



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELCLA SUIT NO. E025 OF 2023

CONNIE ANN FINLAYSON.....
.....APPELLANT

VERSUS

CATHERINE WAMBUI NJERU.....1ST CROSS
APPELLANT/RESPONDENT

IAN GATHOGO MUCHINA2ND CROSS
APPELLANT/RESPONDENT

*(Being an appeal of the Judgment and Decree of Learned Hon J.A
Agonda, Principal Magistrate delivered on 27/07/2023 at Ruiru
Magistrate's Court at Ruiru, ELC Case No. E136 OF 2021)*

IAN GATHOGO MUCHINA.....1ST
PLAINTIFF

CATHERINE WAMBUI NJERU.....2ND
PLAINTIFF

VERSUS

CONNIE ANN FINLAYSON.....
DEFENDANT

JUDGMENT

1. This Appeal arises from the Judgment delivered by Hon J.A Agonda Principal Magistrate delivered on 27/07/2023 at Ruiru in **MCELC Case No. E136 of 2021**. The Judgment was entered against the Appellant but it was in favour of the Respondents as follows:

- a) A permanent injunction is hereby issued restraining the Defendant by herself, agent, servants or any of them howsoever from transferring any property belonging to Nduta Finlayson to herself and restraining her from selling, alienating, leasing and or transferring such property until distribution is done and title deeds are processed
 - b) A permanent injunction is hereby issues restraining the Defendant by herself, agent, servants or any of them howsoever from evicting and or interfering with the peaceful occupation of the Plaintiffs on the suit property
 - c) The Land Registrar, Ruiru is ordered to cancel the Defendant's title deed and all entries on the suit property
 - d) The Defendant is ordered to produce the title deed of the suit property and all other properties originally registered in the name of Nduta Finlayson prior to the death of the 2nd Plaintiff's father
 - e) The Defendant's counter-claim is hereby dismissed
 - f) The Defendant shall bear the costs of this suit and of the counter-claim
2. The Appellant was aggrieved at the Judgment and she lodged this Appeal vide the Memorandum of Appeal dated 25/08/2023, which appeal is premised on eleven grounds as follows:
- 1) THAT the Learned Magistrate erred in fact and in law in entertaining Respondents' suit seeking a permanent

injunction barring their eviction from land on which they are licensees

- 2) THAT the Learned Magistrate erred in fact and in law in holding that the Appellant forged her title to the suit property when no evidence was tendered to support that finding
- 3) THAT the Learned Magistrate erred in fact and in law in making a finding of fraud on the Appellant's part which claim was not specifically pleaded and proved to the required standard
- 4) THAT the Learned Magistrate erred in fact and in law in refusing to admit the Appellant's further evidence that would have allowed the Appellant to provide proof of legal acquisition of the suit property
- 5) THAT the Learned Magistrate erred in fact and in law in making a determination that the Appellant's mother who is the previous owner of the suit property did not have capacity to transfer the land when no evidence was tendered to support that finding.
- 6) THAT the Learned Magistrate erred in fact and in law in referring to the distribution of an estate of a person who is not deceased.
- 7) THAT the Learned Magistrate erred in fact and in law by allowing the Respondents to prosecute a suit on behalf of a deceased person without taking out a grant of representation.

- 8) THAT the Learned Magistrate erred in fact and in law by allowing the Respondents to prosecute the suit on behalf of the Appellant's mother without her authority
 - 9) THAT the Learned Magistrate erred in fact and in law for considering Respondents' witnesses' testimony that was not supported by any evidence.
 - 10) THAT the Learned Magistrate erred in fact and in law in finding that the Respondents' rights to the suit property were infringed yet the Respondents have never been the legal owners of the suit property neither do they have a legal interest in the land.
 - 11) THAT the Learned Magistrate erred in fact and in law in adjudicating on issues that were not pleaded and consequently granted prayers that were not sought for by the Respondents.
3. Therefore, the Appellant has sought these two orders:
- i) That the Appeal be allowed with costs and the decision of the Learned Magistrate be quashed;**
 - ii) That the costs of this Appeal be awarded to the Respondents.**
4. The 1st and 2nd Respondents who were the Plaintiffs in **ELC No. 136 of 2021**, Ruiru Chief Magistrate's Court being aggrieved and dissatisfied with the Judgment by Hon. J.A Agonda delivered on 27/07/2023 filed a cross-appeal against a part of the said Judgment based upon the grounds infra:
- a. THAT the Learned Magistrate erred in law and in fact by failing to declare the Plaintiffs as the owners of the

property on the basis of adverse possession having lived on the suit property, Land Registration No. Ruiru Kiu Block 8/137 and Ruiru Kiu Block 8/1356 for over 20 years.

