

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLA NO. E029 OF 2024

SARAH MANANI TUMBO 1ST APPELLANT

FRANCIS KAYAGO ONDICHO 2ND APPELLANT

VERSUS

PHYLIS OGAKE RATEMO 1ST RESPONDENT

FELIX OMBUKI RATEMO 2ND RESPONDENT

MARY KEMUMA RATEMO 3RD RESPONDENT

REGISTRAR OF LANDS, KISII COUNTY 4TH RESPONDENT

JUDGMENT

(Being an appeal from the judgment of Hon. C. Ocharo, Senior Principal Magistrate, delivered on 25 March 2024 in the suit Kisii CMCC/ELC No. 93 of 2018)

1. The suit from which this appeal emanates was commenced vide a plaint filed by the appellants on 16 April 2018. In the plaint, the appellants sued four defendants, respectively, Phylis Ogake Ratemo, Felix Ombuki Ratemo, Mary Kemuma Ratemo, and the Registrar of Lands, Kisii County Lands Registry/Office. The appellants pleaded that the 1st appellant (as 1st plaintiff) was the owner of the land parcel Nyaribari Chache/B/B/Boburia/14270 (the suit land) which was hived off the land parcel Nyaribari Chache/B/B/Boburia/6897. They pleaded that the 2nd appellant (as 2nd plaintiff), who is the father of the 1st appellant, acquired the suit land by a direct purchase vide a sale agreement dated 10 May 2015; that the property bought measured about 40 x 100 feet; that the purchase price was Kshs. 1,600,000/= which was paid in full and acknowledged; and that title to the suit land was issued to the 1st appellant on 11 December 2017. They pleaded that without just cause, the 1st – 3rd defendants/respondents, with the aid of the 4th defendant/respondent (the Land Registrar) revoked the title of the 1st appellant and illegally bestowed it upon the late Francis Ratemo Ombuki. In the suit they asked for only one prayer, that is restoration of the title back into the name of the 1st appellant.

2. The 1st defendant/respondent did not file defence, but I observe that she filed a replying affidavit to an application dated 15 April 2018, which was an application for injunction that was filed together with the plaint, wherein she deposed that her late father Francis Ombuki Ratemo, indeed sold the suit property to the 1st appellant. Essentially, she did not wish to contest the suit and she asked to be removed from the proceedings. I see that on 24 April 2018, she was removed from the proceedings.
3. The 2nd and 3rd respondents appointed counsel and filed a joint statement of defence. They denied the averments in the plaint and further pleaded that the land parcel Nyaribari Chache/B/B/Boburia/6897 (parcel No.6897) is matrimonial property acquired by the 3rd respondent and her husband Francis Ratemo Omboki, and therefore the same could not be sold without her consent. It was further pleaded that at the time of the alleged sale, Mr. Omboki was seriously sick, and could not enter into such a transaction. It was pleaded that if at all there was sale of the parcel No. 6897, or its resultant titles including the land parcels Nyaribari Chache/B/B/Boburia 14270 & 14271, then the transaction is null and void because of lack of consent of the 3rd respondent and consent of the Land Control Board; that there was no valuation for stamp duty, nor was stamp duty paid; that the transfer documents were never witnessed; and that they transacted on a deceased person's land without letters of administration. They contended that if any title was acquired, then it was through fraud, misrepresentation, illegally, unprocedurally and through a corrupt scheme, to which the appellants were parties, and they prayed that the same should be cancelled or nullified. They pleaded that on discovery of various fraudulent activities, they inter alia instructed an advocate to write to the Land Registrar to place a restriction. They asked that the suit be dismissed.
4. The 4th defendant did not enter appearance, nor file any defence, and did not participate in the trial of the case.
5. PW-1 was the 2nd appellant. He relied on a witness statement wherein he stated that on 25 July 2017, he entered into a sale agreement with Mr. Omboki, and purchased the suit land, measuring 22 x 100 feet at Kshs. 600,000/= which he paid in full. He stated that prior to the sale, he went to speak to the 3rd respondent, accompanied by one David Nyamweya Bororo, regarding the sale. He stated that she had no problem and even encouraged him to purchase the land. He described the 3rd respondent as 1st wife of Mr. Omboki. He stated that even after the death of Mr. Omboki, the 3rd respondent came to him and asked him for her late husband's bank account, copy of his ID, KRA PIN and copies of the title deed, on the basis that she had been separated from her late husband for

