



**Mukoma & another v Ngunu & another (Environment and Land Appeal E034 of 2022) [2025] KEELC 1428 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1428 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL E034 OF 2022**

**JM MUTUNGI, J  
MARCH 20, 2025**

**BETWEEN**

**JANE MUTHONI MUKOMA ..... 1<sup>ST</sup> APPELLANT**

**DAVID MURIITHI GITHUCI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SABINA WARUGURU NGUNU ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL IRRIGATION BOARD ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment and subsequent decree of Hon. A. Lorot Chief Magistrate in Wang'uru MELC No. 53 of 2017 delivered and dated 15th November 2022)*

**JUDGMENT**

1. This Judgment is in respect of the two consolidated Appeals Kerugoya ELC Appeal No. 34 of 2022 (Jane Muthoni Mukoma –vs- Sabina Waruguru Ngunu & 3 Others) and Kerugoya ELC Appeal No. 30 of 2022 (David Muriithi Githuci –vs- Sabina Waruguru Ngunu & 3 Others) arising from the Judgment by A. Lorot, Chief Magistrate in Wang'uru CM ELC No. 53 of 2017 delivered on 15<sup>th</sup> November, 2022. The Appeals were consolidated and were heard together. The 3<sup>rd</sup> Respondent Beth Wamuyu Mukinyukia did not participate and was not represented at the hearing of the Appeal.
2. This Appeal is against the Judgment delivered by Hon. A. Lorot (C.M.) on 15<sup>th</sup> May 2023, in Wang'uru MELC No. 53 of 2017. In his Judgment, the Learned Magistrate entered Judgment in favor of the 1<sup>st</sup> Respondent against the 1<sup>st</sup> and 2<sup>nd</sup> Appellants (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants before the Lower Court). The Learned Magistrate declared that the 1<sup>st</sup> Respondent was the rightful and legal owner of Plot No. 5 Red Soil (the suit plot), including all developments thereon. He ordered the 2<sup>nd</sup> Appellant to surrender vacant possession of the suit plot and issued a permanent injunction against both the 1<sup>st</sup> and 2<sup>nd</sup> Appellants, restraining them, their servants, agents, or anyone acting on their behalf from trespassing,



utilizing, selling, disposing, charging, transferring, or otherwise interfering with the 1<sup>st</sup> Respondent's quiet possession, use, and enjoyment of the suit plot. The Learned Magistrate further ordered the 1<sup>st</sup> and 2<sup>nd</sup> Appellants to bear the costs of the 1<sup>st</sup> Respondent and those of the 2<sup>nd</sup> Respondent, who the Magistrate determined was wrongly joined in the suit.

3. The Appellants, being dissatisfied with the Learned Magistrate's decision have appealed against the Judgment. The 2<sup>nd</sup> Appellant filed his Memorandum of Appeal dated 16<sup>th</sup> November 2022 and has set out Seven grounds of Appeal as follows: -
  1. That the Learned Trial Chief Magistrate erred in law and fact by failing to address all the issues in controversy in determining the dispute before the Court.
  2. That the Learned Trial Chief Magistrate erred in law and fact in determining only two issues and leaving out all other issues undetermined.
  3. That the Learned Trial Chief Magistrate erred in law and fact in failing to make any determination of the Appellant's Counterclaim.
  4. That the Learned Trial Chief Magistrate erred in law and fact in failing to consider the weighty evidence adduced by the Appellant.
  5. That the Learned Trial Chief Magistrate erred in law and in fact for not considering that the Appellant had substantially developed the plot in dispute.
  6. That the Learned Trial Chief Magistrate erred in law and fact in failing to consider and adopt the consent filed in Court between the Appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the Counterclaim.
  7. That the Learned Trial Chief Magistrate erred in law and fact in failing to make a finding that the 1<sup>st</sup> Respondent had received a refund of the purchase price hence could not be entitled to the reliefs sought.
4. The 1<sup>st</sup> Appellant also filed her Memorandum of Appeal dated 5<sup>th</sup> December 2022 and set out 6 grounds.
  1. That the Learned Trial Chief Magistrate erred in law and fact by failing to address all the issues in controversy in determining the dispute before the Court.
  2. That the Learned Trial Chief Magistrate erred in law and in fact in determining only two issues and leaving out all other issues undetermined.
  3. That the Learned Trial Chief Magistrate in law and fact by failing to consider that the Appellant and 3<sup>rd</sup> Respondent had admitted the 2<sup>nd</sup> Respondent's Counterclaim.
  4. That the Learned Trial Chief Magistrate erred in law and fact in failing to consider the weighty evidence adduced by the Appellant.
  5. That the Learned Trial Chief Magistrate erred in law and fact by failing to consider and adopt the consent filed in Court between the Appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the Counterclaim.
  6. That the Learned Trial Chief Magistrate erred in law and fact in failing to make a finding that the 1<sup>st</sup> Respondent had received a refund of the purchase price hence could not be entitled to the reliefs sought.



