



REPUBLIC OF KENYA



**Njeru v Kamau & 5 others (Environment and Land Appeal E035 of 2025)
[2025] KEELC 8289 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8289 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E035 OF 2025
EC CHERONO, J
NOVEMBER 27, 2025**

BETWEEN

ESTHER WANJIRU NJERU APPLICANT

AND

SALOME KAMAU 1ST RESPONDENT

BEATRICE WANYONYI 2ND RESPONDENT

VERONICA WANGARE 3RD RESPONDENT

BENJAMIN BARASA WAFULA 4TH RESPONDENT

ALFRED MUNDU TERA 5TH RESPONDENT

WALUMOLI WALIKELA MUSUNGU 6TH RESPONDENT

JUDGMENT

Introduction

1. The Appellant herein was the Plaintiff in the former suit in Kimilili PM-ELC Case No. 26 of 2019 wherein she had filed a plaint dated 03/06/2019 against the Defendant/Respondent claiming that she was the registered owner of L.R. No. Kimilili/Kimilili/875/19 (herein referred to as the 'suit land') which she averred that the Respondents had trespassed thereon denying her exclusive enjoyment of the land. The Appellant had therefore sought the following orders;
 - a. That the defendants whether by themselves, their agents, servants and or employees do surrender vacant possession of the premises LR No. Kimilili/Kimilili/875/19 to the Plaintiff forthwith failing which an order of eviction be and is hereby issued against the defendants whether by themselves, their agents, servants and or employees or anybody claiming through them.



- b. Mesne profits.
 - c. That the defendants do pay the costs of the suit.
 - d. Any other relief that this honourable court may deem fit to grant.
2. The 1st and 6th Defendants filed a joint statement of defence and counter-claim on 16/10/2019 where they averred that one Hederali Kanji(dcd) sold his leasehold interest in LR No. Kimilili/ Kimilili/875/19 measuring approximately 0.1407acres to one Tela Kisaka alias Mukholi Kisaka at Kshs.40,000/= a transfer consented on 13/11/1997. That the executors of the late Hederali Kanji(dcd) transferred and had the said property registered in the name of Tela Kisaka on 16/10/1972. That the Respondents purchased 0.025ha of the said land at Kshs.21,500. That the 6th Respondent made a part payment of Kshs.10,750 with regard to 30 acres in Mulembe Farm LTD to be transferred to Tela Kisaka as part payment of the suit land. That the balance was cleared through various instalments between 12/10/1979 and 08/01/1986. That the Appellant agreed to buy the remaining portion of 25 x 100feet for Kshs.67,000/= vide an agreement dated 08/01/1985.
 3. In their counter-claim, they averred that the Appellant made a down payment of Kshs.57,000/=. That the 6th Respondent purchased the Northern Part of the suit land while the Appellant got the southern part. Pursuant to the agreement dated 08/01/1985, the 6th Respondent let his rental facilities of the 1st and 2nd Respondents while the Plaintiff has rented to the 3rd Respondent but the said Respondent trades from the 6th Defendants shop. The 6th Defendant averred that he made several attempts to have his portion transferred to him but the Appellant asked him to allow him time to pay the unpaid balance so that they can apply for transfer together. That they perused the county government documents and discovered that the lease documents in favour of Tela Kisaka had been destroyed and another lease reissued despite demanding for rates from the estate of Tela Kisaka and the 6th Defendant. That the Appellant obtained proprietorship of 0.056669ha of the suit land fraudulently. They set out particulars of fraud against the Appellant.
 4. They sought to have the lease issued in the name of the Appellant revoked and the same reverted in the name of Tela Kisaka alias Mukholi Kisaka (dcd), that the Plaintiffs name be expunged from the land sale agreement dated 08/01/1985, that the Plaintiff do pay damages in terms of monthly shop rent from 08/01/1985 to date and an order confining those involved in the issuance of the alleged fraudulent lease to the Appellant.
 5. The 5th and 6th Defendants being represented by counsel later filed an amended defence dated 01/03/2022 wherein they averred that the 6th Respondent is suing as the representative of Simeon Walukela Musungu. They denied that the Appellant obtained the title for the suit land legally and added that the developments therein were done by Tela Kisaka (dcd). It was further averred that the 5th and 6th Respondents were tenants paying rent to the 6th Respondent's father. That despite not settling the entire consideration for the suit land, the Appellant was allowed to use the northern part. In their counter-claim, they averred that the said Tela Kisaka who was the registered proprietor of the suit land on 15/08/1997 sold a portion (northern part) measuring 0.025ha to the 6th Defendant at a consideration of Kshs.21,500/=. The said Tela Kisaka agreed to sell the remaining portion (southern part) to the Appellant for Kshs.67,000/= wherein the Appellant paid Kshs.57,000/= leaving Kshs.10,000/= to be pad before 31/03/1985..
 6. That the 6th Respondent took occupation of his portion and rented to the 1st and 3rd Respondents. That unknown to the 6th Respondent and upon the demise of Tela Kisaka, the Appellant fraudulently obtained proprietorship of the suit land measuring 0.056669ha. They set out particulars of fraud



