



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Gakii v Gerald (Environment and Land Appeal E003 of 2025)
[2026] KEELC 1180 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 1180 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E003 OF 2025**

JO MBOYA, J

FEBRUARY 26, 2026

BETWEEN

ESTHER GAKII APPELLANT

AND

DIONISIO NDEGE GERALD REPUBLIC

*(Being an appeal against the judgment of Hon. R. ONGIRA
[SRM] in Nkubu SPM C ELC Case No. E007 of 2023)*

JUDGMENT

1. The subject matter touches on and or concerns the assertion of fraud. In particular, the Appellant herein approached the lower court vide Nkubu SPMC ELC NO. E007 of 2023 [herein after referred to as the original suit] contending that the Respondent had procured and obtained registration of LR. No. Abogeta/U-Kithangari/1360 by fraud. In this regard, the Appellant sought the intervention of the lower court to cancel the registration of the Respondent's name; and thereafter to revert the title of the suit property unto her name.
2. Fraud is a serious and grave allegation. Whenever fraud is adverted to, the claimant is called upon to place before the court cogent; concrete; and compelling evidence. Furthermore, it is common ground that the standard of proof touching on and concerning fraud is higher than the balance of probabilities.
3. What constitutes fraud was defined in the case of Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] KECA 816 (KLR).
4. The Court of Appeal stated thus:
 52. "Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional . As applied to contracts, it is the cause of an error bearing on



a material part of the contract ,created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.

5. The Appellant had contended that the transfer and registration of the suit property in the name of the Respondent was fraudulent. The Appellant thereafter supplied the particulars of fraud at the foot of paragraph 4 of the Plaint dated the 28.02.2023. In addition, the Appellant invited the court to interrogate the manner in which the transfer of the Land occurred; and thereafter to revert the suit property unto her.
6. The Respondent duly entered appearance and thereafter filed a statement of defence dated the 08.03.2023. The Respondent denied the allegations of fraud. Furthermore, the Respondent posited that the claim based on fraud was time barred.
7. Additionally, the Respondent posited that same bought/purchased a portion of land from one M’Imathiu Mburia [now deceased]. Moreover, the Respondent contended that the portion of land which he bought was thereafter sub-divided a parcel number Abogeta/Upper Kithangari/2781. Besides, the Respondents posited that same procured the transfer and registration of the said parcel of land lawfully and arising out of a sale agreement with M’Imathiu Mburia.
8. The suit in the lower court was heard and disposed of vide Judgment rendered on the 17.12.2024 and whereupon the learned Trial Magistrate [Hon. Ongira – S R M] found and held that the Appellant had failed to prove her claim to the requisite standard. The learned Trial Magistrate thereafter proceeded to and dismissed the Appellant’s suit. Furthermore, the trial court awarded costs to the Respondent.
9. It is the said Judgment and the consequential decree which has aggrieved the Appellant and thus provoking the subject appeal. The appeal is premised on the memorandum of appeal dated the 6th of January, 2025. The grounds of appeal are:
 - i. The learned Magistrate erred in law and facts in finding that the Appellant did not give iota of evidence that the Respondent had fraudulently taken her title-deed.
 - ii. The Learned Magistrate erred in law and in facts in finding that the Respondent had proved ownership of the title when he had obtained it fraudulently.
 - iii. The learned Trial Magistrate erred in law and facts in determining the whole case against the law and the weight of evidence.
10. The subject appeal came up for directions on the 21.01.2026, whereupon learned counsel for the Appellant intimated to the court that same had filed and served the record of appeal. Furthermore, learned counsel posited that the record of appeal was complete and that the appeal was ready for hearing. In addition, learned counsel for the Appellant sought directions as pertains to the hearing and disposal of the appeal.
11. With the concurrence of learned counsel for the Respondent, the court proceeded to and issued directions. The directions were: The appeal be heard before one Judge sitting at Meru; the appeal be canvassed by way of written submissions; the Appellant shall file and serve written submissions within 14 days from the date of directions; the Respondent shall be at liberty to file and serve written submissions within 14 days from the date of service; and the Appellant shall be at liberty to file rejoinder written submissions [if any] and same to be filed within 7 days from the date of service.



