Gitonga v M'Itonga & 3 others (Environment and Land Appeal E017 of 2023) [2025] KEELC 4423 (KLR) (5 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4423 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E017 OF 2023

JO MBOYA, J

JUNE 5, 2025

BETWEEN

JACKSON RUTERE GITONGA ..... APPELLANT

AND

BERNARD M'IMATHIU M'ITONGA ..... 1ST RESPONDENT

LAWRENCE MUTHURI RUTEERE ..... 2ND RESPONDENT

DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER-BUURI ..... 3RD RESPONDENT

ATTORNEY GENERAL ..... 4TH RESPONDENT

JUDGMENT

1. The Appellant [who was the Plaintiff in the Subordinate Court] approached the court vide a Plaint dated 8th May 2019 wherein the Appellant sought the following reliefs:

    i. A declaration that the Plaintiff is the rightful owner of land parcels 1XX5 and 8XX4 Ruiri/ Rwarera Adjudication Section and an order compelling the 3rd def to re-transfer both parcels in the Plaintiff's name.

    ii. An order of eviction of the 1st Defendant from parcel numbers 1XX5; and the 2nd Defendant from Parcel Number 8XX4 and 5XX1 Ruiri/Rwarera Adjudication Section;

    iii. An order of permanent injunction restraining the 1st and 2nd Defendant their family members, employees, agents, servants or anybody else claiming at the plaintiff's behest or instructions from entering into, remaining, occupying, trespassing, or in any other way whatsoever interfering with the plaintiff's peaceful possession, user and enjoyment of parcel numbers 1XX5, 8XX4, and 5XX1 all in Ruiri/Rwarera Adjudication Section;

iv. Mesne profits from 2008 to date.

v. Costs and Interests

2. The first and Second [1st and 2nd Respondents duly entered appearance and thereafter filed a statement of defence dated 3rd June 2019 and wherein the 1st and 2nd Respondent denied the averments at the foot of the Plaint. Furthermore, the 1st and 2nd Respondents contended that the appellants herein voluntarily sold and thereafter caused plot number 1XX5 Ruiri/Rwarera Adjudication Section to be transferred to the 1st Respondent who thereafter sub-divided the same parcel 1XX5 into two portions.

3. Additionally, the 1st and 2nd Respondents also averred that the 1st Respondent subsequently lodged an objection in respect of parcel 1XX5 [reminder thereof] culminating into the creation of inter alia parcel 8XX4, which was thereafter registered in the name of the 2nd Respondent.

4. The 3rd and 4th Respondents duly entered appearance on the 15th July 2021 and thereafter filed a Notice of Preliminary Objection. Instructively, the two contended that the court was devoid of jurisdiction on the basis of section 3 of the Public Authorities Limitations Act Chapter 39 Laws of Kenya.

5. The suit before the subordinate court was heard and disposed of vide Judgement rendered on the 18th July 2023 whereupon the learned Chief Magistrate found and held that the appellant had failed to prove his claim as against the respondents. To this end, the learned Chief Magistrate proceeded to and dismissed the appellant's suit. Furthermore, the Chief Magistrate awarded costs to the respondents.

6. Aggrieved by and dissatisfied with the Judgement and decree, the appellant has now approached this court vide Memorandum of Appearance dated the 16th August 2023; and wherein the Appellant has highlighted the following grounds:

i. The learned magistrate erred in law and in fact in failing to find that the Respondents acted fraudulently and illegally in altering the adjudication records to reflect the 1st Respondent as the legal owner of land parcel number 1XX5 Ruiri/Rwarera Land Adjudication Section measuring approximately three acres.

ii. The learned chief magistrate erred in law and in fact in relying on a letter dated 20th June 1995 to the Chairman of the Land Adjudication Board requesting for transfer, which letter the Appellant vehemently denied. The learned magistrate erroneously proceeded to rely on the said letter as evidence of transfer, yet there was an agreement dated 24th July 1995 between the Appellant and the 2nd Respondent transferring two acres of land from land parcel number 1XX5 Ruiri/Rwarera Land Adjudication Section, which means that as at the date of agreement which came later, the suit property was still in the names of the Appellant and if at all the transfer letter was in existence, which the Appellant denied, the same had not been effected and remained null.

