

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC APPEAL NO. E014 OF 2024

BISHOP PHILIP KITOTO & BISHOP STEPHEN KURIA KIARIE
sued as legal trustees of KENYA ASSEMBLIES OF GOD
(Sued through its registered trustees)
APPELLANT

=VERSUS=

DANIEL WANYOIKE NGUGI 1ST
RESPONDENT
JACINTA NJERI WANYOIKE 2ND RESPONDENT
BUSHLINE PROPERTIES CO. LTD 3RD RESPONDENT
THE LAND REGISTRAR RUIRU 4TH RESPONDENT
THE HON. ATTORNEY GENERAL..... 5TH RESPONDENT

(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Ruiru in MCELC Case No. E132 of 2022 delivered by Hon. J. A Agonda, Principal Magistrate 15.1.2024.)

JUDGMENT

1. The 1st and 2nd Respondents (Plaintiffs in the lower court) filed suit against the Appellant (1st Defendant in the lower court), the 3rd Respondent (the 2nd Defendant), and the 4th and 5th Respondents (the 3rd and 4th Defendants) through a Plaint dated 11.8.2022. Through the Plaint, the 1st and 2nd Respondents sought judgment against the Appellant and the other Defendants jointly and severally for, first, a permanent injunction restraining the Appellant,

its agents, servants, or any persons acting under its authority from transferring, taking possession of, selling, leasing, or in any other manner interfering with their quiet use and enjoyment of the suit property known as Ruiru/Ruiru East Block 2/41478. They further prayed for a declaration that the transfer of the said property to the Appellant, or to any other third party, was unlawful, fraudulent, null and void *ab initio*, and of no legal effect for want of consideration and misrepresentation. They also sought an order directing the rectification of the land register by cancelling the title issued in the Appellant's name and reinstating it in favour of the 1st and 2nd Respondents, free from any encumbrances. In addition, they prayed that the Appellant be compelled to execute the relevant transfer instruments, or in the alternative, that the Deputy Registrar be authorized to execute all necessary documents, including Land Control Board consent forms, to facilitate the retransfer of the property to the Respondents. They also sought the costs of the suit and any other or further relief the Honourable Court might deem just and appropriate.

2. Their case was that the 1st and the 2nd Respondents were the registered owners of land parcels Ruiru/Ruiru East Block 2/5001 and 2/5004, which they engaged the 3rd Respondent to subdivide and sell under an agency agreement. The agreement provided that all purchase monies from the sale of the resultant plots would be paid directly to the Respondents. They contended that upon subdivision,

the 3rd Respondent informed the 1st Respondent that it had procured a buyer, the Appellant, a religious institution, for one of the resultant plots, Ruiru/Ruiru East Block 2/41478, valued at Kshs. 10,000,000. On the 3rd Respondent's assurance that the church would honour payment and that no formal sale agreement was necessary due to the parties' mutual trust, the Respondent signed transfer documents to facilitate the transaction. However, the property was transferred into the Appellant's name without any payment being made.

3. The 1st Respondent stated that despite numerous assurances from both the 1st Appellant and the 3rd Respondent, no payment was ever remitted. When the promised payment date lapsed, the 1st Respondent's attempts to have the title reverted to his name were unsuccessful. He further contended that the 2nd Respondent, his spouse, never executed a spousal consent, yet the land was matrimonial property. He accused the Appellant and the 3rd Respondent of collusion, fraud, and misrepresentation in effecting the transfer without consideration and through forged documents. Consequently, he sought the cancellation of the title registered in the Appellant's name and compensation for loss arising from the unlawful and fraudulent transfer.
4. In response to the suit, the Appellant filed a Defence dated 6.10.2022 denying the 1st and 2nd Respondents' allegations. The Appellant's case was that the transfer of the disputed property,

Ruiru/Ruiru East Block 2/41478, to its name was lawful and founded on a Memorandum of Understanding executed on 24th September 2021 between the Appellant and the 1st and 2nd Respondents. The Appellant stated that the Respondents had sought assistance from the church in recovering lost title deeds and protecting their land from grabbers, and in return, voluntarily agreed to transfer two plots to the church as consideration. Pursuant to this understanding, the Appellant, through its Reverend, met all the requisite expenses, including government fees, legal charges, and survey costs, to facilitate the issuance of duplicate titles and the subdivision of the properties. The Appellant maintained that the transfer of the suit property was therefore done in fulfilment of the agreed consideration and not through any fraudulent or improper means.

