



**Kipchumba (Suing as the legal representative of the Estate of Chepkieny Sibbo - Deceased)  
v Catholic Diocese of Eldoret (Registered Trustee) & 2 others (Environment and Land  
Appeal E013 of 2024) [2025] KEELC 7346 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7346 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND APPEAL E013 OF 2024  
L WAITHAKA, J  
OCTOBER 16, 2025**

**BETWEEN**

**KIRWA KIPCHUMBA (SUING AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF CHEPKIENY SIBBO - DECEASED) ..... APPELLANT**

**AND**

**CATHOLIC DIOCESE OF ELDORET (REGISTERED TRUSTEE) .... 1<sup>ST</sup>  
RESPONDENT**

**LAND REGISTRAR, ELGEYO MARAKWET COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the Judgement of Hon V Karanja  
delivered on in Iten SPMC ELC Case No. 1 of 2019)*

**JUDGMENT**

**Introduction.**

1. By a plaint dated 31st May, 2018 and amended on 8th March, 2024 the plaintiff (now appellant), instituted a suit in the lower court to wit Iten SPMC ELC Case No. 1 of 2019 (Formerly Eldoret ELC Case No.85 of 2018) seeking:-
  - a. Declaration that the process and/or transaction upto and including subdivision of title No. Cherangany/Kapcherop/891, the closing of the said title on subdivision and the creation of numbers 2730 and 2731 and the transfer of L.R No.Cherangany/Kapcherop/2731 into the name of 1<sup>st</sup> defendant was fraudulent and illegal ;
  - b. An order of cancellation/revocation of the transfer effected on or about 30th April 2010 over land parcel No. Cherangany/ Kapcherop/891, transferring the said parcel of land into the



name of the 1<sup>st</sup> defendant and the ownership thereof reverts back into the status before 30th April 2010 that is, into the name of Chepkieny Sipo a.k.a Chepkieny Sibo pending succession proceedings, distribution and transmission of the said Estate to its rightful beneficiaries/heirs;

- c. An order directing and/or ordering the 2<sup>nd</sup> defendant and/or the Chief Land Registrar to forthwith rectify its register and/or records by cancelling title No. Cherangany/ Kapcherop/891 in the name of Chepkieny Sibo.
  - d. An order of permanent injunction restraining the 1<sup>st</sup> defendant, its agents and/or servants from trespassing into, being on, constructing upon and/or otherwise dealing with that parcel of land comprised in title No. Cherangany/ Kapcherop/891 ad/or any part thereof;
  - e. Costs of the suit;
  - f. Any other or further relief that this court may deem fit to grant.
2. As can be discerned from the averments/contentions in the plaint, the plaintiff's suit was premised on the grounds that-
- a. The plaintiff's deceased father was registered as proprietor of land parcel number 891 on 6th March 1972 and was issued with a land certificate on 25th September, 1975 for thirty acres or thereabout (suit property);
  - b. In early 1900's, his father gave out and/or donated 2 acres as centre plot (for Kipsetan Centre;
  - c. In 1997, his father donated ½ an acre comprised in the suit property to St. Joseph's Catholic Church but never transferred or conveyed the said ½ acre of land and/or any part of his said land into the name of the 1<sup>st</sup> defendant and/or Catholic Diocese of Eldoret (Registered Trustee St. Joseph Catholic Church Kipsetam);
  - d. On or about 2001, his father allocated and/or distributed the remainder of the suit property to his 3 sons (as well as himself); 8 acres to the appellant; 16 to the appellant's 2 brothers and the remainder 3 ½ acres was retained by his father;
  - e. That the plaintiff and his brothers have been and are in possession and occupation of their respective portions since 2000;
  - f. The plaintiff and his brothers have developed their respective portions and live thereon;
  - g. That three years after the plaintiff's father passed on, that is in 2011, the Church laid claim to 1 acre of the suit property;
  - h. That they denied the church's claim and told it that it was only entitled to ½ an acre and that the ½ acre the church was entitled to did not fall where the plaintiff's portion is;
  - i. That as at 30th April, 2010 the suit property, 891, was registered in the name of his father, Chepkieny Sibo-deceased;
  - j. That as at 16th June, 2015, the suit property, 891, was still registered in the name of his father, same as at 7th December, 2017;
  - k. That in early 2017 and/or thereabout, the plaintiff discovered that the suit property had purportedly been subdivided, title closed and new numbers, 2730 and 2731 created;
  - l. The plaintiff contended that subdivision of the suit property and creation of parcels numbers 2730 and 2731 was done secretly, fraudulently and/or illegally as upon demise of his father,