a long time and she did not have these documents. He stated that he acceded to her request and gave them to her. He also sent Kshs. 7,000/= to her by mpesa which was owed to the deceased as a gift for selling the land, which was pursuant to the customary practices of the Abagusii. He thus asserted that the 3rd respondent was aware of the sale. He continued that the 2nd wife of Mr. Omboki, Pamela Moraa Ratemo (Pamela), together with the siblings of the deceased, namely Anthony Monayo Omboki, Erastus Obwogo Omboki, and his sisters, were also aware of the sale. So too the 1st respondent, Bill Omboki and Maranga Omboki, who were children of the deceased. He stated that the 1st appellant took possession of the suit land upon purchase and was the one in occupation. In court he stated that the family of the deceased met on 3 April 2018 and confirmed their consent. He produced the said minutes together with the title deed and green card (probably a search for I have not seen any green card).

6. Cross-examined, he acknowledged that in the application dated 15 April 2018, he did state at paragraph 3 thereof that he bought the land on 10 May 2015. He however went on to testify that the sale was on 25 July 2017 though he also mentioned that he could not recall the date of the agreement. He nevertheless testified that the suit land was not purchased at Kshs. 1,600,000/=. He testified that he did not obtain consent from the Land Control Board. He did not know if valuation was done because he stated that a surveyor visited the land and he left it to him to proceed. He confirmed that a title deed was issued in name of the 1st appellant. He testified that there are tenants on the suit land and he is the one who collects rent.
7. Re-examined, he testified that the 1st appellant was his daughter-in-law. He clarified that the land in dispute measured 22 x 100 feet. He elaborated that there was a first portion which he purchased, i.e the land parcel No. 14271, which has no dispute.
8. PW-2 was Erastus Obwogo Ombongi, a brother of the deceased. He also adopted a witness statement as his evidence. In it, he stated that his late brother sold the suit land to the 2nd appellant for Kshs. 600,000/=. He stated that prior to the sale, his late brother informed him of the plan to sell the land and he was therefore aware of the sale. He confirmed writing a letter dated 3 April 2018 that they were aware that the deceased was selling the suit land, and they had no objection, given that it was not ancestral land. He stated that the deceased had separated from the 3rd respondent for over 15 years. He testified that he asked the deceased whether he had informed her of the sale and he affirmed that he had, and that she was not opposed to it. In court, he elaborated that the deceased had two wives, and further, that the 2nd respondent was a son of the deceased

with his first wife (i.e the 3rd respondent). Cross-examined, he testified that he was not present at the time of sale of the land and did not witness the sale agreement. He stated that he was not aware of when the sale took place though he thought it was in July 2017. He was not sure of the purchase price but he stated that his late brother told him he was paid in cash. He affirmed that his late brother was fine at the time of the transaction. He was not sure if stamp duty was paid. On the signed consent he testified that members of the first house did not sign it. He thought that the deceased had purchased the land in the 1970s and he married the second wife in the 1980s.

9. PW-3 was Dennis Onkoba. He is husband to the 1st appellant and son of the 2nd appellant. His evidence was to confirm that his father purchased the suit land from the deceased through the sale agreement of 25 July 2017. He testified that he accompanied his father to the offices of M/s Josiah Abobo & Company Advocates, where the sale agreement was drawn and he witnessed payment of the purchase price of Kshs. 600,000/= . He stated that Mr. Omboki was okay at the time of the sale agreement. He also testified that this was the second portion to be purchased; the first portion having developed no issue.
10. PW-4 was David Nyamweya Bororo. His evidence was that on 7 May 2017, he accompanied the 2nd appellant to see the 3rd respondent regarding sale of the suit land. He stated that they met her in Kisii Town and the 2nd appellant informed her of the intended sale. He stated that she confirmed having been informed by her husband and she had no objection to the sale. Cross-examined, he testified that the purchase price discussed was Kshs. 1.6 million in 2017 and that this money was paid in the bank. He was however not present when the sale agreement was signed.
11. PW-5 was Andrew Ratemo Maranga. He testified that his father indeed sold the suit land. He stated that his father consulted them as the 2nd family since the 1st family had deserted him for more than 15 years. He denied that the land belongs to the first family and further denied that it was the matrimonial home of the 3rd respondent. He testified that there are rental properties on the suit land. He testified that his father sold the two parcels No. 14270 and No. 14271 and they had no objection as the same were solely in his name and he is the one who was collecting the rents therein. Cross-examined he testified that he was not present when the sale agreement was drawn. He stated that his father told him that they had gone to the Board. He was not aware of payment of stamp duty.
12. With the above evidence the appellants closed their case.
13. Only the 2nd defendant/respondent testified in defence. He had a witness statement which he adopted as his evidence in chief. In it, he stated that he is son of the 3rd respondent and

