



REPUBLIC OF KENYA



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**Muchui & another v Karanja (Environment and Land Appeal
E053 of 2021) [2025] KEELC 3239 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3239 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E053 OF 2021**

BM EBOSO, J

APRIL 7, 2025

BETWEEN

PATRICK MUCHUI 1ST APPELLANT

JUSMAH LIMITED 2ND APPELLANT

AND

JOSEPH MUNA KARANJA RESPONDENT

*(Being an Appeal against the Judgment of Hon. O Wanyaga Senior Resident Magistrate,
delivered on 26/5/2021 in Thika Chief Magistrate Court MCL & E Case No 29 of 2019)*

JUDGMENT

Introduction

1. This appeal challenges the Judgment rendered by Hon. O Wanyaga SRM on 26/5/2021 in Thika CMC MCL & E Case No. 29 of 2019. The key question in the dispute in the trial court was whether the respondent had acquired proprietary interest in land parcel number Ruiru/Ruiru East Block 2/27034 through purchase of the said land. The trial court returned a finding in the affirmative. The two appellants have challenged that finding through this appeal. As a first appellate court, I am expected to review the pleadings and the evidence on record and make a finding on that key issue. Before I do that, I will briefly outline a brief background to the appeal and summarize the parties' respective submissions in the appeal.

Background

2. The respondent initiated the suit in the lower court through a plaint dated 6/2/2019. His case was that, through two agreements dated 10/2/2018 and 17/2/2018, he purchased two plots identified as Plot No 4 and Plot No 5 from the 2nd appellant at a purchase price of Kshs 1,900,000, adding that the two plots were subsequently surveyed and registered in the name of the 2nd appellant as parcel



numbers Ruiru/Ruiru East Block 2/27033 and Ruiru/Ruiru East Block 2/27034 respectively. Upon paying purchase price in full, he was given plot ownership certificates by the 2nd appellant and he took possession of the two properties and erected a stone perimeter wall around them.

3. The respondent added that in January 2019, the 1st appellant entered into parcel number Ruiru/Ruiru East Block 2/27034 [formerly Plot No. 5], demolished part of the perimeter wall, and started undertaking “part-developments” on it. He termed the 1st appellant’s actions as irregular, illegal, fraudulent and conspiratorial.
4. The respondent sought the following reliefs from the trial court: (i) a perpetual injunction restraining the appellants against entering, trespassing on, undertaking developments of any kind on or interfering with his use of the suit land; (ii) a declaration that he (the respondent) was the bonafide proprietor of the suit land to the exclusion of everybody else and all other claimants; and (iii) costs of the suit.
5. During trial, the respondent testified and tendered a total of 8 exhibits marked 1(a) and 1(b) to 7, contained in the bundle filed on 6/2/2019. In addition, the respondent filed written submissions dated 23/4/2021, through M/s Muturi Njoroge & Co. Advocates.
6. The appellants contested the claim through a joint statement of defence dated 19/8/2020. Their case was that the 1st appellant was the registered and bonafide owner of land parcel number Ruiru/Ruiru East Block 2/27033 (sic), adding that the respondent was an “imposter keen on sanitizing illegal titles and/or process” through the court. They denied the allegation that the 2nd appellant issued the respondent with certificates of plot ownership upon receipt of full purchase price in the sum of Kshs. 1,900,000 and put the respondent to strict proof. The appellants added that the respondent had fraudulently altered the two land sale agreements dated 10/2/2018 and 17/2/2018. They denied illegality, fraud and conspiracy.
7. During trial, the appellants elected not to lead evidence. They subsequently filed written submissions dated 23/4/2021. Through their written submissions dated 23/4/2021, filed through M/s Musa Boaz & Thomas Advocates, they urged the trial court to reject the respondent’s claim.
8. Ultimately, the trial court rendered the impugned judgment in which it found that the respondent had proved his case on a balance of probabilities and granted him the reliefs that he sought in the plaint.

