

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KAJIADO**  
**ELCL APPEAL E007 OF 2025**

**KITATON** **MPURKOI**  
**SUYIANKA.....1<sup>ST</sup> APPELLANT**

**FRANCIS LIARA SHOKOINE**  
**ALIAS FRANCIS DIARA MPURKOI .....2<sup>ND</sup>**  
**APPELLANT**

**VERSUS**

**NKAPILIL** **LEYIAN**  
**SUYIANKA.....RESPONDENT**

***Being an Appeal against the entire judgment and decree  
of Hon. E.M Kagoni (S.P.M) delivered on 16 January,  
2025 in Kajiado Chief Magistrate ELC Case No. E015 of  
2024***

**JUDGMENT**

1. This Appeal arises from the judgment of Hon. E.M Kagoni (S.P.M) delivered in Kajiado Chief Magistrates Court MCELC E015 of 2024 delivered on 16 January, 2025 where the Learned Magistrate allowed the Respondent’s claim against the Appellants. Disgruntled with the Learned Magistrate’s

decision, the Appellants have approached this court through a Memorandum of Appeal dated 27 January, 2025 which is premised on the following grounds;

**(1) That the Learned Magistrate erred in law and in fact by finding that the Respondent is the rightful owner of 50 acres to be excised from L.R No. KAJIADO-CENTRAL/1140 (hereinafter referred to as 'the suit property');**

**(2) That the Learned Magistrate erred in law and in fact by finding that the 2<sup>nd</sup> Appellant who had no title to land had sold the suit property to the Plaintiff;**

**(3) That the Learned Magistrate failed to appreciate that the 1<sup>st</sup> Appellant by virtue of being the registered proprietor, only she could sell and transfer the suit property;**

**(4) That the Learned Magistrate erred in law by failing to appreciate that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants disputed the sale of the suit property to the Respondent;**

**(5) That the Learned Magistrate erred in law and in fact in granting the order for specific**

***performance, disregarding the material evidence that the land was and is not available for transfer;***

***(6) That the Learned Magistrate erred in law and in fact by interpreting the Respondent's occupation of the suit property as evidence of a sale, disregarding the Appellants' claim that the Respondent's son moved onto the land unlawfully in May 2022 and there is an on-going suit seeking eviction;***

***(7) That the Learned Magistrate erred in law and in fact in concluding that it was not in dispute that Respondent had been in occupation of the suit property since 2002, yet the Appellants pleaded trespass begun in 2022 and in essence it did not have jurisdiction to determine adverse possession claim;***

***(8) That the Learned Magistrate erred in law in failing to consider the Appellants' submissions in their entirety and in doing so arrived at a wrong decision; and,***

***(9) That the Learned Magistrate erred in law and in fact in overlooking the procedural defects in the***

***Respondent's case, including the failure to produce key evidence such as proof of subdivision and requisite approvals for the transaction.***

2. Subsequently, the Appellants seeks for the following prayers;

***(a) The Appeal be allowed***

***(b) The judgment of the Learned Magistrate delivered on 16<sup>th</sup> January, 2025 and consequential orders be set aside.***

***(c) The Appellants be awarded the costs of this Appeal.***

3. The genesis of this appeal is the Respondent's suit against Kitaton Mpurkoi Suyianka, Francis Liara Shokoine Alias Francias Diara Mpurkoi, Daniel Mdomo Mpurkoi Alias Mdomo Shokoine, Leembu Shokoine Alias Loembu Mpurkoi initiated in Kajiado Chief Magistrate's Court through a Complaint dated 15<sup>th</sup> January, 2024. Through the Complaint, the Respondent sought for a permanent injunction against the Defendants from disrupting him and his family from their continuous occupation of 50 acres of land in KAJIADO/KAPUTIEI-CENTRAL/1440 registered under Imaroro/Mashuru Group Ranch as at the time he purchased it for Kshs. 50,000/=.

