

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC LAND APPEAL No. E009 OF 2023

JULIA CHEROPAPPELLANT

VERSUS

JANET EUNICE JELIMO SAWE1ST
RESPONDENT

DANIEL KIPKEMBOI BIWOTT2ND
RESPONDENT

J U D G E M E N T

1. The Appellant filed a Memorandum of Appeal dated 17.08.2023 (hereinafter referred to as **“the present Appeal”**) challenging the Judgement pronounced on 16.08.2023 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT ELC NO. 72 OF 2011(hereinafter referred to as **“the Trial Court Judgement”**) by HON.D. MIKOYAN, CHIEF MAGISTRATE (hereinafter referred to as **“the Trial Court”**) seeking the following Orders; -
 - a. **The Appeal herein be allowed.**
 - b. **The Judgment and Orders of the Honourable Magistrate be vacated and the 1st Respondent’s suit be dismissed with costs.**
 - c. **In the alternative, this Court does substitute the Judgment and Orders of the Trial Magistrate with a proper finding.**
 - d. **Costs of the appeal.**
 - e. **Any other relief and/or orders that this court may deem fit and just to grant.**

2. The grounds relied upon by the Appellant in the present Appeal can be summarised as follows; -
- i. The Learned Trial Magistrate erred in law and in fact by holding that the suit property belonged to the 1st Respondent when there existed no evidence on record to support the said reasoning.
 - ii. The Learned Trial Magistrate erred in law and fact by failing to determine the exact parcel in contention as per the Respondent's pleadings.
 - iii. The Learned Trial Magistrate erred in law and fact in failing to consider the evidence given by the 2nd Respondent especially that he sold to the 1st Respondent a parcel of land known as L.R. No. KAPSARET/KAPSARET/BLOCK 10 (LAMAYWET) 73 and not L.R. No. KAPSABET/LELMOOK & CHEPKATET BLOCK 1 (INDER)/55.
 - iv. The Learned Trial Magistrate erred in law and fact in failing to analyse, consider and determine all the issues raised in the pleadings and evidence as provided by the Appellant.
 - v. The Learned Trial Magistrate erred in law and fact by issuing an eviction against the registered owner without having issued orders for cancellation of the title.
 - vi. The Learned Trial Magistrate erred in law and fact in failing to consider the evidence on record, especially that the 1st Respondent never produced any documentation as an exhibit in support of her case.
 - vii. The Learned Trial Magistrate erred in law and fact in misapprehending the law, the evidence and misapplied, misunderstood and/or overlooked the correct legal

principles and judicial precedent and submissions by the Appellant and/or parties.

- viii. The Learned Trial Magistrate erred in law and fact by failing to appreciate the fact that parties are bound by their pleadings.
 - ix. The Learned Trial Magistrate erred in law and fact by awarding the whole suit land to the 1st Respondent yet the 1st Respondent only claimed part of the suit land.
 - x. The Learned Trial Magistrate erred in law and facts by awarding the 1st respondent the parcel of land yet the Appellant holds indefeasible right over the parcel of land.
 - xi. The Learned Trial Magistrate erred in law and fact in failing to consider the submissions tendered by the Appellant while making his decision.
3. The Appellant thereafter filed a Record of Appeal dated 30.07.2024 on 13.08.2024 and a Supplementary record of appeal dated 16.04.2025 (hereinafter collectively referred to as **“the Record of Appeal”**).
 4. The Record of Appeal was served on the 1st and 2nd Respondents and then admitted for hearing on 07.07.2025.
 5. The Court further directed that the present Appeal be heard by way of written submissions.
 6. The Appellant filed her submissions dated 26.05.2025 while the 1st and 2nd Respondents did file their submissions on 22.07.2025 and 21.07.2025 respectively.
 7. The Court in its jurisdiction as the first Appellate Court is guided by the authority of **SELLE & ANOTHER-VERSUS-ASSOCIATED MOTOR BOAT CO. LIMITED & OTHERS (1968) EA 123** where it was stated as follows; -

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”

8. Based on the above authority, this Court is required to re-evaluate the evidence before the Trial Court, identify the issues for determination, make its own independent conclusions and then consider whether the Trial Court applied the correct law and fact in arriving at its decision.
9. To be able to achieve this exercise, the Court will now proceed re-evaluate the pleadings and evidence tabled before the Trial Court and identify the issues for determination.