Appeal

9. Aggrieved by the judgment of the trial court, the appellant brought this appeal, advancing the following twelve (12) verbatim grounds;
 1. That the Learned Trial Magistrate erred in law and fact in holding that the respondent had proved on a balance of probability that he is the owner of the suit parcel, Ruiru/Ruiru East Block 2/27034 (hereinafter the suit property), yet there was no an iota of evidence of the respondent having purchased the same.
 2. That the Learned Trial Magistrate erred in law and fact by taking as prove contradictory and incomplete documents on the alleged transaction between the 2nd appellant and the respondent.
 3. That the Learned Trial Magistrate erred in law and in fact by finding and holding that there was any land transaction between the 2nd appellant and the respondent over the suit property despite absence of a written agreement for sale.



4. That the Learned Trial Magistrate erred in law and in fact by disregarding the express provisions of the *Land Control Act* on essence of consent to transfer of the suit property which is agricultural thereby arriving at an erroneous judgment to the detriment of the appellants.
5. That the Trial Magistrate erred in law and in fact in relying entirely on the discredited evidence of the respondent thereby arriving at erroneous judgment exhibiting serious bias against the appellants.
6. That the Trial Magistrate erred in law and fact in shifting the evidential burden of proof to the appellants when no prima facie case had been made out by the respondent in the first place to warrant a rebuttal thereby arriving at a wrong decision.
7. That the Learned Trial Magistrate erred in law and in fact considering not tendered in evidence selectively to the prejudice of the appellants and exhibited actual bias against the appellants resulting in an erroneous judgment.
8. That the Learned Trial Magistrate erred in law and in fact in misconstruing and failing to consider that the 2nd appellant is a juristic person and its actions guided by law thereby falling into the error of failing to distinguish between the actions of the 2nd appellant, one Justus Muindu Mue and the import of such actions in binding the 2nd appellant resulting in an erroneous judgment.
9. That the Learned Trial Magistrate's order have occasioned grave injustice to the appellant by dispossessing the 1st appellant of his parcel of land.
10. That in the view of the circumstances set out herein above, the Learned Trial Magistrate totally misdirected himself in delivering judgment in favour of the respondent by failing to consider and appreciate the evidence on record tendered which fell short of proving the allegations in the plaint.
11. That Trial Magistrate erred in law and facts by failing to uphold the sanctity of the title documents held by the appellants in respect of Ruiru/Ruiru East Block 2/27034 and the standards required in land transitions thereby occasioning a miscarriage of justice.
12. That the Learned Trial Magistrate totally misdirected himself in delivering judgment in favour of the respondent by failing to consider and appreciate the totality of evidence on record.

Appellants' Submissions

10. The appeal was canvassed through written submissions dated 2/8/2024, filed by M/s Musa Boaz & Thomas Advocates. Counsel for the appellants submitted that the respondent's claim was anchored on fraud, adding that it was incumbent upon the respondent to prove his case on a higher standard than on the balance of probabilities. Counsel faulted the trial court for basing its finding on the balance of probabilities. Counsel argued that not a single strand of evidence was adduced to demonstrate fraud, adding that no report of fraud had been made to the Kenya Police. Counsel emphasized that under Sections 107 and 108 of the *Evidence Act*, he who alleges is under duty to prove the allegation. Counsel argued that even where a defendant does not tender evidence, a claimant is under duty to discharge the burden of proof, adding that the respondent was under duty to prove that there was indeed a legitimate transaction between him and the registered owner of land parcel number Ruiru/Ruiru East Block 2/27034 and that the transaction met all the legal requirements.
11. Citing Section 3 (3) of the *Law of Contract Act* and Section 38 of the *Land Act*, counsel for the appellants submitted that the agreements which the respondent relied on did not comply with the