4. It was pleaded that despite the issuance of title KAJIADO/KAPUTIEI-CENTRAL/1440 to the 1<sup>st</sup> Appellant on 23<sup>rd</sup> March, 2022, she became dodgy and evasive when the Respondent sought its subdivision in order to acquire his alleged 50 acres. The Respondent accused the Defendants of threatening to evict his son from the land yet he had resided therein since 2008. It was the Respondent's case that legal proceedings were instituted against his son Elijah Soronyi in ELC E069 of 2023 by the 1<sup>st</sup> Appellant seeking eviction orders against him. The Respondent further reproached the Defendants for harassing him and failing to subdivide the suit property in spite of his numerous pleas. According to the Respondent, his outstanding purchase price monies of Kshs. 20,000/= would only be paid once subdivision was effected.
5. In a Statement of Defence dated 22 February, 2024, the Appellants denied the averments levelled against them by the Respondent by asserting that they have never sold or leased any portion of the suit property to the Respondent. It was stated that the 1<sup>st</sup> Appellant was the registered owner of KAJIADO/KAPUTIEI-CENTRAL/1440 acquired from Imaroro/Mashuru Group Ranch by virtue of her membership. The 1<sup>st</sup> Appellant accused the Respondent's son of illegally

moving into her suit property in May, 2022 and putting up structures therein on 20 acres in spite of her protestation and lodging a complaint at Mashuru Police Station. The 1<sup>st</sup> Appellant admitted that she instituted legal proceedings against Elijah Soronyi Nkapilil in MCELC Case No. E069 of 2023 at the Kajiado Chief Magistrate's Court wherein various order were sought against him including evictions orders.

### **Court's direction**

6. The court directed that the Appeal be dispensed through written submissions. This directive was only complied with by counsel for the Appellants.

### **Appellants' submissions**

7. Through the submissions dated 7 August, 2025, the Appellants raised a singular issue for determination being whether the Learned Magistrate erred in law and in fact in finding that there was a valid agreement for the sale of a portion of the suit property between the Appellants and the Respondent.
8. It is argued that no valid sale agreement existed between the Respondent and the 1<sup>st</sup> Appellant relating to the alleged sale of 50 acres out of KAJIADO/KAPUTIEI-CENTRAL/1440. Further, it is not disputed that the 1<sup>st</sup> Appellant became the

registered proprietor of the suit property upon the demise of her husband, Mpurkoi Suyianka Kimiti. Her husband had acquired the suit property from Imaroro/Mashuru Group Ranch by virtue of his membership. It is further argued that as at the time the Respondent purportedly purchased a portion of the land from the 2<sup>nd</sup> Appellant, he was fully aware that its title was still under the group ranch and that Mpurkoi Suyianka Kimiti had already passed away. Based on the foregoing, the Appellants assert that the 2<sup>nd</sup> Appellant never had any proprietary interest over the suit property neither could he sell any of its portion to the Respondent.

9. Section 24 and 26(1) of the Land Registration Act are put forward to reiterate that only the 1<sup>st</sup> Appellant was permitted to deal with the suit property because she was its registered proprietor. The doctrine of *nemo dat quod non habet* as discussed in **Daniel Kiprugubtun Maiywa v Rebecca Chepkurgur Maina (2019) eKLR** which was cited in **Mwai v Muthaithi (Environment & Land Case 37 of 2019) {2023} KEELC 22459 (KLR)** is put forward to advance the argument that “no person can pass a better title to another than that which he has.”

10. It is further restated that the Respondent was well aware that the 2<sup>nd</sup> Appellant did not have the legal capacity to dispose of any portion of the suit property, nor was it available for sale due to lack of proper documentation. Additionally, the succession proceedings had not been concluded to identify who was the registered owner of the property. It is further contended that legal proceedings were instituted against the Respondents' son in Kajiado MCELC No. E069 of 2023 seeking an eviction order against him because he had trespassed onto 20 acres of the suit property.

