



**Chege v Anne Mugure Muhia, Moses Kariuki Ngugi and Monicah Wambui Kariuki (Suing as the Representative of the Estate of Ngugi Mukora - Deceased) & 2 others (Environment and Land Appeal E023 of 2023) [2025] KEELC 3578 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3578 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E023 OF 2023**

**JA MOGENI, J**

**MAY 6, 2025**

**BETWEEN**

**JOHN CHARLES CHEGE ..... APPELLANT**

**AND**

**ANNE MUGURE MUHIA, MOSES KARIUKI NGUGI AND MONICAH  
WAMBUI KARIUKI (SUING AS THE REPRESENTATIVE OF THE ESTATE OF  
NGUGI MUKORA - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, RUIRU ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal against the Judgment delivered on 4th August, 2023 by M.W  
Wanjala (Principal Magistrate) in Thika in CMCC Case No. 478 of 2022)*

**JUDGMENT**

1. The Appellant, John Charles Chege was the was the 1<sup>st</sup> Defendant in the former suit being Thika CMCC case no. 478 of 2022 while the 1<sup>st</sup> Respondent, Anne Mugure Muhia, Moses Kariuki Ngugi And Monicah Wambui Kariuki [Suing as the Representative of the Estate of Nguge Mukora alias Ngugi Mukora [Deceased] were the Plaintiffs. Vide a Plaint dated 23/08/2022, the Plaintiffs'/1<sup>st</sup> Respondents averred they were the deceased Nguge Mukora alias Ngugi Mukora [hereinafter referred to as the deceased] was the sole registered proprietor of land parcel No. Ruiru East/Juja East Block II/2293 herein after referred to as the suit property and demanded that the Plaintiff be declared as the bona fide legal owner of the suit property and the title held by the Plaintiff be held as genuine, cancellation of the 1<sup>st</sup> Defendant/Appellant title, rectification of the record to have the Plaintiff as the only holder of the title to the suit property and a permanent injunction against the Defendants over the suit property.



2. The 1<sup>st</sup> Defendant/Appellant filed a Statement of Defence and Counter-claim dated 3/11/2022 in which it denied the Plaintiffs' claim and put them to strict proof thereof. He averred that he is the bona fide proprietor of the suit property upon a first registration made on 25<sup>th</sup> October 1989.
3. That he was one of the founder shareholders of Juja Farms [1976] Limited vide membership certificate number 624 issued on 20<sup>th</sup> September 1977.
4. He therefore sought an order for dismissal of the Plaintiffs' suit, perpetual injunction against the Plaintiffs, general damages for loss of use of title and costs of the counter-claim.
5. The suit in the trial Court was heard between 3/11/2022 to 26/10/2023 in which both the Plaintiff and the 1<sup>st</sup> Defendant testified on their own behalf and they did not call any witnesses. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not file any defences. It took the concurrence of the both Counsels of the Plaintiff and the Defendant together with the Court to summon the Land Registrar, 2<sup>nd</sup> Defendant as a witness to shade light on the transaction of the suit property being the custodian of all the records of the land details in Kenya. The Judgment was delivered on 4/08/2023.
6. The matter proceeded via viva voce evidence as follows:-

