Kaburu & 3 others v Marete (Suing as the Legal Representative of the Estate of Leonard Marte M'nkoroi alias Marete M'Nkoroi - Deceased) & 2 others (Environment and Land Appeal E049 of 2024) [2025] KEELC 4760 (KLR) (5 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4760 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E049 OF 2024

JO MBOYA, J

JUNE 5, 2025

BETWEEN

DANSON MBAABU KABURU ..... 1ST APPELLANT

LIVINGSTONE NJUGUNA KINYAMU ..... 2ND APPELLANT

LAZARUS MURITHI ..... 3RD APPELLANT

IGNATIUS KABURU M'ARITHI ..... 4TH APPELLANT

AND

DAMASIANO GITONGA MARETE [SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LEONARD MARTE M'NKOROI ALIAS MARETE M'NKOROI - DECEASED] ..... 1ST RESPONDENT

THE HON. ATTORNEY GENERAL ..... 2ND RESPONDENT

THE LAND REGISTRAR – MERU CENTRAL ..... 3RD RESPONDENT

JUDGMENT

1. The 1st Respondent [who is the legal administrator of the estate of Leonard Marete Nkoroi alias Marete Nkoroi] commenced the suit vide Plaint dated 12th July 2012; and which Plaint was subsequently amended and thereafter further amended on the 21st July 2021.
2. Vide the Further amended Plaint dated 21st July 2021, the 1st Respondent sought the following reliefs:
    a. An order of permanent injunction against the 1st – 4th and 6th Defendants, their agents, assigns, servants, successors in title or anybody acting at their behest, control or directions from interfering, occupying and/or farming on parcels No's 279, 1303 and 1387, Mweru III Adjudication Section.

b. That the 5th Defendant be ordered to transfer back parcel No's 279, 1303 and 1387 Mweru III Adjudication section to Leonard Marete M'Nkoroi alias Marete M'Nkoroi.

c. Costs of the suit.

d. A declaration that the acquisition, transfer and registration L.R No's Imenti/South/Mweru III/279 and 1387 and 1303 Mweru III Adjudication section in the names of the 1st, 2nd, 3rd, 4th and 6th defendants were fraudulent, irregular and therefore null and void.

e. An order directing the 7th defendant to cancel title deeds for L.R No. Imenti/South/Mweru III/1387 and 279 and reverting them back to the name of Leonard Marete M'Nkoroi – deceased.

3. The 1st, 2nd, 3rd, 4th and 6th Defendants [the first four who are now the appellants] duly entered an appearance and thereafter filed a statement of defence. Subsequently the statement of defence was amended, resting with the statement of defence dated 30th August 2022 and wherein the named defendants denied the claims at the foot of the further amended Plaint.

4. The suit before the subordinate court was heard and disposed of vide judgment delivered on the 26th June 2024 and where in the learned trial magistrate found and held that the 1st Respondent had duly proved and established his claim against the appellants and the 1st and 2nd respondents herein. To this end, the learned trial magistrate proceeded to and granted the reliefs sought at the foot of the further amended Plaint.

5. The appellants herein felt aggrieved and dissatisfied with the judgment and decree of the trial court and same have now moved this court vide memorandum of appeal dated 25th July 2024. The grounds highlighted at the foot of the Memorandum of Appeal are as hereunder:

i. That the Learned trial magistrate erred in law and in fact in findings that the 1st respondent had not established a balance of probabilities established his claim against the Appellants.

ii. That the Learned trial magistrate erred in law and in facts in failing to appreciate that the 1st respondent or his late father had not challenged the adjudication processes for LR No's Mweru III/279, 1303 and 1387 from inception to conclusion.

iii. That the Learned trial magistrate erred in law and in facts to appreciate that land parcels LR No. Mweru/III/279, 1303 and 1387 were family lands and were demarcated to late Leonard Marete M'Nkoroi alias Marete M'Nkoroi (deceased) for the whole of Imenti family, including the 1st and 2nd appellants' family.

iv. That the Learned trial magistrate erred in law and in facts and failed to appreciate that Imenti and Mbatau were brothers and the 2nd appellant had been allowed to litigate objection proceedings for the family of Imenti despite him being from Mbatau family owing to his enormous family lands.

v. That the Learned trial magistrate erred in finding that this conviction of the 1st appellant over fraud had a bearing in this matter without having regard to the fact that the adjudication process had been followed and the 1st respondent had never raised any objection over parcel 279.