iii. The learned Chief Magistrate erred in law and in fact in ignoring the inconsistent and contradictory testimonial evidence by the respondents who could not explain how the three acres of land parcel number 1XX5 Ruiri/Rwarera Land Adjudication Section were transferred to the 1st Respondent as there was no sale agreement between the two parties.

iv. The learned Chief Magistrate erred in law and in fact in finding that the appellant did not prove fraud because there was no indication that the fraud was reported to the police and the Respondents found culpable yet the trial proceedings had no bearing on any criminal proceedings and/or any report. Furthermore, there are letters produced by the Appellant written to the lands office lodging his complaints.

v. The learned Chief Magistrate erred in law and in fact in finding that the Respondents proved that the Appellant transferred the land to them willingly and all the changes in the adjudication register were done procedurally yet the agreement dated 24th July 1995 categorically stated that failure to pay the balance of the purchase price would result to the appellant claiming his land and/or instituting a suit against him. There was no evidence of payment of the entire purchase price and the Appellant moved to claim his land.

vi. The learned Chief Magistrate erred in law and in fact in ignoring the ruling of the Land Adjudication officer which allowed the objection and ordered land parcel number 5XX1 to revert to the Appellant.

vii. The learned chief magistrate erred in law and in fact by failing to appreciate that the letter issued a surveyor's appointment of 24th July 1995 which is the same date the Appellant entered into an agreement with the 2nd Respondent, nothing would have been easier than to have the surveyor subdivide the land to the 2nd Respondent and the balance remaining in the Appellant's name.

viii. The learned Chief Magistrate erred in law in relying on sections of the law attributed to registered land yet the suit parcel is not registered.

ix. The learned Chief Magistrate erred in law and in fact in ignoring the Appellant's pleadings, evidence and submissions thus proceeding to make and rely on erroneous findings in dismissing the Appellant's suit.

X. The Judgement/decree is against the weight of evidence before the superior court.

7. The subject appeal came up for direction[s] on various dates including the 17th Feb 2025 when the Advocates for the parties confirmed that the record of appeal had been duly filed and served. Furthermore, the advocates covenanted that the record of appeal contained all the requisite pleadings and bundles of documents. In this regard, it was authenticated that the appeal was ripe for hearing.

8. Additionally, the advocates for the parties covenanted to canvass and dispose of the appeal by way of written submissions. To this end, the court proceeded to and gave directions inter alia that the appeal shall be canvassed by way of written submissions to be filed and exchanged within set timelines.

9. The appellant proceeded to and filed written submissions dated 20th March 2025; and wherein the appellant has highlighted three [3] key issues namely; that the learned trial magistrate failed to properly appraise the evidence on record and thus arrived at an incorrect finding that the appellant had not established fraud as against the respondents; the learned trial magistrate adopted and deployed a skewed/slanted approach in appraising the totality of evidence and thus failed to discern the glaring contradictions in the evidence of the 1st and 2nd Respondent; and that the learned trial magistrate erred in law in deploying and invoking the provisions of the *land registration act*, 2012, yet the suit properties are not registered under the said act or otherwise.

10. The 1st and 2nd Respondents filed written submissions [undated] and wherein same have raised and highlighted 3 key issues namely; the learned trial magistrate correctly appraised and apprehended the material facts underpinning the transactions at hand and thus arriving at the correct finding; that the appellant herein willingly and lawfully transferred parcel number 1XX5 Rwiri/Rwarera Adjudication Section to the 1st and 2nd Respondents; and that the appellant herein had failed to prove fraud to the requisite standard. To this end, the 1st and 2nd Respondent therefore implored the court to find and hold that the judgment of the trial court is well grounded and unassailable.

11. The 3rd and 4th Respondents also filed submissions dated 21st March 2025; and wherein the named respondents have contended and highlighted two [2] issues namely; that the appellant willingly and lawfully facilitated the transfer of the suit properties to the 1st and 2nd Respondents; and that the Appellant failed to establish and prove the plea of fraud to the requisite standard or at all.