PLEADINGS BEFORE THE TRIAL COURT

10. The Trial Court proceedings were instituted by a Plaint dated 16.02.2011 filed by the 1st Respondent (who was the Plaintiff before the Trial Court) against the 2nd Respondent (who was the 1st Defendant before the Trial Court) and the Appellant (who was the 2nd Defendant before the Trial Court) seeking the following Orders; -
 - i) **A permanent Injunction restraining the Defendants with interfering with the suit property known as LR.NO. LEMOOK/CHEPKAKET BLOCK 1(INDER)/55 measuring approximately 2.02 Hectares or thereabout.**
 - ii) **An Order of Specific Performance directed to the Appellant and the 2nd Respondents to comply with the Agreement For Sale dated 14/04/2017.**

- iii) **An Order of eviction do issue against the 2nd Respondent to vacate the suit property known as LR.NO. LEMOOK/CHEPKAKET BLOCK 1(INDER)/55.**
- iv) **Costs of the suit.**
- v) **Any other and further relief that this Honourable Court may deem fit and just to grant.**

11. The facts in support of the Plaint filed in the Trial Court were as follows; -

- a) The 1st Respondent entered into an Agreement For Sale dated 14.04.2007 with the 2nd Respondent herein for the same of the whole property known as LR.NO.LEMOOK/CHEPKAKET BLOCK 1 (INDER)/55 measuring approximately 2.02 Hectares (hereinafter referred to as **“the suit property”**).
- b) The total consideration in the Agreement For Sale dated 14.04.2007 was a sum of Kenya Shillings Eight Hundred and Fifty Thousand (KShs.850,000/-) which was paid in full by the 1st Respondent to the 2nd Respondent herein.
- c) However, the 2nd Respondent despite having sold the suit property to the 1st Respondent again sold and gave portion of 1.5 Acres to the Appellant in the year 2010 without any legal justification or ownership rights.
- d) As such, the 1st Respondent in Paragraph 5 of the Plaint pleaded various particulars of breach of Contract by the Appellant and the 2nd Respondent.
- e) The 1st Respondent was of the view that the Appellant’s occupation of 1.5 Acres within the suit property was unlawful and amounts to trespass hence he should be evicted.

12. The Complaint before the Trial Court was duly served on the 2nd Respondent and the Appellant.
13. The 2nd Respondent did file a Defence dated 26.02.2011.
14. The 2nd Respondent sought for Orders of dismissal of the Complaint on the following facts; -
 - a. The 2nd Respondent denied the allegation that he sold the suit property to the 1st Respondent based on an Agreement For Sale dated 14.04.2007 and put the 1st Respondent to strict proof thereof.
 - b. The 2nd Respondent further denied that allegation that he had sold and/or granted possession of a portion measuring 1.5 acres on the suit property to the Appellant herein.
 - c. In essence therefore, the 2nd Respondent specifically pleaded that he was the registered owner of the suit property and the 1st Respondent had no proprietary interests on the same.
 - d. The 2nd Respondent stated in Paragraph 8 of the Defence that on or about 1996- 1997, the 1st Respondent approached him to purchase the property known as LR.NO.KAPSABET/KAPSABET BLOCK 10 (LAMAYWET)/73.
 - e. The 2nd Respondent further stated that it was a mutual agreement that the property known as LR.NO.KAPSABET/KAPSABET BLOCK 10 (LAMAYWET)/73 would be registered in the name of the 1st Respondent to facilitate him secure a loan to settle the consideration therein.
 - f. The 2nd Respondent admitted that indeed the 1st Respondent settled the full purchase price of the property known as LR.NO.KAPSABET/KAPSABET BLOCK 10

(LAMAYWET)/73 and he is the lawful owner of the said property.

- g. In conclusion, the 2nd Respondent denied the allegation that there was an exchange involving the suit property with the 1st Respondent.
15. The Appellant also filed a Statement of Defence dated 18.03.2011.
16. The Appellant in the Statement of Defence dated 18.03.2011 opposed the 1st Respondent's Plaintiff on the following facts; -
- a) The Appellant entered into an Agreement For Sale dated 21.08.2009 with the 1st Respondent for a portion of 7 acres within the suit property measuring 13 Acres.
- b) Upon execution of the Agreement For Sale dated 21.08.2009, the Appellant took possession and occupation of the same up to date.
- c) The Appellant pleaded that she followed all the relevant legal procedures and therefore the ownership of the 7 acres within the suit property was legitimate and lawful.
- d) Consequently, the particulars of Breach outlined by the 1st Respondent in the Plaintiff before the Trial Court did not in any way interfere with her ownership as there was no privity of Contract between herself and the 1st Respondent.
- e) The Appellant specifically pleaded that it was the 1st Respondent who had trespassed into the suit property without any colour of ownership.
- f) In conclusion, the Appellant averred that the relief of specific performance sought by the 1st Respondent could not stand against her ownership as there was no Agreement for Sale between them.

