



REPUBLIC OF KENYA



**Kinyanjui v Chege (Environment and Land Appeal E049 of 2023)
[2025] KEELC 7396 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7396 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E049 OF 2023
JM ONYANGO, J
OCTOBER 29, 2025**

BETWEEN

JAMES KAMAU KINYANJUI APPELLANT

AND

MARY NJOKI CHEGE RESPONDENT

(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Thika in MCELC Case No. 95 of 2020 delivered by Hon. M.W Kurumbu, Principal Magistrate on 21st September 2023.)

JUDGMENT

1. The Respondent (Plaintiff in the lower court) filed suit against the Appellant (1st Defendant in the lower court) through a Plaint dated 12.10.2020. She also sued the Land Registrar Thika as the 2nd Defendant and the Honourable Attorney General as the 3rd Defendant.
2. She sought a declaration that land parcel number Kirimiri Block 1/2 is jointly owned by the Estate of Justine Wanjiku Chege and the 1st Defendant in the ratio of 13:1; an order directing the 2nd Defendant to rectify the land register of Kirimiri Block 1/2 to read the proprietorship as estate of Justin Wanjiku Chege 13 acres: 1st Defendant 1 acre and costs of this suit. Her case was that she was the administrator of the estate of the late Justine Wanjiku Chege, who had been the registered owner of land parcel number Kakuzi/Kirimiri Block 1/2, measuring approximately 14 acres. She explained that the deceased had been a pioneer member of Kirimiri Farmers' Cooperative Society and was allocated the land as her shareholding entitlement. The Respondent testified that the deceased had sold only one acre of the land to the 1st Defendant, James Kamau Kinyanjui, on or about 5th July 1988, leaving the remaining 13 acres under the deceased's ownership.
3. She further stated that after the deceased's death, the 1st Defendant had acknowledged in writing through an agreement dated 5th December 2012 and a subsequent letter to the Land Registrar, Thika,



that he was entitled to only one acre. The Respondent claimed she was later shocked to discover that the property had been registered in equal shares between the estate of the deceased and the 1st Defendant. She contended that the registration was fraudulent and erroneous, insisting that the rightful ownership ratio was 13 acres to 1 acre in favour of the estate of the deceased.

4. In response to the suit, the Appellant filed a Defence and Counterclaim dated 13.1.2021 denying the Respondent's claim. Through his Counterclaim, he sought dismissal of the Respondent's suit with costs. He also sought an order that the subject land No. Kakuzi Kirimiri /Block 1/2 be subdivided as per the register and separate titles comprising of 7.375 acres or 2.95 Hectares each be issued to him and the deceased, respectively.
5. His case was that he was introduced to the deceased, Justine Wanjiku Chege on in June 1986, by her daughter, Mary Njoki Chege (the Respondent), who explained that her mother was in urgent need of money to pay survey fees required by Kirimiri Farmers Co-operative Society Limited to prevent her land from being sold. The Appellant testified that he agreed to settle the said fees on condition that the land would thereafter be shared equally between him and the deceased, a proposal to which the deceased consented. He asserted that he fully paid all the necessary survey and incidental costs, saving the land from forfeiture, and that both parties agreed to a joint registration.
6. He further testified that upon the deceased's death before the issuance of title, he, the Plaintiff, and her siblings appeared before the Presidential Probe Committee on Large Scale Farms in Makuyu, Murang'a, where the joint ownership was approved and the title subsequently issued on 5th October 1988 in their equal names. The Appellant contended that the registration was lawful and first in registration, giving him an indefeasible title. He denied allegations of fraud or illegality and maintained that the Respondent's claim was time-barred. He added that beyond his half share of 7.375 acres, he had also purchased one hectare (later reduced to one acre) from the deceased's portion, and therefore sought dismissal of the suit with costs and an order for subdivision of the property in accordance with the register.
7. The suit proceeded for hearing, and a judgment was entered in favour of the Respondent. Being aggrieved by the said judgment, the Appellant filed the instant appeal, citing the following grounds of appeal.
 - i. That the Learned Magistrate erred in law and in fact in finding for the Plaintiff against the Defendant contrary to the weight of the evidence.
 - ii. That the Learned Magistrate erred in law in holding and declaring that the suit land, Title Number Kakuzi/Kirimiri Block 1/2, is jointly owned by the Estate of Justine Wanjiku Chege and the Appellant in the ratio of 13:1.
 - iii. That the Learned Magistrate erred in law and in fact in holding that the Appellant did not own half (½) share of the suit land.
 - iv. That the Learned Magistrate misdirected herself in law and in fact in dismissing the Appellant's Counterclaim against the weight of the evidence.
 - v. That the Learned Magistrate erred in law and in fact in failing to appreciate that the Respondent's claim to the Appellant's registered half share of the suit land was statutorily time-barred under the [Limitation of Actions Act](#).
 - vi. That the Learned Magistrate erred in law and in fact in ordering the cancellation of the Appellant's registered interest in the suit land, taking into account that it was a first registration.