against the Appellant. They sought to have the Appellant's suit dismissed and the title issued in his name on 08/06/1988 be cancelled and the same revert back in the name of Tela Kisaka alias Mukholi Kisaka(dcd).

Evidence.

7. The parties agreed that the suit proceeds by way of viva voce evidence.
8. PW1 Esther Wanjiru, the widow of the Appellant, testified that her late husband purchased the suit property in 1984 and it was registered in his name on 8th June 1988, following the death of Tela Kisaka in 1986. She stated that Kisaka owed Kshs. 21,000 to Musungu (the 6th Respondent's father) and agreed that Musungu would occupy part of the shop for that value before surrendering it to the Appellant. She added that the 3rd Respondent initially paid rent to her husband but stopped after his death. She denied allegations of fraud and maintained that the entire shop belonged to her and her husband.
9. DW1 Salome Kamau testified that she pays Kshs. 2,000 rent to her landlord, Simeon Musungu, and that when the Appellant asked her to vacate in 2019, she refused as she did not recognize him as the owner.
10. DW2 Beatrice Nafula Wanyonyi produced tenancy agreements of 1992 and 2018 showing she paid rent to Musungu. She knew the Appellant only as a neighbour, not as landlord.
11. DW3 Walumoli Walukela Musungu testified on behalf of the 3rd and 6th Respondents, producing 19 exhibits. He claimed the Appellant fraudulently obtained a lease on 8th June 1988 while the late Tela Kisaka, and later Musungu, continued paying rates on the property.
12. DW4 Alfred Mandu Tera stated that his father, Tela Kisaka, had bought the land from one Kanyi, later selling the northern half to Simeon Musungu and the southern half to the Appellant, who allegedly still owed Kshs. 10,000.
13. DW5 Veronica Wangari Wanjiku testified that she previously operated a bookshop on the property and had been paying rent to Musungu since an agreement dated 12th March 1995.
14. DW6 Allan Babu, the Land Registrar, testified that the initial lease was issued to Hedeveni Kanji for 33 years from 1st January 1956, later transferred to Tela Kisaka in 1972 and corrected to Muholi Kisaka in 1985. A new green card was opened on 8th June 1988 in the name of Michael Kairu Njeru (the Appellant), but the transfer from Muholi Kisaka to him was irregular—missing signatures, dates, and presentation details. He further stated that the lease to Kanji lapsed on 1st January 1989 and that the Appellant's lease, purportedly for 99 years, was invalid as no proper renewal or allotment process was followed.
15. DW7 Benson Wangila Simiyu, County Physical Planner, testified that records showed co-ownership between Tela Kisaka and Simeon Musungu, and later between Musungu and the Appellant. He confirmed that the County Council meeting of 31st May 1985 (ratified on 21st June 1985) approved transfer of Plot 19A to Musungu and Plot 19B to the Appellant. His report (DExhibit 20) recommended subdivision of the land to reflect these respective shares
16. The subordinate court upon considering the issues before it dismissed the Appellants case with costs to the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents and allowed the 5th and 6th Respondents counter-claim by cancelling the certificate of lease in the name of Micheal Kairu Njeru and reverted it back to the name of Tela Kisaka alias Muholi Kisaka and for the Appellant to cater for the costs of the counter-claim.



