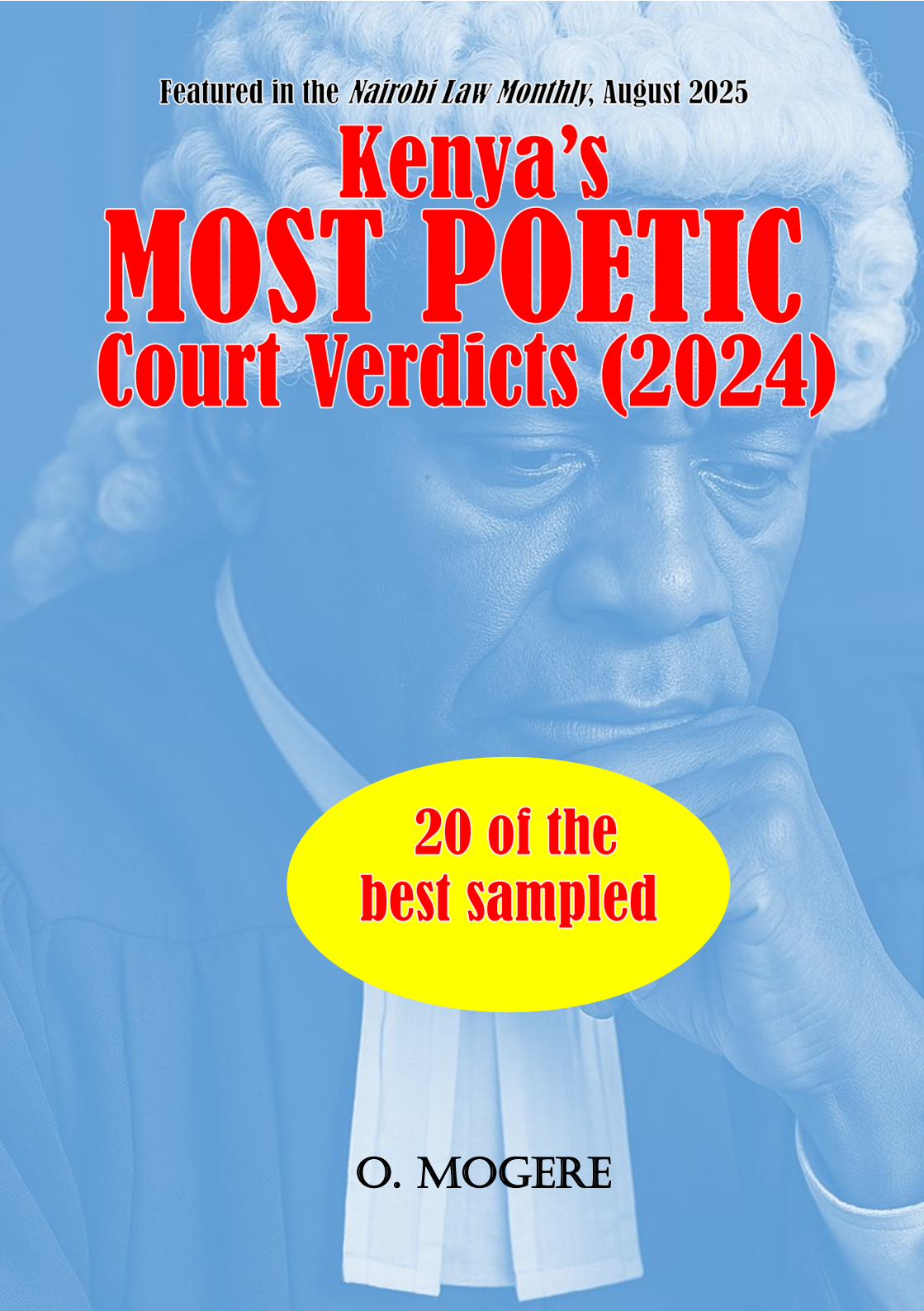




Featured in the *Nairobi Law Monthly*, August 2025

Kenya's **MOST POETIC** Court Verdicts (2024)

**20 of the
best sampled**

O. MOGERE

Kenya's Most Poetic Court Verdicts (2024)

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Introduction

The following is not at all a ranking of the various verdicts. All the 20 made the cut and have been enumerated for ease of following. Also, I won't claim that these were the only decisions issued in 2024 with some level of creativity. I know there were many others. Feel free to email me about them as I seek to fine-tune the methodology going forward.

I would have loved to reproduce the whole verdicts here, but the realities of printing meant it would have been a more expensive affair. The good news is that we are in the digital age where all you need can be summoned by your phone.

Have fun!

O. Mogere

May 2025

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No.1 of 20: 'This case is like two bald men fighting over a comb'



Justice Boaz Olao.

CREDIT: The Judiciary (Kenya)

Case number: Busia Environment & Land Case 6 of 2022, (formerly E11/2020 Kisumu)

In what court: Environment and Land Court

Verdict type: Judgement

Who was accusing: (1) Fredrick Barasa Ouma; (2) Sylvester John Omala; (3) Tuberius Odhiambo Malova, suing on behalf of Abachong'a Community

Who was defending: (1) Board of Management/Trustees Free Pentecostal Fellowship in Kenya; (2) Pastor Joseph Ogesa Wafula

Judge: Boaz Olao

Decision issue date: July 10, 2024

Summary of the case:

This was a dispute over the ownership of a parcel of land known as Bunyala/Mudembi/1859. The plaintiffs, Fredrick Barasa Ouma, Silvester John Omala, and Tuberius Odhiambo Malova, representing the Abachonga Community, filed a suit against the Board of Management of Free Pentecostal Fellowship in Kenya (FPFK) and Pastor Joseph Ogesa Wafula. They sought eviction of the defendants from the land, claiming it was community land reserved for the construction of Bujuanga Nursery School.

The plaintiffs argued that the land was preserved for educational purposes during the land adjudication exercise in 1985 and was registered in the name of the Principal Secretary to the National Treasury of Kenya on behalf of the Bujuanga Nursery School. They claimed that the defendants had trespassed on the land and erected a permanent meeting hall and an academic institution, Bujuanga Light Academy, without any legal right.

The defendants, on the other hand, denied the plaintiffs' claims and asserted that the FPFK was the bona fide owner of the land. They argued that the land had been in their possession since 1965 and that they had developed it extensively, including the construction of Bujuanga Light Academy and a church. They also presented documentary evidence to support their claim, including letters from the County Government of Busia and the assistant chief of Mudembi sub-location.

The court considered the evidence presented by both parties and

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the submissions by their respective counsels. The judge noted that the Green Card produced by the defendants showed that the land was first registered in the name of the then Busia County Council in 1985 and later in the name of the Principal Secretary to the National Treasury of Kenya in 2014. There was no evidence that the land was registered in trust for the Abachonga Community or any other community.

The court concluded that neither the plaintiffs nor the defendants could claim ownership of the land. The plaintiffs' claim that the land was community land was not supported by any documentary evidence, and the defendants' claim that they were the bona fide owners was also not substantiated. The court found that the land was held by the Principal Secretary to the National Treasury of Kenya on behalf of Bujuanga Nursery School and that the plaintiffs had no locus standi to file the suit.

The court dismissed the plaintiffs' suit and ordered them to bear the costs of the suit. The judge emphasised that the plaintiffs' claim to the land was fanciful and that they had no legal basis to seek the eviction of the defendants.

The paragraphs I find to be poetic are: Paragraph 1 & 2.

Paragraph 1:

If you have heard of two bald men fighting over a comb, this dispute is not too dissimilar.

Paragraph 2:

While the parties herein were busy brawling, huffing,

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puffing, punching, kicking and tearing at each other over the title deed of the land parcel No Bunyala/ Mudembi/1859 (the suit land), the real owner thereof and who is the Principal Secretary, Treasury, on behalf of the Bujuanga Nursery School must have been watching this comic relief with a lot of amusement. I must also confess that I enjoyed the drama as the litigants fought over nothing. It reminded me of National Geographic Wildlife videos where, as lions and other carnivores tear at each other following a successful hunt, the vultures circle in the sky above watching. Then at the right time, they pounce and fly away with the lions' meal. I think an appropriate name for this case, if I was to coin one, would be "The Case Of Much Ado About Nothing".

How I see it: The judge delivers punches where it matters as he seeks to illustrate that all this was just entertainment and not a legal duel in the real sense of the word. It would be interesting to see how the parties felt after being lectured in such fashion.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/5198/eng@2024-07-10>

Which can also be accessed by scanning this QR code...



No. 2 of 20: When judge used Juliani's chorus 'Niko Njaa' to say he would not entertain injustice



Justice Kizito Magare.

CREDIT: The Judiciary (Kenya)

Case number: Nairobi (Milimani Law Courts) Civil Appeal E100 of 2021

In what court: High Court

Verdict type: Judgement

Who was accusing: Mwananchi Credit Limited (Appellant)

Who was defending: (1) Peter Kamau Githua; (2) Elizabeth Wanjiku Warui (Respondents)

Judge: Kizito Magare

Decision issue date: June 11, 2024

Summary of the case: This is an appeal from an interlocutory ruling given by Senior Principal Magistrate D.W. Mburu on October 8,

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2021, related to an order of injunction against the appellant. The appellant, who was the defendant/respondent in a pending lower court matter, filed this appeal on November 5, 2021, raising several grounds. The appellant argued that the magistrate erred in law and fact by not recognising a valid chattel mortgage securing a loan of Kshs. 2.5 million advanced to the respondents. The appellant also contended that the magistrate wrongly ruled that the plaintiffs met the threshold for issuing an injunction as set out in the *Giella v Cassman Brown* (1973) EA 358 case, and failed to appreciate that a mandatory injunction should not be issued without proving the necessary ingredients. Additionally, the appellant claimed that the respondents had defaulted on the loan, crystallising their right to realise the security.

The court below had raised two issues: whether the chattel mortgage was registered and whether any money was due to the appellant. The lower court answered both issues negatively, doubting the registration of the chattel mortgage and questioning the money due.

The background of the case involves an application filed on April 29, 2021 for an injunction, arguing that motor vehicle Reg. KBR 833H was unlawfully attached and detained. The respondents sought to restrain Mwananchi Credit from selling motor vehicles Reg. Nos KBR 833H and KCG 002P, stating that all amounts due had been paid. The respondents claimed to have paid over Kshs. 3,057,522, but the lender attached motor vehicle Reg. No. KBR 833H, forcing them to pay Kshs. 233,233. The respondents further

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claimed that the appellant attached the vehicle while in transit and was claiming Kshs. 9,254,767.24. The respondents borrowed Kshs. 2,500,000 with the security of two motor vehicles, stating that Kshs. 5,259,154.97 was due and that they repossessed the vehicles.

The court issued an injunction pending the hearing of the suit, which has been pending since 2021 for this appeal. As this was a first appeal, the court was under a duty to re-evaluate and assess the evidence and make its own conclusions, keeping in mind that the trial court had the advantage of observing the witnesses' demeanour and hearing their evidence first-hand.

The court noted that injunctive orders are discretionary and cannot be impugned unless capricious and without any basis in law. The court found that the affidavits in response amounted to evidence, and the appellant's claim that the respondents could never redeem the loan was unfounded. The court emphasised that a non-registered mortgage is void for all purposes, and Mwananchi Credit was not entitled to repossession. The court concluded that the appeal was unmerited and dismissed it, awarding costs of Kshs. 291,000 to the respondents. The court also ordered the mandatory injunction to be effected forthwith, with the respondent to value the subject matter before release using AA Valuers and file the report in the lower court. The lower court matter was to be fixed for directions on hearing on June 27, 2024, with the matter to be concluded by July 1, 2025.

The paragraphs I find to be poetic are: 27, 43, 44.

Paragraph 27:

The statement from the Appellant shows that the Respondent can never redeem the loan. The money falls into a bottomless pit. This reminds me of the writings of William Shakespeare in *Merchant of Venice*, Act III, Scene 1.

"Shylock: There I have another bad match: a bankrupt, a prodigal, who dare scarce show his head on the Rialto; a beggar, that was used to come so smug upon the mart; let him look to his bond: he was wont to call me usurer; let him look to his bond: he was wont to lend money for a Christian courtesy; let him look to his bond.

Salarino: Why, I am sure, if he forfeit, thou wilt not take his flesh: what's that good for?"

