



Prudential Capital Limited & another v Mukiti (Suing as Personal Representative of the Estate of Stephen Musyoka Maweu - Deceased) (Environment and Land Appeal E067 of 2023) [2025] KEELC 7407 (KLR) (27 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7407 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E067 OF 2023
JM ONYANGO, J
OCTOBER 27, 2025**

BETWEEN

PRUDENTIAL CAPITAL LIMITED 1ST APPELLANT

PIONEER FSA 2ND APPELLANT

AND

WAWIA MUKITI (SUING AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STEPHEN MUSYOKA MAWEU - DECEASED) RESPONDENT

(Being an appeal from the Ruling delivered by Hon. J.A. Agonda (Principal Magistrate) on 2nd November 2023, in Ruiru ELC Suit No. E101 of 2022.)

JUDGMENT

(Being an appeal from the Ruling delivered by Hon. J.A. Agonda (Principal Magistrate) on 2nd November 2023, in Ruiru ELC Suit No. E101 of 2022.)

JUDGMENT

1. Mercy Wawia Mukiti, the Respondent herein, was the Plaintiff in Ruiru ELC Suit No. E101 of 2022, where she filed a suit against Prudential Capital Limited and Pioneer FSA (the 1st and the 2nd Appellants herein), who were the 1st and 2nd Defendants in the lower court, seeking the following reliefs:-
 - a. A Declaration that Stephen Musyoka Maweu's Estate as the rightful owner of that parcels of land known as Ruiru/Ruiru East/Block 2/36707, Ruiru/Ruiru East/Block 2/36709.
 - b. An order compelling the Defendants to process the title deeds for land parcel numbers Ruiru/Ruiru East/Block 2/36707, Ruiru/Ruiru East/Block 2/36708 and Ruiru/Ruiru East/Block



2/36709 in the name of the Plaintiff who is the legal representative of the Estate of Stephen Musyoka Maweu (Deceased), as per the confirmed grant dated 16th March 2022.

- c. That in the alternative, an order directing the executive officer to execute all the documents required for the successful transfer of land parcels Ruiru/Ruiru East/Block 2/36707, Ruiru/Ruiru East/Block 2/36708 and Ruiru/Ruiru East/Block 2/36709 in the name of the Plaintiff.
 - d. An order directing the Land Registrar, Ruiru Lands Registry to issue titles in the name of the Plaintiff for Land Parcels Ruiru/Ruiru East/Block 2/36707, Ruiru/Ruiru East/Block 2/36708 and Ruiru/Ruiru East/Block 2/36709.
 - e. A permanent injunction restraining the Defendants, either by themselves, their agents and/or representatives, from trespassing, transferring to a third party, or interfering with records or in any way whatsoever interfering with records in any way whatsoever interfering with all the Plaintiff's proprietary rights over land parcel numbers Ruiru/Ruiru East/Block 2/36707, Ruiru/Ruiru East/Block 2/36708 and Ruiru/Ruiru East/Block 2/36709.
 - f. Any other order that the honourable court deems fit in ensuring that the ends of justice are met.
 - g. General damages.
 - h. Costs of the suit and interest.
2. The Respondent filed the suit at the trial court in her capacity as the legal representative of the Estate of her late husband, Stephen Musyoka Maweu. Her case was that her late husband purchased three parcels of land from the 1st Appellant, which also traded under the name of the 2nd Appellant. She explained that her husband had built a house on one of the parcels where she resided and cultivated the remaining two. She contended that although her husband had fully paid for the plots through sale agreements executed between 2016 and 2021, he passed away before title deeds were issued. After obtaining and confirming a grant of letters of administration, she wrote to the Appellants requesting that the titles be processed in her name, but they ignored her requests. She expressed concern that the Appellants intended to transfer the properties to third parties and maintained that despite her willingness to meet the costs, they had refused to issue the titles, thereby causing her loss and frustration. She therefore sought orders compelling the Appellants to process and transfer the titles in her name as the Administrator of her late husband's Estate.
3. The Appellants entered appearance and filed a Statement of Defence dated 17th January 2023. The Appellants admitted that the late Stephen Musyoka Maweu had entered into sale agreements with the 1st Appellant for the purchase of the suit properties. However, they denied the Respondent's allegations that the parcels had been subdivided or that the Appellants had refused to process titles. They maintained that the deceased had not completed payment of the full purchase price and other incidental costs, including legal fees, and that title deeds could not therefore be issued.
4. The Appellants further stated that according to the company records, the deceased had indicated that he was single and had listed his mother, Margaret Maweu, as his next of kin, and that the Respondent's claim to be his spouse was unknown to them and unsubstantiated. They denied ever receiving any correspondence or demand from the Respondent or her advocates regarding the processing of titles and asserted that they had always conducted their business lawfully and diligently. The Appellants