- vii. That the Learned Magistrate erred in law and in fact in failing to appreciate that the Appellant's title to the land was registered more than 35 years, and the law of prescription was in favour of the Appellant as against the Respondent.
 - viii. That the Learned Magistrate erred in law in failing to appreciate the fact that the Respondent's claim against the Appellant had already abated.
 - ix. That the Learned Magistrate erred in law and in fact in holding that the Appellant fraudulently registered as owner of half (½) share, yet the Respondent failed to prove the allegation to the required standard of proof.
 - x. That the Learned Magistrate erred in law by relying on the wrong provisions of the law.
 - xi. That the Learned Magistrate erred in law in failing to appreciate the standard of proof required to prove fraud and/or cancellation of title.
8. The court directed that the Appeal be canvassed through written submissions, and both parties duly complied.

Appellant's Submissions

9. The Appellant filed written submissions dated 18.11.2024 through the firm of Nganga Ngigi & Company Advocates. Learned counsel for the Appellant submitted on each of the grounds of appeal. On grounds 1, 2, 3 and 4, counsel argued that the key issue was whether the Appellant was entitled to half share of the suit property. It was submitted that the evidence adduced before the trial court demonstrated that the Appellant had rightfully acquired his half share. Counsel contended that the Appellant had testified that he facilitated the registration process by paying all the necessary survey fees and related costs, and that the deceased and her family members had consented to the joint registration. It was therefore contended that the trial court had erred in disregarding this evidence.
10. Regarding ground 5, counsel submitted that the Respondent's claim to the Appellant's registered share was statutorily time-barred under Section 7 of the *Limitation of Actions Act*, which prohibits the institution of actions to recover land after the expiry of twelve years from the accrual of the cause of action. It was argued that the Respondent had moved to court over thirty years after the registration of the property in the joint names of the parties' predecessors, and the claim was therefore legally untenable.
11. With respect to grounds 6 and 7, counsel submitted that the Learned Magistrate had erred in ordering the cancellation of the Appellant's registered interest, noting that the suit property constituted a first registration under the repealed Registered *Land Act* (Cap 300). Reference was made to Sections 27(a) and 28 of the said Act, which vested absolute ownership in a registered proprietor and provided that such rights were not liable to be defeated except as provided under the law. Counsel pointed out that similar provisions had been retained under Sections 25 and 26 of the *Land Registration Act, 2012*, which accorded a registered proprietor absolute and indefeasible ownership, subject only to proven exceptions provided by statute.
12. On ground 8, counsel argued that the Respondent's claim had already abated by the time the suit was filed. It was observed that Justine Wanjiku Chege had passed away many years earlier, while letters of administration had only been obtained in 2015 in Thika Succession Cause No. 309 of 2015. Counsel argued that the Respondent's suit, being Thika MCL&E Case No. 95 of 2020, had therefore been filed five years after the grant of letters of administration, rendering the claim incompetent.



13. On grounds 9 and 10, counsel addressed the issue of fraud, contending that the Respondent had failed to prove the same to the required standard. It was submitted that the Respondent had merely alleged fraud without providing evidence to support the claim. Counsel relied on authorities including *Orieny & Another vs National Bank of Kenya* [2024] eKLR, *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, and *R.G. Patel vs Lalji Makanji* [1957] EA 314, for the propositions that allegations of fraud must be specifically pleaded and strictly proved, and that the standard of proof required is higher than a balance of probabilities, though not as high as beyond reasonable doubt.
14. Counsel emphasized that the Appellant's evidence was consistent and credible, and that even the Respondent, during cross-examination, had admitted that her late mother was unable to raise survey fees, thereby corroborating the Appellant's version of events. It was further noted that the Land Registrar had confirmed that the registration followed a presidential probe and that title deeds were only issued after all parties had been heard.
15. In conclusion, counsel prayed that the appeal be allowed, the judgment of the subordinate court and all consequential orders be set aside, and judgment be entered in favour of the Appellant as per his counterclaim. Counsel also prayed for costs of the appeal and any other relief that the Honourable Court might deem just and fit to grant, maintaining that the appeal was meritorious and ought to be allowed in its entirety.