Paragraph 43:

The case reminds of a song by Juliani;

Niko njaa hata siezi karanga

Hoehae shaghala baghala

Niko tayari (kulipa)

Kulipa gharama

(Sitasimama maovu yakitawala) x 2

Paragraph 44:

There is no court that will condone the acts perpetuated on the Respondents. The Appellant may have an explanation in full hearing. However, that explanation was not brought out in lengthy hyperbolic affidavits filed in the court below.

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How I see it: The judge pendulums with ease from Shakespeare to Juliani in a weighty matter relating to property and money. Give it to Justice Magare when it comes to throwing something from the art world into the legal one.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehcn/2024/7081/eng@2024-06-11>

Which can also be accessed by scanning this QR code...



No.3 of 20: 'Police wail like children when their day of death comes'



Dr Justice Fred Nyagaka.

CREDIT: The Judiciary (Kenya)

Case number: Kitale Environment & Land Case 26 of 2019

In what court: Environment and Land Court

Verdict type: Ruling

Who was accusing: Veronica Terigi Lukorito

Who was defending: Michael Bett Siror

Judge: Dr Fred Nyagaka

Decision issue date: November 28, 2024

Summary of the case: This is a ruling on an application by way of a Notice of Motion dated August 9, 2024. The applicant, who is the defendant in the case, sought the appointment of David Kipchumba Siror as Guardian ad Litem for Michael Bett Siror. The applica-

tion was based on the grounds that the defendant, due to old age and dementia, was mentally infirm and unable to protect his interests. The defendant was over 92 years old, and his son, David Kipchumba Siror, was willing and able to be appointed as Guardian ad Litem.

The application was supported by an affidavit from David Kipchumba Siror, which included a medical report and a copy of the defendant's identification card. The medical report indicated that the defendant was unable to protect his interests effectively due to his infirmity. The plaintiff, Veronica Terigi Lukorito, opposed the application through a replying affidavit, arguing that the medical report did not provide sufficient proof of the defendant's mental infirmity. She requested that the court conduct an inquiry and cross-examine the doctors who prepared the medical reports.

The court issued summons to Dr. Geoffrey Kibii and Dr. Chelagat Saina, who had prepared the medical reports. Dr. Kibii testified that he examined the defendant on June 6, 2024 and found that the defendant had psychotic symptoms, dementia, delusions, and paranoia. He concluded that the defendant could not defend his interests in the property due to his mental condition. Dr. Saina, a consultant psychologist, testified that she examined the defendant on June 12, 2024 and found that he suffered from dementia, memory loss, depression, and anxiety symptoms. She concluded that the defendant would need assistance from his family in decision-making.

The court considered the application, the law, and the evidence

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provided by the doctors. The court noted that Order 32 Rules 3 and 4 of the Civil Procedure Rules, which the applicant cited, were irrelevant as they applied to minors. However, Order 32 Rule 15 extended these provisions to persons adjudged to be of unsound mind or those found by the court to be incapable of protecting their interests due to mental infirmity. The court found that there was no need for a judicial inquiry into the defendant's mental state, as the evidence provided by the doctors was sufficient.

The court concluded that the defendant was of old age and had reached a stage where he had dementia, which diminished his ability to use his memory and protect his interests. The court found that the defendant required the assistance of a family member as Guardian ad Litem. The court allowed the application, with costs to the applicant, and ordered the defendant to amend the defence to reflect the orders granted. The suit was to be mentioned on December 9, 2024 to confirm compliance.

In the end, the court appointed David Kipchumba Siror as Guardian ad Litem for the defendant, recognising the defendant's mental infirmity and inability to protect his interests due to old age and dementia. The court emphasised the importance of ensuring that the defendant's interests were safeguarded and that no party took advantage of the other. The ruling highlighted the court's commitment to justice and fairness in protecting the interests of vulnerable individuals.

The paragraph I find to be poetic is: Paragraph 15, which reads:

This Court had occasion to listen to the arguments by learned counsel for the Plaintiff who insisted that the Defendant was capable of giving evidence and had no need of a guardian ad litem. It is a sad position taken by the Plaintiff. I wonder whether she would love to be treated the same way when, if God permits, she reaches the same age. It reminds me of this party who, last year but one in July or thereabouts, upon the adverse party applied for an order to give evidence *de bene esse* in their matter because he was old and sickly and wished to testify before anything would happen, insisted that the Court does not grant the orders. He contended that the sickly old man was not sick but pretending so that he could testify. This Court analyzed the condition of the old sickly witness and the medical evidence and granted the orders. It set a hearing date two weeks away. Sadly, before the two weeks would lapse, the party who insisted that the other does not give evidence *de bene esse* died, leaving the 'pretender'. The Plaintiff wants to act like some police who are often trigger-happy but when their time to leave this world and be ready for judgment day comes they wail like children in travail but it is too little too late. She wants to keep an old man of 92 years in the dock and shoot questions to hi[m] in his 'helpless' mental state and be happy to have won the suit, if she proves it to the required standard. This Court being one of justice shall balance the interest of all, including ensuring that if the Defendant is unable to protect his interests, one who is able to do so is brought in: no party to take advantage of the other. In life, tables can turn. Parties and all and sundry are reminded not to be in haste to be happy

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about one's misfortune.

How I see it: Through terse sentences, the judge tears into the accuser who insisted on continuing with the case against a 92-year-old with dementia and other challenges that had diminished his mental capabilities. He wonders whether she would like to be dragged to court if she is blessed to reach that age, and recalls a related case. It is a judicial tongue-lashing, if you ask me.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/13605/eng@2024-11-28>

Which can also be accessed by scanning this QR code...



No.4 of 20: 'Whoever defiles a child will tremble in the right place—prison'



Justice Francis Gikonyo.

CREDIT: The Judiciary (Kenya)

Case number: Kilgoris Criminal Appeal E017 of 2022

In what court: High Court

Verdict type: Judgement

Who was accusing: (1) Brian Otieno; (2) Brian Ochieng

Who was defending: Republic

Judge: Francis Gikonyo

Decision issue date: May 20, 2024

Summary of the case: This was an appeal from the conviction and sentence of Hon. M.I.G. Moranga (S.P.M) in Kilgoris SPMCR SOA Case No. E003 of 2022, delivered on November 11, 2022. The ap-

pellants were charged with the offence of gang defilement contrary to section 10 of the Sexual Offences Act No. 3 of 2006. The particulars were that on January 10, 2022, in Transmara South Sub-County within Narok County, the appellants, in association with each other, intentionally caused their penis to penetrate the vagina of EA, a child aged 16 years old. They faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006. The appellants were convicted of gang defilement and sentenced to 15 years imprisonment.

Dissatisfied with the conviction and sentence, the appellants filed an appeal on November 25, 2022, raising four grounds of appeal: the trial magistrate erred in finding that the prosecution had proved its case beyond reasonable doubt, finding sufficient proof of penetration, relying on uncorroborated evidence of the first prosecution witness, and disregarding the evidence in defence. The appeal was canvassed by way of written submissions.

The appellants argued that they were sentenced to a mandatory sentence without the exercise of discretion, making the sentence unconstitutional. They also contended that the 1st appellant was a minor at the time of the offence and should receive legal protection, while the other appellant was a young person of 22 years and should not be condemned to jail. They further argued that the prosecution did not call crucial witnesses, creating doubt in their case, and that medical evidence did not prove penetration.

The respondent submitted that the complainant's age was proved beyond reasonable doubt, with testimony from the complainant

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and her mother, and a birth certificate indicating she was 16 years old. The respondent also argued that the evidence tabled by the prosecution was cogent, with consistent identification of the appellants as the perpetrators. The complainant identified the appellants in her testimony, and the complainant's mother corroborated this identification. The respondent submitted that penetration was proved beyond reasonable doubt, with the complainant testifying that the appellants forcefully had intercourse with her in turns for the whole night. The clinical officer's findings also supported penetration.

The court re-evaluated the evidence afresh, considering the grounds of appeal, evidence adduced in the lower court, and the parties' submissions. The court identified two broad issues for determination: whether the prosecution proved its case beyond reasonable doubt and whether the sentence was unconstitutional or manifestly harsh and excessive.

The court found that the prosecution proved the elements of gang defilement, including the age of the complainant, penetration, and identification of the assailants. The complainant's age was confirmed by her testimony, her mother's testimony, and a birth certificate. Penetration was proved by the complainant's testimony and medical evidence. The identification of the appellants was consistent and corroborated by the complainant's mother.

The court also considered the appellants' defence, which claimed that they released the complainant unharmed and that the perforation of the hymen did not prove penetration. However, the court

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found that the prosecution's evidence was cogent and proved beyond reasonable doubt that the appellants defiled the complainant. The court rejected the appellants' defence and found their conviction safe.

Regarding the sentence, the court noted that the sentence prescribed in Section 10 of the Sexual Offences Act is imprisonment for a term not less than 15 years but may be enhanced to life imprisonment. The court found that the trial court considered the seriousness of the offence, time spent in custody, and the fact that the appellants were first offenders. The court emphasised the traumatic impact of gang defilement on the victim and the societal detestation of such offences. The court found no merit in the appeal and dismissed it, upholding the conviction and sentence.

In the end, the court found that the prosecution proved its case beyond reasonable doubt, and the trial court did not err in convicting the appellants for gang defilement. The sentence was found to be appropriate, considering the seriousness of the offence and the impact on the victim. The appeal was dismissed, and the conviction and sentence were upheld.

The paragraph I find to be poetic is: Paragraph 46, which reads:

Gang rape or gang defilement is only comparable to merciless devour of prey by a pack of vicious wolves, but, here, it is to satisfy their insatiable sexual desires. Just as the wolves leave in their wake complete devastation, gang rape or defilement leave complete devastation of the innocent girl with eternal defacement of their humanity and person. The

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beauty of a woman which is encapsulated in the pride, self-esteem, integrity, and honour of the person is destroyed by such sexual depravity. To say the least, their worth and innocence are irreparably damaged by this beastly act. Victims of gang rape or defilement are also left with deep and chronic trauma that will affect them psychologically, emotionally, and physically for the rest of their lives. These things must be said to dramatise what it means to rape or defile a woman. This court has stated before, and will state it again without fear of contradiction, that whomever admires and defiles the prohibited; a child; will tremble in the right place; the prison. No wonder the legislative intent which reflects the societal detestation of defilement excludes sexual offences from settlement through alternative dispute resolutions, traditional methods of dispute resolutions, plea bargaining, probation, community service orders et al.

How I see it: Likening gang rape to an attack by wolves, the judge illustrates why he has no iota of mercy for the rapists who appeared before him. He is incensed that they ruined the future of a 16-year-old and even contemplates increasing the sentence they got from 15 years each to life imprisonment (though he chooses to retain the 15 years given by a lower court). This is a judicial rant that would make anyone thinking of rape and defilement quake in their boots.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehcn/2024/5696/eng@2024-05-20>

Which can also be accessed by scanning this QR code...



No.5 of 20: 'If I were a poet, I would write poems about money from America'



Dr Justice Fred Nyagaka.

Case number: Kitale Environment & Land Case 104 of 2018

In what court: Environment and Land Court

Verdict type: Judgement

Who was accusing: Big Tree Farm Limited

Who was defending: (1) Mary Angola Rono; (2) Josia Masaja & 24 others

Judge: Dr Fred Nyagaka

Decision issue date: December 23, 2024

Summary of the case:

In this land ownership dispute, the Plaintiff, a Limited Liability Company, sued the Defendants over a parcel of land known as LR. No.

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8986, IR. No. 7098/15, measuring approximately 16.45 acres. The Plaintiff sought several reliefs, including a permanent injunction against the Defendants, a declaration of sole ownership, and an order of eviction.

The Plaintiff claimed ownership of the land, stating it was registered under certificate of incorporation No. CPR/2014/140356 and had been discharged from various financial institutions' charges on February 5, 2015. The Plaintiff argued that the Defendants had purchased parts of the land from unauthorised third parties, making the transactions void ab initio ². The Plaintiff also claimed exclusive occupation and use of the land, alleging that the Defendants had been invading the land since 2007 and had occupied parts of it.

