC Cause No. E046 of 2021 between Aloice Ooko Onyago Vs Grace Awino and Another)

Judgment

Background

1. The Appellant was the Plaintiff in the subordinate court. He sued the Respondents, claiming to be the registered proprietor of land parcel number North Sakwa/Kanyamgony/1804, measuring approximately 0.63 hectares. He averred that he purchased two acres out of the larger parcel North Sakwa/Kanyamgony/75 from one Oyoo Akumu vide an agreement for sale dated 17/08/1997. That the transfer forms were signed by the vendor in 2013, and he was subsequently registered as proprietor of parcel North Sakwa/Kanyamgony/1804 in 2019 but his evidence, the title deed which he produced as PExhibit 2 showed that he was registered as proprietor on 2nd March 2016. 2. He pleaded that the 1 st Respondent encroached onto his land in March 2015. She erected structures thereon and commenced farming on it without his consent, and that upon demand she claimed to have been allocated a different portion of land by the same Oyoo Akumu. He further pleaded that the 2 nd Respondent encroached onto the land in March 2021 and erected structures, similarly claiming an allocation from Oyoo Akumu, notwithstanding that the said Oyoo Akumu had by then passed on. He sought orders of eviction, permanent injunction, costs and interest. 3. The

Respondents' defence was that the 1 st Respondent purchased her portion from the late Oyoo Akumu. That the Appellant had never been in occupation of the suit land and that the 2 nd Respondent had not erected any structures on it, and was not a trespasser. She further pleaded that the Appellant's title was a forgery, and was procured to defeat the 1 st Respondent's rights. 4. At trial the Appellant testified as PW1 and produced, among other documents, the sale agreement, the title deed, official searches and a demand letter. In cross-examination, he admitted that he had not produced a surveyor's report to establish that the portion occupied by the 2 nd Respondent fell within parcel North Sakwa/Kanyamgony/1804, and that he had purchased only a portion of the original parcel. The 2 nd Respondent testified as DW1 and called two witnesses, DW2 and DW3. Both were said to be daughters-in-law of the late Oyoo Akumu. No documentary evidence was produced on behalf of the Respondents. 5. The learned trial magistrate framed two issues. One was whether there was a valid sale agreement between the Appellant and Oyoo Akumu, and the other, whether the Appellant had proved his case on a balance of probabilities. She found that the Appellant had proved the sale agreement, but had not shown the acreage of the parent parcel North Sakwa/Kanyamgony/75, nor did he produce a green card showing what size thereof was left for the 2 nd Respondent and the family of Oyoo Akumu after the sale. She held that eviction would not sufficiently settle the dispute in the absence of that evidence. She directed the appellant to engage a surveyor to establish the extent of his land. She struck out the suit with no order as to costs. 6. Aggrieved, the Appellant lodged the present Appeal by a Memorandum of Appeal dated 28/8/2025. The Memorandum of Appeal 7. The Appellant advanced ten grounds, 1. That the Learned trial Magistrate erred in law and in fact by dismissing the plaintiff suit. 2. That the learned trial magistrate erred in law and in fact by failing to find that the appellant being the absolute and the registered proprietor of land parcel number North Sakwa/kanyamgony/1804 is entitled to vacant and quite possession of the subject land. 3. That the learned trial magistrate erred in fact and in law challenging the appellant's sale of land agreement and which culminated to issue of title to land parcel number North Sakwa/Kanyamgony/1804 after a process of subdivision when the same was not challenged at all by the respondents at all. 4. That the learned trial magistrate erred in law and in fact by not properly framing the issues for determination by the court. 5. That the learned trial magistrate erred in law and in fact by failing to find that the first and the second respondent had trespassed onto the appellant's land parcel number North Sakwa/Kanyamgony/1804 and had erected structures on the land despite admission on the same by the second respondent and all her witnesses. 6. That the learned trial magistrate erred in law and in fact in failing to appreciate that the second respondent and her witnesses had admitted that the first and the second respondent were in occupation of land parcel number North Sakwa/Kanyamgony/1804 without the appellant's consent hence trespassed onto the land. 7. That the learned trial magistrate erred in law and in fact by finding that the appellant had failed to prove its case despite the express admissions by the second respondent and her witnesses during cross examination that the first and the second respondent had erected structures on the appellant's land parcel number North Sakwa/Kanyamgony/1804. 8. That the learned trial magistrate erred in law and in fact by failing to