Respondent's Submissions

16. In his submissions dated 31.1.2025, learned counsel for the Respondent submitted that none of the grounds of appeal had any substance, and that the Learned Magistrate's findings were fully supported by the evidence on record.
17. With specific reference to grounds 6, 7, and 8, counsel argued that the law on fraud was settled, that fraud had no limitation period. It was pointed out that, as captured on page 9 of the trial court's judgment, the Learned Magistrate was satisfied that the Land Registrar had issued the title in 1988 without any supporting documentation to explain the situation on the ground. The court had found that the registration was done with the participation of the 1st Defendant (now the Appellant), and that the Land Registrar had failed to produce any documents justifying why the suit property was registered equally between the parties.
18. Counsel maintained that the purported 50:50 ownership entry had no legal basis, as the evidence clearly demonstrated that the Appellant had only purchased one (1) acre from the deceased. They submitted that granting the Appellant an extra six acres that he had never purchased would amount to unjust enrichment and would be manifestly unfair to the Estate of Justine Wanjiku Chege.
19. Counsel further submitted that one of the registered proprietors of the suit property, Justine Wanjiku Chege (deceased), had died on 30th April 1988, as confirmed by the trial court on page 11 of its judgment. It was therefore contended that the subsequent registration of the Appellant on 5th October 1988, as having any stake in the property of a deceased person, was illegal and contrary to Section 45(1) of the *Law of Succession Act*.
20. They argued that, under that provision, no person was permitted to take possession of or otherwise intermeddle with the property of a deceased person except as authorised by law or by a grant of representation. Counsel maintained that the Land Registrar's action amounted to intermeddling with the estate of the deceased, rendering the Appellant's registration a nullity in law. In their view, any dispute over the deceased's property ought to have been dealt with in a succession cause.



21. Counsel argued that the Appellant had failed to produce any evidence before the trial court to prove that he had purchased more than one acre of the suit property. Reference was made to page 9 of the judgment and to the exhibits produced by the Appellant, specifically the sale agreement and the memorandum from the Chief's office (Exhibits 4, 5, and 6), all of which indicated that the Appellant had purchased only one acre.
22. Counsel further submitted that during cross-examination, the Appellant had admitted that he occupied only one acre of the property, while the Respondent remained in possession of the remainder. Counsel therefore submitted that the Appellant's claim to half of the land was a desperate attempt to reap where he had not sown.
23. Counsel addressed the authorities cited by the Appellant, including Civil Appeal No. E016 of 2023, Orieny & Another vs National Bank of Kenya, and argued that, upon scrutiny, the cited decision actually supported the Respondent's case. In particular, counsel referred to the portion of the judgment emphasizing that allegations of fraud must be strictly proved; although not beyond reasonable doubt, something more than a balance of probabilities is required.
24. It was submitted that the trial court had correctly found that there was fraud, as there was no reasonable explanation for how the Appellant had purportedly acquired half of a parcel measuring 14.75 acres, when he had only purchased 1 acre.
25. The Respondent also relied on Murang'a ELC Case No. E023 of 2021, Peter Gichuhi Wainaina vs JWK & Another, where the court cited the Court of Appeal decision in Civil Appeal No. 239 of 2009, Munyu Maina vs Hiram Gathihu Maina (2013) eKLR, which held that where the root of a registered proprietor's title is challenged, it is not sufficient to rely solely on the instrument of title; the proprietor must go beyond the title and prove that the acquisition was legal, formal, and free from any encumbrances.
26. Applying this principle, counsel argued that the Appellant had only proved acquisition of one acre and could not claim ownership of more than his fair share. In conclusion, counsel submitted that none of the grounds of appeal had any merit. They described the appeal as frivolous, vexatious, and an abuse of the court process, raising no genuine question of law or fact. Counsel therefore urged the Court to dismiss the appeal with costs and to uphold the judgment of the trial court as sound and well-reasoned.

Analysis and Determination

27. The principles governing this court's role on appeal are well articulated in *Selle and Another vs Associated Motor Boat Co. Ltd and Another* (1968) EA 123, where the Court held that a first appeal bears the character of a retrial. It imposes upon the appellate court a solemn duty to re-examine the evidence, draw its own conclusions, and support those conclusions with clear and persuasive reasoning. This obligation is to be discharged carefully, with due regard to the fact that the trial court had the distinct advantage of observing the witnesses as they testified and assessing their credibility.
28. In re-evaluation of the entire record, the court finds that the essential issues for determination are:
 - i. Whether the Respondent's claim is time-barred by virtue of the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya
 - ii. Whether the Respondent proved that the Appellant had acquired his title fraudulently.
 - iii. Whether the Appellant proved his Counterclaim.
 - iv. Whether the appeal should be allowed



29. The suit herein is based on fraud as the 1st Respondent alleged that the Appellant fraudulently had the suit property registered in the joint names of the Appellant and the Respondent's late mother in equal shares. The said registration took place in 1988, while the suit was filed in 2020.