The 1st Defendant, Mary Angola Rono, filed a defence and counterclaim, denying the Plaintiff's allegations and asserting a valid claim to five acres of the land, which she had purchased from the Plaintiff's agent, Gladys Wabuge, for Kshs. 850,000. She argued that the Plaintiff held the land in trust for her and that the transaction was not void. The 1st Defendant also claimed that she had been prevented from taking possession of the land and sought an order for the Plaintiff to transfer the five acres to her.

The 11th Defendant, Benard Nyabera Ondimu, also filed a defence and counterclaim, asserting a valid claim to seven acres of the land, which he had purchased from Geoffrey Kilwake Wabuge for Kshs. 950,000. He claimed that he had taken possession of only five acres and sought an order for the Plaintiff to transfer the seven acres to him.

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The 7th Defendant, Michael Munialo Mulongo, claimed three acres of the land, which he had purchased from Jeoffrey Kilwake Wabuge for Kshs. 450,000. He stated that he had taken possession of only one and a half acres and sought an order for the Plaintiff to transfer the three acres to him.

The 21st Defendant, Antony Sabwani, claimed four acres of the land, which he had purchased from Jeoffrey Kilwake Wabuge for Kshs. 652,000. He stated that he had taken possession of only one and a half acres and sought an order for the Plaintiff to transfer the four acres to him.

The 24th Defendant, Mayani Orina, claimed two acres of the land, which he had purchased on behalf of Teresa Nyarinda Matura from Jeoffrey Kilwake Wabuge for Kshs. 340,000. He stated that he was only a caretaker on the land and sought the dismissal of the Plaintiff's suit.

The court considered several issues, including the effect of the Plaintiff's failure to file a Defence to the Counterclaims, the effect of failure to serve summons to enter appearance, and the validity of the agreements entered into by the Defendants. The court found that the Plaintiff's failure to file a Defence to the Counterclaims meant that the Defendants were entitled to proceed on their counterclaims by way of formal proof. The court also found that the Plaintiff's failure to serve summons to enter appearance on several Defendants meant that the suit against those Defendants should be dismissed.

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Regarding the validity of the agreements, the court found that the Plaintiff was incorporated in 2014 and the land was transferred to it in 2015. The court held that the agreements entered into before the Plaintiff's incorporation were not void, as the land was not owned by the Plaintiff at the time. The court also found that the doctrines of proprietary estoppel and constructive trust applied, as the Defendants had been put into possession of the land.

The court concluded that the Plaintiff's claim was barred by the limitation period and that the Defendants had proved their counterclaims to the required standard. The court ordered the Plaintiff to transfer the respective portions of land to the Defendants who had been put into possession and to refund the 1st Defendant her money with interest. The court also awarded costs to the Defendants whose counterclaims succeeded.

The paragraphs I find to be poetic are: Paragraph 1 & 2.

Paragraph 1:

If I were a poet, I would write poems about money from America. But I am not one! This money from America flows easily in many hands in Africa, Kenya in particular. No wonder it has caused many a heartache, as I often see on television and social media about many relatives and friends of many who reside in America, have sent sums of money for investment back home (in Kenya) but in the end it has turned out to be the cause of wailing and mourning. "America money" you are doing us great and yet giving pain!

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Paragraph 2:

The facts of what is alleged to have taken place in relation to the transactions that brought some of the Defendants who testified in this matter about how they miserably attempted to or obtained interest in land in the suit land is like a movie from Hollywood. No wonder one of the Defendants stated how money from America was sent to her account and she withdrew it immediately to pay for land on which maize was planted then and she was promised to take possession thereof after harvest only for it to turn out to be belonging to someone else after the harvest.

How I see it: The judge begins his lengthy verdict, 106 paragraphs long, with a panoramic view of the scenario where people in the United States remit money to those in Kenya.

He wishes he were a poet to jot some lines about those remittances. However, if you read Justice Nyagaka's verdicts with a fine-tooth comb, you will discover a poet between those lines.

Safe to say the judicial ecosystem makes him think he's not a poet whereas he is a W.B. Yeats in robes and with a gravel.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/14155/eng@2024-12-23>

Which can also be accessed by scanning this QR code...



No.6 of 20: 'Even the Bible requires a good man to leave some inheritance'



Justice Anne Omollo.

CREDIT: The Judiciary (Kenya)

Case number: Nairobi Environment & Land Petition E019 of 2024

In what court: Environment and Land Court

Verdict type: Ruling

Who was accusing: (1) Jerotich Seii; (2) Njomo Kamau; (3) Maureen Mugure; (4) Florence Ilovi; (5) Margaret Kamau; (6) Charles Kigotho; (7) Atieno Ocholla; (8) Eunice Nyawira; (9) Margaret Orai; (10) Janet Mawiyoo; (11) Brownhill Management Limited

Who was defending: (1) Nairobi County Government; (2) Patrick Analo Akivaga; (3) Stephen Gathuita Mwangi; (4) Tom Achar; (5) Geoffrey Muturi Murumia; (6) National Environment Management

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Authority; (7) Mamo B Mamo; (8) Catherine Thaithi; (9) Blissful Residence Investment Limited

Judge: Anne Omollo

Decision issue date: September 16, 2024

Summary of the case:

This was a ruling on a Notice of Motion dated June 13, 2024, brought under various provisions of the Constitution of Kenya Practice & Procedure Rules 2013, EMCA, and the Environment & Land Court Act. The Petitioners/Applicants sought several orders, including conservatory orders to stop further development and construction activities on the property known as Nairobi/Block 17/392 in Kilimani Area, Nairobi, pending the hearing and determination of the Petition.

The application was supported by grounds that the Applicants are owners/occupiers/residents of properties near the subject property, and the 9th Respondent had commenced development by felling trees and demolishing buildings without obtaining necessary approvals. The Applicants argued that the development would cause environmental damage and was in violation of various legal provisions. They also claimed that the 9th Respondent was continuing with the construction of 18-storey residential apartments, which was not permitted under the current development control policy.

Jerotich Seii, in her affidavit, stated that her property is opposite the subject property and that the area falls under Zone 4 of the 1st Respondent's by-laws on land use and planning. She claimed that

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the construction started on May 27, 2024 and that the felling of trees had affected the environment. The Applicants argued that the development activities were in breach of Article 42 of the Constitution, Section 3 of EMCA, and Section 57 of the Physical Land Use and Planning Act. They sought conservatory orders to prevent further environmental damage.

In opposition, the 9th Respondent filed a replying affidavit, arguing that the 1st Petitioner had no right to claim against them as she owned no property adjacent to the subject property. The 9th Respondent claimed to have obtained all necessary approvals and argued that the subject property was not a historical site. They asserted their right to utilise the property in line with land use ordinances and stated that the license for cutting trees was conditional on replanting. The 9th Respondent also argued that the Applicants' claims were speculative and that no loss or damage had been suffered.

The 6th to 8th Respondents filed a preliminary objection, arguing that the Petitioners should have first approached the National Environment Tribunal (NET) to challenge the EIA licence. They claimed that the Petition violated provisions of the Fair Administrative Actions Act and was an abuse of the court process. The 1st to 5th Respondents filed a replying affidavit, stating that the 9th Respondent had followed all required procedures for change of user and development approvals. They argued that the application lacked merit as all due procedures were followed.

The court considered the issues raised and framed three questions

for determination: whether the Petitioners had locus to bring the application, whether the court had jurisdiction, and whether the application was merited. On the question of locus, the court found that both the Constitution and EMCA allowed any person to bring a claim where the environment was likely to be damaged. The court rejected the argument of lack of locus and found it without merit.

Regarding jurisdiction, the court found that the issues raised in the Petition could not be determined by the NET and that the court had jurisdiction to hear the matter. On the merit of the application, the court found that the Applicants had raised several issues with the development approvals given to the 9th Respondent. The court noted that the Applicants had shown a *prima facie* case with a probability of success.

The court concluded that the balance of convenience tilted in allowing the application in terms of prayer 4 of the motion but with a variation that the 9th Respondent's development activities should not go beyond 4-level floors pending the hearing and determination of the Petition. The court ordered the parties to fast-track the hearing and determination of the Petition.

The paragraph I find to be poetic is: Paragraph 22, which reads:

Thus, both the Constitution and Statute allows any person to bring a claim where the environment is likely to be damaged. Trees have no mouth to speak for themselves but they have rights to be protected. The present generation must also stand in the gap for the future. Even the Bible in the book of Proverbs 13:22 requires a good man to leave some inheritance

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for our children's children (our futures) who currently have no one to speak for them. The issues of environmental rights are thus not specific in certain instances and so I find the argument of lack of locus in bringing environmental claims as rusty and without merit. In any event, the 9th Respondent's objection touches on the 1st and 11th Petitioners and said nothing about the locus of the remaining 9 Petitioners.

How I see it: In just one paragraph, the judge deploys various literary devices that range from allusion to metaphors. She is citing the Biblical book of Proverbs and then, shortly afterwards, we find her describing an argument as rusty. All that in an effort to speak for the environment. She deserves his flowers (and trees), this judge.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/5998/eng@2024-09-16>

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No.7 of 20: 'This made me recall a poem I read last week'



Justice Kizito Magare.

Case number: Kisii Civil Appeal 85 of 2022

In what court: High Court

Verdict type: Judgement

Who was accusing: (1) Chared Nyakundi Kamau; (2) Pacifica Kwamboka Kamau

Who was defending: Ruth Kwamboka Mauti

Judge: Kizito Magare

Decision issue date: February 26, 2024

Summary of the case:

This was an appeal filed by the Appellant against the decision of Hon Sindani. The appeal was based on several grounds, including errors in law and fact by the trial magistrate, failure to consider specific sections of the Law of Succession Act, and allowing the ap-

plicant for citation without clear identification. The Appellant argued that the Respondent was a stranger who had intermeddled with the property of the deceased with the assistance of the Assistant County Commissioner, contrary to the Law of Succession Act.

Justice Ogola's words in the case of *Captain J.N. Wafubwa v Housing Finance Co. of Kenya* (2012) eKLR were recalled, highlighting the predatory nature of banks in Kenya and questioning whether banks are truly serving Kenyans. The case at hand was not about a windfall but about ensuring that a watchman does her work. The Appellant's appeal was criticised for being full of hyperbole, conjecture, and legal phrases strewn all over, lacking any issue of law or fact.

The appeal, the judge said, did not attack the decision made. He thus deemed it purposeless. Appeals are governed by Order 42 rule 1 of the Civil Procedure Rules, which requires a memorandum of appeal to set forth concisely the grounds of objection to the decree or order appealed against. The Court of Appeal has repeatedly emphasised the importance of drafting memoranda of appeal in strict compliance with the rules, avoiding verbosity and repetition.

The grounds raised in the appeal were considered ancillary, repetitive, and a waste of judicial time, with no single question raised for the court to deal with. As a first appeal, the court said, it was under a duty to re-evaluate and assess the evidence and make its own conclusions, keeping in mind that the trial court had the advantage of observing the witnesses' demeanour and hearing their evidence first-hand. The court, the judge said, would not interfere with the

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exercise of judicial discretion by an inferior court unless it is satisfied that the decision is clearly wrong.

The court explained that the duty of the first appellate court was settled in the case of *Selle and another v Associated Motor Board Company and others* (1968) EA 123, where the court held that it is not bound to accept the findings of fact by the court below if it appears that the trial court failed to take account of particular circumstances or probabilities. The judge noted that the court must bear in mind that it had neither seen nor heard the witnesses, but documents still speak for themselves. The judge added that the trial court and the appellate court will construct documents in a similar manner, as there are no witnesses required to know the content of a document.

The appellants argued that the Respondent was intermeddling with the estate and not taking letters of administration. The appeal, however, was deemed hopeless, with the Appellant's submissions being unintelligible and a waste of judicial time. The respondent submitted to the court that the appeal was academic as there was a succession cause filed before that appeal.

On the suitability of the response, the court found that the Respondent, as a daughter-in-law, has a right to petition whether or not her husband is alive.

In the end, the appeal was dismissed for being baseless and unmerited, with costs awarded to the Respondent. The judge made reference to the Supreme Court's guiding principles on the award

of costs emphasise that costs follow the event, but the ultimate factor is the judicial discretion of the court. The court found that the appellants do not deserve the mercy of the court, and thus costs of Kshs 120,000 were awarded to the Respondent.

