



Okumbe v County Government of Siaya & 4 others (Environment and Land Appeal E004 of 2023) [2023] KEELC 22186 (KLR) (14 December 2023) (Judgment)

Neutral citation: [2023] KEELC 22186 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND APPEAL E004 OF 2023
AY KOROSS, J
DECEMBER 14, 2023**

BETWEEN

DR. JOSHUA ABONG'O OKUMBE APPELLANT

AND

COUNTY GOVERNMENT OF SIAYA 1ST RESPONDENT

**CHIEF EXECUTIVE COMMITTEE MEMBER COUNTY GOVERNMENT OF
SIAYA (DEPARTMENT OF LANDS, PHYSICAL PLANNING, HOUSING AND
URBAN DEVELOPMENT) 2ND RESPONDENT**

**WALTER OKELO (CHIEF OFFICER, DEPARTMENT OF LANDS, PHYSICAL
PLANNING, HOUSING AND URBAN DEVELOPMENT) 3RD RESPONDENT**

DR. JAMES OUKO OKUMBE 4TH RESPONDENT

MATHEWS ADERA OKUMBE 5TH RESPONDENT

*(Being an appeal from the judgment and decree of PM Hon. J. P.
Nandi given on 20/12/2022 in Bondo PM ELC Case No. E28 of 2021)*

JUDGMENT

Background

1. The background to the dispute giving rise to this appeal as articulated in the pleadings, is centred on Plot No 14 Wagusu Market ('the suit property'). In the lower court, the Appellant was the Plaintiff and the Respondents were the Defendants. The Appellant and 4th and 5th Respondents are brothers and sons of Petro Okumbe Ouko ('the Deceased').
2. From the pleadings, the 4th Respondent was also the Deputy Governor of the 1st Respondent whilst the 2nd and 3rd Respondents were officers whose offices fell with the 1st Respondent.



3. In an amended plaint dated 16/03/2022, the Appellant sued the Respondents for allegedly unlawfully, illegally, unprocedurally and fraudulently transferring ownership of the suit property from himself to the Deceased.
4. The Appellant averred that from 1951, the suit property had previously been owned by the Deceased. Nonetheless, on 11/06/1990 and with the knowledge of family, the Deceased transferred the suit property to the him. In other words, it was a gift inter vivos.
5. He further averred that to effect this gift, on 17/07/1991, the defunct County Council of Siaya (Council) which was succeeded by the 1st Respondent, transferred the suit property to him.
6. On the strength of this transfer, he improved the suit property by demolishing the semi-permanent structure that stood on it and put up a modern structure and had since then, been paying annual rates for it either through the defunct Council or to the 1st Respondent.
7. He averred that at the instigation of the 4th Respondent who had challenged his ownership, on 2/12/2020, the 1st Respondent unprocedurally, fraudulently and unlawfully reverted the suit property's ownership to the Deceased.
8. Consequently, he prayed for the Trial Magistrate to grant him the following reliefs: -
 - a. As the Appellant was condemned unheard, a declaration the transfer of the suit property by the 1st Respondent from himself to the Deceased was unprocedural, unlawful, fraudulent and therefore void.
 - b. A declaration the 1st Respondent was vicariously liable for the acts of the 4th Respondent and the 1st, 2nd, 3rd and 4th Respondents were jointly and severally liable.
 - c. A declaration the 1st, 2nd, 3rd and 4th Respondents had no jurisdiction to overturn the decision of the honourable court given in December 2019.
 - d. A declaration the 2nd, 3rd and 4th Respondents misused their respective offices, influence and positions.
 - e. An order of transfer of the suit property from the Deceased to him.
 - f. General damages for embarrassment, pain and inconvenience caused.
 - g. Costs and interest on damages and costs.
9. In a Defence by the 1st Respondent's Office of the County Attorney dated 13/07/2021, the 1st, 2nd and 3rd Respondents denied the allegations contained in the Plaint, put the Appellant to strict proof and asserted the decision to revert the suit property to the Deceased's name was conducted within the confines of law.
10. In a Defence dated 26/07/2021 by the firm of Yonga, Odhiambo & Associates, the 4th Respondent denied allegations in the Plaint, put the Appellant to strict proof and averred the reversion of the suit property to the Deceased was above board. The 4th Respondent further averred the Appellant was given an opportunity to provide proof of a regular transfer from the Deceased to himself but squandered it.
11. The firm of Julius Juma & Company Advocates for the 5th Respondent filed a Defence dated 6/12/2022 whereby the 5th Respondent admitted the Appellant's claim. He contended that in light of the Appellant's generosity in uplifting the livelihoods of their family by taking care of and paying