on 29th January 2008, his father's estate was governed by the *Law of Succession Act*, Cap 160 Laws of Kenya.

3. The particulars of the pleaded fraud and illegality in the dealings with the suit property are listed in paragraph 18 of the plaint thus-
  - a. Intermeddling with the Estate of Chepkinyeng Sibbo, a deceased person;
  - b. Acting in total disregard of the requirements of Chapter 160 of the Laws of Kenya;
  - c. Causing the Estate of the said deceased person to be subdivided and having the suit land therefrom and transferring it into its name;
  - d. Acting against the legitimate expectations of the plaintiff and other beneficiaries to the said Estate;
  - e. Causing subdivision and or transfer on the basis of invalid consents and or without consent(s);
  - f. Aiding and or abetting an illegality and generally disregarding the due process;
  - g. Causing a title deed to be issued on the basis of invalid consent(s);
  - h. Failing to be diligent whilst dealing with the said Estate;
  - i. Causing and or allowing an Estate of a deceased person to be intermeddled with.
4. The 1<sup>st</sup> defendant filed a statement of defence and counter-claim, dated 31st August, 2018 in which he admits that the appellant's father was registered as the proprietor of the suit property (land parcel Cherangany /Kapcherop/ 891) on 6th March, 1972 and issued with a land certificate in respect thereof on 25th September, 1975. The 1<sup>st</sup> defendant explains/contends:-
  - a. That it entered into a written agreement with the plaintiff's father to purchase 1 acre to be excised out of the suit property at a consideration of Kshs. 20,000/-;
  - b. That the purchase was sanctioned by the appellant's family;
  - c. That its representatives jointly with the plaintiff's father, occasioned a survey and subdivision to be carried out on 4th November 1999 and the 1 acre purchased was identified and excised out of the suit property;
  - d. That with the consent of the plaintiff's father, it occasioned transfer and registration of the portion bought, now parcel number 2731 measuring 0.4 hectares and it is the registered proprietor of land parcel number 2731;
5. It is the 1<sup>st</sup> defendant's case that: -
  - a. A sale agreement was duly executed by its representatives and the plaintiff's deceased father;
  - b. The family of the plaintiff's deceased father was involved and did expressly consent to purchase of the suit property by it;
  - c. Consent to survey and the survey process was carried out in the presence of local administration, 1<sup>st</sup> defendant's representative and the plaintiff's deceased father and his family;
  - d. The plaintiff's father did execute transfer documents and application for Land Control Board in favour of the 1<sup>st</sup> defendant;
  - e. The Land Control Board consent was sought and issued in favour of the 1<sup>st</sup> defendant;