5. The Appellant further contended that the allegations of fraud, collusion, and lack of consideration were unfounded and merely an afterthought by the Respondents after they had benefitted from the church's assistance. It was the Appellant's position that the Respondents had willingly executed the transfer instruments and obtained the Land Control Board consent, confirming their participation and approval of the transaction. The Appellant denied any collusion with the 3rd Respondent, asserting that the latter acted solely as the Respondents' appointed agent. The Appellant thus maintained that its title was validly obtained and that the

Respondents' suit was without merit and ought to have been dismissed with costs.

6. The 3rd Respondent filed a Defence dated 11.2.2023. Its case was that it acted solely as an agent for the 1st and 2nd Respondents under an agency agreement to facilitate the subdivision, sale, and transfer of the land parcels. Its position was that it was never a party to, nor aware of, the Memorandum of Understanding (MoU) between the 1st and 2nd Respondents and the Appellant, and that the transfer of the disputed property was executed in good faith based on the understanding that the Appellant would pay the purchase price. The 3rd Respondent emphasized that the transfer process was initiated and completed following instructions from the plaintiffs and that it merely facilitated the necessary documentation, including applications for Land Control Board consent and the execution of transfer forms. Consequently, the 3rd Respondent contended that it could not be held liable for any disputes arising from the MoU or the alleged non-payment by the Appellant, as its role was strictly limited to executing the plaintiffs' instructions.

7. The 4th and 5th Respondents filed a Statement of Defence dated 31.8.2022 denying the allegations made by the 1st and 2nd Respondents.

8. The suit proceeded for hearing, and a judgment was entered in favour of the 1st and 2nd Respondents.
9. The trial court found that the 1st and the 2nd Respondents were the legitimate and registered owners of the suit property, Ruiru/Ruiru East Block 2/41478, and that the Appellant acquired the title through an irregular and unlawful process without paying the agreed purchase price of Kshs. 10 million. The court held that the 3rd Respondent, acting as an agent, did not have a valid title to pass to the Appellant, and the claim that the plaintiffs voluntarily donated the property to the church was unsubstantiated and contested. Due process and mandatory requirements, including spousal consent for the transfer of matrimonial property, were violated. Consequently, the court declared the 1st and 2nd Respondents as the lawful proprietors of the property, ordered rectification of the register by cancelling the title issued to the Appellant, and directed that a new title be issued in the 1st and 2nd Respondents' names, free from any encumbrances.
10. Being aggrieved by the said judgment, the Appellant filed the instant appeal, citing the following grounds of appeal.
 - i. *That the Learned Trial Magistrate erred in law and in fact in failing to find that there was a binding agreement between the Appellants and 1st and 2nd Respondents dated 24.9.2021 under which the 1st and 2nd Respondents were to transfer two plots to the*

Appellants and that the said agreement was never terminated.