vi. That the Learned trial magistrate erred in law and in facts by failing to appreciate the land parcels LR NO's 1303 and 1387 were not the subject of the proceedings and conviction of the

1st appellant in Nkubu SPMCRC No. 403 of 2014 which criminal matter was initiated after this matter has been filed.

vii. That the Learned trial magistrate erred in law and in fact in failing to find that the adjudication process had been completed with due process, followed, and land parcels LR No. Mweru III/279, 1303 and 1387 being registered to the 1st and 2nd appellants, the 3rd & 4th appellants brought the same as innocent purchasers thereof.

viii. That learned trial magistrate erred in law and in facts by failing to appreciate that the appellants had all along occupied the subject matter to the exclusion of the 1st respondent and the whole of Marete M'Nkoroi family as evidence and proof of actual ownership.

ix. That the Learned trial magistrate erred in law and fact by disregarding the appellants' evidence and testimony and that of their witnesses.

x. That the Learned trial magistrate finding was against the weight of evidence on balance of probabilities.

6. The instant appeal came up for directions on the 27th of February 2025; whereupon 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 was complete.

7. Flowing from the foregoing, the court proceeded to and issue directions pertaining to and concerning the filing and exchange of the written submissions. Moreover, the court circumscribed the timelines for the filing and exchange of written submissions.

8. The appellants filed written submissions dated 12th of March 2025; wherein the appellants raised and highlighted four key issues namely; whether the trial court had jurisdiction to entertain and adjudicate upon the 1st respondents' suit; whether the consent issued by the Land Adjudication Officer was lawful; and who ought to pay costs of the appeal.

9. Regarding the 1st issue, learned counsel for the appellants submitted that the trial court was devoid of the requisite jurisdiction to entertain and adjudicate upon the dispute that was raised by the 1st respondent. In this regard, it was submitted that the decision complained of was made by the land adjudication officer and such a decision could only be challenged and or impugned in the manner prescribed under the *Land Adjudication Act*, Cap 284 laws of Kenya and not otherwise.

10. Furthermore, learned counsel submitted that where there is an express statutory provision providing for the manner of dealing with a particular dispute, then a party is obligated to comply with the established provisions of the law. In this regard, it was thus submitted that the 1st respondent ought to have filed an appeal to the Minister in accordance with the provisions of Section 29 of the *Land Adjudication Act* [Cap 294] and not file the suit.

11. Premised on the foregoing, it was contended that the trial court was therefore divested of the requisite jurisdiction to entertain the suit. In this regard, learned counsel for the appellants has cited and referenced various decisions inter alia Adero & another v Ulinzi Sacco Society Ltd [2002] 1 KLR 577; Ola Energy [K] Ltd v Rashid Opondo Otieno T/A Kisumu Breakdown Services Ltd (2021) eKLR; Faustin Mvoi & antoher v Nicholas Muumbi Manthi [2018] eKLR and Tobias Achola Osindi v Cyprianus Otieno Ogalo & 6 others [2013] eKLR respectively.

12. As pertains to the second issue, it was submitted that the 1st respondent proceeded to and procured the consent from the land adjudication officer long before same had been constituted as the legal

administrator of the estate of the deceased. In this regard, it was submitted that the consent under reference was procured and obtained pre-maturely and in the absence of the requisite locus standi.

13. Arising from the fact that the 1st respondent had not obtained the requisite grant of letters of representation, it was contended that the consent by the land adjudication officer was issued to a person without capacity. To this end, it was posited that the consent was invalid and thus the entire suit filed by the 1st respondent was void.

14. In amplification of the foregoing submissions, learned counsel for the appellants has cited and referenced the decision of the Court of Appeal in the case of Rajesh Prajivan Chudasama v Sailesh Prajivan Chudasama (2014) eKRL where the court highlighted the concept of locus standi and its implications in legal proceedings filed before a court of law.

15. Finally, learned counsel for the appellants contended that based on the question of jurisdiction and lack of locus standi, the appeal beforehand is meritorious and thus same ought to be allowed. Moreover, it has been posited that the 1st respondent ought to be condemned to bear the costs of the proceedings.

16. The 1st Respondent filed written submissions dated 11th April 2025; and wherein same has raised and canvassed three [3] key issues namely; whether the court was justified in cancelling the title deeds to the suit properties or otherwise; whether the consent issued to the 1st respondent was regular; and whether the court was seized of the requisite jurisdiction to entertain the 1st respondents suit or otherwise.