that he has her authority to testify on her behalf. He stated that the land parcel No. 6897 is matrimonial property acquired by his mother and deceased father, and it could not be sold without her consent. He added that at the time of the purported sale and transfer, his father was seriously sick and could not enter into such a transaction. He repeated what was pleaded in the plaint, i.e that if there was a sale, then it was null and void as his mother never consented to it; that there was no Land Control Board consent prior to subdivision and transfer; that there was no valuation for stamp duty and no stamp duty was paid on the transfer; that the transfer documents were never witnessed; that when the land was transacted his father had died and no letters of administration had been obtained. He alleged that there was fraud carried out by Pamela and some of her children including transferring Kshs. 1, 400,000/= from his father's account when he was in the morgue, and having a hand in transferring the suit property in into the name of the appellants. Consequently, they wrote to the Governor of Central Bank complaining about the withdrawal of the monies and instructed their advocate to write to the Land Registrar to place a restriction. He stated that they went to the High Court and obtained Letters of Administration Ad Colligenda Bona to preserve his father's estate. They also instructed their advocate to write to the Land Registrar, Kisii, informing him of the fraudulent activities and requested for documents from him which were not there. He contended that the suit was brought to inter alia perpetuate illegalities and to sanctify an illegal process.

14. Cross-examined, he testified that his late father could not sell the suit land without informing his mother because they bought the land together. Asked about the whereabouts of his mother, he stated that she lives in Kisii and able to testify but mentioned that she has authorized him to testify in the suit. He disputed that his mother and father had separated. He stated that the property was purchased in the early 1980s by both his mother and father. He however did not have any document to prove that his mother and father jointly purchased the suit land.
15. With that evidence the defendants/respondents closed their case.
16. Counsel were invited to file submissions, which they did, culminating into the impugned judgment.
17. In her judgment, the trial Magistrate referred to the plaint wherein it was pleaded that the transaction between the deceased and the 2nd appellant was on 10 May 2015 and that Kshs. 1, 600,000/- was paid. She found that in the evidence, all witnesses, save for PW-4, alluded to a sale agreement of 2017. She continued as follows :

“However, the plaintiff (sic) did not amend this glaring error to their pleading which forms the basis of this claim since it is based purely on this sale of 25/7/2017 and not 10th May, 2015. This is a fatal mistake that could have only been cured by amendment of the plaint and not testifying contrary to the pleadings. Such an inconsistency is so grave that at this stage there is no cure irrespective of the fact that the plaintiff testified to and produced the sale agreement appertaining to the transaction of 25/7/2017...

From the foregoing, the plaintiff (sic) has failed to prove their case on a balance of probability as at this stage there is no cure to the variance between the pleadings and the evidence with regard to the date of the sale agreement which forms the basis of this claim.

Having said that, it is not in dispute that the 1st plaintiff is the registered proprietor of the suit land having obtained title in the year 2017. However, the registration of the said title has been put to question in that though the 2nd plaintiff alleges to have purchased the suit land from one Francis Omboki on 25/7/2015, title was issued in December of the same year after the seller had passed on. It is not explained how transfer was done or the subsequent processes. PW1 confirmed that he did not appear before the Land Control Board. The plaintiffs were also unable to explain whether stamp duty was paid or not.

Such inconsistency leaves this court to question the truthfulness of the plaintiff's testimony more so in light of the absence of any documentary evidence to support their case save for a sale agreement that has been impeached for being inconsistent with the pleadings.