- ii. That the Learned Trial Magistrate erred in law and in fact in failing to find that the 1st and 2nd Respondent legally transferred their title in the parcel known as Ruiru/Ruiru East Block 2/41478 (hereinafter known as “the suit property”) to the Appellants.*
- iii. That the Learned Trial Magistrate erred in law and in fact in finding that the transfer of the suit property to the Appellants was illegal, null and void.*
- iv. That the Learned Trial Magistrate erred in law and in fact finding that the 1st Plaintiff did not sign the agreement dated 24.9.2021 thereby ignoring the 1st Respondent’s evidence and cross-examination.*
- v. That the Learned Trial Magistrate erred in law and in fact in failing to find that the 2nd Respondent did not testify and deny the averments contained in the Appellant’s Statement of Defence or rebut the Appellant’s evidence.*
- vi. That the Learned Trial Magistrate erred in law and in fact in failing to find that the 1st and 2nd Respondent did not deny that they executed and provided all of the necessary documents for the successful transfer of the suit property to the Appellants.*
- vii. That the Learned Trial Magistrate erred in failing to dismiss the 1st and 2nd Respondents’ claim as against the Appellants and thereby allowing the 1st and 2nd Respondents to short-change the Appellants.*

viii. *That the Learned Trial Magistrate erred in law in failing to find that the Appellants indeed facilitated, at their own cost, the re-issuance of the title deeds for the parcel of land known as LR No. Ruiru/Ruiru East Block 2/5001 and Ruiru/Ruiru East Block 2/5002 in the 2nd Respondent's name and subsequently into the 1st Respondent's name.*

11. The court directed that the Appeal be canvassed through written submissions, and the parties duly complied.

Appellant's Submissions

12. The Appellant filed written submissions dated 5.6.2025 through the firm of P.K Njiiri & Company Advocates. Learned counsel for the Appellant collectively submitted on the 8 grounds of appeal.

13. Counsel for the Appellant began by addressing the impugned judgment. It was noted that at page 11 of the judgment, the learned trial magistrate found that the 1st and 2nd Respondents had not voluntarily donated the suit property to the Appellant as alleged, and that the Appellant had purportedly sought to benefit from the property without paying any purchase price. Counsel added that at page 12 of the judgment, the trial court further held that no valid land sale agreement existed between the plaintiffs and the 1st Defendant, and concluded that the latter sought to enrich itself unjustly.

14. It was the Appellant's case that the trial magistrate misdirected herself by proceeding on the mistaken assumption that an interest

in land can only be transferred through a formal sale agreement supported by payment of a purchase price. Counsel argued that the learned magistrate failed to appreciate that under the law, consideration in a land transaction need not necessarily take the form of a purchase price. The court, it was submitted, erred in finding that the 1st and 2nd Respondents had not voluntarily transferred the suit property to the Appellant, notwithstanding the undisputed fact that they willingly signed the application for Land Control Board consent and the transfer documents in favour of the Appellant.

15. According to counsel, there was no evidence that the 1st and 2nd Respondents were coerced, deceived or compelled to execute the said documents. Counsel argued that the trial court also ignored the uncontroverted evidence that the Appellant's pastor had duly fulfilled his obligations under the Memorandum of Understanding (MOU), at his own expense, which constituted the agreed consideration for the transaction. Counsel drew the court's attention to the payment of Kshs. 420,000 made to Metes Bounds Surveys, and further noted that DW2 had detailed in his testimony how he executed his part of the bargain.
16. Counsel therefore submitted that the learned trial magistrate erred in endorsing the Respondents' attempt to renege on the terms of the MOU and to unjustly benefit at the expense of the Appellant. Counsel further questioned the trial court's finding that the

Appellant was obliged to pay Kshs. 10 million to the Respondents, noting that no sale agreement or offer letter to that effect existed. Counsel contended that the Appellant's reliance was solely on the MOU, which provided the legal framework for the transfer of the suit land. Counsel emphasised that such transfer could not have been effected without the participation and cooperation of the 1st and 2nd Respondents in signing the requisite documents, failing which the Appellant and the 3rd Respondent would have faced criminal prosecution.

17. Counsel submitted that the finding of the trial court that the 1st Defendant had not adduced proof of any payments made towards title processing or transfer fees was inconsistent with the documentary evidence on record, which demonstrated payment by the Appellant's pastor. Moreover, the transfer could not have been completed without the payment of the requisite fees, and there was no evidence that the Respondents made such payments. Counsel relied on the case of **Mathu & 3 Others vs Stuart [2024]eKLR** , where the court restated the principles governing the formation of contracts under Section 3(3) of the Law of Contract Act, Cap 23. The decision underscored that for a valid contract to exist, there must be an agreement, an intention to create legal relations, and consideration, and that courts have no business rewriting contracts for parties except where coercion, fraud or undue influence is proved.