The paragraph I find to be poetic is: Paragraph 6, which reads:

This Appeal slipped through. It should have been summarily rejected. The grounds do not raise any issue of law or fact. They are full of hyperbole, conjecture, innuendo, and a hodgepodge of rules and legal phrases strewn all over. When reading the grounds of Appeal, I recalled, a poem I read last week by Rupri Kaur which stated as doth;

"I think about the way my father pulled the family out of poverty coz no matter what this baby was coming.

A father worried about jobs and rentone swollen belly with a baby inside.one mother tongue that was broken now,

Two university degrees that meant nothing,

No family no friends, just man and wife,

Nwith hopes that left the bitter taste of rejection in their mouth.

A discombobulated couple that landed in the new world without being able to construct a perfect sentence in English my mother raised 4 children without knowing what a vowel was."

How I see it: Justice Magare herein shows his love for all things literary when he cites a poem he had read just a few days before.

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He uses the poem as the base from which he attacks the “hopelessness” of the appeal filed before him. He just fell short of using “hot air”, though I think he might have used more stinging terms. Take the example of paragraph 10 where he writes: “The grounds raised are ancillary, repetitive, propitious, and a waste of judicial time.” What on earth is ‘propitious’?

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/1835/eng@2024-02-26>

Which can also be accessed by scanning this QR code...



No.8 of 20: 'This reminds me of the Bible verse that all is vanity'



Justice Kizito Magare.

Case number: Nyeri Civil Appeal E039 of 2023

In what court: High Court

Verdict type: Judgement

Who was accusing: Charity Njoki Kinyua

Who was defending: (1) Ann Wambui Muriuki; (2) Zipporah Njoki Gakungu; (3) Mary Wambui Muraya, suing as Joy Mothers Women Group

Judge: Kizito Magare

Decision issue date: July 18, 2024

Summary of the case:

This was an appeal from the judgment of Hon. E. Kanyiri in Karatina PMCC 84 of 2020, where the appellant was a defendant in a claim for money had and received. The court entered judgment for the

respondents against the appellant for a sum of Kshs. 132,000, along with costs and interest from the date of filing. The appellant raised several grounds of appeal, arguing that the trial magistrate erred in law and fact by failing to consider the entirety of the record and evidence adduced, and by misleading herself into a wrong judgment.

The appellant's submissions included letters and a demand notice, which she claimed the court did not consider. She argued that off-setting the loan from her savings was a serious issue that was not addressed, and that the loan was issued as per an unapproved group constitution. The respondent, on the other hand, submitted that the only issue was the amount payable, and that the appellant had agreed to pay interest on the money received. The respondent filed suit claiming a refund of Kshs. 132,000, which the appellant failed to pay.

The court found that the appellant admitted to receiving the money and owing the debt, but did not provide evidence of repayment. The court emphasised that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings must be disregarded. The court also noted that it is not the business of the court to rewrite contracts between parties, and that the appellant's defence was a sham.

The appeal was dismissed for being baseless, with costs awarded to the respondent. The court reiterated the importance of pleadings in ensuring that each side is fully aware of the questions likely to be raised, and that evidence must be in consonance with the plead-

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ings. The court also highlighted the duty of the debtor to show that the debt has been paid.

In conclusion, the appeal was dismissed for lacking merit, and the appellant was ordered to pay costs of Kshs. 55,000 to the respondents.

The paragraph I find to be poetic is: The first paragraph, which reads:

This is an appeal from the Judgment of Hon. E. Kanyiri and decree given by Hon. E. Kanyiri in Karatina PMCC 84 of 2020. The Appellant was a defendant in a claim for money had and received. The Appeal reminds me of holy writs which posit that:

"I have seen all the works which have been done under the sun, and behold, all is vanity and striving after wind."

How I see it: Again, this is Justice Kizito Magare doing Kizito Magare things. At this rate, we have to demand a novel or at least a poetry book from this judge.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehcc/2024/9231/eng@2024-07-18>

Which can also be accessed by scanning this QR code...



No.9 of 20: When Shakespeare was cited in a marine dispute



Justice Kizito Magare.

Case number: Mombasa Admiralty Cause E003 of 2021

In what court: High Court

Verdict type: Judgement

Who was accusing: ET Timbers PTE Limited

Who was defending: Defang Shipping Company Limited. (With Kenya Ports Authority as the interested party.)

Judge: Kizito Magare

Decision issue date: May 24, 2024

Summary of the case:

This high-octane litigation revolved around the MV Dolphin Star, a ship arrested in April 2021 and anchored at Mtongwe for over three years, posing environmental hazards. The claimant filed an admiralty claim in rem on April 4, 2021, seeking various reliefs, in-

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cluding \$2,601,294.02, damages, cargo shut-out charges, brokerage commission, interest, and costs. The defendant opposed the claim, arguing that the ship's owner was Starryway Trading & Shipping Company Ltd and that the contract required arbitration in London. They also denied the existence of a contract between the claimant and defendant and claimed collusion with the Ministry of Justice of Liberia.

The court dismissed the claim for want of prosecution, but it was later reinstated with conditions. The defendant filed an admiralty cause, claiming ownership of the MV Dolphin Star and accusing ET Timbers PTE Limited of causing the vessel's arrest. The Kenya Ports Authority (KPA) also filed a suit seeking \$166,293.99 for care and provisions for the ship's crew and removal of the vessel. The court directed that the claims be heard together.

The claimant's witnesses testified that they paid Starryway Trading & Shipping Company Ltd as the defendant's agent and that there was a binding contract. The defendant's witness denied knowledge of the directors and refused to produce documents. The court noted that the defendant was playing games and deliberately failed to produce documents.

The court found that the claimant's case was substantially proved, with evidence from the ship itself. The claimant sought \$2,601,294.02, but the court found that \$2,118,262.21 was proved, including the cost of logs, freight, brokerage commission, and shut-out fees. The court also found that the defendant was the owner of the ship and that the time charter was irrelevant.

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The court addressed the issue of jurisdiction, noting that the High Court of Kenya exercises admiralty jurisdiction in the same manner as the High Court in England. The court found that it had jurisdiction over the ship and the parties. The court also addressed the issue of arbitration, noting that the right to arbitration is not absolute and that the existence of the underlying contract was denied by the defendant.

The court concluded that the owners of the ship were in breach of the contract of carriage and failed to deliver the cargo to its destination. The court ordered the ship to be appraised and sold to recover the amounts awarded, costs, taxes, and other charges. The court also allowed KPA's claim for \$166,293.60, with costs. The suit filed by Defang Shipping Company Limited was dismissed with costs. The court lifted the warrant of arrest against the timber and ordered the ship to be moved to shore.

The paragraphs I find to be poetic are: Paragraphs 3 and 4.

Paragraph 3:

The dispute reminds of Shylock's remarks in reference to his adversary, Antonio in Act 1 Scene 3 of William Shakespeare's, *The Merchant of Venice* as follows:

"Ho, no, no, no, no! My meaning in saying he is a good man is to have you understand me that he is sufficient. Yet his means are in supposition: he hath an argosy bound to Tripolis, another to the Indies. I understand, moreover, upon the Rialto, he hath a third at Mexico, a fourth for England, and other ven-

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tures he hath squandered abroad. But ships are but boards, sailors but men; there be land rats and water rats, water thieves and land thieves—I mean pirates—and then there is the peril of waters, winds, and rocks. The man is, notwithstanding, sufficient. Three thousand ducats. I think I may take his bond.”

Paragraph 4:

It is unfathomable that when a ship, worth billions of yuan, is being wasted away after being arrested, the parties do not seem to care about the consequences. The parties, to the contrary, appeared interested in the dispute itself regardless of the rewards that lie concomitant with the determination of the dispute.

How I see it: Before this starts to read like a Justice Kizito Magare worship book, just look at the way he brings in Shakespeare in a marine case. A reference of a ship in Shakespeare’s book is linked with the one that was anchored in Mtongwe and raised a great deal of controversy over spillage and failure to deliver cargo.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/6270/eng@2024-05-24>

Which can also be accessed by scanning this QR code...



No.10 of 20: 'Anger lodges in the heart of fools'



Justice Kizito Magare.

Case number: Nyeri Criminal Appeal E039 of 2023

In what court: High Court

Verdict type: Judgement

Who was accusing: Davis Kiprono Too

Who was defending: Republic

Judge: Kizito Magare

Decision issue date: December 20, 2024

Summary of the case:

The judge was determining an appeal from the conviction and sentence meted out by Hon. F. Muguongo (Principal Magistrate) in Karatina CMCR No. 1649 of 2019, delivered on June 8, 2023. The appellant was tried and found guilty of arson and sentenced to a fine of Ksh. 3,000,000, in default of which he would serve seven years imprisonment.

The appellant had been charged with the offence of arson contrary to section 332(a) of the Penal Code. The particulars were that on September 22, 2019, at about 3 am, at Thuguma Police Post in Nyeri town, the appellant wilfully and unlawfully set fire to a building, namely a police post, valued at approximately Ksh. 2,850,000, belonging to the National Police Service. The court indicated concern over the catastrophic effect the fire had on the people in the building.

After the plea was taken, the matter proceeded to a full hearing. Five witnesses testified for the prosecution, and the appellant testified and gave sworn evidence. The court analysed the evidence and found the appellant guilty. The appellant was aggrieved and filed a Memorandum of Appeal, raising 13 grounds, which essentially boiled down to three issues: whether the court erred in finding the appellant guilty against the weight of evidence, whether the court erred in disregarding the defence, and whether the conviction and sentence were without sufficient proof.

The evidence presented included testimonies from Corporal Kennedy Agiza, PC Andrew Kipkoech Limo, PCW Rose Ekai, Scola Alila Ekamasi, and PC Josephine Asimit. Corporal Kennedy Agiza testified that he heard unusual noise outside Thuguma Police Post and saw fire from inside the home of PCW Rose Ekai. PC Andrew Kipkoech Limo testified that he saw fire coming from the house of PCW Rose Ekai and that the appellant was present during the fire incident. PCW Rose Ekai testified that the appellant was her ex-boyfriend and that they had an altercation on the night of the fire. Scola Alila

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Ekamasi testified that the appellant called her and inquired about the whereabouts of PCW Rose Ekai. PC Josephine Asimit testified that she was the investigating officer and handed a matchbox recovered from the appellant's pocket.

The appellant testified that he was a marketing manager of a multinational company and was in Nyeri at the invitation of PCW Rose Ekai. He stated that he woke up to find the house on fire and rescued the children. On cross-examination, he denied setting the house on fire and stated that it was only the children and himself in the house at the time of the fire.

The appellant filed submissions arguing that the respondent did not prove the four ingredients of the offence of arson: proof of ownership of a building or structure, proof that the building or structure was set on fire, proof of the assailant, and proof that the assailant set the building or structure on fire without any lawful justification. The appellant also argued that the evidence did not meet the conditions for the application of circumstantial evidence. On the sentence, the appellant submitted that the trial court applied wrong principles and gave an unfair sentence.

The court re-evaluated the evidence and found that the prosecution proved its case to the required standards. The court found that the circumstantial evidence irresistibly pointed to the appellant and no other person. The court dismissed the appeal on conviction and found the sentence of seven years imprisonment lawful.

It brushed off the appeal on conviction and sentence, except for

the fine of Ksh. 3,000,000, which it declared unlawful.

The paragraphs I find to be poetic are: Paragraphs 71 and 72.

Paragraph 71:

Instead of the Appellant quenching the fire of love through getting new love, he refused to cover his nakedness and pass out of love's threshing floor.

As stated in Prophet (Knopf, 1923), referred by Justice Kiage JA above, the field of love is not for the selfish or the fired up for the sake of love.

The poem in its penultimate paragraphs posits:

Then it is better for you that you cover your nakedness and pass out of love's threshing-floor, Into the seasonless world where you shall laugh, but not all of your laughter, and weep, but not all of your tears.

Love gives naught but itself and takes naught but from itself.

Love possesses not nor would it be possessed;

For love is sufficient unto love.

Paragraph 72:

If a party is unable to handle love, it does not pay to be haughty with anger. Holy Scripture states that a man of wrath stirs up strife, and one given to anger causes much transgression. It advises that we should not be quick to become angry, for anger lodges in the heart of fools. The actions that the Appellant took in a fit of anger, will keep him behind bars for 7 years.

