



**Njeru v Ndungu alias Angelica Wangui Njuguna & 3 others (Environment and Land Appeal 38 of 2021) [2025] KEELC 1059 (KLR) (5 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1059 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL 38 OF 2021**

**A NYUKURI, J  
MARCH 5, 2025**

**BETWEEN**

**LYDIA MUTHONI NJERU ..... APPELLANT**

**AND**

**A.W. NDUNGU ALIAS ANGELICA WANGUI NJUGUNA ..... 1<sup>ST</sup> RESPONDENT**

**STANLEY NDUNGU MURIGI (SUED AS OFFICIALS OF URUTWAGO  
MWIRUTI WOMEN GROUP) ..... 2<sup>ND</sup> RESPONDENT**

**KEITH OLANG OGOLLA ..... 3<sup>RD</sup> RESPONDENT**

**WINFRED WANJA NJUE ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. This appeal by Lydiah Muthoni Njeru is a challenge against the judgment of Hon. C.C. Oluoch, (Chief Magistrate) delivered on 4<sup>th</sup> August, 2021 in Mavoko CMC ELC No. 8 of 2014. In the impugned judgement, the learned trial magistrate found that the appellant (plaintiff in the lower court) lawfully purchased the suit property from the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein (1<sup>st</sup> and 2<sup>nd</sup> defendants in the lower court) and also that the 3<sup>rd</sup> and 4<sup>th</sup> respondents herein (3<sup>rd</sup> and 4<sup>th</sup> defendants in the lower court) lawfully purchased the same suit property from the 1<sup>st</sup> and 2<sup>nd</sup> respondents, but that the latter were innocent purchasers for value without notice since the appellant had not developed the suit property at the time of sale. Therefore, the trial court dismissed the appellant's claim but ordered refund of the purchase price with interest to the appellant on the basis that the appellant sought alternative prayer for refund of the value of the suit property but that the valuation report she presented showed a cumulative value of the land together with developments thereon made by the 3<sup>rd</sup> and 4<sup>th</sup> respondents.



## Background

2. The facts on record show that on 1<sup>st</sup> September, 2005 the appellant purchased from the 1<sup>st</sup> and 2<sup>nd</sup> respondents the land known as plot No. 11 on L.R. No. 7340/15 measuring 40 feet by 80 feet at a consideration of Kshs. 125,000/= which amount was paid in full. The vendors did not transfer the land to the appellant, and neither did the appellant develop the land. Subsequently, on 2<sup>nd</sup> June 2011, the 1<sup>st</sup> and 2<sup>nd</sup> respondents sold the same suit property to the 3<sup>rd</sup> and 4<sup>th</sup> respondents who in 2014 began constructing thereon prompting the appellant reported them to the area chief and the police.
3. By a plaint dated 9<sup>th</sup> September, 2014, filed in Mavoko CMC ELC No. 8 of 2014, the plaintiff sought the following orders against the four defendants therein;
  - a. A permanent injunction do issue restraining the defendants by themselves, their relatives, families and or agents from trespassing, entering, remaining, transferring, selling and or in any way dealing with all that property known as Plot No. 11 situated at Njiru Githunguri Farm (L.R. No. 7340/15) within Utawala area Machakos County.
  - b. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be ordered to transfer the said Plot No. 11 situated at Njiru Githunguri Farm (L.R. No. 7340/15) within Utawala area Machakos County to the plaintiff herein and or in the alternative the defendants do pay the plaintiff the current value of the suit land herein.
  - c. That an order of eviction do issue as against the 3<sup>rd</sup> and 4<sup>th</sup> defendants and the same be executed by the OCS Mlolongo Police Station.
  - d. That the cost of the suit be paid by the defendants.
4. The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed defence dated 26<sup>th</sup> September, 2014 denying the plaintiff's claim. They denied selling the suit property to the plaintiff and stated that they had no capacity to enter into land sale agreement with the plaintiff.
5. The 3<sup>rd</sup> and 4<sup>th</sup> defendants filed a statement of defence dated 2<sup>nd</sup> April, 2015. They denied the appellants claim and stated that they purchased the suit property from the 2<sup>nd</sup> respondent at a consideration of Kshs.450,000/= which they paid in full.
6. The matter was heard by way of viva voce evidence. The plaintiff presented two witnesses. No evidence was presented by the 1<sup>st</sup> and 2<sup>nd</sup> defendant. The 3<sup>rd</sup> and 4<sup>th</sup> rdefendants presented 2 witnesses.