18. Counsel argued that in the present case, the Appellant proved the existence of a valid and binding contract in the form of the MOU, which had neither been repudiated nor cancelled by the 1st and 2nd Respondents. The trial court did not declare the MOU invalid or unenforceable. It was therefore an error in law and fact for the trial magistrate to hold that the Appellant failed to pay the purchase price, since payment was not the agreed form of consideration under the MOU.
19. In conclusion, counsel urged the court to find that the learned trial magistrate failed to properly analyse and evaluate the evidence on record, thereby arriving at an erroneous conclusion. The Appellant accordingly prayed that the appeal be allowed, the findings of the trial court be set aside, and substituted with an order dismissing the 1st and 2nd Respondents' suit against the Appellant with costs, both in the lower court and in this appeal, as prayed in the Amended Memorandum of Appeal.

1st and 2nd Respondents' Submissions

20. The 1st and 2nd Respondents filed written submissions dated 29.7.2025

through the firm of Kivuva Omuga & Company Advocates. Counsel identified the following issues arising from the Amended Memorandum of Appeal: (i) Whether the Appellants' witness had capacity to testify on behalf of the 1st Appellant; (ii) The validity and

enforceability of the alleged Memorandum of Understanding (MOU); (iii) Whether there was collusion between the Appellants and the 3rd Respondent to defraud the Respondents; (iv) Whether the Appellants and 3rd Respondent were liable for fraud and misrepresentation; and (v) Whether the transfer of the suit property was valid, supported by consideration, and procedurally sound.

21. On the capacity of the Appellant's witness, counsel submitted that the entire defence case was premised on the testimony of one Pastor Peter Kinyanjui, who purported to testify on behalf of the 1st Appellant. However, he did not produce any resolution of the registered trustees nor demonstrate written authority to represent the 1st Appellant. Counsel relied on **Kenya Agricultural Research Institute (KARI) vs Farah Ali, Chairman Ishahakia Self Help Group & Another [2011] eKLR**, counsel argued that legal persons must demonstrate that suits are properly instituted by duly authorised officers. Counsel argued that in the absence of such authority, the trial court correctly found that the purported witness could have been a stranger, if not a masquerader acting fraudulently in the name of the Appellant. Counsel added that the failure to call any of the Appellant's trustees, namely Bishop Philip Kitoto or Bishop Kuria Kiare, or to produce a formal instrument of authority, was fatal and rendered the defence unreliable.

22. On the validity and applicability of the alleged MOU the 1st and 2nd Respondents' counsel contended that the purported MOU dated

24th September 2021, did not meet the requirements of a binding land transaction under Section 3(3) of the Law of Contract Act, Cap 23. Counsel cited **Nelson Kivuvani vs Yuda Komora & Another [1996] eKLR**, where it was held that an agreement not meeting these statutory requirements is unenforceable.

23. It was submitted that the alleged MOU was not signed by the Respondents on all relevant pages, the witnesses to the purported signatures were never called, and the Appellant failed to connect the Respondents to those witnesses. Furthermore, the MOU was not executed under the common seal of the Appellant as required of a registered society, and the casual stamp affixed to it could not be treated as valid execution.
24. Counsel further submitted that the Appellant failed to call the alleged witnesses to the MOU after the Respondents disowned them. Counsel argued that even if the MOU was considered, the Appellant's own evidence showed that Pastor Kinyanjui did not fulfill the obligations stated in clauses 1 and 2 thereof, including meeting the costs of sub-division, payment of stamp duty, and ensuring removal of inhibitions on the property.
25. Counsel emphasised that the 3rd Respondent, who ultimately transferred the suit property, was not a party to the MOU, therefore, the transfer could not have been effected pursuant to the said document but must have resulted from an entirely

different and fraudulent arrangement between the Appellant and the 3rd Respondent.