The Appeal.

17. Being dissatisfied by the subordinate court's judgment, the Appellant preferred this appeal on the following grounds;
- a. The Learned Trial Magistrate erred in Law and fact when she failed to consider critical evidence on the Record being Valid transfer instruments executed on the 30th April 1985 between Tela Mukholi Kisaka of ID/7602061/70 and Michael Kairu Ngeru in relation to all Land known as KIMILILI/KIMILILI/875/19 which forms the subject of the Appeal.
 - b. The Learned Trial Magistrate erred in Law and fact when she overlooked a valid Sale Agreement dated 15th August 1984 between Tela Mukholi Kisaka of ID/7602061/70 and Michael Kairu Ngeru in relation to ownership of all Land known as KIMILILI/KIMILILI/875/19.
 - c. The Learned Trial Magistrate erred in Law and fact when she failed to consider evidence in chief and a report presented by the Land Registrar Bungoma County and the Kimilili Town Municipal Physical Planner regarding the ownership of all Land known as KIMILILI/KIMILILI/875/19.
 - d. The Learned Trial Magistrate erred in Law and fact when she cancelled the Appellant Certificate of Lease notwithstanding the high threshold stipulated under Section 26 of the Land Registration Act 2012 and Provisions of the Land Act when cancelling certificates of Titles acquired Procedurally.
 - e. The Learned Trial Magistrate erred in Law and fact when she Ignored and overlooked critical evidence showing that the Appellant had completed Payments for the purchase of all Land known as KIMILILI/KIMILILI/875/19 at the time Transfer instruments were executed and the same acknowledged by the Purchaser.
 - f. The Learned Trial Magistrate erred in Law and fact when failed to consider the Appellant's Interest on all land known as known as KIMILILI/KIMILILI/875/19 which has been for a period of 30years hence violating her rights under Article 40 of the Constitution of Kenya 2010.
 - g. The Learned Trial Magistrate erred in Law and fact when she made a judgment based on hearsay, misinformation, secondary evidence and open bias disregarding critical evidence presented before her during trial and a critical analysis of the Law.
 - h. The Learned Trial Magistrate erred in Law and fact when she ruled that the Appellants certificate of title be cancelled and reverted back to Tela Mukholi Kisaka who is long deceased and acknowledged receipt of the Full purchase price prior to his demise.
 - i. The Learned Trial Magistrate erred in Law and fact notwithstanding her well-reasoned finding that Tela Mukholi Kisaka never disputed the ownership and registration of the certificate of Lease of all Land known as KIMILILI/KIMILILI/875/19 during his Lifetime in favour of the Appellant.
 - j. The Learned Trial Magistrate erred in Law and fact when in her judgment took into account matters that were not canvassed in evidence to the prejudice of the Appellant.
 - k. The Learned Trial Magistrate erred in Law and fact when she overlooked relevant evidence presented by the Land Registrar Bungoma County and Physical Planner Kimilili Municipality to the prejudice of the Appellant who is the registered owner of all Land.