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How I see it: Well, how do you judge a man who burnt a building in a police post in a fit of anger? The man had gone to visit his ex, a police officer, and was enraged that she seemed cosy with someone else. So, as she was on an outing that night, he set her house on fire at around 3.30am — after getting the children out. I read the judgement as Justice Magare's way of telling the convict the phrase we are so familiar with in the streets: "Ukiachwa, achika." The judge wrote in the 70th paragraph: "The lesson learnt is that the wounds of love find scant balm in the courts of law." Of the fire that burnt six houses at the police post, the judge wrote in paragraph 40: "The fire started in the house of PW3 while she was on a night of carousal and merriment." Okay, before I go into another Justice Magare worship episode, would you please agree with me that the good judge's turn of phrase is something special?

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/16052/eng@2024-12-20>

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No.11 of 20: 'I am not persuaded by the Applicant's alleged Damascus moment'



Justice David Kemei.

CREDIT: The Judiciary (Kenya)

Case number: Siaya Miscellaneous Criminal Application E103 of 2024

In what court: High Court

Verdict type: Ruling

Who was accusing: George Onywera Akeno

Who was defending: Republic

Judge: David Kemei

Decision issue date: December 20, 2024

Summary of the case:

This was a ruling on an application filed by George Onywera Akeno, seeking a review of his sentence. The application, dated August 28,

2024, requested a reduction of his sentence or the option to pay a fine. Akeno was convicted in Madiany SRMC Cr. E023/2024 for assault causing bodily harm, contrary to Section 251 of the Penal Code, and sentenced to five years imprisonment. He argued that the trial magistrate did not provide an option for a fine, and he did not intend to appeal the conviction. Akeno claimed to have learnt his lesson and expressed remorse, emphasising the need to reconcile with his biological daughter, the complainant. Before court, he also highlighted his role as the sole breadwinner for his family, stating that his incarceration was causing social and economic challenges, including his daughter's inability to join the Kenya Medical Training College. Akeno asserted that the court had the power under Article 165 (3) of the Constitution to grant the orders sought.

The application was presented through both written and oral submissions. Akeno filed written submissions, while the counsel for the Respondent, Miss Mumu, presented oral submissions. Akeno's submissions reiterated the grounds in support of the application. Miss Mumu opposed the application, arguing that the sentence was commensurate with the offence committed. She emphasised that the trial magistrate considered the manner in which Akeno assaulted his daughter, who had been subjected to domestic violence in the absence of her mother. Miss Mumu also noted that there were several instances of assault by Akeno, which were reported to the area chief. She argued that Akeno should continue serving his sentence.

The court considered the application for revision of the sentence

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and the submissions tendered. It was noted that Akeno was not challenging the trial court's conviction and sentence and had not lodged an appeal. The court found that the application was straightforward, seeking only a revision of the sentence. The primary issue for determination was whether the application had merit.

The lower court's record indicated that Akeno was convicted on his own plea of guilty for assault causing actual bodily harm. Before sentencing, the trial court called for a presentence report, dated July 17, 2024. The report revealed that Akeno had been cruel to his eldest daughter due to perceived issues between him and her mother, who had separated from him. The report said that at one instance, Akeno tied the complainant to his motorcycle and dragged her along the road, later dousing her with petrol with the intention to burn her. The complainant was rescued and taken to a children rescue centre, where she received refuge and an opportunity to pursue her education. The trial court sentenced Akeno to five years imprisonment as provided under Section 251 of the Penal Code.

The court found that Akeno's actions towards his daughter were extremely cruel and unimaginable. One of the worst was tying her to a stone, extending the rope to his motorcycle, and dragging her along the road to the river, treating her like a gunny bag. To make matters worse, he doused her with petrol, intending to set her ablaze. The complainant was rescued by members of the public. The court noted that the complainant had endured numerous beatings from Akeno before the incident. With her mother separat-

ed from Akeno, the complainant had no one to protect her and had to endure harassment from her stepmother, step-siblings, and Akeno. The court was not convinced by Akeno's claim of remorse, as he had shown extreme cruelty towards his daughter just a few months prior. The court found Akeno's claim that he intended to enrol the complainant in college to be too little, too late, as she had already been assisted by well-wishers. The court questioned Akeno's sincerity.

Regarding the sentence imposed, the court found it neither harsh nor excessive. The trial court, the judge said, exercised its discretion, considering Akeno's mitigation and the pre-sentence report. The trial court did not consider any irrelevant factors that would warrant interference by the court.

In conclusion, the court found that Akeno's application for revision of the sentence lacked merit and dismissed it. Akeno was ordered to continue serving his sentence to completion.

The paragraph I find to be poetic is: Paragraph 8, which reads:

Looking at the circumstances of the Applicant as compared to those of the complainant, I find that the Applicant was too cruel to his own daughter. What the Applicant did to his daughter was unimaginable. He is reported to have tied her on a stone and extended the rope onto his motorcycle and then he rode the motorcycle as he dragged the victim along the road to the river as if the victim was some form of a gunny bag. The Applicant who appeared depraved went ahead to douse the girl with petrol in-

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tending to set her ablaze. The complainant was rescued by members of the public. Indeed, it transpired that the complainant has in the past underwent a lot of beatings from the Applicant prior to the incident herein. Apparently, the mother of the complainant had separated with the Applicant and thus the complainant had no one to protect her and had to persevere the harassment from her stepmother, step siblings and the Applicant. The Applicant was expected to protect her but instead turned into a monster. I am not persuaded by the Applicant's alleged Damascus moment when he now claims to care for his daughter yet a few months ago she survived death by the skin of her teeth thanks to the cruelty of the Applicant herein. It is clear that the Applicant's claim that he intends to enrol the complainant in college is rather too little too late since she has already been assisted by well-wishers. The Applicant's bonafides are rather suspect.

How I see it: The literary power of this decision lies in the judge's scathing remarks as he explains why the convict, obedient though he seems, does not deserve forgiveness. But which other way can you treat a person who ties up his daughter on a motorbike and drags her on the road after tying her on a rope? How do you handle someone who has attempted to burn his daughter? The term "monster" is an apt description. Perhaps he deserved more than five years in jail?

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehcn/2024/16350/eng@2024-12-20>

Which can also be accessed by scanning this QR code...



No.12 of 20: He lied to the court that his sister had died...then she walked in to testify



Dr Justice Fred Nyagaka.

Case number: Kitale Environment & Land Case 81 of 2016

In what court: Environment and Land Court

Verdict type: Judgement

Who was accusing: Musa Lotach Masaluk

Who was defending: Julius K. Misoi

Judge: Dr Fred Nyagaka

Decision issue date: January 18, 2024

Summary of the case:

The case involved a dispute over land parcel No. West Pokot/ Siyoi'A'/4621, with the Plaintiff seeking several reliefs, including a declaration that the Defendant holds the title in trust for the Plain-

O. Mogere

tiff, an order to cancel the title deed, and the issuance of a new title deed in the joint names of the Plaintiff and the Defendant. The Defendant denied the Plaintiff's claims and prayed for the suit's dismissal with costs.

The Plaintiff, who is the nephew of the Defendant, claimed that the land was held in trust by the Defendant on behalf of the children of the Plaintiff's deceased mother, Chepkosgei Tamining. The Plaintiff stated that the land belonged to his mother and her sisters, beneficiaries of his deceased grandmother, Tapkigen Mokotoi. He alleged that the Defendant was adopted into the family as his grandmother could not sire sons. The Plaintiff further claimed that the Defendant fraudulently registered himself as the proprietor of the land in 1997 and evicted the Plaintiff and other beneficiaries from the land. The Plaintiff sought the acquisition of 3 ½ acres out of the 32 acres of the land and one plot at the highway.

The Plaintiff called his brother-in-law, Joshua Samoei, and an elder, Daniel Murio, as witnesses. They supported the Plaintiff's claims that the Defendant was an adopted son and that the Plaintiff's mother and her sisters lived on the land. They also testified that the Defendant unlawfully registered the land in his name and evicted the Plaintiff and his family.

The Defendant, who is the uncle of the Plaintiff, testified that he is the sole and lawful registered proprietor of the land. He produced the title deed, a certificate of search, and a green card to support his claim. The Defendant stated that the land was issued to him by 26 elders in the 1950s, and a demarcation exercise in 1960 con-

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firmed the boundaries. He claimed that no one challenged his ownership during the 90-day period given for lodging claims. The Defendant also stated that the Plaintiff's mother had land in Ziwa and never claimed the instant land against him. He denied evicting anyone and maintained that the Plaintiff was given land by his father. The Defendant called Raphael Bor and Mary Chelimo Samoei as witnesses. They supported the Defendant's claims that the land was acquired personally and not family land.

The court analysed the evidence and found that the Plaintiff failed to prove that the land was acquired for the benefit of his mother and her beneficiaries. The court noted that the Plaintiff was not a truthful witness and had lied about the relationships and living status of his own sister. The court also found that the Plaintiff failed to establish that the Defendant held the land in trust for him. The court concluded that the Defendant acquired the land solely, lawfully, and rightfully in his own name. The Plaintiff's suit was dismissed with costs to the Defendant.

Basically, the court found that the Plaintiff failed to prove his claims and that the Defendant is the absolute and indefeasible owner of the land. The Plaintiff's suit was dismissed for lacking merit, and the Defendant was awarded costs.

The paragraph I find to be poetic is: Paragraph 26, which reads:

All the same, the Plaintiff was not a truthful witness at all, and his witness[s] deliberately intended, and fell prey, follow suit and mislead the Court by supporting not only a false pleading about the relation-

ships and living status of his own sister. According to his pleadings, which parties are bound by, his deceased mother was a co-wife to Chelimo (DW4) and Chepketer . In fact, it was only in his cross-examination that he admitted that they were not co-wives. Instead, according to the Defendant and his witnesses, DW4 is the Plaintiff's sister and Chepketer is the mother's younger sibling. He even went to the extent of perjuring that DW4 was dead. Unfortunately for his case, DW4 came to Court, in the flesh and blood, confirming and testifying as to her living status. This reminded the Court of the Biblical account of the Resurrection of Jesus Christ when many, including his own disciple, Thomas doubted as to whether he had risen. At one time, he had to call on his "doubting" Thomas to put his hand in His so that he would stop doubting and believe (John 20: 27). The witness stated that on her part she had never died.

How I see it: The judge spares no punches in discrediting the claims of the Plaintiff who lied at various instances, including when he said that his sister had died. Justice Nyagaka refers to the Bible on the story of Jesus' resurrection, with the exact verse to boot, to dramatise the appearance of the "dead" woman in court. You can't make this up.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/30/eng@2024-01-18>

Which can also be accessed by scanning this QR code...

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No.13 of 20: When a defilement verdict started with mention of a 1970s song about teen love



Justices Hannah Okwengu, Hellen Omondi and Joel Ngugi.

CREDIT: The Judiciary (Kenya)

Case number: Kisumu Criminal Appeal 304 of 2019

In what court: Court of Appeal

Verdict type: Judgement

Who was accusing: S.K. (Appellant)

Who was defending: Republic

Judges: Hannah Okwengu, Hellen Omondi, Joel Ngugi

Decision issue date: June 13, 2024

Summary of the case: The appellant was charged with defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act. The case revolved around a 14-year-old boy who fell in love with a 15-year-old girl and took her to his parents' home, where they stayed for several days as his supposed wife.

The prosecution's case was that between April 2 and 4, 2013, at Tepengwet village in Angatia division, Transmara West District, Narok County, the appellant was left with the girl and her children at a different house.

On the third day, the appellant was arrested and later charged. Although the appellant claimed he was arrested without cause, the defence witnesses stated that the girl went to the appellant's home and refused to leave. The bottom line is that the appellant and the girl shared a room, mattress, blanket, and more for at least three days—and a lot happened behind closed doors.

The appellant was tried, convicted, and sentenced to serve 20 years imprisonment by the magistrate's court.

Dissatisfied with the decision, he appealed to the High Court at Kisii in Kisii High Court Criminal Appeal No. 43 of 2019 on both conviction and sentence, but the appeal was dismissed in its entirety.

The appellant then preferred the present appeal, initially on both conviction and sentence, but at the hearing, he abandoned the appeal on conviction and urged the court to consider only his appeal on sentence. The relevant grounds of appeal were that the trial

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court erred in not sentencing him as a minor and that the mandatory custodial sentence was unconstitutional.

