



**Charo v Nzaro & 4 others (Civil Appeal E001 of 2023)  
[2026] KECA 84 (KLR) (30 January 2026) (Judgment)**

Neutral citation: [2026] KECA 84 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPEAL E001 OF 2023  
AK MURGOR, GW NGENYE-MACHARIA & KI LAIBUTA, JJA  
JANUARY 30, 2026**

**BETWEEN**

**BAHATI CHARO ..... APPELLANT**

**AND**

**JACKSON NZARO ..... 1<sup>ST</sup> RESPONDENT**

**MARIO MAINDA ..... 2<sup>ND</sup> RESPONDENT**

**ERICK NGUWA (SUED IN THEIR CAPACITY AS CHAIRMAN, SECRETARY  
& TREASURER RESPECTIVELY OF KALOLO KIBAONI BAYA MAGONZI  
UPGRADING PROJECT) ..... 3<sup>RD</sup> RESPONDENT**

**NORRIS VYANGU ..... 4<sup>TH</sup> RESPONDENT**

**FESTUS KIMBICHI ..... 5<sup>TH</sup> RESPONDENT**

*(Being an appeal from the Judgment and Decree of the Environment and Land Court of Kenya at Malindi (J. O. Olola, J.) delivered on 22nd January 2021 in E.L.C Case No. 243 of 2016)*

**JUDGMENT**

1. By her plaint dated 16<sup>th</sup> September 2016 and amended on 29<sup>th</sup> November 2017, the appellant, Bahati Charo, sued the respondents jointly and severally for: a declaration that the action of the 1<sup>st</sup> to 3<sup>rd</sup> respondents of subdividing the appellant's portion of land measuring 100 by 70 feet and creating another portion of land now known as plot No. 83 was null and void; an order of permanent injunction restraining the 1<sup>st</sup> to 3<sup>rd</sup> respondents from subdividing the appellant's portion of land known as plot No. 84 (the suit property) and creating therefrom any portion of land and allocating the same to any person; an order of permanent injunction restraining the 4<sup>th</sup> and 5<sup>th</sup> respondents from trespassing on, selling or erecting any building on the appellant's portion of land measuring 100 feet by 70 feet or thereabouts and known as plot No. 84, or the portion of land purportedly subdivided from



the appellant's plot and now known as plot No. 83, and from dealing in the said plots in any manner whatsoever; orders of vacant possession of the appellant's plot or the portion of land purportedly subdivided from the said plot and now known as plot No. 83, and demolition of any structures erected thereon by the respondents and eviction of the respondents therefrom; and costs of the suit and interest thereon at court rates.

2. The appellant's case was that, on or about 2<sup>nd</sup> March 1978, she bought 28 cashew nut trees on the suit property; that she took possession and developed the suit property by building her residence and a business structure, which she leased out to various tenants; that, thereafter, a squatter upgrading project called "Kalolo Kibaoni Baya Magonzi Upgrading Project" (the project) was formed with the mandate of identifying the occupants in possession of portions of land at Kibaoni, Kalolo and Bayamagonzi areas in Kilifi Town; that, during the mapping, demarcation and picking of the occupants, the appellant's portion of land was assigned plot No. 84 in respect of which she paid to the 1<sup>st</sup> to 3<sup>rd</sup> respondents all requisite charges or fees and was awaiting issuance of a beacon certificate before deed plans were given and the plot of land eventually registered in her name; that, unbeknown to the appellant, the 1<sup>st</sup> to 3<sup>rd</sup> respondents wrongfully and unlawfully, and without her consent or compensation, proceeded to subdivide or hive off a portion of the suit property and created another plot measuring 50 feet by 50 feet, which they assigned plot No. 83 and proceeded to allocate the same to the 4<sup>th</sup> respondent, who sold it to the 5<sup>th</sup> respondent; and that the 5<sup>th</sup> respondent had commenced construction of a building thereon.
3. According to the appellant, the suit property ceased to be available for subdivision or alienation to any other person after she had paid the requisite charges to upgrading project. She averred that the respondents' actions were in violation of her constitutional right to property; and that, unless the orders sought were granted, the respondents would complete the illegal alienation and thereby deprive the appellant of her land.
4. In their joint defence dated 4<sup>th</sup> October 2016 and amended on 5<sup>th</sup> February 2018, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents denied the appellant's claim and averred that the suit property was part of a large piece of land measuring 0.2262 Hectares and which was initially allocated to Maendeleo Ya Wanawake group in 1991; that the Kalolo Kibaoni Bayamagonzi upgrading project was formed in the year 1998 with the aim of settling squatters in Kalolo Kibaoni and Bayamagonzi areas of Kilifi town; that, during the survey of Kibaoni area, it was noted that Maendeleo Ya Wanawake had been allocated a big area despite the large number of squatters residing thereon;  
  