5. Both the Appellants pray that the appeal be allowed, and that the Judgment dated 15<sup>th</sup> November 2022 be set aside and substituted with a Judgment in their favour, with costs to be paid by the Respondents.
6. The case before the Lower Court involved a legal dispute between the 2<sup>nd</sup> Appellant and the 1<sup>st</sup> Respondent regarding the suit plot sold to them by the 1<sup>st</sup> Appellant. To have the matter determined by the Lower Court, the 1<sup>st</sup> Respondent, filed an amended Plaintiff on 14<sup>th</sup> September 2017. In the Amended Plaintiff, she claimed to be the rightful owner of the suit plot, asserting that she purchased it from the 1<sup>st</sup> Appellant vide the sale agreement dated 30<sup>th</sup> January 2017 for the consideration of Kenyan Shillings One Million (Kshs. 1,000,000). She stated that after fully paying the purchase price, the suit plot was transferred to her by the allocating authority, and she received the relevant ownership documents after which, she took vacant possession of the plot.
7. The 1<sup>st</sup> Respondent stated that the suit plot contained residential units, which she continued to lease out and collect rent from until on or about 13<sup>th</sup> March 2017 when the 2<sup>nd</sup> Appellant unlawfully and forcefully entered the suit plot and commenced constructing unlawful and illegal extensions, and prevented her from accessing her property. She contended that if the 2<sup>nd</sup> Appellant's laid claim of ownership of the suit plot and he possessed ownership documents, such documents must have been acquired fraudulently. The 1<sup>st</sup> Respondent maintained that due to the unlawful and fraudulent actions of the 2<sup>nd</sup> Appellant, she was denied the possession and enjoyment of her property rights over the suit plot. She sought the following remedies:
  1. A declaration that the Plaintiff is the rightful and legal owner of the plot No. 5 Red soil of the National Irrigation Board and the 1<sup>st</sup> Defendant do offer vacant possession to the Plaintiff and in default he be forcibly evicted from the same.
  2. A declaration that the 1<sup>st</sup> Defendant forcible entry and continued occupation of Plot No. 5 Red soil of the National Irrigation Board is illegal and in breach of the proprietary rights of the Plaintiff and the 1<sup>st</sup> Defendant be ordered to pay mense profits of Kshs. 10,000 per month with effect from month of March 2017 until he offers vacant possession and also be condemned to pay general damages for trespass to be assessed by the Honourable Court.
  3. In Alternative and without prejudice to prayers A & B above, the 2<sup>nd</sup> Defendant be ordered to refund to the plaintiff the amount of consideration of Ksh. 1,000,000 paid to her plus interest of 30% per month with effect from 30/1/2017 until payment in full plus costs of the suit.
  4. An order of permanent injunction do issue against the Defendants from entering, selling, disposing, charging, blocking access to or in any other way unlawfully, interfering with the Plaintiff's quite possession and enjoyment of the Plaintiff's proprietary rights over Plot No. Red Soil.
  5. Costs of the suit
8. On 3<sup>rd</sup> October 2017, the 2<sup>nd</sup> Appellant filed his amended Defence and Counterclaim. He denied all the claims made in the amended plaintiff and raised a Counterclaim, stating that he had entered into a sale agreement with the 1<sup>st</sup> Appellant on 10th March 2017 for the purchase of the suit plot for a consideration of Kenya Shillings One Million Two Hundred Thousand (Kshs 1,200,000/-). The 2<sup>nd</sup> Appellant further stated that on 18<sup>th</sup> March 2017, he, along with the 1<sup>st</sup> Appellant and Beth Wamuyu Mukinyukia, entered into a further agreement for the transfer of the suit plot, as the beacon certificate had been issued to Beth Wamuyu Mukinyukia. The 2<sup>nd</sup> Appellant averred that on 24<sup>th</sup> March 2017, Beth Wamuyu wrote to the 2<sup>nd</sup> Respondent requesting that the transfer of the suit plot be effected to him (the 2<sup>nd</sup> Appellant) which the 2<sup>nd</sup> Respondent did on 27<sup>th</sup> March 2017.