- mandatory requirements of the law. Counsel argued that the trial court disregarded the distinct personalities of Justus Muindu Mue and Jusmah Limited, adding that the trial court similarly disregarded the requirement for witnessing of each signature to a contract for sale of land.
12. Citing Section 19 of the *Stamp Duty Act*, counsel argued that for any agreement to be admissible in evidence, it ought to be stamped, adding that the two agreements were not stamped.
 13. Counsel faulted the trial court for disregarding the requirement for consent of the Land Control Board under Section 8 of the Land Control Board Act, adding that the transaction was void for want of consent of the Land Control Board.
 14. Counsel further faulted the trial court on the ground that it made a presumption that the 2nd appellant was the same person as Justus Muindu Mue. Counsel contended that whereas the respondent sued the two appellants, he laid his claim squarely on one Justus Muindu Mue who was not a party to the suit. Counsel argued that under the doctrine of privity of contract, a transaction between the respondent and Justus Muindu Mue cannot be invoked against the appellants.
 15. Citing Section 26 of the *Land Registration Act*, counsel submitted that it was incumbent upon the respondent to prove that the title held by the 1st appellant was “delegitimized” by the provisions of the said section. Counsel argued that no evidence was tendered to impeach the title of the 1st appellant yet the judgment of the trial court effectively revoked the said title. Counsel added that the respondent did not tender evidence linking the suit property to the sale agreements that he tendered, which related to plot number 4 and plot number 5.
 16. Lastly, counsel argued that the trial court failed to scrutinize the entirety of the evidence presented by the respondent which showed that the parties sued by the respondent never dealt with him and that there was no nexus between plot numbers 4 and 5 and land parcel number Ruiru/Ruiru East Block 2/27034. Counsel urged the court to allow the appeal.

Respondent’s Submissions

17. The respondent opposed the appeal through written submissions dated 6/10/2024, filed through M/s Wanjiku Thuo Advocates. On grounds 1, 2 and 3 of the memorandum of appeal, counsel submitted that the respondent purchased the two plots that were to be surveyed out of land parcel number Ruiru/Ruiru East Block 2/1267. Counsel added that by 17/2/2024, the respondent paid the agreed purchase price of Kshs 1,900,000 in full and the 2nd appellant acknowledged receipt of the purchase price in full and issued to the respondent a receipt together with two plot ownership certificates. Counsel emphasized that the sale agreements, the receipt and the ownership certificates were prepared and issued by the 2nd appellant. Making reference to the affidavit filed by the 2nd appellant and contained at page 53 of the record of appeal, counsel argued that the 2nd appellant acknowledged the sale but alleged that the respondent breached the agreement without disclosing the nature of the breach.
18. Counsel submitted that the 2nd appellant neither pleaded nor proved invalidity of the contract. Counsel argued that the two agreements met all the requirements of Section 3(3) of the *Law of Contract Act*, adding that the agreements were in writing; they were signed by all the parties; and the signatures were attested by witnesses.
19. On the contention that the agreements were not stamped by the Collector of Stamp Duty, counsel submitted that the law enjoins the courts to give parties a reasonable opportunity to apply to the Collector of Stamp Duty to stamp liable instruments.



20. On the contention that there was no nexus between plot numbers 4 and 5 and the suit property, counsel submitted that the sale/purchase was on the basis of the exhibited subdivision scheme, adding that the plots were subsequently surveyed and titles issued in the name of the 2nd appellant.
21. On ground 4, 9 and 11, counsel submitted that the appellant never raised the issue of consent of the Land Control Board, adding that the appellants ambushed the respondent during cross examination. Counsel added that it was the duty of the appellant to lead evidence proving that the suit land was subject to the *Land Control Act*. Counsel added that at the time of purchase, the suit property was comprised in a share certificate and could not be the subject of consent of the Land Control at that point.
22. The respondent added that the 2nd appellant held the suit property in trust for the respondent and did not have capacity to dispose it by way of sale to the 1st appellant. Counsel emphasized that the fact that the respondent paid full purchase price to the 2nd appellant he took vacant possession and developed the suit property, he acquired an overriding interest in the suit land. Citing the pronouncement in the case of *Willy Kimutai Kililit Vs Michael Kibet* [2018] eKLR, counsel urged the court to give effect to the doctrine of constructive trust and find that the 2nd appellant held the suit property in trust for the respondent.
23. On ground 8 - the contention that the trial court failed to make a distinction between the 2nd appellant and Justus Muindu Mue, counsel submitted that the descriptive part of the sale agreements clearly identified the 2nd appellant as the vendor, adding that, as a director of the 2nd appellant, Justus Muindu Mue signed the agreement on part of the 2nd appellant. Counsel added that payment and receipt of the full purchase price was acknowledged by the 2nd appellant. Counsel referred the court to paragraph 1 of the 2nd appellant's affidavit at page 52 in which 2nd appellant confirmed, through Justus Muindu Mue, that he [Justus Muindu Mue] was a director of the 2nd appellant.
24. On grounds 5, 6, 7, 10 and 12, counsel submitted that the standard of proof in a civil dispute of this nature is one on a balance of probabilities. Counsel argued that the respondent discharged the burden of proof by demonstrating that he purchased the suit property from the 2nd respondent; paid full purchase price; and took possession of the purchased land. Counsel contested the allegation of bias and emphasized that the trial court properly relied on the available evidence in making the impugned decision. Counsel urged this court to reject the appeal.

