

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC APPEAL NO. E041 OF 2022**

**MAGANJO & COMPANY LIMITED.....1<sup>ST</sup>**

**APPELLANT**

**PETER KARANJA THUO.....2<sup>ND</sup>**

**APPELLANT**

**HANNAH WANJIRU THUO.....3<sup>RD</sup>**

**APPELLANT**

**HAMUD MOHAMED OSMAN.....4<sup>TH</sup>**

**APPELLANT**

**VERSUS**

**NJOGU MAREGWA**

**NDAMBIRI MAGU**

**SAMUEL GITHINJI (Legal Representative of MAGU  
RUTERE)**

**WILFRED NJOGU MWANIKI (Legal Representative of  
MWANIKI MIANO)**



***evidence to enter judgement in favour of the Plaintiffs.***

***2. The Learned trial Magistrate erred in both law and in fact by entering judgement in favour of the Plaintiffs (Respondents herein) based on matters that had not been pleaded or tendered in evidence.***

***3. The Learned trial Magistrate erred in both law and in fact by ignoring evidence tendered by the Defendants (Appellants herein) and solely relying on evidence tendered by the Plaintiffs.***

***4. The Learned trial Magistrate erred in both law and in fact by being biased in favour of the Plaintiffs instead of applying the law to all parties equally.***

***5. The Learned trial Magistrate erred in both law and in fact in entertaining extraneous matters that were not relevant to the case.***

***6. The Learned trial Magistrate erred in both law and in fact in disregarding and or failing***

***to accord the necessary consideration to the evidence by the Appellants.***

3. This Appeal was canvassed by way of written submissions.

**The Appellant's Submissions.**

4. On whether the learned Trial Magistrate erred in entering judgement in favour of the Respondents on matters that had not been pleaded, counsel submitted that the issue of validity of contract was not raised in the Further Amended Plaintiff but the trial court made a determination on it. It was argued that parties were not given an opportunity to litigate on the issue of the validity of contract therefore disadvantaging the Appellants. It was an error for the learned Trial Magistrate to base the judgement on an issue that was not ventilated, and the suit should be remitted back to the lower Court for re-trial.

5. On whether the learned Trial Magistrate disregarded evidence tendered by the Appellants and solely relied on evidence tendered by the Respondents, counsel submitted that the Appellants accused the Respondents of fraud and submitted evidence to this effect such as the letter dated 8<sup>th</sup> December 2011 from the Town Clerk addressed to Maganjo &

company, the letter dated 16<sup>th</sup> March 2012 from the DCI Kajiado in response to the letter dated 20<sup>th</sup> January 2012. It was submitted that the 3<sup>rd</sup> Respondent gave the 4<sup>th</sup> Appellant documents for both Maganjo & Company as well as Maganjo & Company Limited and to a lay person, there was no difference in the two names. Therefore, evidence tendered at the lower Court showed that the 4<sup>th</sup> Appellant was an innocent purchaser as defined in **Lawrence Mukiri vs Attorney General and 4 others [2013] eKLR**. It was also their submission that the 4<sup>th</sup> Appellant was very familiar with Magu Rutere and his children since he was a young boy and after he purchased the property, Magu introduced him to the tenants and he started collecting rent. The issue of the difference in identity card number, was also submitted to have been an erroneous mistake on the part of 4<sup>th</sup> Appellant. As such, the 4<sup>th</sup> Appellant was not involved in any fraud in the purchase of the suit property and none was proven as per the standards held in **Evans Kidero vs Speaker Nairobi County Assembly and another (2018) eKLR**

6. They urged that Appeal should therefore be allowed as prayed together with costs.

### **Submissions of the Respondents**

7. The Respondent claims that they were the registered owners of plot No. 14 Majengo A Kajiado Township and put up a temporary house which was generating Kshs. 24,000 each month. However, sometime in 2011 they were stopped by the 4<sup>th</sup> Appellant who claimed ownership of the suit plot having purchased it from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants, and later stated that he purchased it from one Magu Rutere. The Respondents claim that the owner of the land is Maganjo & Company and not Maganjo & Company Limited (the 1<sup>st</sup> Appellant). Therefore, any transaction from the 1<sup>st</sup> Appellant was fraudulent. It was also their submission that the rates clearance certificate issued to the 1<sup>st</sup> Appellant on 27<sup>th</sup> March 2006 was erroneous because it was issued before the 1<sup>st</sup> Appellant became a registered entity. It was also their submission that the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants were charged at Kibera Law Courts **Criminal Case No. 40 of 2013** for charges on

conspiracy to defraud, giving false information to a person employed in the public office and stealing.