9. The 2<sup>nd</sup> Appellant stated that he was subsequently put into possession of the suit plot and had made substantial developments worth millions of shillings. He denied the 1<sup>st</sup> Respondent's claim of ownership, asserting that her assertion was false since she had been refunded her money by the 1<sup>st</sup> Appellant and was merely awaiting her remaining balance. The 2<sup>nd</sup> Appellant claimed that if the 1<sup>st</sup> Respondent possessed any documents related to the suit plot, they had been obtained fraudulently during the pendency of the case. The 2<sup>nd</sup> Appellant sought the following orders:
1. A declaration that he was the rightful and legal owner of plot No. 5 Red Soil.
  2. A permanent injunction restraining the 1<sup>st</sup> Defendant her agents, heirs, legal representatives, any person claiming under her from entering or in anyway whatsoever from interfering with the Plaintiff's quiet possession, use and enjoyment of Plot No. 5 Red Soil.
  3. costs of the suit.
10. On 10<sup>th</sup> October 2017, the 1<sup>st</sup> Appellant filed her Statement of Defence. She denied the allegations in the amended plaint and reiterated that, although she had sold the suit land to the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent did not fulfill the contract terms and demanded a refund. She asserted that she refunded the 1<sup>st</sup> Respondent a total of Kenya Shillings Five Hundred and Fifty Thousand (Kshs 550,000/-) and was left with a balance of Kenya Shillings Four Hundred and Fifty Thousand, (Kshs 450,000/-) which they had agreed would be paid before January 2018. The 1<sup>st</sup> Appellant claimed that she resold the land after the 1<sup>st</sup> Respondent repudiated the contract. She contended that if the suit plot had been transferred to the 1<sup>st</sup> Respondent, it was done unlawfully.
11. Beth Wamuyu (3<sup>rd</sup> Defendant) filed her statement of defense on 18<sup>th</sup> October 2017. She denied the allegations made in the Counterclaim. She asserted that she originally purchased the suit plot from the 1<sup>st</sup> Appellant, who later breached the contract and fully refunded her money. She stated that she was further requested by the 1<sup>st</sup> Appellant to transfer the suit plot to the 2<sup>nd</sup> Appellant, which she did. Beth claimed that if the suit plot was transferred to the 1<sup>st</sup> Respondent, it was done unlawfully. She denied the allegations of fraud made by the 1<sup>st</sup> Respondent and stated that she did not even know the 1<sup>st</sup> Respondent.
12. The 2<sup>nd</sup> Respondent filed its statement of defence on 8<sup>th</sup> February 2018 and denied the claims made in the amended plaint and stated that the 1<sup>st</sup> Appellant was the original owner of the suit property. According to the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Appellant entered into two separate agreements with different parties: one with Beth Wamuyu on 14<sup>th</sup> December 2016 and another with the 1<sup>st</sup> Respondent on 30<sup>th</sup> January 2017. The 2<sup>nd</sup> Respondent stated that, the matter was referred to the Director of Criminal Investigations for further inquiry. However, on 21<sup>st</sup> June 2017, Beth Wamuyu informed the 2<sup>nd</sup> Respondent that she had no interest in the suit property and advised them to process the ownership documents for the new owner. Consequently, the 2<sup>nd</sup> Respondent issued a beacon certificate to the 1<sup>st</sup> Respondent on the 1<sup>st</sup> Appellant's request and on the basis that Beth had withdrawn her interest in the suit plot.
13. On 13<sup>th</sup> October 2017, the 1<sup>st</sup> Respondent filed her response to the 2<sup>nd</sup> Appellant's statement of Defence and Counterclaim. She reiterated the contents of her Amended Plaint and denied the allegations made in the amended defence. The 1<sup>st</sup> Respondent asserted that she had a reasonable cause of action against the 2<sup>nd</sup> Appellant and dismissed the latter's defence as a mere sham, and lacking in substance.



