



Kioko & another (Both Suing as the Legal Representatives of the Estate of Kioko Lola, Deceased) v Muka Mukuu Farmers Cooperative Society (Environment and Land Appeal E025 of 2024) [2026] KEELC 541 (KLR) (5 February 2026) (Judgment)

Neutral citation: [2026] KEELC 541 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E025 OF 2024
JG KEMEL, J
FEBRUARY 5, 2026**

BETWEEN

**BONIFACE KIOKO 1ST APPELLANT
BERNARD MUTUKU KIOKO 2ND APPELLANT
BOTH SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF
KIOKO LOLA, DECEASED**

AND

MUKA MUKUU FARMERS COOPERATIVE SOCIETY RESPONDENT

JUDGMENT

The Introduction and background

1. The appeal originates from the judgment issued by the Cooperative Tribunal on 30/11/23, in which the appellants were the claimants/plaintiffs, whereas the respondent was the defendant in the tribunal proceedings.
2. Vide an amended statement of claim dated 24/9/2020, the appellants [claimants] sued the respondent as the legal administrators of the estate of the late Kioko Lola, deceased and sought orders;
 - a. A declaration that the deceased was the legal and or beneficial owner of Plot No 188 situated in Donyo Sabuk, Kangundo.
 - b. A permanent injunction restraining the respondent and their servants against and or any other persons purporting to derive right of entry from the respondent from trespassing, selling, alienating, and or in any other way whatsoever interfering with the estate of the deceased, possession, occupation, and or quiet enjoyment of plot No Game 188 situate in Donyo Sabuk Kangundo.



- c. Mesne profits
 - d. Costs of and incidental to these proceedings
3. It was alleged that Kioko Lola passed away on 10/4/1996, and his widow, Nzisa Kioko, filed a suit in the Tribunal. However, she died on 24/8/2019, prompting the subsequent substitution of the claimants.
 4. That prior to his demise, Kioko Lola was a member No. 633 of the respondent and possessed share certificate No. 638 in respect to Plot No. 15-192, [the original] as well as Plot Game 188, [additional plot].
 5. Upon the death of Kioko Lola, the respondent transferred the original plot No 15-192 to Nzisa Kioko, the deceased's wife. However, in March 2016, the respondent refused to transfer plot No. 188 to Nzisa Kioko or grant her vacant possession, and instead threatened to transfer the plot to a third party. In brief, therefore, the claim was for the respondent to transfer plot No 188 to the claimants and vacant possession thereof.
 6. In denying the claim, the respondent, through its amended statement of defence dated 11/8/2021, acknowledged that Kioko Lola was its member No. 633, share certificate No. 638, the holder of Plot No. 15-192, and the owner of an additional plot, No. 25 Kayatta, within Kayatta Central. It contended that Plot No. Game 188 was owned by Kioko Katunga, who possessed share certificate No. 639 and plot No. 6-039, along with an additional plot, No. 188.
 7. It was further contended that Plot No. 188 was transferred to Margaret Juma Kioko, who sold it to Juliana Mwai, who in turn conveyed it to his son, the current owner, namely John Oleso Mwai.
 8. It was further contended that Kioko Lola transferred his interest in Plot Kayatta No. 25 to Alice Mukene Nzau on 5/12/95. The dispute was subsequently referred to an arbitration panel, which, after review, adjudicated that Plot No. 188 was held by John Oleso Mwai. It asserted that the claimants do not hold any interest in Plot No. 188, hence the respondent has no basis to allocate the plot to them, as it belongs to a third party.
 9. During the hearing, PW1 – Boniface Kioko presented evidence and reiterated the contents of his claim. He relied on two witness statements dated 24/9/2020 and 4/11/2021. He further stated that his deceased father was allocated Plot No. 188 on 23/10/1983. Additionally, he indicated that in August 2015, the respondent instructed him to conduct a survey of Plot 188, which he completed on 3/8/2015. He paid Kshs 9000/- and a search fee of Kshs 500/-. He also stated that on 14/4/2016, he corresponded with the respondent requesting for the Yellow Card for Plot 188. The respondent replied within the same month, indicating that the documents could not be released without the owner's or member's consent. Subsequently, on 7/5/2016, the respondent wrote back stating that the document he had requested had been released to him and that no other documents could be released, and that the matter was considered final.
 10. In his subsequent witness statement dated 4/11/2021, he reaffirmed the contents of his previous statement and further clarified that Kioko Lola did not acquire Plot No. 25 Kayatta, but instead obtained Plot No. 188. He explicitly denied that Kioko Lola sold Plot No. 25 Kayatta to Alice Mukene Nzau on 5/12/1995. Additionally, he confirmed that he has no personal interest in Plot No. 25 Kayatta and has not previously raised any disputes concerning the said plot before the Arbitration panel. He stated that, according to the respondent's 2013 audited report, Plot No. 188 was allocated to Kioko Lola, whereas Margaret Juma Kioko was assigned Plot Maen C112, which is recorded in the report as having been sold. Consequently, Kioko Kitunga could not have transferred Plot No. 188 to his wife, as alleged by the respondent, because Plot No. 188 was not under his ownership. Furthermore, the