30. Section 7 of the *Limitation of Actions Act* provides as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

31. Section 26 of the *Limitation of Actions Act* stipulates as follows:

“Where, in the case of an action for which a period of limitation is prescribed, either—

- (a) The action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
- (b) The right of action is concealed by the fraud of any such person as aforesaid; or
- (c) The action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:

Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- (ii) in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.”

32. The proviso to section 26 (a) of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya provides that where an action is based on the fraud of the defendant or his agent, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or could with reasonable diligence have discovered it. The Respondent testified that he only discovered that the suit property was registered in the joint names of his late mother and the Appellant when he conducted an official search. He produced a certificate of official search dated 1st October 2019. It is therefore safe to assume that the discovery was made in 2019, and therefore the suit falls within the proviso to section 26 of the *Limitation of Actions Act*.

Whether the Respondent proved that the Appellant had acquired his title fraudulently.

33. On fraud, the Respondent asserted that the Appellant fraudulently caused the suit property to be registered jointly between himself and the deceased, each holding an equal share, notwithstanding that he had purchased only one acre out of the 14-acre parcel.



34. In response, it was submitted for the Appellant that the Respondent had failed to prove the same to the required standard. It was submitted that the Respondent had merely alleged fraud without providing evidence to support the claim. The Appellant contended that allegations of fraud must be specifically pleaded and strictly proved, and that the standard of proof required is higher than a balance of probabilities, though not as high as beyond reasonable doubt. The Appellant further argued that his evidence was consistent and credible, and that even the Respondent, during cross-examination, had admitted that her late mother was unable to raise survey fees, thereby corroborating his version of events.
35. Fraud, as a legal concept, denotes conduct deliberately intended to deceive another person, resulting in prejudice to that person. It includes dishonest dealings, misrepresentation, concealment of material facts, or collusion with land officials to procure registration unlawfully. The burden of proving fraud rests squarely upon the party alleging it, and the standard of proof, though not beyond reasonable doubt, is higher than on a balance of probabilities.
36. This principle was articulated in *R.G. Patel vs Lalji Makanji* (1957) EA 314, where the Court held that allegations of fraud must be strictly proved; although the standard of proof may not be as high as beyond reasonable doubt, something more than a mere balance of probabilities is required.
37. In *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR, the Court held that when the root of a registered proprietor's title is challenged, the proprietor must go beyond the mere production of a title deed and demonstrate that the acquisition was lawful, formal, and free from taint of fraud or misrepresentation.
38. Section 26(1) of the *Land Registration Act*, 2012 provides that a certificate of title shall be taken as prima facie evidence of ownership, but that such title may be challenged on grounds of fraud, misrepresentation, or where it is shown that the title was acquired illegally, unprocedurally, or through a corrupt scheme. Thus, registration does not operate as a shield for a proprietor who participated in or benefitted from fraudulent dealings.
39. Applying these principles to the present case, the Respondent produced evidence that the deceased, Justine Wanjiku Chege, sold only one acre of her 14-acre parcel to the Appellant through a written sale agreement dated 7th July 1986. The Appellant did not produce any written agreement evidencing the alleged arrangement that the land would be shared equally. He merely relied on an alleged oral agreement made on 22nd June 1986 that he would assist in paying survey fees and all other costs and incidentals in exchange for half the land. The law applicable in 1986 required at least a written memorandum signed by the party to be charged to prove a contract for the disposition of an interest in land. No such memorandum was tendered to support the claim of an equal division.
40. The Appellant's explanation that the registration was approved by the "Presidential Probe Committee on Large Scale Farms in Makuyu" was unsupported by any documentary evidence. The Land Registrar who testified in the trial court admitted that there were no documents in the parcel file explaining how the equal registration came about. This absence of official documentation coupled with the fact the registration was effected after the death of Justine Wanjiku Chege who acquired the land from Kiri-miri Cooperative Society lends credence to the Respondent's assertion that the process was irregular and that the registration was manipulated to the Appellant's advantage.
41. The Respondent also produced a renewal of agreement dated 5th December 2014, acknowledging that he was entitled to only one acre of the land. This acknowledgment is wholly inconsistent with his present claim to half of the parcel. The inconsistency between the Appellant's admission in 2014 and



his current position strongly suggests knowledge of the irregularity in the registration, and his failure to explain this contradiction fortifies the inference of dishonest conduct.