17. Regarding the first issue, learned counsel for the 1st respondent has submitted that the suit properties were duly demarcated and registered in the name of Leonard Marete Nkoroi, [now deceased]. To the extent that the suit properties were duly demarcated and registered in the name of the deceased, it was contended that the demarcation and registration of the suit properties could not be interfered with without notice to and or involvement of the deceased or his legal representatives.

18. Nevertheless, it was submitted that the 1st and 2nd appellants herein fraudulently and illegally lodged objection proceedings in the year 2010 and 2011 respectively, while same [1st & 2nd appellants] were aware that Leonard Marete Nkoroi was deceased. For good measure, it was posited that Leonard Marete Nkoroi died on the 31st December 2004.

19. Additionally, it was submitted that following the lodgment of the fraudulent objections, the 1st and 2nd appellants colluded with the land adjudication officer and thereafter caused the suit properties to be transferred to and in their name. In this regard, it was submitted that the cancellation of the name of the deceased and the transfers of the suit properties to the 1st and 2nd appellants was undertaken illegally and without notice to the estate of the deceased.

20. Furthermore, it was submitted that arising out of the fraudulent and illegal objection proceedings, the 1st appellant herein was arrested and charged vide Nkubu Criminal case No. 403 of 2014, which case was heard and concluded vide judgment rendered on the 22nd May 2017. Further and in any event, it was posited that the 1st appellant was found guilty of the offence of conspiracy to defraud touching on and concerning one of the suit properties, namely; Plot No. 279.

21. Flowing from the foregoing, it was submitted that the 1st respondent had duly established and proved the plea of fraud to the requisite standard. To this end, it was contended that the finding of fraud by the learned magistrate was well grounded and premised on credible evidence.

22. Regarding the plea of bona-fide purchaser for value, it was submitted that the 3rd & 4th appellants were privy to and knowledgeable of the fraud, illegality and unprocedural manner in which the titles to the

suit properties were procured and hence same cannot implead and or invoke the doctrine of bona-fide/ innocent purchaser for value without notice or at all.

23. As pertains to the issue of the Consent which was sought for and obtained by the 1st Respondent prior to and before procuring the Grant of Letters of Administration ad Litem, Learned Counsel for the 1st Respondent submitted that it was not necessary that the consent be obtained only after the issuance of the Grant. In any event, it was posited that the process of obtaining the Consent from the Land Adjudication Officer in terms of Section 30[1] of the *Land Adjudication Act*, Chapter 284, Laws of Kenya; does not constitute Judicial proceeding[s].

24. To this end, it was submitted that the Consent to file the Suit before the Lower Court was lawfully and procedurally obtained and procured.

25. Regarding the issue of whether the Court was seized of the requisite jurisdiction to entertain the proceeding[s] under reference, it was submitted that the Honorable Court was seized of the requisite Jurisdiction to entertain the suit insofar as the timeline[s] for filing of an appeal to the Minister in accordance with the provisions of the *Land Adjudication Act*, Chapter 284, Laws of Kenya, had long lapsed and hence the 1st Respondent could not file any such appeal.

26. Furthermore, it was contended that insofar as the Estate of the Deceased was not involved in the objection proceeding[s] leading to the offensive transaction[s], the 1st Respondent was not aware and knowledgeable of same.

27. Moreover, it was posited that upon obtaining the consent of the Land Adjudication Officer, the issuance of the said Consent shifted the Jurisdiction to entertain the dispute beforehand to the Courts. In this regard, it was submitted that the Court was thus seized of the requisite jurisdiction. To this end, Learned Counsel for the 1st Respondent cited and referenced the holding in the case of Stanley Gitonga versus Gerald Mwithia [2013]KECA429 [KLR], where the Court of Appeal held that the issuance of the Consent shifts the Jurisdiction to Court.

28. Arising from the foregoing submissions, Learned Counsel for the 1st Respondent has invited the Honourable Court to find and hold that the instant Appeal is devoid of merit[s] and to proceed and dismiss same with costs.

29. The 2nd and 3rd respondents do not appear to have filed any written submissions. Instructively, no such written submissions were traceable to or obtainable from the e-platform of the court.