## Plaintiff's evidence

7. PW1 was Lydia Muthoni Njeru who informed court that she purchased the suit property from the 1<sup>st</sup> and 2<sup>nd</sup> defendants whom she knew well and that she bought the property from a Women Group called Urutwago Mwiruti Women Group led by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. That she paid a sum of Kshs. 125,000/= being consideration thereof in full settlement. She produced a sale agreement, banker's cheque, receipt, share certificate, photographs, demand letter and valuation report. In cross-examination she stated that the 2<sup>nd</sup> defendant informed her that he resold her land because she took long to develop it.
8. PW2 was Emily Mukami Makau. She stated that she witnessed the sale transaction between the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants. In cross-examination, she stated that she did not know if there was a house on the suit property. That marked the close of the plaintiff's case.



### 3<sup>rd</sup> and 4<sup>th</sup> defendants' evidence

9. DW1 was Keith Olang' Ogola, the 3<sup>rd</sup> defendant. He testified that the 4<sup>th</sup> defendant was his wife. Further that having intention to purchase land, he visited the 2<sup>nd</sup> defendant's office, was shown the map of the property, chose the suit property, then went to the site and saw that the suit property was not occupied. That after the site visit, they returned to the 2<sup>nd</sup> defendant's office where they entered into a land sale agreement wherein he purchased the suit property at a consideration of Kshs. 450,000/=. That after a week, he deposited the said sum in the 2<sup>nd</sup> defendant's account and was issued with a receipt and agreement. That when he wanted to construct on the suit property in July, 2014, the plaintiff began claiming ownership of the land. That having confirmed from the 2<sup>nd</sup> defendant's office that he was the owner of the land he proceeded with the construction. That he was reported at Mlolongo police station. He produced a sale agreement, receipt, plot ownership certificate and photographs.
10. In cross-examination, he stated that he saw the suit property for the first time in July, 2013 and that he did not make any inquiries from neighbours. That he only relied on the information given by the vendor and did not do any other due diligence. That he later learnt that the plaintiff had purchased the suit property and that he did not make any claim against the 1<sup>st</sup> and 2<sup>nd</sup> defendants because they confirmed to him that he was the owner of the suit property. On further cross-examination, he stated that the suit property was sold to him by Urutagwo Women Group and that he did not carry out a search before purchase. Further that a registered group cannot have only one member. That the agreement was not drawn by an advocate. That he did not find out why the seller did not have a witness to the agreement. He conceded that he was aware people buy land without building on it. In re-examination, he stated that the 2<sup>nd</sup> defendant informed him that he was the Chairman of Urutagwo Women Group and that he did not tell him that another person had already purchased the suit property.
11. DW2 was Stephen Eliud Ogola, the father of the 3<sup>rd</sup> defendant. He stated that he was involved in the 3<sup>rd</sup> defendant's purchase of the suit property. That in 2013, the 3<sup>rd</sup> defendant instructed him to commence the construction and in April, 2014 the plaintiff reported them to the area Chief.
12. In cross-examination he stated that he did not know the 1<sup>st</sup> defendant and that she signed the certificate of ownership but he never met her. That he did not talk to the neighbours before assisting his son to buy the suit property. Further that he did not have any documents showing officials of Urutagwo Women Group and that the only official they dealt with was the 2<sup>nd</sup> defendant. That marked the close of the 3<sup>rd</sup> and 4<sup>th</sup> defendants' case.
13. Upon consideration of the pleadings, evidence and submissions, the trial court further found that the agreements for purchase of the suit property by the plaintiff and the agreement entered into by the 3<sup>rd</sup> and 4<sup>th</sup> defendants were all valid agreements but that the 3<sup>rd</sup> and 4<sup>th</sup> defendants were innocent purchasers for value because the plaintiff did not develop the suit property upon purchase. The trial court further dismissed the prayers sought by the plaintiff but allowed a refund of purchase price of Kshs. 125,000/= with interest from the date of filing suit till payment in full. The trial court further found that although the plaintiff sought an alternative prayer for compensation of the current value of the suit property, the valuation report she presented contained both the value of the suit property together with developments thereon done by the 3<sup>rd</sup> and 4<sup>th</sup> defendants and therefore she could only get a refund of the purchase price.
14. Aggrieved with the trial court's judgment, the appellant filed appeal before this court vide Memorandum of appeal dated 27<sup>th</sup> August, 2021 citing the following grounds of appeal;



