



**Wotsembo v Odekeyo (Environment and Land Case 164 of 2014)
[2025] KEELC 5786 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5786 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND CASE 164 OF 2014**

**BN OLAO, J
JULY 31, 2025**

BETWEEN

BEATRICE AWINO WOTSEMBO PLAINTIFF

AND

DANCAN DAVID ODEKEYO DEFENDANT

JUDGMENT

1. Beatrice Awino Wotsembo (the Plaintiff) moved to this Court vide her plaint dated 20th August 2014 and filed on 28th August 2014. She impleaded Dancan David Odekeyo (the Defendant) and sought judgment against him in the following terms with respect to the land parcel No No. Marachi/Ebukhalalire/962 (the suit land):

- a. The title deed issued to the Defendant on 27th May 2004 in respect to the land parcel No No. Marachi/Ebukhalalire/962 be cancelled and the same be reverted to the Plaintiff.
- b. Costs of this suit.
- c. Any other relief deemed fit and just to grant.

The Plaintiff's claim was premised on pleadings that at all material times to this suit, she was the registered proprietor of the suit land. That sometime in September 2002, she entered into a sale agreement with the Defendant for the purchase of the suit land at a consideration of Kshs.175,000. The Defendant paid a sum of Kshs.100,000 upon execution of the sale agreement leaving a balance of Kshs.75,000 and it was an express term of the sale agreement that the suit land would be transferred upon completion of payment of the balance.

2. On or about 11th August 2014, the Plaintiff visited the Lands Office in Busia and while conducting a search, she discovered that the Defendant had fraudulently transferred the suit land into his name



without her consent. The particulars of the Defendant's fraud are pleaded in paragraph 7(i) to (vii) and 8 of the plaint as follows:

- i. Transferring L.R. No. No. Marachi/Ebukhalalire/962 into his names without the consent and authority of the Plaintiff.
- ii. Transferring L.R. No. No. Marachi/Ebukhalalire/962 into his names without him and the Plaintiff attending the relevant area Land Control Board.
- iii. Causing transfer of the suit land into his names without obtaining consent.
- iv. Forging a letter of consent for transfer.
- v. Forging the Plaintiff's signature on both application for consent of Land Control Board forms and Transfer forms.
- vi. Causing L.R. No. No. Marachi/Ebukhalalire/962 to be transferred into his names without 1st completing purchase price.
- vii. Being fraudulent per se.

In paragraph 8, the Plaintiff pleaded further that the sale of the suit land between herself and the Defendant became null and void ab-initio for lack of consent of the Land Control Board and also for lack of Grant of Administration intestate by the Plaintiff before the agreement of sale could be entered into and as such, the transaction done by the Defendant over the title to the suit land is consequently null and void.

Together with the plaint, the Plaintiff filed his statement dated 20th August 2014 in which she states that the suit land originally belonged to her late father Jonathan Nafaa Odongo and upon his demise, her mother Terry Achola Wotsembo was registered as the proprietor thereof following orders in Busia High Court P & A No 110 of 1991. The suit land was subsequently transferred to her through transmission on 27th May 2004.

3. Sometime in September 2002, she sold it to the Defendant at a consideration of Kshs.175,000 of which the Defendant paid a deposit of Kshs.100,000 on the date of the agreement leaving a balance of Kshs.75,000 which was to be paid before the transfer of the suit land. At the time of the sale agreement however, the Plaintiff did not have a Grant in respect to the Estate of her late mother Terry Achola Wotsembo and so the transaction was void. The Defendant and herself did not apply for nor obtain the consent of the Land Control Board for the transaction which therefore became null and void at the end of six months after the sale agreement.
4. On 11th August 2014, she visited the Lands Office to conduct a search and discovered that the Defendant had already taken over the suit land without her knowledge and before clearing the purchase price. She itemized the particulars of fraud as already set out in her plaint adding that her copy of the sale agreement got burnt in her house when she was living in Kericho during the post-election violence of 2007 and 2008. She therefore seeks that the title held by the Defendant be cancelled.
5. The Plaintiff also filed the statement of her witness Odhiambo Sumba (PW2) dated 18th May 2015.
6. In his statement this witness says he know both parties and that sometime in September 2002, the Plaintiff sold the suit land to the Defendant at a consideration of Kshs.175,000. That he was a witness to the agreement and the Defendant paid a deposit of Kshs.100,000 in cash and the suit land was to be transferred upon completion of the full purchase price. Later, the Plaintiff told him that she had visited the Lands Office in Busia and found that the Defendant had fraudulently registered the suit



land in her name yet the balance of the purchasing price had not been paid. It is his evidence that the suit land belongs to the Plaintiff.