that it was agreed to subdivide the property to six plots being plot Nos. 81, 82, 83, 84, 87 and 514 for the purpose of settling the squatters; that the appellant was not present during the subdivision and allocation as she was not a resident thereat; that the appellant approached the project in 2003 and requested to be considered for allocation of a plot; that she was allocated plot No. 84 on humanitarian grounds after due procedure and payment of the requisite fees; and that her suit did not disclose any reasonable cause of action against them. They prayed that it be dismissed with costs.
5. In his defence dated 18<sup>th</sup> May 2017 and amended on 11<sup>th</sup> April 2018, the 4<sup>th</sup> respondent, Norris Vwangu, denied the allegations contained in the plaint and averred that he was the owner of plot No. 83, which was allocated to him by the project under due process, and after payment of all dues; that, on or about 11<sup>th</sup> July 2016, he sold the said plot to the 5<sup>th</sup> respondent, Festus Kimbichi, whereupon it was duly transferred to him; and that the appellant's suit did not disclose a reasonable cause of action against him. He prayed that it be dismissed with costs.
6. On his part, the 5<sup>th</sup> respondent filed his defence and counterclaim dated 11<sup>th</sup> April 2018 denying the appellant's claim. He averred that he was the lawful owner of plot No. 83 having purchased it from



the 4<sup>th</sup> respondent; that the appellant's suit was brought out of malice with intent to dispossess him of his property; that the appellant had not disclosed any reasonable cause of action against him, and that she was not entitled to the reliefs sought; that the appellant was a fraudster who had forged receipts purporting to be the owner of the suit property; and that she was unlawfully interfering with his use of his property. In his counterclaim, the 5<sup>th</sup> respondent prayed that the appellant's suit be dismissed with costs; a permanent injunction restraining the appellant from interfering with his (the 5<sup>th</sup> respondent's) peaceful enjoyment and use of his property; costs of the counterclaim and interest thereon.

7. In her reply to the 4<sup>th</sup> and 5<sup>th</sup> respondent's defence and defence to the 5<sup>th</sup> respondent's counterclaim dated 30<sup>th</sup> April 2018, the appellant reiterated the contents of her amended plaint and contended that the 4<sup>th</sup> respondent had never been in occupation of the suit property as alleged; that the suit property was at all times owned and occupied by the appellant; that the subsequent allocation of the suit property to the 4<sup>th</sup> respondent by the 1<sup>st</sup> to 3<sup>rd</sup> respondents was unlawful, null and void; that sale and transfer of the suit property by the 4<sup>th</sup> to the 5<sup>th</sup> respondent was likewise null and void and did not pass any valid title or interest therein; and that her suit disclosed a reasonable cause of action and was not brought out of malice as alleged.
8. In her defence to the 5<sup>th</sup> respondent's counterclaim, the appellant denied each and every allegation contained in the counterclaim and contended that she was the beneficial owner of the suit property and was entitled to its exclusive use and possession; and that the 5<sup>th</sup> respondent had no right thereto, and was not entitled to an order of injunction against her. In addition, she denied being a fraudster and having forged receipts in respect of the fees payable for the allocation of the suit property. By reason of the matters aforesaid, she prayed that the 5<sup>th</sup> respondent's counterclaim be dismissed with costs.
9. In its judgment dated 22<sup>nd</sup> January 2021, the ELC (J. O. Olola, J.) dismissed the appellant's suit and allowed the 5<sup>th</sup> respondent's counterclaim as prayed. According to the learned Judge, the Sale Agreement executed on 2<sup>nd</sup> March 1978 between herself and one Kazungu Wa Monzo did not specify the parcel of land on which the 28 Cashew nuts purchased by the Plaintiff were situated. Neither did it specify the extent or area on which the cashew nut trees stood. As the learned Judge observed:

“43. ... that Agreement neither referred to any land nor did it give the Plaintiff authority to take possession thereof and to proceed to develop the same. That omission, whether deliberate or otherwise, was rather consequential in my view. As it were, the Plaintiff does not lay claim on the said Plot No. 84 as a beneficiary thereof by virtue of her ancestry.”