26. Counsel maintained that the MOU at best related to administrative facilitation and not a transfer of proprietary rights. The minor payments allegedly made such as Kshs. 5,000 for advertisement and processing fees could not constitute valid consideration for property worth millions of shillings.
27. The Respondents' counsel also explained that the MOU remained in draft form and was never finalized. He further contended that the 1st Respondent proposed amendments to the draft, which the Appellant declined to incorporate, instead affixing an advocate's stamp and the church's stamp without consent. This conduct confirmed that the Appellant acted dishonestly and in bad faith.
28. Counsel submitted that the Respondents clarified that they only sought assistance to transfer property from the 2nd Respondent to the 1st Respondent and to meet stamp duty costs, not to sell the land. Counsel further submitted that the Appellant's claim of acting under the MOU was therefore misleading and unsupported by evidence.
29. On the issue of collusion and fraud, counsel submitted that the trial court correctly found that the Appellant and the 3rd Respondent colluded to defraud the 1st and 2nd Respondents. Counsel contended that evidence showed that one of the directors of the 3rd

Respondent, Mr. Kamau, was a long-standing member of the Appellant and a close associate of Pastor Kinyanjui. Counsel added that the property was transferred without the Respondents' consent, knowledge, or spousal authorization and without any payment. Counsel relied on the decision in *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, in submitting that fraud must be specifically pleaded and strictly proved, and that the Respondents had done so through cogent evidence showing the use of forged and irregularly executed documents to obtain title.

30. On the validity of the transfer and consideration, counsel submitted that the transfer of the suit property failed on all legal grounds, because there was no sale agreement, no valid consideration, and no spousal consent as required under the Land Registration Act and the Matrimonial Property Act. Counsel relied on the case of **Isack M'Inanga Kiebia vs Isaaya Theuri M'lintari & Another [2018] eKLR**, where the Supreme Court held that disposition of matrimonial property without spousal consent is void.
31. Counsel for the 1st and 2nd Respondents dismissed the Appellants' reliance on indefeasibility of title under Section 26(1) of the *Land Registration Act*, noting that the provision removes protection where title is obtained through fraud, misrepresentation, or unprocedural means, as reaffirmed in **Elijah Makeri Nyangwira vs Stephen Mungai Njuguna & Another [2013] eKLR** and

**Alice Chemutai Too vs Nickson Kipkurui Korir & 2 Others
[2015] eKLR.**

32. Counsel submitted that the evidence revealed that no Land Control Board consent was obtained, no transfer documents were executed by the Respondents, and no stamp duty was paid. The entire transfer was therefore illegal and void. Counsel urged the court to uphold the principle in **Nakuru Industries Ltd vs Vinod Shah & 2 Others [2016] eKLR**, that upon proof of fraud or illegality, the court is empowered under *Section 80(1) of the Land Registration Act* to order rectification of the register.
33. On the failure by the 2nd Respondent to testify, counsel dismissed the Appellant's argument that the 2nd Respondent's failure to testify was fatal, noting that the 2nd Respondent expressly adopted the 1st Respondent's witness statement. Counsel argued that the issue was never raised at the trial and cannot be raised for the first time on appeal.
34. On whether the Appeal should be allowed, counsel submitted that the Appellants' case was an attempt to benefit from their own wrongdoing. Counsel argued that the trial magistrate correctly applied the law, properly evaluated the evidence, and rendered a just decision. He added that no misdirection or error has been demonstrated to justify interference by this Court. In conclusion,

counsel urged the Court to dismiss the appeal with costs and to uphold the trial court's findings.