Section 25 and 26 of the Land Registration Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on the grounds of fraud or misrepresentation to which the owner is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. Such is the sanctity of title bestowed upon the title holder under the Act.

Though the plaintiffs pleaded that registration was proper, the same has not been proved whatsoever. This court finds that the plaintiffs have failed to prove their case on a balance of probability with regard to their purchase of the suit land in the year 2017 from the registered owner and subsequent transfer and issueance (sic) of title.

The upshot is that the suit fails and is dismissed with costs the end and 3rd defendants (sic). The title deed issued to the 1st plaintiff on 11th December, 2017 be and is hereby ordered cancelled forthwith.”

18. Aggrieved by the above decision, the appellants now appeal to this court on grounds that the trial Magistrate failed to consider the evidence of the appellant and their witnesses which corroborated each other that the appellants bought land from the deceased; that the trial Magistrate erred by failing to consider the inconsistencies in the evidence tendered by the respondents; that the trial Magistrate erred in finding that the appellants acquired title fraudulently whereas the respondents failed to produce conflicting documents or title deed to prove that there are varying titles referring to the same land but different proprietors; that the trial Magistrate erred in dismissing the suit on a technicality, being the disparity in the dates of the agreement and when the transaction was completed, despite all witnesses testifying that there was a sale of land and transfer of title to the appellants; that the trial Magistrate erred in dismissing the suit of the appellants with costs; that the trial Magistrate erred in cancelling the title deed issued to the 1st appellant. The appellants seek that the appeal be allowed and for the judgment to be set aside. They seek orders for the title to the suit land to be bestowed upon the 1st appellant and for the 4th respondent to register her as proprietor. They also seek costs of the suit and of this appeal.
19. The appeal was urged through written submissions and I have taken into account the submissions of Mr. Mainga, learned counsel for the appellants, and Mr. Tanui, learned counsel for the 2nd & 3rd respondents.
20. I opt to start with the pleadings, for the trial Magistrate placed a considerable premium on the same. It is correct that in their plaint, the appellants did plead that the 1st appellant was the lawful proprietor of the suit land which land was said to measure approximately 40 x 100 feet , and which land was purchased at Kshs. 1, 600,000/= pursuant to a sale agreement dated 10 May 2015. They also pleaded that title was obtained on 11 December 2017. They stated that this title was cancelled by the Land Registrar and title was bestowed upon Francis Ratemo Ombuki (the deceased). It is this action which made them come to court, and as I had mentioned, there was only one prayer in the plaint, that of restoration of the title back to the name of the 1st appellant.
21. From the evidence tendered, it emerged that the land parcel No. 6897, from which the suit land emanated from, was subdivided into two, to bring forth the suit land (i.e parcel No. 14270) and the parcel No. 14271. The mutation form was indeed supplied and it showed subdivision of the parcel No. 6897 into parcel No. 14270 measuring 0.035 Ha, and parcel No. 14271 measuring 0.045 Ha. When you look at these two sizes, it was actually the parcel No. 14271 which could have measured 40 x 100 feet, and it could only have been

the parcel No. 14270 which could have measured 22 x 100 feet. It also emerged in evidence that this land parcel No. 14271 had earlier been sold to the appellants and there was no dispute over it. Indeed, in his submissions, Mr. Tanui, asked me to refer to the notice of motion dated 15 April 2018, which had annexed a sale agreement dated 10 May 2015 selling a portion measuring 40 x 100 feet out of the land parcel No. 6897. It is thus apparent to me that when drafting the plaint, there was a mix-up in the sale of the portion measuring 40 x 100 feet which was done in 2015 for the parcel No. 14271, and the sale of the suit land which was done on 25 July 2017. This mix-up however, prejudiced nobody. The plaint was clear that the land in issue is the land parcel No. 14270 and the cause of action was the cancellation of the title of the 1st appellant and restoration of the title of the erstwhile proprietor, despite the latter having sold the land. The defence of the 2nd and 3rd respondents, though traversing the allegation of a sale of 2015 for land measuring 40 x 100 feet, was clear that it was in respect of the land parcel No. 14270 and no other. In fact, the evidence of DW-1 did not even bother to mention any alleged sale of the land in 2015, only contesting the legality of the sale of the suit land inter alia for want of consent of the 3rd respondent. The parties were therefore very clear on what the issue was, and in as much as parties are bound by their pleadings, it should be recalled that pleadings are the handmaidens of justice and not its mistress. The trial Magistrate in her judgment indeed was of opinion that the pleadings had an error and she was cognizant that this was a mistake. I do not see how, in the circumstances of the case herein, the error in the pleadings could be said to be fatal. This was a procedural technicality that did not affect the substance of the case and was curable on the basis of Article 159 (2) (d) of the Constitution which informs court not to pay undue regard to procedural technicalities. The substance of the case was discernible, i.e that it was a complaint of cancellation of the title of the 1st appellant by the 4th respondent and the action of reinstating that title back to the name of the deceased. I am not persuaded that the case of the appellants was one bound to fail merely because of this error and mistake in the pleadings. It was one to be considered fully on its merits and I would not proceed to dismiss it on the basis of this error in pleadings.