- l. The Learned Trial Magistrate erred in Law and fact when she completely failed in her duty to sufficiently analyze the evidence presented before her during trial before making a determination based on evidence.
 - m. The Learned Trial Magistrate erred in Law and fact when she tilted the entire Judgement against the weight of evidence on record to the prejudice of the Appellant.
 - n. The Learned Trial Magistrate erred in Law and fact when she made a Judgment by solely relying on the evidence of the Respondents ignoring the Appellant's Submissions with utmost disdain hence occasioning a miscarriage of Justice.
 - o. The Learned Trial Magistrate erred in Law and fact when she overlooked the fact that the Entire Judgement is incapable of execution as Tela Mukholi Kisaka met his demise over 36 years ago and reverting of all Land known as KIMILILI/KIMILILI/875/19 creating a Legal quagmire as there are no known representatives of his estate.
 - p. The Learned Trial Magistrate erred in Law and fact when she overlooked and ignored the Appellant's Right to property under *the constitution* 2010 dispensation.
18. The Appellant sought the following orders;-
- a. A declaration that a Valid Transfer and renewal of Certificate of Lease of all Land known as KIMILILI/KIMILILI/875/19 was legally registered in favour of MICHAEL KAIRU NJERU.
 - b. A declaration that all Land known as KIMILILI/KIMILILI/875/19 is lawfully registered under the Names of MICHAEL KAIRU NGERU as the valid and legal owner.
 - c. Costs of this Appeal be borne by the Respondents.
19. Directions were taken for the appeal to be canvassed by way of submissions.

Submissions by the Appellant.

20. The Appellant submits that the trial court erred in reverting the suit land to the estate of the late Mukholi Kisaka alias Tela Kisaka, despite clear evidence of a valid sale. It was undisputed that Tela Kisaka sold the property to Michael Kairu Njeru and Simeon Walukela Musungu, with Njeru eventually purchasing the entire plot. The Appellant produced several sale agreements executed between 1984 and 1985, receipts, advocate acknowledgments, Land Control Board consent, and a Transfer of Lease registered in 1985, culminating in a Certificate of Lease issued to Njeru on 8th June 1988. The Appellant maintains that Tela Kisaka intended to transfer full ownership to Njeru, that the purchase price was fully paid, and that the late Musungu never disputed Njeru's ownership during his lifetime. The court was therefore urged to find that the property was lawfully transferred to Njeru and did not form part of the estate of Tela Kisaka.
21. The Appellant submits that Michael Kairu Njeru lawfully purchased the suit property in 1984, evidenced by a duly executed and witnessed sale agreement dated 15/08/1984 and a joint agreement of 08/01/1985. It is acknowledged that the land initially belonged to Hadevani Kanji, who sold it to Tela Kisaka in 1972, and that Simeon Musungu had only negotiated for half the plot, partly paying through land exchange at Mulembe Farm. The Appellant argues that the sale met the requirements of Section 3(3) of the *Law of Contract Act*, making it valid and enforceable, and relies on Nelson Kivuvani v Yuda Komora & Another [1991] HCCC No. 956, which affirmed that a written, signed, and witnessed land sale agreement constitutes a valid contract.



22. It was submitted that the transaction was supported by Land Control Board consent and a lease extension approved in 1987–1988, with receipts confirming rent payment. That though the Registrar questioned the lease’s validity, he admitted unfamiliarity with the old land laws. The Physical Planner’s report (1985) confirmed council approval of transfers Plot 19A to Simeon Musungu and Plot 19B to Michael Njeru and later identified a clerical error listing Musungu as sole owner.
23. The Appellant argues that under Sections 24 and 26 of the *Land Registration Act*, registration confers absolute ownership, and a title can only be challenged for proven fraud or illegality. He submits that Michael Kairu Njeru’s Certificate of Lease was lawfully obtained through a valid transfer by Mukholi Kisaka in 1985, with no evidence of fraud or misrepresentation. Citing inter alia *Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others* [2015] eKLR, and *Mombasa, in Civil Appeal No. 312 of 2012, Emfil Limited Vs Registrar of Titles Mombasa & 2 others* [2014] eKLR the Appellant contends that fraud must be strictly proved to a higher standard, which the Respondents failed to do. The alleged unpaid Ksh 10,000 does not amount to fraud, and the trial court erred in cancelling a valid title without proof.
24. It was submitted that cancellation of the title three decades later and reverting it to the estate of the vendor whereas he acknowledged payment of the full purchase price on the 20/03/1985 and thus executing a transfer in favour of Michael Kairu Njeru on the 23/09/1985 was erroneous. They submitted that the learned trial magistrate erred in Law when she shifted the burden of proving fraud allegations raised by the Respondents notwithstanding that the 4th Respondents never substantiated his allegation by absconding trial thus the Appellant lacked a chance to cross-examine him as he was the maker of the joint statement of Defence which was relied on by the 1st to 3rd Respondents as their Pleading.
25. It was argued that the learned trial magistrate failed to interrogate the process of Transfer and registration of Michael Kairu Njeru as the registered owner of the suit Land and instead focused on hearsay and secondary evidence pleaded by the 4th Respondent who absconded Trial hence the Appellant Lacked the chance to conduct a cross-examination during Trial for the 4th Respondent to substantiate his claims in pleadings relied by the Respondents Jointly. Lastly it was submitted that the appellant has demonstrated in her Grounds of Appeal the errors, omissions and disregard of critical issues that the Learned trial magistrate overlooked when she arrived at the Judgement beyond the required threshold.