12. Having reviewed the pleadings that were filed by the parties; having appraised the record of appeal; having taken into account the evidence tendered [both oral and documentary] and having considered the written submissions filed by the parties, I come to conclusion that the determination of the subject matter turns on two [2] key issues namely; whether the appellant established and proved the plea of fraud as pertains to Parcel Numbers 1XX5 and 8XX4 or otherwise; and whether the findings of the learned trial magistrate as pertains to parcel number 5XX1 Ruiri/Rwarera Adjudication Section are legally tenable or otherwise.

13. Before venturing to interrogate and address the pertinent issues that have been highlighted in the preceding paragraphs, it is imperative to state and observe that this being a first appeal this court is tasked with the mandate and jurisdiction to undertake exhaustive review, scrutiny, appraisal and analysis of the entirety of the evidence that was placed before the trial court and thereafter to arrive at an independent conclusion.

14. Suffice it to state that the court is not bound by the factual findings and conclusions that were arrived at by the trial court. For good measure, this court is at liberty to depart from the factual findings and conclusions arrived at by the trial court, where it is shown that the conclusions of the trial court were arrived at on no evidence; based on a misapprehension of the evidence tendered; perverse to the evidence on record; or better still where it is demonstrably shown that the trial court has committed an error of principle, which vitiates the judgment.

15. The jurisdictional remit of the first appellate court while entertaining and adjudicating upon an appeal [first Appeal] has been the subject of various court decisions. Recently, 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;

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> "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 demeanor of witnesses.
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> In a nutshell, a first appellate court must proceed with caution in deciding whether 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 re-analyze 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 circumstances 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."

16. Bearing in mind the dicta captured and highlighted by the Court of Appeal in the decision [supra], I am now disposed to revert to and consider the thematic issues, which had been highlighted elsewhere herein before. Suffice it to state that I shall address the issues sequentially.

17. Regarding the first issue, namely; whether the appellant established and proved the plea of fraud as pertains to Parcel Numbers 1XX5 and 8XX4 or otherwise, it is imperative to recall that the appellant herein filed the original suit contending that same [appellant] was the lawful owner of parcel number 1XX5 Ruiri/Rwarera Adjudication Section. To this end, the Appellant contended that the said parcel of land was gathered and recorded in his name.

18. Furthermore, it was the testimony of the Appellant that on or about the 16th of July 1997 same [Appellant]] wrote/lodged an objection with the Demarcation Officer of the Adjudication Section, seeking to bar any transaction[s] being undertaken on the said property without his involvement and

consent. In this regard, the Appellant tendered and produced the documents at page 14 of the Record of Appeal.

19. Additionally, the Appellant contended that same discovered that the suit parcel, namely, 1XX5 had been illegally transferred to the name of the 1st Respondent and thereafter subdivided into two portions namely; 1XX5 and 5XX1, respectively. [See the letter dated 14th of April 2003].

20. Moreover, the witness testified that same thereafter sought the intervention of the 3rd Respondent herein but same did not assist in correcting the impugned transaction.

21. Other than the foregoing, it was the testimony of the Appellant that same subsequently lodged an objection namely Objection Number 4663, against Parcel Number 5XX1. In addition, the appellant averred that the said objection was subsequently heard and disposed of vide decision of the 3rd Respondent rendered on the 22nd of MARCH 2018.[See the docs at pages 18-22 of the record of appeal].

22. It was the testimony of the Appellant that pursuant to the objection proceedings; parcel number 5XX1 was returned unto him. For good measure, the appellant posited that the objection was allowed and the name of 2nd Respondent was cancelled.

23. The Appellant also averred that same was not privy to and knowledgeable of the letter dated 20th June 1995 which was deployed by the 1st Respondent in transferring parcel number 1XX5 unto his name. Further and in any event, the appellant contended that it was not possible to transfer parcel 1XX5 to the 1st respondent and yet same appellant is still said to have entered into a sale agreement with the 2nd Respondent on the 24th of July 1995. To this end, the Appellant posited that the transactions impacting upon parcel number 1XX5 was illegal and fraudulent.