- contended that the Respondent's suit was based on falsehoods, material non-disclosure, and lack of proof, and that she had no legal or beneficial right to claim the suit properties.
5. The parties recorded a Consent dated 25th April 2023, which was adopted as an order of the court on 26th April 2023. The terms of the Consent Order were as follows:
 - i. That the Respondent to pay a sum of Kenya Shillings One Hundred and Sixty Thousand only (Ksh 160,000) as titles processing fees.
 - ii. That the Appellants to process title numbers Ruiru/Ruiru East Block 2/36707, Ruiru/Ruiru East Block 2/36708 and Ruiru/Ruiru East Block 2/36709 in the name of the Respondent within thirty (30) days.
 - iii. That once the titles are out in the name of the Respondent, the matter may be marked as settled with no orders as to costs.
 - iv. That the matter be mentioned in early June 2013 to confirm titles are out and mark the matter as settled. (sic)
 - v. That mention 5/6/2023 for compliance.
 6. Subsequently, the Appellants filed a Notice of Motion application dated 31st August 2023 seeking inter alia to set aside the Consent Order and all consequential orders relating to Land Parcel Number Ruiru/Ruiru East Block 2/36707.
 7. The Appellants stated that following the adoption of the consent orders by the trial court, they conducted an internal audit of the company's property transactions, which revealed irregularities in the processing of titles and instances where titles had been released without full payment. They explained that certain employees were implicated in the fraudulent activities and were subsequently dismissed. The Appellants contended that, according to their records, the deceased had paid only Kshs. 469,000 out of the agreed purchase price, leaving an outstanding balance of Kshs. 230,000, which remained unpaid to date.
 8. They asserted that they had repeatedly requested the Respondent to produce proof of payment, such as receipts or bank statements, but she had failed to do so. The Appellants argued that the consent order as adopted would occasion them great hardship, financial loss, and injustice, amounting to unjust enrichment of the Respondent, contrary to the principles of equity and good conscience.
 9. The Respondent opposed the application through Grounds of Opposition dated 18th September 2023. The Respondent opposed the Application, contending that it lacked merit, was not arguable, and fell well within the court's jurisdiction to dismiss. She maintained that the consent judgment, having contractual effect, could only be set aside on grounds that would justify rescission of a contract, such as fraud, collusion, or misrepresentation, none of which had been demonstrated by the Applicant.
 10. The Respondent further asserted that the Application was misconceived, incompetent, and an abuse of the court process, meant only to delay and frustrate her enjoyment of property rights guaranteed under Article 40 of *the Constitution*. She added that upon adoption of the consent order, the court became functus officio and thus lacked jurisdiction to reopen the matter. In her view, the Application for stay and setting aside of the consent order was frivolous, vexatious, and a waste of judicial time.
 11. The application was canvassed through written submissions. Upon considering the application, the response to the application and the parties' respective submissions, the trial court delivered the impugned Ruling on 2nd November 2023.