10. As the learned Judge went on to observe:

“44. From her own pleadings and testimony before the Court, she all along knew that the parcel of land she occupied was Government land. While she questions the mandate of the KKB Upgrading Project, it was apparent to me that that was a vehicle created by the Government to enable squatters like herself acquire what was then for all intents and purposes, Government land.”

45. It is also clear to me that the Plaintiff herself recognized the mandate of KKB from as far back as the year 2003. From a perusal of her own List of Documents, she annexes a Copy of her Statement dated 5<sup>th</sup> August 2003 on the Project contribution as sent to her by the then Chairman of the Project indicating that she owed a sum of Kshs 10,200. The Plaintiff consequently



made payments amounting to Kshs 10,200 as evidenced by three receipts issued in her name on 16<sup>th</sup> April 2008.

46. Subsequently by a Clearance Certificate dated 16<sup>th</sup> April 2010 in regard to Plot No. KB/84, the KKB Officials confirmed that they had identified the Plaintiff as the rightful owner of the structure on the said Plot and cleared her for showing of beacons and to be issued with a Beacon Certificate.
47. Indeed, contrary to the Plaintiffs assertions, it was apparent that her own Plot No. 84 emanated from the sub-division of a parcel of land earlier on allocated by the Government to the Maendeleo Ya Wanawake organization in 1991 measuring 0.2226 Ha. That much was clear from a Letter of Allotment produced by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants dated 7<sup>th</sup> June 1991. It was also apparent that following the intervention of the Project Officials, they were allowed to sub-divide that parcel of land as a result whereof they created six parcels of land assigned as Plot Nos. 81, 82, 83, 84, 87 and 514.
48. From the material placed before me, it was therefore clear that Plot No. 83 was not hived off Plot No. 84 as claimed by the Plaintiff. From her testimony herein, it was apparent that the Plaintiff was unsure of the measurements of her parcel of land both before the alleged creation of Plot No. 83 and even after.
49. On the other hand, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who are former officials of the KKB Project gave clear testimony on how Plot Nos. 83 and 84 came to be and how Plot No. 83 was allocated to the 4<sup>th</sup> Defendant before, following their laid down processes, being transferred to the 5<sup>th</sup> Defendant on sale.”

11. Aggrieved by the learned Judge’s decision, the appellant moved to this Court on appeal on the following 4 grounds set out in her memorandum of appeal dated 4<sup>th</sup> January 2023:

- “ 1. The learned Judge erred in law and fact by failing to find that the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondents unlawfully subdivided a portion of the appellant’s land and allocated it to the 4<sup>th</sup> respondent.
2. The learned Judge erred in law and fact by failing to find that the appellant had been in occupation of entire portion of land now comprising Plot No. 83 and Plot No. 84 long before the establishment of Kalolo Kibaoni Baya Magonzi Upgrading Project and that the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondent failed to allocate Plot No. 83 and Plot No. 84 to the appellant contrary to their Inandate and that the allocation of Plot No. 83 to the 4<sup>th</sup> respondent was erroneous.
3. The learned Judge erred in law and fact by failing to find that the 5<sup>th</sup> respondent was not a bona fide purchaser of Plot No. 83.
4. The learned Judge erred in law and fact in the manner he evaluated the evidence and consequently arrived at the wrong decision that the appellant had failed to prove her case while the 5<sup>th</sup> respondent had proved his counterclaim against the appellant.”

12. In support of her appeal, learned counsel for the appellant, M/s.J. K. Mwarandu, filed written submissions dated 24<sup>th</sup> June 2024.