Analysis and Determination

25. The court has read and considered the original record of the trial court, the record filed in this appeal, the grounds of appeal and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The appellants itemized 12 grounds of appeal in the memorandum of appeal dated 14/6/2021. In their subsequent written submissions dated 2/8/2024, they submitted on only six grounds.
26. This is a first appeal. Taking into account the parties' pleadings in the trial court, the grounds of appeal and the parties' respective submissions, the key issue that falls for determination in this appeal is whether the respondent acquired a proprietary interest in land parcel number Ruiru/Ruiru East Block 2/27034 through purchase. In determining the issue, the court will examine the grounds of appeal and the arguments that were canvassed by the appellant. Before I do that, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.



27. The principle that guides a first appellate court was summarized by the Court of Appeal in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusion.

28. The principle was similarly outlined in *Abok James Odera t/a A J. Odera & association v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”

29. It is important to observe from the outset that as the claimant, the respondent bore the burden of proof. It is also important to observe that during trial, by choice, the appellants elected not to lead evidence. By that decision, the appellants denied themselves the opportunity of placing before court necessary controverting evidence. They also denied themselves the opportunity to place before court evidence that would advance their defence. All that was available to the trial court was the evidence presented by the respondent during the various stages of examination. I now turn to the key issue which I will dispose by analyzing the key points that were canvassed in this appeal.

30. Was there a valid contract for sale of land between the 2nd appellant and the respondent? According to the respondent, there was a valid contract for sale of land between the two parties. According to the appellants there was none. Indeed, at paragraph 19 of their joint written submissions, the appellants contended thus:

“The alleged agreements were not between the respondent and the appellants.”

31. The appellants’ contention does not, however, align with their pleadings [defence] in which they contended at paragraph 8 that the respondent had fraudulently altered the two sale agreements. The court understood the appellants to be saying that the two agreements were entered into by the two parties and that the respondent subsequently made fraudulent alterations to them. The appellants did not, however, disclose the nature of the alterations which they alleged were made by the respondent. Having chosen not to tender evidence, nothing came from the appellants to demonstrate the alleged fraudulent alterations to the two agreements yet the only issue which the appellants raised on the two agreements related to alleged alterations. They never proved the alleged alterations.

32. The court has reviewed the available evidence on the rival positions of the parties on the contention that there was no valid contract between the 2nd appellant and the respondent. Among other exhibits, the respondent produced:

- (i) the two sale agreements dated 10/2/2018 and 17/2/2018;
- (ii) receipt number 371 dated 17/2/2018 for Kshs. 1,900,000 issued by Jusmah Limited as “Being payment of Plot Nos 4 & 5 Ruiru/Ruiru East Block 2/1267”;
- (iii) proposed subdivision plan for Ruiru/Ruiru East Block 2/1267 bearing plot nos 4 and 5 among others;



