

**IN THE COURT OF
APPEAL AT
ELDORET**

(CORAM: WARSAME, ACHODE & MATIVO, & JJ. A)

CIVIL APPEAL ELD. NO. 17 OF 2020

BETWEEN

FELIX KIPRONO KEMBOI.....APPELLANT

AND

**BEATRICE NJOKI MACHARIA1ST
RESPONDENT MUNICIPAL COUNCIL OF
KAPSABET2ND RESPONDENT NANDI HKIMA
SACCO LTD.3RD RESPONDENT**

*(Being an appeal against the Judgment of the Environment and
Land Court at Eldoret (A. Ombwayo, J) delivered on 7th December,
2018*

in

ELC Cause No. 766 of 2012)

JUDGMENT OF THE COURT

1. This appeal concerns the disputed ownership of Plot No. Kapsabet Municipality/393, a 2.4 hectare parcel of land in Kapsabet Municipality. The central question is whether the appellant, who allegedly acquired the property in 1999 as a registered proprietor, holds valid title, or whether the 1st respondent's claim based on her late husband's 1980 allocation takes precedence. A fundamental factual dispute underpins this case: whether Plot No. Kapsabet

Municipality/393 and Plot No. 1181/415 refer to the same physical piece of land.

2. The dispute essentially pits two competing claims: the appellant asserts that he is an innocent purchaser for value entitled to protection, under the Land Registration Act, while the 1st respondent contends that her late husband was the rightful original allottee and hence the rightful owner, and that the appellant's registration was fraudulent.
3. The 1st respondent, Beatrice Njoki Macharia, is the widow of the late Kimani Macharia who died in July 1998. She is the administratrix of his estate, having procured letters of administration and later a certificate of confirmation of grant dated 20th September 2006.
4. According to the 1st respondent, her late husband was allocated Plot No. 1181/415 by the then Nandi County Council, with the allocation being confirmed on 25th August 1980 through the District Plot Allocation Committee. She testified that they had been in occupation of the plot since the allocation, conducted business activities thereon, and constructed permanent structures including a house in 1982. She also claimed to have been paying land rent and rates for over 30 years.

5. The crux of her claim was that upon her husband's death in 1998, the appellant fraudulently registered himself as the owner of Plot No. Kapsabet Municipality/393 in the year 1999, and that Plot No. 393 and Plot No. 1181/415 are the same physical piece of land. She further contended that in 2004, the Municipal Council of Kapsabet carried out a valuation during which the valuers erroneously inserted the appellant's name to Plot No. 393 instead of Plot No. 392, and that Plot No. 1181/415 was subsequently issued the new plot number KAP/MUN/393.
6. The 1st respondent contended that she had lived and developed the property without interference until around 2010 when Hekima Sacco, alleging ownership of the land, fenced off the plot including part of her house. This interference brought the alleged fraudulent registration to her attention, leading her to lodge formal complaints with the relevant authorities.
7. The appellant denied all the allegations in the plaint and raised preliminary objections challenging the competence of the suit. He argued that the 1st respondent lacked locus

standi to institute the suit as she had not obtained letters of

administration to her deceased husband's estate. He also contended that the claim was statute barred.

8. On the substantive issues, the appellant claimed that he lawfully acquired Plot No. Kapsabet Municipality/393 through a chain of title originating from one Kipsang Chomba (also referred to as T. Kipsang Chomber), who had been allocated Plot D by the Kapsabet Municipal Council. The appellant's position was that his Plot No. KAP/MUN/393 derived from Chomba's "Plot D" allocation and was therefore different from the 1st respondent's Plot No. 1181/415.
9. The appellant produced evidence including an allotment letter issued to Kipsang Chomba, a consent to transfer, and a transfer of lease document dated 11th August 1995, showing the transfer from Kipsang Chomba to himself for consideration of KSh. 50,000. He maintained that he was an innocent purchaser for value whose title was protected under section 26 of the Land Registration Act.
10. The trial Court (Ombwayo, J.), after hearing the evidence, and considering the applicable law, delivered judgment on 7th

December 2018 in favour of the 1st respondent. The learned Judge had this to say:

"I do find that the plaintiff has demonstrated that the 1st defendant obtained registration of the suit property un-procedurally and therefore, his title is invalid. The 1st defendant cannot claim to be an innocent purchaser for value without notice as he must have visited the parcel of land or ought to have visited the same and seen that the plaintiff had already developed the property at the time Kipsang Chombe was issued with the allotment letter"