- f. 1<sup>st</sup> defendant paid stamp duty for transfer of the property;
  - g. 1<sup>st</sup> defendant was lawfully and duly registered as owner of parcel number 2731 having fully complied with the substantive and procedural law on purchase and transfer of agricultural land. It denies all particulars of fraud and illegality pleaded and contends that it followed laid out statutory provisions and that the plaintiff is not entitled to the prayers sought.
6. The 1<sup>st</sup> defendant reiterates the averments in the statement of defence and avers:-
- a. That on or about the year 2012, without colour of right and without consent or authority/permission of the 1<sup>st</sup> defendant or its duly authorized officers and by treachery, the plaintiff trespassed upon land parcel number 2731 belonging to it and through his agents caused to be fenced the whole parcel with intention of forcibly and unlawfully grabbing it for the purpose of planting grains, constructing his home and other amenities.
  - b. That it protested to the plaintiff and local administration regarding the plaintiff's activities to no avail.
7. By way of counterclaim, the 1<sup>st</sup> defendant sought judgment against the plaintiff for-
- a. Eviction orders against the plaintiff and his family, servants and/or agents, administrators and beneficiaries of the Estate of the late Chepkering Sibbo from 2731;
  - b. A permanent injunction restraining the plaintiff, his family, servants and agents and administrators and beneficiaries of the Estate of late Chepkering Sibbo from trespassing upon land parcel 2731;
  - c. General damages for trespass;
  - d. An order condemning the plaintiff to pay the costs of the suit;
  - e. Any other relief that the court may deem fit and just to grant.
8. The plaintiff filed a response to defence and defence to counterclaim denying the averments in the 1<sup>st</sup> defendant's defence and counterclaim and reiterated his pleaded case.
9. When the case came up for hearing, parties led evidence in support of their pleaded cases.
10. Upon considering the case urged before her, the learned trial magistrate determined that the plaintiff had failed to prove his case on a balance of probabilities and dismissed it with costs to the defendants. Regarding the 1<sup>st</sup> defendant's counterclaim, the learned trial magistrate determined that the 1<sup>st</sup> defendant had proved its counterclaim on a balance of probabilities and granted its prayers (a), (b) and (d) of the counterclaim.
11. In dismissing the plaintiff's case and allowing the 1<sup>st</sup> defendant's counterclaim, the learned trial magistrate inter alia stated/held:-

“...I have carefully considered the evidence adduced by both the Plaintiff, the Defendant and their witnesses. I have also considered the filed written submissions and the authorities in support of the respective cases...The issue for determination whether or not to cancel/revoke land parcel No. Cheragany/Kapcherop/2731. Whether or not fraud has been established. Who is to bear costs.....

The land parcel No. Cheragany/Kapcherop/891 was originally registered under Chepkieny Sibbo who was the plaintiff's father and he passed on 29/1/2008. The 1<sup>st</sup> Defendant through



its witnesses stated that the deceased (Chepkieny Sibbo) sold 1 acre to the 1<sup>st</sup> defendant in 7/4/1998 and it was to be excised from the suit land (891).

The 1<sup>st</sup> Defendant paid for the land and they processed the transfer documents and they were issued with the title deed on 17/10/2017. That the plaintiff's son Kirwa Kipchumba participated in the transaction with his mother and he has now gone to claim and trespassed onto the land.

The Land Registrar (DW5) confirmed that the transfer was proper as the deceased Chepkiyeng Sibbo executed the documents before his death. From the foregoing it is clear that the 1<sup>st</sup> Defendant acquired ownership as a bonafide purchaser from the owner Chepkieny Sibbo and therefore the orders sought for cancellation of the title cannot issue.

On issue (b) of fraud, the plaintiff submitted that the title deed held by the 1<sup>st</sup> defendant be cancelled on grounds of fraud.....

In this case, the plaintiff failed to led credible evidence how the 1<sup>st</sup> defendant committed fraud. The 1<sup>st</sup> defendant has given a plausible explanation as to how they acquired land parcel No.2731 and the explanation is believable..."