14. In response to the Counterclaim, the 1<sup>st</sup> Respondent denied its validity and stated that if it were true that the 2<sup>nd</sup> Appellant had entered into a sale agreement with the 1<sup>st</sup> Appellant regarding the suit plot, then that agreement was null and void ab initio and constituted acts of fraud, as the 1<sup>st</sup> Respondent had already purchased the suit plot. The 1<sup>st</sup> Respondent reiterated that her transaction with the 1<sup>st</sup> Appellant had been sanctioned by the allocating authority, and as a result, she was issued all relevant ownership documents, which have not been revoked or canceled in accordance with the Irrigation Act Cap 347 of the Laws of Kenya. She further emphasized that she had never expressed an intention to resell the suit plot. She denied she had received any refund.
15. The 2<sup>nd</sup> Appellant filed a response to the 1<sup>st</sup> Respondent's defence reiterating that the sale agreement between the 1<sup>st</sup> Appellant and the 1<sup>st</sup> Respondent had been terminated, and the 1<sup>st</sup> Appellant refunded part of the purchase price to the 1<sup>st</sup> Respondent, which the 1<sup>st</sup> Respondent acknowledged receipt of. He further contended that if any documents were issued to the 1<sup>st</sup> Respondent, they were doctored, fabricated, forged, and/or obtained fraudulently. The 2<sup>nd</sup> Appellant maintained that the 1<sup>st</sup> Respondent's response to the Counterclaim did not raise any triable issues.
16. The Learned Trial Magistrate heard the suit on 27<sup>th</sup> June 2022. The 1<sup>st</sup> Respondent testified that the 1<sup>st</sup> Appellant sold her the suit plot through a sale agreement dated 30<sup>th</sup> January 2017 for the consideration of Kshs 1,000,000/- which she paid in full. She stated the property was transferred to her name and she was issued a beacon certificate dated 27<sup>th</sup> June 2017.
17. During Cross-examination, the 1<sup>st</sup> Respondent confirmed that she purchased the suit plot from the 1<sup>st</sup> Appellant and maintained the plot was procedurally and validly transferred to her. The 1<sup>st</sup> Respondent clarified that the sum of Kshs 550,000/- the 1<sup>st</sup> Appellant had deposited into her (1<sup>st</sup> Respondent) Equity Bank Account was not for refund but deposit to bail her out in case she was arrested as she was under investigation following a complaint by the 2<sup>nd</sup> Appellant. The 1<sup>st</sup> Respondent stated that she refunded the 1<sup>st</sup> Appellant the deposit she had made in her Bank Account.
18. The 2<sup>nd</sup> Appellant testified that he purchased the suit plot for Kshs. 1,200,000/- from the 1<sup>st</sup> Appellant. He stated that before he bought the plot he carried out a search at the National Irrigation Board (NIB) and he verified that the plot belonged to the 1<sup>st</sup> Appellant and one Beth Wamuyu Mukinyukia with whom they co-owned the plot. He testified that he paid the full purchase price and that the 1<sup>st</sup> Appellant and the said Beth Wamuyu facilitated the transfer of the suit plot to his name.
19. During cross-examination, the 2<sup>nd</sup> Appellant stated that he paid Kshs. 1,200,000/- to the 1<sup>st</sup> Appellant, despite the search he conducted at NIB indicating she was not the sole owner of the suit plot. He confirmed that the 1<sup>st</sup> Appellant did not have authorization from Beth Wamuyu to sell the plot. He admitted that there was no sale agreement between him and Beth. He further stated that he had not seen any documents indicating that the suit plot had been sold to the 1<sup>st</sup> Respondent. He claimed that the 1<sup>st</sup> Respondent forcibly entered the suit plot in July 2017 and collected rent. He explained that the application for transfer was made between him and Beth Wamuyu because she was the registered owner at the time. He conceded the beacon certificate he was given did not have all the signatures of the NIB Officers as required. He stated he had been on the plot since 6<sup>th</sup> July 2017. The 2<sup>nd</sup> Appellant further stated that he was not aware that the 1<sup>st</sup> Appellant had sold the suit plot to the 1<sup>st</sup> Respondent at the time he purchased the same.
20. Leah Nyaguthii Mukoma, who is the daughter of the 1<sup>st</sup> Appellant testified that the 1<sup>st</sup> Respondent was a friend of her mother but it was the 2<sup>nd</sup> Appellant who she was aware was buying the suit land from her mother as she witnessed the sale agreement between her mother and the 2<sup>nd</sup> Appellant.