- school fees for his younger siblings, the Deceased gifted the Appellant the suit property. The 5th Respondent prayed for the orders pursued in the amended Plaintiff to be granted.
12. Replies to Defence against the 1st to 4th Respondents' Defences both dated 30/08/ 2021 were filed by the Appellant.
 13. Parties testified and their respective cases were closed. In his judgment, the Trial Magistrate acknowledged 5 issues arose for determination: (a) who was the original owner of the suit property, (b) whether the suit property was transferred to the Appellant (c) whether the transfer of the suit property from the Appellant to the Deceased was unlawful, unprocedural and fraudulent, (c) whether the 1st-4th Respondents acted without jurisdiction to overturn the decision of the court in ELC Case No 2 of 2019 and, (5) whether the 4th Respondent exercised undue influence over the 2nd and 3rd Respondents.
 14. The Trial Magistrate found that it was undisputed the Deceased was the original owner before the Appellant became the owner. He further surmised the Council and Appellant misconstrued the import of the Transfer Form. In that regard, the Trial Magistrate stated the Appellant's allegation that the suit property was transferred to him was false.
 15. The Trial Magistrate also found that the Appellant had not particularised and distinctly proved fraud as against the 1st-3rd Respondents. Further, the Trial Magistrate stated the Appellant was privy of the process leading up to the reversion of the suit property and could not cry foul.
 16. In addition, the Trial Magistrate deduced that since the court in ELC Case No 2 of 2019 had found that the suit property formed part of the Deceased's estate, it was clear that the suit property was indeed part of the estate of the Deceased.
 17. Finally, the Trial Magistrate found that the Appellant had not proved undue influence by the 4th Respondent over the 2nd and 3rd Respondents. In conclusion, the Trial Magistrate found that the Appellant had not proved his case on a balance of probabilities and dismissed his suit with costs to the 1st-4th Respondents.

Appeal To This Court

18. Aggrieved by the Trial Magistrate's decision, the Appellant preferred an Appeal to this court on 13 grounds. After consideration of these grounds together with the Appellant's submissions dated 13/06/2023, these grounds can be aptly be abridged into the following four grounds: -
 - a. The Trial Magistrate erred in law and fact in not finding the Deceased had transferred the suit property to the Appellant.
 - b. The Trial Magistrate erred in law and fact in not finding the transfer process of the suit property from the Appellant's name to the Deceased's name was unprocedural, unlawful and fraudulent.
 - c. The Trial Magistrate erred in law and fact in finding the Appellant had not proved his claim that the reversion of the suit property to the Deceased's name by the 1st to 3rd Respondents was fraudulent, illegal, unlawful and unprocedural.
 - d. The Trial Magistrate erred in law and fact in failing to find the 4th Respondent unduly influenced the 2nd and 3rd Respondents.
19. The Appellant prayed for the appeal to be allowed, that the impugned judgment and decree be set aside and be substituted and that he be awarded costs of the Trial Magistrate's suit and of the appeal.



Parties' Submissions

20. As directed by the court, the Appeal was canvassed by written submissions. All parties filed their respective submissions and they were all represented by counsels who represented them in the lower court. The 5th Respondent supported the Appeal whilst the 1st to 4th Respondents strenuously opposed the Appeal.
21. The court has carefully read and understood the records and elucidating submissions. The submissions and well cited provisions of law and authorities relied upon by parties shall be taken into consideration while rendering this determination.