30. Having reviewed the pleadings filed on behalf of parties; having considered the evidence tendered [both oral and documentary]; having considered the entire record of appeal and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the subject appeal turns on Five [5] key issues, namely; Whether the Court was seized of the requisite Jurisdiction to entertain and adjudicate upon the Subject Dispute; Whether the Consent that was obtained from the Land Adjudication Officer was regular and lawful, or otherwise; Whether the 1st respondent established and proved the plea of fraud as against the appellants and the 1st and 2nd respondents respectively; whether the plea/doctrine of bona-fide purchaser for value avails to the 3rd and 4th appellants or otherwise; and whether the 1st respondent was entitled to the reliefs sought at the foot of the Further amended Plaint or otherwise.

31. Before venturing forward to analyse the issue[s] that have been highlighted, it is imperative to observe that the Appeal beforehand is a first appeal from the decision of the court of first instance, namely, the Subordinate Court. By virtue of being a first appeal, this honourable court is vested with the requisite jurisdiction to review, re-evaluate and re-analyse the findings of the court of first instance and thereafter

to arrive at independent conclusions, taking into account the pleadings filed; evidence on record and the applicable laws. [See the provisions of Section 78 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya].

32. Nevertheless, it is imperative to underscore that even though this court is clothed with jurisdiction to review, re-evaluate and re-analyse the findings and observations of the trial court, this court is however, called upon to exercise necessary caution and circumspection. In addition, the court is called upon to defer to the findings of the trial court unless, the findings of the trial court are informed by extraneous factors or better still, are perverse to the evidence on record.

33. The scope and jurisdictional remit of this court whilst entertaining a first appeal has been elaborated upon and underscored in various decisions. In the case of Selle & Another v. Associated Motor Boat Co. Ltd & Others [1968] EA 123, the Court of Appeal for Eastern Africa elaborated on the applicable principle and stated 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..."

34. Likewise, the extent and scope of the Jurisdictional remit of the first appellate court was also elaborated upon in the case of Abok James Odera T/A A.J Odera & Associates versus John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, where the Court of Appeal held thus;

We also wish to be guided by the reasoning of this court in the case of Mwana Sokoni versus Kenya Business Limited [1985] KLR 931 page 934,934 thus:-

> " Although this court on appeal will not lightly differ from the Judge at first instance on a finding of fact, it is undeniable that we have the power to examine and re-evaluate the evidence on a first appeal if this should become necessary. As was said by the house of Lords in Sottos Shipping versus Sauviet Sohold, the Times, March 16,1983.
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> "It is uncertain whether their Lordships should have reached the same conclusion on the evidence, but it is important that, sitting in the appellate court they should be over mindful of the advantages enjoyed of the trial Judge who saw and heard the witnesses and was in a comparably better position than the Court of Appeal to assess the significance of what was said, how it was said, and equally impotent what was not said"

Again, in Peters versus Sunday Post Limited (1958) EA424, a decision of the Court of Appeal for Eastern Africa, Sir Kenneth O' Conner, P said at page 429:

> " It is a strong thing for an appellate court to differ from the finding on a question of fact of the Judge who tried the case and who has had the advantage of seeing and hearing and the witnesses"

35. Without endeavouring to exhaust the case law that elaborate on the scope and extent of jurisdiction of the first appellate court, it is apposite to take cognizance of the holding of the Court of Appeal in

the case of Gitobu Imanyara & 2 others v Attorney General [2016] eKLR, where the Court held as hereunder;

> As we discharge our mandate of evaluating the evidence placed before the High Court, we keep in mind what the predecessor of this Court said in Peters v Sunday Post Ltd [1958] EA 424. In its own words: -
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> "Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide ..."

36. Duly guided by the established position [ratio] which underlines the scope and extent of the jurisdiction of the 1st appellate court, I am now disposed to revert to the subject matter and to discern whether the learned trial magistrate correctly appraised, analyzed and evaluated the evidence tendered by the parties and in particular, the 1st Respondent [who was the Plaintiff before the trial court] and thereafter correctly applied the law in the course of determining the dispute between the parties.

37. Additionally, I am also well positioned to review and re-evaluate the factual matrix [evidence] presented before the trial court and thereafter endeavor to ascertain whether the factual findings arrived at by the trial magistrate accord with the evidence on record or better still, whether the conclusions arrived at, were perverse to the evidence on record.