Submissions by the 1st, 2nd and 3rd Respondents

26. The 1st, 2nd and 3rd Respondents filed submissions dated 10/09/2025 where they majorly challenged the validity of the registration of land parcel Kimilili/Kimilili/875/19 in the name of Michael Kairu Ngeru, alleging it was obtained fraudulently. Citing *Munyu Maina v Hiram Gathiha Maina* (CA No. 239 of 2009), they argued that once the root of title is questioned, it is not enough for a proprietor to simply produce a certificate of lease; he must prove that the acquisition was lawful and procedurally sound.
27. They argued that the Appellant failed to produce any credible evidence beyond the certificate of lease and a demand notice dated 11/04/2019 to prove that he was the legitimate owner of the suit land. That the transfer of Lease dated 23/09/1985, allegedly transferring the property from Mukholi Kisaka to Michael Kairu Ngeru, was never received for registration or entered in the presentation book as was the evidence of the Land Registrar which was not controverted. It was argued that the said evidence confirmed that the transfer lacked both a date of receipt and a presentation number, proof that it was never properly registered.



28. It was further submitted that Michael Kairu Ngeru unlawfully transferred the title to himself on 08/06/1988, after the death of Mukholi Kisaka which occurred on 26/12/1986, thereby intermeddling with a deceased's estate contrary to section 45 of the [Law of Succession Act](#). They relied on jurisprudence from cases such as *Zacharia Wambugu Gathimu v John Ndung'u Maina* (ELC 244/2017) and *Bahola Mkalindi Rhigho v Michael Seth Kaseme* [2012] eKLR holds that any transfer of a deceased's property before compliance with succession laws is a nullity.
29. Similarly, they relied in the case of *Elijah Makeri Nyangwana v Stephen Mungai Njuguna* [2013] eKLR and *Grace Waruiru Ngigi v Ngugi Nguri* (E20/2021), where courts affirmed that titles obtained unprocedurally or after a proprietor's death can be impeached under section 26(1) of the [Land Registration Act](#), and that doctrines of equity cannot sanitize illegality. It was further submitted that the Land Control Board consent dated 30/04/1985 only authorized subdivision of the land, not its transfer and therefore, the purported transfer lacked the necessary statutory consent.
30. It was further submitted that the testimony from DW5 confirmed that both the Appellant and the 6th Respondent took possession from the late Mukholi Kisaka in 1985, each occupying separate portions and collecting rent from tenants, indicating that each purchased only half of the property. They thus urged the appellate court to uphold the trial court's finding that the transfer to Michael Kairu Ngeru was fraudulent, unprocedural, and illegal, and that the leasehold title should be cancelled and reverted to the name of Mukholi Kisaka as part of his estate.
31. In conclusion and relying on *Alberta Mae Gacie v Attorney General* [2006] eKLR and *Arthi Highway Developers Ltd v West End Butchery Ltd* [2015] eKLR, it was argued that courts should not shield individuals who acquire title through deceit or fraud. They prayed that the appellate court affirms the trial court's decision cancelling the appellant's title and order that costs of the appeal be borne by the Appellant.