Issues For Determination, Analysis And Determination

22. As this is a 1st appeal, it is my duty to analyze and reassess the evidence on record and reach my own conclusions but giving allowance I did not hear the parties. See *Selle v Associated Motor Boat Co.* [1968] EA 123. After due consideration, the issues that arise for determination are the four condensed grounds of Appeal and they will be dispensed with successively.
23. Since the 1st-4th Respondents raised the question of how the Appellant acquired the suit property before they could deal with its reversion, the burden was placed on the Appellant to prove that he acquired the suit property from the Deceased. This burden of proof is explicated in Sections 107, 108, 109 and 112 of the [Evidence Act](#).
24. It must be noted it was undisputed the Appellant was in occupation of the suit property and had been paying Land Rates for it.
25. In the absence of the suit property's registration in our land regime, it follows that this court is called upon to interrogate the defunct Council's legal framework as provided for in the repealed [Local Government Act](#) 1986 which dealt with allotment of properties to individuals. Under Section 28 of the repealed [Local Government Act](#) 1986 [1998 revision], the Council was capable of acquiring, holding and alienating land.
26. Section 129 of the same Act stated the Clerk of the Council was the Council's Chief Executive and Administrative Officer and coordinated all its duties. The Council could also sell any land it possessed but did not require [see also Section 145 (f)]. According to Part (p) of Section 145 thereof, the Council had power to establish, maintain, let, manage and control public markets and market buildings.
27. According to the Third Schedule of the repealed [Local Government Act](#) 1986 [revised 1998], the Clerk was responsible for convening all meetings of the Council and its committees and was also mandated to prepare agendas, minutes and reports for various local authorities.
28. In addition, the Clerk had charge and custody of and was responsible for all charters, deeds, records and other documents belonging to the Council. He had the duty of ensuring that the business of the Council was carried out with order, regularity and expedition in accordance with the by-laws, regulations, resolutions and standing orders of the local authority. He also conducted general correspondence for the Council.
29. In their defence, the 1st and 3rd Respondents admitted that indeed, they were custodians of documents pertaining to the suit property nonetheless, during transition from the Council to the 1st Respondent, the Transition Authority did not hand over documents pertaining to the suit property to it. Therefore, the Trial Court was left to interrogate documents produced by the Appellant.



30. To prove ownership, the Appellant produced several documents including an executed Transfer Form by the Deceased to the Appellant that was depicted as Change of Name and Business, Transfer payment slip and Rent payment slip all of which were paid for by the Deceased.
31. It emerged, subsequent to the Transfer and by virtue of the Works Town Planning and Markets Development Committee's meeting held on 5/07/1991, the Council communicated to the Deceased that his Transfer to the Appellant had been approved.
32. Thereafter, transactions between the Council and Deceased ceased and dealings over the suit property commenced between the Council and Appellant as an allottee. The Council received Land Rent and Rates from Appellant and issued various notices to him. The Appellant produced documents to support this. This relationship continued even well after the 1st Respondent statutorily took over the defunct Council's functions.
33. It was the Appellant's and 5th Respondent position that the Transfer was a gift inter vivos between the Deceased and the Appellant. The 3rd Respondent testified its Rates Records showed the Appellant was registered as the owner of the suit property and he (Appellant) had been paying Rates.
34. The 4th Respondent stated the Transfer Form was suspicious because it had not been signed by family members but went ahead and testified that the Transfer Form was a Change of Name and not a Transfer of ownership.
35. On interpretation of the meaning of the Transfer Form or process of transfer from the Deceased to the Appellant, the Trial Magistrate stated and found as follows: -

“Thus a reading of this clear (*sic*) show that what was intended by this application was change of name and business and not transfer as alleged by the plaintiff. The said application does not have recommendation of the committee and Health Officer and the decision of County Council nor bear the signature of the MOH and clerk to council. This means the Application was not completed. The letter dated 17/7/1991 talks of transfer of plot 14 Wagusu Market.

The plaintiff and author of letter dated obviously misinterpreted the reason for change of name”

36. Accordingly, the question that begs to be answered is whether the Trial Magistrate erred in his interpretation. Since interpretation of the Deceased's intention in executing the Transfer Form was and still is the subject of interrogation, it is incumbent upon this court to apply tools of legal interpretation to construe the Deceased's intention.
37. Interpretation and intention of parties have been defined by several legal scholars. Dennis Kurzo et al , “*Legal Pragmatics*’ John Benjamins Publishing Company, Edn 1, Volume 288 page 119 defined legal interpretation as:-

“...the reconstruction of the meaning of text, i.e. interpretation, is complex operation, involving parameters of a linguistic, situational, inter-textual, cognitive, cultural and ideological nature.”