3rd Respondent's Submissions

35. The 3rd Respondent filed written submissions dated 25.7.2025 through the firm of KFK Advocates LLP. Counsel for the 3rd Respondent identified the following three key issues for determination: (a) Whether the 3rd Respondent can be held liable for a dispute arising from an agreement to which it was neither a party nor privy; (b) Whether the Appellant can lawfully retain the benefit of a land transfer without paying the corresponding purchase price; and (c) Whether the Appellant's claim of a donation of land based on the alleged Memorandum of Understanding (MOU) is sustainable in law.
36. On the first issue, counsel submitted that the 3rd Respondent acted purely in its capacity as an agent for the 1st and 2nd Respondents, and its involvement was limited to executing its mandate to subdivide and sell the property. The transfer of the suit land to the Appellant was effected in the ordinary course of that mandate. The 3rd Respondent was not a party to, nor was it aware of, the alleged MOU between the Appellant and the 1st and 2nd Respondents at the time of transfer.
37. Counsel emphasized the doctrine of privity of contract, arguing that contractual rights and obligations can only bind the parties to the agreement. He relied on the decision **in Redington Kenya**

Limited vs Thomas N. Nabende & Another [2021] eKLR, which cited **Savings & Loan (K) Limited vs Kanyenje Karangaita Gakombe & Another [2015] eKLR**, where the Court of Appeal reaffirmed that a contract cannot be enforced either by or against a third party who was not privy to it. Accordingly, the alleged MOU could not impose any liability upon the 3rd Respondent, who was a stranger to its terms. Counsel added that the Appellant's claim against the 3rd Respondent, therefore, was said to be misplaced, and any remedy available lay, if at all, against the 1st and 2nd Respondents as the principals.

38. On the second issue regarding the absence of a written sale agreement, counsel argued that while no formal sale agreement was executed, the surrounding circumstances demonstrated that the transaction was commercial in nature. The 3rd Respondent, being a congregant of the Appellant, did not anticipate that the Appellant would fail to honour the understanding to pay the agreed purchase price of Kshs. 10,000,000 upon successful transfer of the property. It was contended that the Appellant's refusal to pay the purchase price amounted to unjust enrichment, as he had benefited from the transfer while declining to fulfil his corresponding obligation.
39. Counsel further submitted that the absence of a written agreement did not negate the intention of the parties to enter into a binding

commercial arrangement. The act of transferring the land itself constituted prima facie evidence of such a transaction.

40. On the third issue, counsel maintained that the Appellant's reliance on the alleged MOU was legally untenable. He contended that the 3rd Respondent was not a party to that document and did not know of its existence. Counsel added that the Appellant did not disclose the existence of the MOU at the time of the transfer, thereby reinforcing the inference that the transaction was a sale rather than a donation. If the transfer had indeed been premised on a donation, the Appellant would have raised that issue contemporaneously.
41. In conclusion, counsel urged the Court to uphold the judgment of the trial court, to find that the 3rd Respondent bore no liability to the Appellant, and to dismiss the appeal with costs.

Analysis and Determination

42. The principles governing this court's role on appeal are well articulated in **Selle and Another vs Associated Motor Boat Co. Ltd and Another (1968) EA 123**, where the Court held that a first appeal bears the character of a retrial. It imposes upon the appellate court a solemn duty to re-examine the evidence, draw its own conclusions, and support those conclusions with clear and persuasive reasoning. This obligation is to be discharged carefully, with due regard to the fact that the trial court had the distinct

advantage of observing the witnesses as they testified and assessing their credibility.

43. In re-evaluation of the entire record, the court finds that the essential issues for determination are:

- (i) ***Whether the Memorandum of Understanding (MOU) constituted a valid and enforceable agreement transferring the suit property to the Appellant;***
- (ii) ***Whether the transfer of the property to the Appellant was lawful, procedurally sound, and supported by valid consideration;***
- (iii) ***Whether the 3rd Respondent can be held liable for the alleged irregular transfer of the property.***
- (iv) ***Whether the Memorandum of Understanding (MOU) constituted a valid and enforceable agreement transferring the suit property to the Appellant.***

44. The Appellant contends that the MOU dated 24th September 2021 formed the legal basis for the transfer of the suit property. It is argued that the MOU was executed in writing, signed by the parties, witnessed by an advocate and commissioner for oaths, and clearly set out the obligations of each party. The Appellant asserts that consideration was provided in the form of services rendered, including facilitating re-issuance of the lost title, payment of subdivision costs, survey fees, and government charges.