38. Back to the issues which were highlighted elsewhere herein before. Regarding the 1st issue, namely; whether the Honourable Court was seized of the requisite jurisdiction to entertain and adjudicate upon the Suit, it is imperative to recall that the Appellants have contended that the Court was devoid of jurisdiction. In particular, the Appellants contended that the matter concerned the action[s] that were undertaken by the Land Adjudication Officer pursuant to the provision[s] of the *Land Adjudication Act*, Chapter 284, Laws of Kenya and hence anyone aggrieved with the said decision[s], was obligated to comply with the provisions of the Act.

39. Additionally, it was posited that according to the *Land Adjudication Act* [supra] the decisions of the Land Adjudication Officer could only be challenged in line with the prescription[s] provided thereunder. In this regard, it was submitted that the 1st Respondent ought to have filed an appeal against the said decision[s] in accordance with the provision[s] of section 29 of the *Land Adjudication Act* [supra].

40. To the extent that there was/is a laid down procedure for challenging the decision of the Land adjudication and given that the procedure was not followed, the Appellants contended that the court was therefore divested of jurisdiction.

41. On the other hand, the 1st Respondent submitted that that Honourable court was seized of the requisite jurisdiction to entertain and adjudicate upon the subject matter. It was posited that the decision[s] leading to the transfer of the suit properties in the name[s] of the 1st and 2nd Appellants was taken and made without notice to the Estate of the Deceased.

42. In this regard, the 1st Respondent submitted that the Estate of the Deceased was thus not aware of the proceeding[s] and same only became aware of the action[s] of the Land Adjudication Officer long after the offensive transaction[s]. In any event, it was posited that by the time the 1st Respondent got to know of the decision[s], time for filing an appeal to the minister had long passed.

43. I have considered the rival submission[s] on the question of jurisdiction and I wish to state as hereunder. The impugned decision[s] were indeed made and/ or taken by the Land Adjudication Officer. In this regard, the provision[s] of section 29 of the Act provided for a right of appeal to any aggrieved person.

44. Furthermore, the said provision[s] also captured the timeline[s] for filing the appeal, if any. Nevertheless, it is not lost on this Court that the decision[s] complained of were made without the knowledge, involvement and/ or participation of the Estate of the Deceased. In this regard, there is no gainsaying that the Estate of the Deceased was not aware of the said decision[s] and thus same were precluded from filing the intended appeal.

45. Moreover, it is imperative to observe that with the passage of time to file the appeal to the minister, the Estate of the Deceased were at liberty to file the suit in the original court and to pursue its claim to the suit properties. In any event, it is not lost on me that where the existing statutory mechanism is not efficacious and/ or effective, then the aggrieved party is at liberty to approach a court of law for remedies; and that is exactly what the 1st Respondent did.

46. Furthermore, it is worthy to recall that what was being challenged by the 1st Respondent was the manner in which the Objection[s] were lodged long after the death of the Deceased; and without notice to the Estate of the Deceased and thus culminating into the un-procedural and illegal transfer of the suit properties. To my mind, the relief[s] that were sought by the 1st Respondent fell within the jurisdiction of the Court.

47. Additionally, it is important to point out and highlight that the 1st Respondent procured and obtained the Consent of the Land Adjudication Officer before filing the suit. Suffice it to state that the issuance of the Consent under reference vested and conferred the Court with jurisdiction. In this regard, it is my finding that that the court was seized of the requisite jurisdiction and thus correctly entertained the suit.

48. As pertains to the second issue, namely; whether the consent of the Land Adjudication Officer was regular or otherwise, it is important to underscore that the consent under reference was never challenged by the Appellants by way of Judicial Review. In this regard, the Consent remained in situ and the question is whether the appellants can now be heard to question the validity and propriety thereof vide the instant proceeding[s].

49. In my humble albeit considered view, the Appellants were at liberty to challenge the issuance of the consent in the manner provided under the law. Nevertheless, having not challenged the consent and insofar as same remain[s] in existence, the court could not ignore the said consent. The consent was therefore lawful.

50. Other than the foregoing finding, it is also important to observe that the request/ application for issuance of the consent from the Land Adjudication Officer is not a judicial process. Quite clearly, the 1st Respondent was not obligated to obtain Grant of Letters of Administration ad Litem prior to making the said application.