12. The Appellant filed written submissions dated the 20.01.2026 and wherein same has highlighted four [4] key issues. The issues highlighted by/on behalf of the Appellant are: The learned Trial Magistrate failed to appreciate the gist of the Appellant's case; the learned Trial Magistrate failed to interrogate the manner in which the suit property was transferred to and registered in the name of the Respondent; the learned Trial Magistrate misconstrued the evidence on fraud; and the learned Trial Magistrate erred in finding and holding that the Respondent had proved the root of this title to the suit property.
13. Learned counsel for the Appellant has thereafter highlighted the said issues and referenced various decisions. The decisions that have been referenced by learned counsel for the Appellant are: Alice Chemutai Too versus Nickson Kipkurui Korir and 2 others 2015 eKLR; Munyu Maina versus Hiram Gathiha Maina [2013] eKLR; Kyalo versus Nduuti [2025] eKLR and Hubert L Martin and 2 others versus Margaret J Kamal and 5 others [2016] eKLR.
14. Flowing from the submissions by learned counsel for the Appellant, the court has been invited to find and hold that the Appellant tendered and adduced plausible evidence to demonstrate that the suit property was transferred to and registered in name of the Respondent by fraud. In addition, it has been contended that the learned Trial Magistrate failed to appreciate the evidence pertaining to and concerning fraud and thus arrived at an erroneous conclusion. To this end, the court has been implored to set aside the impugned Judgment and to allow the Appellant's suit in the lower court.
15. The Respondent filed written submissions dated the 08.02.2026 and wherein same has highlighted and canvassed two [2] key issues. The issues highlighted by the Respondent are: the Respondent was/ is a bona fide purchaser for value of LR No. Abogeta/Upper Kithangare/2781; and the Appellant did not prove/establish the plea of fraud to the requisite standard or at all.
16. Learned counsel for the Respondent has thereafter highlighted the twin issues and referenced the decision in the case of Dina Management Limited versus County Government of Mombasa and 5 others [2023] KESC. In particular, learned counsel for the Respondent has submitted that the Respondent entered into a lawful sale agreement with M'IMathiu Mburia[now deceased] and purchased a portion of LR No. Abogeta/Upper Kithangari/1360. Thereafter it was posited that the said parcel of land was sub-divided and the sold portion became LR No. Abogeta/Upper Kithangari/2781.
17. Premised on the foregoing, it was contended that the learned Trial Magistrate correctly appraised the evidence and thereafter arrived at the correct conclusion. In particular, it has been contended that the Appellant did not prove or establish the plea of fraud. To this end, the court was invited to find and hold that the Judgment of the Trial Magistrate was well grounded; well-reasoned; and thus unassailable. The court has been invited to dismiss the appeal and to award costs to the Respondent.
18. Having reviewed the record of appeal; the pleadings filed by/on behalf of the parties; the evidence tendered [both oral and documentary]; the written submissions filed and upon taking into account the applicable law, I come to the conclusion that the determination of the subject appeal turns on two key issues. The issues are: Whether the Appellant established and proved the plea of fraud to the requisite standard or otherwise; and Whether the learned Trial Magistrate arrived at an erroneous conclusion or otherwise.
19. Before addressing the thematic issues, which have been highlighted in the preceding paragraph, it is imperative to highlight that what is before me is a 1st appeal. Being a first appeal, this court is enjoined to undertake exhaustive scrutiny, review, evaluation and analysis of the entirety of the evidence that was tendered before the court of 1st instance [Lower court] and thereafter to discern whether the conclusion/finding[s] arrived at by the lower court accords with the evidence or otherwise.