12. The trial court held that the consent order recorded on 26th April 2023 was valid, binding, and entered into freely by both parties and their advocates. It found that the Appellants had not demonstrated any sufficient grounds such as fraud, collusion, mistake, or misrepresentation to justify setting aside the consent. The court noted that if the Appellants were opposed to the consent, they should have raised an objection immediately instead of waiting for five months before filing the application. It emphasized that the alleged oversight by the Appellant in reconciling the accounts did not amount to a valid reason to invalidate a consent order.
13. The trial court further held that since the consent had been duly adopted as an order of the court, it could not be varied or discharged at the whim of either party. The court therefore dismissed the Notice of Motion dated 31st August 2023 with costs to the Respondent and directed the Appellants comply with the terms of the consent within 21 days, failing which the Respondent would be at liberty to seek appropriate remedies.
14. Being dissatisfied with the Ruling of the trial court, the Appellants filed this appeal raising 7 grounds of appeal claiming that the trial magistrate erred in law and fact by:
 - i. That the Learned Magistrate erred in law and in fact in failing to find that a consent order can and may be set aside when a party to the consent order discovers there was either fraud, mistake and or misrepresentation on the material facts that gave rise to the consent.
 - ii. That the Learned Magistrate erred in law and in fact in failing to find that in the appellant's audit established there has been collusion between some of the Appellants employees and some purchasers whereby titles are released without payment of the full purchase price thus causing losses to the appellants and indeed some employees were summarily dismissed due to the said fraudulent actions.
 - iii. That the Learned Magistrate erred in law and in fact in failing to find that the appellants had a very good reason for seeking setting aside the consent order adopted as an order of the court on 26th April, 2023 as based on the documents and other evidence availed there was no full payment of the purchase price for the subject plot as indeed there was no evidence adduced by the Respondent to counter the evidence of the appellant.
 - iv. That the Learned Magistrate erred in law and in fact in failing to find that the total sum paid by the deceased was only Kshs.469,000/= based on the evidence adduced thus leaving an outstanding sum of Kshs.230,000/= which has not been paid to date.
 - v. That the Learned Magistrate erred in law and in fact in failing to find that Appellants severally demanded that the Respondent avails the receipts or bank statements showing that the husband (deceased) had settled the entire purchase price as she had intimated but which proof of payment was never availed hence the Magistrate's orders amount to unjust enrichment of the Respondent as she wants to get the subject property without having made the full payment for the same.



- vi. That the Learned Magistrate erred in law and in fact in failing to find that the Appellants' Statement of Account proves the balance of Kshs 230,000 was due and owing from the Respondent.
- vii. That the Learned Magistrate erred in law and in fact in failing to find that the Consent Order had occasioned great hardship, inconvenience and financial loss to the Appellants and amounts to using the court for unjust enrichment by the Respondent which the courts have always frowned upon.