7. Although the Plaintiff also filed statements of other witnesses, they did not testify. The Plaintiff however also filed the following documents as her documentary evidence:

1. Copy of Confirmed Grant issued to Terry Achola Wotsembo in respect to the Estate of Jonathan Nafaa Odongo in Busia High Court Succession Cause No 110 of 1991.
2. Copy of transfer of L.R No. Marachi/Ebukhalalire/962 by Terry Achola Wesombo as personal representative of Jonathan Nafaa Odongo to Beatrice Awino Wotsembo.
3. Copy of Green Card for the land parcel No No. Marachi/Ebukhalalire/962 showing that it was registered in the joint names of the Plaintiff and Defendant on 27th May 2004.

By a further list of documents dated 14th July 2023, the Plaintiff filed the following additional documents:

1. Copy of application for consent of the Land Control Board dated 12th August 2003.
2. Copy of Letter of Consent dated 11th June 2003.
3. Transfer of Land Form dated 28th August 2003.

The Defendant filed a defence dated 21st November 2014 in which he denied the fraudulent allegations levelled against him adding that he obtained the suit land after following the laid down procedures. He asserted that he purchased the suit land in September 2002 after paying the full purchase price. He pleaded further that the Plaintiff's suit is barred by the statute of Limitation and should be struck out.

8. The Defendant recorded two statements in support of his case. The first is dated 21st November 2014 in which he stated that he is the registered proprietor of the suit land pursuant to documents presented to him by the Plaintiff as the administrator to the Estate of Jonathan Nafaa Odongo. This suit is therefore misplaced as the Plaintiff had received money for the sale.

9. In his second statement dated 16th March 2021 and filed on 17th March 2021 after a change of counsel, the Defendant repeated that it is true the Plaintiff sold to him the suit land at a consideration of Kshs.175,000 of which Kshs.100,000 was paid at the time of signing the sale agreement. That on 11th June 2003, the two appeared before the Butula Land Control Board and obtained consent for the transfer of the suit land to him. On 8th September 2003, he submitted all the relevant documents to the Land Registrar Busia and paid the Plaintiff the balance of Kshs.75,000 after she had signed the transfer documents. It is therefore dishonest for the Plaintiff to allege that the balance of the purchase price was not paid to her. However, the transfer could not be effected as no formal transmission had been effected from the Plaintiff's mother to her. So on 27th May 2004, they both appeared before the Land Registrar Busia for the transfer process and a title deed was issued to him on 27th May 2004. He denied having obtained the title fraudulently adding that he has been in possession of the suit land since 2003 without any resistance from the Plaintiff. The Plaintiff's remedy, if any can only be to claim for the balance of the purchase price which would be barred by limitation. The suit should be dismissed.

10. The Defendant filed the following documents as his documentary evidence vide his list dated 16th March 2021:

1. Copy of Letter of Consent dated 11th June 2003 for the transfer of the land parcel No Marachi/Bukhalalire/962 from the Plaintiff to the Defendant.



2. Copy of receipts.
3. Copy of title deed for the land parcel No Marachi/Bukhalalire/962 issued to the Defendant on 27th May 2004.
4. Copy of Green Card for the land parcel No Marachi/Bukhalalire/962.

The record shows that the Plaintiff had earlier obtained a judgment in her favour delivered by Omollo J on 13th February 2020 as a result of expert proceeding. That ex parte judgment was set aside vide a ruling delivered on 25th February 2021.