13. In rebuttal, learned counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, M/s. Madzayo Mrima & Jadi, filed written submissions dated 3<sup>rd</sup> July 2024.
14. On their part, learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents, M/s. Ombachi Moriasi, Nyachiro and Co., also filed written submissions dated 3<sup>rd</sup> March 2025.
15. None of the learned counsel cited judicial authorities in support of their respective arguments.
16. This Court’s mandate on 1<sup>st</sup> appeal was espoused in Ng’ati Farmers’ Co-Operative Society Ltd v Ledidi & 15 Others [2009] KLR 331 as follows:

“An appeal to this Court from a trial by the High Court is by way of re-trial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that, this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witness and should make due allowance in that respect. In particular, this Court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

17. This mandate was underscored in the case of Kenya Ports Authority v Kuston (Kenya) Limited [2009] 2 EA 212 as follows:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

18. However, we are conscious as cautioned by the predecessor to this Court in Peters v Sunday Post Ltd [1958] EA 424 that:

“It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the Judge who tried the case and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution. It is not enough that the appellate court might itself have come to a different conclusion.”

19. To our mind, the following issues commend themselves for our determination, namely: (i) whether the appellant was in occupation of the parcel of land comprised of plot Nos. 83 and 84 as the rightful owner long before the Project; (ii) whether the 1<sup>st</sup> to 3<sup>rd</sup> respondents subdivided and hived off a portion of the appellant’s land and allocated it to the 4<sup>th</sup> respondent; (iii) whether the 5<sup>th</sup> respondent was a bona fide purchaser for value of plot No. 83; and (iv) whether the 5<sup>th</sup> respondent’s was entitled to the reliefs sought in his counterclaim.
20. On the 1<sup>st</sup> issue, the appellant claimed to have been in occupation of plot Nos. 83 and 84 as the rightful owner long before the Project. Her case was that she secured ownership thereof upon purchase of 28 cashew nut trees and thereafter developed the suit property by building her residence as well as



structures, which she leased as business premises. In support of her case, she produced a copy of the Sale Agreement executed on 2<sup>nd</sup> March 1978 between herself and one Kazungu Wa Monzo.

21. We take to mind the learned Judge's observations in the impugned judgment. According to the learned Judge, the Plaintiff moved into and occupied what is now referred to as Plot No. 84 Kalolo Kibaoni Baya Magonzi on the strength of the sale agreement aforesaid. As the learned Judge observed:
  - “ 42. That Agreement unfortunately does not specify the parcel of land on which the 28 Cashew nuts purchased by the Plaintiff were situated. Nor does it specify the extent or area occupied by the cashew nuts...
  43. More importantly, that Agreement neither referred to any land nor did it give the Plaintiff authority to take possession thereof and to proceed to develop the same. That omission, whether deliberate or otherwise was rather consequential in my view. As it were, the Plaintiff does not lay claim on the said Plot No. 84 as a beneficiary thereof by virtue of her ancestry.
  44. From her own pleadings and testimony before the Court, she all along knew that the parcel of land she occupied was Government land...”
22. Taking issue with the learned Judge's findings, learned counsel for the appellant submitted: that the appellant's uncontroverted evidence showed that she started to occupy the suit property sometime in 1978 after purchasing cashew nut trees standing thereon; that this was long before the Project was established; that none of the respondents were present when the appellant acquired the cashew nut trees; and that the Project was established in 1998 by which time the appellant was already in occupation of the suit property, having built her residence thereon.
23. In rebuttal, learned counsel for the 1<sup>st</sup> to 3<sup>rd</sup> respondents submitted: that the appellant failed to establish her ownership of the suit property before establishment of the Project; and that the Sale Agreement produced by the appellant did not refer to any land or give the appellant the authority to take possession and develop the suit property.
24. According to learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents, the Sale Agreement produced by the appellant was self-defeatist. Counsel submitted that it was not signed by the purported seller and purchaser of the trees; that the agreement did not show the acreage occupied by the trees or make reference to any particular parcel of land; and that it did not confer on the appellant any possessory rights over a parcel of land.
25. While the sale agreement dated 2<sup>nd</sup> March 1978 and made between the appellant and Kazungu Wa Monzo for the purchase of 28 cashew nut trees for a total of Kshs. 810 appeared genuine, we take to mind the fact that it made no reference to the sale of any specific plot or parcel of land; that it did not specify the location of and area occupied by the cashew nut trees said to have been purchased; and that the agreement does not of itself prove that she was in occupation of the suit property long before the establishment of the Project. Moreover, this was unalienated government land in respect of which no claim would lie on the basis of an alleged sale, more so in view of the fact that what was sold were cashew nut trees.
26. Section 2 of the repealed Government Lands Act defined “unalienated Government land” to mean Government land which was not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment.