20. Furthermore, it is important to underscore that in the course of evaluating the evidence on record, this court is called upon to arrive at and form an independent conclusion. Besides, the court is seized of the discretion to depart from the factual finding[s] arrived at by the lower court. Nevertheless, it must be recalled that even though the court is obligated to arrive at an independent conclusion or depart from the factual conclusions, such departure can only be taken If and only if it is demonstrated that the findings of the lower court were based on no evidence; based on misapprehension of the evidence on record; perverse to the evidence tendered; or better still, where it is demonstrated that the judgment was arrived at in contravention of established principle[s] of the law.
21. The scope and jurisdictional remit of the first appellate court while handling an appeal has been expounded in a plethora of decisions. In *Selle & another v Associated Motor Boat Co Ltd of Kenya & others* [1968] EA 123, the Court of Appeal for Eastern Africa, which is the predecessor of our Court of Appeal stated thus:

“ An appeal to this court from a trial by the High Court is by way of a re-trial and the principles upon which this court acts in such an appeal are well settled. 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 this 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 based on the demeanour of a witness is inconsistent with the evidence in the case generally. [see also *Kenya Urban Roads Authority & another Vs Belgo Holdings Limited* [2025]KECA ; and *Gitobu Imanyara versus Attorney General* [2016] Eklr; *Ephantus Mwangi versus Dancun Mwangi Wambugu* [1984] eKLR; and *Jabane Versus Olenja* [1986] eKLR, respectively.]
22. Bearing in mind the established principles and the guidelines espoused in the decisions above, I am now well positioned to interrogate the thematic issues highlighted for consideration. I beg to start with the 1st issue.
23. It is the Appellant who approached the lower court contending that LR No. Abogeta/Upper Kithangari/1360 had been fraudulently transferred and registered in the name of the Respondent. Furthermore, the Appellant thereafter particularized fraud. The Appellant finally invited the court to cancel the title in respect of LR No. Abogeta/Upper Kithangari/1360 and to revert same to her name.
24. The Appellant also tendered evidence before the lower court and reiterated the pleadings that she had filed. In particular, it was the Appellant’s testimony that she has sued the Respondent because of parcel number 1360. Moreover, the Appellant posited that parcel number 1360 is her land.
25. The gravamen of the Appellant’s case is to the effect that the suit property [LR No. Abogeta/Upper Kithangari/1360] was transferred to and registered in the name of the Respondent by fraud. However, there is no gainsaying that the Appellant herein has never been the registered owner of LR No. Abogeta/Upper Kithangari/1360. To this end, the contention by the Appellant that the said land is hers, is premised on misapprehension of the facts and evidence on record.
26. Other than the foregoing, the Appellant herein also seems to be confused about the exact identity of the parcel of land, which belongs to and is registered in the name of the Respondent. For good measure, the parcel of land which belongs to and is registered in the name of the Respondent is LR No. Abogeta/Upper Kithangari/2781, which is separate and distinct from the land being claimed by the Appellant.



27. Additionally, evidence abound that the Appellant herein has never been the registered owner of LR No. Abogeta/Upper Kithangari/1360. In this regard, the plea by the Appellant that same was defrauded of the said parcel of land, are mistaken and misconceived. In any event, it is common ground that the Respondent procured the transfer and registration of LR No. Abogeta/Upper Kithangari/2781 from the sale which was entered into between M’Imathiu Mburia [now deceased] and himself.
28. It is not lost on me that the Appellant herein, who is a daughter of M’Imathiu Mburia, has neither challenged the sale agreement nor sought to invalidate same; or at all. In addition, the Appellant has also not challenged the affidavit which was sworn by M’imathiu on 20.09.2019 and which affidavit underpinned the transfer and registration of LR No. Abogeta/Upper Kithangari/2781 in favour of the Respondent.
29. It suffices to state and underscore that the burden of proving fraud laid on the shoulders of the Appellant. The Appellant was obliged to tender and adduce plausible; cogent; compelling; concrete; and credible evidence to establish the plea of fraud. Moreover, there is no gainsaying that the plea of fraud cannot be left to inference; speculation; or hypothesis.
30. The Appellant failed to tender any evidence pertaining to forgery of any signatures. On the contrary, the transfer of the property, namely; LR No. Abogeta/Upper Kithangari/2781 is grounded on lawful signature of M’Imathiu Mburia. In any event, no evidence was tendered to dispute the signature of the said M’Imathiu Mburia on the sale agreement and the affidavit sworn on the 20.09.2019.
31. In my humble view, the Appellant’s case is founded more on speculation and innuendos, other than empirical evidence. Fraud must be distinctly pleaded; and specifically proven. The standard of proof is higher than on a balance of probabilities. The standard has been stated to be the intermediate standard.
32. In the case of *Doshi v Chemutut & 7 others* [2025] KECA 776 (KLR), the Court of Appeal reviewed various decisions and reiterated the applicable standard as pertains to fraud.
33. The court stated thus:
 41. In the often-cited decision of this Court in the case of *Vijay Morjaria v Nansingh Madhusingh Dabar & Another* [2000] eKLR, Tunoi, JA. stated that: “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. In the same vein, the Court in the case of *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR reiterated that: “It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* [2008] 1 KLR (G&F) 742 wherein the Court stated that: “...We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”
34. Other than the foregoing decision it is also imperative to reference the holding in the case of *Kiarie & 2 others v Magera* [2018] KECA 467 (KLR). The court underscored the standard of proof and the