11. Consequently, the court held that the appellant could not claim protection as an innocent purchaser for value given the defects in the root title and ordered that the appellant's name be cancelled from the records of Title No. Kapsabet Municipality 393 and be substituted with the name of the 1st respondent.
12. Dissatisfied with this decision, the appellant filed the present appeal originally raising 22 grounds. In his written submissions dated 7th February 2024, the appellant condensed the grounds into 4 main issues for determination:
 - a. Whether the 1st respondent's suit was competent;***
 - b. Whether the 1st respondent adequately proved ownership of the subject land;***

c. Whether the 1st respondent's claim of fraud was proved;

d. Whether the court erred in cancelling the appellant's title to the subject property.

13. When the matter came up for hearing before us on 10th June 2025, counsel for the appellant, Ms. Khayo, appeared alongside Mr. Mwendwa for the 1st respondent. Both counsel relied wholly on their written submissions and presented brief oral highlights of their respective cases.
14. Ms. Khayo for the appellant submitted that the 1st respondent's certificate of confirmation of grant was not properly brought to the trial court's attention hence the trial court made no determination on this issue; and that the suit was incompetent as it was filed 12 years after the limitation period without the 1st respondent providing letters of administration to support her claim on behalf of the deceased's estate.
15. In their written submissions dated 7th February 2024, the appellant maintained that he was an innocent purchaser for value whose title was protected under section 26 of the Land Registration Act. The appellant contended that his chain of title originated from Kipsang Chomba who had been properly allocated Plot D, which later became Plot No. 393, and was

therefore distinct from Plot No. 1181/415. The appellant argued

that no evidence was led to show that the deceased Kimani Macharia was ever issued with an allotment letter or that Plot No. 1181/415 was the same as Plot No. 393. The appellant therefore sought that the appeal be allowed, the trial court's judgment be set aside, and the 1st respondent's claim be dismissed with costs.

16. Learned counsel Mr. Mwendwa submitted that the 1st respondent had obtained letters of administration and a certificate of confirmation of grant, with the property vesting in her through succession by 2006. On the limitation issue, counsel argued that since the suit was instituted in 2011 and the letters of administration were confirmed in 2006, the limitation of actions did not apply.
17. In her written submissions dated 6th June 2025, the 1st respondent raised preliminary objections to the competency of the appeal, arguing that it was filed out of time and contravened Rules 79, 84 and 89 of the Court of Appeal Rules 2022, such that nothing can breathe life into the appeal. She further argued that she had obtained a certificate of confirmation of grant in 2006, giving her locus

standi to institute the suit.

18. Lastly, she contended that the material on record confirmed that Plot No. 393 was formerly known as Plot No. 1181/415, and that letters from various government offices confirmed that the suit property belonged to her late husband and that the appellant's title was tainted with illegality as the root of his title was fundamentally flawed, and that he could not claim protection as an innocent purchaser for value. We were urged to dismiss the appeal with costs.
19. We have carefully considered the submissions filed by both parties and the record of appeal and the law. From the outset, we note that the 1st respondent raised preliminary objections challenging the competency of this appeal under Rules 79, 84 and 89 of the Court of Appeal Rules 2022. The 1st respondent argues that the appeal contravenes these mandatory provisions such that nothing can breathe life into the appeal and consequently this Court lacks jurisdiction to entertain the appeal.
20. The objection concerns improper service of the notice of appeal under Rule 79(1); the absence of a certified decree in the record of appeal contrary to Rule 89(1)(h); and filing

delays under Rule

84 of the Court of Appeal Rules. The 1st respondent relied on various authorities including **Bwana v Bonaya & 2 others and Mugambi v Electricity Transmission Company Ltd (KETRACO) to support their position.**

21. Rule 86 of this Court's rules is clear:

86. Application to strike out notice of appeal or appeal

A person affected by an appeal may, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground—

- a) that no appeal lies; or*
- b) that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:*

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the notice of appeal or record of appeal, as the case may be.

22. The notice of appeal was filed on 20th December 2018. The 1st respondent's preliminary objections were only raised in written submissions dated 6th June 2025, over six years later. This far exceeds the 30-day window prescribed by Rule 86. Accordingly, it was open for the 1st respondent to move the Court appropriately within the applicable timelines. As was aptly stated by this court in **Mae Properties Limited v. Joseph Kibe**

[2017] eKLR:

"We have said on numerous occasions that the Rules of Court exist for the purpose of orderly administration of justice before this Court. The timelines for the doing of certain things and taking of certain steps are indispensable to the proper adjudication of the appeals that come before us. The Rules are expressed in clear and unambiguous terms and they command obedience ...Failure to comply with the timelines set invites sure consequences."