12. Dissatisfied with the decision of lower court, the plaintiff appealed to this court on the grounds that the learned trial magistrate erred by: -
  1. Failing to appreciate that when a person dies intestate his/her asset is deemed as the property of a deceased person and that the governing law is the Law of Succession Act, Cap 160 Laws of Kenya and any transaction conducted after the death of the deceased without following the law amounts to fraud, is illegal and the court has powers to reverse any such transaction;
  2. Failing to hold that when Chepkiyeng Sibbo died intestate on 29/1/2008 land parcel Cherangany/Kapcherop/891 and/or title numbers Cherangany/Kapcherop/2730 and 2731 were vested in his estate and any transaction that was conducted thereafter without representation, grant of letters of administration, confirmation of grant and transmission of the suit land was illegal, null and void and was to be declared as such;
  3. Failing to take into account and consider the provisions of Section 6 of the Land Control Act;
  4. Failing to hold that the purported agreement that had been produced by the 1<sup>st</sup> respondent's witness (DW3) was null and void because the requisite consent of the Land Control Board was not obtained within the given timelines of the said section of the Land Control Act;
  5. Failing to hold that there was no valid agreement or transaction between the 1<sup>st</sup> respondent and the deceased because the purported agreement did not involve the 1<sup>st</sup> respondent's registered trustee(s);
  6. Failing to interrogate/question the process and transactions leading upto and including the subdivision of land parcel 891, the closing of the said title on subdivision and the creation of land parcels 2730 and 2731 and the transfer of title No. 2731 into the name of the 1<sup>st</sup> respondent when its registered owner was already dead;
  7. Failing to appreciate that when title of the suit land was being questioned, the 1<sup>st</sup> respondent had the duty to show the chain of acquisition including all the steps and procedures of acquisition thereby arriving at a wrong/erroneous decision;



8. Only taking into account and consideration the provisions of Section 24 of the [Land Registration Act](#), 2012 and disregarding the exceptions given in Section 26(1)(a) and (b) of the same Act;
9. Failing to appreciate that title No. 2730 and 2731 were registered without the original title deed (Pexbt 5) having been surrendered to the lands office/registry;
10. Holding that the appellant had failed to prove his case on a balance of probabilities and dismissing the same and holding that the 1<sup>st</sup> respondent had proved its counterclaim on a balance of probabilities and granting it prayers (a), (b) and (d) of the counterclaim yet the appellant had proved his case as required in law.
13. The appellant prays that the appeal be allowed with costs; the judgment delivered on 12<sup>th</sup> August, 2024 by Hon. Karanja Virginia PM, in Iten SPMC No.1 of 2019 be set aside; judgment be entered in his favour against the respondents as prayed in the amended plaint and the counterclaim by the 1<sup>st</sup> respondent be dismissed with costs.
14. Pursuant to directions given on 27<sup>th</sup> March, 2025 the appeal was disposed of by way of written submissions.

## **Submissions**

### **Appellant's submissions**

15. In his submissions filed on 6<sup>th</sup> May 2025, the appellant on grounds 1, 2 and 6 of his memorandum of appeal, submitted that the learned trial magistrate erred in failing to uphold the provisions of the [Law of Succession Act](#). He submitted that the appellant had the legal capacity to represent the estate of his deceased father and he had discharged evidence in support of his claim vide his witness statement and documents produced. He submitted that Chepkieny Sipo (Sipo), who was the absolute owner of parcel Elgeyo/ Marakwet/891 (suit property) died intestate on 29<sup>th</sup> January, 2008 and no requisite grant was obtained in respect of his estate; that the new parcels to wit 2730 and 2731, were created from the suit property without a grant obtained in respect to it upon subdivision contravening the provisions of Section 45 of the [Law of Succession Act](#). He contested the authenticity of the title deed issued on 17<sup>th</sup> October, 2017 in respect to the suit property and submitted that the 1<sup>st</sup> respondent was registered as the owner of parcel 2731 without transmission. He contended that his claim before the trial court was based on illegalities and fraud perpetuated by the respondents and that during trial, the respondents merely denied their claim and did not produce any transfer document but that notwithstanding, the learned trial Magistrate decided the matter in their favour and faulted the appellant for not leading credible evidence on how the fraud was committed.
16. He further submitted that DW3 upon cross examination, admitted that Sibo did not sign any transfer forms; that by the time the supposed transfer and title deed was presented and issued, Sibo had died. DW5, the Land Registrar on cross examination, confirmed that presentation of the transfer and issuance of title deed were done after Sibo had died but stated that there is nothing wrong if the deceased executed documents before his death.
17. He submitted that only persons with a grant or any other legal authorization can deal with property of a deceased person to avoid intermeddling. He relied on the cases of *Gitau & 2 Others v Wandai & 5 Others* (1989) KLR 231 and *Wilson Nzuki Ayolo (deceased) Machakos High Court Probate and Administration Cause No. 152 of 2000*.