### **Plaintiff's Case**

7. PW1 Monica Wambui Kariuki adopted her witness statement filed on 30/08/2022 which she adopted as her evidence in chief. She also adopted her list of documents filed as Pexh 1-6. She testified that she was the legal representative of the estate of the deceased Nguge Mukora alias Ngugi Mukora who was her grandfather and the legal owner of all that parcel of land known as Ruiru East/Juja East Block II/2293. She stated that she had authority from her co-Plaintiff to testify on their behalf.
8. She testified that she has a limited grant ad litem and that among the documents was a search dated 16/03/2021 which show that the suit property was issued to her grandfather on 17/08/1989. It was her testimony that when the family of the deceased started the process of succession they wanted to sell the suit property and transfer it to one John Thuo Ndungu.
9. They discovered upon application for the transfer at Ruiru Land Registry that the suit property had been registered in the name of the 1<sup>st</sup> Defendant and not Ngugi Mukora the deceased. It is her prayer that the title held in the name of Ngugi Mukora be regarded as genuine and all other subsequent title be surrendered for cancellation and that the Ruiru Land Registry be directed to rectify their records to have Ngugi Mukora as the bona fide legal owner of the subject Land Parcel.
10. Upon being re-examined she testified that Ngugi Mukora owned other parcels in Juja Farm but that he had given it to his daughter Mary Wanjiru who however is deceased. The succession process was done and that is why it was to be sold to one John Thuo Ndung'u although upon conducting a search it was discovered that one John Chege was claiming to be the owner of the suit property and had reported to the DCI.
11. That the Police had summoned the Plaintiffs and wanted them to go with the title and exchange it with the said John Chege but the Plaintiffs rejected.

### **Defence Case**

12. DW1 John Charles Chege adopted his witness statement which he stated that he will rely on as his testimony in chief. He stated that there were people who wanted to buy land and he joined them and they bought shares. That they were issued with certificates and then ballot card. That eventually he was issued with title in 1989 and it was for parcel number 2293.



13. He testified that he has a caution placed on the suit property and he produced it as annexure 3 and it was placed on the parcel in 2000 when he realized that there was a problem on the suit property. That he went to Ruiru Land Office to report in the year 2000 but the DCI produced a report in June 2021.
14. Upon cross-examination he maintained that he was a shareholder of Juja Farm and that he had all the requisite documentation. Upon being cross-examined further he stated that he could not remember his ballot and card number. He testified that he did not know who Ngugi Mukora was though he had heard that he had a plot next to his and that he had been allotted plot number 2292 and that he got to know that plot number 2293 had been registered in the name of Ngugi Mukora on 18/09/2000.
15. On being asked about the Occurrence Book number he testified that the Occurrence Book number he had was for the year 2019 which he was issued after he reported the matter in 2019. Further he stated that the receipt he produced as Dexh 1 dated 25/05/1984 was for settlement of a harambee water project and thus it was an erroneous exhibit.
16. On the caution which he had stated that he had placed on the land it emerged from the cross-examination that whereas it was signed it was not received by the Registrar and was thus not lodged at the Land's Office. He testified that he could not remember whether he took the caution to the Land's office and that he only remembers filling it but not filing it.
17. On the investigation by DCI it was his testimony that he did not know whether any one was arrested or charged but that he made a report to DCI. That his title was issued on 25/10/1989 and that he did not know when Mukora was issued with title. When he was testifying, he was shown the Plaintiff's title which was issued on 17/08/1989 and reissued in August 1994. He denied knowing a neighbor by the name Mary Ngugi who was and he stated that his certificate was No. 624 and that it was issued to him by the officials of the Company for who he testified that he could not remember their names.
18. He told the Court that he know one of the officials but he had forgotten their name because he used to stay far from the suit property. Further he stated that he has never stayed on the suit property but that he has never sold that suit property to anybody. On re-examination he now stated that one Kibora Wanduigi had fenced the suit property for him but that he was not aware how many hectares the land was.
19. The parties by consensus agreed to have the Registrar invited to testify on the history of the registration details for land parcel Nos. Ruiru East/Juja East Block 2/2292 and 2293 and provide the necessary documents related to the land including previous searches, original membership register for Juja Farm [1976] Ltd.
20. The Registrar Robert Mugeni Mbumba No. 327. He testified and produced documents relating to both parcels where he stated that Plot No. 2293 was allocated to John Charles Chege and Share Certificate No. 624 and that shamba No. 2292 was allocated to Nahashon Ngugi Mukora and Share Certificate No. 585. He also testified that land parcel Nos. Ruiru East/Juja East Block 2/2293 was allocated to both John Charles Chege and Nahashon Ngugi Mukora but that DCI via a letter dated 2/06/2021 informed the office of the Registrar that land parcel Nos. Ruiru East/Juja East Block 2/2293 was found to belong to John Charles Chege and that the office of the Land Registrar was advised to rectify the record to reflect that.
21. That vide a Gazette Notice No. 9353 of 10/9/2021 the registration of Nahashon Ngugi was expunged and the green card was reconstructed to reflect John Charles Chege as the proprietor of the suit property. On cross-examination he told the Court that Ngugi Mukora was issued with a title of parcel Nos. Ruiru East/Juja East Block 2/2293 on 17/08/1989 and also the searches confirmed this. Although