TESTIMONIES & EVIDENCE PRODUCED BEFORE THE TRIAL COURT

17. The Trial Court proceeding began on the 19.05.2021 with the testimony of the 1st Respondent who was marked as PW 1.
18. The 1st Respondent informed the Court that he would adopt his witness statement as his evidence in chief.
19. According to the 1st Respondent, she purchased the suit property from the 2nd Respondent sometime on 25.03.1997 and settled the full purchase price.
20. However, the 2nd Respondent showered her a different portion of land from the one that he had purchased.
21. This is the basis upon which the second Agreement For Sale was agreed upon and executed.
22. Similarly, the 1st Respondent testified that the portion of land which he had initially purchased was within a swampy area and requested to be given another portion of land.
23. In support of her evidence in Chief, the 1st Respondent produced the following documents;-

PW1 Exhibit 1 - Demand Notice

PMFI 2 - Supplementary Sale Agreement dated 14.04.2007.

PMFI 3 - Original Sale Agreement dated 25.03.1997.

24. It was the 1st Respondent's testimony that the Appellant took 2 Acres of her land and she also closed her road hence leaving her in a marshy area.
25. The 1st Respondent further stated that the 2nd Respondent gave her another land that they finished paying for which is the suit property but she is yet to get a title deed.

26. It was her testimony the 1st Respondent stated that she is using 5 Acres but the Appellant cut off 3 Acres and fenced it off thus denying him access.
27. On cross-examination by the 2nd Respondent, the 1st Respondent insisted that her claim was on the suit property and not the property in Kapsabet.
28. On being referred to her own statement, the 1st Respondent disowned the averments and stated that she did not sign it.
29. The 1st Respondent however admitted that she is the registered owner of the property in Kapsabet.
30. The 1st Respondent stated that the second Agreement For Sale was signed in the year 2007.
31. The 1st Respondent insisted that the portion of land she occupied was swampy although the portion she had purchased was the suit property.
32. The 1st Respondent confirmed that she did not have any payment receipts for the Second Agreement to confirm full payment thereof.
33. The 1st Respondent reiterated that she had purchased a portion of 5 acres from the 2nd Respondent although the Appellant had taken away 3 acres of the same.
34. On further cross-examination by the Appellant, the 1st Respondent admitted that the initial Agreement for Sale made in 1997 related to the property in Kapsabet.
35. The 1st Respondent insisted that the Second Agreement For Sale related to the suit property and not the Kapsabet property.
36. On being referred to the Original Agreement made in 1997, the 1st Respondent confirmed that the portion she was

purchasing was 2 acres but her claim was for the entire 5 acres of the suit property.

37. The 1st Respondent admitted that the suit property was registered in the name of the Appellant although she had placed a caution on the same which was subsequently removed.
38. On re-examination, the 1st Respondent affirmed that her claim is for the suit property which measures about 2.02 Hectares which is 5 Acres despite the fact that the Second Agreement provides for purchase of 2 Acres.
39. According to the 1st Respondent, the Supplementary Agreement was dealing with the exchange of the Kapsabet property which was swampy with the suit property herein.
40. At the end of this re-examination, the 1st Respondent was stood down to enable her produce the Agreements For Sale but she failed to do so and the 1st Respondent's case was closed on 26.01.2021.
41. The Defence hearing began with the testimony of the 2nd Respondent who was marked as DW 1.
42. The 2nd Respondent adopted the Witness Statement dated 16.06.2011 and filed on 07.04.2021 as his evidence in chief.
43. The 2nd Respondent confirmed that he was familiar with the 1st Respondent.
44. The 2nd Respondent stated that he sold a portion of land known as LR.NO.KAPSABET/KAPSABET BLOCK 10 (LAMAIYWET)/46 sometime on 25.03.1992.
45. The 2nd Respondent insisted that the portion of land sold to the 1st Respondent was different from the suit property before the Trial Court.