11. Thereafter, the hearing commenced before me on 16th December 2024 when the Plaintiff and her witness testified by adopting their statement and produced her documentary evidence listed above.
12. The Defendant was the only witness who testified in support of his case. He too adopted as his evidence the documents listed and his statements. Submissions were subsequently filed by MS Maloba instructed by the firm of Maloba & Company Advocates for the Plaintiff and by Mr Omondi instructed by the firm of Omondi & Company Advocates for the Defendant.
13. I have considered the evidence by the parties and the submissions by counsel.
14. It is common ground that the Defendant holds the title deed to the suit land since 27th May 2004. The Green Card to the suit land however shows that the Plaintiff and the Defendant both registered as proprietors of the suit land on 27th May 2004 as joint owners. Prior to that, it was registered in the name of Jonathan Nafaa Odongo Wotsiembo aka Nafaa Odongo Otsiembo as the second owner on 23rd January 1992, it was registered in the name of Terry Achola Wotsembo as Administrator to the Estate of Jonathan Nafaa Odongo Wotsiembo aka Nafaa Odongo Otsiembo. Terry Achola Wotsembo was only registered to hold the suit land in trust for her daughter the Plaintiff herein.
15. It is common ground that the Plaintiff sold the suit land to the Defendant at a consideration of Kshs.175,000. However, while the Plaintiff claims that the Defendant only paid the sum of Kshs.100,000 and the balance was to be paid after going through all the legal processes but before transfer and which was never paid, the Defendant's defence is that in fact he not only paid the full purchase price and followed the legal process before the suit was transferred into his name. The Plaintiff however alleges that the registration of the suit land in the Defendant's name was one fraudulently. Allegations of that fraudulent process have been particularized in paragraph 7(i) to (vii) of the plaint. The Plaintiff did not produce the sale agreement. She said her copy got burnt in Kericho during the post violence clashes of 2007-2008. The Defendant did not produce his copy nor offer any explanation for its absence. But the execution of the sale agreement in 2002 is not in dispute.
16. Allegations of fraud must be specifically pleaded and proved. In the case of Vijay Morjaria -v- Nansingh Madhusing Darbar & Another 2000 eKLR, Tunoi JA as he then was stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.



And in the case of *Arthi Developers Ltd -v- West End Butchery Ltd* 2015 eKLR, the Court observed that:

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond a reasonable doubt.”

It is clear from the Green Card to the suit land that in September 2002 when the Plaintiff and Defendant entered into the sale agreement, the said land was registered in the name of Terry Achola Wotsembo to hold in trust for the Plaintiff “until maturity”. It is not known when the Plaintiff became of age of maturity. However, the suit land had not yet been transferred to the Plaintiff and she could not purport to transact any agreement for sale with respect to the same. Generally, a beneficiary of land held in trust cannot transfer it before the trust is terminated. This is because, the beneficiary’s interest in the land is typically subject to the terms of the trust document and the trustee’s control. Since Terry Achola Wotsembo held the title to the suit land in trust for the Plaintiff, she held the legal title and managed the suit land on behalf of the Plaintiff. The Plaintiff could not therefore sell the suit land held in trust for her until the trust had been terminated and the suit land transferred to her. It matters not that the suit land would eventually be transferred to her in accordance with the terms of the trust. What is clear however is that the Plaintiff had no legal capacity to purport to sell the suit land in September 2002 and all the processes that followed on account or on the basis of that sale agreement were null and void ab-initio because, by her own admission in her evidence in chief, she sold the land in 2002 after the demise of her mother but without a Grant. That was intermeddling.

17. In his submissions, counsel for the Defendant has stated the following in paragraph 9:

9: Whereas the Plaintiff denied ever appearing in Busia before the Registrar on 27/5/2004, her own documents show otherwise. There is a transfer by personal representative to a person entitled under a will or on intestacy form produced by the Plaintiff. It shows that it was prepared on 26th May 2004 and verified on the same date. The document was received for registration on 27th May 2004 and paid for vide receipt numbers 586022. The assessment on the form are registration (250) and stamp duty (200). The Defendant produced receipt number 586022 issued on 27th May 2004 in the sum of Kshs.250 for registration and receipt number 585779 also issued on 27/5/2004 in the sum of Kshs.200 for stamp duty. Both receipts are in the Plaintiff’s name.”