he stated that he doubted the information of the searches. On the Juja Farm Members register he stated that the copy of transfer of the members register was not certified by Juja Farm.

22. He also testified that John Charles Chege was issued with a title on 25/10/1989 but that he was not able to produce the green card to confirm the information he had given. He further stated that he did not have any documents with him to show that Mukora ever owned parcel number 293 nor any documents to support issuance of title to Mukora. That when the caution was lodged on 27/11/2000 he did not know whether a search was done before the caution was lodged.
23. The parties filed written submissions and thereafter the trial Magistrate delivered the determination of the Court on 4/08/2023 and allowed the Plaintiffs' [1<sup>st</sup> Respondents] claim and entered Judgment for the Plaintiffs [1<sup>st</sup> Respondents] and held at paragraph 62 that;

“ The Court was thus satisfied on a balance of probabilities that the Plaintiffs had proved that they were entitled to the reliefs that they sought in the Plaint. The Court was not satisfied that the 1<sup>st</sup> Defendant had proved his case to the required standards. Consequently, the Plaintiffs' suit is allowed in terms of the prayers set out in the Plaint dated August 23, 2022. The 1<sup>st</sup> Defendant's Counter-claim is dismissed with costs.”
24. The Appellant was aggrieved by the decision and by an Amended Supplementary Memorandum of Appeal dated 3<sup>rd</sup> February 2025 seeking for the following orders;
  - a. That the Judgment be set aside in total and the same be substituted with Judgment in favour of the Appellant as the proprietor to title Ruiru East/Juja East Block 2/2293.
  - b. That the case be remanded back for rehearing/retrial.
  - c. That the costs of the appeal be borne by the Respondent.
25. The Appeal is based on the grounds that;
  1. The learned trial Court erred in law and in fact when it made Judgment without critical analysis of facts that both the Appellant and 1<sup>st</sup> Respondents were shareholder of Juja Farm [1976] Ltd and that each had respective entitlement by dint of shareholding
  2. The learned trial Court misguided itself on the analysis of evidence available before it when it failed to appreciate that the 2<sup>nd</sup> Respondent had fully elaborated that a thorough process of investigation had been undertaken by the directorate of criminal investigations over registration of title Ruiru East/Juja East Block 2/2293
  3. The learned trial Court erred in law and in fact when it wholly excluded analysis of evidence of vital witnesses as well as of vital document on the flimsy and academic reasoning thus occasioning the Appellant a breach of justice.
  4. The learned trial Court erred in law and in fact when it failed to consider that all the evidence available was capable to demonstrate that the Appellant was the bona fide owner of land parcel Ruiru East/Juja East Block 2/2293 to the exclusion of everybody else.
  5. The learned trial Court misguided itself on the exercise and application of the doctrine of balance of probabilities and rendered a per incuriam Judgment when it failed to adjudge that the 1<sup>st</sup> Respondent had already disposed of by sale his share entitlement to third party and had actually even executed transfer instrument in favour thereof