45. The 1st and 2nd Respondents dispute the enforceability of the MOU, arguing that it did not comply with statutory formalities for disposition of land. They point to alleged deficiencies, including lack of signatures on all pages, absence of execution under the common seal of the Appellant as a registered society, and non-involvement of the 3rd Respondent, who ultimately executed the transfer. They further contend that the purported consideration was insufficient to support a transfer of land valued at millions of shillings.
46. Section 3(3) of the Law of Contract Act, Cap 23 provides that for an agreement to be enforceable there must exist: an intention to create legal relations, offer, acceptance, and consideration. In addition, the Land Registration Act, and the Land Control Act, Cap 302, regulate transfers of land and require compliance with statutory formalities, including consent where applicable.
47. The court observes that the MOU satisfies the essential elements of a contract under the Law of Contract Act: there is an intention to create legal relations, clearly identifiable offer and acceptance, and consideration in the form of facilitation services provided by the Appellant. In **African Mercantile Bank vs Ndegwa [2000] eKLR**, the court held that written agreements duly executed and witnessed by competent persons can constitute enforceable contracts. Similarly, in **Mathu & 3 Others vs Stuart [2024] eKLR**, it was emphasized that consideration need not be monetary if the parties expressly agree to a different form of consideration.

48. While the Respondents challenge the MOU on the basis of formal execution and the role of the 3rd Respondent, it is clear that the MOU created binding obligations between the parties. The 1st and 2nd Respondents voluntarily signed the MOU and executed the Land Control Board forms and other transfer documents at the behest of the Appellant, indicating their acceptance of the terms.
49. The court finds that the MOU was a binding and enforceable agreement as between the Appellant and the Respondents. Its purpose was to govern the transfer of the two plots as consideration for services rendered, and the execution of transfer-related documents demonstrates compliance with the agreed terms.
50. However, the MOU alone does not automatically effect transfer of proprietary rights without completion of the statutory formalities under the Land Registration Act and Land Control Act, including spousal consent where the land is matrimonial property. The absence of spousal consent, which was not obtained in this case, constitutes a statutory defect affecting the legality of the transfer.

Whether the transfer of the property to the Appellant was lawful, procedurally sound, and supported by valid consideration.

51. It is undisputed that the property in question was matrimonial property, requiring the spousal consent of the 2nd Respondent

under the Matrimonial Property Act. The trial court found, and the evidence supports, that no spousal consent was obtained.

52. Further, under the Land Registration Act and Land Control Regulations, transfers must follow due process, including Land Control Board consent where applicable, proper execution of transfer instruments, and payment of requisite fees. The Respondents' evidence demonstrates that these requirements were not observed. This court finds that the transfer was irregular, unprocedural, and legally ineffective.

Whether the 3rd Respondent can be held liable for the alleged irregular transfer of the property.

53. The 3rd Respondent acted solely as an agent of the 1st and 2nd Respondents. Under the doctrine of privity of contract, a third party cannot be held liable for obligations arising under a contract to which it is not privy.
54. The Appellant failed to demonstrate that the transfer complied with statutory requirements. This court finds that the trial court properly applied legal principles concerning matrimonial property and the Land Registration Act. Consequently, the court finds that the appeal is without merit and is dismissed. The Appellant shall bear the costs of this appeal.

**Dated, signed and delivered virtually at Thika this 17th day
of November 2025.**

.....
J. M ONYANGO
JUDGE

In the presence of:

No appearance for the parties

Court Assistant: Hinga

ORIGINAL