51. Suffice it to state that Letters of Administration were only necessary to facilitate the commencement of the Legal proceeding[s] and not otherwise. To this end, it is my finding and holding that that the 1st Respondent did not require the Letters of Administration for purposes of procuring the Consent. In this regard, the contention by the Appellant[s] touching on and concerning the Locus standi of the 1st Respondent was/ is misconceived. Furthermore, the decision[s] that were referenced by the Appellants including the case of Rajesh Prajivan Chudasama versus Sailesh Prajivan Chudasama [2014] eklr; are irrelevant to the matter beforehand.

52. Regarding the third Issue, namely; whether the 1st respondent duly established and proved the plea of fraud as against the appellants on one hand and the 1st and 2nd respondents on the other hand, it is imperative to recall that the 1st respondent placed before the trial court evidence to show that the suit properties had been demarcated and registered in the name of Leonard Marete Nkoroi, [now deceased].

53. Furthermore, the 1st respondent also tendered and produced a copy of the certificate of death of Leonard Marete Nkoroi [deceased] showing that same died on the 31st December 2004.

54. Be that as it may, the 1st respondent posited that the 1st and 2nd appellants, while knowing that Leonard Marete Nkoroi [deceased] had died, proceeded to and lodged objection[s] numbers 329 of 2010 and 331 of 2010, respectively; and wherein the said appellants contended that same were[sic] the sons of the deceased.

55. Moreover, evidence was tendered to demonstrate that based on the misleading statements [misrepresentations] of the 1st and 2nd appellants, namely; that same were sons of the deceased, the land adjudication officer proceeded to and cancelled the name of the deceased in respect of the suit properties and thereafter transferred same to the 1st and 2nd respondents.

56. Be that as it may, the 1st respondent provided evidence that the 1st and 2nd appellants were not the sons of the deceased. Furthermore, there is no gainsaying that the evidence of the 1st respondent to the effect that the 1st and 2nd appellants are not the sons of the deceased was not controverted at all. On the contrary, the 1st and 2nd appellants testified and posited that the deceased was not their Father. Moreover, the 1st appellant indicated that his father was one Kaburu.

57. Owing to the foregoing, there is no gainsaying that the 1st and 2nd appellants fraudulently and mischeviously misled the land adjudication officer as pertains to their relationship with the deceased; and premised on the fraud, same procured the cancellation of the name of the deceased from the adjudication record.

58. Other than the foregoing, it is not lost on the court that the land adjudication officer also proceeded to and [sic] undertook the objection proceedings without due notice to and involvement of the deceased. Furthermore, there is no gainsaying that land adjudication officer could not have involved the deceased posthumously.

59. It suffices to highlight that the objection proceedings, which culminated in the cancellation of the name of the deceased from the Adjudication record[s], could not have been undertaken without notice to the deceased or his estate. Moreover, it is common ground that the estate of the deceased was entitled to due notice, participation or involvement in the objection proceedings. This is clearly underpinned by the provisions of article[s] 10, 47 and 50 of *the Constitution* 2010 which espouse the Rule of Law; Due process; the right to fair administrative action; and the right to fair Hearing and trial, respectively.

60. In so far as the estate of the deceased was neither notified nor involved in the impugned objection proceedings, there is no gainsaying that any decision[s] and or outcome arising therefrom was a nullity ab initio.

61. The importance of due process of the law was highlighted and elaborated upon in the case of County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR, where the Court of Appeal expounded on the concept as hereunder;

    1. Due process is a fundamental aspect of the rule of law. Due process is the right to a fair hearing. The right to a fair hearing encapsulated in the audi alteram partem rule (no person should be condemned unheard) and founded on the well-established principles of natural justice, is not a

privilege to be graciously accorded by courts or any quasi-judicial body to parties before them. As is clear from Articles 47 and 50 of our Constitution, it is a constitutional imperative.

1. Whereas the right to a fair hearing varies from one case to another depending on the subject of the matter in issue, its irreducible minimum is now well settled. In granting that right, the court or the administrative body or person concerned should not make it a charade by taking perfunctory actions for the sake of running through the motions to be seen to have complied with it. The person charged is entitled to what, in legal parlance, is referred to as the right to "notice and hearing." That means he must be given written notice which must contain substantial information with sufficient details to enable him to ascertain the nature of the allegations against him. The notice must also allow sufficient time to investigate the allegations and seek legal counsel where necessary.

   In the epigram of the indomitable Lord Denning in Kanda v. Government of Malaya

   > "If the right to be heard is to be a real right which is worthy anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."