8. It was further submitted that one Magu Rutere of ID No. 0088126, the one the 4<sup>th</sup> Appellant claims to have paid Kshs. 450,000 was different from Magu Rutere, father to Samuel Githinji one of the Respondents whose ID No. was 0088128. Counsel also submitted that the 4<sup>th</sup> Appellant did acknowledge that there was a difference between Maganjo & Company Ltd and Maganjo & Company, and that had he known this, he would not have been involved in the transaction. As such, the Appellants fraudulently used the Respondent's documents to effect a transfer to the 4<sup>th</sup> Defendant. Counsel went on to submit that the purported agreement between the Appellants was not attested and questioned whether one of the parties who signed the agreement using his thumbprint was aware of its content.

9. From the above, counsel submitted that the Appellants did not prove their validity of the suit property and the learned Trial Magistrate correctly entered judgement in favour of the Respondents because the suit property was never the . Reference was made to the cases of **CMC**

**Aviation Ltd. vs. Cruisair Ltd. (No. 1) [1978] KLR 103; [1976 80] 1 KLR 835; Robert Ngande Kathathi v Francis Kivuva Kitonde [2020] eKLR and Kenya Refuse Handlers Limited v City Council of Nairobi [2019] eKLR.**

### **Analysis and Determination**

10. The Appellants, raised six grounds of Appeal. Which can be compressed into the following issues;

- i. Whether the Learned trial Magistrate erred in both law and in fact by relying on hearsay evidence to enter judgement in favour of the Plaintiffs.***
- ii. Whether the Learned trial Magistrate erred in both law and in fact by entering judgement in favour of the Plaintiffs (Respondents herein) based on matters that had not been pleaded or tendered in evidence.***
- iii. Whether the Learned trial Magistrate erred in both law and in fact in entertaining extraneous matters that were not relevant to the case.***
- iv. What orders should issue?***

**v. Who should bear costs of this Appeal?.**

11. This being a first Appeal, the court must conduct a fresh and independent evaluation of the entire evidence adduced before the trial court while bearing in mind, that it did not hear or observe the witnesses.

See **Richard Wefwafwa Songoi Vs. Ben Munifwa Songoi (2020) KECA 942 (KLR)** where it was stated thus;

**“In Selle Vs. Associated Motor Boat co. (1968) EA 123, it was stated thus;**

**“-----Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.....”**

12. Through the **Further Amended Plaintiff** dated **22<sup>nd</sup> October 2021**, the Respondents claim that plot No. 14 Majengo A Kajiado Township was duly allotted to them through Maganjo and Company. The Letter of Allotment which was in possession of the 3<sup>rd</sup> Respondent (Magu Rutere) got lost and a report was made at Upper Hill Police

Station in the year 2009. In 2011 as they were erecting a fence on the suit property, they were stopped by police officers on the claim that the plot belonged to the 4<sup>th</sup> Appellant having purchased it from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants. It was their claim that they had not sold the plot to anyone and they filed a report at the Land Fraud Investigation department at the Directorate of Criminal Investigations.

13. These investigations revealed that the 2<sup>nd</sup> Appellant while employed by the Respondents stole the documents relating to the suit property and conspired with the 3<sup>rd</sup> Appellant to incorporate the 1<sup>st</sup> Appellant which was trading in a name similar to the 1<sup>st</sup> Respondent. It is their case that this was fraudulently done because the Registrar of Companies should not have approved the name for registration.

14. Further that the transfer and allotment of plot No. 14 was illegally done and the 4<sup>th</sup> Appellant did not have legal claim over it. They sought a declaration that as the bonafide owners and the letter of allotment issued to the 4<sup>th</sup> Defendant to be cancelled. They also sought that the Appellants be restrained from interfering with the suit

property in any manner. They also sought general damages as well as special damages for Kshs. 650,000 as rental income of Kshs. 24,000 per month from the year 2011.

15. The Appellants in their Statement of Defence denied the allegations stating that the 4<sup>th</sup> defendant purchased the suit property on 18<sup>th</sup> December 2008 and the purchase price paid to the 3<sup>rd</sup> Respondent in presence of the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants. Therefore the claim that Letter of Allotment was lost was false because the original Letter of Allotment was surrendered to OlKejuado Town Council and the suit transferred to the 4<sup>th</sup> Appellant. They urged the court to dismiss the suit.

16. One of the witnesses, was Corporal Samuel Kamau, attached at the Directorate of Criminal Investigations who stated that he carried out investigations into the alleged fraud and later charged the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants with a criminal offence. He stated that the 4<sup>th</sup> Appellant was innocent because he was duped into buying the plot.