24. It is on the foregoing basis, that the Appellant sought to invalidate the transfer and recording of Parcel number 1XX5 in the name of the 1st Respondent; the initial sub-division of parcel number 1XX5 into two portions including parcel 5XX1; and the eventual sub-division of the remainder of parcel 1XX5 into two portions leading to the creation of parcel 8XX4.

25. On the other hand, the 1st and 2nd Respondent adopted the position that the Appellant herein voluntarily wrote the letter dated 20th June 1995 seeking to have parcel 1XX5 transferred to and recorded in the name of his appellant's brother, namely; the 1st Respondent. To this end, the 1st and 2nd respondents therefore contended that the transfer and recording of the suit property in the name of the 1st Respondent was lawful and legitimate.

26. It was the further testimony of the 1st and 2nd Respondents that the Appellant herein also entered into a sale agreement with the 2nd Respondent and wherein same [appellant] sold to the 2nd Respondent 2 acres out of plot number 1XX5 Ruiri/Rwarera Adjudication Section. In this regard, the 1st and 2nd Respondents referenced and relied on the sale agreement dated 24th July 1995, together with the acknowledgement dated 27th Nov 1995. [See pages 50 and 51 of the record of appeal].

27. From the foregoing testimonies and evidence on record, what becomes apparent is that the appellant herein wrote to the land Adjudication officer vide letter dated 20th June 1995 and wherein same [appellant] sought to have parcel number 1XX5 Ruiri/Rwarera Adjudication Section to be transferred to the 1st Respondent.

28. Furthermore, evidence abound that parcel number 1XX5 was subsequently transferred to and recorded in the name of the 1st Respondent. Moreover, the 1st Respondent thereafter proceeded to and sub-divided parcel number 1XX5 into two portions culminating into LR Numbers 1XX5 and 5XX1.

29. It is also instructive to note that upon the sub-division of parcel 1XX5 culminating into the creation of parcel number 5XX1, the latter was thereafter transferred to and recorded in the name of the 2nd Respondent.

30. From the foregoing chronology, there is no gainsaying that the appellant was privy to and knowledgeable of the transfer of Parcel Number 1XX5 Ruiri/Rwarera Adjudication Section to the 1st Respondent. If anything, the appellant did not challenge the validity and authenticity of the letter dated 20th June 1995.

31. It is also not lost on the court that the Appellant did not seek to have the signature at the foot of the said letter subjected to forensic examination. To this end, I agree with the learned trial magistrate that the Appellant did not demonstrate/ establish fraud as against the Respondents.

32. Suffice it to state that the burden of proving and establishing fraud [if at all] laid on the shoulders of the appellants. Moreover, there is no gainsaying that proof of fraud must be established to a standard above the balance of probabilities but below the standard of beyond reasonable doubt. Instructively, the standard of beyond reasonable doubt only inheres/ applies in criminal matters.

33. The manner of pleading and proving claims pertaining to fraud has been highlighted in a number of decisions. In the case of Kuria Kiarie & 2 others v Sammy Magera [2018] KECA 467 (KLR) the Court of Appeal expounded on the standard of proof pertaining to the plea of fraud and stated thus;

> " The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:
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> "It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts." [Emphasis added].
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> The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.
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> 26. As regards the standard of proof, this Court in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR expressed itself as follows; -
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> "...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: "...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him.
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> Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases..." ...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts."
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> 27. We have examined the appellants amended defence for any pleading on particulars of fraud or illegality but there is none. The claims were therefore stillborn and no evidence could be tendered. Even if it was open to tender evidence on fraud and illegality, the mere allegation that a sale agreement and

a Consent for transfer cannot be obtained on the same day is well below the standard of proof set under the authorities cited. We need not belabour this issue as we are satisfied that it was neither properly pleaded nor strictly proved. That ground of appeal fails too."

34. Recently, the Court of Appeal re-visited the manner of pleading of fraud, the necessity to supply the particulars thereof and the requisite standard of proof pertaining to the plea of fraud in the case of Doshi v Chemutut & 7 others (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment) where the Court noted;

> " Apart from the omission to plead fraud, nor particulars of fraud against the named defendants, Mr. & Mrs. Walker, were provided. In the often-cited decision of this Court in the case of Vijay Morjaria v Nansingh Madhusingh Dabar & Another [2000] eKLR, Tunoi, JA. stated that:
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> "41. It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts."
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> 42. In the same vein, the Court in the case of Kinyanjui Kamau v George Kamau Njoroge [2015] eKLR reiterated that:
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> " It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo v Ndolo [2008] 1 KLR (G&F) 742 wherein the Court stated that:
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> "...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases..."