18. He further submitted that courts have held in several cases that transfers done after the death of a registered owner are a nullity as the estate of the deceased person can only have been dealt with under the Law of Succession. To buttress his point, he relied on the cases of *Elias & another v Hezekiah & 2 others* (Suing as the legal Representing and Administrators of the Estate of Kinga M'abira- Deceased) (Environment and Land Appeal 2 of 2022) [2023] KEELC 429 (KLR), *Zacharia Wambugui Gatimu v John Ndugu Maina* (2019) eklr and *Mary Watiri Mwangi* (suing as representatives of the estate of Kiburio Kamutu) v Timothy Kimani Kiburio [2018] eklr quoted the case of *Elias & another v Hezekiah & 2 others* (supra).
19. On grounds 3, 4, and 5, he submitted that the trial court erred in law and in fact in failing to hold that the purported agreements were void as the consent of the Land Control Board was not obtained timely. The appellant disputed the purported agreements produced by the 1<sup>st</sup> respondent because the contents vary and none of the registered trustees executed the purported agreements. It was his contention that these inconsistencies suggest that the agreement did not originate from the 1<sup>st</sup> respondent because such a transaction should have been done through an advocate given the magnitude of the organization. He further submitted that if indeed the agreements were valid, the consent ought to have been obtained within the set timelines from the Land Control Board. It was his contention that lack of consent made the transaction between Sipo and the 1<sup>st</sup> respondent void by operation of the law. He was guided by Section 6 of the *Land Control Act* and the cases of *Hirani Ngaithe Githire v Wanjiku Munge* [1979] eklr, *Silas Bartonjo Kiptala v James Kipkemboi Munei* [2013] eklr, *Willy Kimutai v Micheal Kibet* [2018] eklr, *Gabriel Makokha Wamukota v Sylvester Nyongesa Donati* [1987] eklr and *Nakuru Civil Appeal No. 84 of 2004 Fred C. Fedha & another and Edwin E. Asava Majani* (unreported).
20. On grounds 7, 8 and 9, he submitted that once a title deed is challenged, the burden to prove a title was acquired lawfully shifts to the owner who is required to demonstrate the chain of acquisition & procedure. The appellant submitted that no application for consent to transfer duly executed by the deceased and minutes of the Land Control Board were produced to support the purported transfer of the suit property and the letter of consent relied by the 1<sup>st</sup> respondent was ambiguous. They relied on the cases of *M'Mugwika M' Rugonga v Settlement Fund Trustee& another* [2022] eklr, *Botwa Farm Co. Ltd v Settlement Fund Trustee & another* [2019] eklr, *Daniel Maina Kibage (Duly Registered Attorney of Gabriel Githiga v Kenya Forest Services* [2018] eklr and *Munyu Maina v Hiram Gathiha Maina*, Civil Appeal No. 239 of 2009.
21. He further submitted that the court has power to revoke or nullify titles especially where obtained by fraud and relied on the cases of *Chemei Investments Limited v Attorney General & others Nairobi Petition No. 94 of 2005* (unreported) and *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eklr and on the case of *Bhimji Parbat Dharnji Kerai v Stephen Njoroge Mbonoh*, Civil Appeal No. 66 of 2016 to demonstrate that a transaction done after the demise of a party was not valid as it did not involve a transferor and a transferee.