I have looked at the Transfer by Personal Representative to Person Entitled Under A Will or Intestacy Form dated 26th May 2004. It is a transfer of the suit land by Terry Achola Wotsembo as Personal Representative of Jonathan Nafaa Odongo to the Plaintiff being the “person entitled thereto under the will (or on the intestacy of the deceased.” The Defendant was not entitled to the suit land by virtue of being a “person entitled thereto under the will /or on the intestacy of the deceased.” This is a case of an express trust. Such a trust arises where trust property, it’s purpose and beneficiaries have been clearly identified (see HALSBURY’S LAW OF ENGLAND VOL 16 BUTTERWORTHS 1976 at paragraph 1452). In this case, it is clear from the Green Card that the beneficiary of the suit land was intended to be the Plaintiff and nobody else. There was no way in which the suit land could be transferred directly from Terry Achola Wotsembo (the trustee) to the Defendant. Only the Plaintiff could have lawfully transferred the suit land to the Defendant and then, only after the same had been transferred to her by Terry Achola Wotsembo the trustee. That did not happen. Therefore, the transfer by Personal Representative Form alluded to by counsel for the Defendant does not assist his case.



18. The Plaintiff has also pleaded that the Defendant did not pay the full purchase price of Kshs.175,000 but only paid Kshs.100,000 leaving a balance of Kshs.75,000 as per their sale agreement of September 2002. The Plaintiff has stated that her copy of the sale agreement was burnt in Kericho during the post-election violence of 2007-2008. On his part, the Defendant denied that he still owes the Plaintiff the balance of Kshs.75,000. In paragraph 6 and 14 of his statement dated 16th March 2021, he says:

- 6: Before submitting the documents, the Plaintiff had refused to transfer the transfer forms claiming that she could only do so upon receipt of the balance of the purchase price. I paid her the said balance of Kshs.75,000 in the Registrar's Office after which she signed the documents.”
- 14: Since the Plaintiff does not dispute the sale, I strongly believe that her remedy if any, would be a claim of the purchase price (which would be barred by limitation) and not an attempt to rescind the agreement of sale.”

When Mr Omondi cross-examined the Plaintiff on this issue on 16th December 2024, she denied having been paid the balance of the purchase price, signing the application for consent or attending the Land Control Board. This is what she said:

“The land is Marach/Ebukhalalire/962. It is true that I sold the land to the Defendant. The sale agreement got burnt during the post-election violence in 2007. The Defendant has been using it since 2002. The Defendant only paid me only Kshs.100,000 out of the purchase price of Kshs.175,000 He was to pay the balance after the process is over. I did not go to the Land Control Board. I can see the application for consent of the Land Control Board. It has my identity card number but the signature is not mine. I can see the letter for consent filed by myself. It is for the suit land. It grants consent to transfer the suit land to the Defendant. In my statement at paragraph 11, I have mentioned fraud. I can see the Transfer of Land Form. It is signed by an advocate named Francis Nakhone. I do not even know him. I did not write to the Defendant to pay the balance.”

The burden of proving fraud is on the Plaintiff. She has done so by denying having signed the transfer forms or having received the full purchase price or attending the Land Control Board. The evidential burden then shifted to the Defendant to rebut the Plaintiff's testimony. In the case of *Mbuthia Macharia -v- Annah Mutua Ndwiga & Another C.A. Civil Appeal No 297 of 2015 [2017 eKLR]*, the Court had this to say on evidential burden at paragraph 16:

“

“ 16: The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the Appellant, the evidential burden may shift in the course of the trial, depending on the evidence adduced.”

The issue was settled by the Supreme Court in *Raila Amolo Odinga & Another -v- IEBC & 2 Others 2017 eKLR* where it stated at paragraph 132 thus:

“

“ 132: Though the legal and evidential burden of establishing the facts and contentions which will support a party's case is static and remains



constant through a trial with the Plaintiff, however, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and it's position at any time is determined by answering the question as to who would lose if no further evidence were introduced.”

- 133: It follows therefore that once the Court is satisfied that the Petitioner has adduced sufficient evidence to warrant impugning an election if not controverted, then the evidentiary burden shifts to the Respondent, in most cases, the electoral body, to adduce evidence rebutting that assertion and demonstrating that there was compliance with the law or, if the ground is one of irregularities, that they did not affect the results of the election. In other words, while the Petitioner bears an evidentiary burden to adduce factual evidence to prove his/her allegations of breach, then the burden shifts and it behoves the Respondent to adduce evidence to prove compliance with the law. We shall revert to the issue of the shifting of the burden of proof later in this judgment.”