manner in which fraud must be proven. The court reiterated that proof of fraud cannot be left to inference.

35. The court stated as hereunder:

26. As regards the standard of proof, this Court in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR expressed itself as follows:-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

36. The Appellant herein merely pleaded and thereafter supplied particulars of fraud. However, the Appellant failed to tender credible evidence to prove same. On the contrary, the Appellant merely threw the allegations of fraud on the head of the trial court without more. Surely, the Appellant could not expect a finding in her favour without discharging the burden of proof. [See the holding in the case of *Dr. Samson Gwer and 5 others versus KEMRI* [2020] eKLR; *Daniel Toroitich Arap Moi versus Mwangi Stephen Murithi* [2014] eKLR; and *James Muniu Mucheru versus National Bank of Kenya Limited* [2019] eKLR].

37. The next issue that falls for consideration is whether the learned Trial Magistrate arrived at an erroneous conclusion or otherwise. To start with, the learned Trial Magistrate fully appreciated that the Appellant’s case touched on and concerned LR No. Abogeta/Upper Kithangari/1360, yet the land that belongs to Respondent is LR No. Abogeta/Upper Kithangari/2781.

38. Secondly, the learned Trial Magistrate correctly found that the Appellant’s suit which concerned LR No. Abogeta/Upper Kithangari/1360, was mistaken insofar as the Respondent had not been registered as the owner of the said parcel of land. In this regard, the Appellant was clearly non-suited.

39. Thirdly, the learned Trial Magistrate found and held that the Respondent tendered credible evidence demonstrating the manner in which same procured the registration of LR No. Abogeta/Upper Kithangari/2781, unto his name. For good measure, the Respondent availed a copy of the sale agreement dated the 08.12.2012; copy of the affidavit sworn by M’Imathiu Mburia; copy of the transfer and copy of certificate of title. The said documents clearly demonstrate the root of the Respondent’s title.

40. In my humble view, the learned Trial Magistrate duly appraised the evidence on record and thereafter reached and arrived at the correct findings; and conclusions. The conclusions are well grounded. Same are unassailable.

41. In view of the foregoing and taking into account the holding of the Court of Appeal in the case of *Mwanasokoni v Kenya Bus Services Ltd* [1985] KECA 82 (KLR), I come to the conclusion that the subject appeal is meritless. Same is courts dismissal.

Final orders:

42. From the foregoing analysis, the final orders that commend themselves to the court are:



- i. The Appeal be and is hereby Dismissed.
- ii. The Judgment and the consequential Decree of the learned Trial Magistrate rendered on the 17.12.2024 be and is hereby affirmed.
- iii. Costs of the Appeal be and are hereby awarded to the Respondent.
- iv. The Costs in terms of clause [iii] above shall be agreed upon; and in default be taxed in the conventional manner.

43. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 26TH DAY OF FEBRUARY, 2026.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Naserian – Court Assistant

Mr. Kimathi Kiara for the Appellant

Mr. Joshua Mwiti for the Respondent