- (iv) plot ownership certificate no 058 issued by Jusmah Limited on 17/2/2018 certifying that the respondent was the owner of plot number 4 as per the proposed subdivision scheme of LR Ruiru/Ruiru East Block 2/1267; and
 - (v) plot ownership certificate number 059 issued by Jusmah Limited on 17/2/2018 certifying that the respondent was the owner of plot number 5 as per the proposed subdivision scheme of LR Ruiru/Ruiru East Block 2/1267. The respondent tendered oral evidence and stated that there was a sale contract relating to the two plots.
33. The record of the trial court reveals that it was the evidence of the respondent that the two plots were subsequently surveyed and registered as Ruiru/Ruiru East Block 2/27033 and 27034 respectively. His evidence was not controverted by the appellants who elected not to lead evidence.
34. The appellants contended that the two sale agreements which the respondent relied on were between him and Justus Muindu Mue. They argued that there was no sale agreement between the 2nd appellant and the respondent. They faulted the trial court for failing to appreciate that Jusmah Limited and Justus Muindu Mue were distinct juristic persons.
35. In considering the above contention, the court has examined the two agreements. The first agreement is dated 10/2/2018 and contains three pages. The first page contains parties to the agreement. Jusmah Limited is identified as the vendor and Joseph Muna Karanja is identified as the purchaser. The second page contains:
- (i) the recitals;
 - (ii) the purchase price;
 - (iii) acknowledgment of part payment of purchase price;
 - (iv) date of payment of balance of purchase price; and
 - (v) the remedies available in the event of default by either party. The second page also contains the part for execution by the vendor and the purchaser. Justus Muindu Mue is captured as having executed the agreement on part of the vendor and Joseph Muna Karanja is captured as having signed on part of the purchaser. The third page contains names of the two attesting witnesses to the agreement, namely, Lucy Wamaitha and Mary Wanjiru Mwangi. However, only Mary Wanjiru Mwangi signed the agreement as the only attesting witness.
36. The agreement dated 17/2/2018 too consists of three pages. The first page contains the names of the contracting parties. Jusmah Limited is identified as the vendor while Joseph Muna Karanja is identified as the purchaser. The second page contains:
- (i) the recitals;
 - (ii) the agreed purchase price of Kshs 1,900,000;
 - (iii) an acknowledgment of payment of the above purchase price in full; and
 - (iv) a confirmation that there is “NIL Balance”. The second page also contains the execution part of the agreement. The person executing the agreement on part of the vendor is identified as Justus Muindu Mue while the person signing on part of the purchaser is identified as Joseph Muna Karanja. The third (last) page contains the two attesting witnesses identified as Lucy Wamaitha and Mary Wanjiru Mwangi and bears their respective signatures. On the face of the agreement, the 2nd respondent acknowledged receipt of the purchase price in full. There is



nothing on the face of the agreement dated 17/2/2018 that suggests that the 2nd appellant was not the vendor.

37. Having chosen not to tender evidence before the trial court, the appellants denied themselves the chance to point out, by way of evidence, any defect that they may have noticed in the two agreements.
38. An examination of the agreement dated 17/2/2018 reveals that the vendor was Jusmah Limited and that Justus Muindu Mue executed the agreement on part of the vendor. The respondent testified that Justus Muindu Mue was a director of Jusmah Limited. His evidence was not controverted. Besides this, on 7/3/2019 the appellants presented a notice of motion dated 6/3/2019 and an affidavit dated 6/3/20219 in which they confirmed that Justus Muindu Mue was a director of the 2nd appellant. The affidavit is part of the record that was before the trial court and is now before this court.
39. That is not all. The 2nd appellant issued receipt number 371 acknowledging receipt of Kshs. 1,900,000 as full payment of purchase price for plot numbers 4 and 5 comprised in Ruiru/Ruiru East Block 2/1267. In addition, the 2nd appellant issued plot ownership certificates for the two plots. The 2nd appellant gave the respondent possession of the two plots and allowed him to erect a stone perimeter wall around them. In spite of all the above evidence, the two appellants did not find it necessary to tender evidence to controvert the respondent's evidence.
40. The appellants cited Section 3 (3) of the Law of Contract Act and Section 38 of the Land Act and contended that the two agreements were invalid by dint of the framework in the above sections. I have said the appellants did not tender evidence to demonstrate that the agreement dated 17/2/2018 did not meet the requirements of the law. Had they tendered evidence, they could have taken the court through the original agreements and tendered evidence on what it is that made the agreements non-compliant. They did not lead evidence but they want the court to impeach the contract without evidence of non-compliance.
41. Even if the court were to find a defect in the agreement dated 17/2/2018, the acknowledgement of receipt of purchase price in full; issuance of plot ownership certificates; and grant of possession of the two parcels to the respondent by the 2nd appellant, are clear elements that establish a constructive trust and place the transaction within the ambit of Section 38 (2) (b) of the Land Act. Suffice it to state that, upon selling the suit land to the respondent and upon receiving purchase price in full, the 2nd respondent did not have any other interest in the two plots to sell to the 1st appellant. The 2nd appellant became a constructive or implied trustee under Section 38 (2) (b) of the Land Act the moment they received full purchase price from the respondent and granted him possession of the suit land. If the 2nd appellant received purchase price from the 1st appellant after they had received full purchase price from the respondent, that was clearly illegal because at that point the 2nd appellant held titles to the two plots as a constructive trustee.
42. In *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, the Court of Appeal said the following about the principle of constructive trust:

“Thus, since the current Constitution has by virtue of Article 10(2)(b) elevated equity as a principle of justice to a constitutional principle and requires the court in exercising judicial authority to protect and promote that principle, amongst others. It follows that the equitable doctrine of constructive trust and proprietary estoppel are applicable to and supersede the Land Control Act where a transaction relating to an interest in land is void and enforceable for lack of consent of the Land Control Board”
43. The appellants contended that there was no nexus between plot numbers 4 and 5 and parcel numbers Ruiru/Ruiru East Block 2/27033 and 27034. I have reviewed the evidence on record. The appellant



testified that the purchase was on the basis of a proposed subdivision scheme relating to land parcel number Ruiru/Ruiru Block 2/1267. He further testified that upon subdivision, plot numbers 4 and 5 were surveyed and registered as parcel numbers Ruiru/Ruiru Block 2/27033 and Ruiru/Ruiru East Block 2/27034 respectively. The appellants did not lead any evidence to controvert the above evidence by the respondent.

44. It is also observed from the record that, whereas the appellants contended in paragraph 5 of the defence that the 1st appellant was the registered proprietor of land parcel number Ruiru/Ruiru East Block 2/27033, no such evidence was tendered. Secondly, the claim and judgment in the trial court focused on Ruiru/Ruiru East Block 2/27034 and not Ruiru/Ruiru East Block 2/27033.
45. The appellants relied on Section 19 of the *Stamp Duty Act* and invited this court to set aside the judgment of the trial court on the ground that the two agreements were not stamped. This court has reflected on the above argument. The appellants participated in the trial and allowed admission of the two agreements. It is too late for them to object to the admission of the agreements at this appellate stage. Had the appellants raised an objection to the admission of the two agreements during trial, the trial court would have given directions in line with the procedure stipulated under Section 19(3) of the *Stamp Duty Act*. It is too late to object to the admission of the two agreements at this appellate stage. Suffice it to state that, the parties are under a statutory duty to pay stamp duty on the two agreements regardless of whether they are being used as evidence in a court of law and regardless of the time.
46. The appellants also invited the court to allow this appeal on the ground that the requisite consent of the Land Control Board was not obtained. The requirement for consent of the Land Control Board is a factual issue. The appellants were required to raise the issue of lack of consent as part of their defence. They were thereafter expected to tender evidence demonstrating that the suit land was subject to the provisions of the *Land Control Act* and that the transaction was a controlled transaction within the meaning of the Act. Having elected not to lead evidence, they are clearly inviting this court to act on the basis of speculation. The court will not do that.
47. Even if the court were to find that, at that stage, the transaction was subject to the requirements of the *Land Control Act*, given the circumstances of this dispute and the principle in *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, I do not think this point has merit. Put differently, given the circumstances of this dispute, the principle of constructive trust prevails.
48. Lastly, the appellants faulted the trial court for not basing its decision on the standard of proof required in a claim of fraud. I have looked at the pleadings that were before the trial court. Although the respondent outlined particulars of fraud and conspiracy without linking them to the substantive text of the pleadings, a finding on the question of fraud on part of the appellants was not one of the key issues that fell for determination in the claim by the respondent. The key issue before the trial court was whether the respondent had acquired proprietary interest in the suit land through purchase. This required proof on a balance of probabilities.
49. For the above reasons, this court comes to the conclusion that the respondent properly established that he had acquired a proprietary interest in land parcel number Ruiru/Ruiru East Block 2/27034 [formerly designated as plot number 5 on the proposed subdivision scheme] through purchase. Put differently, the respondent established that he was the legitimate beneficial owner, through purchase, of land parcel number Ruiru/Ruiru East Block 2/27034.
50. The result is that this court has not found merit in this appeal. The appeal is rejected and dismissed. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the appellants shall bear costs of the appeal.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF APRIL, 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Ms Mwangi holding brief for Ms Wanjju for the Respondent

Ms Wairumu holding brief for Mr Tumu for the Appellant

Mr. Tupet – Court Assistant