As a second appellate court, the duty under section 361 of the Criminal Procedure Code limits the court to addressing matters of law only, not delving into matters of fact already dealt with by the trial court and re-evaluated by the first appellate court. The appellant did not specifically raise the issue of his age during the trial, and it was not a ground of appeal before the High Court. However, during cross-examination, the girl testified that the appellant was younger than her. The appellant explained in his submissions that he was a minor at the time of the incident but did not provide his age to the court as he did not know it would be relevant.

The other limb of the appeal urged the court to interfere with the mandatory minimum sentence, arguing that such sentences have been declared unconstitutional if meted out as the only available options. The trial magistrate sentenced the appellant to 20 years imprisonment as provided under Section 8(3) of the Sexual Offences Act, which mandates a minimum sentence for defilement with a child between twelve and fifteen years. The appellant cited emerging jurisprudence regarding the constitutionality of mandatory minimum sentences in sexual offences.

The court considered the circumstances leading to the appellant's imprisonment, noting his youthful look and the transformation and rehabilitation he spoke of after more than six years in adult prison. The appellant claimed to have learnt his lesson and expressed a desire to spread awareness among young men about the conse-

quences of romantic liaisons with girls under 18 years.

Given the circumstances of the offence, the court found that the appellant's incarceration since June 20, 2018 was adequate punishment and allowed the appeal on sentence. The court set aside the 20-year sentence and reduced it to the term served, ordering the appellant to be set at liberty forthwith unless otherwise lawfully held.

The paragraphs I find to be poetic is: Paragraph 1, which reads:

In the late seventies, a pop song that filled the air-waves with the title, "Puppy Love", swept the teenage space globally. Oxford's dictionary defines "puppy love" as intense but relatively shallow romantic attachment, associated with adolescents. What happens when a 14-year old boy falls in love with a 15-year old girl, takes her to his parents' home and keeps her for days as his supposed wife? Such was the situation which led to the Appellant, SK, being charged in the Principal Magistrate's court at Kilgoris with the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offence Act.

How I see it: The judges set the tone for setting the young man free after he had done a couple of years in prison. He was 14; the girl he had a thing with was 15, yet he was the one sent to jail for defilement — 20 years to be exact.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keca/2024/685/eng@2024-06-13>

Kenya's Most Poetic Court Verdicts (2024)

Which can also be accessed by scanning this QR code...



No.14 of 20: 'Baby was abandoned on his second day of earthly sojourn'



Justice Benjamin Musyoki.

CREDIT: The Judiciary (Kenya)

Case number: Nairobi (Milimani Law Courts) Family Adoption Cause E204 of 2023

In what court: High Court

Verdict type: Judgement

Who was applying: (1) MKM; (2) LHRM

Who was defending: (Adoption causes don't involve defendants)

Judge: Benjamin Musyoki

Decision issue date: August 13, 2024

Summary of the case:

The judgment revolved around the adoption of a child who was abandoned on the roadside in Ruaka, Kiambu County, on the sec-

ond day of his life. The child was found by good Samaritans and reported to the Ruaka police post, after which he was taken to Nazareth Hospital for a medical checkup and temporarily placed in Limuru Children's Centre. On May 18, 2022, the Limuru Chief Magistrate's Court issued an order committing the child to Limuru Children's Centre for six months to allow authorities time to trace his parents or relatives. Despite efforts, no relatives were found, and on December 14, 2022, the court re-committed the child to the Centre for three more years.

Kenya Children's Homes Adoption Society conducted investigations and declared the child free for adoption on February 15, 2023, issuing a certificate to that effect. On April 25, 2022, the applicants approached the adoption home with the intention of adopting a child aged below one year. They were assessed and found fit to be adoptive parents, with a report dated October 27, 2023 concluding that the adoption would be in the child's best interest. The child was placed with the applicants on March 23, 2023, and they subsequently filed an originating summons dated October 12, 2023 seeking to adopt the child.

The applicants, married for eight years, testified separately and adopted their joint statement and affidavit dated October 12, 2023. They confirmed their understanding of the irreversible nature of an adoption order and the child's right to inherit them. They provided evidence of their financial capability to care for the child and confirmed the appointment of a legal guardian. The applicants called their aunt, RMM, as a witness, who accepted the appointment as

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Legal Guardian and confirmed her understanding of the responsibilities involved.

A report from the Department of Children Services, dated December 19, 2023, recommended granting the adoption orders sought by the applicants. Aliso Odinyo, appointed as Guardian Ad Litem on November 2, 2023, testified that he assessed the applicants and the child, finding them suitable for adoption. He noted that the child was well taken care of and had integrated well into the family.

Based on the evidence presented, the court was convinced that the child was in good hands and that it was in his best interest to be adopted by the applicants. The court allowed the originating summons dated October 12, 2023, authorizing ZKM and LHRM to adopt Baby DU, who would henceforth be named DB. The child was declared a Kenyan citizen by birth, with his date of birth set as January 29, 2022. PMK and RMM were appointed as the Legal Guardians, and the Guardian Ad Litem was discharged.

The paragraph I find to be poetic is: Paragraph 1, which reads:

[O]n the second day of his sojourn in this world, the child herein was abandoned on the roadside in the Ruaka area of Kiambu County. The grace and mercy of God led men and women of good will to the child, who then picked the young soul and reported the matter at Ruaka police post vide occurrence book entry number 6/13/5/2022. The child was taken to Nazareth Hospital for medical checkup and through the police, he was temporarily placed in Limuru Children's Centre.

How I see it: Through his choice of words, the judge reveals his sympathy for this young angel who was abandoned at just two days old. The judge made his sympathy even clearer when he wrote in paragraph 9: "He was abandoned at a very frail age. He is now slightly over two years old. The only parents known to him are the applicants. It will not be in his interest to live without a formal family set up." Over and above the judge's mercy and belief in a superior being, this verdict also shows how the legal system comes through for the vulnerable through the laws set.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/10250/eng@2024-08-13>

Which can also be accessed by scanning this QR code...



No.15 of 20: 'This court wished it were Solomon and attempt to cut the baby'



Dr Justice Fred Nyagaka.

Case number: Kitale Environment & Land Case E014 of 2022

In what court: Environment and Land Court

Verdict type: Judgement

Who was accusing: (1) Peter Akombe Mosaisi; (2) Annah Mokeira Robert

Who was defending: (1) Eunice Nyanchama Akombe; (2) Jeliah Nyakerario

Judge: Dr Fred Nyagaka

Decision issue date: January 18, 2024

Summary of the case:

The judgment revolved around a family dispute over property,

reminiscent of the Biblical story of King Solomon and the two mothers. The court hoped for a resolution guided by wisdom, love, and truth, emphasising the temporal nature of worldly possessions and urging the parties to reconsider their stands.

The plaintiffs, a husband and his second wife, filed a suit against the husband's first wife and their daughter. The dispute centers on a parcel of land and a house constructed on it. The court noted the bitter and emotional nature of the battle between the rival sides, with lengthy pleadings and witness statements.

The court encouraged reconciliation but had to proceed with the case due to the parties' inability to resolve the matter amicably. The court acknowledged its lack of jurisdiction over matrimonial issues but noted the close relation of the issues to the case.

The plaintiffs claimed the husband was validly married to both women under Gusii customary law and that he was the registered owner of the disputed land. They alleged the defendants forcibly entered the land, chased away the plaintiffs' watchman, and blocked their access. The plaintiffs sought a declaration of ownership, a permanent injunction against the defendants, and costs.

The defendants admitted the customary marriage but denied the validity of the second marriage. They claimed the land was subject to a trust in favour of the first wife and their children, who had equitable rights to access it as a family home. They provided details of a family meeting in 2015 where it was resolved that the children would fund the purchase of the land and construction of a retire-

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ment home for the parents. They alleged the plaintiffs' conduct violated the trust and sought a declaration of the trust, registration of the first wife as a joint tenant, and an injunction against the second wife.

The court analysed the issues, considering the pleadings, evidence, and submissions. It found that a family meeting was held in 2015, where the children resolved to fund the purchase of the land and construction of a retirement home. The court determined that the money given to the husband was not for his upkeep but for the agreed purpose. It found that the initial payment for the land came from a joint account held by the husband and first wife, and subsequent payments were made by the children.

The court concluded that the husband was registered as the sole proprietor of the land in trust for the first wife and their children. It found no evidence of fraud in the registration but determined that a constructive trust was created. The second wife had no right to the property, the court said, and the defendants did not trespass on the land.

The court dismissed the plaintiffs' suit and granted the defendants' counterclaim, ordering the registration of the first wife as a joint tenant. It also issued a permanent injunction against the second wife and awarded costs to the defendants. The judgment emphasised the importance of family unity and the need to resolve disputes amicably.

The paragraphs I find to be poetic are: Paragraph 1, 2 & 322.

Paragraph 1:

The emotional drain and stress that went into this suit when one part of a family pitted itself against another over a property which, if the family sat and resolved would have saved hundreds of thousands or even millions by avoiding a court dispute, reminded the Court of the Biblical account of the case of two mothers who lived in the same house, bore children two days apart, one of them lay on hers and it died and staged claim to the one who was alive (read 1 Kings 3: 16-28). It is written that the dispute went before King Solomon who, upon hearing the facts, asked for a knife to split into two the living baby. For the love of the child, its mother decided to give it up so that the child could live. This Court wished by asking the parties right from the start and still wishes not to split the 'live baby' they stage claim to by asking them to let wisdom, love and truth guide them in ending the wrangles over the 'baby' by this judgment.

Paragraph 2:

By the above I mean that this Court hopes that even though by the end of this judgment it would have pronounced itself on both the law and facts herein, the parties will still find it in their hearts to reconsider their stands and give Caesar what belongs to him and God what belongs to Him (Matthew 22:21). This is urged of them through wisdom bearing in mind that the things of this world are temporal (2 Corinthians 4: 18) and each one of us should lay their treasures in heaven where neither moths nor rust will get to and destroy (Matthew 6: 19-21). This is

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further borne of the stark reality that in this world the parties herein, just like any other being born on woman, their days are few and filled with sorrow (Job 14: 1-2) and they should look for a better country where with God not being ashamed of them (Hebrews 11: 16) they will live in streets of gold and transparent glass (Revelation 21: 21) and not houses built by bricks/stone and cement. That now set me to determining the dispute herein.

Paragraph 322:

As I exercise the discretion, I revisit the issue I started with in this judgment: The Biblical story of the decision of King Solomon and the live baby who was being claimed by two women. While he took the baby in his arms and lifted the sword as a sign of intending to split the baby into two to give half to each woman he did not intend to kill the baby. Instead he wanted to ascertain who would care to let the child live. I believe this is what I have done in this judgment and by not ordering costs to be borne by any party: the parties now have a living 'baby'.

How I see it: By the end of the first two paragraphs, the woke of today would have shouted "preach!" It is not always that you get a judge trying to use the scriptures to call warring parties to order, but Dr Nyagaka has already demonstrated that he is king in that respect. And he finishes the very long judgement by saying he has let the "child live". Talk of channelling Solomon in the AD era.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/134/eng@2024-01-18>

Which can also be accessed by scanning this QR code...



No.16 of 20: 'Court orders are not a scarecrow'



Justice Lucas Naikuni.

CREDIT: The Judiciary (Kenya)

Case number: Mombasa Environment & Land Case 73 of 2021

In what court: Environment and Land Court

Verdict type: Ruling

Who was accusing: James Oluoch Ogando

Who was defending: (1) Kenya Ports Authority Pension Scheme (Defined Benefits); (2) Kenya Ports Authority

Judge: Lucas Naikuni

Decision issue date: October 15, 2024

Summary of the case:

The court was called to determine two motions dated June 12, 2024, and June 18, 2024, both filed by James Oluoch Ogando

against the 1st and 2nd Defendants.

The Plaintiff sought to set aside the consent application dated May 20, 2024, from the 1st Defendant and requested that each party bear its own costs. The application was supported by an affidavit from James Oluoch Ogando, who claimed he was misled into signing the consent draft without his inputs being incorporated.