22. But even then, as will be seen shortly, that issue of the error or mistake in the plaint was immaterial to the cause of action. The substance of the case of the appellants was that the suit land was sold to them by the deceased and they obtained title to it. They came to court on one complaint only, that is, that the defendants colluded to have the Land Registrar cancel this title and restore it back to the name of the deceased and they wished

to nullify this action. In their defence, the 2nd and 3rd respondents appeared to justify this action. They pleaded that upon the death of Mr. Omboki, they discovered several fraudulent activities, including withdrawal of funds from the account of the deceased, and transfer of property to other persons. They pleaded that they wrote to the Land Registrar to place a restriction. This was repeated in the evidence of the 2nd respondent at defence hearing. Indeed, among the documents produced by the 2nd respondent was a letter dated 11 January 2018 written by M/s Job Obure & Company Advocates on the instructions of the 3rd respondent. That letter stated as follows :

“RE : APPLICATION FOR RESTRICTION ON L.R NO. NC/B/B/BOBURIA/14270

MARY KEMUMA RATEMO : OUR CLIENT

We refer to our letter to you dated 21st November 2017 (whose copy we attach hereto duly received by you) and wish to kindly pray that you reverse the registration of SARAH MANANI TUMBO as registered proprietor of the above captioned parcel which is, for all purposes, part of the Estate of FRANCIS RATEMO OMBUKI – Deceased. Our client foresaw intermeddling of the property and alerted your office early enough. Kindly act decisively on this subject this in the interest of justice (sic). Refer to our client’s annexures enclosed herewith.”

23. The annexures referred to in the above letter were two searches, one dated 10 November 2017 indicating the suit land still in the name of Francis Ratemo Omboki, and the second dated 8 January 2018, indicating the 1st appellant as the registered proprietor, having become registered on 11 December 2017.
24. It is thus quite apparent that the 2nd and 3rd respondents were aware of the registration of the 1st appellant as proprietor of the suit land. However, instead of coming to court to seek the cancellation of this title, they opted to use an unorthodox method of writing to the Land Registrar to cancel the title. It is also clear that the Land Registrar must have acted on this letter dated 11 January 2018, for the 2nd and 3rd respondents produced another search dated 12 January 2018 now indicating Francis Ratemo Ombuki as the proprietor. I am repeating for the umpteenth time that it is this act of cancellation of the title of the 1st appellant that moved the appellants to file their suit. They impugned this action and they asked for a prayer of restoration of their title. This cause of action should have remained the focus of the trial court and nothing else. The trial Magistrate ought to have questioned

whether the cancellation of the title by the Land Registrar, on a mere letter, was founded in law or not.

25. I am aware that within the trial, and even on this appeal, much was said about the manner in which the 1st appellant obtained registration, but we should not forget that this was not the cause of action, and there was never any counterclaim filed by the 2nd and 3rd respondents seeking any declaration that the title of the 1st appellant was improperly obtained. The cause of action was purely based on the act of deregistration of the title of the 1st appellant by the Land Registrar pursuant to the complaints of the 3rd respondent. And with that in mind, even the error in the pleadings, regarding the particulars of sale, were immaterial, as that was not the cause of action before the court.
26. Having in mind the foregoing, I will narrow my attention purely on the cause of action, and that is, whether the Land Registrar acted in accordance with the law and whether the appellants deserved the prayer to have the title of the 1st appellant restored. It is this cause of action that I focus my mind on, and nothing else, and as far as I can see, that was the only substantive question to be tried, i.e whether the Land Registrar had power to cancel the title of the 1st appellant and revert title back to the name of the deceased in the manner that he did. Unfortunately, I see nothing in the submissions of counsel addressing this point and I will make an independent assessment.
27. The power of the Land Registrar to affect title is contained in Section 79 of the Land Registration Act, Act No. 6 of 2012. That Section provides as follows :