- respondent failed to disclose the ballot records that supported the arbitration panel's conclusion that Plot No. 188 never belonged to Kioko Lola. He further added that each member was entitled to only one additional plot, and the respondent has not elucidated how Kioko Kitunga purportedly acquired two additional plots, namely plots 188 and Maen C112, as indicated in the respondent's audited report.
11. During cross-examination, PW1 indicated that the documents marked as Exhibit Nos 8-9 [the members register and the plot record] did not originate from the respondent. He further clarified that, aside from the farming activities he undertook on plot 188 in November 2015, the plot, which is located at a considerable distance from their residence, remained uncultivated.
 12. PW2 – Benson Erasto testified and formally adopted his witness statement dated 8/11/2022. He affirmed that he is a former police officer and recounted that on 3/8/2015, he accompanied PW1 to pay the survey fees for the beacon identification of Plot No. 188 at the offices of the 1st Respondent. He further stated that on 11/8/2015, in the company of PW1, his friend, a surveyor and an officer of the respondent, he visited Plot No. 188. PW1 later informed him of a dispute concerning Plot No. 188. Subsequently, in June 2016, he accompanied PW1 again to view Plot No. 25 in Kayatta; however, PW1 refused to accept the plot because it was not owned by his father.
 13. In cross, he stated that he could only adduce evidence in respect to what he observed during the two visits.
 14. DW1 – Peter Mulili testified on behalf of the respondent, affirming his position as the Vice Chairperson of the respondent. As of 2018, the respondent's membership comprised 2016 members, each holding entitlement to the main plot, a commercial plot, and an additional plot measuring 1.2 acres.
 15. He stated that Kioko Lola acquired share No. 638 for plot No. 15-192 [main plot] and the additional plot No. 25 – Kayatta Central. During his lifetime, Kioko Lola sold the additional plot No. 25 Kayatta to Alice Makene Nzau on 5/12/1995. Alice Makene Nzau paid a transfer fee of Kshs 200/- and balloted for the plot. Upon Kioko Lola's death, the main plot No. 15-192 was transferred to his wife, Nzisa Kioko. That on 28/9/2000, Alice Makene Nzau, together with others, was referred to the respondents' surveyor for land allocation, where she was allocated plot No. 25, Kayatta Central, and the allocation was authenticated by the office bearers of the Respondent.
 16. Following the 2016 hearing, he stated that the arbitration panel concluded that plot Nos. 188 and 25 were allocated to Kioko Kitunga and Kioko Lola, respectively. He further stated that PW1 disregarded the panel's decision and reported the matter to the Police and the Commissioner of Cooperatives, who sought clarification from the respondent as to who was the rightful owner of plot No. 188. The respondent informed both offices that the plot belonged to Kioko Kitunga [currently John Oleso Mwai], not to Kioko Lola.
 17. He further stated that Kioko Katunga held share No. 639 and was entitled to the main plot No. 6-039, which he had acquired from Kamau Kamote. On 12/10/1996, Kioko Katunga participated in the ballot for the additional plot No. Game 188 at the Central Game Farm. Upon Kioko Katunga's demise, his share was transferred to his wife, Margaret Juma Kioko, who, in turn, sold the plot to Juliana Mwangeli Mwai [now deceased]. The plot has now devolved to her son, John Oleso Mwai, the current owner. He added that each member is only entitled to one additional plot.
 18. In his subsequent witness statement dated 1 July 2022, PW1 reaffirmed the contents of his preceding statement and further stated that he did not raise any objections to the transfer of plot No. 25 from Kioko Lola to Alice Mukene Nzau. He also noted that it is likely that Kioko Lola did not disclose the transaction to PW1 during Kioko Lola's lifetime.