6. The trial Court erred in law in failing to consider that the evidence of the 2<sup>nd</sup> Respondent was in itself sufficient to determine the right ownership of the title Ruiru East/Juja East Block 2/2292 Ruiru East/Juja East Block 2/2293.
  7. The trial Court erred and misdirected itself in determining the contents of public records in a casual manner without considering the basic provisions of the *Land Registration Act* as read with land registration of regulations of year 2017 thus rendering a miscarriage justice.
  8. The learned trial Court erred in law and in fact when it made conclusions which were neither raised during the trial and/or during submissions
26. As a result, the Appellant sought the following reliefs in the Appeal:
- a. That the Judgment be set aside in total and the same be substituted with Judgment in favour of the Appellant as the proprietor to the title Ruiru East/Juja East Block 2/2293.
  - b. That the case be remanded back for rehearing/retrial.
  - c. That the costs of the Appeal be borne by the Respondent.
27. The Appeal was heard by way of written submissions which parties filed and exchanged. The Appellant filed their submissions dated 19/02/2025 and identified the issues for determination as the Grounds of Appeal. The Appellant reiterated the testimony given at trial and on the first Ground of Appeal submitted that he had confirmed that both the deceased [1<sup>st</sup> Respondent] and the Appellant were members of Juja Settlement Harambee Water Project. He further submitted that they both had titles and that he had on his part proved his root of title in line with Section 107 of the *Evidence Act*.
28. I will join issue with the third, fourth, fifth and seventh Grounds of Appeal because the issues raised are related. Now, the Appellant submitted that despite the Court summoning an expert witness being the Land Registrar who is also an Advocate of the High Court of Kenya, the trial Court chose to ignore his evidence together with the letter of DCI and decided that the suit property belonged to the 1<sup>st</sup> Respondent. He thus contended that this finding of the trial Court was erroneous. The Appellant submitted that the Court in failing to accept his evidence which was corroborated by the expert witness and also the letter of the DCI then it meant the Court was adducing evidence for the 1<sup>st</sup> Respondent. Despite the Appellant holding that he had adduced evidence to point to the fact that he had proved his case on a balance of probability.
29. In totality the Appellant submitted that the appeal should be allowed since he had proved his case and the trial Court's Judgment should be set aside.
30. The 1<sup>st</sup> Respondent filed her submissions dated 26/02/2025 and submitted on the eight [8] Grounds of Appeal as filed by the Appellant.
31. On the first Ground of Appeal it was the submission of the 1<sup>st</sup> Respondent that whereas the original Membership register for Juja Farm [1976] Ltd being a land buying company at the time this matter was being heard had been wound up. It was this company that was the custodian of all the copies necessary to establish the root and/or origin of the title including but not limited to the ballot card, share certificates, receipts, clearance letter, original member's register.
32. He further submitted that the Appellant had alluded that a company member's register was produced as evidence but it is his submission that that position is untrue. That the original or duly certified copy of the entire member register of JUJA FARM [1976] Ltd indicating the Appellant being a shareholder