grant the orders sought in the amended plaint dated 9/8/2021. 9. That the learned trial magistrate erred in law and in fact by inviting the appellant to avail a surveyor report to prove trespass against the respondents despite the express and explicit admissions by the second respondent and her witness that the first and the second respondent had got into and erected structures on the subject land without the consent of the appellant. 10. That the learned trial magistrate erred in law and in fact by failing to make a determination that the appellant had proved his case on a balance of probabilities. 8. The grounds may be grouped in terms of the issues they seek to address, as follows: a. That the Learned Magistrate erred in dismissing the suit and in failing to properly frame the issues for determination (grounds 1 and 4). b. That the Learned Magistrate erred in failing to find that the Appellant, as the registered and absolute proprietor, was entitled to vacant possession, and in questioning the sale transaction and subdivision leading to the title notwithstanding that it was never challenged by the Respondents (grounds 2 and 3). c. That the Learned Magistrate erred in failing to find that the Respondents had trespassed and erected structures on the suit parcel, despite what were said to be express admissions by the 2nd Respondent and her witnesses during cross-examination (grounds 5, 6 and 7). d. That the Learned Magistrate erred in declining to grant the orders sought in the amended plaint, and in requiring a surveyor's report notwithstanding the alleged admissions (grounds 8 and 9). e. That the Learned Magistrate erred in failing to find that the Appellant had proved his case on a balance of probabilities (ground 10). 9. The Appellant prayed that the appeal be allowed, the judgment and decree of the subordinate court be set aside, that eviction and permanent injunction orders issue against the Respondents in respect of North Sakwa/Kanyamgony/1804, and for costs of the appeal. 10. The appeal was canvassed by way of written submissions. The Appellant's Submissions 11. The Appellant framed three issues. One, who was the owner of the suit parcel, whether the 2nd Respondent and her witness admitted to trespass and whether the Appellant was entitled to the reliefs sought. 12. On the role of a first appellate court, counsel relied on *Migore v South Nyanza Sugar Co Ltd* [2018] KEHC 5465 (KLR), which restated the duty of a first appellate court to reconsider and re-evaluate the evidence and reach its own conclusion, while being slow to disturb findings of fact absent a misapprehension of the evidence or wrong principles. 13. On ownership, counsel relied on Section 26(1) of the Land Registration Act and *In re Estate of Raphael Ngugi (Deceased)* [2022] KEELC 1575 (KLR), both on the conclusiveness of a certificate of title save on proof of fraud, misrepresentation, illegality or a corrupt scheme. It was submitted that although the validity of the Appellant's title had been alleged to be fraudulent, no evidence had been adduced to impeach the title and that he was accordingly the absolute and indefeasible owner. 14. On trespass, counsel cited Section 3(1) of the Trespass Act and *Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited* [2019] KEELC 1664 (KLR) for the definition of trespass as an intrusion upon land in the possession of another. *Chrispine Otieno Caleb v Attorney General* [2014] KEHC 8485 (KLR) was cited for the proposition that a Defendant's failure to adduce evidence leaves the Plaintiff's case uncontroverted, and was relied upon to argue that the 1st Respondent's failure to defend rendered the claim against her unchallenged. Counsel also cited the decision of *Ideal Ceramics Limited v Suraya*