19. He stated that Plot No Maendeleo C112 [Maen C112] is owned by Nzuki Kivinda Ngome, share No. 635. Furthermore, he clarified that Margaret Juma Kioko never possessed Plot Maendeleo C112, as it was owned by member No. 635.
20. Regarding the 2013 audit report, he stated that it was marred by errors and irregularities, as outlined by the respondents' administrator, Mr. Kitavi, in his correspondence dated 8/1/2016. According to all available records, plot No. 188 is registered to Mr John Oleso Mwai, not to Kioko Lola or PW1.
21. In cross-examination, he stated that he did not know why the respondent directed PW1 to conduct a survey of Plot 188 in 2015. He also stated that the receipts held by PW1 were from the respondent. However, he could not state the purpose of the receipts because Plot No 188 was surveyed in 1996. He nevertheless admitted that Boma Surveyors were the respondent's surveyors. He also admitted not adducing any ballot records for Alice Nzau save for the transfer. He stated that Alice Nzau was not a member of the respondent. In respect of the plot record in the name of Kioko Lola for Plot 188, he stated that it was erroneously issued and later cancelled by the respondent's officials. He added that Margaret Juma was not given another plot, that the information in the audit report is erroneous, and that the error was later corrected, just as with others whose details had errors.
22. Upon hearing the dispute, the Tribunal delivered its verdict on 30/11/23 as follows;

“It is not in dispute that the Claimant’s father, Kioko Lola (Deceased), was a member of the Respondent and entitled to a bonus plot. It is also not in dispute that the deceased was allocated the bonus plot no. Game 188. According to the documents filed by the Respondent – Muka Mukuu Farmers' Cooperative Society Limited, Share Register Special Audit Report dated 31/12/2013, filed on 27/9/2023, page 10 of 38, member No. 633, Kioko Lola, of Share No. 638, got plot 15-192 on 28/10/2013 and the bonus plot of 1.2 acres, Game 188. The Claimant clearly demonstrated that the land belongs to his father. However, the Respondent avers that the late Kioko Lola sold the portion of land and produced transfer forms to that effect, which were Respondent Exhibits. All along, the late Kioko Lola had sold his bonus plot no. Game 188. In essence, from Respondent Witness 1's evidence, the plot was sold to Alice Munene Nzau, which was Kayata No. 25, and Game Central 188 was sold to Margaret Juma, that is, Kioko Mutunga. The question that begs an answer, which the Claimant did not address, is why they took so long to occupy the land and now want to reclaim it. His clarification that the land was too far unfortunately does not hold water, and we, the Tribunal, take it with a pinch of salt. All along, the bonus parcels were occupied uninterrupted for years, which would only mean that the Claimant's father sold the land. We are satisfied with the explanation from Respondent Witness 1, and further, the fact that the matter was taken for arbitration and, when the outcome was not in the Claimant's favour, he opted to bring a claim against the Respondent at the Tribunal. We shall not be led into the intricacies of how the arbitration was done, who were present, and whether it was procedural and proper. The Claimant did not raise the issues when he attended the same or when the exercise was being done. He cannot raise them at this stage. With this in mind, we find that the land, Plot No. Game 188, Oldonyo Sabuk, Kangundo, belongs to someone else and not the Claimant. The land was rightfully allocated to them. However, there was a transfer of the land, as the current owners have been there uninterrupted and can only know that the land was sold to them. We find that the Claimant has not proved his claim, and as such, the same fails. The claim is dismissed with costs to the Respondent.”