Appellants' Submissions

15. The appeal was canvassed by way of written submissions. The Appellants filed written submissions dated 1st July 2025 through the firm of M/s H.T & Associates Advocates. Counsel for the Appellants sequentially submitted on each of the grounds of appeal.
16. On ground one, counsel submitted that the learned magistrate erred both in law and in fact by failing to appreciate that a consent order could be set aside where it was obtained through fraud, mistake, or misrepresentation of material facts. He relied on the decision in *Flora N. Wasike v Destimo Wamboko* [1988] eKLR in support of his submission. Counsel defined "fraud," "misrepresentation," and "mistake" using Black's Law Dictionary, noting that each entails deception or misunderstanding sufficient to invalidate consent. He argued that the learned trial magistrate failed to consider that the Appellants entered into the consent on the mistaken belief that the Respondent's late husband had cleared the full purchase price, yet their subsequent audit revealed an outstanding balance of Kshs. 230,000. He maintained that the magistrate ignored clear evidence of misrepresentation by the Respondent.
17. On the second ground, counsel contended that the trial court erred in disregarding the audit report and bank statements produced by the Appellants, which demonstrated collusion between some of their employees and purchasers leading to release of titles before full payment. He cited the magistrate's observation that the Appellant ought to have done due diligence but argued that this reasoning ignored the probative value of the evidence on record. According to counsel, the audit revealed that the deceased purchaser had only paid Kshs. 469,000 of the Kshs. 699,000/= purchase price. He maintained that this finding of partial payment, coupled with the audit's discovery of fraudulent internal practices, should have persuaded the trial court that the consent was entered into under mistake and should therefore have been set aside.
18. On ground three, submitted that the learned magistrate failed to appreciate that the Respondent had not discharged the burden of proving that her late husband had fully paid the purchase price. He noted that the Respondent merely asserted that the payment had been made but failed to produce any documentary proof. Counsel relied on Sections 107 and 109 of the *Evidence Act*, arguing that the party alleging a fact must prove its existence. He maintained that the trial court erroneously relied solely on the Respondent's averments without requiring supporting evidence, contrary to the law on evidentiary burden.
19. On ground four, counsel argued that the trial court misdirected itself on the shifting nature of the evidentiary burden. Citing *Ogutu vs Budaha*[2024] eKLR, he submitted that once the Appellants adduced statements of account showing the outstanding balance, the evidentiary burden shifted to the Respondent to rebut that evidence. Her failure to provide receipts or bank statements demonstrating full payment meant that the Appellants' evidence remained uncontroverted. He emphasized that the Respondent's unsupported assertions could not outweigh the Appellants' documentary evidence.
20. On ground five, counsel submitted that the magistrate failed to appreciate



that upholding the consent order amounted to unjust enrichment on the part of the Respondent, who sought to retain the property without clearing the full purchase price. He pointed out that the Appellants had repeatedly demanded proof of full payment, but the Respondent did not produce any receipts or statements. He argued that as the administrator of the deceased's estate, the Respondent was in a position to access bank records, and her failure to produce them should have been construed against her. He maintained that the Respondent's actions demonstrated an intent to benefit unjustly from the consent order.

21. On ground six, counsel contended that the trial magistrate failed to properly consider the statement of account annexed to the Appellants' application, which clearly showed that a balance of Kshs. 230,000 remained unpaid. He maintained that once the Appellants adduced this evidence, the evidentiary burden shifted to the Respondent to disprove it. Her failure to do so, he argued, rendered her allegations unsubstantiated. Counsel maintained that the magistrate's disregard of the statements of account led to an erroneous finding.
22. Finally, on ground counsel submitted that the consent order occasioned undue hardship, financial loss, and injustice to the Appellants. He argued that the magistrate erred in dismissing their application despite clear evidence of mistake and misrepresentation that led to the adoption of the consent. Counsel maintained that the Respondent's refusal to produce proof of payment, coupled with her reliance on the consent to retain the property, demonstrated an intention to use the court process for unjust enrichment. He urged that the court should have found that the circumstances warranted setting aside the consent order.
23. In conclusion counsel urged this court to set aside the ruling of the Principal Magistrate delivered on 2nd November 2023 in Ruiru ELC Case No. E101 of 2022 and substitute it with an order allowing the Appellants' Notice of Motion dated 31st August 2023 to set aside the consent judgment.

Respondent's Submissions

24. The Respondent filed submissions dated 29th July 2025. She identified the following two issues for determination: (i) whether the Consent Judgment was valid and binding; and (ii) whether the Appellants demonstrated sufficient legal grounds to warrant setting aside the Consent.