Property Group Ltd [2017] KEHC 7184 (KLR), on judgment upon a clear, unequivocal admission, to argue that the 2nd Respondent's admissions on cross-examination as to occupation and construction on the land sufficed to establish trespass. 15. On reliefs, counsel relied on *Mbuthi v Osman & another* [2024] KEELC 387 (KLR) for the proposition that a proprietor whose title is unchallenged and who proves his case is entitled to injunctive relief. It was urged that the appeal be allowed with costs. The 2nd Respondent's Submissions 16. The 2nd Respondent opposed the appeal in its entirety. She filed submissions in which she framed three issues. These were whether the trial magistrate erred in finding that the Appellant failed to discharge the burden of proof; whether proof of ownership alone entitled the Appellant to eviction and injunction; and whether the court should interfere with the trial magistrate's findings and exercise of discretion. 17. On the burden and standard of proof, counsel relied on sections 107 to 109 of the Evidence Act, and the decisions in *Palace Investments Limited v Geoffrey Kariuki Mwenda & another* [2015] KECA 616 (KLR), and *Ndiritu (Suing as Administrator for the Estate of George Ndiritu Kariamburi - Deceased) v Ropkoi & another* [2004] KECA 65 (KLR), for the propositions that a claimant bears the burden of proving his case on a balance of probabilities and that failure to discharge that burden is fatal to the claim regardless of the weakness of the defence. She submitted that although the Appellant proved registration of parcel North Sakwa/Kanyamgony/1804, he did not prove that the 2nd Respondent's occupation fell within that specific parcel, particularly since he had purchased only a portion of the parent parcel, North Sakwa/Kanyamgony/75, which had subsequently been subdivided. Counsel pointed out that no survey report, mutation records, Registry Index Map or other objective evidence was produced to establish the location of the alleged encroachment. She cited *Kionga v Inspector General of Police & Another* [2023] KEELC 19971 (KLR) as an instance where a trespass claim failed for want of evidence linking the alleged encroachment to the specific parcel in issue. 18. On the distinction between ownership and possession, counsel relied on *Municipal Council of Eldoret v Titus Gatitu Njau* [2020] KECA 782 (KLR), which in turn cited *M'Kiriara M'Mukanya & another v Gilbert Kabeere M'Mbijiwe* [1984] KECA 21 (KLR) and *Winfield & Jolowicz on Tort*, for the proposition that trespass protected the right to possession, that this was distinct from ownership, and that a claimant must prove the unlawful intrusion of the defendant onto the specific land in issue. 19. On the appellate court's interference with a trial court's findings and exercise of discretion, counsel relied on *M'Kiriara M'Mukanya & another v Gilbert Kabeere M'Mbijiwe* [1984] KECA 21 (KLR) and *Mbogua Kiruga v Mugecha Kiruga & another* [1988] KECA 122 (KLR), for the settled position that an appellate court will not readily disturb findings of fact or discretion properly exercised, and that interference was warranted only where the trial court acted on no evidence, misapprehended the evidence, or proceeded on wrong principles. She submitted that the trial magistrate correctly identified the evidentiary gap as to the location and extent of the alleged encroachment, and properly declined to grant the drastic remedy of eviction in its absence. She urged that the appeal be dismissed with costs and the judgment of the subordinate court upheld. 20. No submissions were on record on behalf of the 1st Respondent. Issues for Determination 21. Having carefully considered the grounds of appeal

in the Memorandum of Appeal, the law, the rival submissions and the evidence on record, the grounds of appeal can be condensed to the following issues which arise for determination; i. What the duty of this Court as a first appellate court is and the circumstances in which it may interfere with the findings of the trial court; and ii. Whether the appeal is merited. iii. Who should bear the costs of the appeal.

Analysis and Determination

22. I begin the determination by considering the issues sequentially, as identified.
- i. The discretion of the court on a first appeal 23. This being a first appeal, the Court is under a duty to re-examine the evidence adduced at trial, evaluate it, and reach its own independent conclusions, bearing in mind that it neither saw nor heard the witnesses testify. This duty, and the caution that attends it, is settled by a long line of authority. 24. In *Selle & Another v Associated Motor Boat Co. Ltd* [1968] EA 123, the Court of Appeal for East Africa held, at page 126: “An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.” 25. In the case of *Kenya Ports Authority v Kustron (K) Ltd* [1997] KECA 96 (KLR) this Court stated as follows regarding the duty of first appellate court: “This being a first appeal to this Court, the duty of the court, is to reconsider the evidence, evaluate and draw its own conclusion though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect...” 26. As to interference with a trial court's exercise of discretion, the locus classicus is *Mbogo & Another v Shah* [1968] EA 93, where Sir Charles Newbold, P., held, at page 96: “...a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice.” 27. This Court will therefore re-evaluate the evidence and draw its own conclusions, while bearing in mind that it did not hear or observe the witnesses. It will interfere with the trial court's findings of fact only where the evidence demonstrates that the court acted on no evidence, misapprehended the evidence, or proceeded on wrong principles. As regards the exercise of discretion, interference is warranted where the trial court misdirected itself or arrived at a plainly wrong decision resulting in injustice. ii. The second issue for determination is whether the appeal is merited. In this regard this court sets to analyse the grounds in clusters of the grounds which are related to the specific issues.