23. Aggrieved by the decision of the Tribunal delivered on 30/11/23, the appellants, who were the claimants, proffered the instant appeal on the following grounds, namely;
- a. That the Tribunal erred in law and in fact by finding that Kioko Lola (deceased) was not the legal and/or beneficial owner of Plot No. Game 188 situated in Donyo Sabuk, Kangundo while there was no evidence to support this conclusion.
 - b. The Tribunal erred and misdirected itself when it failed to consider the Appellant's submissions on both points of law and facts.
 - c. That the Tribunal erred in law and fact by failing to judiciously analyze the evidence on record, the Appellants' witness statements, submissions and authorities cited, thereby arriving at the wrong conclusion.
 - d. The Tribunal erred in law and in fact in finding that both plots being occupied uninterrupted meant that they had been sold when there was no sufficient evidence to show that Kioko Lola (deceased) actually sold any land.
 - e. The Tribunal erred in law and in fact in finding that there was not enough reason for the Appellants to not occupy the land if the land was theirs, while wholly ignoring the fact that the Appellants had no reason to leave their current place of residence.
 - f. The Tribunal erred in law and in fact in finding that the audit report was marred with irregularities when there was no evidence to support that conclusion.
 - g. The Tribunal erred in law and in fact by holding that the Claimant was allocated Plot No. 188 and then sold it when the respondent's contention was that the Appellant was allocated plot No. 25 and sold it while the claimants' contention was that he was allocated plot no. 188 thereby mixing issues leading to the wrong conclusion.
 - h. The Tribunal erred in law and in fact by holding that Kioko Lola (deceased) sold Plot No. 188, whereas the evidence on record shows that the plot was sold by Margaret Kioko, who is not at all related to Kioko Lola or his estate.
 - i. The Tribunal erred in law and in fact by holding that the audit report was erroneous, while the complete plot record was not produced to prove the correct allocation of the plots.
 - j. The learned magistrate's decision was unjust against the weight of the evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
24. Consequently, the Appellants sought the following orders;
- a. That this appeal be allowed with costs.
 - b. That the judgment delivered on the 30th November 2023 by the Cooperative tribunal in Case No. CTC/391/2018 be set aside in its entirety.
 - c. That judgement be entered for the Appellants as prayed in the Amended Statement of Claim dated 24th September 2020.
 - d. That the costs in the Cooperative Tribunal as well as costs of the Appeal be provided for.
 - e. Any further or alternative relief or order this Honourable court may deem just to grant.



The written Submissions

25. The parties, with the concurrence of the court, filed written submissions which I have read and considered.
26. Counsel for the appellants framed 3 issues for the Court's determination; namely, whether the tribunal evaluated the evidence and whether that evaluation led to unsupported and contradictory conclusions; whether the tribunal failed to consider the appellants' submissions on law and facts; and whether the tribunal's finding was marred by speculative findings not based on facts or evidence on record.
27. Regarding the first issue, counsel submitted that the tribunal erred in concluding that the deceased, Kioko Lola, was neither the legal nor the beneficial owner of Plot No. 188. This argument was supported by reference to the case of *Caroline Awinja Ochieng & Anor Vs Jane Anne Mbithe Gitau & two others* [2015] ECLR, where it was submitted that the balance tilts in favour of the appellants when the 2013 Audit report, produced as claimants' exhibit Nos 6 and 36, and corroborated in the Respondents' further list of documents dated 4/10/23, is considered.
28. Regarding the audit report, counsel asserted that it was prepared by the respondents' auditors based on their official records as of 31/11/2013 and stamped on 17/5/2014. This serves as prima facie evidence of the allocation of plot No. 188 to Kioko Lola. The allocation, being binding in rem, obligates all parties, including the Respondent. The tribunal's dismissal of the report on the grounds of irregularities was therefore unfounded and not supported by any substantial evidence disapproving the allocation of the said plot. Relying on the case of *Philemon L Wambia Vs Gaitano Lusista Mukofu & 2 others* [2019] KECA 157 KLR, counsel submitted that irregularities cannot be inferred from facts but must be proved. It was not open to the respondent to deny its own report, and the court was urged to recognise the said report unless rebutted, which in this case has not.
29. The Tribunal was faulted for neglecting to analyse the evidence on record, specifically the appellant's witness statements, submissions, and cited authorities. The Plot record spanning pages 37-39, which includes the members' register and the plots record prepared by the respondent, indicates Kioko Lola as the owner of plot 188. However, the Tribunal disregarded the evidentiary value of these documents, leading to an incorrect conclusion.
30. Additional submissions indicated that the respondent commissioned a survey of plot 188 through its Boma Surveyors. It was therefore questioned whether the respondent had a rationale for facilitating the survey for the appellants if the plot indeed belonged to other individuals. The audited report confirms that Margaret Kioko's bonus plot was MAEN C 112 (sold) and not plot 188. That the respondents' report on pages 99 and 103 of the record of appeal is but a fabrication intended to muzzle the truth about the true ownership of plot No 188.
31. Regarding the second issue, the tribunal was faulted for ignoring the appellants' comprehensive submissions on legal and factual points, which resulted in an incorrect decision.
32. On the third issue, the court was respectfully urged to determine that plot No 188 had not been sold, due to the lack of any sale agreement, transfer form, or oral evidence supporting such a transaction. Furthermore, the Arbitration panel's decision was based on unproduced ballots and altered records, all without supporting documentary evidence. The court was urged to reject the Tribunal's decision in its entirety.
33. Counsel for the Respondent framed two issues for determination: firstly, the identification of the plots allocated to Kioko Katunga, deceased, and secondly, the identification of the plots allocated to Kioko Lola, deceased.