46. The 2nd Respondent denied knowledge of the purported Agreement For Sale dated 14.04.2007 and/or to have executed the same with the 1st Respondent.
47. According to the 2nd Respondent's testimony, the suit property was lawfully sold to the Appellant through the Agreement For Sale dated 21.08.2009 and the title deed issued in her name.
48. The 2nd Respondent then produced the Agreement For Sale dated 21.08.2009 in relation to the suit property with the Appellant as DEFENCE EXHIBIT 1.
49. On cross-examination by Counsel for the 1st Respondent, the 2nd Respondent admitted the existence of the Agreement For Sale dated 25.03.2007 are regards the property known as KAPSABET/KAPSABET BLOCK 10 (LAMAIYET)/46 but denied existence of the alleged Agreement For Sale dated 14.04.2007.
50. The 2nd Respondent confirmed that originally, the suit property was registered in his name but he transferred it to the Appellant upon lawful acquisition of the same.
51. On further cross-examination by Counsel for the Appellant, the 2nd Respondent stated that there was no dispute over the suit property with the Appellant.
52. The 2nd Respondent informed the Court that the second Agreement For Sale dated 14.04.2007 relied by the 1st Respondent did not identify the suit property as the property on sale between the parties.
53. On re-examination, the 2nd Respondent reiterated that he had sold the property known as KAPSABET/KAPSABET BLOCK 10 (LAMALWET)/46 to the 1st Respondent while the suit property was sold to the Appellant.

54. In conclusion, the 2nd Respondent denied executing the Agreement For Sale dated 14.04.2007 with the 1st Respondent relating to the suit property.
55. The 2nd Respondent was then discharged from the witness box and his case was closed thereafter.
56. The Appellant's case proceeded on the 15.02.2023.
57. The Appellant was marked as DW1 and adopted her witness statement dated 20.05.2011 as her evidence in chief.
58. The Appellant then produced the following documents in support of her testimony; -
 - DW2 Exhibit 1 - Sale Agreement of 21.08.2009
 - DW2 Exhibit 2 - Sale Agreement of 14.04.2007
 - DW2 Exhibit 3 - Title Deed parcel No. 55
 - DW2 Exhibit 4 - KRTS Letter
59. The Appellant testified before the Trial Court that she was the registered owner of the suit property herein.
60. The Appellant denied any wrong doing against the 1st Respondent and sought the 1st Respondent's claim against her be dismissed.
61. On cross-examination by Counsel for the 1st Respondent, the Appellant admitted that the Agreement For Sale was for 0.8 Acres but the Title Deed she hold has 4.43 Hectares.
62. The Appellant confirmed that her portion on the suit property was 7 Acres.
63. On cross-examination by Counsel for the 2nd Respondent, the Appellant stated that the entire suit property was in her name and the 1st Respondent had not raised any issue about it being registered in her name.

64. The Appellant was of the view that the Agreement For Sale dated 14.04.2007 did not relate to her and the 1st Respondent could not seek any reliefs from the Appellant.
65. On re-examination, the Appellant stated that the sub-division proposed on the suit property did not have the beneficiaries to be allocated the same or the size the 1st Respondent was claiming on it.
66. At the end of this re-examination, the Appellant was discharged from the witness box and her case was subsequently closed.
67. The Court has carefully considered the grounds Memorandum of Appeal and the Record of Appeal and identifies the following issues for determination; -

ISSUE NO. 1- WHETHER AN ORDER FOR SPECIFIC PERFORMANCE CAN ISSUE IN RESPECT TO THE SUPPLEMENTARY SALE AGREEMENT DATED 14.04.2007.

ISSUE NO. 2-IS THE 1ST RESPONDENT ENTITLED TO THE ORDER OF EVICTION AGAINST THE APPELLANT HEREIN?

ISSUE NO. 3-WHETHER AN ORDER OF PERMANENT INJUNCTION AND EVICTION CAN ISSUE AGAINST THE APPELLANT?

ISSUE NO. 4-IS THE APPEAL MERITED?

ISSUE NO. 5-COSTS.

68. The Court will now proceed to evaluate the above issues for determination; -

ISSUE NO. 1 - WHETHER AN ORDER FOR SPECIFIC PERFORMANCE CAN ISSUE IN RESPECT TO THE SUPPLEMENTARY SALE AGREEMENT DATED 14.04.2007