Submissions by the 5th and 6th Respondents

32. They argued that the appeal lacks merit as the Appellants failed to prove his case on a balance of probabilities. They noted that the Appellant abandoned claims for eviction and mesne profits, focusing only on challenging the cancellation of the Certificate of Lease issued to Michael Kairu Ngeru a title whose validity they contend was not defended against the counterclaim.
33. They submit that once the root of title was challenged, the Appellant had the duty to prove its legality as held in *Munyu Maina v Hiram Gathiha Maina*. It was argued that no sale agreement or supporting documents were produced to show lawful acquisition, contrary to Section 3(3) of the [Law of Contract Act](#). That the Land Registrar's evidence confirmed that the transfer to Ngeru was ever registered and their certificate of lease was therefore fraudulent and void.
34. Relying on Sections 26(1)(a) and (b) of the [Land Registration Act](#) and authorities such as *Arthi Highway Developers Ltd v West End Butchery Ltd*(supra) and *Elijah Makeri Nyang'wara v Stephen Mungai Njuguna*(supra), they argued that a title obtained illegally or unprocedurally is impeachable even against an innocent holder. That the trial court, therefore, correctly found that Ngeru's title was fraudulently acquired. They maintained that the appeal discloses no error of law or fact. That the trial magistrate properly evaluated the evidence and applied the law. Since the Appellant did not defend the counterclaim, the trial court rightly treated the case as unopposed. On costs, they rely on Section 27 of the [Civil Procedure Act](#), emphasizing that costs follow the event. They prayed that the appeal be dismissed with costs to the 5th and 6th Respondents.



Legal analysis and determination.

35. I have duly considered the record of appeal before this Court together with the submissions of learned counsel. In my view, this appeal, which challenges the judgment of the trial magistrate dismissing the Appellant's plaint and allowing the 5th and 6th Respondents counter-claim, may be conveniently determined by a singular issue of whether the trial court erred in arriving at the said determination.
36. The Appellant argued that the title held by Micheal Kairu Njeru ought to be protected stating that he was a bona fide purchaser for value who made all payments relating to the sale agreement admitted by the 5th and 6th Respondents and to whom a legitimate transfer was effected in his favour thus, he acquired his certificate of lease legally and that the same should be protected under the provisions of the *Land Registration Act*, 2012 and *the Constitution* of Kenya, 2010.
37. In determining this issue, the starting point is a reference to the holding in *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR that:
- “We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”
38. Further, in *Dina Management Limited vs. County Government of Mombasa & 5 Others* [2023] KESC 30 (KLR) as follows:
- “Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible.”
39. The above dictum must be read in conjunction with section 112 of the *Evidence Act* to the extent that a person with facts within his personal knowledge has the burden of proving or disproving the existence of such facts.
40. Section 24 of the *Land Registration Act* vests in a registered proprietor the absolute ownership of land together with all rights and privileges appurtenant thereto. Similarly, Section 25 protects the interests of a registered proprietor from being defeated except as provided by law, while Section 26(1) accords the Certificate of Title prima facie evidence of proprietorship. However, subsection (1)(a) and (b) thereof make it clear that such title may be challenged on the grounds of fraud, misrepresentation, or where it has been acquired illegally, unprocedurally, or through a corrupt scheme.
41. From the case law highlighted in the preceding paragraphs, the proprietor must go beyond the instrument of title and demonstrate the legality of the process through which the title was obtained. The Appellant, in support of his contention that he is the lawful and registered proprietor of the suit property, produced a Certificate of Lease. It is, however, this very certificate that is impugned by the Respondents on the grounds that it was fraudulently procured.
42. The Appellant had filed a bundle of documents in support of his case. However, the same were expunged from the court record by the trial court on ground that they had been filed out of time without the requisite leave of the court. That decision was never appealed against or otherwise set aside. Consequently, this Court, sitting as an appellate court is bound to confine itself to the record as it



stood before the trial court. It therefore follows that this Court is estopped from considering the said documents as they did not form part of the duly admitted record of the lower court proceedings.