21. The 1<sup>st</sup> Appellant testified that Beth Wamuyu had paid her Kshs. 1,000,000/- as the purchase price for the suit property. She added that she entered into another sale agreement with the 1<sup>st</sup> Respondent, who also paid her Kshs 1,000,000/-. She stated that she further sold the suit plot to the 2<sup>nd</sup> Appellant, which angered the 1<sup>st</sup> Respondent when she discovered. She stated her daughter had placed a caution to prevent any transaction of the plot but she later agreed to have the same removed to facilitate the sale of the plot. The 1<sup>st</sup> Appellant affirmed that she made an application dated 14<sup>th</sup> March, 2017, to the 2<sup>nd</sup> Respondent requesting the suit land be transferred to the 1<sup>st</sup> Respondent and conceded that she did not do a similar request to the 2<sup>nd</sup> Respondent in favour of the 2<sup>nd</sup> Appellant in December 2016.
22. Gordon Omondi Mbudah (DW4), the Scheme Surveyor of the National Irrigation Authority, testified on behalf of the 2<sup>nd</sup> Respondent. He adopted his witness statement and the accompanying documents as his evidence. He affirmed that the suit plot was initially owned by the 1<sup>st</sup> Appellant, before she transferred the same to the 1<sup>st</sup> Respondent. He stated that their records did not have the 2<sup>nd</sup> Appellant, except for a letter dated 24<sup>th</sup> March 2017, written by Ms. Beth Wamuyu, requesting the transfer of the beacon certificate to the 2<sup>nd</sup> Appellant. He indicated that this request was not acted upon since the beacon produced was not genuine.
23. In his evidence the Surveyor explained that the beacon certificate produced by the 2<sup>nd</sup> Appellant was not genuine as it indicated it was dated 21<sup>st</sup> December, 2016 yet the application by Ms. Beth Wamuyu was dated 24<sup>th</sup> March 2017. He stated that for the beacon certificate to be valid it should have contained three signatures: those of the Scheme Surveyor, the Scheme Engineer, and the Scheme Manager, which the said beacon did not have.
24. The Surveyor further testified that the 1<sup>st</sup> Appellant had made a request to the 2<sup>nd</sup> Respondent's office to transfer the suit plot to the 1<sup>st</sup> Respondent, and the transfer was effected as Beth Wamuyu had consented to the transfer. The witness stated that Beth Wamuyu gave consent vide the letter dated 21<sup>st</sup> June 2017 in which she indicated she had no further interest in the suit plot as the 1<sup>st</sup> Appellant had returned to her all her money. She authorized the 2<sup>nd</sup> Respondent to process the transfer to the new buyer who she did not name.
25. The Learned Trial Magistrate after reviewing the pleadings, evidence and parties' submissions came to the conclusion that the 1<sup>st</sup> Respondent had proved her case against the Appellants. It was his view that the 1<sup>st</sup> Respondent was the rightful owner of Plot No. 5 Red Soil. The Learned Magistrate on that basis issued a declaration that the 1<sup>st</sup> Respondent was the rightful owner and as a consequence issued a permanent injunction restraining the Appellants either by themselves, their servants, agents or anyone acting on their behalf or at the behest from trespassing into, utilizing, selling, disposing, charging, transferring or in any other way interfering with the 1<sup>st</sup> Respondent's quiet possession, use and enjoyment of the Plot No. 5 Red Soil which provoked the present Appeal.
26. The Appeal was argued by the parties by way of written submissions. The Appellants submitted the Trial Magistrate failed to address all the issues in controversy, focusing only on two specific points. Regarding the first issue of rightful ownership, the Appellants argued the Trial Magistrate did not adequately consider the evidence presented by the Appellants. The Appellants submitted that the 1<sup>st</sup> Appellant provided evidence indicating that the agreement between her and the 1<sup>st</sup> Respondent had been revoked and that part of the purchase price had been refunded to the 1<sup>st</sup> Respondent. The Appellants argued that since the sale agreement between the 1<sup>st</sup> Appellant and the 1<sup>st</sup> Respondent was revoked, the 1<sup>st</sup> Appellant was free to seek out a willing buyer, and the 1<sup>st</sup> Respondent was only entitled to a refund of the purchase price.