- a. That the learned magistrate erred in law and in fact in reaching a finding that there was an enforceable contract between the 2<sup>nd</sup> respondent on the one part and the 3<sup>rd</sup> and 4<sup>th</sup> respondents on the other part.
  - b. That the learned magistrate erred in law and in fact in reaching a finding that the 3<sup>rd</sup> and 4<sup>th</sup> respondents had exercised due diligence in the sale transaction with the 2<sup>nd</sup> respondent contrary to the evidence on record.
  - c. That the learned magistrate erred in law and in fact in awarding the suit land to the 3<sup>rd</sup> and 4<sup>th</sup> respondents herein when evidence on record did not warrant such an award.
  - d. That the learned magistrate erred in law and in fact in reaching a finding that the value of Kshs. 2 million given in the valuation report produced in evidence by the plaintiff was inclusive of the developments on the suit land yet the said report clearly stated that the valuation was of the land alone.
  - e. That the learned magistrate erred in law and in fact in reaching a finding that the plaintiff/appellant was only entitled to a refund of the purchase price plus interest at court rates from date of filing suit yet the value of the property had skyrocketed over the years.
  - f. That the learned magistrate erred in law and in fact in reaching a finding was not fair and just.
15. Consequently, the appellant sought the following orders;
- a. That the judgement of the lower court be set aside.
  - b. That the court do proceed and find that the 3<sup>rd</sup> and 4<sup>th</sup> defendants were not entitled to the sit property as there is no valid contract of sale and the suit land was not available for sale when they purported to purchase the same.
  - c. The court do award the appellant the suit property and the 3<sup>rd</sup> and 4<sup>th</sup> respondents be evicted from the land thereof.
  - d. That the cost of the appeal and the lower court be paid by the respondent.
16. The Appeal was canvassed by way of written submissions. On record are the appellants submissions dated 4<sup>th</sup> April 2023 and the 3<sup>rd</sup> and 4<sup>th</sup> respondents' submissions dated 21<sup>st</sup> September, 2023.

### **Appellant's Submissions**

17. Counsel for the appellant submitted that the trial court erred in finding that both the two agreements by the appellant on one hand and that by the 3<sup>rd</sup> and 4<sup>th</sup> respondents on the other hand, were enforceable and that it also erred in awarding the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> respondents against the evidence on record. Counsel maintained that the suit property was not available for sale to the 3<sup>rd</sup> and 4<sup>th</sup> respondents since the 1<sup>st</sup> and 2<sup>nd</sup> respondents had no proprietary interest therein at the time they purported to sell the same to the 3<sup>rd</sup> and 4<sup>th</sup> respondents.
18. It was further contended for the appellant that the signature of the vendor in the agreement with the 3<sup>rd</sup> and 4<sup>th</sup> respondents was not witnessed as required in law contrary to Section 3(3)(b) of the [Law of Contract Act](#). Counsel maintained that for want of attestation of the vendor's signature, the contract was unenforceable. Counsel referred to the principle of nemo dat quod non habet and relied on section