The Plaintiff sought to find the trustees of the 1st Defendant in contempt of court orders made on May 7, 2024, and requested that the Land Registrar at Mombasa be inhibited from registering any transfer of Pension Scheme properties until the application is heard and determined.

The 1st Defendant opposed the motions, arguing that the consent was willingly entered into and that the Plaintiff was attempting to mislead the court. They provided evidence of the meeting minutes and correspondence to support their claim.

The Plaintiff responded with a further affidavit, reiterating that the consent application was filed without his knowledge and that the court order must be obeyed.

Both parties filed written submissions, with the Plaintiff arguing that the consent application was not legally binding and the 1st Defendant asserting that the consent was valid and binding.

The court analysed the issues and determined that the Plaintiff had made a case for setting aside the consent order and that the contempt application was not proven. The court granted an inhibition

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order to prevent the transfer of Pension Scheme properties until the suit is heard and determined.

The court allowed the Notice of Motion application dated June 12, 2024, and partially allowed the Notice of Motion application dated June 18, 2024, with no orders as to costs.

The paragraphs I find to be poetic are: Paragraphs 17 & 33.

Paragraph 17:

The Plaintiff submitted that what the 1st Defendant was saying in paragraph 7 of his Replying Affidavit of July 19, 2024 was an attempt to mislead the court by pleading wilful ignorance of the law on consent proceedings. According to the Plaintiff ignorance of law excuses no one. What the 1st Defendant averred in paragraph 6 of his Replying Affidavit was worrying. To him it meant that one thing – were they saying that this Honourable Court just issues orders as scarecrow which clever birds can ignore and destroy the crops. [Did] the orders of this Honourable court mean nothing to them? They had disobeyed the order and extinguished the properties of the members of the pension scheme. They were saying yes, the properties were gone, so what can the court do? The Court could do one thing: punish them in the manner provided in the law.

Paragraph 33:

The Plaintiff/Applicant according to the Learned Counsel was saying that he was wine and dined by the 1st Defendant almost to the point of slumber, such that the resultant consent was not the product

of sound reason but was sleep induced. That argument, which was altogether without merit, was forgivable only because it was made by a layperson. But it was not one that should detain the court at all.

How I see it: In paragraph 17, Justice Naikuni tore into the first defendant for suggesting that court orders are for dummies. In the 33rd paragraph, he tore into the witness who said he was sleepy when he signed a consent and so it couldn't stand in law. It sounds more ridiculous each time you read it.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/7041/eng@2024-10-15>

Which can also be accessed by scanning this QR code...



No.17 of 20: 'Spirits of your parents would not approve of your property fights'



Justice Reuben Nyakundi.

CREDIT: The Judiciary (Kenya)

Case number: Eldoret Succession Cause 52 of 1994

In what court: High Court

Verdict type: Ruling

Who was accusing: Rose Jerono Tiren

Who was defending: Silas Kipkoech Tiren {With interested parties: (1) Mary Sumbeiywo; (2) Kenneth Tiren; (3) Sheila Tiren; (4) Raymond Koscom; (5) Asha Tiren; (6) Maurice Tiren}

Judge: Reuben Nyakundi

Decision issue date: June 13, 2014

Summary of the case:

The ruling revolved around the estate of Kite arap Tiren, who

O. Mogere

passed away on February 7, 1993, leaving behind a written will. The beneficiaries of the will, including Susan Rotich Tiren, Silas Kipkoech Tiren, and Rose Chereno Tiren, filed a citation against the executors on March 22, 1993. The executors filed for probate (legal process for distributing the property of a deceased person), but some beneficiaries objected, claiming not all were provided for. The court, presided by Hon. Nambuye, J, varied the distribution of the deceased's last will, dividing the estate into units for Susan's house and the objectors' houses.

The court distributed various properties, including parcels of land and town plots, among the beneficiaries. However, disagreements arose regarding the distribution, leading to multiple applications and rulings over the years. For instance, on April 23, 2008, Eileen Kurumei and Mary Joan Cherono sought the court's intervention to distribute the estate's residue among the beneficiaries from the first to the fourth households. The court, presided by Hon. P.J Mwilu, distributed the estate, considering the principles of fairness and equity.

Despite the court's efforts, the litigation continued. Philip Tiren and James Tiren filed an application on September 13, 2010, seeking a review of the orders made by Justice P. Mwilu on July 28, 2010. They sought to distribute the estate among the deceased's households fairly. On July 5, 2012, Philip Kiplagat Tiren filed another application seeking to stay the implementation of the court's order dated July 28, 2010. The court noted that numerous applications had been filed regarding the matter, highlighting the ongoing dis-

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putes.

The property known as L.R. NO. 8709 became a focal point of contention. The parties recorded a consent to review and set aside the judgment affecting this property, acknowledging it was not part of the estate. Rose Jerono Tiren filed an application on July 5, 2008, seeking to restore the property to her and set aside the erroneous subdivision. The court noted that the property had been the subject of numerous applications, including one on March 24, 2016, where the applicants sought to restrain the respondents from subdividing or selling certain land parcels. The court dismissed the application, finding no merit in the allegations.

The court observed that the executors had failed to perform their duties, leading to prolonged litigation. On March 12, 2007, the court removed the executors and appointed the public trustee to administer the unconfirmed portion of the estate. On February 24, 2021, Silas Kipkoech Tiren sought to amend the executors' names, and a consent was filed on September 7, 2021, resulting in the grant of letters of administration to Silas Kipkoech Tiren on March 3, 2022. The court issued a certificate of confirmation of grant on May 11, 2022.

Despite these efforts, the matter remained unresolved in 2024. The court noted that the unending litigation resulted from parties' dissatisfaction with the orders issued. The court emphasised the need for finality in litigation and urged the parties to appeal to the Court of Appeal if dissatisfied. The application dated December 4, 2023, sought various reliefs, including the use of land for planting and

the reversal of estate titles. The applicant argued that the review would clarify asset boundaries and end conflicts. The respondent opposed the application, asserting that the estate had been distributed per the court's decree.

The court concluded that the application lacked merit, emphasizing the need for the parties to implement the court's decisions and bring the matter to a close.

The paragraphs I find to be poetic are: Paragraphs 45 & 46.

Paragraph 45:

The structure of inquiry as set out above remains the yardstick for the executor or the administrator whose role is to construe and interpret the spirits of the dead on whose behalf they take the throne of the deceased in the administration of the estate. It is also a matter of common knowledge that nearly all inhabitants of the world, including those who believe in science accept and profess some form of religion. It is also a matter of common knowledge and judicial notice that all religions teach the doctrine of survival, creation and death. That means they teach that in every individual human being there exists a soul which becomes separated from the body and the death and continues to live on in some form of existence hence the maxim 'may his or her soul rest in eternal peace' while the body is dust into dust.

Paragraph 46:

It may seem puzzling that the possibility of the souls of the deceased continuing to exist when sepa-

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rated from the human bodies is not in the realm of unknown and when the reflection by administrators to the estate of the deceased is apparently drowned in a sea of conflicts it may well therefore call for them to commune with the spirit of the deceased to re-establish if he or she could have been alive, what would be the best win-win situation of the matter.

How I see it: This is a poignant lecture by Justice Nyakundi who wants the warring parties in a property case to put themselves in the shoes of the departed and ask themselves if the departed would have been happy with their actions. While some judges cite the Bible, others are referring to the spirits of the departed. What's not to love about our courts?

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/6968/eng@2024-06-13>

Which can also be accessed by scanning this QR code...



No.18 of 20: 'These shenanigans must stop'



Justice Francis Olel.

CREDIT: The Judiciary (Kenya)

Case number: Machakos Succession Cause E042 of 2023

In what court: High Court in Machakos

Verdict type: Ruling

Who was accusing: (1) Lilian Ndinda Mua; (2) Lucy Mutheu Mua; (3) Stephen Kivondo Mua (Petitioners)

Who was defending: Josephat Musyoka Mua (objector)

Judge: Francis Olel

Decision issue date: July 17, 2024

Summary of the case:

The case involved the estate of the late Dorothy Justus Kivondo, with the parties being her children. The 1st to 3rd petitioners filed

for letters of administration intestate on June 11, 2023, seeking joint administration of their mother's estate, including the respondent, Josephat Musyoki Mua, who did not sign the petition. Simultaneously, the petitioners filed a summons to restrain the respondent from further construction and cultivation on various estate properties, which the court granted *ex parte*.

The respondent filed a response and an objection to the grant, citing a family agreement from May 19, 2019, appointing him as the sole administrator. The petitioners filed additional summons to have the respondent's workers vacate the estate, while the respondent sought to restrain the petitioners from wasteful activities on the estate. The respondent later filed a fresh objection and sought to set aside *ex parte* orders, which the petitioners opposed.

The court noted the ongoing disputes among the siblings, which had led to criminal complaints and other conflicts. To restore order, the court consolidated all pending applications and made determinations based on the Succession Act and Probate and Administration Rules. The court emphasised the need for just, expeditious, and affordable resolution of civil disputes.

The respondent's objections were based on a family agreement appointing him as the sole administrator, which the petitioners denied, accusing him of misleading them into signing a premeditated document. The court dismissed the objections, noting that all siblings had equal rights to administer the estate. The court also dismissed the respondent's application to be the sole administrator, citing his hostile behaviour.

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The petitioners sought to restrain the respondent from further construction and cultivation on the estate properties, which the court granted ex-parte. The respondent filed a counter-application to restrain the petitioners from wasteful activities on the estate. The court noted that both parties had established a prima facie case and emphasised the need to preserve the estate pending distribution.

The court highlighted the importance of preserving the estate and preventing irreparable loss to any party. The court granted status quo orders to balance the interests of all parties and set aside injunctive orders solely directed at the respondent. The court emphasised the need for equal treatment of all parties and the importance of preserving the estate.

The court also addressed the application to have the respondent's workers vacate the estate, noting that they were not intermeddlers but agents of the respondent. The court allowed the workers to remain on the estate, subject to obeying all court orders.

In conclusion, the court dismissed the respondent's objections and marked the summons as compromised, issuing an injunction restraining all parties from engaging in wasteful activities on the estate. The court appointed all parties as joint administrators and directed them to attend court-annexed mediation to agree on issues related to the preservation and use of the estate properties. The court emphasised the need for cooperation among the parties to move the succession process forward.

The paragraph I find to be poetic is: Paragraph 5, which reads:

What is clear is that within one year of litigation and before even gazettelement of this petition, the parties herein, who are siblings of one mother and father, are engaged in vicious shadow boxing and sideshows that would leave their parents (may their soul rest in peace) squirming in disgust by the unnecessary “catfights” that they are engaged in, and which fights have led to criminal complaints being filed and other nasty engagement/exchanges as set out in the various affidavits filed by the parties. These shenanigans must stop and the parties herein should focus on the sole purpose of the succession process, which is to consolidate the estate of the deceased and have it distributed equitably as provided for under the law of succession Act, Cap 160 laws of Kenya.

How I see it: The judge minces no words in telling the warring siblings to shape up and let go of the ugly fights they are engaged in. He refers to their deceased parents in a bid to pump some sense into the heads of the warring siblings.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/kehcn/2024/8607/eng@2024-07-17>

Which can also be accessed by scanning this QR code...



No.19 of 20: 'I will not wield a machete like Okonkwo did to Ikemefuna'



Justice Lucas Naikuni.

Case number: Mombasa Environment & Land Case E010 of 2024

In what court: Environment and Land Court

Verdict type: Ruling

Who was accusing: Lydia Njamiu Nduhiu

Who was defending: (1) Katanu Ngomo & Peter Kitali Munguti, trading as Miritini Sunshine Academy; (2) National Environment Management Authority; (3) National Construction Authority; (4) County Government of Mombasa

Judge: Lucas Naikuni

Decision issue date: December 2, 2024

Summary of the case:

The ruling involved a Notice of Motion application dated July 31,

O. Mogere

2024, filed by Katanu Ngomo and Peter Kitali Munguti, trading as Miritini Sunshine Academy, the 1st Defendant. The application was based on various provisions of the Civil Procedure Act and Civil Procedure Rules, seeking to have the Plaintiff's suit struck out. Additionally, the 1st Defendant filed a Preliminary Objection dated August 7, 2024, which the court decided to address first.