27. The 2<sup>nd</sup> Appellant submitted that he had adduced evidence to prove he did not acquire the suit plot through fraudulent means by presenting a beacon certificate issued to him by the 2<sup>nd</sup> Respondent at the time of purchase. He contended that the survey report produced by the 1<sup>st</sup> Respondent did not conclusively show that the 2<sup>nd</sup> Appellant obtained a fake beacon certificate. He placed reliance on the case of Julius Njogu Kimani v. Stephen Maina (2015) eKLR.
28. The 1<sup>st</sup> Respondent filed her written submissions dated 26<sup>th</sup> February 2024, asserting that the evidence presented by the 2<sup>nd</sup> Appellant clearly indicated that the 2<sup>nd</sup> Appellant purchased the suit plot as the second buyer. She claimed that the root of the issues they were facing was the 1<sup>st</sup> Appellant. The 1<sup>st</sup> Respondent submitted that the evidence of the 2<sup>nd</sup> Respondent's witness was crucial as the 2<sup>nd</sup> Respondent was the allocating authority and the custodian of the records and documents related to the plots, including the suit plot. Additionally, she submitted that the evidence provided by the 2<sup>nd</sup> Respondent's surveyor demonstrated that the beacon certificate issued to her on 27<sup>th</sup> June 2017, was legitimate, while the certificate issued to the 2<sup>nd</sup> Appellant was fake, as the individual who issued the same had been transferred from the Survey Department. The 1<sup>st</sup> Respondent contended her agreement with the 1<sup>st</sup> Appellant had never been rescinded and/or revoked and had been performed and completed. She urged for the dismissal of the Appeal with costs.
29. I have reviewed the record of Appeal and have considered and reevaluated the evidence adduced before the Lower Court taking cognizance that this is an Appellate Court of first instance, and as such I am obligated to consider and re-evaluate the evidence and material that was before the Learned Trial Magistrate at the time he made the Judgment to satisfy myself that the decision that the Magistrate reached was justified. This was in keeping with the principle established by the Court of Appeal in the Case of *Selle & Another –vs- East African Motor Boat & Others* (1968) EA 123.
30. In the instant Appeal the singular issue for determination and upon which the Appeal turns is who between the 2<sup>nd</sup> Appellant and the 1<sup>st</sup> Respondent was the rightful owner of plot No.5 Red Soil within the Mwea Irrigation Scheme as each one of them claimed to have purchased the said plot from the 1<sup>st</sup> Appellant and transfers facilitated through the Offices of the 2<sup>nd</sup> Respondent. Thus in determining the issue the Court will require to consider and re evaluate the evidence to determine, whether the Learned Trial Magistrate in determining as he did that the 1<sup>st</sup> Respondent was the rightful owner of the suit plot, was justified in reaching such conclusion.
31. It is not in dispute that the 1<sup>st</sup> Appellant was the initial owner of Plot No. 5 Red Soil Mwea. The evidence adduced before the Lower Court showed she apparently sold the plot multiple times and was collecting money from the buyers. The 1<sup>st</sup> Appellant had sold the plot to Beth Wamuyu Mukinyukia for Kshs 540,000/- although in her evidence she stated she did not have any documents evidencing that transaction as she claimed the same had been stolen by thugs. The 1<sup>st</sup> Appellant had to refund Beth Wamuyu her money for her to withdraw her interest in the suit plot to enable the 1<sup>st</sup> Appellant to sell the plot to the 1<sup>st</sup> Respondent. On 21<sup>st</sup> June 2017 Beth Wamuyu wrote a statement at the CID Office Mwea East and stated thus:-