42. Consequently, the absence of a valid written agreement for an equal share, the lack of supporting documents from the Land Registry and the Appellant's own written acknowledgment of one acre dated 5th December 2014 all point to a deliberate scheme to secure a greater interest than that legitimately purchased. The cumulative evidence, when tested against the authorities cited above, meets the elevated threshold for proof of fraud.
43. I therefore find that the trial court properly held that the registration of the Appellant as a joint owner of half of the suit property was fraudulent and unlawful. The Respondent successfully demonstrated that the Appellant, fraudulently procured registration in his favour contrary to the intention of the deceased and in violation of the law.
44. Consequently, the court finds that the Appellant's title, to the extent of the fraudulent portion, is not protected under Section 26(1) of the [Land Registration Act](#). The Respondent proved fraud to the required standard, and the trial court was right in ordering rectification of the register to reflect ownership of 13 acres to the estate of the deceased and 1 acre to the Appellant.

Whether the Appellant proved his Counterclaim.

45. On whether the Appellant proved his counterclaim, the court finds that he did not. His counterclaim rested on the assertion that there existed an oral agreement between himself and the deceased, Justine Wanjiku Chege, entitling him to one-half of the suit property in consideration of his assistance with survey and subdivision costs. He relied on a copy of the certificate of official search dated 1st October 2019 and a copy of the green card dated 7th October 2019, which reflected both his and the deceased's names as joint proprietors in equal shares.
46. While those records demonstrate the current position in the land register, they are not, by themselves, proof of a valid contractual entitlement to half of the land. Section 26(1) of the [Land Registration Act](#), 2012 provides that a certificate of title is prima facie evidence of ownership but may be impeached where the title was acquired fraudulently, illegally, unprocedurally, or through a corrupt scheme. Therefore, mere registration does not cure defects in the process through which the title was obtained.
47. The court reiterates that the alleged oral agreement could not, in law, confer an interest in land capable of registration without compliance with Section 3(3) of the [Law of Contract Act](#) (Cap. 23) as it then stood. The version of Section 3(3) of the [Law of Contract Act](#) in force in 1986, before the 1990 amendment (which took effect in 1991) provided:

“No suit shall be brought upon a contract for the disposition of an interest in land unless the agreement upon which the suit is founded, or some memorandum or note thereof, is in writing and signed by the party to be charged or by some other person thereunto lawfully authorized by him.”

48. This means that in 1988 oral contracts were not automatically void, but they could not be enforced in court unless there existed some written memorandum or note, signed by the party to be charged, acknowledging the terms of the agreement. In *Macharia Mwangi Maina & 87 Others vs Davidson Mwangi Kagiri* [2014] eKLR the Court of Appeal held that transactions made before the 1990 amendment could still be enforceable if supported by some signed memorandum or written acknowledgment.



49. In this case, the Appellant did not produce any memorandum or written acknowledgment that he had purchased a half portion of the suit property. His claim was therefore unsupported by any documentary evidence capable of satisfying the statutory requirement. The Appellant failed to discharge his burden under Sections 107 and 109 of the *Evidence Act* (Cap. 80), which place upon a party the duty to prove the existence of facts upon which he relies. The Respondent, in contrast, produced clear documentary evidence including the sale agreement for one acre dated 7th July 1986 and the renewal agreement dated 5th December 2014 acknowledging that he was entitled to only one acre thereby discrediting the Appellant's claim to a larger share. The consistency of the Respondent's evidence and the absence of any written agreement to support the Appellant's alleged arrangement fatally undermined the counterclaim.
50. In view of the foregoing, the court finds that the Appellant neither proved the existence of a valid contract granting him half of the land nor provided a lawful explanation for his registration as a joint proprietor. His evidence fell short of the statutory threshold under the *Law of Contract Act* and the *Evidence Act*.

Whether the appeal should be allowed

51. I have re-evaluated the evidence on record and I am of the view that the trial magistrate took into account the evidence on record and properly directed himself in law and fact in arriving at his decision. In light of the above analysis, I find no justifiable reason to interfere with the judgment of the trial court. Consequently, it is my finding that the appeal lacks merit and it is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF OCTOBER 2025.

.....

J. M ONYANGO

JUDGE

In the presence of:

1. Miss Kilonzi for Mr. Ngigi for the Appellant
2. Miss Mugo for the Respondent.

Court Assistant: Hinga