While Janet Giltrow and Dieter Stein (Eds) “*The Pragmatic Turn in Law: Inference and Interpretation in Legal Discourse*” 1st Edn, De Gruyter Inc. Volume 118, pages 83- 84 had this to say on intentions of an utterer: -

“To clarify the nature of this intention, we can say that it is the intention to modify the addressee’s thoughts so that the addressee grasps the utterer’s intention to modify the addressee’s thoughts. Crucially, this “intention to mean” is, like other intentions, constrained by rational expectations- in this case, by what the speaker can rationally expect the intended addressee to take the speaker meant.”

38. From the documents produced before the Trial Magistrate, the Council as the Deceased’s addressee no doubt understood the Deceased intended to transfer the suit property to the Appellant.
39. This is evidenced by its letter dated 17/07/1991 to the Deceased where it confirmed the Transfer had been effected and that the suit property had been registered in the Appellant’s name as per the Deceased’s request. There was no evidence the Deceased ever questioned the Council’s understanding of his intention to the time of his demise in 2008.
40. Similarly, none of the Parties disputed the Deceased’s intention apart from the 4th Respondent who held a contrary view which was upheld by the Trial Magistrate.
41. A close investigation of Transfer Form shows it allowed the Deceased either to transfer, change a business or plot or add names. Visibly, in the Transfer Form, the Deceased changed the business from bakery to petty trade and hotel however, he introduced a new limb of his intention which was not in the pre-printed header of the Transfer Form; Change of Name. This Change of Name was interpreted by the Council as the Deceased’s addressee to be a form of transfer. Was that so?
42. As explained by *Concise Oxford English Dictionary*, 12th Edn “Change of Name” has several definitions including: -

“1 make or become different...arrive at a fresh phase; become new 2. take or use another instead of...”

Black’s Law Dictionary, 11th Edn has defined “Transfer” to include: -

- “1. Any mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien, or other encumbrance. The term embraces every method – direct or indirect, absolute or conditional, voluntary or involuntary -of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor’s equity of redemption....”
43. To elucidate the custom of Councils on Transfer and/or Change of Name, the testimony of the legal officer of defunct City Council of Nairobi in *Naomi Wakonyu Kamau & 2 others v Dorcas Wanjira Kariuki* [2019] eKLR sheds light on it when her testimony was summarized as follows: -

“She stated that since the properties had no titles the Deceased inquired from her on the procedure that he could use to effect the transfer. She stated that she advised the Deceased that he could give the defendant a power of attorney on the strength of which the records held at the City Council of Nairobi in respect of the suit properties could be changed to the name of the defendant. ...She stated that the said power of attorney was used to change



the records held at the then City Council of Nairobi relating to the suit properties from the name of the Deceased to that of the defendant.”

44. On an application letter for Change of Name by an allottee, the Principal Land Administration officer with the Ministry of lands explained the import of this intention in *Cross Current Indigenous Network v Commissioner of Lands & another* [2018] eKLR and his testimony was abbreviated as follows: -

“The witness stated the Ministry acted on this letter and issued a new letter of allotment to AIC church dated 28th October 1997. He stated the earlier letter of allotment issued to Cross Current Indigenous Network dated 15th May 1992 was withdrawn/cancelled upon the issuance of the new allotment letter to AIC...”

45. Therefore, it arises the act of Change of Name in a defunct Council’s Transfer Form was one of the modes of Transfer and it can be deduced it meant the process by which an Applicant, in this case the Deceased, could apply in a Transfer Form for all records over an allotted plot held by the defunct Council in an Applicant’s name to be cancelled and a new name, in this case the Appellant be entered in his stead.

46. Accordingly, from the evidence adduced, transfer fees and Plot Rent for the year 1991 was duly paid for, vide Min: 6/91 of the Works Town Planning and Markets Development Committee held on 5/04/1991, the Transfer was approved, the Council’s Treasurer was requested to adjust its records and, the Council’s Clerk registered the suit property in the Appellant’s name. This process was explained by a County Revenue Officer in *Sara Lettich v Joshua Rutto & 2 others* [2021] eKLR thus: -

“She explained the process of transferring ownership of plots as follows: First the seller has to present a sale agreement, then the Town Planning Committee holds a meeting to approve the same. The Town Clerk and County Treasurer then sign the Transfer Form after confirming that the land rates have been paid.”

See also the Third Schedule of the defunct *Local Government Act* 1986 [revised 1998] which was highlighted earlier in this judgment and *Henry Itumange Nzioka v Rachel Kalendi Nzioka* [2021] eKLR.