**Issues for determination**

11. This being a first appellate court, it is duty bound to re-evaluate and re-assess the evidence before the trial court before arriving at its own independent conclusion. The duty of the first appellate court was stated by learned Judges of the Court of Appeal in **Jacinta Wanjiku Kamau v Isaac Kamau Mungai & another [2006] KECA 366 (KLR)** in the following words;

***“This being a first appeal, it is our duty to re-evaluate the evidence, assess it and reach our own conclusions remembering that we have neither***

***seen nor heard the witnesses hence due allowance must be made for this.”***

12. After careful consideration of the entire record of Appeal as well as submissions by the Appellants' Counsel, I agree that the first issue for determination in this appeal is whether the 2<sup>nd</sup> Appellant had the legal capacity to dispose of portion of the suit property to the Respondent. The 2<sup>nd</sup> issue is whether the Respondent was entitled to the orders sought in his plaint.

**Determination**

13. The two issues raised by the Learned Magistrate in making his determination upon careful consideration of the pleadings, evidence on record and parties' submissions were whether there was an agreement executed by parties to sell portion of the suit property before its title was issued and if the agreement was enforceable.

14. It is not contested that the suit property was initially registered in the name of the late Mpurkoi Suyianka Kimiti. It was also not in dispute that the Respondent instituted this suit against the widow of the late Mpurkoi Suyianka Kimiti, the 1<sup>st</sup> Appellant herein and her three sons and that Mpurkoi Suyianka Kimiti and the Respondent are both brothers.

15. The Respondent's claim before the trial court was premised on a sale agreement dated and executed on 21 September, 2022. The Agreement was in relation to sale of 50 acres of land from the 2<sup>nd</sup> Appellant (seller) to the Respondent (buyer). The Agreement which was attested was duly signed by the Respondent and 2<sup>nd</sup> Appellant and his two brothers. According to the terms of the agreement, the Respondent paid Ksh.50,000/= only because he had previously paid 40 cows valued at Kshs. 16,000/= each. The Respondent however, pleaded that he only paid Ksh.30,000/= while the outstanding balance of Ksh.20,000/= would only be paid once subdivision of the suit property was undertaken.

16. The Appellants have in their submissions invoked the doctrine of '**nemo dat quod non habet**' maintaining that the 2<sup>nd</sup> Appellant did not have the capacity to sell the suit property to the Respondent. It is not disputed that the 2<sup>nd</sup> Appellant was the son of Mpurkoi Suyianka Kimiti, the original owner of the suit property. Nonetheless, he purported to sell 50 acres of the suit property to the Respondent before he had been issued with any letter of

administrations permitting him to deal with the deceased estate in any manner.

17. The issue of disposal of property without legal capacity was deliberated by the Court of Appeal in **Abed v Ali** **[2025] KECA 1323 (KLR)** as follows;

*“in the absence of letters of grant of representation, one Jacob Kilonzo had no legal capacity to sell the suit house to Asma Ahmed. In addition, it is trite that a person can only transfer what he owns. The above cited position gets credence from the Latin maxim of Nemo dat quod non habet, which means that one can only give what he/she has, or can only transfer what he/she owns. More particularly, a person who does not own property cannot confer it on another except with the true owner's authority.”*

18. Differently constituted, the Court of Appeal in **Kimani (Suing as the Legal Representative of the Estate of John Kimani Munyaka) & another v Wainaina** **[2025] KECA 1679 (KLR)** further held as follows;

*“These documentary facts lead us to an inescapable conclusion grounded in a fundamental principle of*

***law, “nemo dat quod non habet”, “no one can give what they don't have.” In our view, the appellants' entire case rests on shaky ground. They seek to enforce rights arising from a transaction where the vendor possessed nothing to sell and could convey nothing to the purchaser.”***

19. It is not disputed that as at the time the 2<sup>nd</sup> Appellant allegedly sold the suit property to the Respondent, he was not its registered owner. Through her defence, the 1<sup>st</sup> Appellant has maintained that she had never sold nor leased any portion of her land to the Respondent. In addition, while giving her testimony, she testified that as the owner of the suit property, she had never sold it to any person. According to her testimony, she had borrowed Ksh.50,000/= from the Respondent as a loan. It was not for sale of land neither were any cows exchanged as alleged by the Respondent. These assertions were also restated by DW2 and DW3 in their respective testimonies.