35. Following the foregoing analysis, I come to the same conclusion with the learned trial magistrate that the Appellant herein did not establish and/or prove the plea of fraud. In any event, there is also the aspect where the appellant filed an objection touching on parcel 5XX1, but did not file any objection touching on parcel 1XX5 or parcel 8XX4.

36. The connotation that is derivable and inferred from the failure to file objection against parcel 1XX5 is to the effect that same [appellant] was privy to the circumstances leading to its transfer and recording in the name of the 1st Respondent.

37. The determination of issue number above should have been sufficient to dispose of the subject appeal. However, there is a curious perspective turning on the issue of objection number 4663 and which merits interrogation and due analysis by the court.

38. To this end, I am now constrained to address the second, issue namely; whether the findings of the learned trial magistrate as pertains to parcel number 5XX1 Ruiri/Rwarera Adjudication Section is legally tenable or otherwise. As pertains to this issue, it is worthy to recall and reiterate that the Appellant herein lodged the objection number 4663 challenging the transfer and recording of plot number 5XX1 in the name of the 2nd Respondent.

39. Subsequently, the said objection was set down for hearing and same was heard and disposed of vide judgement rendered on the 23rd March 2018. For good measure, the objection which had been mounted by the Appellant was allowed.

40. For ease of appreciation, it is imperative to reproduce the decision of the land adjudication officer verbatim.

41. Same are reproduced as hereunder;

> " The Objection is allowed. Parcel Number 5XX1 is reverted to Jackson Rutere Gitonga."

42. Following the rendition or delivery of the foregoing decision the land adjudication and settlement officer granted a right of appeal to the minister. Furthermore, the timeline[s] for mounting the appeal was stipulated to be 60 days from the date of delivery of the said judgment/ decision.

43. The land adjudication and settlement officer having entertained and adjudicated upon the objection filed by the appellant and having decreed that parcel 5XX1, does revert to the appellant; it behoved any person aggrieved by the said decision to mount an appeal to the minister.

44. Suffice it to state that the decision of the land adjudication and settlement officer arising out of an objection is appealable to the minister for lands [now the Cabinet Secretary for Lands, Public Works, Housing, and Urban Developments].

45. At this juncture it is imperative to take cognizance of the provisions of sections 29 of the *Land Adjudication Act* Chapter 284 Laws of Kenya.

46. The said section stipulates as hereunder;

> " 29 (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Cabinet Secretary by—
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> (a) delivering to the Cabinet Secretary an appeal in writing specifying the grounds of appeal; and
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> (b) sending a copy of the appeal to the Director of Land Adjudication,
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> and the Cabinet Secretary shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
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> (2) The Cabinet Secretary shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.
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> (3) When the appeals have been determined, the Director of Land Adjudication shall—
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> (a) alter the duplicate adjudication register to conform with the determinations; and
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> (b) certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.

(4) Notwithstanding the provisions of section 38(2) of the *Interpretation and General Provisions Act* (Cap. 2) or any other written law, the Cabinet Secretary may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Cabinet Secretary."

47. The objection proceedings and the decision arising therefrom was known to the 1st and 2nd Respondents. If anything, the objection under reference and the decision arising therefrom were tendered and produced before the court. Nevertheless, there is no gainsaying that the 2nd Respondent who was/is affected by the said objection did not contest its validity.

48. Furthermore, it appears that the 2nd Respondent has neither found it appropriate to challenge the objection proceedings and the outcome thereof. To this end, it is evident that the findings of the land adjudication and settlement officer stands.

49. To the extent that the objection proceedings and outcome thereafter have never been challenged and/or impeached in accordance with the prescribed statutory provisions, it then means that the ownership of parcel 5XX1 reverted to the Appellant.