47. Consequently, all due process towards the Transfer by Change of Name were duly followed. I respectively disagree with the Trial Magistrate that the Transfer form was incomplete. Plainly, from the fine print of the Transfer form, the Deceased was restricted to only fill the 1st part of the Form which he did.

48. Thereafter, the remainder parts of the Transfer Form were to be filled by the internal mechanisms of the Council and by its letter dated 17/07/1991, the Council confirmed the Committee had approved the application for Transfer.

49. In view of the sequence of events earlier highlighted on how the Council registered the suit property in the Appellant’s name, the logical conclusion was that the Council carried out its mandate in filling the Transfer Form which required the Committee’s input together with that of the Council and Ministry of Health and no doubt these internal deliberations culminated in the final outcome which was communicated by the letter dated 17/07/1991.

50. Apart from the 4th Respondent alleging the Transfer Form was fraudulent, he did not prove this. The 1st Respondent whose predecessor allocated the suit property and also the custodian of the records never dislodged the legality of the documents produced by the Appellant. Ultimately, I must find the



Appellant succeeds on this limb. I find and hold that the Trial Magistrate erred in finding that the Appellant did not prove the Deceased transferred the suit property to him.

51. Order 2 Rule 10 (1) (a) of the [Civil Procedure Rules](#) provides as follows: -

“(1) Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies;”

52. It is trite law fraud must be proved on parameters beyond a balance of probability but below reasonable doubt. This principle of law was elucidated in the well cited Court of Appeal decision of [Arthi Highway Developers Limited v West End Butchery Limited & 6 others](#) [2015] eKLR where the court expressed itself as follows: -

“As a serious accusation, fraud ought to be specifically pleaded and proved on higher balance of probability but not beyond reasonable doubt. It is not necessary that the word Fraud be stated or used, but the facts stated in the pleading must be so stated to show that fraud was used, and the circumstances leading to reasonable inference that fraud, illegalities and irregularities were the cause of the loss or damage complained.”

53. In view of this and having examined the impugned judgment, I do not entertain in my mind that the Trial Magistrate appreciated these well settled principles of law. Though, in his findings, he found: -

“I find that the plaintiff has not distinctly alleged and as (sic) distinctively proved as against ...the 2nd, 3rd and 4th defendants.”

54. Now, having revisited the Appellant’s claim, at paragraph 26 of his Plea, the Appellant particularized fraud against the 1st to 3rd Respondents as follows: -

“The 2nd, 3rd and 4th defendants without notice to the plaintiff unprocedurally, unlawfully illegally and without the knowledge or consent of the plaintiff transferred the ownership of Plot No14 Wagusu Market from the name of the Plaintiff Dr Joshua Abong’o Okumbe to the name of Petro Okumbe Ouko (Deceased).”

55. On juxtaposing these particulars against the legal framework of fraud in civil cases, in my mind, I entertain no doubt that the Appellant distinctly pleaded and particularized fraud, illegality and unprocedural conduct against the 1st to 3rd Respondents. Therefore, I find and hold the Trial Magistrate erred.

56. This notwithstanding, I must interrogate if these particulars were proved to the required standards. In referring to John Willard, [A Treatise on Equity Jurisprudence](#) 147 (Platt Potter Ed.,1879), [Black’s Law Dictionary](#), 11th Edn., defined fraud as follows;

“Fraud has been defined to be, any kind of artifice by which another is deceived. Hence, all surprise, trick, cunning, dissembling, and other unfair way that is used to cheat any one, is to be considered as fraud.”