“I wish to state today 21<sup>st</sup> June 2017 I have no interest in Plot No. 5 in Red Soil which I was claiming ownership through sale by one Jane Mukoma. I have withdrawn from the said plot since Jane Mukoma has fully returned all my money. Therefore the new owner can be facilitated to acquire full ownership.”



32. On the same date 21<sup>st</sup> June 2017 the said Beth Wamuyu wrote to the Manager NIB Mwea respecting the said plot No. 5 Red Soil informing him she had no interest in the said plot and that the new owner could be accorded assistance without any further reference to her.
33. On 14<sup>th</sup> March 2017 after the 1<sup>st</sup> Appellant had been paid by the 1<sup>st</sup> Respondent the full purchase price as per the acknowledgments, the 1<sup>st</sup> Appellant wrote to the Scheme Manager, Mwea Irrigation Scheme thus:-
- “I, Jane Muthoni Mukoma, the legal owner of plot No. 5 Red Soil, I have come into an agreement with my family and hereby wish to transfer the same to one Sabina Waruguru Ngunu.
- I am hereby requesting your office to change your record and issue to Sabina Waruguru Ngunu with a Beacon Certificate.”
34. Following the withdrawal of interest in the plot by Beth Wamuyu and removal of a caution lodged by the 1<sup>st</sup> Appellant’s daughter, a beacon certificate in regard to plot No. 5 Red Soil was processed on 27<sup>th</sup> June 2017 in favour of the 1<sup>st</sup> Respondent.
35. The issue of the Beacon Certificate in favour of the 1<sup>st</sup> Respondent essentially conferred ownership of the suit plot to the 1<sup>st</sup> Respondent. The Scheme Surveyor, Gordon Mbudah who testified on behalf of 2<sup>nd</sup> Respondent stated that for a Beacon Certificate to be valid, the same had to be signed by the Scheme Engineer and had to be approved by the Scheme Manager. He was emphatic that as per the Scheme’s records, the 1<sup>st</sup> Respondent was the validly registered owner of Plot No. 5 Red Soil in the Scheme.
36. Gordon Mbudah in his evidence was categorical that the Beacon certificate exhibited by the 2<sup>nd</sup> Appellant was not genuine and they did not have the same on the Scheme records. He faulted the beacon certificate for carrying a reference of December 2016 yet the application for transfer was made on 24<sup>th</sup> March 2017 which he indicated was not practicable. Further he explained the alleged beacon certificate was not authenticated as it did not have the mandatory three signatures of the 2<sup>nd</sup> respondent as required. He affirmed that due process was followed to have the 1<sup>st</sup> Respondent registered as the owner of the suit plot.
37. On evaluation of the evidence it is evident that the agreement for the sale of the suit plot to the 1<sup>st</sup> Respondent entered into on 30<sup>th</sup> January 2017 was completed and the 1<sup>st</sup> Respondent was duly issued a Beacon certificate on 27<sup>th</sup> June 2017. Though the 1<sup>st</sup> Appellant claimed that the agreement to the 1<sup>st</sup> Respondent was rescinded and/or revoked and the 1<sup>st</sup> Respondent refunded part of the money that was not borne out by the evidence. The 1<sup>st</sup> Appellant personally wrote to the 2<sup>nd</sup> Respondent the letter dated 14<sup>th</sup> March 2017 authorising the transfer to the 1<sup>st</sup> Respondent. Beth Wamuyu who also had interest in the plot following a sale agreement wrote to the 2<sup>nd</sup> Respondent confirming she no longer had any interest in the plot since she had been refunded her money by the 1<sup>st</sup> Appellant. That paved the way for the 2<sup>nd</sup> Respondent to complete the transfer in favour of the 1<sup>st</sup> Respondent.
38. The 2<sup>nd</sup> Appellant David Muriithi Kithuci entered into a sale agreement with the 1<sup>st</sup> Appellant on 10<sup>th</sup> March 2017 to purchase the suit plot for Kshs 1,200,000/-. Though he paid the money to the 1<sup>st</sup> Appellant he stated she did not have any ownership documents and that it was Beth Wamuyu who held the documents and that it was her (Beth) who effected the transfer to him. Apparently Beth Wamuyu gave the 2<sup>nd</sup> Appellant the beacon certificate that the 2<sup>nd</sup> Respondent said was fake. According to the 2<sup>nd</sup> Appellant, the 1<sup>st</sup> Respondent’s agreement with 1<sup>st</sup> Appellant was rescinded/revoked and she was refunded part of the money. The 1<sup>st</sup> Appellant while at the CID Offices stated she had given the 1<sup>st</sup>