23. Moreover, the 1st respondent has actively participated in these proceedings for over six years, filing comprehensive submissions on the merits and appearing for hearing. Such conduct is inconsistent with any claim that this Court lacks jurisdiction. Having failed to timeously challenge the appeal's competency under Rule 86 of the rules of this Court, the 1st respondent cannot now be heard to raise these objections through her submissions. We therefore decline the submission to determine the appeal on that ground.

24. Having resolved the preliminary objection to the competency of the appeal, we now turn to the substantive grounds of appeal. As noted earlier, the appellant condensed his 21 grounds of appeal into four main issues for determination:

a. Whether the 1st respondent's suit was competent;

b. Whether the 1st respondent adequately proved ownership of the subject land;

c. Whether the 1st respondent's claim of fraud was proved;

d. Whether the court erred in cancelling the appellant's title to the subject property.

25. On the first issue of whether the 1st respondent's suit was competent, the appellant challenged the competence of the suit on two grounds: that the 1st respondent lacked locus standi having not obtained letters of administration, and that the claim was statute barred.
26. On the issue of locus standi, the record before us clearly shows that the 1st respondent obtained a certificate of confirmation of grant and the same is included in the appellant's own record of appeal. This certificate, issued on 20th September 2006, confirmed that the 1st respondent was the sole beneficiary of the estate of her deceased husband. By the time she instituted the suit in 2011, the suit property had already vested in her through succession. The appellant's contention that this information was not brought to the trial court's attention is therefore without basis. We find that the 1st respondent had proper locus standi to institute the suit and this ground of appeal fails.

27. Regarding limitation, the appellant's argument that the suit was filed 31 years after the alleged allocation in 1980 is misconceived. The 1st respondent's cause of action accrued in 2004 when she discovered the specific nature of the alleged fraud or mistake, being that Felix Kiprono Kemboi had been registered as the owner of the suit property, and that her plot number had been changed from 1181/415 to KAPS/MUN/393. With letters of administration confirmed in 2006, her suit filed in 2011 was well within the limitation period. The cause of action fell under the provisions of section 26 of the Limitation of Actions Act, which provides that time runs from the date of discovery of concealed fraud or mistake. **(see Kenya Ports Authority v Timberland (K) Limited [2017] eKLR)**. We therefore find that the suit was within the limitation period and therefore competent.
28. The second issue is whether the appellant has proved that he is the rightful owner of the suit property. The appellant has argued that he is a bona fide purchaser for value of the suit property and that he acquired an indefeasible title by virtue of his certificate of title issued by the Registrar of

Lands.

29. In **Samuel Kamere v Lands Registrar, Kajiado [2015] KECA 644 (KLR)** this court established that in order to be recognized as a bona fide purchaser for value, a person must demonstrate three key elements: first, that they obtained a valid and legally recognized title; second, that they conducted adequate due diligence to verify the rightful owner from whom they acquired legitimate title; and third, that they paid genuine consideration for the property in question.

30. In **Dina Management Ltd v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)** the Supreme Court affirmed this court's decision in **Munyu Maina v. Hiram Gathiha Maina (Civil Appeal No 239 of 2009) [2013] eKLR**, where this court aptly stated:

" where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register."

31. The appellant's position is that he acquired the suit property through a legitimate purchase from the original allottee Kipsang Chomba. He maintains that this is different land from Beatrice's property 1181/415 and produced supporting evidence including an allotment letter, consent to transfer, and transfer of lease document dated 11th August 1995.
32. The record reveals critical deficiencies in the appellant's root of title. First, there was no evidence of minutes from any Plot Allocation Committee meeting, authorizing the allocation to Kipsang Chomba. Documentary evidence before the trial court established that such approval is a mandatory procedural requirement. In a letter dated 16th January 2006 from the Municipal Council of Kapsabet, the Council stated that "any claim without allocation cannot be confirmed."
33. Second, the record does not contain any application by Chomba for allocation of the plot, raising serious questions about how an allotment letter came to be issued in his favour. Third, the allocation letter dated 23rd December 1992 purported to allocate an unsurveyed commercial plot designated only as "Plot D" without a specific plot

number,

representing a fundamental departure from established land allocation procedures which require surveyed parcels with defined boundaries and proper identification.