57. On application of this definition to the particulars pleaded, the evidence adduced by the Appellant did not support a claim of fraud. On this, I find and hold the Trial Magistrate did not err in finding the Appellant did not prove his claim of fraud.
58. Turning to allegations of illegality and unprocedural manner in the way the suit property was reverted by the 1st Respondent to the Deceased's name, the Appellant invoked the doctrine of fair administrative action which requires public bodies to conduct their affairs in a manner that is expeditious, efficient, lawful, reasonable and procedurally fair.
59. Prior to and at arriving at its decision to revert the suit property to the Deceased, the 1st Respondent was legally required to follow procedures charted out in Section 4 (3) of the *Fair Administrative Action Act* which provides as follows: -
- “(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
- (b) an opportunity to be heard and to make representations in that regard;
- (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
- (d) a statement of reasons pursuant to section 6;
- (e) notice of the right to legal representation, where applicable;
- (f) notice of the right to cross-examine or where applicable; or
- (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.”
60. From the impugned judgement, the Trial Magistrate stated as follows: -
- “The plaintiff was given a notice and invited to attend the exercise but he refused to avail the documents and attend...Thus the plaintiff cannot be heard again saying he was not notified of the process that led to the retransfer of the suit plot to the same”
61. From the adduced evidence, I do not fault this statement by the Trial Magistrate. The Appellant's counsel's letter dated 24/08/2020 to the 1st Respondent was categorical the Appellant would not attend the meeting scheduled for 27/08/2020. This was in response to a letter dated 18/08/2020 by the 1st Respondent requesting for documents pertaining to the suit property.
62. No doubt any subsequent similar letter by the 1st Respondent over the same issue would have been frowned upon by the Appellant. The only point of concern is that this letter dated 18/08/2020 and another by the 1st Respondent dated 11/11/2020 merely required the Appellant to present documents to it. In other words, the letters were erringly silent on the intention of the 1st Respondent.



63. This court is not surprised the Appellant was astonished when he discovered the suit property was reverted to the Deceased since the nature of the administrative action that was to be taken by the 1st Respondent for his failure to tender documents was never advanced to him.
64. Thus, to the extent the nature of the administrative action was never communicated to the Appellant by the 1st Respondent prior to reversion of the suit property, I find the Trial Magistrate erred. I find and hold the Appellant proved the reversion of the suit property to the Deceased's name was unlawful, illegal and unprocedural.
65. Earlier in this judgment, the court outlined that a claim of undue influence must be specially pleaded and proved. See Order 2 Rule 10(1)(a) of the *Civil Procedure Rules*. The Trial Magistrate did appreciate this position of law and found the Appellant did not table evidence that the 4th Respondent used his position to unduly influence the 2nd and 3rd Respondents' actions.
66. The standard of proof in a claim of undue influence is a standard higher than a balance of probabilities but lower than reasonable doubt. This was held so in the recent Court of Appeal decision of *Patel & another v MJC & another (Suing as the guardians of PJP)* (Civil Appeal 182 of 2019) [2022] KECA 364 (KLR) (4 February 2022) (Judgment) which stated: -
- “It should also be appreciated that apart from specifically pleading undue influence, coercion and fraud, the same has to specifically proved by cogent evidence and not on the balance of probabilities as wrongly held by the trial court. Prove has to be higher than on the balance of probabilities but slightly lower than prove beyond reasonable doubt.”
67. From the evidence on record, the Appellant merely asserted that he strongly believed the 4th Respondent used his position as Deputy Governor to influence the 2nd and 3rd Respondents.
68. Apart from the Appellant's apprehension, no cogent evidence was tendered to prove this allegation and in the absence of proving such assertions, his claim failed and I must conclude, find and hold that the Trial Magistrate did not err in his findings.
69. I find and hold the Appellant was partly successful in his appeal. It is trite law costs follow the event and considering the close familial relationship between some of the parties, each party shall bear their respective costs of this appeal and that of the trial court suit. I must mention the Appellant did not prove damages.
70. For the reasons stated above, the end result is that the appeal shall be allowed in part and the lower court judgment is substituted in terms of the following disposal orders: -
- a. That a declaration be and is hereby issued that the Transfer by the 1st Respondent of Plot No 14 Wagusu Market from the name of Dr Joshua Abong'o Okumbe to that of Petro Okumbe Ouko (Deceased) was unprocedural, unlawful, null and void.
 - b. That the 1st Respondent shall amend in its records and cancel the registration of Petro Okumbe Ouko (deceased) as the allottee of plot No 14 wagusu market and instead, register Dr Joshua Abong'o Okumbe as the allottee.
 - c. That each party shall bear their respective costs of the appeal and of the lower court suit.

It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 14TH DAY OF DECEMBER 2023.

HON. A. Y. KOROSS



JUDGE

14/12/2023

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the Presence of:

N/A for appellant

Miss. Otieno h/b for Mr. Adera for the 1st, 2nd and 3rd Respondents

Miss Otieno h/b for Mr. Odino for the 4th Respondent

N/A for the 5th Respondent

Court Assistant: Ishmael Orwa