27. In *Sammy Mwangangi & 10 others v Commissioner of Lands & 3 others* [2018] KECA 800 (KLR), this Court held that:

“43. Under the repealed Constitution and the Government Lands Act, the Government could allocate to individuals unalienated Government land. However, such alienation could only be effected legally after the planning process was completed ....

44. In a similar situation to what the appellants are now claiming, this Court in the case of *Michael Githinji Kimotho -Vs- Nicholas Murathe Mugo*, Nairobi Civil Appeal No. 53 of 1995 it held as follows:

‘If the appellant had been in occupation of the suit land as a squatter without any right or title to the suit land in his favour, he was obviously in no position to resist the respondent’s claim. Though the appellant had for a long time been in occupation of the suit land which was government land before it was allocated to the respondent, this could not have helped him in resisting the respondent’s claim where the latter is registered as owner of the land. Similarly, if he, the appellant, had carried out any development on the suit land, he did so at his own peril and he could not expect any compensation in that respect. Even if for argument sake the suit land had been erroneously allocated to the respondent the appellant as a squatter in the suit land had no locus standi and the so called erroneous allocation could not be an answer to the respondent’s claim for his eviction. His position as a trespasser could not have given him any protection against the respondent’s claim for possession as the registered owner of the suit land.’”

28. In our considered view, mere sale and purchase of trees on an unalienated land, occupation and development thereof did not by any means confer title to such land unless and until the land is surveyed, subdivided, alienated and allotted with a view to registration in the respective names of the allottees. In this case, no such steps had been taken in respect of the suit property until the squatter upgrading project was established and undertaken, thereby culminating in the allocation of plot No. 84 to the appellant. Before then, the suit property remained unidentifiable, unregistered and incapable of being the subject of any property rights enforceable at law. In effect, the sale agreement could, at best, only confer upon the appellant tenure over the trees and not ownership of the suit property.

29. To our mind, it is immaterial that the appellant took possession of the cashew nut trees and occupied the unalienated suit property as early as 1978. Doing so did not arm her with the right to challenge the title of a subsequent registered proprietor thereof.

30. Turning to the 2<sup>nd</sup> issue as to whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents subdivided and hived off a portion of the appellant’s land and allocated it to the 4<sup>th</sup> respondent, the evidence on record shows that the appellant recognized the mandate of KKB from as far back as the year 2003; that she made payments amounting to Kshs 10,200 as evidenced by three receipts issued in her name on 16<sup>th</sup> April 2008; that she was allocated plot No. KB/84 pursuant to a clearance certificate dated 16<sup>th</sup> April 2010 issued by the project officials upon confirmation that the structure erected thereon belonged to her; and that, upon allocation, she was entitled to and obtained a beacon certificate to facilitate registration of the plot in her name.

31. In addition to the foregoing, the record as put to us shows that the appellant’s plot No. 84 emanated from the sub-division of a parcel of land previously allocated by the Government to the Maendeleo Ya



Wanawake organization in 1991 measuring 0.2226 Ha as evidenced by the Letter of Allotment dated 7<sup>th</sup> June 1991 and produced by the 1<sup>st</sup> to 3<sup>rd</sup> respondents; and that the parcel of land was sub-divided into plot Nos. 81, 82, 83, 84, 87 and 514. In view of the foregoing, and having considered the rival submissions of learned counsel, we reach the inescapable conclusion, as did the learned Judge, that plot No. 83 was not hived off Plot No. 84 as claimed by the appellant.