69. According to the Plaint dated 16.02.2011, the 1st Respondent sought for an order of Specific Performance against the 2nd Respondent based on the Agreement For Sale dated 14.04.2007.
70. The 1st Respondent was of the view that the 2nd Respondent had sold the suit property to her at a consideration of Kenya Shillings Eight Hundred and Fifty Thousand (KShs.850,000/-) which was paid in full.
71. Upon purchase of the suit property in 2007, the 1st Respondent took possession of the entire 5 Acres until the year 2010 when the Appellant encroached into a portion of 1.5 acres and occupied the same.
72. The 1st Respondent was of the considered view that she is the lawful owner of the suit property and therefore the 2nd Respondent should be compelled by way of a Specific performance to transfer the said suit property to the name of the 1st Respondent.
73. On the other hand, the 2nd Respondent denied the Agreement for Sale dated 14.04.2007 with the 1st Respondent over the suit property.
74. The 2nd Respondent stated that the Copy marked for production before the Trial Court did not bear his signature as the Vendor of the suit property.
75. The 2nd Respondent confirmed that the only property which was sold to the 1st Respondent through an Agreement For Sale dated 25.03.1997 was known as LR.NO.KAPSABET/KAPSABET BLOCK 10 (LAMAIYWET)/73.
76. The 1st Respondent stated that the property known as LR.NO.KAPSABET/KAPSABET BLOCK 10 (LAMAIYWET)/73 is registered in the name of the 1st Respondent.

77. The 2nd Respondent verified that the suit property belonged to him and had been purchased by the Appellant and registered in her name.
78. To compliment the testimony of the 2nd Respondent, the Appellant maintained that she is the lawful registered owner of the suit property and was issued with a Title Deed to that effect.
79. The Appellant denied knowledge of the Agreement For Sale between the 1st Respondent and the 2nd Respondent if any existed.
80. To begin with, Section 107 of the Evidence Act, Cap 80 provides that the party who alleges any fact must prove the same.
81. In this issue, the 1st Respondent was under a duty to first and foremost prove that the Agreement For Sale dated 14.04.2007 exists and is binding on the parties therein.
82. The 1st Respondent purported to present a Copy of the Agreement For Sale dated 14.04.2007 but the 2nd Respondent objected to its existence from the very beginning.
83. It was on the basis of this objection that the 1st Respondent was given an opportunity to present the original Agreement For Sale dated 14.04.2007 but unfortunately failed to produce the same before her case was closed.
84. Clearly therefore, the Agreement For Sale dated 14.04.2007 was never produced before the Trial Court by the 1st Respondent to prove the fact that it was legitimate and/or properly executed by the 2nd Respondent.

85. This being the case, this Court is of the considered view and finding that the Agreement For Sale dated 14.04.2007 was never proved to be in existence and the terms of sale contained therein binding on the 2nd Respondent.
86. A claim for Specific Performance can only flow from the intentions between two contracting parties who have a binding Agreement and/or mutual intentions in their dealings.
87. However, in this issue, while the 1st Respondent seeks to claim the purchase of the suit property based on the Agreement for Sale dated 14.04.2007, the 2nd Respondent denies such an intention and/or mutual agreement between the parties.
88. The failure by the 1st Respondent to even produce the original Agreement For Sale dated 14.04.2007 which has been challenged by the 2nd Respondent even made the situation worse.
89. As such, this Court is of the considered view and finding that the 1st Respondent's claim for Specific performance against the 2nd Respondent over the suit property based on the Agreement For Sale dated 14.04.2007 is not merited and cannot be granted.

ISSUE NO. 2 - IS THE 1ST RESPONDENT ENTITLED TO THE ORDER OF EVICTION AGAINST THE APPELLANT HEREIN?

90. The second issue is whether the 1st Respondent is entitled to a prayer of eviction against the 2nd Respondent and/or the Appellant herein.
91. The 1st Respondent claimed before the Trial Court that she was the bonafide and legitimate owner of the suit property herein based on the Agreement For Sale dated 14.04.2007.

92. The 2nd Respondent on the other hand denied the ownership of the suit property by the 1st Respondent.
93. The 2nd Respondent pleaded and testified that the suit property initially belonged to him before he sold the same to the Appellant.
94. Consequently, the suit property is now registered in the name of the Appellant herein.
95. The Appellant confirmed that indeed she purchased the suit property from the 2nd Respondent and upon compliance with all legal requirements had the same registered in her name.
96. The 1st Respondent in her pleadings is alleging that the Appellant is in occupation of about 1.5 acres of the suit property and therefore should be evicted as her occupation is in contravention with her ownership rights.
97. Section 24 to 26 of the Land Registration Act, No. 3 of 2012 provides that the conclusive owner of a parcel of land is the one that is recorded in the ownership section of the Register.
98. In this instance, the registered owner of the suit property is the Appellant.
99. The only way the registration of the Appellant can be challenged is through the allegations of Fraud, misrepresentation and/or procuring the Title by way of corrupt means provided under Section 26 of the Land Registration Act, No. 3 of 2012.
100. This being the scenario, the Appellant is the recognised person to enjoy the rights, privileges, possession and

occupation of the suit property to the exclusion of any other person.