62. The necessity to afford a party and or person the right to fair trial or fair hearing was also elaborated by the Supreme Court of Kenya in the case of Kidero & 4 others v Waititu & 4 others (Petition 18 & 20 of 2014 (Consolidated)) [2014] KESC 11 (KLR) (29 August 2014) (Judgment) where the Court stated thus:

> Fair hearing, in principle, incorporates the rules of natural justice, which include the concept of audi alteram partem(hear the other side or no one is to be condemned unheard) and nemo judex in causa sua (no man shall judge his own case), otherwise referred to as the rule against bias. Peter Kaluma, Judicial Review: Law, Procedure and Practice 2nd Edition (Nairobi: 2009) at page 195, notes that the rules of natural justice generally refer to procedural fairness in decision making. Further he analyses the two mentioned concepts of the rules of natural justice and states [at pages 176 and 177] that it is the duty of the courts, when dealing with individual cases, to determine whether indeed the rules of natural justice have been violated and noting that "although the necessity of hearing is well established, its scope and contents remain unsettled."
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> 258. What then are the norms or components of a fair hearing? The Supreme Court of India, in Indru Ramchand Bharvani & Others v. Union of India & Others, 1988 SCR Supl. (1) 544, 555 found that a fair hearing has two justiciable elements:(i)an opportunity of hearing must be given; and(ii)that opportunity must be reasonable (citing Bal Kissen Kejriwal v. Collector of Customs, Calcutta & Others, AIR 1962 Cal. 460).
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> 259. That Court in Union of India v. J.N. Sinha & Another, 1971 SCR (1) 791 and C.B. Boarding & Lodging v. State of Mysore, 1970 SCR (2) 600 held that with regards to fair hearing, each case has to be decided on its own merits. In Mineral Development Ltd. v. State of Bihar, 1960 AIR 468, 160 SCR (2) 909 the Court further observed that the concept of fair hearing is an elastic one and "is not susceptible of easy and precise definition."

63. Pertinently, failure to comply with and or abide by the tenets of fair hearing and due process of the law renders the resultant decision, outcome and or award illegal, void and invalid. In this regard, it is immaterial whether the decision maker would have arrived at the same decision, had same [decision maker] heard the adverse party.

64. The foregoing exposition of the Law was underscored by the Court of Appeal [per Nyarangi, JA] in the case of David Oloo Onyango v Attorney General (1987) eKLR where the court stated as hereunder;

> A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at: De Souza v Tanga Town Council [1961] E A 377 at page 338, letter E-G. In Associated Provincial Picture Houses Limited v Wednesbury Corporation, [1948], KB 223 (a decision which was cited by both parties) at page 228-229, Lord Greene MR distinguished judicial acts from an executive act, such as the act of the Commissioner in this case, and continued.

65. In the circumstances and bearing in mind the ratio espoused in the decision[s] above, there is no gainsaying that the objection proceedings and the decision arising therefrom which impacted on the ownership rights of the suit properties, were illegal, null and void. For good measure, the cancellation of the name of the deceased and the substitution thereof with the names of the 1st & 2nd appellants was invalid for all intents and purposes.

66. Before concluding on this issue, it is also important to highlight the fact that by the time the impugned objection proceedings were being mounted and thereafter [sic] being heard by the Land Adjudication Officer, the deceased was long dead. Nevertheless, the proceedings under reference impacted on the property of the deceased prior to and before the succession proceedings were undertaken. In this regard, the transactions that impacted upon the suit properties were equally prohibited by the provision[s] of Section 45 of the *Law of Succession Act*, Cap 160, Laws of Kenya.

67. For ease of appreciation, section 45 of the *law of succession act* [supra] stipulates thus;

No intermeddling with property of a deceased person

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

68. Irrespective of whichever len[s] one deploys; or angle one looks at the process leading to the registration of the suit properties in the names of the 1st and 2nd appellants, the common denominator is to the effect that the transaction[s] were vitiated by illegality. Simply put, it was rotten to the core.

69. Flowing from the foregoing, I come to the conclusion that the 1st & 2nd appellants who were the primary actors in connivance with the land adjudication, did not accrue and or acquire any title. On

the contrary, it is crystal clear that the 1st respondent duly established and proved that the transactions affecting the suit properties were not only fraudulent but illegal, unprocedural and thus invalid.