34. Fourth, a crucial defect plagued the transfer mechanism itself.

The report from the Permanent Secretary dated 21st November 2011 revealed that the transaction purporting to transfer the plot from Kipsang Chomba to the appellant was executed through a power of attorney dated 11th August 1995, facilitated by James Kirwa Tuikong, a former town clerk of the Municipal Council of Kapsabet. Critically, both the power of attorney and the transfer of lease document failed to contain the identification numbers of the parties involved. This omission represented a serious procedural defect that cast further doubt on the legitimacy of the transfer and undermined the appellant's assertion that he conducted proper due diligence as an alleged innocent purchaser for value.

35. Critical evidence undermining Chomba's allocation also came from a letter dated 24th August 1993 from the Regional Local Government Officer, Rift Valley Region,

addressed to the Commissioner of Lands (reference
PID/KAP/126/2/VOL.1

122). This letter exposed fundamental irregularities in the purported allocation to Kipsang Chomba.

36. The letter revealed, firstly, that there were no records in the Part Development Plan which was used to allocate the unsurveyed commercial plot "D" to Kipsang Chomba. The absence of such records made it impossible for the authorities to confirm where plot "D" was situated during the allocation. This lack of documentation struck at the very foundation of Chomba's claim, as it demonstrated that the purported allocation had no verifiable basis in the official land records.
37. Secondly, and more significantly, the letter indicated that part of the plot already allocated to Kimani Macharia had been improperly carved out and allocated to another person. The letter noted that according to correspondence from the District Physical Planner dated 22nd November 1991, the land available for allocation to Kimani Macharia was 0.102 hectares. However, the letter revealed that by 1993, the portion remaining for Macharia had diminished to approximately 0.05 hectares. This represented a loss of

nearly half of Macharia's allocated land. The inescapable inference is that this missing portion had been

irregularly hived off and allocated to Kipsang Chomba as the so-called "plot D", which subsequently became Plot No. 393 now claimed by the appellant. In essence, Chomba's purported allocation was not of an independent plot, but rather was created through an improper superimposition of land that had already been lawfully allocated to Kimani Macharia.

38. Moreover, a letter from the Permanent Secretary, Ministry of Local Government dated 22nd February 2012 to the Commissioner of Lands confirmed that Plot No. 393 was properly allocated to Macharia, who had constructed a permanent house thereon in 1982. The letter requested confirmation from the Commissioner of Lands regarding the location of plot "D" which was purportedly allocated to Kipsang Chomba and later sold to the appellant. The clear implication from the correspondence was that Chomba's allocation lacked proper documentation and procedural compliance, and that the plot subsequently numbered 393 had in fact and in deed been allocated to Kimani Macharia. It therefore means that what had been allocated to Chomba is

nothing but part of Macharia's plot which was not available for allocation or alienation. Simply put,

this amounted to a fraudulent attempt to deprive the rightful owner of her property rights.

39. The trial court also conducted a site visit and made critical findings of fact. The court observed that Plot No. 1181/415 and Plot No. 393 were the same physical piece of land, save that Plot No. 393 was created and superimposed on the already existing Plot No. 1181/415. The court noted that the permanent building which the 1st respondent had constructed was located on an unsurveyed portion of land between Plot No. 393 and the access road. The court found that this location, far from supporting the appellant's contention that the plots were distinct, confirmed that Macharia's original allocation encompassed both what later became Plot No. 393 and the adjacent unsurveyed land. These findings were based on evidence from expert witnesses and the court's own observations on the ground.
40. This Court has consistently held that it will not disturb a trial court's findings of fact unless there is justifiable reason to do so. As was stated in **Francis Kariuki Thuku & 2 others v Republic [2010] KECA 234 (KLR)**, such findings will only

be

interfered with where there is no evidence to support them, or where the trial court misdirected itself on the facts or the law. The appellant has not established any such basis for intervention.