43. In the absence of those documents, the Appellant was left with no admissible documentary evidence to substantiate his claim for ownership of the suit property or to demonstrate the legality of the process leading to the issuance of his title. The burden of proof under Sections 107 and 109 of the *Evidence Act* squarely rested upon him to establish his claim on a balance of probabilities. Having failed to place before the trial court credible and admissible evidence in support of his case, the Appellant could not, therefore, be said to have discharged that burden and therefore, the validity of the title remains in serious doubt. The trial court was consequently justified in finding that the Appellant's claim lacked evidentiary support.
44. Consequently, this Court finds that the Appellant failed to establish a lawful and legitimate root of title to the suit property. The Certificate of Lease produced cannot, in the circumstances, be deemed conclusive proof of ownership in the face of uncontroverted allegations of fraud and irregularity in the registration process. Accordingly, the Appellant's claim to ownership collapses for want of proof, and the Respondents' challenge to the impugned title stands.
45. From the foregoing evidence of DW6, it is clear that the witness testified that the first lease was issued to Hedevani Kanji for a term of thirty three (33) years commencing on 01/01/1956. The said lease was therefore due to expire on 1st January 1989. Before the expiry of that lease, Hedevani Kanji transferred his interest to Tela Kisaka, later referred to as Muholi Kisaka, 16/10/1972. The witness further explained that under the applicable law, a lessee is required to apply for renewal or extension of a lease upon its impending expiry. As at 01/01/1986, Muholi Kisaka remained the registered proprietor of the suit property.
46. There is, however, no evidence on record to show that Muholi Kisaka made any application for renewal or extension of the lease upon the lapse of the original term. In this Court's view, this explains why the suit property reverted to the County Council of Bungoma, the lessor, upon expiry of the original lease term. The lease having expired, the land had reverted to the Government. It was no longer a leasehold property, but government land within the meaning of the Government Lands Act (now repealed). (See the case of *Sehmi & another v Tarabana Company Limited & 5 others* [2025] KESC 21 (KLR). It follows, therefore, that the leasehold interest previously held by Muholi Kisaka terminated by operation of law. Consequently, the 5th and 6th Respondents, whose claim is anchored on the ownership of Muholi Kisaka, cannot derive any valid interest from a title that had already lapsed and was not lawfully extended.
47. In the result, this appeal partially succeeds to the extent that this Court is not persuaded that the lease or ownership should revert to Tela Kisaka alias Muholi Kisaka, for the reasons already expounded above. The evidence clearly shows that the original lease held in that name lapsed by effluxion of time and was never renewed in accordance with the law. To reinstate that interest would be to revive a leasehold that ceased to exist by operation of law.
48. Accordingly, the judgment of the trial court is hereby set aside and substituted with the following orders:
 - a. The Certificate of Lease issued in the name of Michael Kairu Njeru is hereby cancelled.
 - b. The title to the suit property shall revert to the County Council of Bungoma (now the County Government of Bungoma) for fresh allocation in accordance with the law.
 - c. The Land Registrar is directed to rectify the register to reflect this determination.



- d. The Deputy Registrar of this Court shall serve the County Government of Bungoma with a formal notice of the outcome of this judgment for appropriate administrative action.
- e. Each party shall bear their own costs of the appeal.

49. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF NOVEMBER, 2025.

.....

HON.E.C CHERONO

ELC JUDGE

In the presence of;

SUBPARA 1.

Mr. Maloba for the 5th and 6th Respondents

Mr. Oira for the Appellant.

3. 4th Respondent-present.

4. 1st Respondent-present.

5. 2nd Respondent-present.

6. 3rd Respondent-present.

7. Bett C/A.