Whether the Consent Judgment Was Valid and Binding

25. The Respondent submitted that the consent judgment recorded on 26th April 2023 was valid, binding, and lawfully entered into by both parties. She contended that the Appellants had failed to demonstrate fraud or mistake as alleged, since they bore the legal duty to prove such allegations strictly. It was her position that the Appellants had reviewed their own records before entering into the consent, and even acknowledged that the deceased purchaser had fully paid the purchase price, with only Kshs.160,000 being required for title deed processing fees which the Respondent duly paid.
26. The Respondent further argued that the Appellants' claim of a mistake in their records was baseless because they solely managed the deceased's savings account, and therefore any discrepancy in the balances could only arise from their own mismanagement. She maintained that the Appellants were not a licensed financial institution and thus their alleged savings records could not be independently verified. The Respondent stated that the Appellants' late discovery of an alleged balance could not invalidate the consent, especially where they had the opportunity to audit their accounts before execution.
27. She further submitted that where fraud is alleged, the same must be reported to the police and investigated by the relevant authorities such as the DCI. She added that the Appellants had produced



no such report, investigation, or charge to substantiate their claims. She argued that the allegation of fraud was speculative and unsupported by evidence. Relying on the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR, she emphasized that fraud must be pleaded and strictly proved to a standard higher than on a balance of probabilities but not as high as beyond reasonable doubt. The Respondent therefore urged that the Appellants had failed to meet this legal threshold.

28. She also cited *Intercountries Importers & Exporters Ltd v Teleposta Pension Scheme* [2019] eKLR and *Samson Munikah & Co. Advocates v Wedube Estates Ltd* [2007] eKLR to reinforce that a consent order may only be set aside on grounds of fraud, mistake, or misrepresentation. In her view, the Appellants had shown none of these grounds. She added that the deceased's title had not even been released, meaning the alleged fraudulent category of released titles did not apply to this case.

Whether the Appellants Demonstrated Sufficient Legal Grounds to Warrant Setting Aside the Consent

29. The Respondent argued that the Appellants had failed to demonstrate any sufficient cause to set aside the consent order. She asserted that the property in question had been purchased by the deceased, and the Respondent was not privy to the initial transaction. The documents available to her indicated that the deceased had cleared the full purchase price, and the Appellants had confirmed this position at the time of entering into the consent.
30. She relied on *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334 to emphasize that the legal burden of proof lies with the party who alleges a fact and wishes the court to believe it. She also invoked Sections 107, 108, and 109 of the *Evidence Act* (Cap. 80) to argue that the evidentiary burden rested squarely upon the Appellants, who had failed to produce any documentary proof to rebut her averments.
31. The Respondent further submitted that consent judgments have the same effect as contracts and may only be interfered with on the same grounds that justify setting aside a contract. Citing *Flora Wasike vs Destimo Wamboko* [1988] KLR 429, *Kenya Commercial Bank Ltd vs Specialized Engineering Co. Ltd* [1982] KLR 485, and *Purcell vs F.C. Trigell Ltd* [1970] 2 All ER 671, she argued that since the consent was voluntarily executed by both parties and duly adopted by the court, the Appellants could not later renege merely because of an internal oversight. She further referred to *Euromec International Ltd vs Shandong Taikai Power Engineering Co. Ltd* [2021] eKLR, emphasizing that once a party signs a document, they are presumed to have intended to be bound by it.
32. She maintained that the Appellants were attempting to rewrite the consent to extract an undue benefit, contrary to the principle of sanctity of contracts. To buttress this position, she relied on *National Bank of Kenya Ltd vs Pipe Plastic Samkolit (K) Ltd* [2002] 2 EA 503 and *Pius Kimaiyo Langat vs Co-operative Bank of Kenya Ltd* [2017] eKLR.
33. In conclusion, the Respondent stated that the Appellants had failed to discharge the evidential and legal burden required to set aside a consent judgment. She described the appeal as frivolous and vexatious, arguing that it sought to undermine the finality of litigation and the sanctity of court-recorded consents. She urged the court to dismiss the appeal with costs.