### **1<sup>st</sup> Respondent's submissions**

22. In their submissions, the 1<sup>st</sup> respondent gave an elaborate background of the case and framed the following issues for determination;
  - a. Who is the owner of Cherangany/Kapcherop/271?
  - b. Whether the transfer and registration of Cherangany/Kapcherop/271 was fraudulent?
  - c. Whether Land Control Board consent was obtained and if not, whether failure to obtain Land Control consent within the requisite period invalidated the sale agreement?



- d. Whether the appellant can introduce new unpleaded issues at this stage?
- e. Who should pay costs of the appeal.
23. The 1<sup>st</sup> respondent submitted that the appellant had introduced new issues in his submissions particularly in paragraph 9 and urged the court to disregard them as they did not form part of their pleadings. They submitted that parties are bound by their pleading and relied on the cases of *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eklr, *Malawi Railways Ltd v Nyasulu* [1998] MWSC 3 cited with approval by the court of appeal in the case of *James K. Kamau v Nairobi City Council* [2018] eklr, *Galaxy Paints Co. Ltd v Falcon Guards Ltd* (2000) EA 885.
24. On who is the owner of Cherangany/Kapcherop/271, they submitted that it is not in dispute that Sibbo was the legal and registered owner of the suit property measuring 12 hectares and that he gave some land to the 1<sup>st</sup> respondent in 1997/1998 and subdivided the remaining land amongst his children including the appellant who was given 8 acres from parcel 891. Whilst the appellant alleged that only ½ acre was given to the 1<sup>st</sup> respondent, no evidence was adduced to support this averment. On the contrary, the 1<sup>st</sup> respondent had adduced evidence showing how they purchased the one acre from Sibbo which transaction was sanctioned by Sebo's family. They further submitted that DW3, confirmed that the full purchase price was paid in the year 2002 including a balance of Kshs 5,000/-. In response to the claim by the appellant that the agreements relied upon were wanting, they submitted that the agreements were duly executed and the signatures and thumb prints have not been challenged to date. They submitted that an agreement not done by an advocate does not negate it and in this case, the agreement was prepared and witnessed by the office of the president through the Chief Sengwer location and witnessed by village elders as evidenced by Dexbt 2.
25. They submitted that the appellant had not produced any documents to counter the 1<sup>st</sup> respondent's documents and averments. Ultimately, the evidence by DW4, the assistant chief, remains uncontroverted that the deceased sold 1 acre of the land to the 1<sup>st</sup> respondent.
26. On whether the transfer and registration of Cherangany/Kapcherop/271 was fraudulent, the 1<sup>st</sup> respondent submitted that the appellant had a duty to prove fraud and illegality on the part of the respondents. They submitted that the appellant pleaded particulars of fraud in his amended pleadings but failed to prove the same. The court cannot infer fraud from pleadings. Fraud must be proved to a standard above the balance of probabilities. They relied on the cases of *R.G Patel v Lalji MakanjI* (1957) EA 314 and *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eklr.
27. The further submitted that the 1<sup>st</sup> respondent's witnesses confirmed that the transfer and registration was legal. A mutation form (Dexbt1), was produced showing subdivision of parcel 2731 in the name of the 1<sup>st</sup> respondent with the deceased's thumbprint and minutes of 10<sup>th</sup> May, 2012 (Dexbt 11) showing consent was obtained on 24<sup>th</sup> April, 2002 and balance of the purchase price paid. It was submitted that fraud is a matter of evidence and the duty of proving the allegations of fraud lay squarely with the appellant which he failed to prove, therefore, the learned trial magistrate did not err in holding that the 1<sup>st</sup> respondent is the legal and registered owner of the suit property. They relied on the following cases; *Insurance Company of East Africa v The Attorney General & 3 Others* HCCC 135/1998, *Zaabwe v Orient Bank 7 others* SCCA NO. 4 OF 2006 as quoted in the case of *Joseph Mutuku Mwanthi & 6 Others v Aimi Ma Kilungu Company Limited* [2021] eklr, *Kampala Bottlers Ltd v Damanico (U) Ltd*, SCCA NO. 22 OF 1992 & *Kuria Kiarie and 2 Others v Sammy Magera* (2018) eklr. *Muthaura (suing as the personal representatives of the estate of Munene Mugo Ncacu- Deceased) v Mugo & another (Environment & Land Case 10 of 2020)* [2024] KEELC 3384 (KLR), *Mary Watiri Mwangi (Suing as the legal representative of the estate of Kiburio Kamutu) v Timothy Kimani Kiburio & 3 others* [2018]