- 23 of the *Sale of Goods Act* in submitting that a person who is not the owner of goods cannot lawfully sell such goods.
19. Reliance was also placed on the cases of Daniel Kiprugut Maiyua v Rebecca Chepkurgat Maina (2019)e KLR and Said Mabruk Abed –vs- Margaret Mumbua Muli (2022) e KLR to emphasize the import of the principle of *nemo dat quod non habet*.
  20. Counsel also cited the case of Elizabeth Chemutai Chepkwony v Janeth Chepkoech & Another (2019) eKLR and Article 40(3) of *the Constitution* of Kenya for proposition that no person shall be deprived of their property without prompt and just compensation. Counsel argued that the trial court was wrong to order refund of the purchase price when the 3<sup>rd</sup> and 4<sup>th</sup> respondents did not counter claim for the suit property against the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the appellant arguing that there was existence of an elaborate scheme to deprive the appellant of her property.
  21. On whether the trial court was right in concluding that the 3<sup>rd</sup> and 4<sup>th</sup> respondents conducted due diligence, counsel argued that it was evident that they did not do any due diligence as the sale agreement shown to be done on behalf of a group was signed by one person and that the 3<sup>rd</sup> respondent admitted that he only relied on the evidence of 2<sup>nd</sup> respondent and that he failed to make inquiries from the neighbours. Counsel faulted the trial court for relying on the 3<sup>rd</sup> respondent’s evidence that there was a list of members when no such list was not produced as evidence.
  22. Counsel also faulted the trial court’s finding that the stated value of Kshs. 2,000,000/= in the appellant’s valuation report was inclusive of developments done by the 3<sup>rd</sup> and 4<sup>th</sup> respondents, and insisted that the valuation report was clear that the amount stated of Kshs. 2, 000, 000/=, was in respect of the land only and did not include developments thereon.
  23. On the trial court’s conclusion that the appellant was entitled to a refund of the purchase price, counsel argued that the appellant purchased the suit property lawfully in 2005, the valuation done in 2015 showed appreciation of the land and that therefore the finding that the appellant was entitled to refund of the purchase price was erroneous.

### **3<sup>rd</sup> and 4<sup>th</sup> Respondents’ Submissions**

24. Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents submitted that the appellant was obligated to demonstrate that the agreement by the 3<sup>rd</sup> and 4<sup>th</sup> respondents amounted to wrong-doing or that there was foul-play or fraud which she failed to prove. Counsel argued that the appellant failed to prove collusion between the 1<sup>st</sup> and 2<sup>nd</sup> respondent with the 3<sup>rd</sup> and 4<sup>th</sup> respondents. Counsel maintained that therefore the 3<sup>rd</sup> and 4<sup>th</sup> respondents had demonstrated that they were bona fide purchasers for value without notice of defect in title.
25. It was further submitted for the 3<sup>rd</sup> and 4<sup>th</sup> respondents that documents produced by the 3<sup>rd</sup> and 4<sup>th</sup> respondents show that they lawfully acquired the suit property meaning that they went to the suit property; they found that it had not been fenced and no beacons were on the property and there were houses on the left and the right sides of the plot.
26. The court was referred to the case of Eunice Grace Njambi Kamau & Another v The Honourable Attorney General & 5 Others (2000) eKLR and Central Bank Ltd v Trust Bank Ltd & 4 Others (1996) EKLR for the proposition that fraud must be specifically pleaded and strictly proved.
27. On whether the 3<sup>rd</sup> and 4<sup>th</sup> respondents acquired good title, counsel relied on the case of Katende – vs- Haridar & Company Ltd (2008) 3 E A 173 and submitted that as the 3<sup>rd</sup> and 4<sup>th</sup> respondents were



not aware of any previous sale and having entered into a valid sale, they were innocent purchasers for value without notice.

28. Counsel further contended that the 3<sup>rd</sup> and 4<sup>th</sup> respondents will suffer irreparable damage if they are not declared as lawful owners of the suit property because the appellant never fenced or developed the property upon purchase and that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have committed colossal sums of money on the property in building a permanent residential house on it which is almost complete, as their developments will go to waste. Further reliance was placed on the cases of Lawrence Mukiri vs Attorney General & 4 Others (2013) eKLR and Elizabeth Wambui Githinji & 29 Others –vs- Kenya Urban Roads Authority (2019) eKLR among others.