50. Flowing from the foregoing, I conclude that the findings and holdings of the learned trial magistrate as pertains to parcel 5XX1 are erroneous and contrary to the provisions of inter alia sections 25, 26, and 29 of the *Land Adjudication Act* Chapter 284 Laws of Kenya.

51. Before concluding on this issue, it is important to underscore that the only way of impugning the decision of the land adjudication officer is by mounting an appeal in the manner prescribed under the act. In any event, where there is a prescribed statutory dispute resolution mechanism, it behoves all sundry to abide by/adhere to the prescribed mechanisms. [See Speaker of the National Assembly v Karume (Civil Application 92 of 1992) [1992] KECA 42 (KLR) (29 May 1992) (Ruling); Kibos Distillers Limited & 4 others v Benson Ambuti Adega & 3 others [2020] KECA 875 (KLR); Eaton Towers Kenya Limited v Kasing'a & 5 others (Civil Appeal 49 of 2016) [2022] KECA 645 (KLR) (28 April 2022) (Judgment), and the Supreme Court of Kenya Petition No. 3 of 2016 Albert-Chaurembo Mumba and 7 Others -vs- Maurice Munyao and 148 Others].

Conclusion

52. While discussing issue number one [1], this court has concluded that the learned trial magistrate correctly appraised and applied evidence and facts as appertains to parcel numbers 1XX5 and 8XX4 Ruiri/Rwarera Adjudication Section. Simply put, the plea of fraud was not proven to the requisite standard.

53. Regarding the second issue, this court has found and held that the decision of the land adjudication and settlement officer could only have been impugned by way of an appeal to the minister. [See Section 29 of the *Land Adjudication Act*] However, no appeal having been filed, the ownership of the said parcel stands in line with the decision of the 3rd Respondent.

54. Regarding the claim for Mesne profits, there is no gainsaying that same was lawfully dismissed. In any event, the Claim for mesne profits which is akin to special damages, was neither particularly pleaded nor strictly proved in the manner prescribed by the Law. [See Karanja Mbugua & another v Marybin Holding Co. Ltd [2014] KEELC 378 (KLR)].

Final Disposition:

55. Having analysed the thematic issues that were highlighted in the body of the judgement, it is apparent that the appeal beforehand is partially successful.

56. Consequently, and in the premisses, the final orders that commend themselves to the court are as hereunder;

    a. The Appeal be and is hereby allowed in the following terms;

        i. Parcel Number 5XX1 be and is hereby ordered to belong to the Appellant herein.

        ii. The 2nd Respondent be and hereby ordered to vacate and handover vacant possession of parcel 5XX1 Ruiri/Rwarera Adjudication Section to the Appellant herein within 90 days from the date of the judgement.

        iii. In default to vacant and hand over vacant possession in terms of clause a(ii) the Appellant shall be at liberty to evict the 2nd Respondent from the said parcel 5XX1.

        iv. In the event of eviction being carried out in terms of clause a (iii) above, the costs and expenses arising therefrom shall be certified by the Deputy Registrar and thereafter be recovered from the 2nd Respondent.

        v. A permanent injunction be and is hereby issued to restrain the 1st and 2nd Respondent from entering upon, remaining on, and, or in any other manner interfering with the Appellant's occupation and use of the said parcel number 5XX1.

    b. The decision of the learned Chief Magistrate pertaining to parcel number 1XX5 and 8XX4 Ruiri/Rwarera Adjudication section be and is hereby affirmed.

    c. For the avoidance of doubt, the ownership, possession, and use of parcels 1XX5 and 8XX4 shall remain in the names and under the custody of the 1st and 2nd Respondents.

    d. The orders pertain to costs in the subordinate court be and is hereby varied and set aside.

    e. In lieu thereof, the Appellant be and is hereby awarded half costs in the subordinate court.

    f. The Appellant be and is hereby awarded half costs of the Appeal.

57. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS

5TH DAY OF JUNE 2025.

OGUTTU MBOYA, FCIArb, CPM [MTI-EA].

JUDGE.

In the presence of:

Mutuma – court Assistant.

Mr. Thuranira Atheru for the Appellant.

Mr. Kaumbi for the 1st and 2nd Respondents.

Ms. Miranda [Senior Litigation Counsel] for the 3rd and 4th Respondents