70. Regarding the fourth issue, namely; whether the 3rd and 4th appellants can invoke and rely on the plea of bona-fide purchaser for value without notice, it is important to underscore that the plea for bona-fide purchase for value cannot arise where the certificate of title that underpins the claim beforehand was illegal and invalid ab initio.

71. Moreover, evidence abound that the 3rd and 4th appellants herein did not undertake and or discharge due diligence prior to and before purchasing the suit properties. Suffice it to highlight that the learned trial magistrate correctly reviewed the evidence that was given by the 3rd and 4th appellants and thereafter came to the conclusion that the said appellants were complicit in the fraud touching on and concerning the suit transactions. [See page 13 of the Judgment of the trial court].

72. Having found and held that the certificates of titles underpinning the suit property were procured unprocedurally and illegally and taking into account the findings of the learned trial magistrate [which findings are correct] I come to the conclusion that the plea of bonafide purchaser for value does not avail to the 3rd & 4th appellants.

73. Before departing from this issue, it is imperative to underscore that whosoever wishes to invoke and rely upon the doctrine of bona-fide purchaser for value must establish and prove certain peremptory ingredients. In the case of Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment) the Supreme Court of Kenya[the apex Court] expounded on the doctrine as hereunder;

> We consider it necessary to clarify and restate the doctrine of "innocent purchaser for value" in view of the Court of Appeal's pronouncement in certifying this appeal as one involving matters of general public importance, when it stated thus: "Having considered the issues raised, we find that indeed, there is uncertainty in the law with regard to the concept of innocent purchaser for value and the indefeasibility of titles as is apparent in the various decisions cited by the parties." [Emphasis ours].
>
> 58. It is a fundamental principle of the law of property in land that a purchase of a legal estate for value without notice is an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer. The onus of proof, however lies upon the person claiming to be a bona fide purchaser. Three main ingredients must be present for a claimant to mount a successful defence based on the doctrine. These are, innocence, purchase for value, and a legal estate.
>
> 59. The element of innocence means that the purchaser must act in good faith. His conduct must not raise any doubt as to whether indeed, he did not have any notice or knowledge as to the existence of a rival interest in the suit land. If for example, it comes to light that during the process of purchase, the claimant engaged in conduct that was unconscionable in the eyes of equity, such conduct would weaken his claim of innocence as to the existence of a rival interest. The element of innocence also connotes the exercise of diligence expected of any reasonable purchaser. The claimant must demonstrate that he acted diligently and conducted a reasonable inquiry into the status of the estate or land that he sought to purchase.

74. To my mind, the learned trial magistrate correctly found and held that the 3rd and 4th appellants could not partake off and or benefit from the plea of bona fide purchaser for value. I agree.

75. Regarding the final issue, namely; whether the 1st respondent proved and established entitlement to the relief[s] sought, there is no gainsaying that the 1st respondent duly placed before the court evidence to demonstrate that the suit properties lawfully belong to the estate of the deceased. In this regard, the estate of the deceased was entitled to the suit properties.

76. In the premises, I encounter no difficulty in coming to the same conclusion as the learned trial magistrate. Instructively, an order of declaration that the suit properties belonged to the estate of the deceased was merited. Furthermore, the learned trial magistrate was well within his jurisdiction in directing the cancellation of the names of the 1st, 2nd, 3rd, 4th & 6th defendants from the titles of the suit properties.

77. In a nutshell and having taken into account the principles espoused in the case of Mwanasokoni v Kenya Bus Services Ltd [1985] eKLR, I come to the conclusion that the decision of the learned trial magistrate is well grounded.

Final Disposition:

78. For the reasons which have been highlighted in the body of the Judgment, it must have become apparent that the appeal beforehand is not only misconceived, but devoid of merits. To this end, the appeal courts dismissal.

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

    i. The Appeal be and is hereby dismissed.

    ii. The Judgment and decree of the trial court [S.K Ngetich, SPM] be and is hereby affirmed.

    iii. Costs of the appeal be and are hereby awarded to the 1st Respondent and same to be borne by the appellants jointly and or severally.

80. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 5TH DAY OF JUNE 2025

OGUTTU MBOYA, FCIArb; CPM [MTI].

JUDGE

In the presence of:

Ms Mutuma- Court Assistant.

Mr. Gichunge for the Appellant[s].

Ms Gacheri holding brief for Mr. Kaberia for the 1st Respondent.

Ms. Miranda [Senior Litigation Counsel] for the 2nd & 3rd Respondents