### **Analysis and determination**

29. The court has carefully considered the appeal, the entire trial court record and the parties' rival submissions. The role of this court as a first appellate court is to re-assess, re-evaluate and re-analyze the evidence on record and make its own independent conclusions, bearing in mind that it had no advantage of seeing or hearing the witnesses, and make due allowance for that. This position was stated in the Cases of *Selle & Another –vs- Associated Motion Boat Co. Ltd & Others* (1968) EA 123 and *Peters –v- Sunday Post* (1958) EA 424, among others.
30. While a first appeal is decided on facts and the law, the first appellate court is ordinarily the final court on facts and therefore on appeal, parties deserve a full, fair and independent evaluation of the evidence as anything short of that would amount to an injustice. Therefore, the role of this court being the first appellate court is to apply its mind to the entire case, re-evaluating both questions of fact and law and considering all issues arising from the case.
31. Having considered the appeal herein the issues that arise for this court's determination are as follows;
- a. Whether the trial court was wrong in dismissing the appellant's claim of the suit property despite concluding that the appellant's agreement with the 1<sup>st</sup> and 2<sup>nd</sup> respondents was valid.
  - b. Whether the 3<sup>rd</sup> and 4<sup>th</sup> respondents were innocent purchasers for value without notice of defect in title.
  - c. Whether the trial court was wrong to elevate the interest of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as innocent purchasers above the interest of the appellant who is an innocent owner.
  - d. Whether the trial court was wrong in granting the appellant refund of the purchase price on the basis that the valuation report presented included the value of the developments made by the 3<sup>rd</sup> and 4<sup>th</sup> respondents.
  - e. Which orders should the court grant in the circumstances of this case.
32. Article 40 (1) and (6) of *the Constitution* of Kenya provides for legal protection only in respect of lawfully acquired property. Therefore, where property is acquired unlawfully whether or not the new title holder was party to the illegality, such acquisition does not enjoy legal protection.
33. For a sale of land to be valid, the parties to the same must have the requisite capacity to transact in regard to such land. Therefore, before a person sells land, they must be the owners thereof, or have the authority of the owner to sell, for them to pass good title to whoever will purchase such land.
34. In the instant case it is not disputed that the suit property was sold by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to the appellant on 1<sup>st</sup> September 2005 at a consideration of Kshs. 125, 000/= which the appellant paid in full. It is also not in dispute that at the time of that sale, the 1<sup>st</sup> and 2<sup>nd</sup> respondents owned



- the suit property and had capacity to enter into the agreement with the appellant. For those reasons therefore, the agreement entered into between the appellant and the 1<sup>st</sup> and 2<sup>nd</sup> respondents was a valid and enforceable agreement, and therefore the trial court rightly found so.
35. It is also not disputed that after selling the suit property to the appellant, the 2<sup>nd</sup> respondent again entered into a sale agreement over the same suit property with the 3<sup>rd</sup> and 4<sup>th</sup> respondents on 2<sup>nd</sup> June 2011. It therefore follows that when the 2<sup>nd</sup> respondent sold the suit property to the appellant in 2005 and received the entire consideration, the suit property became the appellant's property and was no longer the property of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Upon purchase, the same passed to the appellant, hence they did not own the suit property on 2<sup>nd</sup> June 2011 when they purported to sell it to the 3<sup>rd</sup> and 4<sup>th</sup> respondents. Therefore the 1<sup>st</sup> and 2<sup>nd</sup> respondents lacked capacity to enter into the land sale agreement dated 2<sup>nd</sup> June 2011 and hence the said agreement was invalid and unenforceable. In that respect therefore, the findings of the trial court that the agreement between the 3<sup>rd</sup> and 4<sup>th</sup> respondents on one hand and the 2<sup>nd</sup> respondent on the other hand as being valid and enforceable was made in error as the 2<sup>nd</sup> respondent had no capacity to contract over the suit property which he did not own as of 2<sup>nd</sup> June 2011.
36. As to whether the 3<sup>rd</sup> and 4<sup>th</sup> respondents were innocent purchasers for value without notice of defect in title, they informed court that they did not obtain any search and their only source of information was the 2<sup>nd</sup> respondent and that they did not even bother to ask the neighbours of the suit property. The evidence on record shows that the reason they purchased the suit property is because it was neither developed nor fenced. They appeared to blame the appellant for failure to develop or fence her plot. This court takes the view that an innocent purchaser ought to demonstrate having conducted reasonable due diligence. I do not agree with the position taken by the 3<sup>rd</sup> and 4<sup>th</sup> respondents which was upheld by the trial court, that confirming that a plot is vacant and not fenced is sufficient due diligence. There is no obligation in law for an owner of property to fence or develop their land for purposes of preventing its purchase by third parties. In my view, the 3<sup>rd</sup> and 4<sup>th</sup> respondents did not conduct sufficient due diligence expected of an innocent purchaser. It is unreasonable for the 3<sup>rd</sup> and 4<sup>th</sup> respondents to insist that they purchased the suit property because it was vacant and undeveloped and lay blame at the appellant's door. If such position were to be upheld, then all the vacant plots in this country would be grabbed with ease and land owners would be exposed to serious risk. For those reasons, I find and hold that the 3<sup>rd</sup> and 4<sup>th</sup> respondents were not innocent purchasers for value without notice.
37. Even if it were true that the 3<sup>rd</sup> and 4<sup>th</sup> respondents were innocent purchasers for value without notice, the law distinguishes the rights of an innocent owner as against the rights of an innocent purchaser. Article 40 (6) of *the Constitution* of Kenya removed protection from an innocent purchaser if the title held by the innocent purchaser was unlawfully acquired whether or not the purchaser was party to the illegality. Where the owner of the property in issue is an innocent owner, the interest of an innocent purchaser is inferior to the interest of an innocent owner. A person cannot purchase property in unlawful circumstances, whether or not they were party to the illegality and get legal protection on the basis of being innocent purchasers for value without notice of defect in title. Therefore, as long as there is a defect in title, the true owner thereof cannot be deprived of the property just because of the innocence of the purchaser. In this case, the appellant who was the first in time in purchasing the suit property, is an innocent owner. In my view, the scale of justice tips in favour of an innocent owner as against an innocent purchaser. Therefore, whether or not the 3<sup>rd</sup> and 4<sup>th</sup> respondents are innocent purchasers, the rights of the appellant as an innocent owner supersedes the rights of innocent purchasers in any event.