KEELC 1426 (KLR), Kinyanjui Kamau v George Kamau [2015] eklr and Central Bank of Kenya v Trust Bank Limited & 4 others [1996] eklr.

28. On whether the Land Control Board consent was obtained and if not, whether failure to obtain Land Control Board consent within the requisite period invalidated the sale agreement, they admitted that the Land Control Board consent was obtained late as evidenced by DW3 and Dexbt 7 but submitted that voiding a transaction on account of the Land Control Board consent having been obtained late is an injustice on the purchaser. They relied on the case of Gabriel Makokha Wamukota v Sylvester Nyongesa Donati [1987] and submitted that failure to obtain Land Control Board consent within statutory timelines does not automatically render it void and unenforceable. They relied on the cases of Maina & 87 others v Kagiri (Civil Appeal 6,26 & 27 of 2011) [2014] KECA 880 (KLR) Kiplagat Kotut v Rose Jebor Kipngok [2019] eklr.

### **Analysis and determination**

29. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard, see *Selle & Another vs. Associated Motor Boat Co. Ltd* (1968) E.A 123 and *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga vs. Kiruga & Another* (1988) KLR 348.
30. As pointed out herein above, the appellant based his case on alleged fraudulent subdivision of the parcel of land known as Cherangany/Kapcherop/891 and transfer of one of the resultant parcels namely land parcel number Cherangany/Kapcherop/2731 to the 1<sup>st</sup> respondent. The appellant in his pleadings, acknowledged that the 1<sup>st</sup> respondent had interest in the original parcel of the land (Cherangany/Kapcherop/ 891) on account of what he calls donation of ½ an acre of land to the 1<sup>st</sup> respondent by his father (now deceased). The 1<sup>st</sup> respondent on the other hand, had pleaded that their interest in the suit property was on account of purchase of one acre of land from the original parcel of land from the appellant's father, a claim the appellant vehemently denied.
31. DW1 Emmanuel Suter Cheserek, informed the court that he participated in the survey process that resulted in the parcel of land owned by the 1<sup>st</sup> respondent.
32. DW2 John Kitur Kabellion, like DW1, informed the court that he participated in subdivision of the land in question.
33. DW3 Reuben Kipkorir Yego, informed the court that he was the Chairman of the 1<sup>st</sup> respondent Church in 1999. His testimony is to the effect that the parcel of land held by the church was given to the church as a gift by the appellant's father; that on the advice of the church's Father-In Charge the gift was converted into money resulting in a sale agreement being executed between the appellant's father and the leadership of the Church. Subsequently, a survey was conducted to carve out the portion given by the appellant's father. D.W.3 produced the following documents in support of the 1<sup>st</sup> respondent's defence and counterclaim:-
- i. Letter dated 1st April 1998 as Dexbt 1. The Letter indicates that the appellant's deceased father had agreed to sell to the 1<sup>st</sup> respondent 1 acre of land;
  - ii. Agreement between the appellant's father and 1<sup>st</sup> respondent's leadership gifting the church 1 acre of land from parcel number 891, dated 7th April, 1998 (Dexbt 2). The agreement is signed