Then in paragraph 401 of the judgment, the Supreme Court went on to add that:

“401: In keeping with our pronouncement regarding the burden and standard of proof in election petition, we are therefore satisfied that the Petitioners have discharged the legal burden of proof as to squarely shift it to the 1st and 2nd Respondent. We are also of the firm view that having so shifted, the burden has not in turn been discharged by the 1st and 2nd Respondent as to raise substantial doubt with regard to the Petitioner's case.”

The Supreme Court was of course dealing with an election Petition which is not the case herein. There can be no doubt, however, that the principles set out above with regard to legal and evidential burden of proof apply with equal force in a case such as this.

19. In the preceding paragraphs of this judgment, I have made a finding that neither Terry Achola Wotsembo (the trustee) nor the Plaintiff (the beneficiary) could sell the suit land before the trust had been determined. And that the sale agreement entered into between the Plaintiff and the Defendant in September 2002 was therefore null and void.
20. The above notwithstanding, and if I am wrong on the issue of the validity of the sale agreement between the Plaintiff and the Defendant executed in September 2002, one of the Plaintiff's allegations of fraud on the part of the Defendant is that he transferred the suit land in his names without first “completing the purchase price” – paragraph 7(vii). While the Defendant's case is that he fully paid the purchase price of Kshs.175,000 the Plaintiff's case is that in fact the Defendant only paid the sum of Kshs.100,000 leaving unpaid the sum of Kshs.75,000. When he was re-examined by his own counsel Mr Omondi, this is what he said:

“I paid the Plaintiff full purchase price. She had refused to sign the consent. So I paid the balance of Kshs.75,000 at the Lands Office. The consent was issued on 11th June 2003. I attended the Land Control Board with the Plaintiff. She was present.



The transfer Form was verified before an Advocate. Both myself and the Plaintiff were present. The Plaintiff did not serve me with any notice before filing the suit.”

The Plaintiff having denied the receipt of the Kshs.75,000 balance price or attending the Land Control Board, and the Defendant being the one asserting that he paid the balance price at the Land Registrar’s Office, the Plaintiff was asserting the negative while the Defendant was asserting the positive. It is always a difficult task to prove the negative. In the case of Douglas Mungai Njoroge -v- Stephen Kimondo Karuku C.A. Civil Appeal No E069 of 2022 [2024 KECA 553 KLR], the Court of Appeal cited the Supreme Court of Uganda in the case of J.K Patel -v- Spear Motors Ltd SCCA No 4 of 1991 in which that Court cited Phipps On Evidence 12th Edition Paragraph 95 that:

“The proving of a negative task is always difficult and often impossible, and would be a most exceptional burden to impose upon a litigant. The burden of proof in any particular case depends on circumstances in which the claim arises. In general, the rule which applies is *ei qui affirmat not ei qui negat incumbi probatio*. It is an ancient rule founded on considerations of good sense and it should not be departed from without strong reasons... As applied to judicial proceedings the phrase “burden of proof” has two distinct and frequently confused meanings, (1) the burden of proof as a matter of law and pleading – the burden, as it has been called, of establishing a case, whether by preponderance of evidence, or beyond reasonable doubt; and (2) the burden of proof in the sense of adducing evidence... The onus probandi rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into, upon the party against whom the tribunal, at the time the question arises, would give judgement if no further evidence were adduced.”

The same Court went on to cite the case of Sheikh Ali Senyonga & 7 Others -v- Sheikh Hussein Rajab Kakooza & 6 Others SCCA No 9 of 1990 that to hold that the negative position must be proved by the Respondents would be to impose an unnecessary burden on them.

21. The Defendant having stated in his testimony that the Plaintiff had refused to sign the consent before being paid the balance of Kshs.75,000 which he therefore paid at the Lands Office, and the Plaintiff having denied receiving that balance, one would have expected the Defendant, in view of the Plaintiff’s earlier refusal to sign the consent form, to have obtained the Plaintiff’s signature confirming the receipt of the balance price. As is clear from the extract in Phipps On Evidence (supra), it “would be a most exceptional burden to impose upon” the Plaintiff the burden of proving that she was not paid the balance of the purchase price. The burden was on the Defendant to confirm the positive i.e. that he paid the balance and it was not on the Plaintiff to prove the negative. The Defendant not having done so, this lends credence to the Plaintiff’s claim that she did not sign the consent document and her signature was forged.
22. I am persuaded from all the above that the Plaintiff has proved some of the allegations of fraud against the Defendant in the manner in which he obtained the registration of the suit land in his name. It is not mandatory to prove all the allegations. She is therefore entitled to the orders sought in her plaint.
23. The Defendant pleaded in paragraph 6 of his defence that this suit is statute barred. The Plaintiff pleaded in paragraph 7 of her plaint that she discovered the fraud when she visited the Lands Registry on 11th August 2014. The suit was filed on 28th August 2014. It is not caught up with the statute of Limitation. That plea must be rejected.