- was never adduced as exhibit before the trial Court at the same time it neither indicated plot allocations as they were only photocopies with suspected alterations and obliterations.
33. It was the submission of the 1<sup>st</sup> Respondent that whereas the Appellant was possessed with the original title that was issued to him on 25/10/1989 but which did not confer him as having been a shareholder of Juja Farm [1976] Ltd. Thus the Appellant failed to establish before the trial Court about the origin/root of his title and that Section 26 [1] [b] does protect the real title holders from being deprived of their titles by subsequent transactions.
  34. On the second Ground of Appeal the 1<sup>st</sup> Respondents submitted that they had conducted consistent searches over the years including the one issued on 19<sup>th</sup> August 1997, 8<sup>th</sup> April 2002 and as late as 16<sup>th</sup> March 2021 to attest to the fact that the suit property belonged to the late Mukora Ngugi [deceased]. That infact the Appellant testified that he conducted a search in 2000 and discovered that the suit property was in the name of the 1<sup>st</sup> Respondent [Ngugi Mukora]. This evidence was not controverted during the trial. That at no time did the Registrar present any search attesting to the land being registered in the name of the Appellant.
  35. On the third and fourth ground it is the submission of the 1<sup>st</sup> Respondents that the Registrar was unable to explain how the original records of the suit property could not be traced and that the reconstruction of the file as expected vide the Gazette Notice number 9353 was not done. The reconstruction instead bore a land register that was different from the one that was lost. The Registrar also informed Court that the DCI directed the Land Registrar to remove the name of the Mukora Ngugi and rectify the register by registering the Appellant as the proprietor of the suit property. He was not able to explain what happened to the registration of the deceased.
  36. On the fifth Ground of Appeal it was the submission of the 1<sup>st</sup> Respondent that the Appellant failed to prove his case on a balance of probability more especially the document that he tendered in Court were photocopies and that others obvious or suspected alterations and obliterations and their authenticity could not be established. That despite the Appellant discovering in 2000 that the land was registered in the name of the deceased Mukora Ngugi [who passed on in 2003] he never did anything about it until 2019 when he sought to place a Caution on the parcel of land. Again, the caution was never registered. It is their submission that the Appellant has not met the standard set by Sections 107 and 108 of the *Evidence Act*.
  37. That the Appellant failed to present in Court evidence establishing the root of his title he did not even tendered a single official search he purported to have conducted in the year 2000 that prompted him to report the matter at the DCI 19 years later.
  38. The 1<sup>st</sup> Respondents submitted that during the hearing they testified that they had been re-issued with another Title Deed on August 1994 by the office of the Land Registrar. To the 1<sup>st</sup> Respondent, he submitted that this was a clear manifestation that the records under the Land Registrar's custody demonstrated that the 1<sup>st</sup> Respondent is and was still the bonafide registered owner of the suit land.
  39. Therefore the 1<sup>st</sup> Respondents submitted that, it is not enough for the Appellant to wave and/or display a Certificate of Title and thereafter to contend that mere possession of such Certificate of Title [which is an End product] connotes conclusive evidence of ownership.
  40. In their submissions they made an observation that the possession of a Certificate of Title does not per se constitutes conclusive evidence of ownership. In any event, the validity of a title deed is anchored on and dependent upon the propriety, legality and validity of the process that birthed the Certificate of Title / Title Deed.



41. Further that it is a maxim of equity that where there are equal equities, the first in time prevails. The 1<sup>st</sup> Respondent submits that the learned chief magistrate duly appreciated the totality of the evidence that was tendered before him and thereafter arrived at the correct decision whilst finding and holding that the suit property lawfully belongs to the 1<sup>st</sup> Respondent. That therefore the Judgment of the trial Court should be upheld and the appeal dismissed.

### **Issues for Determination**

42. My analysis of the parties' pleadings, evidence, the submissions in the trial Court as well as the Judgement, the Memorandum of Appeal and the filed submissions in support of the Appeal and in opposition thereto, although the Appellant raised 8 issues for determination in his Memorandum of Appeal, the Court is of the opinion that resolution of the following key issues shall effectively determine the appeal:
1. Whether the trial Court erred in law and fact in holding that the 1<sup>st</sup> Respondents had proved their claim against the Appellant to the required standard.
  2. Who is the owner of the suit property?
  3. Whether the appeal is merited.
  4. Who should bear the costs of the appeal?

### **Analysis & final determination**

43. As a first Appellate Court, this Court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis. The Court has however to bear in mind the fact that it did not have an opportunity to see and hear the witnesses first hand. This duty is enunciated by Section 78 of the [Civil Procedure Act](#) which espouses the role of a first Appellate Court which is to: '... re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions.'
44. Besides, that duty has been affirmed in numerous decisions of the Superior Courts. Notably in the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was pronounced thus:
- “... this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”
45. It is trite that he who alleges must prove. The burden of proof in Civil cases is on a balance of probabilities. The burden of proof is anchored in Statute. Sections 107 – 109 of the [Evidence Act](#) provide;
- “
- “107. Burden of proof