34. In response to the first issue, the respondents' counsel submitted that Kioko Katunga acquired share No. 639 [plot No. 6-039] from Kamau Kamote on 12/10/96. Thereafter, Katunga participated in a ballot for an additional plot, No. 188, which was allocated to him. This was confirmed by the share transfer for share No. 639 dated 1/12/96; the sale agreement for plot No. 188 dated 28/11/99; the plot records for share No. 639; the arbitration panel's decision on the ownership of plot No. 188; and letters to the Commissioner for Cooperative Development dated 10/2/2017, inter alia.
35. Subsequently, Plot No. 188 was transferred to Mrs. Margaret Juma Kioko, the wife of Katunga. She later sold it to Juliana Mwangeli Mwai and John Oleso Mwai, pursuant to the sale agreement dated 28/11/1999. It is noted that Mr. Kioko Katunga was never allocated Plot No. 188.
36. Regarding the second issue, the counsel for the Respondent submitted that Kioko Lola was allocated the primary plot No. 15-192, along with an additional central farm plot, Kayatta 25. Upon his death, plot No. 15-192 was transferred to his wife, Nzisa Kioko, who is deceased. However, Kioko Lola sold his additional plot, Kayatta 25, to Ms. Alice Mukene Nzau on 5/12/95 and paid a transfer fee of Kshs 200/-. It was therefore submitted that Kioko Lola was never allocated plot No. 188, and his estate therefore has no lawful claim to the said plot.
37. It was submitted that, based on the evidence adduced by the respondent, Kioko Katunga held share No. 639 and was allocated additional Plot No. 188, while Kioko Lola held share No. 638 and was allocated additional plot Kayatta 25.

Analysis and determination

38. Having considered the record of appeal in its entirety, the written submissions and all the material placed before the court, the issues that fall for determination are;
 - a. Whether appellants proved their case in the Tribunal?
 - b. Whether the Tribunal evaluated the evidence and whether it led to unsupported and contradictory conclusions?
 - c. Costs of the appeal.
39. As a first appellate Court, this Court has a duty to analyze, reconsider and re-evaluate the entire evidence on record so as to satisfy itself as to the correctness or otherwise of the decision of the trial Court. The principles which guide a first appellate Court were summarized in the case of *Selle & Another –vs- Associated Motor Boat Co. Ltd & Others* [1968] EA 123 at P.126 as follows:

“...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 witnesses 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 on the demeanor of a witness is inconsistent with the evidence in the case generally.”
40. Similarly, in the case of *Peters –vs- Sunday Post Ltd* [1958] EA 424 Sir Kenneth O’ Connor, P. rendered the applicable principles as follows:

“...it is 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 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 the 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...”