24. The Defendant's counsel made the following submission in paragraph 19 of his submissions:

“ 19: It follows that the Defendant who paid for the land and has been in possession for over 20 years cannot lose it merely because no consent was obtained under the Land Control Act. A constructive trust would be created thereby in the Defendant's favour. Similarly, the Plaintiff would be estopped from claiming any interest in the suit land having led the Defendant to believe that the land belonged to him for over 12 years.”

That submission cannot be correct because a constructive trust, as defined in Black's Law Dictionary 10TH Edition is

“ An equitable remedy by which a Court recognizes that a claimant has a better right to certain property than the person who has legal title to it. This remedy is commonly used when the person holding the property acquired it by fraud, or when property obtained by fraud or theft (as with embezzled money) is exchanged for other property to which the wrongdoer gains title. The Court declares a constructive trust in favour of the victim of the wrong, who is given a right to the property rather than a claim for damages...”

In the circumstances of this case, it is the Defendant who holds the legal title to the suit land and against whom fraud has been pleaded and in my view, proved to the required standard. A constructive trust cannot be invoked in his favour. If anything, it can only be invoked in favour of the Plaintiff.

25. On submissions that “the Plaintiff would be estopped from claiming any interest in the suit land having led the Defendant to believe that the land belonged to him for over 12 years”, the Plaintiff filed this suit on 28th August 2014, just slightly over two (2) weeks after discovering the fraud on 11th August 2014. That is when time started to run in terms of Section 26 of the Limitation of Actions Act. It cannot therefore be said that the Plaintiff made the Defendant believe that the suit land belonged to him. In any case, no such evidence was led by the Defendant to that effect and neither did he counter claim for adverse possession. He could not possibly do so anyway being the current registered proprietor of the suit land.
26. Having said so, this Court finds that the Plaintiff has proved her case against the Defendant.
27. With regard to the disposal orders, this Court, as I have already stated above, did not have the benefit of seeing the sale agreement executed by the parties in September 2002. But it is not in dispute that the Plaintiff received the sum of Kshs.100,000 from the Defendant. Equity demands that even as I cancel the Defendant's title to the suit land, he is entitled to a refund of the Kshs.100,000 which was willingly paid by the Plaintiff albeit in circumstances which this Court has now faulted. The Defendant's title, however, cannot be protected by the law. In particular, Article 40 of the Constitution.
28. Ultimately therefore and having considered all the evidence, this Court makes the following disposal orders:
1. The title to the land parcel No No. Marachi/Ebukhalalire/962 issued to the Defendant on 27th May 2004 is hereby cancelled.
 2. The Defendant shall within 30 days of this judgment surrender to the Land Registrar Busia the original title for cancellation and issuance of a new title in the name of the Plaintiff and sign all relevant documents.



3. In default of (2) above, the Land Registrar Busia shall, notwithstanding the absence of the original title deed to the land parcel NO MARARCHI/EBUKHALALIRE/962, cancel the register and issue a new title to the Plaintiff.
4. The Deputy Registrar of this Court shall, upon request, sign any relevant documents on behalf of the Defendant to facilitate the registration of the title to the land parcel No No. Marachi/ Ebukhalalire/962 in the name of the Plaintiff.
5. The Plaintiff shall within 30 days of the delivery of this judgment refund to the Defendant the sum of Kshs.100,000 and in default, execution shall issue.
6. With regard to costs, the order that commends itself to make in the circumstance of this case is that each party shall meet their own costs.

BOAZ N. OLAO

JUDGE

31ST JULY 2025

**JUDGMENT DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS
31ST DAY OF JULY 2025.**

Right of Appeal.

BOAZ N. OLAO

JUDGE

31ST JULY 2025