[1] Whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

[2] When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

46. The facts of this case refer to a case of double registration of land. The Appellant claimed legal ownership of the suit land vide a Plaint dated 23/08/2022. He sought an order for a declaration that he is the bonafide owner of the suit land the title Ruiru East/Juja East Block 2/2293 and rectification of the 2<sup>nd</sup> Respondent’s record cancelling the 1<sup>st</sup> Respondents’ title in respect of the suit land.
47. Supporting his case, he took the stand as PW1. Adopting his witness statement as his evidence in Chief, he informed the Court that he bought shares and that he was issued with a Certificate number 624 and a ballot card. That he was finally issued with title to the suit property in 1989 for parcel number 2293. The detailed account of his testimony is as stated at paragraph 12-19 of the Defence Case.
48. In cross, the Appellant maintained that he never knew about Mukora Ngugi the 1<sup>st</sup> Respondent’s parcel of land. He testified that on 18/09/2000 he learnt his parcel of land plot 2293 had been registered in the name of Ngugi Mukora although the Occurrence Book sample that he produced was for the year 2019. Also the receipt he produced in Court was for the settlement harambee for a water project not a shareholder of Juja Farm.
49. Although he had testified that he placed a caution on the suit property, in cross-examination it emerged that the caution was never lodged. Neither was it signed by the Registrar to indicate that the caution was paid for and lodged. He informed the Court in cross-examination that he did not know whether someone is supposed to lodge caution.
50. On further re-examination he clarified that the No. 624 was the receipt number for the Juja Settlement Harambee project. It thus emerges that the Appellant did not have a membership number for Juja Farms 1976. The Appellant also did not know the acreage of the suit property that he alleged belonged to him. It thus emerged that the Appellant’s title is not supported by relevant documents namely clearance certificate, transfer forms duly signed by the Ccompany, Juja Farm [1976]Ltd. The Appellant also testified that his title was issued on 25/10/1989.
51. Yet the title to the 1<sup>st</sup> Respondents had been issued on 17/08/1989 to Ngugi Mukora [deceased]. What was clarified by the Land Registrar Mr Robert Mugeni Mbumba when he testified in Court on 4/05/2023 is what happened to the title of the Appellant dated 25/10/1989 when the title of the late Ngugi Mukora was reissued in 1994 over the same parcel of land.
52. From my analysis, it follows that in reissuing the title deed in 1994 in the name of Ngugi Mukora the Registrar was confirming ownership of the suit property to belong to the deceased. Additionally elsewhere in this Judgment the 1<sup>st</sup> Respondents have produced several searches showing that the



ownership of the suit property was in the name of the 1<sup>st</sup> Respondents' grandfather. The Land Registrar did not even produce the green card of the Appellant's claimed suit property he casually informed the Court that it may have been lost.

53. From the cross-examination of the Land Registrar there seemed to be an allegation of that the number at the end of plot Number 2293 seemed to have been rubbed to indicate the last number as a "2" and not a "3" to lend credence to the claim that the parcel that belonged to the late Ngugi Mukora was Ruiru East/Juja East Block 2/2292 and not Ruiru East/Juja East Block 2/2293.
54. I am however not persuaded by this line of argument and state that the Appellant failed to convince the trial Court that he was the proprietor of the suit property and that the late Ngugi Mukora was the owner of Ruiru East/Juja East Block 2/2292.
55. Be that as it may, it is important to point out that whenever a dispute arises as pertains to ownership of a designated property, it behooves the disputants, the Appellant not excepted, to place before the Court plausible and credible evidence speaking to the process leading to the Certificate of Title, which has since been issued.
56. Simply put, it is not enough for the Appellant herein to wave and/or display a Certificate of Title and thereafter to contend that mere possession of such Certificate of Title [which is an End product] connotes conclusive evidence of ownership.
57. To my mind, the possession of a Certificate of Title does not per se constitutes conclusive evidence of ownership. In any event, the validity of a Certificate of Title is anchored on and dependent upon the propriety, legality and validity of the process that birthed the Certificate of Title.
58. It is trite that the legal burden of proof, unlike the evidentiary burden of proof does not shift. In the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 3 Others* [2014] eKLR the Supreme Court held inter alia:

“The person who makes such allegation must lead evidence to prove the fact. She or he bears the initial legal burden of proof which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue.”