The Preliminary Objection raised by the 1st Defendant argued that the Plaintiff's suit was an abuse of the court process, having been filed prematurely and contrary to the provisions of Sections 61, 78, and 80 of the Physical and Land Use Planning Act (PLUPA), No. 3 of 2019, Laws of Kenya. The 1st Defendant contended that the Plaintiff had not exhausted the mandatory procedures and administrative remedies provided by the PLUPA before invoking the court's jurisdiction. Therefore, the 1st Defendant argued that the court lacked jurisdiction to hear and determine the matter, and the suit should be dismissed with costs.

The court directed that the Preliminary Objection be disposed of by way of written submissions. The Plaintiffs, through their counsel, argued that the Preliminary Objection did not raise pure points of law and was instead based on disputed facts. They cited several cases, including *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors*, to support their argument that a Preliminary Objection must be based on a pure point of law and cannot be raised if any fact needs to be ascertained.

The Plaintiffs further argued that the 1st Defendant had not filed any defence to the Plaintiff's claim, and the Preliminary Objection

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did not arise by clear implication out of the Plaintiff's pleadings. They contended that the absence of approvals and the need for an Environmental Impact Assessment (EIA) and public participation were admitted facts, and therefore, the procedures and administrative remedies under the PLUPA did not apply.

The 3rd Defendant, through their counsel, also opposed the Preliminary Objection, arguing that the Plaintiff's suit concerned the construction of a school on Plot No. 446 Miritini-Miritni Site and Service Scheme, and the main issue was whether the construction works had been approved and licensed by the relevant authorities. The 3rd Defendant contended that the County Government of Mombasa had not established its Physical and Land Use Planning Liaison Committee, and therefore, the court had jurisdiction to hear the matter.

The court analysed the issues and determined that the Preliminary Objection raised pure points of law, specifically the doctrine of constitutional avoidance. The court noted that jurisdiction is a crucial aspect that must be determined at the onset of proceedings. The court cited several cases, including *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited*, to emphasise the importance of jurisdiction and the need for parties to exhaust alternative dispute resolution mechanisms before approaching the court.

The court found that the Mombasa County Physical and Land Use Planning Liaison Committee had not been established and was not operational. Therefore, the court held that it had the original jurisdiction to entertain the present suit, as the Plaintiff's suit primarily

raised questions of planning, use, and development of the property in question. The court dismissed the Preliminary Objection with costs, allowing the Plaintiff's suit to proceed.

In conclusion, the court emphasised the importance of exhausting alternative dispute resolution mechanisms provided by statute before resorting to the courts. However, in the absence of such mechanisms, the court has the jurisdiction to hear and determine the matter. The court awarded the costs of the Preliminary Objection to the Plaintiffs and directed that the Notice of Motion application be disposed of by way of written submissions.

The paragraphs I find to be poetic are: 53, 54 & 55.

Paragraph 53:

This grim scenario reminds the Honourable Court to the story of a famous and key character known as Okonkwo the village wrestler in the masterpiece book by the Nigerian renowned author Chinua Achebe, "Things Fall Apart". Mr. Okonkwo, by then a very respectable character within the village of Umuofia Kwenu, got entrusted the parental responsibility of taking care of a young man called Ikemefuna, captured while young from a neighbouring village of arch enemies. He brought him up so well up to his teenage stage to a point of regarding him as his parent. One day, the elders being suspicious that the boy once grown would be a menace decided that he be killed on pretence of being returned to his ancestor village. But when a decision was arrived at by the Umuofia Kwenu that the boy had to be killed, they picked on Okonkwo to do the heinous act. He

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inevitabl(y) and reluctantly found himself doing it as [the] boy ran towards him for safety from a group of enraged and impatient elders so that Okwonkwo was almost betraying them. The act haunted him forever. He lived on this curse up to his death.

Paragraph 54:

Likewise, this Court, on being faced by such similar circumstances, quickly seeks a soft landing solace from the Scripture in songs by David in the book of Psalms 121 verse 1 which holds:- "I lift my eyes to the mountains. From where does my help come? My help comes from the Lord, who made heaven and earth. He will not let your foot be moved, he who keeps you will not slumber. He who keeps Israel will neither slumber nor sleep. The Lord is your Keeper; the Lord is your shade on your right hand. The sun shall not smite you by day nor the moon by night....."

Paragraph 55:

Thus, based on this glaring legal lacuna and vacuum, created by the County Government of Mombasa, the only place left for the Plaintiff herein, is to institute this case before this Honourable Court. Until and unless this legal structure is actually created, and it becomes vibrantly operational, the Court of law should never smash them with machete as Okwonkwo in the story from Mr. Chinua Achebe's masterpiece, did by sending them away. Thus, on that front the preliminary objection fails.

How I see it: The judge effortlessly shifts from the famous "Things

Fall Apart” to the Bible and back. Who would have thought an otherwise dry matter would bring up such legendary inferences in court?

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/13668/eng@2024-12-02>

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No.20 of 20: 'We have a limited time to honour the living but an eternity to honour the dead'



Justices Mwaniki Gachoka, Francis Tuiyott and Lydia Achode.

CREDIT: The Judiciary (Kenya)

Case number: Nairobi Civil Appeal E692 of 2023

In what court: Court of Appeal

Verdict type: Judgement

Who was accusing: (1) Joseph Ontweka; (2) Elisha Ontweka; (3) Stanley Ontweka; (4) David Ontweka

Who was defending: Zipporah Masese Ondieki

Judges: Mwaniki Gachoka; Francis Tuiyott; Lydia Achode

Decision issue date: January 25, 2024

Summary of the case:

In the main judgment in the matter, Justice Gachoka addressed the complex issue of burial disputes, which have been a part of human history and continue to be relevant today. The judgment began by acknowledging that while no one has personal experience with death, we all know that it is inevitable.

The judgment referenced Christian theology, where Jesus of Nazareth predicted his death but did not prophesy who would inter his body.

It similarly cited Greek mythology, where Sophocles' "Antigone" depicts a burial dispute where Antigone defies King Creon's prohibition on burying her brother Polyneices, emphasising the importance of honouring the deceased.

Burial disputes are far from simplistic, the judge noted, as they involve the participation of relatives and society in burial rites to contemplate mortality. These disputes have been present throughout history and will continue as long as death exists. The judgment suggested that it may be time to put the law on burial disputes to rest, but acknowledges the complexity due to varying burial beliefs, rites, customs, and the interplay with religious beliefs and constitutional rights.

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The judgment noted that burial disputes are also prevalent in the developed world, citing the US Supreme Court of Georgia's decision in "Louisville & NR Co v Wilson" which emphasised the necessity of setting guidelines for the disposition of the dead. The court recognised the importance of customs and civilisation in dealing with the dead.

In this matter, the case involved the remains of Naftali Onderi Ontweka, a senior public servant who died on April 19, 2023. His family was divided into two factions that could not agree on his place of burial, leaving his body in the mortuary.

On one side of the dispute was his wife, Zipporah Masese Ondieki; and on the other were Naftali's brothers. During his lifetime, Ontweka constructed a family home in Kamulu, Machakos County, which his wife wanted him buried in. He also had homes in Kiango, Kisii County, and Kileleshwa, Nairobi County.

Naftali's brothers wanted him buried in Kiango.

Naftali's widow filed a plaint seeking a permanent injunction against the appellants (his brothers) to prevent them from interfering with the burial and to have his remains buried in Kamulu. The trial court found that Ontweka never professed the Christian faith and subscribed to Gusii customary law, which remained applicable. The first court held that Ontweka should be buried in Kiango, Kisii County, in accordance with Gusii customary law.

The respondent appealed the trial court's decision, and the High Court re-evaluated the evidence. The High Court noted that the

parties were relatives of the deceased and entitled to bury him. The court upheld the trial court's findings that the right to bury was not an issue for determination, but the place of burial was. The High Court found that Ontweka had not declared his wish as to his final resting place and invoked section 3 (2) of the Judicature Act, which qualifies that customary law remains applicable according to substantial justice.

The High Court set aside the trial court's judgment and ordered that Ontweka be buried in his Kamulu home, with the appellants free to participate and observe Gusii customary law. Naftali's brothers appealed the High Court's decision, raising ten grounds, including the failure to properly analyse evidence and the misapplication of Gusii customary law.

The Court of Appeal, as the second appellate court, confined its mandate to matters of law. The court noted that burial disputes are emotive and require balancing the interests of parties involved. The court emphasised the importance of considering customs that communities regard as crucial in death rites, but only to the extent that they promote constitutionalism.

The court considered the wishes of the deceased, noting that while they are not binding, they should be given effect as far as practicable. The court also considered the interests of parties claiming the right to inter the remains, noting that there is no hierarchy in identifying who has the most legitimate interest. The court emphasised the importance of religious and cultural practices in burial disputes, recognising that they should be promoted if consonant with con-

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stitutional principles.

Ultimately, the court upheld the High Court's judgment, agreeing that Ontweka should be buried in Kamulu. The court emphasised the importance of therapeutic jurisprudence in burial disputes, recognising the emotional impact on parties involved. The court dismissed the appeal, ordering that Naftali's remains be released to his wife for burial in Kamulu, with the appellants at liberty to attend and perform Gusii customary rites. Each party was ordered to bear their costs, and the costs of the mortuary were to be shared.

The paragraphs I find to be poetic are: Paragraphs 1, 2, 3 & 79 of Justice Gachoka's verdict that the other two judges agreed with. They read:

Paragraph 1:

Despite no one having personal experience with death, we all know that one day we will all meet our end at some point but how and by whom our corporal remains will be disposed remains unknown to us. In Christian theology, we are told that Jesus of Nazareth, predicted his death, but he did not at any point prophesy that Joseph of Arimathea would inter his body at Golgotha. Fortunately, no burial dispute ensued.

Paragraph 2:

In Greek mythology, one of the earliest recorded burial disputes is aptly depicted by Sophocles in his work 'Antigone.' Following the brutal murder of Polyneices, Creon, the King of Thebes, prohibits the bur-

ial of Polyneices. Polyneices's sister, Antigone, defies the king and proceeds to bury him. She then declares to her sister, Ismene, that we have only a limited time to please the living, but an eternity to honour the deceased. Abiding by the law of the gods, she defies the human law set by Creon.

Paragraph 3:

Burial disputes are therefore far from simplistic. This is because the relatives of the deceased and society ought to participate in the burial rites to contemplate their mortality on earth. As a plethora of cases all over the world have demonstrated, these disputes have been with us throughout history and unless death abandons humankind (for we cannot abandon death), they will continue being part of matters that courtroom Daniels are called upon to decide upon.

Paragraph 79:

Burial disputes are emotive and whatever the outcome, some will be left in tears. This means that the words and phrases employed in the resolution of the dispute should be sensitive to the mental and physical health of the parties involved in the burial dispute. The faction of the law considers humanness as a crucial ingredient in the crucible of justice and therefore it ought to be factored in the process of judgment-making. Nevertheless, this does not involve shelving away the tenets of due process and adherence to judicial impartiality nor does it mean the substitution of therapy with sound judicial reasoning.

How I see it: This is a great analysis that effortlessly swings from

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Biblical reference to Greek mythology, setting the tone for the laying out of the dispute and the thorny issues in it. In the 79th paragraph, the judge just proves he is a poet in his own right by deliberating on matters of language versus the law. I suppose the conflicting parties got not just a serving of the law but also an education on mythology.

Get the full decision on this link: <https://new.kenyalaw.org/akn/ke/judgment/keca/2024/11/eng@2024-01-25>

Which can also be accessed by scanning this QR code...



They listen, and they judge.

While writing their decisions, most judges prefer sticking to the matters brought before them and analysing the law as the writs say.

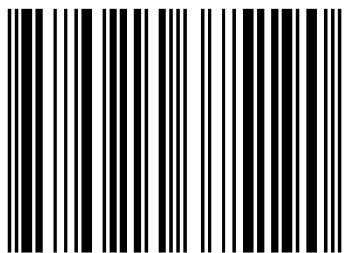
Then there are those who do so but let their creative juices flow.

From citing literary works to reproducing lyrics of popular songs, some judges have a way with words.

This book samples 20 of the best in Kenya in the year 2024, with links provided to the full verdicts on Kenya Law Reports.

O. Mogere, who gathered these verdicts, is a literature graduate and a fan of the creative mind. He believes court processes are beautiful—and that judges and magistrates are up there with the gods.

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