41. Bearing the above principles in mind, I shall now undertake the analysis of the instant appeal.
42. There is no dispute that the respondent is a farmers' cooperative society comprising members and shareholders. It was generally accepted that each member was entitled to a main plot and a bonus plot, also called the additional plot. Plot allocation is mainly by way of payment of shares and other outgoings, inter alia, survey. Paid-up members participate in plot allocation through balloting. The Society is governed by the provisions of the Cooperative Act and, as such, is expected to be supervised by the Ministry of Cooperatives or its equivalent. As with similar cooperative societies, the Society maintains the members' register and plot allocation details.
43. There is no dispute that Kioko Lola was member No. 633, holding main plot No. 15-192. The issue before the court is whether he also held additional plots, specifically plot No. 188 or plot No. 25 Kayatta.
44. According to the appellant, Kioko Lola was allocated plot No. 188; however, the respondent has refused to issue him a Yellow Card for settlement and title preparation, despite being directed to conduct a survey through Boma Surveyors, the respondent's surveyors. This request was accompanied by a payment of Kshs 9000/- for the exercise. The appellants argue that the respondent has no justifiable reason for refusing to issue the Yellow Card, as the records from the members' register in the respondent's possession, as well as the plot records, indicate that plot No. 188 was allocated to Kioko Lola, not to Kioko Katunga, as the respondent claims. Furthermore, Margaret Juma Kioko, the wife of Kioko Katunga, was allocated plot No. Maen [Maendeleo] C112, not plot No. 188, as alleged by the respondent.
45. On the other hand, the respondent stated that Kioko Lola, member No 633, was entitled to the main plot No 15-192 and an additional plot No 25 Kayatta. He further stated that in 1995 he sold plot No 25 to Alice Mukene Nzau. He also stated that share No 639 initially belonged to Kamau Kamote, who transferred it to Kioko Katunga, who was allocated plot No 6-039. Thereafter, Katunga balloted for additional plot No 188, situated at Game Central. Upon Kioko Katunga's demise, his share was transferred to his wife, Margaret Juma Kioko, who, in turn, sold the plot to Juliana Mwangeli Mwai [now deceased]. The plot has now devolved to her son, John Oleso Mwai, the current owner.
46. Given the background above, it is evident that the subject suit land is not titled [commonly known as unregistered land] and in such a case, the court will be called upon to examine the chain of documents that constitute the title to trace the root of each claimant's interest in the suit land. In the case of Caroline Awinja Ochieng & Anor Vs Jane Anne Mbithe Gitau & 2 others [2015] EKLR the court stated as follows;

“In determining the above issue it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history. The simple reason is that unregistered titles exist only in the form of chains of documentary records. The court has to perform the delicate task of ascertaining that the documents availed by the parties are not only genuine but also lead to a good root of title minus any break in the chain. It is the delivery of deeds



or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title paramount certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.

The instant case is no exception. It is for the Court to interrogate the evidence, especially documentary evidence and ascertain who between the two antagonists that is to say the Plaintiffs on the one hand and the 1st Defendant on the other hand, is the true owner of the suit plot. For the court to conduct this rather wearisome and intricate task, it is proper that the documents, unless otherwise agreed, are produced in their original form or format.”

47. Guided by the above decision, the court will then examine the documentary evidence presented by the parties. Before proceeding further, it is appropriate to note that the burden of proof lies with the appellants. Sections 107–109 of the *Evidence Act* are set forth as follows.

107. Burden of proof

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

48. The standard of proof in civil claims, such as the present case, is the balance of probabilities. The standard of proof indicates the degree to which a party must substantiate its case to achieve success. The burden of proof, also referred to as the “onus,” pertains to the obligation to meet that standard. In civil proceedings, the burden rests with the claimant, who is required to establish their case against the defendant “on a balance of probabilities.” This criterion is colloquially known as the 51% test. Consequently, the court must be convinced that, based on the evidence presented, the occurrence of the event was more probable than not.

Did the Appellants prove their case in the Tribunal ?

49. According to the plot record, Kioko Lola was allocated Plot No. 15-192 on January 29, 1983, and paid the survey fees as evidenced by the receipt dated December 5, 1995, along with a ballot for the same