79. Rectification by Registrar

(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

(a) in formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;

(b) in any case and at any time with the consent of all affected parties;

(c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;

(d) for purposes of updating the register; or

(e) for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless—

(a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or

(b) it would for any other reason be unjust for the alteration not to be made.

Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

(3) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

(3A) A person aggrieved by the decision of the Registrar under this section may apply to the Court for any necessary orders.

(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under this section and without prejudice to the generality of the foregoing, the regulations may provide for—

(a) the process of investigation including notification of affected parties;

(b) hearing of the matters raised; and

(c) the criteria to be followed in coming up with the decision.

28. From Section 79 above, it will be seen that under Subsection (1) the Land Registrar may rectify the register (or any instrument presented for registration) in five instances. The first is in respect of formal matters or where there are errors, mistakes or omissions, not materially affecting the interests of a proprietor. The second instance is a correction with the consent of the parties and this would be in any other case not covered in the first instance above. The third is for purposes of rectification of the dimension or area (size of the land) if found to be incorrect upon resurvey, but this will be after issue of notice. The fourth instance is for purposes of updating the register. The fifth instance is for correcting the name, address or particulars of the proprietor, but this is upon written application by the proprietor. Even then, where the rights of the proprietor are to be affected, a written notice of 90 days needs to be given.

29. The foregoing powers, if read carefully, relate to powers of correction of the particulars in the register. Now, correction, should not be extrapolated to mean cancellation or nullification of title, unless of course it is with the consent of the proprietor. That power to cancel or nullify titles is reserved for the courts under Section 80 of the Land Registration Act, which provides as follows :

80. Rectification by order of Court

(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.

(2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

30. It will straight away be seen that the manner of drafting of Section 79 in relation to the powers of the Land Registrar, and Section 80 on the powers of the court, are disparate. In Section 80, you see the specific mention of the power of 'cancellation' which is not used in Section 79. Unless the proprietor consents, the power to cancel the proprietorship of a person in respect of land vests in the court and not in the Land Registrar. Even assuming that the Land Registrar has the powers, which for the avoidance of doubt, I am categorical that he had no such powers, he could not exercise the same at a whim without giving any hearing to the appellants. It is apparent that he acted on the basis of a complaint in a letter and there is no evidence of him calling the parties to a hearing before proceeding to cancel the title of the 1st appellant.

31. Such actions need to be called out and castigated, otherwise we may end up with a situation of anarchy, where rogue Land Registrars proceed to cancel people's titles without their knowledge. Such conduct cannot be encouraged for it is deleterious to land administration and the concept of sanctity of title.

32. If the 2nd and 3rd respondents thought that the title of the 1st appellant was not a good title what they ought to have done was to present their case in court and seek the cancellation of the title of the 1st appellant, not look for some shortcut and have the title of the 1st appellant cancelled by an entity that had no such power, and even then, without giving the title holder a hearing.

33. From the foregoing, it will be seen that I am persuaded that the appellants had a good case that the cancellation of the title of the 1st appellant was illegal and they deserved the order to reinstate that title. I therefore proceed to set aside the judgment of the trial court entirely and substitute the same with an order allowing the single prayer in the plaint. I order the Land Registrar, Kisii, to rectify the register and reinstate the title of the 1st appellant. In their plaint the appellants did not ask for costs. I will therefore award them no costs in relation to the case before the Magistrates' court. The appellants will however have the costs of this appeal jointly and/or severally against the respondents save for the 1st respondent.

34. Judgment accordingly.

DATED AND DELIVERED THIS 18 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Ndichu h/b for Mr. Mainga for the appellants

Mr. Tanui for the 2nd and 3rd respondents

No appearance for the 1st and 4th respondents

Court Assistant – Michael Oyuko