- a. Ownership and title (grounds 2 and 3). 28. The validity of the Appellant's title was challenged by the defence. The Respondents alleged that it was a forgery. However, the Learned Trial Magistrate did not find the title forged, fraudulent, invalid or otherwise impeachable. On the contrary, she accepted the claim and evidence that the Appellant had established the sale agreement from which his claim arose. As noted below, regarding the basis of the trial magistrate accepting that position that the appellant proved the purchase and ownership of the 0.63 hectares this court wonders how that finding was right. This is in light of the discrepancies between the pleadings and evidence, particularly regarding the size of the land allegedly bought as against the one registered in favour of the Appellant. Not only that discrepancy but also the fact that the agreement was entered into in on 17 th August 1997 but the registration took place on 2 nd March 2026 absent of a mutation, transfer forms and other conveyance instruments was made. This event taking place about nineteen (19) years later, which is so many years after the end of the six years the law of limitation and contract provides for, makes the validity of the title in respect of parcel No. North Kanyamgony/1804 questionable. But since I have not been asked to declare it as such, I do not proceed to do so. The basis upon which the suit failed was therefore not that the Appellant lacked title to parcel North Sakwa/Kanyamgony/1804, but that he had not sufficiently established that the land occupied by the Respondents was comprised in that particular parcel. That was why she ordered for a survey report to confirm occupation. 29. The distinction is important because Section 26(1) of the Land Registration Act protects the registered proprietor's title from challenge except on the grounds stipulated therein. However, proof of registration does not, without more, establish every factual element necessary to sustain a claim for trespass. In *Municipal Council of Eldoret v Titus Gatitu Njau* [2020] KECA 782 (KLR), the Court of Appeal, citing *M’Kiriara M’Mukanya & another v Gilbert Kabeere M’Mbijiwe* [1984] KECA 21 (KLR), reiterated that trespass is a violation of the right to possession and that a plaintiff must establish the right to immediate and exclusive possession of the land in question, which is distinct from ownership. It held that; “ trespass is a violation of the right to possession and a plaintiff must prove that he has the right to immediate and exclusive possession of the land which is different from ownership (See *Thomson v Ward*, (1953) 2QB 153.” 30. The issue before the trial court was therefore not whether the Appellant was the registered proprietor of land parcel number North Sakwa/Kanyamgony/1804, but whether he had established that the Respondents had unlawfully entered upon or occupied that or the particular parcel of land in issue. His reliance on Section 26(1) of the Land Registration Act consequently did not answer the evidentiary question that determined the suit. The two grounds of appeal therefore do not address the actual basis upon which the trial court declined to grant the reliefs sought hence are not merited
- b. Whether the trial magistrate erred in dismissing the suit and failing to frame issues (well). 31. Regarding whether the trial court erred in dismissing the suit and failed to frame the issues before her well, I have considered the two grounds of appeal and the trial court record. I find that the trial court framed the issues she considered relevant and which went to the root of the contention between the parties. The court thereafter carefully analyzed the

issues framed. Thus, the trial court did not err as contended by the appellant. The two grounds of appeal fail.

