



REPUBLIC OF KENYA



**KENYA LAW**  
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**Tiras v Kanampiu (Civil Appeal E080 of 2022)  
[2025] KECA 1603 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1603 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL E080 OF 2022  
W KARANJA, J MOHAMMED & LK KIMARU, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**KELLEN KEERU TIRAS ..... APPELLANT**

**AND**

**TIMOTHY MICHENI KANAMPIU ..... RESPONDENT**

*(Being an appeal from the judgment of the Environment and Land Court at  
Cbuka (Yano, J.) dated 7<sup>th</sup> June, 2022 in ELC Appeal No. E016 of 2021)*

**JUDGMENT**

1. The appellant's late father, Tilas M'Bore M'Raji, filed a suit against the respondent before the Chief Magistrate's Court at Meru, vide a plaint dated 3<sup>rd</sup> May, 2004. In the plaint, the appellant's father alleged that he was the original owner of the parcel of land L.R. No. Mwimbi/Chogoria/1591, measuring
0. 527 hectares (suit land), prior to its sub-division on 24<sup>th</sup> September 1999. It was his case that on 30<sup>th</sup> March 2004, he discovered that the respondent had, without his knowledge or approval, grabbed the suit land and caused it to be sub-divided into resultant five parcels, which were registered in the respondent's name. The resultant five parcels were registered as L.R. Nos. Mwimbi/Chogoria/2726, 2727, 2728, 2729 and 2730.
2. The appellant's father contended that the respondent had illegally, fraudulently, and unlawfully acquired the suit land, and caused it to be sub-divided into the resultant five parcels of land. The particulars of fraud were pleaded. He urged the court to cancel the titles issued to the respondent, as they were acquired fraudulently, and direct that parcels Nos. 2726, 2727, 2728, 2729 and 2730 be transferred to him.



3. The respondent filed a statement of defence dated 2<sup>nd</sup> July, 2004, in which he denied the allegation that the suit land was fraudulently transferred to him. He averred that the transfer was lawful and procedurally done with the full participation of the appellant's father.
4. The appellant took over the case upon the demise of her father.
5. The case was heard by way of viva voce evidence. The appellant (PW1) told the court that her father was the registered proprietor of the suit land, which is ancestral land. She stated that the family had no idea how the respondent acquired the suit land and sub- divided it. It was her evidence that the respondent was not in possession of the suit land. PW2, Ashford Kaburu Mukaraku, the appellant's cousin, told the court that the suit land is ancestral land, and belonged to the appellant's late father. He explained that the appellant was born on the suit land and has lived thereon all her life. He stated that the respondent was not in possession of the suit land. PW3, Japheth Ngai Mukindia, was the area Chief, Chogoria Location. He confirmed drafting an introduction letter for the appellant detailing that she was the daughter of the late Tilas M'Bore M'Raji (p. exhibit number 3)
6. The respondent, on his part, testified that the appellant's father sold to him parcels Nos. 2626, 2627, 2628 and 2629 over a period of time. It was his evidence that parcel No. 2630 was sold to one Ephantus Gitonga, the appellant's son. The respondent stated that a consent was issued by the Land Control Board, and the four parcels were registered in his name on 24<sup>th</sup> September, 1999. It was his testimony that he was charged in criminal case No. 1009 of 2006, with the offence of obtaining registration by false pretenses, contrary to section 320 of the Penal Code, and that he was acquitted of the charges.
7. Sharon Muthoni Gitau, a Land Registrar based at Chuka, testified as DW2. She produced green cards relating to the suit land, and the resultant subdivision of the five parcels of land. It was her evidence that parcels Nos. 2726, 2727, 2728 and 2729 were registered in the name of the respondent, while No. 2730 was registered to a third party by the name Obadiah Miriti Kihariki. She produced the application for subdivision of the original suit land, consent to sub-divide and a copy of the mutation form, all of which were signed by the appellant's father. She stated that the appellant's father transferred the four parcels of land to the respondent.
8. At the end of the trial, the learned magistrate found that the appellant's father sold parcels Nos. 2726 and 2728 to the respondent, and that the two parcels lawfully belonged to the respondent. The learned magistrate determined that the respondent failed to avail any evidence to prove that parcels Nos. 2727 and 2729 were sold to him as alleged. The learned magistrate directed that the parcels Nos. 2727, 2729 and 2730 revert back to the appellant as the lawful owner.
9. The appellant, aggrieved by the said decision, lodged an appeal before the Environment and Land Court at Chuka. The appellant faulted the learned Judge for finding that her late father sold parcels Nos. 2726 and 2728, in the absence of any sale agreement, transfer documents or consent from the Land Control Board, to that effect. The appellant was of the view that the respondent fraudulently acquired parcels Nos. 2726 and 2728, and that the registration, being tainted with fraud, ought to have been cancelled. The appellant was aggrieved that the trial court awarded parcels Nos. 2726 and 2728 to the respondent, when there was no such prayer or counterclaim pleaded by the respondent. Lastly, the appellant faulted the learned magistrate for awarding her only half the costs of the suit.
10. Yano J., in a judgment dated 7<sup>th</sup> June, 2022, affirmed the decision of the trial court. The learned Judge determined that the proceedings in the criminal trial confirmed that the appellant's father sold parcels 2726 and 2728 to the respondent, but that the respondent failed to avail any evidence of how he acquired the remaining parcels of the suit land. The learned Judge found that the appellant failed to provide proof of the fraud allegations levelled against the respondent with respect to parcels 2726 and