- by the appellant's father and witnessed by several witnesses, among them the area chief (bears stamp of the area chief);
- iii. Letter from the area chief dated 31st September, 1999 (Dexbt 3). The letter is about postponement by the chief of a planned inspection of beacons at Kipsetan Catholic plot;
  - iv. Minutes dated 4th November 1999 (Dexbt 4). The minutes are about witnessing of survey of the church's plot out of land parcel number Cherangany/Kapcherop/891. In the minutes is a list of the people/persons who attended and witnessed the exercise. The size of land shown is indicated as 1 acre.
  - v. Acknowledgement note dated 9th November, 1999 (Dexbt 5) in which the appellant's father acknowledged having sold 1 acre to the church at Kshs. 20,000/-
  - vi. Application for consent of Land Control Board-Dmfi 6;
  - vii. Consent dated 29th December, 1999 (Dexbt 7).
  - viii. Title deed issued to the 1<sup>st</sup> respondent given on 17<sup>th</sup> October 2017 (Dexbt 8);
  - ix. Search Dexbt 9;
  - x. Minutes dated 8th May 2012 (Dexbt 10);
  - xi. Minutes dated 10th August, 2012 (Dexbt 11);
  - xii. Minutes dated 29th November, 2013 (Dexbt 12);
  - xiii. Letter dated 25th August 2014.
34. DW3 admitted that the appellant's father was deceased when the church obtained its title. He also admitted/acknowledged that mutation forms were signed when the appellant's father was already dead.
  35. In re-examination, DW3 informed the court that they had processed letters before the death of the appellant's father.
  36. DW4, Kitogom Kipsoo, informed the court that he was the area assistant chief in 1999; that on instruction of the area chief, he attended the survey process of the portion bought by the church and that the appellant and his family members attended the survey. On cross-examination, he maintained that he witnessed the subdivision of the original parcel of land.
  37. DW5 Ndege Tiberious, acknowledged that by the time the parcel held by the 1<sup>st</sup> respondent was transferred to the 1<sup>st</sup> respondent and got registered in its name, the appellant's father was deceased. That notwithstanding, he stated that there was nothing wrong with the transfer if the deceased executed the transfer documents before his death.
  38. DW5 stated that if he knew that the appellant was deceased at the time he processed the transfer in favour of the 1<sup>st</sup> respondent, he would not have processed it.
  39. Ideally, this is a case where the transfer effected in favour of the 1<sup>st</sup> respondent ought not to have been done as it was done at a time when the registered proprietor of the original parcel of land was dead.
  40. The Estate of the appellant's father was not involved in the transfer yet it ought to have been involved. Nevertheless, upon review of the totality of the evidence adduced in this case, I do find as a fact that the 1<sup>st</sup> respondent had acquired interest in the 1 acre that was transferred to it.



41. The evidence adduced by the 1<sup>st</sup> respondent shows that the process that culminated in the transfer of the portion of the original parcel of land transferred to it was sanctioned by the appellant's deceased father. In the circumstances, it cannot reasonably be said that the Estate of the deceased suffered any loss/prejudice on account of the apparent irregularity in the impugned transfer to warrant interference with the title deed issued to the 1<sup>st</sup> respondent.
42. Other than leading evidence showing that the title held by the 1<sup>st</sup> respondent was processed and issued at a time when his father was dead, the appellant did not demonstrate that the 1<sup>st</sup> respondent had no interest in the parcel of land transferred to it to warrant cancellation of the title on account of the irregularity in the impugned transfer.
43. The upshot of the foregoing is that the appellant has not made up a case for interference with the decision of the lower court. Consequently, I find the appeal lacking on merits and dismiss it.
44. On account of the apparent irregularity in the transfer, which in appropriate circumstances would have culminated in cancellation of the title issued in favour of the 1<sup>st</sup> respondent, I order parties to bear their costs of the appeal and of the suit in the lower court.
45. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**L. N. WAITHAKA**

**JUDGE**

Judgment delivered virtually in the presence of:-

N/A for the Appellant

Ms. Sang holding brief for Ms. Rotich for the 1<sup>st</sup> Respondent

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent

Court Assistant: Christine