101. The 1st Respondent having failed to prove that the Agreement for Sale dated 14.04.2007 is authentic, legal and binding, then she has no lawful ownership rights that can interfere with the Appellant's ownership protected under Section 24 and 25 of the Land Registration Act, No. 3 of 2012.
102. In essence therefore, the Order of eviction against the 2nd Respondent and the Appellant herein cannot be granted to the 1st Respondent.

ISSUE NO. 3 - WHETHER THE 1ST RESPONDENT IS ENTITLED TO A PRAYER OF PERMANENT INJUNCTION?

103. The third issue is whether the 1st Respondent is entitled to a prayer of permanent injunction against the 2nd Respondent and the Appellants herein.
104. Based on the finding of Issue No. 2 herein, the suit property herein belongs to the Appellant in line with the Title Deed issued therein.
105. The 1st Respondent having failed to prove the existence, authenticity and legality of the Agreement for Sale dated 14.04.2007 over the suit property, then no order of injunction can be issued against either the 2nd Respondent or the Appellants as their dealings over the suit property is in line with law.

ISSUE NO. 5 -IS THE APPEAL MERITED?

106. Based on the issues determined hereinabove, the next question is whether the present Appeal is merited or not.

107. A perusal of the Trial Court Judgement identifies the correct issues for determination before it.
108. However, the Trial Court misdirected itself in the appreciation of the facts tabled before it and the documentary evidence adduced by the parties.
109. To begin with, the Trial Court in its own proceedings noted that the 1st Respondent failed to avail the original Agreement For Sale dated 14.04.2007 despite being stood down and given time to procure the same.
110. As a result of this failure to produce the Agreement For Sale dated 14.04.2007, the 1st Respondent's case was ultimately closed.
111. This being the scenario, the first issue for determination was the existence, validity and bidding name of the alleged Agreement For Sale dated 14.04.2017.
112. In fact, the Trial Court cited the authority of QPKA LIMITED- VERSUS- KENYATTA HOSPITAL ASSOCIATE (2021) eKLR which reiterated another authority THRIFT HOMES LIMITED- VERSUS- KENYA INVESTMENNTS LTD (2015) eKLR.
113. In these two authorities cited by the Trial Court, they both made a finding that specific performance could only be enforceable where there is a valid enforceable contract and will not be ordered if the contract suffers from some defects or mistake or illegality.
114. If this is the case, then the purported Agreement For Sale having been in dispute and its enforceability in doubt, the Trial Court ought not to have granted the prayer for specific performance as sought by the 1st Respondent.

115. In addition to the above, the decision by the Trial Court to issue an injunction against the Appellant over the suit property while she is still the registered owner of the suit property keeping in mind that the Trial Court did not cancel her title deed contradicts the provisions of Section 24 and 25 of the Land Registration Act, No. 3 of 2012.
116. In essence, this Court is of the considered view that the present Appeal is merited and should be granted as prayers.

ISSUE NO. 6- COSTS

117. The costs of the appeal will therefore be borne by the 1st Respondent.

CONCLUSION

118. In conclusion, the Court hereby makes the following Orders in determination of the present Appeal ;-

I. THE MEMORANDUM OF APPEAL DATED 14.05.2025 IS MERITED.

II. THE JUDGMENT AND ORDER MADE ON THE 16.08.2023 BY THE HON.D. MIKOYAN, CHIEF MAGISTRATE IN THE PROCEEDINGS KNOWN AS ELDORET CHIEF MAGISTRATES COURT CASE NO. 72 OF 2011 BE AND ARE HEREBY SET-ASIDE AND VACATED.

III. THE 1ST RESPONDENT'S PLAINT DATED 16.02.2011 BE AND IS HEREBY DISMISSED WITH COSTS.

IV. THE RESPONDENTS ARE CONDEMNED TO PAY COSTS OF THIS APPEAL.

DATED, SIGNED and DELIVERED at ELDORET this 12th day of NOVEMBER, 2025.

EMMANUEL M. WASHE
JUDGE

IN THE PRESENCE OF:

Court Assistant: Brian

Plaintiff: Ms. Ekisa holding brief Mr. Wanyonyi for Appellant

Defendant: Mr. Kibichy holding brief Ms. Kipsei for the 2nd

Respondent

Mr. Oduor for the 1st Respondent