2728. Regarding costs of the suit, the learned Judge held that the trial court properly exercised its discretion in awarding the appellant half the costs of the suit, as her suit partly succeeded.
11. The appellant is now before us on a second appeal. She has proffered five grounds of appeal. She averred that the learned Judge erred in law: by finding that the testimony of the appellant's mother and the assistant chief supported the respondent's acquisition of parcels Nos. 2726 and 2728, despite finding that the respondent failed to produce any sale agreement; by finding that the appellant failed to prove fraud with respect to acquisition of parcels Nos. 2726 and 2728; by failing to find that no transfer documents executed by the appellant's father were availed by the respondent, and that there was no evidence to support the alleged sale of the said parcels; by failing to find that the registration of the suit parcels in the name of the respondent was fraudulent; and, by finding that the judgment of the trial court was well founded, in the absence of any prayer or counterclaim from the respondent, with respect to parcels Nos. 2726 and 2728. The appellant urged us to set aside the judgment of the ELC and award the appellant parcels Nos. 2726 and 2728.
  12. The appeal was heard by way of written submissions. Learned counsel Mr. Kiogora for the appellant submitted that the respondent did not avail any evidence to prove his assertion that he had purchased any land from the appellant's father. Counsel faulted the ELC for finding in favour of the respondent, when he failed to avail any documentary evidence of the alleged sale, or that the sale was backed by the Land Control Board consent. Counsel maintained that the transfer of the suit land to the respondent was fraudulent, and that in the absence of any counterclaim by the respondent, the ELC had no basis awarding the two parcels of land to the respondent.
  13. Mr. Muthomi, learned counsel, for the respondent, was of the view that in the absence of a written agreement, the respondent was only required to establish that he had been in possession of the suit land, which he had been in occupation of since 1999, to date. Counsel submitted that the appellant's mother, in her statement, detailed that the appellant's father had sold part of the suit land to the respondent, sometime in 1999. Further, one Eustace Karuri, a member of the Meru South Land Control Board, confirmed that the respondent and the appellant's father appeared before the Board seeking consent for sale of parcels Nos. 2726 and 2728. Counsel urged that these facts were admitted by the appellant during her cross-examination. He was of the view that the allegations of fraud against the respondent were not backed by any evidence. It was his submission that costs follow the event, and that the appellant, having only partly succeeded in her claim, was only entitled to half the costs. Counsel invited us to dismiss the appeal for lack of merit.
  14. We are alive to our mandate as a second appellate court to resist the temptation of delving into matters of facts, and confine ourselves to matters of law, unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See the decisions of this Court in *Kenya Breweries Ltd v Godfrey Odoyo* [2010] eKLR; and *Stanley N Muriithi & another v Bernard Munene Ithiga* [2016] eKLR).
  15. We have considered our mandate in light of the facts of this case, the grounds of appeal and the submissions made before us. The issue for determination by this Court is whether the first appellate court was right in finding, as the trial court did, that the respondent was entitled to ownership of parcels No. Mwimbi/Chogoria/2726 and 2728.
  16. From the evidence adduced before the trial court, it was established that the appellant's late father Tilas M'Bore M'Raji, sold and transferred the two parcels of land to the respondent. A member of Meru South Land Control Board Eustace Karuri confirmed that indeed the appellant's father and the respondent appeared before the said Land Control Board where consent was issued for the said



two parcels of land to be transferred to the respondent. The appellant claims that these transfers were fraudulently obtained. The two courts below, upon considering the evidence adduced before it, and re-evaluating the same reached the conclusion that indeed the appellant's father transferred the said two parcels of land to the respondent. As a second appellate court, this Court cannot interfere with the concurrent findings of facts by the two courts below unless it is established that the said courts failed to take into consideration a relevant fact or took into consideration an irrelevant fact.

17. The appellant based his claim on fraud. This Court in *Vijay Morjaria v. Nansingh Madhusingh Darbar & another* [2000] eKLR, held thus;

“it is well established that fraud must be specifically pleaded and that the particulars of fraud alleged must be stated on the face of the pleadings. 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...”

18. This Court further in *Gladys Wanjiru Ngacha v. Teresa Chepsaat & 4 others* [2013] eKLR held:

“...it is not enough for the appellants to have pleaded fraud; she ought to have tendered evidence that proved the particulars of fraud to the satisfaction of the trial court. In the case of *Mutsonga v Nyati* [1984] KLR 425, at page 439, this Court held:

“Whether there is any evidence to support an allegation of fraud is a question of fact. We find that the appellant did not prove fraud on the part of the respondent.”

19. In the present appeal, although the appellant pleaded fraud, she did not prove that the respondent had committed fraud in the transaction leading to the transfer of the two parcels of land. It is noteworthy that the appellant lodged a criminal complaint against the respondent alleging that the suit parcels of land had been fraudulently transferred to the respondent. The respondent was acquitted of the charge. The standard of proof to establish fraud in criminal cases is higher i.e that of proof beyond any reasonable doubt. In the current civil suit, the appellant failed to discharge the lower burden of proof placed upon her to establish fraud on a balance of probability.

20. It was clear to us that the evidence adduced by the appellant in support of her claim for the alleged fraud did not displace the evidence that was adduced by the respondent and his witnesses (and indeed supported by some of the appellant's own witnesses) that the two parcels of land had legally been transferred to the respondent by the appellant's late father.

21. We cannot fault the two courts below for reaching the decision that they did. The appeal lacks merit and is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**W. KARANJA**

**JUDGE OF APPEAL**

.....

**JAMILA MOHAMED**

**JUDGE OF APPEAL**

.....

**L. KIMARU**



**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

