



Kiogora v Munyua [Sued as the Legal Representative of the Estate of Monica Nkoroi (Deceased)] & another (Environment and Land Appeal E012 of 2024) [2025] KEELC 4096 (KLR) (22 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E012 OF 2024**

JO MBOYA, J

MAY 22, 2025

BETWEEN

DAVID KIOGORA APPELLANT

AND

JOSHUA MUGAMBI MUNYUA [SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MONICA NKOROI (DECEASED)] 1ST RESPONDENT

LARENCE MUTWIRI KIBIRI [SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOANINA REGERIA) 2ND RESPONDENT

JUDGMENT

1. The original suit before the subordinate court, namely; Meru CMC ELC No. 311 of 2015 was commenced by Monica Nkoroi and Joanina Regeria [now deceased], respectively; and wherein same contested the transfer and registration of L.R No. Kiirua/Kiirua/1013 [suit property] in the name of the respondents herein. Suffice it to state that the respondent was the defendant in the original suit.
2. Nevertheless, the original plaintiffs [details in terms of paragraph 1 hereof] passed on before the suit could be heard and determined. In this regard, the original plaintiffs were substituted by the current respondents. To this end, the plaint was further amended resting with the amended plaint dated 14th January 2022 and wherein the respondents sought the following reliefs:
 - a. An order that L.R No. Kiirua/Kiirua/1013 be transferred from the defendant back to Sabera Mutimbi and in default, the court's executive officer be empowered to sign all necessary documents in order to effect the said transfer.
 - b.



- (i) an order that the land registrar, meru do dispense with the requirement for the production of the original title deed of the suit land herein which was issued in the name of the defendant herein during the transfer of the suit land in the name of Sabera Mutimbi.
 - (ii) Payment of exemplary damages by the defendant for the outrageous conduct of fraudulently transferring the suit land herein into his name and payment of mesne profit since 23rd December 2014 when the defendant transferred the land into his name.
3. The original suit was heard and disposed of vide judgment rendered on 25th January 2024; where upon the learned trial magistrate found and held that the impugned transfer and registration of the suit property in the name of the appellant was undertaken when the transferor [Sabera Mutimbi] had died. In this regard, the learned trial magistrate held that the transfer and registration of the suit property in the name of the appellant was therefore illegal, unlawful and void.
 4. Consequently, and to this end, the trial magistrate proceeded to and revoked the certificate of title in the name of the appellant.
 5. Aggrieved by the judgment and decree of the trial court, the appellant has now filed the instant appeal. The appellant has highlighted various grounds of appeal, namely;
 - i. That the learned principal magistrate erred in the law and in facts by assuming the position of a medical specialist by interpreting the deceased Sabera Mutimbi's cause of death and coming to a conclusion that she had no capacity to execute a land transfer form for land parcel Kiirua/Kiirua/1013.
 - ii. That the learned principal magistrate erred in law and facts by coming to the conclusion that the deceased Sabera Mutimbi didn't execute the land parcel Kiirua/Kiirua/1013 transfer form, yet no evidence was availed that the thumbprint affixed on the land transfer form didn't belong to the deceased.
 - iii. That the learned principal magistrate erred in law and in facts by failing to analyze the appellant's evidence.
 - iv. That the learned principal magistrate erred in law and in fact by relying on speculations and conjectures in the judgment.
 - v. That the learned principal magistrate made a finding outside the weight of the pleadings and evidence.
 6. The appeal came up for direction on the 17th February 2025 whereupon the advocates for the parties covenanted to canvass the appeal by way of written submissions. To this end, the court proceeded to and issued directions including prescribing the timelines for the filing and exchange of written submissions.
 7. The appellant thereafter filed written submissions dated [date not clear] day of March 2025; whereas the respondents filed written submissions dated 7th April 2025. The two [2] sets of written submissions form part of the record of the court.
 8. The appellant has raised and canvassed three [3] salient issues at the foot of the written submissions. The issues canvassed by the appellant are namely; the learned trial magistrate constituted himself as a medical expert and thereafter proceeded on the basis of hypothesis to hold that the deceased was not



- seized of capacity to execute the transfer instruments; that the learned trial magistrate erred in law in disregarding the evidence by the appellant; and that the learned trial magistrate shifted burden of proof to the appellant contrary to the established principle[s] of the law.
9. Regarding the first issue, learned counsel for the appellant has submitted that the learned trial magistrate erred in law and in fact in finding and holding that the deceased was suffering from a serious illness namely; septicaemia which negated the deceased's capacity and or ability to execute the transfer instruments. To this end, it has been submitted that the finding and holding by the learned magistrate was not based on any credible medical evidence or at all.
 10. Furthermore, it has been submitted that in finding and holding that the deceased was prevented from executing the impugned transfer on the basis of the sickness and old age, the learned trial magistrate constituted himself as a medical specialist, albeit without having the requisite knowledge to do so. Simply put, learned counsel for the appellant has impugned the finding and holding of the learned trial magistrate on the basis of having been arrived at and or reached on speculations, conjecture and hypothesis.
 11. In respect of the second issue, learned counsel for the appellant has submitted that the learned trial magistrate disregarded and or failed to take into account the totality of the evidence on record and thus arrived at an erroneous conclusion.
 12. To this end, it was submitted that the appellant tendered and produced before the court copies of the application for land control board consent, the land control board consent and the transfer instruments, showing that the deceased was privy to and knowledgeable of the transfer of the suit property. Nevertheless, it was contended that despite the clear evidence at the foot of the said documents, the learned magistrate failed to take the same into account and thus arrived at an erroneous conclusion.
 13. Regarding the third issue, learned counsel for the appellant has submitted that the learned trial magistrate erred in law in shifting the burden of proof to the appellant to prove that the transfer of the suit property was lawful. Nevertheless, it was posited that the burden of proof laid on the shoulders of the respondents [plaintiffs] in the original suit.
 14. Based on the foregoing submissions, learned counsel for the appellant has therefore implored the court to find and hold that the judgment of the trial court is wrought with errors of omission and commission and thus same [judgment] ought to be set aside. In this regard, learned counsel has invited the court to proceed and set aside the judgment and to substitute same with an order dismissing the respondent's suit.
 15. The respondents filed written submissions dated 7th April 2025; and wherein same have similarly highlighted three [3] salient issues for consideration by the court. The issues canvassed by the respondents are namely; that the impugned transfer was undertaken when the deceased had already passed on and thus the suit property belonged to the estate of the deceased; the learned trial magistrate correctly appraised the evidence on record and reached the correct finding[s]; and that the respondents duly established fraud as against the appellant.
 16. Regarding the first issue, learned counsel for the respondents has submitted that the suit property belonged to and was registered in the name of Sabera Mutimbi [now deceased]. Furthermore, it was contended that Sabera Mutimbi died on 19th December 2014 whereas the suit property was transferred and registered in the name of the appellant on the 23rd December 2014. In this regard, it was submitted that by the time the suit property was being transferred in the name of the appellant, the suit property



formed part of the estate of the deceased and thus same [suit property] could not be alienated and or dealt with prior to the issuance of grant of letters of administration.

17. Nevertheless, it was submitted that though the appellant was aware of the death of Sabera Mutimbi [now deceased], the appellant proceeded to and caused the suit property to be transferred in his name without undertaking the requisite succession proceedings. Moreover, it was posited that the transfer and registration of the suit property in the name of the plaintiff was being undertaken on the same date when the deceased was being buried, or better still scheduled to be buried.
18. Arising from the foregoing, it was contended that the suit property could not have been dealt with and or transferred in the name of the appellant in the manner contended. In this regard, it has been submitted that the impugned transfer of the suit property to and in favour of the appellant constituted intermeddling with the estate of the deceased.
19. As pertains the second issue, it was submitted that the respondents and their witnesses tendered and produced credible evidence before the court, showing that the deceased had called and summoned his children, including the original plaintiffs [now deceased] and the appellant herein to a family meeting. However, it was posited that the appellant herein failed to attend the said family meeting.
20. Additionally, it has been submitted that during the said meeting, Sabera Mutimbi [now deceased] intimated to the original plaintiffs [now deceased] that same [deceased] suspected that the appellant had stolen the certificate of title and her identity card. To this end, it was contended that the totality of the evidence tendered and placed before the court was overwhelming and proved fraud.
21. In respect of the third issue, it was submitted that the respondent[s] herein pleaded and particularized fraud at the foot of the further amended pleadings. In addition, learned counsel submitted that the respondents also tendered and produced credible evidence to demonstrate/prove fraud as against the appellant.
22. On the other hand, it was submitted that the appellant herein failed to controvert and or rebut the evidence that had been tendered. In particular, it was contended that the appellant's witness did not controvert the assertion that the appellant had stolen the certificate of the title as well as the identity card of the deceased. Furthermore, it was submitted that the appellant had also failed to demonstrate that the deceased, who was old and sickling, was capable of executing the transfer instrument on the 16th December 2014, barely 3 days before her death on the 19th of December 2024.
23. Arising from the foregoing, learned counsel for the respondents has submitted that the appellant herein failed to disprove the strong evidence pertaining to and pointing at fraud in respect of the transfer of the suit property. To this end, learned counsel has therefore invited the court to find and hold that the impugned judgment is not only credible but legally sound. In this regard, the court has been invited to find and hold that the appeal is devoid of merit and thus ought to be dismissed with costs.
24. Having reviewed the pleadings, the evidence tendered both oral and documentary, the entire record of appeal, the judgment of the court and upon taking into account the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the dispute beforehand turns on one key issue, namely; whether the transfer and registration of the suit property in the name of the appellant was fraudulent or otherwise.
25. Before venturing to interrogate the singular issue, highlighted in the preceding paragraph, it is imperative to observe that, being a first appeal, this court is bestowed with the statutory mandate and or duty to subject the entire evidence tendered before the trial court to exhaustive scrutiny, review, appraisal and evaluation. Furthermore, there is no gainsaying that this court is at liberty to depart from



the factual findings and conclusions of the trial court and in lieu thereof, to arrive at such independent conclusion[s] based on the evidence on record.

26. Nevertheless, it is imperative to highlight that even though this court is at liberty to depart from the factual findings and conclusions of the trial court, such departure must only be taken where there exists compelling reasons and or basis so to do. Moreover, the court is duty-bound to exercise due care, caution and circumspection before departing from the factual findings and conclusions of the trial court. For good measure, the court is reminded that same must be aware that the trial court had the benefit of hearing and seeing the witnesses testify and thus the trial court was in a better position to appraise the credibility of the witnesses and their demeanor.
27. Be that as it may, there is no gainsaying that in appropriate situation, the first appellate court is obligated to arrive at own and independent conclusion, more particularly, where the conclusions of the trial court are perverse to the evidence on record, premised on misapprehension of the evidence or better still where it is demonstrably shown that the trial court committed an error of principle.
28. The jurisdictional remit of the first appellate court while entertaining and adjudicating upon an appeal has been the subject of various court decisions. The Court of Appeal in the case of Kenya Urban Roads Authority & another v Belgo Holdings Limited (Civil Appeal E011 of 2021) [2025] KECA 764 (KLR) (9 May 2025) (Judgment) stated thus;

“ 37. We have considered the appeal and this being a first appeal, we are under a duty to subject the entire evidence and the judgment to a fresh and exhaustive examination with a view to reaching our own conclusions in the matter. In carrying out this duty, we have to remember that we had no opportunity of seeing and hearing the witnesses who testified during the trial and to make an allowance for the same. We have also to remember that it is a big thing to overturn the findings of a trial court which has had the singular opportunity of reaching its conclusions based on a combination of the evidence adduced and observation by the court of the demeanour of witnesses. In a nutshell, a first appellate court must of necessity proceed with caution in deciding whether or not to interfere with the findings of a trial court, but of course where such findings are not supported by the evidence on record or where they are founded on a misapprehension of the law, the axe must fall on the impugned judgement. This position is anchored in section 78 of the *Civil Procedure Act*, which requires a first appellate court to re-evaluate, reassess and reanalyse the extracts of the record and draw its own conclusions. These provisions have been underscored in numerous decisions of the Superior Courts among them *Peters v Sunday Post Limited* [1958] EA 424, where the predecessor to this Court expressed itself as follows: “Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law an appellate court has jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this really is a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great



weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to the courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given...Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion. The appellate court may take the view that, without having seen or heard the witnesses it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question...It not infrequently happens that a decision either way may seem equally open and when this is so, then the decision of the trial Judge who has enjoyed the advantages not available to the appellate court, becomes of paramount importance and ought not be disturbed. This is not an abrogation of the powers of a Court of Appeal on questions of fact. The judgement of the trial Judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong.”

29. With the foregoing in mind, it is now apposite to revert to the subject matter and discern whether the factual findings and conclusions that were arrived at by the learned trial magistrate accord with the evidence on record or otherwise. Furthermore, it is also imperative to interrogate whether the interpretation and application of the law have been undertaken in the prescribed manner.
30. It is common ground that Sabera Mutimbi [now deceased] died on the 19th of December 2014. In addition, it is also not in contest that the deceased was buried on the 23rd of December 2014.
31. Additionally, evidence abounds that the transfer and registration of the suit property in the name of the appellant was undertaken on 23rd December 2014. For coherence, the impugned transfer was undertaken on the same day/date when the deceased was being buried. At any rate, evidence was tendered to demonstrate that the burial of the deceased on the 23rd December 2014 was delayed because the appellant herein who was/is a son of the deceased, had disappeared with the burial permit.
32. Pertinently, the transfer and registration of the suit property was being undertaken when the deceased was dead. The question that does arise and which merits consideration is whether the suit property formed part of the estate of the deceased as at 23rd December 2014 and if so, whether the suit property could be alienated/disposed of without due regard to the provisions of Section 82 of the *Law of Succession Act*, Chapter 160, Laws of Kenya.



33. The other incidental question that also flows from the singular issue beforehand is whether the transfer instruments that was allegedly signed by the deceased was lawfully executed by the deceased or better still, whether the execution of the impugned transfer instruments was proven/ established in the manner required under the Law.
34. To start with, it is imperative to highlight that the respondents herein impleaded fraud and thereafter supplied various particulars of fraud as against the appellant. Furthermore, the respondents proceeded to and tendered evidence before the trial court including the testimony that the deceased had indeed called a family meeting prior to her death and wherein the deceased intimated to the original plaintiffs that same [deceased] suspected that the appellant herein had stolen the certificate of title and her National identity card.
35. Additionally, evidence was also tendered that the deceased was aged, elderly and sickly. The fact that the deceased was elderly, aged and sickly is highlighted at the foot of the burial permit and the death certificate which were duly tendered before the trial court. Instructively, it was shown that the deceased was aged 89 years old. Besides, it was demonstrated on the basis of the cause of death that the deceased died as a result of cardio-respiratory failure due to septicaemia.
36. The foregoing constitutes the background obtaining shortly prior to the death of the deceased. However, the critical issue that I beg to address is whether the suit property formed part of the estate of the deceased and whether same could be disposed off without compliance with the due process in accordance with the Law of Succession Act.
37. To start with, what constitutes the free property of a deceased person is defined by section 3 of the Law of Succession Act Cap 160 Laws of Kenya.
38. The said provision stipulates thus;
- “free property”, in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death;”
39. Flowing from the definition [supra], it is evident and apparent that the suit property became part of the estate of the deceased person following the death of the deceased. Instructively, the suit property belonged to and was registered in the name of the deceased as at 19th December 2014.
40. Other than the fact that the suit property formed part of the estate of the deceased, it is worthy to underscore that whatsoever property, which forms part of the estate of the deceased cannot be alienated and or disposed of without due compliance with the provisions of the law of succession act. In particular, the provisions of section 82 of the law of Succession Act are instructive and apt.
41. The said provision stipulates as hereunder;
- Section 82. Powers of personal representatives Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—
- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:
- Provided that—



- (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
 - (ii) no immovable property shall be sold before confirmation of the grant;
- (c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;
- (d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation:

Provided that except so far as otherwise expressly provided by any will—

- (i) no appropriation shall be made so as to affect adversely any specific legacy;
 - (ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or
42. Despite the clear provisions of Section 82 [supra], which prohibit transfer, alienation and or disposal of the estate of the deceased prior to the issuance of the requisite grant of letters of administration, the appellant herein had the audacity and temerity to cause the suit property to registered in his name. Suffice to underscore that the impugned transfer was being undertaken as the body of the deceased was awaiting burial.
43. To my mind, the impugned transfer and consequential registration of the suit property was wrought and replete with illegality. Moreover, it is worthy to highlight that the impugned transfer was also heartless and inhumane and same demonstrates the lengths that some human beings, the appellant in particular, can go to in stealing from the dead.
44. The second perspective that merits consideration relates to the legal import and tenor of the provisions of Section 45 of the *Law of Succession Act*, Chapter 160, Laws of Kenya. Pertinently, the said section prohibits any dealing and or alienation of the estate of a deceased. In particular, the section under reference stipulates that any such dealing would amount to and or constitute intermeddling.
45. For ease of appreciation the provisions of section 45 of the *Law of Succession Act* [supra] are reproduced as hereunder;
45. No intermeddling with property of deceased person
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.



- (2) Any person who contravenes the provisions of this section shall—
- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

46. Again, I must say that the dealings and or transactions that were undertaken over and in respect of the suit property on the 23rd December 2014, albeit on the face of the death of the deceased, constituted a criminal offence punishable in the manner prescribed vide Section 45 of the *Law of Succession Act*.
47. The third perspective that also flows from the singular issue relates to whether the transfer instruments which underpin the impugned transfer and registration of the suit property was lawful or better still, whether its execution by the deceased was proven, in the manner prescribed under the provision[s] of the *Evidence Act*, Chapter 80, Laws of Kenya.
48. Suffice it to state that the respondents herein had contended that the deceased did not sign and or execute the impugned transfer instruments. Furthermore, it was contended that the transfer instruments in question was forged by the appellant.
49. Moreover, the respondents and their witnesses tendered and produced before the court evidence to the effect that the deceased had prior to her death raised the issue of the theft of the certificate of title and her own national identity card. This bit of the evidence that was tendered on behalf of the respondents was not controverted.
50. Additionally, the respondents also tendered and produced a copy of the burial permit, the certificate of death and assorted photographs of the deceased. From the burial permit and the certificate of death, it is evident that the deceased was quite elderly and sickly. Indeed, the deceased is reported to have died from acute respiratory failure due to septicaemia.
51. Owing to the foregoing, the respondents took the position that the deceased was unable to appear before an advocate on the 16th of December 2014 [barely 3 days before her death] and to execute the impugned transfer instruments. To this end, the respondents posited that the transfer instrument itself was a forgery.
52. The totality of the evidence that was tendered by the respondents and their witnesses and coupled with the burial permit and certificate of death, respectively, brought a serious question pertaining to and concerning the execution of the impugned transfer instruments. Suffice it to state that the respondents had discharged the evidential burden of proof and thus it behooved the appellant to rebut the evidence tendered.
53. However, it is important to observe that the appellant herein did not tender and or produce any credible evidence to dislodge or controvert the evidence that had been placed on record by the respondents. Moreover, it is not lost on me that the appellant herein bore the burden of demonstrating that the transfer instruments were duly executed.
54. To this end, it is imperative to reference the provisions of Sections 70 and 71 of the *Evidence Act* cap 80 laws of Kenya.
55. The sections under reference stipulates as hereunder;