38. Regarding the trial court's finding that the value of the suit property in the valuation report included the value of developments by the 3<sup>rd</sup> and 4<sup>th</sup> respondent, this court finds that that finding was an erroneous finding as the valuation report is clear and unequivocal at page 8 on the first general remark that although there was a house on the suit property, the value of the land in the report is only in regard to the land and does not include the value of the development. Therefore, the trial court was in error in making an order for refund of the purchase price on the basis that the value of the property included the value of the house constructed by the 3<sup>rd</sup> and 4<sup>th</sup> respondents.
39. Therefore, the trial court was wrong to order for refund of the purchase price as the appellant had not sought for the same but for current value of the land as an alternative remedy. However, as the appellant is the lawful owner of the suit property, she was entitled to the property which was her main prayer and not the alternative prayer. The appellant having demonstrated that she lawfully purchased the suit property, it follows that the 3<sup>rd</sup> and 4<sup>th</sup> respondents' occupation thereof amounts to trespass and hence the appellant deserves both orders of vacant possession and permanent injunction sought in her plaint.
40. In the premises, I find and hold that the appeal herein is merited and the same is hereby allowed. The judgment of the trial court is hereby set aside and the same is substituted with the following orders;
- a. A permanent injunction is hereby issued restraining the respondents by themselves, their relatives, families and or agents from trespassing, entering, remaining, transferring, selling and or in any way dealing with all that property known as plot No. 11 situated at Njiru Githunguri Farm (LR No. 7340/15 within Utawala area Machakos County.
  - b. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents are hereby ordered to transfer the said Plot No. 11 situated at Njiru Githunguri Farm (LR No. 7340/15 within Utawala area Machakos County to the appellant herein within 30 days of this judgment and in default the Deputy Registrar of this court is authorized to execute all transfer documents to vest ownership of the said property in the appellant.
  - c. The 3<sup>rd</sup> and 4<sup>th</sup> respondents are ordered to vacate the suit property being Plot No. 11 situated at Njiru Githunguri Farm (L R No. 7340/15) within Utawala area Machakos County within 90 days of this judgment and in default, eviction orders to issue and the OCS Mlolongo Police Station to provide security during the eviction process.
  - d. The respondents shall bear the costs of this appeal as well as the costs of the suit in the court below.
41. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 5<sup>TH</sup> DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**A. NYUKURI**

**JUDGE**

In the presence of;

Ms Gichuki for the appellant

Mr. Onyore for the respondent

Court Assistant: Juliet