Respondent the money so that she could withdraw from the sale but the money was given back to her. The evidence of the 1<sup>st</sup> Appellant was improbable as she was the same person who made an application to the 2<sup>nd</sup> Respondent to have the suit plot transferred to the 1<sup>st</sup> Respondent. It does appear the 1<sup>st</sup> Appellant was playing with people as pawns using the suit plot as one cannot explain why within a short span of time she sold the same plot to three different people and collected money from each of them.

39. The sale to the 1<sup>st</sup> Respondent was completed and for Beth Wamuyu she confirmed she was refunded her money by the 1<sup>st</sup> Appellant. As for the 2<sup>nd</sup> Appellant he was successfully played by the 1<sup>st</sup> Appellant as the documents he was handed over by Beth Wamuyu for the plot were not genuine. At any rate the transaction with the 1<sup>st</sup> Respondent was earlier in time, the agreement with her having been entered into on 30<sup>th</sup> January 2017 while the 2<sup>nd</sup> Appellant's agreement was on 10<sup>th</sup> March 2017. The 1<sup>st</sup> Respondent's agreement had not been rescinded and/or cancelled as at 10<sup>th</sup> March 2017 when the 2<sup>nd</sup> Appellant entered his agreement with the 1<sup>st</sup> Appellant. The 1<sup>st</sup> Appellant could not enter into a valid agreement in respect of the suit plot when she already had a subsisting agreement of sale with the 1<sup>st</sup> Respondent and had been paid the purchase price. On the basis of the evidence therefore, the 1<sup>st</sup> Respondent validly purchased the suit plot and she was the rightful owner.
40. The Learned Trial Magistrate, having myself carried out my own evaluation and analysis of the evidence, came to the correct finding that indeed the 1<sup>st</sup> Respondent had validly purchased the suit plot and that the same was regularly and procedurally transferred to her. I see no basis upon which I can interfere with the decision of the Learned Trial Magistrate. I affirm the decision.
41. Both Appeals by the 1<sup>st</sup> Appellant, and the 2<sup>nd</sup> Appellant, filed separately as Kerugoya ECL Appeal No. 34 of 2022 and 30 of 2022 respectively, and were consolidated for purposes of hearing are without any merit and the same are dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 20<sup>TH</sup> DAY OF MARCH 2025.**

**J. M. MUTUNGI**

**ELC JUDGE**