Analysis and Determination

34. I have carefully considered the Record of Appeal, the Ruling of the learned trial magistrate, the Memorandum of Appeal, the rival submissions filed by counsel for the Appellants and the Respondent, as well as the applicable law and authorities cited. From the pleadings, evidence, and submissions, this court distills the main issue for determination as whether the learned Magistrate erred



in law and in fact by declining to set aside the consent order adopted by the trial court on 26th April 2023.

35. It is trite that a consent judgment or order is binding upon the parties in the same way as a contract. The principles governing the setting aside of consent orders were clearly laid out in *Flora N. Wasike vs Destimo Wamboko* [1988] eKLR and *Brooke Bond Liebig (T) Ltd vs Mallya* [1975] EA 266, where the courts held that a consent judgment may only be set aside on grounds of fraud, collusion, misrepresentation, mistake, or for any reason that would enable a court to set aside a contract. Similarly, in *Kenya Commercial Bank Ltd vs Specialized Engineering Co. Ltd* [1982] KLR 485, the Court of Appeal emphasized that a consent order, once entered into voluntarily by parties and adopted by the court, cannot be rescinded merely because one party has changed its mind or discovered new facts it could have verified before execution.
36. The Appellants' case is anchored on the assertion that the consent was entered into under a mistaken belief that the Respondent's late husband had fully paid the purchase price for the suit property, whereas an internal audit conducted later revealed that a balance of Kshs. 230,000 remained unpaid. They further allege that certain employees colluded with purchasers to release titles without full payment, thus causing losses to the company.
37. The Respondent, on the other hand, maintains that the consent was voluntarily executed after negotiations, that she and her late husband had complied with all payment obligations, and that the Appellants' subsequent claims are merely an afterthought aimed at defeating her proprietary rights under Article 40 of *the Constitution*.
38. This Court reiterates that the jurisdiction to interfere with a consent order is a narrow one, to be exercised only where strong and cogent evidence demonstrates that the consent was obtained through fraud, misrepresentation, or mistake.
39. In the present case, while the Appellants rely on an internal audit and a statement of account indicating an outstanding balance, there is no evidence that the Respondent or her late husband concealed material facts or made false representations during the negotiations that led to the consent. The audit findings were made long after the consent had been adopted as a court order, and no affidavit from the alleged rogue employees or bank verification report was produced to substantiate the claim of collusion. The failure by the Appellants to conduct proper due diligence before entering into the consent cannot be equated to fraud or misrepresentation by the Respondent.
40. Further, under sections 107 to 109 of the *Evidence Act* (Cap. 80), the burden of proof lies on the party asserting the existence of a fact. Once the Appellants alleged that the consent was procured through mistake or fraud, it was incumbent upon them to provide credible and verifiable evidence of such conduct. Their failure to do so renders the claim unproven.
41. Even assuming there was a genuine dispute regarding the balance of the purchase price, that issue could have been addressed through a substantive recovery suit rather than by impeaching a validly entered consent. As stated by the Court of Appeal in *Flora Wasike vs Destimo Wamboko* (supra), courts must uphold the sanctity of consents as instruments of compromise, which form the backbone of efficient dispute resolution.
42. This Court therefore finds that the learned Magistrate properly directed himself in law and fact in holding that no sufficient grounds had been established to warrant the setting aside of the consent. The audit report, having been generated after the consent was recorded, does not constitute new material evidence or a valid ground to disturb a lawful court order.



43. In view of the foregoing, the Court finds that the Appellants have failed to demonstrate fraud, mistake, or misrepresentation sufficient to set aside the Consent Order entered on 26th April 2023. The appeal is therefore devoid of merit and is hereby dismissed. The consent order remains valid and binding upon the parties. Costs of the appeal shall be borne by the Appellants.

Dated, signed and delivered virtually at Thika this 27th day of October 2025.

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J. M ONYANGO

JUDGE

In the presence of:

1. Mr. Mutemi for Mr. Thimba the Appellant
2. Ms Mawiya for the Respondent.

Court Assistant: Hinga

THIKA ELC APPEAL NO. E067 OF 2023 Page 4

