



**Lagat v Koech (Suing as the Legal Administrator of the Estate
of John Kipkoech Maritim) (Environment and Land Appeal
E013 of 2023) [2026] KEELC 517 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 517 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E013 OF 2023
CK YANO, J
FEBRUARY 5, 2026**

BETWEEN

THOMAS LAGAT APPELLANT

AND

**CATHERINE JERONO KOECH (SUING AS THE LEGAL ADMINISTRATOR
OF THE ESTATE OF JOHN KIPKOECH MARITIM) RESPONDENT**

JUDGMENT

1. This Appeal emanates from the judgment and decree of Hon. B.K. Kiptoo (Principal Magistrate) in Eldoret CMCC ELC NO.79 OF 2019 delivered on 18th August, 2023. Aggrieved by the said decision, the Appellant lodged the instant Appeal against the judgment outlining the following grounds of Appeal: -
 1. That Honourable Magistrate misdirected himself both in facts and in law in allowing the Plaintiff's claim taking into account the totality of the evidence tendered during trial.
 2. That the learned Honourable Magistrate erred in law and in fact in holding that the respondent had proved to the required standard that she is the owner of the parcel of land in issue and in so doing;
 - a. Erred in law and in fact in failing to make a finding that the Appellant had failed to sufficiently prove his ownership of the parcel in question.
 - b. Erred in law and in fact in failing to uphold the Appellants case on acquisition of the parcel of land number Uasin Gishu/Jabali Scheme/92 by the Respondent.
 3. That the learned Honourable Magistrate erred in law and in fact in favouring the Respondent's evidence and ignoring the Appellant's evidence thus arriving at an unfair judgment in that;



- a. The learned honourable magistrate upheld the respondent's claim solely on certificate of title by the respondent despite an existing valid title held by the Appellant.
 - b. The learned honourable magistrate failed to uphold the sanctity of the parcel of land to the Appellant.
4. That the learned honourable magistrate erred in law and in fact in ignoring the pleadings, evidence and submissions by the Appellant and giving more weight to the pleadings, evidence and submissions by the Respondent thereby arriving at an unjust determination is under appeal and in so doing;
- a. The learned honourable magistrate erred both in fact and law by failing to correctly evaluate the evidence and thereby arriving at a wrong conclusion by finding in favour of the plaintiff.
 - b. The learned honourable magistrate erred both in facts and in law failing to take into account the evidence tendered by the Defendants.
 - c. The learned honourable magistrate erred in law and in fact by conclusively relying on the Certificate of Title issued to the Respondent as the only document to prove ownership disregarding the facts that there was another Certificate of Title issued to the Appellants.
 - d. That the learned magistrate erred in law and in fact by considering irrelevant facts and at the same time ignoring relevant facts and thereby arrived at a completely erroneous conclusion.
 - e. The learned magistrate failed to properly analyze the evidence on record and appreciate the submissions of the learned counsel for the Appellant by finding in favour of the Respondent herein.
5. That the learned honourable magistrate erred in law and in fact in upholding the respondents claim and not making a finding on the Appellants Counter claim.
6. In all the circumstances of the case, the findings of the learned magistrate rendered an unjust finding.
2. Consequently, the Appellants sought the following Orders: -
- a. The appeal be allowed.
 - b. The judgment delivered on 18th August, 2023 in Eldoret CMCC ELCO NO. 70 OF 2019 Catherine Cheron Koech (Suing as the Legal administrator of the estate of John Kipkoech Maritim) Versus Thomas Lagat be set aside and in lieu thereof judgment issue as follow;
 - i. The plaintiff's claim be dismissed
 - ii. The Defendant's counter claim be allowed.
 - c. The Appellants be awarded the costs of this Appeal and in the Superior Court.
3. A brief background to bring the Appeal into perspective is that the respondent herein (plaintiff in the trial court) filed a suit vide a Plaint dated 10.03.2014 and filed on 14.03.2014, seeking the following orders against the appellant (defendant in the trial court); an order of injunction to restrain the defendant by himself, his agents and or servants from leasing out or disposing off in any other way the



parcel of land known as Jabali Settlement Scheme Plot No. 92, an order of eviction, costs of the suit and any other relief.

4. The Respondent's suit was opposed. The Appellant filed a Statement of Defence and Counter Claim dated 10.04.2021 and Amended on 20th September, 2021. The Appellant in his defence denied all the allegations raised against him by the Respondent and put her to strict proof thereof. He further averred that he is the registered owner of the suit land and has been in actual possession of the land since the year 1999 and has remained thereon to date.
5. In his counter-claim, it was his claim that he is the registered owner of the suit land having been allotted and issued with the title deed thereto. It was his contention that the title deed issued to Simion Keya Kipkania was improper and should therefore be cancelled.
6. He sought the following orders in the counter-claim; a declaration that he is the owner of the suit land, an order of cancellation of the title deed issued to Simion Keya Kipkania, an order of permanent injunction against the respondent, her agents, servants as well as costs of the suit and the counter-claim.
7. The Amended Statement of Defence and Counter-claim was served upon the respondent who filed a Reply to the Amended Defence and Defence to Counter-claim dated 24.09.2021.
8. In a nutshell, it is the respondent's claim that the suit land belonged to her late husband having acquired it by way of exchange from Simon Keya Kipkania. She further averred that her late husband allowed the appellant to temporarily occupy a portion of the suit land as he waited to acquire his own. She contended that despite accommodating the appellant by selling 2 acres portion in his aid, the appellant had now threatened to dispose off the entire parcel of land belonging to her late husband's estate.
9. The appellant on the other hand stated that the suit parcel measuring 7 ¼ Acres belonged to his deceased brother who handed over the same to him in 1999. That he immediately took possession and has remained therein to date. It was further his claim that he is the registered owner of the suit land having been allotted and issued with the title deed.
10. Upon close of pleadings, the matter was set down for hearing of the main suit.
11. The Respondent's case proceeded for hearing on 22.10.2021. The Plaintiff testified as PW1 and called 4 other witnesses to testify in support of her case. The defence case proceeded for hearing on 18.01.2023 and the appellant testified as DW1 and called 2 other witnesses to testify in support of his case.
12. Upon close of the defence case, parties filed and exchanged their rival written submissions. Consequently, the suit was determined vide the judgment issued on the 18.08.2023, whose effect was to allow the respondent's suit as claimed hence the instant appeal.
13. This court issued directions on the disposal of the appeal by way of written submissions. The appellant filed submissions dated 3rd November, 2025. I have perused the court record and I have not seen submissions filed by the respondent. Be that as it may, I will proceed to render my decision as hereunder.

Analysis and Determination:

14. I have carefully considered the grounds in the Memorandum of Appeal, the Record of Appeal and the Supplementary Record of Appeal as well as the submissions filed in totality. Consequently, it is my considered view that the main issue for determination is whether this Court should interfere with the trial court's findings and exercise of discretion by setting aside the judgment delivered on 18.08.2023 and allowing the appeal. I will determine the same on account of the following; -



- a. Who is the actual, beneficial and registered owner of the suit land known as Uasin Gishu/Jabali Settlement Scheme Plot No. 92.
 - b. Whether the respondent proved her case to warrant the grant of the orders sought.
 - c. Whether the Appellant proved his counter-claim to the required standard to warrant the grant of the orders sought.
 - d. Who should bear the costs of the appeal.
15. This court's jurisdiction as a first appellate court is to reappraise the evidence or issues which were before the trial court and make its own conclusion. This mandate does not however entail taking on board new issues which were never brought to the trial court's attention or matters that were not subject of the trial court's consideration or tribunal as in the instant case. See the Court of Appeal decision in *Oi Pejeta Ranching Limited vs David Wanjau Muhoro* [2017] eKLR.
- Who is the actual, beneficial and registered owner of the suit land known as Uasin Gishu/Jabali Settlement Scheme Plot NO. 92;
16. At the center of the dispute between the parties herein is the ownership of the suit land known as Uasin Gishu/ Jabali Settlement Scheme/ 92.
17. Both parties have laid ownership claims in respect to the suit land. The appellant avers that he is the rightful owner of the suit land, having been allotted and registered as an owner in the year 2019 and a certificate of title issued to that effect.
18. The respondent on the other hand also maintained that she is the rightful owner of the suit land. That the suit land was acquired by her late husband, John Maritim, by way of exchange with one Simion Keya Kipkania (who is since deceased). Consequently, the widow of the said Simion Kipkania, upon obtaining the requisite Certificate of Confirmation of Grant, proceeded to transfer and have the same registered in favor of the respondent and a title deed was issued to that effect.
19. In support of her ownership claims, the respondent produced the following documents; a copy of the title deed of the suit land in the name of Simion Keya as Pexh. 2 in support of her averment that the land originally belonged to the late Simion Keya Kipkania, Title Deed of the suit land in her name as Pexh. 5, the duly signed copies of transfer and registration documents between herself and one, Eddah as Pexh. 3 (a) and (b) as well as confirmation of stamp duty payment as Pexh. 4. All these documents were to explain the root of the title deed issued in her favor.
20. The evidence of the respondent was corroborated by PW2, PW3, PW4 as well as PW5. PW2, Eddah Kipkania, the widow of Simion Kipkania, confirmed that there was an Agreement for Exchange of the suit land with another parcel in Kitale No. 761. That pursuant to the said exchange agreement, she transferred the suit land to the respondent and complied with all the statutory procedures in transferring the same. Further, the same was only transferred upon obtaining the certificate of confirmation of grant which was produced as Pexh. 17.
21. PW4, the Area Chief, also testified that the late John Maritim was the actual owner of the suit land having acquired the same by way of exchange with/from one Simion Kipkania. It was also his testimony that when the dispute was first reported to his office, the mother and brothers of the appellant all stated that the land belonged to the late John Maritim, the husband of the respondent.
22. PW5, the Land Registrar Uasin Gishu County, produced the relevant documents in support of the transfer and registration of the suit land in favor of the respondent; to wit, Green card, Discharge, Transfer, LRA 39 and LRA 42 as Pexh. 17(a) – 21 respectively. She also confirmed that pexh. 5 in the



name of the respondent emanated from their registry and was issued to Catherine Jerono Koech, the respondent herein, on 16.07.2020.

23. The averments of acquisition by way of exchange were further corroborated by DW2, the Land Adjudication & Settlement Officer, who in his testimony confirmed that from their record, the suit land was initially allocated to Simion Kipkania in the year 1994. The said Simion exchanged the land with another one in Kitale, No. 761.
24. The appellant on the other hand, save for stating that he is the registered owner of the suit land and that the same was allotted to him and a title deed subsequently issued in his favor, neither provided any evidence in support of the said claims of allotment nor gave an explanation of how he acquired and became the registered owner of the suit land. DW2, who testified in his favor, on cross-examination conceded that he does not know how the appellant was picked as the owner of the suit land.
25. In view of the foregoing, it is evident that the respondent is the actual, beneficial and registered owner of the suit land. She gave an explanation and adduced the relevant documents of how the suit land was acquired, transferred and registered in her name and a valid title deed subsequently issued to that effect.
26. Section 26(1) of the [Land Registration Act](#) is clear to the effect that a certificate of title shall be taken as prima facie evidence that the person named therein is the absolute and indefeasible owner, unless the title is challenged on grounds of fraud, misrepresentation, illegality, unprocedural acquisition, or corrupt scheme, to which the proprietor is proved to have been a party. There was no such challenge on the title deed held by the respondent by the appellant.

Whether the respondent proved her case to warrant the grant of the orders sought;

27. The second issue is whether the respondent proved her case to warrant the grant of the orders sought. As stated earlier in the judgment, the respondent in her plaint sought against the appellant orders of permanent injunction, eviction and costs of the suit.
28. Having held that the respondent is the actual, bonafide, beneficial and registered proprietor of the suit land, it therefore follows that she is entitled to a quiet and absolute possession thereof, occupation and use of the same to the exclusion of everyone else including the appellant, together with all rights and privileges appurtenant thereto as provided under section 24 of the [Land Registration Act](#).
29. Consequently, it is the finding of this court that she was entitled to the orders of permanent injunction and eviction as sought in the plaint. Thus, the trial magistrate did not err in granting the same.

Whether the Appellant proved his counter-claim to the required standard to warrant the grant of the orders sought;

30. The appellant in his counter-claim sought declaratory orders that is he is the actual and beneficial owner of the suit land, the cancellation of the title deed issued to Simion Kipkania, permanent injunction against the respondent as well as costs of the suit and the counter-claim.
31. It is his claim that he is the duly registered owner of the suit land and holds a valid title deed thereto. In his memorandum of appeal, he has faulted the trial court for disregarding the certificate of title held in his name and produced as an exhibit, which he maintains is the prima facie proof that he is the actual and registered owner of the suit land.
32. I have discussed the issue of ownership of the suit land at length in issue no. (i) above. Be that as it may, I wish to reiterate that one cannot merely dangle a certificate of title as conclusive proof of ownership



of a parcel of land. It is settled that where a certificate of title has been challenged, the onus is on the person named as the proprietor therein to demonstrate the root of the title.

33. The Court of Appeal in the case of *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR held that where an instrument of title is challenged, such proprietor must go beyond the instrument to prove legality:

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

34. Guided by the Court of Appeal decision above, it is evident that the appellant had a duty and evidentiary burden to go beyond the title instrument to prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrance.
35. The appellant herein did not adduce any documentary evidence to prove his alleged acquisition/allotment/allocation claims of the suit land either in the form of an allotment letter, adjudication records, agreement or transfer documents from the late John Maritim or the late Simion Kipkania. It is therefore not clear how he acquired the suit land and became the registered owner.
36. Further, DW2, as earlier stated, confirmed that from their records, the suit land was allocated to Simion Kipkania in the year 1994. The said Simion later exchanged the suit land with another one in Kitale No. 761. However, on cross-examination, DW2 conceded that he did not know how the appellant was picked as the owner of the suit land.
37. In addition, the evidence on record further shows that the appellant’s occupation of the land was permissive, having been allowed by the deceased to take care of a portion of the land. Such occupation, however long, does not confer ownership nor defeat a registered title. See *Wambugu v Njuguna* [1983] KLR 172.
38. In view of the foregoing, it is clear that the appellant did not sufficiently prove that he is the actual and beneficial owner of the suit land. Consequently, a declaratory order that he is the owner of the suit land sought in the counter-claim could not be granted.
39. The appellant also sought an order for cancellation of title originally held by the late Simion Kipkania. Section 80(1) of the *Land Registration Act* provides the grounds for the cancellation of a title. The section provides as follows: -

“(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.” (emphasis added)

40. The question that therefore follows is whether the appellant proved that the registration in the name of the late Simion Kipkania was obtained or made by fraud or mistake.
41. It is trite law that allegations of fraud must be pleaded and strictly proved. In *Vijay Morjaria vs. Nansingh Madhusingh Darbar & another* [2000] eKLR Tunoi JA (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of



course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

42. From the material and evidence placed before the trial court and which this court has had the opportunity to reappraise, re-evaluate and re-consider, the appellant neither pleaded nor proved fraud or mistake on the part of the late Simion Kipkania on his registration as the original/previous owner of the suit land to the required standard.
43. Thus, the upshot of the foregoing is that the appellant did not sufficiently prove his claim under the Counter-claim to the required standard to warrant the grant of the orders sought against the respondent.
44. The duty of an appellate court is now well settled. An appellate court will not interfere with findings of fact unless they are based on no evidence, a misapprehension of the evidence, or the wrong application of legal principles. No such misapprehension or application of wrong legal principals has been sufficiently demonstrated in the present appeal.
45. It is trite law that a court is not bound to accept evidence merely because it has been tendered. What is required is that the court considers and evaluates the evidence before either accepting or rejecting it. In this case, the appellant’s evidence was found to be unsupported, contradictory, and incapable of displacing the respondent’s registered title.
46. In conclusion therefore, this court finds no basis to fault the trial court’s finding as contained in the judgment dated 18.08.2023. The same was arrived at upon careful consideration of the evidence adduced by each party and a proper appraisal of each party’s claim. Consequently, this court finds that the appeal is not merited.

Who should bear the costs of the appeal;

47. The general rule is that costs follow the event unless the court directs otherwise.
48. In the instant case, having held that the appellant has failed to prove his appeal to the required standard, it is the finding of this court that the respondent should be awarded costs for defending the appeal.
49. The costs of the appeal will therefore be borne by the appellant.

Conclusion:

50. In the upshot, I accordingly find that the Memorandum of Appeal dated 28th August, 2023 is not merited and the appeal is hereby dismissed with costs to the Respondent.
51. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF FEBRUARY, 2026.

HON. C. K. YANO

JUDGE

In virtual presence of: -

Mr. Kipnetich holding brief for Mr. Maritim for Appellant

No appearance for Respondent

Court Assistant – Laban