59. In the Court of Appeal case of *Munyu Maina v Hiram Gathiha Maina Nyeri Civil Appeal No. 239 of 2009* [2013] eKLR the Learned Judges stated that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.
60. Additionally the same Court in the case of *Mwangi James Njehia v Janetta Wanjiku Mwangi & Another* [2021] eKLR in dismissing an appeal challenging the trial Court's Judgement that found the Appellants' title to be invalid and ordered its cancellation stated;

“We say so because in the recent past and even presently, fraudsters have upped their game and we have come across several cases where Title deeds manufactured in the backstreets have, with collusion of officers in land registries, been transplanted at the Lands Office



and intending buyers have been duped to believe that such documents are genuine and on that basis they have “purchased’ properties which later turn out to belong to other people when the correct documents mysteriously reappear on the register or the genuine owner show up after seeing strangers on their properties waving other instruments of title. It is the prevalence of these incidents that have necessitated the current overhaul and computerization of the registration systems at the Land Registry in Nairobi.”

61. The upshot and totality of my analysis above is that the Appeal is bereft of merit on the following grounds; the trial Court soundly analyzed the rival evidence as presented and there is no basis to depart from its findings; the root of the 1<sup>st</sup> Respondents’ title was proven on a balance of probabilities and found more credence from the Appellant, and the Land Registrar; the root of the Appellant’s title was not supported by proper documentation; acquisition of a title is a wholistic process, not just the end product, the process is as important as the title; the Court’s power to order cancelation of title is well entrenched in law by dint of Section 80 of the *Land Registration Act*; the Appellant has not established which evidence was rejected; the allegation that the Court addressed extraneous matters is unfounded. Even if this ground was to stand, the Appellant himself did not have any evidence of his being a member of Juja Farms [1976] Ltd and could not prove that he was allotted the plot he claimed to be his [no Share Certificate, no proof of ballot nor any supporting documentation].
62. Having now carefully considered the available evidence as tendered at the lower Court, having evaluated the same and coming to its own independent conclusion, this Court finds and holds that the trial Magistrate did not err nor misapprehend the facts, Law and evidence on record.
63. Ultimately the appeal is found to be without merit. Having held and found that the Appellant failed to show the root of his title and the 1<sup>st</sup> Respondents were able to properly show the root of their title, the Court finds and holds that the learned trial Magistrate was correct in his findings that the 1<sup>st</sup> Respondents were the legal owners of the suit property and consequently allowing the Plaintiffs’ claim as contained in the Plaint and dismissing the Counter claim.
64. Therefore, this Court finds and holds that the instant Appeal is not merited.  
Who should bear the costs of the suit
65. Section 27 of the *Civil Procedure Act* gives the Court discretion to grant costs. The SC in the case of *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* [2014] eKLR affirmed that costs must always follow the event unless the Court has a good reason to order otherwise. Thus it is trite that Costs ordinarily follow the events. The 1<sup>st</sup> Respondents herein are the successful parties and they are therefore entitled to the Costs of the Appeal.
66. Consequently, the Court finds that the instant Appeal is not merited and the same is dismissed entirely with costs to the 1<sup>st</sup> Respondents. Judgement accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 6<sup>TH</sup> DAY OF MAY 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J**

**JUDGE**

In the presence of:

Mr. Waweru Nyambura for the Appellant



Mr. Ngeresa for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents – Absent

Mr. Melita – Court Assistant

.....

**MOGENI J**

**JUDGE**