- c. Trespass, admissions and framing of issues (grounds 1, 4, 5, 6 and 7). 32. The central question was not merely whether the Respondents occupied or had structures upon some portion of land associated with the late Oyoo Akumu. It was whether the portions occupied by them fell within the specific boundaries of parcel North Sakwa/Kanyamgony/1804 registered in the Appellant's name. The Appellant himself admitted in cross-examination that he had purchased only a portion of the parent parcel, North Sakwa/Kanyamgony/75, and that he had not produced a surveyor's report establishing that the portion occupied by the 2nd Respondent fell within parcel 1804. Further, he pleaded that he bought 0.63 ha. whereas gave evidence that he purchased 2 acres at a price of KShs 60,000/= per acre, totaling to KShs 120,000/=. It is worth noting that 0.63 ha is equivalent to 1.556 acres, which translates to a big discrepancy between his pleadings and the evidence. Further, it (the discrepancy) casts doubt as to whether the suit land was ever surveyed before the appellant got registered as owner of parcel No. North Sakwa/Kanyamgony/1804. This, in my view was a proper basis for the finding of the trial Court that the land ought to be surveyed in order to ascertain the extent and position of the 0.63 hectares owned by the appellant. 33. Again, the discrepancy as noted, and discussed above, and the period between when the alleged agreement was entered into and the registration of the appellant as owner, and lack of the mutation forms and transfer instruments, should have prompted the trial magistrate to interrogate the validity of the title, under Section 26 of the Land Registration Act. But since the Respondents did not file a cross appeal, this court limits itself to the issues raised by the appellant. 34. In any event, the parent parcel of land had subsequent to the purchase been subdivided. In those circumstances, the precise identification of the portion allegedly occupied by the Respondents was not a peripheral matter but went to the very foundation of the claim. There was no evidence tendered by the appellant that the specific portion of the suit land was ever surveyed before or after the sale and occupation to establish that, indeed, the part complained of was his or the one he bought and settled on, and comprised in the subject suit land. 35. The Appellant was obligated to establish that connection by cogent evidence. The evidence he should have adduced should have included a surveyor's report, mutation records, the Registry Index Map, evidence from the Land Registrar, or other reliable material capable of identifying the location and extent of the alleged encroachment. No such objective evidence was produced. The Appellant consequently established his registration as proprietor of a parcel of land known as parcel North Sakwa/Kanyamgony/1804, but did not sufficiently establish that the Respondents had trespassed upon it. In *Municipal Council of Eldoret v Titus Gatitu Njau* [2020] KECA 782 (KLR), the Court of Appeal emphasized that trespass concerns interference with possession of the particular land in issue. Ownership is relevant, but the claimant must still establish the factual basis of the alleged intrusion. 36. The Appellant also relied on the evidence of the 2nd Respondent and her witnesses as constituting admissions of trespass. I have considered the portions of the evidence relied upon. The two witnesses stated that Grace Awino, the 1st Respondent

was in occupation of the portion of land claimed to have been trespassed onto by the Respondents. But DW1 testified that the part of the land in issue was the one Grace was registered as owner, and not the appellant. This, in my humble view, did not establish the specific location of the suit land and the alleged trespass: the two witnesses were not experts in survey or possess the knowledge and ability of establishment of the location and extent of land. Even assuming that the 2nd Respondent admitted occupation of, or having structures upon, the land in question, such an admission did not, by itself, establish that the occupied portion was parcel North Sakwa/Kanyamgony/1804. An admission of occupation establishes occupation, it does not necessarily establish the identity or boundaries of the land occupied. The material fact which remained to be established was the location of that occupied portion in relation to the boundaries of the Appellant's registered parcel. That fact was not established by the alleged admissions. 37. The Appellant's reliance on the 1st Respondent's failure to adduce evidence does not alter the position. It was the appellant's obligation to discharge the burden of proof and not vice versa. Sections 107 and 108 of the Evidence Act place the legal burden upon the party who asserts the existence or nonexistence of facts upon which the relief sought is founded. In *Palace Investments Limited v Geoffrey Kariuki Mwenda & another* [2015] KECA 616 (KLR), the Court of Appeal reiterated that the burden of proof lies upon the party asserting the relevant facts and that the standard is proof on a balance of probabilities. The Court further observed that where the evidence is equally convincing on both sides, the party bearing the burden must fail because the requisite standard has not been attained. 38. Accordingly, the absence of a defence or evidence from the 1st Respondent did not relieve the Appellant of his obligation to establish the material facts constituting his cause of action. He was still required to prove that the portion allegedly occupied by the 1st Respondent was part of parcel North Sakwa/Kanyamgony/1804. In the absence of such evidence, her failure to participate in the proceedings could not, of itself, entitle the Appellant to judgment against her. The trial court therefore cannot be faulted for declining to infer and or find trespass merely from the absence of evidence on the part of the 1st Respondent.