20. Given the above-mentioned allegations, the question that arises is whether the 2<sup>nd</sup> Appellant had the legal capacity to dispose off the portion of the suit property. While giving his testimony, the Respondent acknowledged that although he

purchased the suit property from the 1<sup>st</sup> Appellant, the Agreement stipulated that the vendor was the 2<sup>nd</sup> Appellant. He further admitted as at the time of purchase, he was well aware that his brother, Mpurkoi Suyianka Kimiti, was already deceased.

21. In **Samuel Kamere vs Lands Registrar, Kajiado [2015] KECA 644 (KLR)**, the Court of Appeal discussed the circumstances under which a person can qualify to be a bona fide purchaser for value by holding as follows;

***“In order to be considered a bonafide purchaser for value, he must prove that he had acquired a valid and legal title, secondly, that he carried out the necessary due diligence to determine the lawful owner from whom he acquired a legitimate title, and thirdly that he paid valuable consideration for the purchase of the suit property.***

22. The doctrine of a *bona fide* purchaser was further expounded by the Supreme Court in **Sehmi & another v Tarabana Company Limited & 5 others [2025] KESC 21 (KLR)**, where the Apex Court stated as follows;

***“It is a fundamental principle of the law of property in land that a purchase of a legal estate for value***

***without notice is an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer. The onus of proof however lies upon the person claiming to be a bona fide purchaser. Three main ingredients must be present for a claimant to mount a successful defence based on the doctrine. These are, innocence, purchase for value, and a legal estate.”***

23. While granting the orders for specific performance, the learned Magistrate held that he found no reasons why execution of the duly executed sale agreement between the Respondent and the 2<sup>nd</sup> Appellant could not be executed.
24. Clearly, based on the above cited judicial pronouncements, the 2<sup>nd</sup> Appellant lacked the requisite capacity to sell any part of the suit property. Consequently, the Learned Magistrate erred when he allowed the Respondent's case, yet the it was based on an unenforceable contract.
25. On the 2<sup>nd</sup> issue, the Learned Magistrate issued an order for the specific performance of the alleged agreement between the parties. The jurisdiction on specific performance is well settled.

26. In the case of **Reliable Electrical Engineers Ltd -Vs- Mantrac Kenya Ltd (2006) eKLR**, Maraga J (as he then was) stated that:

***“Specific performance like any other equitable remedy is discretionary and the court will only grant it on well laid down principles. The jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with formal requirements or mistake or illegality, which makes the contract invalid or unenforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy.”***

27. The court in the case of **Thrift Homes Ltd -Vs- Kays Investment Ltd (2005) eKLR** made a similar finding and stated as follows: -

***“specific performance, like any other equitable remedy, is discretionary and the court will only grant it on well settled principles. The jurisdiction of specific performance is based on the existence of a valid, enforceable contract. It will not be ordered if the contract suffers from same defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or unenforceable.”***

28. The question then that must be considered before issuance of an order for specific performance is whether there was a valid and enforceable agreement between the parties. From the

foregoing, there was no valid and enforceable agreement between the parties and the Learned Magistrate erred in granting such an order in the absence of a valid and enforceable agreement.

29. Based on these circumstances, the Appellants' appeal succeeds. I hereby proceed to set aside the Learned Magistrate's judgment delivered in 16 January, 2025 in its entirety. I grant the costs of this appeal and of the suit before the trial court to the Appellants against the Respondent

It is so ordered

**Dated Signed and Delivered at Kajiado Virtually this 3<sup>rd</sup> Day of February 2026.**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Ms. Achola h/b for Mr. Nyasimi for the Appellants

N/A by the Respondent

Court Assistant: Mpoye

**M.D. MWANGI**  
**JUDGE**