32. It is not lost on us that Plot Nos. 83 and 84 were created at the same time after survey and sub-division of the parcel of land aforesaid in 2002; and that Plot No. 83 was not hived off the appellant's Plot No. 84.
33. On the closely related 3<sup>rd</sup> and 4<sup>th</sup> issues as to whether the 5<sup>th</sup> respondent was a bona fide purchaser for value of plot No. 83; and whether he was entitled to the reliefs sought in his counterclaim, we hasten to observe that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who were former officials of the KKB Project testified on how plot Nos. 83 and 84 came to be, and how plot No. 83 was allocated to the 4<sup>th</sup> respondent before sale to the 5<sup>th</sup> respondent. According to them, the sale and transfer of plot No. 83 was carried out in accordance with their laid down procedures.
34. According to the 4<sup>th</sup> respondent, he was allocated plot No. 83 by the Project. He testified that he sold the plot to the 5<sup>th</sup> respondent for a sum of Kshs. 1.6 million vide a Sale Agreement dated 11<sup>th</sup> July 2016; and that he transferred the plot to the 5<sup>th</sup> respondent with the approval of the Project administration. This evidence was corroborated by the 1<sup>st</sup> respondent, who stated that the 4<sup>th</sup> and 5<sup>th</sup> respondent went to the Project offices and informed them of the sale; that they scrutinized the agreement; and that they reflected the changes in their register and charged the requisite transfer fees.
35. The 1<sup>st</sup> respondent further stated that, upon payment of the requisite fees, they issued a clearance certificate dated 1<sup>st</sup> August 2016 to the 5<sup>th</sup> respondent, who they now considered as the owner of plot No. 83. On his part, the 5<sup>th</sup> respondent testified that, at the time of purchasing plot No. 83, the 4<sup>th</sup> respondent's house had collapsed; that the land was in the name of the 4<sup>th</sup> respondent in the Project's Register; that there was no dispute when he bought the land; that he brought a surveyor in 2016 as he wanted to fence the land, but that he could not do so as the appellant lodged a complaint; that he paid the requisite fee to facilitate resolution of the dispute as shown in the Project receipt dated 13<sup>th</sup> September 2016 issued to him; and that the dispute was never resolved by the Project administration after the appellant filed the suit leading to the impugned judgment.
36. The 4<sup>th</sup> and 5<sup>th</sup> respondents produced copies of the Sale Agreement, bank transfer of the consideration paid to the 4<sup>th</sup> respondent, receipts for transfer fees and dispute resolution fees, the clearance certificate issued to the 5<sup>th</sup> respondent, as well as a list of Project members listing the 5<sup>th</sup> respondent as the owner of plot No. 83. Apart from mere denials, the appellant did not adduce any evidence to rebut the 4<sup>th</sup> and 5<sup>th</sup> respondents' evidence of sale and transfer of plot No. 83, which was corroborated by the 1<sup>st</sup> respondent.

The Black's Law Dictionary (9<sup>th</sup> Edn) defines a bona fide purchaser as:

“One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”



37 In *Said v Shume & 2 others* [2024] KECA 866 (KLR), this Court held that:

“26. In the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR), the Supreme Court stated that, for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment. The Court upheld the dicta in *Samuel Kamere v Lands Registrar, Kajiado*, (*supra*) and stated that:

‘...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property ....’”

38. It is clear from the evidence on record that the 5<sup>th</sup> respondent was a bona fide purchaser for value of plot No. 83. That leaves us with the question as to whether the 5<sup>th</sup> respondent was entitled to the reliefs sought in his counterclaim.

39. In *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR, Korir J. (as he then was) persuasively held that:

“8. .... A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.” (See also *Kenya Breweries Ltd & Another v Washington O. Okeyo* [2002] eKLR).

40. The 5<sup>th</sup> respondent having sufficiently demonstrated that he was a bona fide purchaser for value of plot No. 83, he was entitled to the reliefs sought in his counterclaim.

41. Having carefully considered the record of appeal, the grounds on which it is anchored, the rival submissions, the cited authorities and the law, we reach the inescapable conclusion that the appeal has no merit and is hereby dismissed with costs to the respondents.

42. Consequently, the judgment and decree of the ELC (J. O. Olola, J.) dated 22<sup>nd</sup> January 2021 be and is hereby upheld. Orders accordingly.

**DATED AND DELIVERED AT MOMBASA THIS 30<sup>TH</sup> DAY OF JANUARY 2026.**

**A. K. MURGOR**

.....  
**JUDGE OF APPEAL**

.....

**DR. K. I. LAIBUTA CArb, FCIArb.**

**JUDGE OF APPEAL**

.....



**G. W. NGENYE-MACHARIA**

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