41. In contrast to the deficiencies in the appellant's chain of title, the 1st respondent presented substantial evidence of her late husband's allocation and occupation of the suit property. The 1st respondent testified that her late husband Kimani Macharia had been allocated the plot through the District Plot Allocation Committee on 25th August 1980, and that they had been in occupation since then. She stated that they had conducted business activities on the land and constructed permanent structures including a house in 1982, well before Kipsang Chomba's purported allocation in 1992.
42. The 1st respondent further produced minutes of the District Plot Allocation Committee meeting held on 25th August 1980 evidencing the allocation of land to Kimani Macharia. She also produced numerous letters from government offices confirming that the suit property belonged to her late husband, including correspondence from the Municipal

Council of Kapsabet, the

Permanent Secretary to the Commissioner of Lands, the District Physical Planner, and other regional government officers.

43. Significantly, the 1st respondent produced receipts demonstrating payment of land rent and rates for Plot No. 1181/415 over an extended period. While the appellant contested these receipts, suggesting that plot number insertions were made later, the trial court evaluated the evidence and found it credible. The trial court was entitled to make findings of fact based on its assessment of the evidence before it, and as we have stated earlier, an appellate court will not interfere with such findings unless they are shown to be clearly erroneous or based on a misdirection. Our view is that the trial court made no error.
44. The trial court also relied on evidence from the Municipal Council of Kapsabet which stated that during a valuation exercise in 2004, the valuers erroneously inserted the appellant's name on Plot No. 393 instead of Plot No. 392. This evidence supported the finding that Plot No. 393 was improperly created and superimposed on the already

existing Plot No. 1181/415 which belonged to Kimani
Macharia. The letter from

the Municipal Council dated 16th January 2006 confirmed this error and indicated that the appellant ought to have been registered as owner of Plot No. 392 instead of Plot No. 393.

45. As the Supreme Court affirmed in **Dina Management Ltd**, where the initial acquisition of title is unlawful, all subsequent transfers-even to innocent purchasers, are void. In the present case, the appellant's entire chain of title derives from Kipsang Chomba's purported allocation of unsurveyed "Plot D" in 1992. For the reasons we have articulated above, that allocation was fundamentally defective and unprocedural.
46. Given these fundamental defects in the root of title, the appellant cannot claim protection under section 26 of the Land Registration Act as an innocent purchaser for value. The principle is clear: *nemo dat quod non habet* - one cannot give what one does not have. Since Kipsang Chomba never validly acquired any legal or equitable interest in the suit property, he could not transfer such interest to the appellant. The fact that the appellant may have paid consideration and

received a certificate of title does not cure the fundamental invalidity at the root of his claim. In our view, both the appellant and his

predecessor in title, have no right or interest over the suit property. What happened is an attempt to defraud the 1st respondent which was thwarted by the trial court and by this court too.

47. In these circumstances, the appellant's subsequent registration cannot override the 1st respondent's prior and superior proprietary interest established through her late husband's alienation, occupation and development of the land from the 1980s, coupled with the documentary evidence from various government offices confirming his claim to the property. The appellant's contention that his registration, being a first registration, was protected from cancellation under section 143 of the Registered Land Act must fail.

48. Having established that the appellant's root of title was fundamentally defective, it becomes unnecessary to delve into the remaining issues raised in the appeal. The principle is now firmly settled: a certificate of title cannot cure an unlawful allocation process. A title is merely the end-product of a process, and where that process is tainted, whether

through procedural irregularity, fraud, or illegality, then the resultant

title is void. No right can flow from nothing. A nullity at inception remains a nullity, no matter how many hands it passes through. In our humble view, the suit property was not available for allocation and alienation to Chomba, therefore the subsequent transfer was equivalent to putting nothing over nothing.

49. In the end, having carefully considered the submissions of both parties, the record of appeal, and the applicable law, we are satisfied that the trial court reached the correct decision. The learned trial judge properly analyzed the evidence, correctly identified the defects in the appellant's root of title, and appropriately concluded that the appellant could not claim protection as an innocent purchaser for value. The trial judge's findings of fact were well-supported by the evidence and the judge did not misdirect himself on any material issue of law or fact.

50. Consequently, the trial court was entitled to order rectification of the register by canceling the appellant's name and substituting it with that of the 1st respondent, who established a superior proprietary interest through her

late husband's

allocation, alienation, development, and the confirmatory evidence from various government offices.

51. The appeal accordingly lacks merit and is hereby dismissed. The decision of the trial Court is affirmed. The 1st respondent shall have the costs of this appeal.

Dated and delivered at Nakuru this 21st day of October, 2025.

M. WARSAME

.....
..... **JUDGE OF APPEAL**

L. ACHODE

.....
JUDGE OF APPEAL

J. MATIVO

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR