

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KAJIADO**

**ELC APPEAL NO. E011 OF 2022**

**BETWEEN**

**SAMUEL MWANIKI GAKIO ..... APPELLANT**

**AND**

**ANNE WANJIRU KARANJA .....**

**RESPONDENT**

**(Arising out of the Judgment and Decree of the Principal Magistrate’s Court at Kajiado  
(Hon. I.M. Kahuya, PM) in MCELC No. 290 of 2015 delivered on 26th January 2022)**

**JUDGMENT**

**Introduction and Background**

1. This appeal challenges the Judgment and Decree of the Learned Principal Magistrate, **Hon. I.M. Kahuya, PM**, delivered on 26th January 2022 in **Kajiado MCELC No. 290 of 2015**. The Appellant, **Samuel Mwaniki Gakio**, being dissatisfied with the outcome of the lower court proceedings, approached this court via a Memorandum of Appeal dated 24th February 2022, seeking to have the decision set aside.
2. The Appellant has proffered twenty-eight (28) grounds of appeal against the learned trial Magistrate’s decision. While the grounds are unnecessarily extensive, they can be broadly categorized into five (5) issues of procedural fairness, jurisdiction, evidentiary evaluation, and the application of substantive law regarding matrimonial property and land transfer.
3. The Appellant’s primary contentions are as follows:

- a. **Procedural Fairness and Right to be Heard:** The Appellant avers that the trial court failed to act judiciously regarding Procedural Rules in respect of the Covid-19 protocols on physical attendance. He contends that the court ignored case management rules allowing for service via email, thereby violating his constitutional right to a fair hearing (Article 50(1)) and access to justice.
  - b. A central limb of the appeal is that the trial court lacked jurisdiction. The Appellant argues that the dispute hinged on the **Matrimonial Property Act**, and as such, the suit was not properly framed for the lower court. Further, he contends that the Magistrate exceeded jurisdiction under Article 162(b) regarding the use and occupation of land.
  - c. The Appellant faults the trial court for failing to draft issues for determination and for ignoring the status of pleadings. Specifically, he asserts that the Respondent failed to file a reply to the defense to the counter-claim, effectively admitting the allegations therein, a fact the trial court allegedly overlooked.
  - d. The Appellant criticizes the trial Magistrate for allegedly relying on hearsay evidence, extraneous matters, and conjecture rather than the evidence on record. The Appellant argues that the court "filled in the lacuna of facts" with hypotheses rather than relying on strict proof.
  - e. The Appellant claims the Magistrate misapprehended the law on divorce, customary law, and spousal consent. He alleges that the court essentially "imposed a marriage" that had been dissolved for 13 years and failed to properly adjudicate the law on the sale and transfer of property involving a third party (PW2) who was not enjoined in the suit.
4. The Appellant seeks the following substantive orders:

- a. That the Plaintiff's (Appellant's) claim in the lower court be allowed and the Respondent's counter-claim be dismissed.
  - b. In the alternative, that the judgment be set aside and a new trial commences before a different court.
  - c. Costs of the appeal.
5. The Respondent filed a response to the Memorandum of Appeal dated 12th July 2024 grounded on the following key rebuttals:
- a) The Respondent categorically denies that the lower court matter was a matrimonial cause. She avers that the suit before the Chief Magistrate was "purely a land matter" concerning "Environmental and land issues," specifically alleging fraud on the part of the Appellant regarding **L.R NO NGONG/NGONG/53771**. She states she never relied on the Matrimonial Property Act in the lower court proceedings.
  - b) The Respondent contends that all Covid-19 rules were observed by the trial court. Contrary to the Appellant's claim of being denied a fair hearing, she asserts that the Appellant and his witnesses were given the opportunity to testify in chief, cross-examination, and re-examination.
  - c) The Respondent denies the allegations regarding the lack of pleadings, stating she filed a defense and counterclaim which put the Appellant to strict proof.
  - d) Furthermore, she asserts there was **no divorce** between her and the Respondent and **no existence of a second marriage**, arguing that the suit property was fraudulently transferred by the Appellant.

- e) She maintains that the allegations in the Memorandum of Appeal are false and that the lower court correctly found she had proved her case on a balance of probabilities after conclusively hearing evidence from both parties.
6. The genesis of this dispute lies in the Complaint dated **27th June 2015** filed by the Appellant (then Plaintiff) in **MCELC 290 of 2015**. In that suit, the Plaintiff averred that he was the registered owner of the parcel of land known as **Title No. Ngong/Ngong/53771** (hereinafter "the suit property"). He pleaded that he had purchased the suit property from one **John Kungu Burugu**, described in the Complaint as the Defendant's former husband, in the year 2012 for a consideration of **Kshs. 6,000,000**.
7. The Plaintiff's cause of action arose on or about **April 2013**, when he alleged that the Defendant, without any colour of right or consent, trespassed onto and took possession of the suit property. Despite repeated demands to vacate, the Defendant reportedly remained in occupation as a trespasser.
8. Consequently, the Plaintiff sought judgment against the Defendant for:
- a) An order for **vacant possession and eviction** from Title No. Ngong/Ngong/53771.
  - b) **Damages for trespass.**
  - c) Costs of the suit and interest thereon.
9. In response to the Complaint, the Defendant (now Respondent) filed a **Statement of Defence and Counter-Claim** dated **27th April 2016**. In her Defence, she denied the Plaintiff's claim of trespass, averring that she and her family had been residing on the suit property (**Title No. Ngong/Ngong/53771**) for more than nine (9) years and that it was the only home the family knew. She contended that the suit property was "family property" and that she was never consulted regarding its disposal, which she argued required her spousal consent.

10. By way of **Counter-Claim**, the Defendant sought judgment against the Plaintiff. She averred that she is the wife of **John Kungu Mburugu** (the Vendor), having been married under Kikuyu customary law, and that they were blessed with two children, Ronny Karanja and Susan Wachuka. She further claimed that the suit property had been their matrimonial home for the last 10 years.
11. She alleged that the Plaintiff colluded with her husband to defraud her of the land. She particularized this fraud as: Failure to sign a sale agreement, failure to procure her spousal consent, alleging that no money was exchanged between the Plaintiff and her husband.
12. She prayed for the dismissal of the Plaintiff's suit and an order that the Plaintiff or in the alternative an officer of the court sign transfer forms to return the Title Deed of **LR No. Ngong/Ngong/53771** to herself and John Kungu Mburugu.
13. The Plaintiff (now Appellant) filed a **Reply to Defence and Defence to Counter-Claim** dated **14th July 2016**, joining issues with the Defendant.
14. He vehemently denied the existence of a subsisting marriage or a matrimonial property interest, averring specifically that, the marriage between the Defendant and the Vendor (John Kungu Mburugu) was formally dissolved on **7th January 2001** at a meeting held at the Defendant's parents' home in Muranga.
15. He pleaded that the Defendant had separated from the Vendor in the year 2000 and, following the divorce in 2001, she got married to and lived with one **Patrick Mwangi Karanja**, with whom she had sired the second child, Susan Wachuka.
16. He denied that the Defendant had resided on the property for 9 years, stating that she only "forced her way" into the suit property on or about **April 2013**, long after her divorce. Consequently, the Plaintiff asserted that the Defendant's consent was not necessary as she was

not the wife of the Vendor at the material time. He maintained that a valid sale agreement was signed, the full purchase price was paid, and the transfer was lawful.

17. The appeal was canvassed by way of written submissions.

### **Analysis of Submissions**

18. The Appellant, through **Mwaniki Gitau & Company Advocates**, filed written submissions dated **14th November 2025**. The Appellant condenses his twenty-eight grounds of appeal into four main thematic areas:

- a. **Procedural Unfairness (Covid-19 & Right to be Heard):** The Appellant contends that the trial court violated his constitutional right to a fair hearing. He submits that although he filed his submissions on **17th December 2021**, the Respondent only filed and served hers on **26th January 2022**—the very same day the Judgment was delivered. He argues that it was practically impossible for the Trial Magistrate to have read and considered the rival submissions before rendering the decision, thereby violating the *audi alteram partem* rule.
- b. **Jurisdiction:** The Appellant argues that the dispute essentially mutated into a matrimonial property cause, which falls under the exclusive jurisdiction of the High Court (Family Division) or a Magistrate's Court exercising jurisdiction under the **Matrimonial Property Act**, but not the Environment and Land Court (ELC). Relying on the cases of *HNN v DNK* and *LCL v WLM*, he submits that the moment the Respondent claimed spousal interest and "family property" status, the ELC Magistrate ought to have downed her tools or ordered a separate trial.
- c. **Defective Pleadings & Non-Joinder:** The Appellant faults the trial court for entertaining a counterclaim that sought to cancel a transfer involving a third party, **John Kungu**

**Burugu** (the Vendor/Husband), without enjoining him as a Defendant to the counterclaim as required by **Order 7 Rule 8** of the Civil Procedure Rules. He argues that the court could not validly cancel the Vendor's transfer without him being a party to the suit.

d. **Unpleaded Reliefs:** He further submits that the Trial Court erred by granting a permanent injunction and declaring a beneficial interest, reliefs which he avers were not specifically prayed for in the Respondent's pleadings.

19. The Respondent, through **Obare Ratemo & Co. Advocates**, opposes the appeal via submissions dated **14th November 2025**.

20. She maintains that the matter before the lower court was "purely a land matter" concerning fraud, not a matrimonial cause. She asserts she never relied on the Matrimonial Property Act but rather on the fact that the transfer was fraudulent.

21. She submits that all Covid-19 protocols were observed and that the Appellant was given ample opportunity to testify, cross-examine witnesses, and re-examine.

22. She argues that the Trial Magistrate correctly found that the Appellant had fraudulently transferred the suit property (**L.R No. Ngong/Ngong/53771**) and that the allegations of a divorce or a second marriage were false. She urges the Court to dismiss the appeal as the case was proved on a balance of probabilities.

#### **Issues for Determination**

23. This court is conscious of its mandate as the first appellate court ..to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. To subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it as held by Mativo J in **Mursal & another v**

Manese (suing as the legal administrator of Dalphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022) (Judgment).

24. Having considered the Memorandum of Appeal, the decision of the trial court and the rival submissions, this court has identified the issues for determination in this appeal as follows:

- A. Whether the trial court Magistrate had the requisite jurisdiction to hear and determine the dispute.**
- B. Whether the Appellant's constitutional right to a fair hearing was violated.**
- C. Whether the Respondent's Counter-claim was defective for failure to join the Vendor as a necessary party to the suit.**
- D. Whether the learned Trial Magistrate erred in law and fact by finding that the suit property was "matrimonial" property.**
- E. Whether The Respondent Proved Fraud To The Required Standard And Whether The Trial Court Erred In Deeming The Land Transaction Invalid.**
- F. Whether the learned Trial Magistrate erred in law by granting a declaration of beneficial interest and a permanent injunction and whether the invocation of the prayer for "any other relief" was a proper exercise of judicial discretion.**

**Analysis and Determination**

- A. Whether the trial court Magistrate had the requisite jurisdiction to hear and determine the dispute.**

25. The Appellant faults the Judgment of the lower court on the primary ground of want of jurisdiction. It is the Appellant's contention that the moment the Respondent raised the issue of spousal consent and matrimonial property in her pleadings, the nature of the suit mutated from a civil land dispute into a Matrimonial Cause, thereby ousting the jurisdiction of the Magistrate.

26. This Court is alive to the locus classicus on jurisdiction, the case of Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd (1989) eKLR, where Nyarangi, JA held that:

*"Jurisdiction is everything. Without it, a court has no power to make one more step. A court of law downing its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction is not only the correct procedure to adopt, but it is the constitutional duty of the court to do so."*

27. A perusal of the Plaintiff filed on 27th June 2015 reveals that the Plaintiff (now Appellant) sought the following orders:

- (a) Vacant possession and eviction;
- (b) Damages for trespass; and
- (c) Costs.

28. These are reliefs squarely anchored on the proprietorship of land. The cause of action was alleged trespass. The Respondent, in her defense, pleaded fraud and illegality, asserting that the transfer to the Appellant was void for lack of spousal consent.

29. The Appellant's argument that raising a defense of spousal rights strips the Trial court of jurisdiction is misconceived. This was not a suit for the dissolution of marriage, nor was it a suit for the division of matrimonial property between spouses upon divorce. It was a suit determining whether the registered proprietor had a valid title capable of enforcing eviction against a person in actual occupation.

30. I note the Appellant's heavy reliance on **Article 162(2)(b)** of the Constitution regarding the status of the court. It is important to clarify that **Article 162(2)(b)** establishes the Superior Court (the Environment and Land Court) with the status of the High Court to hear disputes relating to the environment and the use and occupation of, and title to, land. While this Constitutional

provision establishes the Superior Court, the Magistrate's Court exercises jurisdiction conferred upon it by the **Environment and Land Court Act** and the **Land Registration Act** to hear disputes of a concerning land falling within its pecuniary limits.

31. The dispute before the lower court was fundamentally about Overriding Interests. The Environment and Land Court and Magistrates as such are the primary guardians of the **Land Registration Act, 2012**. The Respondent's defense was effectively a claim that she held an unregistered interest that superseded the Appellant's title. **Section 28 of the Land Registration Act** provides as follows:

*"Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register— (a) spousal rights over matrimonial property; (b) trusts including customary trusts; ... (h) rights of a person in possession or actual occupation of land to which he or she was entitled in right of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed;"*

32. To adjudicate whether the Appellant was entitled to eviction orders, the Court had to determine if the Respondent had "spousal rights over matrimonial property" or "rights of a person in actual occupation" which would constitute an overriding interest against the Appellant's title. The Learned Trial Magistrate was beseeched to determine the validity of a land transfer and the rights of occupation. The issue of whether a marriage existed was a question of fact necessary to determine if the "spousal consent" requirement under the Land laws had been breached.

33. Consequently, I find that the Trial Magistrate had the requisite jurisdiction to hear and determine the dispute. The suit was, and remained, a land matter concerning title, use, and occupation.

**B. Whether the Appellant's constitutional right to a fair hearing was violated.**

34. The Appellant has vehemently argued that his constitutional right to a fair hearing under **Article 50(1)** of the Constitution was breached. His grievance stems from the fact that the Respondent filed and served her written submissions on **26th January 2022**, the very same day the Judgment was delivered. He contends that this deprived him of the opportunity to peruse the Respondent's arguments or file a rejoinder, thereby violating the *audi alteram partem* rule.
35. The right to a fair hearing is fundamental, but it must be viewed within the context of the entire trial process, not merely the filing of final submissions. The record confirms that the trial was conducted publicly, witnesses were called by both sides, sworn, examined-in-chief, cross-examined, and re-examined. The Appellant fully participated in these proceedings. The evidentiary phase of the trial, which is the bedrock of any judicial determination, was concluded on **24th November 2021** to the satisfaction of all parties.
36. Regarding the specific issue of submissions, it is trite law that submissions do not constitute evidence; they are merely arguments to persuade the court based on the evidence already on record. The record indicates that the Appellant filed his written submissions on **17th December 2021**. The fact that the Respondent filed her submissions on the morning of the Judgment acts more to her detriment than to the Appellant's.
37. I am of the belief that the Appellant suffered no prejudice. He was heard on merit, his evidence was taken, and his submissions were on record. To invalidate a judgment on the technicality of the timing of the Respondent's submissions would be contrary to the spirit of **Article 159(2)(d)** of the Constitution, which enjoins courts to administer justice without undue regard to procedural technicalities.

38. The Appellant was afforded ample opportunity to plead his case, and he utilized it fully. This ground of appeal fails.

**C. Whether the Respondent's Counter-claim was defective for failure to join the Vendor (John Kungu Burugu) as a necessary party to the suit.**

39. The Appellant posits that the Respondent's Counter-claim was fatally defective because it sought orders effectively cancelling the transfer executed by the Vendor, **John Kungu Burugu**, without enjoining him as a Defendant to the Counter-claim. The Appellant argues that the Trial Court condemned the Vendor unheard and issued orders against a non-party.

40. This Court is not persuaded that this omission is fatal to the Respondent's case. The law regarding the joinder of parties is codified under **Order 1 Rule 9 of the Civil Procedure Rules, 2010**, which provides that:

*"No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."*

41. The objective of this rule is to prevent the derailment of substantive justice by procedural technicalities. While it is good practice to join all persons whose interests may be affected, the failure to do so does not automatically render the suit a nullity, particularly where the court can still effectively determine the dispute between the parties present.

42. In the instant case, the matter in controversy was the validity of the transfer of **Title No. Ngong/Ngong/53771** from the Vendor to the Appellant. The Vendor, **John Kungu Burugu**, was not a stranger to the proceedings. He appeared in court as **PW2**, testified under oath, and was cross-examined. He expressly admitted to the transaction and supported the Appellant's case. He had his "day in court" as a witness and was fully aware of the Respondent's allegations of fraud

and lack of consent. He did not seek to be joined into the suit as a party to safeguard his interests if he had any in the suit.

43. The Learned Trial Magistrate properly dealt with the matter in controversy as regards the rights and interests of the parties actually before her. The non-joinder of the Vendor was a curable procedural defect that did not go to the root of the court's jurisdiction or the validity of the judgment.
44. Accordingly, this ground of appeal must fail.

**D. Whether the learned Trial Magistrate erred in law and fact by finding that the suit property was "matrimonial" property.**

45. The crux of the Appellant's argument is that at the time of the sale in 2012, the property had ceased to be "matrimonial" or "family" property because the marriage between the Respondent and the Vendor (**PW2**) had allegedly been dissolved in 2001.
46. To determine whether the property was matrimonial, this Court must first answer the foundational question: **Was there a valid divorce as pleaded?**
47. For a customary marriage to be validly dissolved, specific traditional rites must be observed. It is not enough for parties to simply separate or live apart. The binding nature of a customary union requires a formal dissolution process, the most critical of which is the **return of the bride price (dowry)**. This court is cognizant of the fact that under Kikuyu customary law, the return of dowry is the definitive act that signifies the dissolution of a marriage.
48. The Appellant's argument that the Respondent had "remarried" or had children with another man does not, in law, dissolve the first marriage if the dowry remains with the bride's family. As held in **S.K.K v G.M.K [2018] eKLR**, mere separation does not nullify a subsisting customary marriage unless the requisite customary divorce rites are performed.

49. Since no evidence was presented on the return of the dowry paid, the marriage legally subsisted at the time of the sale in 2012. The Respondent was in actual occupation of the land, which was the matrimonial home. Therefore, the property was **matrimonial property** within the meaning of **Section 93 of the Land Registration Act**. The Magistrate's finding that the property was "matrimonial" is upheld. This ground of appeal fails.

**E. Whether The Respondent Proved Fraud To The Required Standard And Whether The Trial Court Erred In Deeming The Land Transaction Invalid.**

50. The Appellant contends that the Trial Magistrate erred in finding that the transfer of **Title No. Ngong/Ngong/53771** was fraudulent.

51. A scrutiny of the evidence on record reveals a glaring and fatal anomaly: the transaction lacked the fundamental legal pillars required to sustain a valid sale of land in Kenya. Specifically; there was **no written sale agreement, no spousal consent, and no valid instrument of transfer** produced to substantiate the conveyance.

52. The Appellant admitted that he could not produce a written sale agreement. In the realm of land law, a sale of land is not a casual handshake agreement. It is a statutory construct governed strictly by the **Law of Contract Act (Cap 23)** and the Land Act.

53. **Section 3(3) of the Law of Contract Act** which is couched in mandatory, prohibitive terms is replicated verbatim in section 38(1) of the Land Act. It provides verbatim:

*"(3) No suit shall be brought upon a contract for the disposition of an interest in land unless— (a) the contract upon which the suit is founded — (i) is in writing; (ii) is signed by all the parties thereto; and (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party."*

54. The legal effect of this section is that any purported sale of land that is not reduced to writing and attested is **void ab initio**. It is legally non-existent. The registration of a title without a supporting valid contract is evidence of irregularity and or a fraudulent act.

55. The Respondent was in actual occupation of the suit land. As established, the land was matrimonial property. **Section 93(2)** of the **Land Registration Act, 2012** mandates that spousal rights are overriding interests.

56. **Section 28 of the Land Registration Act** provides verbatim:

*"Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register— (a) spousal rights over matrimonial property;"*

57. Further, **Section 79(3)** of the **Land Act, 2012** explicitly invalidates transfers of matrimonial property without consent:

*"(3) A disposition of matrimonial property shall be void if— (a) it is made without the written and informed consent of the spouse;"*

58. The Appellant failed to produce any document evidencing the Respondent's consent. In the absence of this statutory consent, the transaction is statutorily declared "**void**."