17. PW2 in her testimony stated that their company was Maganjo and Company while the company that sold the suit property was Maganjo and Company Limited. It was

her testimony that the 2<sup>nd</sup> and 3<sup>rd</sup> Appellant's father and husband respectively were partners in Maganjo and Company. PW3 Samuel Githinji acknowledged that his father the late Magu Rutere was the custodian of the 1<sup>st</sup> Respondent's documents (Maganjo & Co) which got lost at some point. He stated that the late Magu Rutere could neither read nor write and therefore was not aware of the sale agreement with the 4<sup>th</sup> defendant. It was his testimony that the 2<sup>nd</sup> Appellant and his father- Magu Rutere were close friends.

18. The 4<sup>th</sup> Appellant in his testimony stated that the documents in his possession for the suit property were given to him by the 2<sup>nd</sup> Appellant with authority from one Magu Rutere. He further stated that upon purchase of the suit property, the said Magu Rutere handed over the tenants residing thereon to him before relocating to his rural home. On cross examination it was his testimony that he believed the 4<sup>th</sup> Respondent and the 1<sup>st</sup> Appellant were the same entity and since Magu Rutere referred him to the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants, he had no reason to doubt the transaction. He also confirmed that the receipt dated 27<sup>th</sup> March 2006 was in the name of the 1<sup>st</sup> Appellant

although the Certificate of Incorporation showed that the company was incorporated on 13<sup>th</sup> November 2007. It is on record that he stated, ***“Yes, letter of allotment issued to the 4<sup>th</sup> plaintiff was on 13<sup>th</sup> May 1992 but I didn’t notice that I was equally duped by the 2<sup>nd</sup> Defendant...”***

19. The Learned Trial Magistrate in her judgement found that the Plaintiffs (the Respondents herein) were the bona fide owners of plot No. 14 Majengo A Kajiado Township and that the letter of allotment issued to the 4<sup>th</sup> Defendant (the 4<sup>th</sup> Appellant herein) be recalled and cancelled.

20. Having reviewed the evidence on record as well as witness statements, it is not in contention that the 1<sup>st</sup> Appellant and the 4<sup>th</sup> Respondent are two different entities. That is **Maganjo and Company Limited vis a vis Maganjo and Company**. It is on record that the suit property Plot No. 14 Majengo A Kajiado Township was first allotted to Maganjo and Company on 13<sup>th</sup> May 1992. However on 30<sup>th</sup> December 2006, Maganjo and Company Limited applied for a transfer of the suit property. There is no evidence showing how the suit property changed hands from Maganjo and Company to Maganjo and Company

Limited. It is also on record that the said Maganjo and Company Limited was incorporated on 13<sup>th</sup> November 2007. It is therefore not clear how the plot was registered in favour of a company that was non-existent at the time of registration.

21. It is also on record that investigations were conducted into the sale and transfer of the suit plot to the 4<sup>th</sup> Appellant and criminal charges preferred against the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants.

22. It is now well settled that the end result in land transactions is as good as the process. If the process is flawed, then the end result would be equally flawed. This was the Court of Appeal's holding in **Munyu Maina v Hiram Gathiha Maina [2013] KECA 94 (KLR)**:

***“... when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any***

***encumbrances including any and all interests which need not be noted on the register...***

23. It is clear that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Appellants impersonated the Plaintiffs' business name and its partners by selling, receiving money for sale and authorizing money for sale and authorizing the transfer of the suit property purporting it is the 1<sup>st</sup> Appellant's Company name knowing very well they were not lawfully and legally entitled to do so. They held themselves out as the lawful owners of the suit property whereas it was allocated to the 1<sup>st</sup> Respondent.

24. The Learned Trial Magistrate rightly found that fraud had been proved against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Appellants.

The Learned Trial Magistrate also correctly held that 2<sup>nd</sup>, 3<sup>rd</sup> Appellants being the sole directors of the 1<sup>st</sup> Appellant decided to dispose of the suit property barely one year after the 1<sup>st</sup> Appellant had been registered.

25. I am of the view that the Learned Trial Magistrate exercised her discretion properly by finding in favour of the Respondents herein.

26. I find that the Learned Trial Magistrate considered all the evidence and arguments of the parties and applied the

relevant law properly before reaching her conclusion. I find no basis to interfere with the said Judgement.

27. In conclusion, the Appeal is found to be without merit. The same is dismissed with costs to the Respondents.

**Dated, Signed and Delivered virtually at Kajiado this 16<sup>th</sup> day of October, 2025.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF.**

Mr. Ibrahim Mwangi for the Appellants.

Mr. Mugo for the Respondents.

Peter - Court Assistant.