- d. Reliefs sought, survey evidence and balance of probabilities (grounds 8, 9 and 10). 39. The reliefs sought by the Appellant were eviction and a permanent injunction. Such reliefs had to be founded upon proof of his entitlement to possession of the specific land from which eviction was sought and proof of unlawful occupation or interference by the Respondents. The Appellant's registration as proprietor of parcel North Sakwa/Kanyamgony/1804 established his proprietary interest in that parcel, but did not, without proof of the geographical nexus, establish that the Respondents' occupation or structures were situated thereon. 40. The evidentiary deficiency on his part was therefore not merely a question of the form of evidence adduced by him. It went to the substance of his claim. If the Court could not, on the evidence, determine that the portion of the parcel of land occupied by the Respondents was the same as that comprised in land parcel No. 1804, it could not properly issue an order evicting them from that parcel or permanently restraining them from dealing with it. 41. I am therefore unable to agree with the appellant that the Learned Trial

Magistrate acted on no evidence, misapprehended the material evidence, or proceeded upon a wrong principle of law. Her conclusion that the extent and location of the land allegedly occupied by the Respondents had not been sufficiently established was supported by the Appellant's own evidence and admissions. As stated in *Peters v Sunday Post Ltd* [1958] EA 424, although an appellate court has jurisdiction to review the evidence and reach its own conclusion, that jurisdiction must be exercised with caution and it is not enough that the appellate court might itself have reached a different conclusion. 42. I also find no error in the trial court's finding that it was of importance and objective for the appellant to adduce evidence capable of establishing the extent and location of the alleged encroachment. The trial court's reference to a surveyor was not, in my view, a determination that a surveyor's report is an indispensable requirement in every claim for trespass. Rather, it was a response to the particular evidentiary gap disclosed by the Appellant's own case. Whether the requisite connection could have been established through a surveyor's report, mutation records, Registry Index Map, evidence from the Land Registrar or other reliable evidence was ultimately a matter of proof. What was essential was that the Appellant does establish, on a balance of probabilities, that the Respondents had occupied or constructed upon parcel North Sakwa/Kanyamgony/1804. He did not do so. 43. Lastly, the rest of the grounds not necessarily singled out herein in the analysis merged into the others already considered, and they were not merited. In the circumstances, the Appellant did not discharge the burden of proving his claim to the required standard. The trial court was therefore entitled to decline the orders of eviction and permanent injunction. Consequently, all of the grounds fail.

Disposition

44. Having re-evaluated the evidence on record and considered the grounds of appeal, this Court finds no basis for interfering with the findings of the Learned Trial Magistrate. The appeal accordingly lacks merit. iii. Who to bear costs 45. On the issue of costs, Section 27(1) of the Civil Procedure Act provides that costs of and incidental to all suits shall follow the event unless the Court, for good reason, otherwise directs. The discretion must, however, be exercised judicially and upon reasonable grounds. In the present case, the 2nd Respondent has successfully defended the appeal, and I find no sufficient reason to depart from the general rule. As regards the 1st Respondent, who did not participate in the appeal, I would make no order as to costs as between her and the Appellant. 46. Accordingly, the Court makes the following orders: a. The appeal dated 28/8/2025 is hereby dismissed. The judgment of the trial court is upheld and while doing so, the Court substitutes the final disposition of the trial court with an order of dismissal of the suit. The rest of the findings and orders of trial court remain. b. There shall be no order as to costs as between the Appellant and the 1st Respondent. However, as for the 2nd Respondent she shall have the costs of this appeal. 47. It is so ordered. JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM THIS 16 TH DAY OF SEPTEMBER 2026. HON. DR. IUR NYAGAKA JUDGE In the presence of: Mr Ogutu Advocate for the Appellant (in open

court) M/s C. Juma holding brief for Mr. Ouma for the 2 nd Respondent (online) No
appearance for 1 st Respondent Ms. Lola, Court Assistant

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/keelc/2026/5435>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/onyango-v-awino-and-another-2026>

Prepared on 26 October 2026 · Esheria