- plot. It is uncontested that Kioko Lola passed away in 1996, and his wife, Nzisa, died in 2019. Upon the demise of Kioko Lola, his wife was issued with a Yellow card for Plot No. 15-192 on January 16, 2016. The appellants have relied on the members' register of 2013 [audited report], which indicates that Plot No. 188 was assigned to Kioko Lola and that the plot record was cancelled.
50. The appellants have also heavily relied on the special audit of the share register dated 31/12/2013, prepared by DMK Muathe & Associates. Page 10 of the aforementioned report indicates Kioko Lola as the proprietor of Plot 188, while Margaret Juma Kioko is recorded as holding Plot Maen C112. The same plot is also associated with Nzioka Kivinda Ngome and marked as sold. DW1 explained to the court that this report contained errors and irregularities, as evidenced by the report dated 8/1/2016 prepared by Mr. Kitavi, which identified the inaccuracies, including the incorrect entry of Kioko as the owner of Plot 188 instead of Plot No 25 Kayatta.
 51. Conversely, the respondent presented a title deed register dated 23/11/1995, indicating that Kioko Lola was the owner of Plot No. 25 Kayatta, while Margaret Kioko possessed Plot No. 188 and Nzioka Kivinda Maen C112. It is documented that Plot No. 25 Kayatta was sold by Kioko Lola to Alice Nzau, as evidenced by the application for LCB consent dated 5/12/95. Furthermore, the survey fee for the additional plot to Plot 638 referred to Plot 25 Kayatta. DW1 provided unchallenged testimony that Kioko Lola sold his Plot No. 25 to Alice Makene Nzau. The Arbitration Panel reached a similar conclusion. The court is convinced that Plot No. 25 Kayatta belonged to Kioko Lola. The consent application explicitly states that he was transferring the additional plot to Alice Mukene Nzau. Additionally, unchallenged evidence demonstrated that each member was entitled to one additional plot, not two. Consequently, there is no evidence to substantiate that Kioko Lola was ever allocated Plot No. 188 alongside Plot No. 25 Kayatta.
 52. Regarding plot No. 188, the beacon certificate on record, dated 12 October 1996, indicates that the plot was issued to Kioko Katunga. Following his demise, the plot was transferred to his wife, Margaret Juma Kioko, on 2 December 1999. According to the sale agreement dated 28 November 1999, Margaret transferred ownership of the plot to Juliana Mwangeli Mwai. Uncontested evidence shows that, upon her death, the plot was inherited by her son, John Mwai. PW1 informed the court that he cultivated the land in November 2016; however, the documents on record indicate that the plot has been held by Juliana Mwai's family since 1999. The justification that the land was distant from their residence is unconvincing. The plot is currently in Mwai's possession, and PW1 has no lawful authority to interfere with it.
 53. It has been asserted that Margaret Juma Kioko owned plot Maen C112 rather than plot No 188. This claim is inaccurate. According to the 1995 register, the land was held by Nzioka Kivinda, who subsequently sold it, as evidenced by the application for consent to sell it to Naomi Mbulwa and later to Issac Sila Ndivo. I have provided sufficient evidence to demonstrate that Margaret Juma Kioko possessed only plot 188 as an additional plot, not two plots, as claimed by the appellants.
 54. The arbitration panel, in its determination, was unequivocal that plot 188 did not belong to Kioko Lola but to John Mwai. The court has not received any evidence to alter its decision in favour of the appellants.
 55. With regard to the two registers, the court has been persuaded by the 1995 register, which documented the transactions of the original members and is deemed more credible than the 2013 register, which was subject to errors acknowledged even by the Respondent and its administrators. In any event, the Appellants, being children of the original members, were not privy to the transactions, hence the misplaced evidence that has informed the suit in the tribunal and this appeal.



56. Ultimately, I conclude that the appellants have not substantiated their claim that Kioko Lola possessed plot no 188, either in the past, at present, or at the time of the Societies' inception. The evidence supports John Mwai's ownership rather than that of Kioko Lola and his dependants and/or the legal administrators of his estate.

Whether the Tribunal evaluated the evidence and whether it led to unsupported and contradictory conclusions?

57. The appellants have extensively articulated their allegation that the Tribunal disregarded their evidence, thereby concluding that the land does not belong to them. I have meticulously analysed the appellants' evidence in conjunction with that of the respondent, and I am convinced that the Tribunal, aside from a few factual discrepancies, duly considered the evidence presented to it and reached the correct conclusion.

58. This ground, therefore, is rejected.

Who shall bear costs of the Appeal

59. Although costs of an action or proceeding are at the discretion of the court, the general principle is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap.21). As such, the successful litigant should ordinarily be awarded costs unless, for good reason, the court directs otherwise. The court has noted that the Appellants have lost their appeal, and I see no reason to grant costs in favour of the Respondents.

60. Final orders for disposal

- a. The Appeal is unmerited.
- b. It is dismissed with costs to the Respondent

61. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF FEBRUARY 2026 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered Online in the Presence of:

Mr Uvyu for the Appellant

N/A for the Respondent

CA- Ms. Yvette Njoroge