59. The Appellant argues that fraud was not proved. This Court disagrees. Fraud in land transactions is rarely proved by a confession, so to speak; it is proved by the **absence of the necessary legal footprints** that a genuine transaction leaves behind.

60. A genuine purchaser enters a written sale agreement (Section 3(3) LCA). A genuine purchaser seeks spousal consent (Section 79(3) Land Act). A genuine purchaser executes a valid Transfer form (Form J). The Appellant had none of these.

61. This vacuum of evidence leads to the irresistible inference that the transaction was a sham designed to defeat the Respondent's interests in the land. As stated by Lord Denning in the celebrated case of Lazarus Estates Ltd v Beasley [1956] 1 QB 702, which has been adopted by Kenyan Courts in Arthi Highway Developers Limited v. West End Butchery Limited & Others [2015] eKLR:

***"No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."***

62. The absence of a written contract, the absence of spousal consent, and the absence of a verifiable transfer instrument constitute sufficient proof of fraud. The Appellant procured a title deed on the foundation of a void transaction. You cannot place something on nothing and expect it to stand; see *Macfoy v. United Africa Co. Ltd [1961] 3 All E.R. 1169*.

63. Accordingly, the Trial Magistrate was correct in law and fact to find the transaction fraudulent and invalid. This ground of appeal fails.

**F. Whether the learned Trial Magistrate erred in law by granting a declaration of beneficial interest and a permanent injunction and whether the invocation of the prayer for "any other relief" was a proper exercise of judicial discretion.**

64. The Respondent's Counter-claim specifically sought the cancellation of the Appellant's title and a mandatory order for the re-transfer of the suit property to the joint names of herself and her husband, John Kungu Mburugu.

65. However, in its final determination, the trial court did not grant the order for cancellation. Instead, the learned Magistrate invoked the prayer for "any other relief this court may deem fit to grant" and proceeded to issue:

- a. A declaration that the Defendant has a **beneficial interest** in the suit land; and
- b. An order for **permanent injunction** restraining the Appellant from interfering with the Defendant's peaceful possession.

66. The legal question before this Court is whether the trial court traveled beyond the pleadings to the detriment of the Appellant. The general rule, as established in *Galaxy Paints Co. Ltd vs. Falcon Guards Ltd (2000) 2 EA 385*, is that parties are bound by their pleadings and a court should not grant a relief that has not been specifically pleaded. The rationale is to prevent surprise and ensure the opposing party has a fair opportunity to respond.

67. However, this rule is not absolute. Courts of equity and justice are not merely rigid computation machines. Where a specific relief (such as cancellation of title) is sought but technically difficult to grant, perhaps due to the non-joinder of the Vendor, but the *evidence* fully supports the protection of the party's rights, the Court is entitled to rely on the "omnibus prayer" to mold the relief to fit the justice of the case.

68. In the instant case, the substance of the Respondent's Counter-claim was to protect her matrimonial home and prevent eviction by a purchaser she alleged was fraudulent. The trial court found, as a matter of fact, that she was a spouse in actual occupation and that the Appellant was not an innocent purchaser.

69. Having made those findings, leaving the Respondent without a remedy simply because the specific prayer for "cancellation" was technically encumbered would have been unjust. The declaration of a **beneficial interest** is a recognition of her rights under **Section 28 of the Land Registration Act** (Overriding Interests), and the **permanent injunction** is the consequential order necessary to protect that interest.

70. These reliefs are not alien to the dispute; they are lesser, protective measures subsumed within the larger prayer for "ownership." By granting them, the learned Magistrate effectively secured the Respondent's tenure without needing to legally revert the title, a pragmatic and judicious use of the prayer for "*any other relief.*"

71. Consequently, I find that the learned Trial Magistrate did not err. The orders granted were consistent with the facts proved at trial and necessary to achieve substantial justice. The Appeal dated **24th February 2022** fails and is hereby **dismissed** in its entirety.

It is so ordered

**Dated Signed and Delivered at Kajiado Virtually this 19<sup>th</sup> Day of February 2026.**

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

**In the virtual presence of:**

Ms. Njuguna h/b for Mr. Mwaniki for the Appellant

Mr. Obare for the Respondent

Court Assistant: Mpoye

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