70. Proof of allegation that persons signed or wrote a document If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.
71. Proof of execution of document required by law to be attested If a document is required by law to be attested it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there is an attesting witness alive and subject to the process of the court and capable of giving evidence:
 Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document which has been registered in accordance with the provisions of any written law, unless its execution by the person by whom it purports to have been executed is specifically denied.
56. My reading and understanding of the provisions of Sections 70 and 71 of the *Evidence Act* [supra] drives me to the conclusion that it was incumbent upon the appellant to prove that the transfer instrument underpinning the registration of the suit property was lawful and properly executed by the transferor. Such proof could only have been achieved by calling the attesting witness.
57. However, there is no gainsaying that the attesting witness was neither called by the appellant. Nevertheless, it bears repeating that the execution of the transfer instruments had been impugned and or brought into question.
58. In the circumstances, the learned trial magistrate was right in finding and holding that the execution of the transfer documents was indeed illegal and unlawful and constituted an endeavor by the appellant herein to steal a match on his siblings, namely; the original plaintiffs now deceased.
59. Before concluding on this issue, it is important to reiterate the holding of the court in the case of *Grace Waruinu Ngige & another v Ngugi Nguri & 4 others* [2002] eKLR where the court observed as hereunder;
- It is overwhelmingly clear that the presentations and registration of the transfer on 1.2.91 24 days after death of the deceased, was fraudulent and a nullity. The estate of the deceased would only have dealt with under the *Law of Succession Act* after his death and not otherwise.
60. I beg to adopt the findings and holdings in the foregoing decision and do hereby find that the impugned transfer and registration of the suit property in favour of the appellant was not only fraudulent but illegal and unlawful. Such kind of transactions are frowned upon not only by the law but also by equity. [see Section 26 (1) (b) of the *Land Registration Act*, 2012, [See also *Wambui v Mwangi & 3 Others* (Civil Appeal 465 Of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment)].
61. Having reviewed the entire evidence and having taken into account the dictum in the various decisions relative to the scope of the jurisdiction of the first appellate court, I come to the conclusion that the learned trial magistrate reached and arrived at the correct decision.
62. Notably, the evidence that was placed on record was overwhelming and same pointed to a serious fraud which was perpetrated by the appellant on the same date of the burial of his [appellant's] own mother.



Final Disposition :

63. From the analysis highlighted in the body of the judgment, it must have become crystal clear that the appeal beforehand is devoid and bereft of merits. Pertinently, the evidence on record was overwhelming and implicated the appellant in the commission of a serious fraud.
64. Consequently, and in the premises, the final orders that commend themselves to me are as hereunder;
- i. The Appeal be and is hereby dismissed.
 - ii. The Judgment of the trial court [subordinate court] dated 19th February 2024 be and is hereby affirmed.
 - iii. The Costs of the appeal be and are hereby awarded to the Respondents.
 - iv. The costs in terms of clause [iii] shall be agreed upon and in default be taxed by the Deputy Registrar of the court.
65. It is so ordered

DATED, SIGNED AND DELIVERED AT MERU THIS 22ND DAY OF MAY 2025.

OGUTTU MBOYA, FCI Arb, CPM [MTI]

JUDGE.

In the presence of

Mutuma– Court Assistant

Mrs. Mutegi for the Appellant.

Miss Maore for the Respondents.