5. So, the Respondents/cross Appellants have sought the orders thus;

a) THAT the cross-appeal be allowed and the appeal filed by the Appellant be dismissed.

b) THAT the 1st and 2nd Respondents be declared the legal and legitimate owners of the suit properties Land Registration No. Ruiru Kiu Block 8/137 and Ruiru Kiu Block 8/1356 and the titles for the properties be registered in their favour.

c) THAT the Cross-Appellants be awarded costs in the lower Court, the appeal, the cross-appeal and the interests thereof.

d) Any other relief that this Honorable Court may deem fit to grant.

6. Both the Appeal and cross appeal were canvassed by written submissions. However, before the Appeal was heard the Counsel for the Appellant filed an application to cease acting dated 7/11/2024 and since it was unopposed it was allowed on 06/02/2025.

7. Soon thereafter the Appellant filed a Notice of Change of Advocates dated 28/03/2025 bringing on board **Aming'a Opiyo Masese Advocates**. On 20/05/2025 when the Court issued directions for filing of submissions and Judgment date

the Appellant's Counsel were not present in Court and the Cross-Appellants were directed to serve the Judgment date.

8. The Cross-Appellants served the Appellant through her Advocates. The process server Charles Kimathi Ncooro has filed an Affidavit of Service dated 30/04/2025 as proof of service. At the next mention on 27/03/2025, the Court issued directions on filing of the written submissions and reserved a date for Judgment for both the Appeal and Cross-Appeal. However, the Appellant did not attend Court and the Court directed the Cross-Appellants to serve them with the date of Judgment.
9. As at the time of writing this Judgment only the Cross-Appellants had filed their submissions dated 17/05/2025 to both the Appeal and cross-appeal.

Brief History to the Suit

10. The Cross-Appellants filed a Plaintiff in the Chief Magistrate's Court at Ruiru dated 23/09/2021 against the Appellant. The Plaintiff was later amended on 23/09/2022. The Cross-Appellants who were the Plaintiffs in the lower Court against the Appellant who was the Respondent obtained orders as stated at paragraph 1.
11. Being dissatisfied with the Judgment they filed an Appeal seeking to quash the Judgment by the trial Court.
12. According to the claim filed in the lower Court by the Cross-Appellants who were Respondents, the suit property Ruiru/Kiu Block No. 8/1357 is said to have been bought by the 1st and 2nd Respondent's husband & father respectively

and he registered the same under the name of his mother, Nduta Finlayson.

13. That he then constructed the house and the same was confirmed during Plaintiffs hearing by the Plaintiff's Witness Josphat Njomo, at the trial Court.
14. In response, the Appellant who was the Defendant in the lower Court filed a Defence and Counter-claim where she disputed the contents and denied all the averment of the Plaintiffs' Plaint and put them to strict proof.
15. She averred in the Counter-claim that the mother of the Defendant who is her mother, purchased the two suit properties being RUIRU KIU BLOCK 8/1356 and RUIRU KIU BLOCK 8/1357. That she bought the later parcel from Mwana Mukia Housing Co-operatives Society Ltd.
16. According to the Defendant her mother, Nduta Finlayson gifted the late Michael Muchina Finlayson the parcel known as Ruiru Kiu Block 8/1356 and it was subsequently registered into the name of Micheal Muchina Finlayson who is the Defendant's late brother.
17. She further contends that the second parcel was gifted by her mother to the Defendant and her daughter Denise Nduta and subsequently transferred to their names. Thus, she counter-claims against the Plaintiffs for a declaration that herself and her daughter are the absolute proprietors of the subject suit land. She also sought an eviction against the Plaintiffs and an order of permanent injunction against the Plaintiff for trespass and general damages for trespass

on Ruiru Kiu Block 8/1357.

18. During the hearing the 2nd Plaintiff testified as PW1 and the 1st Plaintiff as PW2. They testified that they were mother and son and that they had lived on the suit property for more than 25 years. The 1st Plaintiff told the Court that he has known the suit property as his home since he was born and brought up on the suit property where he had stayed with his mother - PW1 and his late father Michael Muchina Finlayson.
19. That the Defendant is the sister to the father and husband of the 1st and 2nd Plaintiffs respectively. That the suit property has been registered in the name of the Nduta Finlayson who is the mother of the Defendant who is the sister of the deceased Micheal Muchina the father and husband of the 1st and 2nd Plaintiffs respectively. That the Defendant was living abroad for more than 30 years and the 1st and 2nd Plaintiffs have never had issues with her.
20. That the Defendant has never lived on the suit property since the RUIRU/KIU BLOCK 8/1357 the Plaintiffs testified was bought by the father and husband of the 1st and 2nd Plaintiffs respectively and he registered the same in the name of his mother. He even constructed a house on the land as confirmed by PW3 Josphat Njomo.
21. She testified that she was served with an eviction notice from the Defendant who on 7/09/2021 requiring her to vacate the suit property.
22. The Defendant testified as DW1 and called three witnesses.

It was her case that the suit property belonged to her mother Nduta Finlayson, who purchased both LR RUIRU/KIU BLOCK 8/1356 and RUIRU/KIU BLOCK 8/1357 in 1970 at a cooperative known as Mwanamke Cooperative. She testified that her mother had given RUIRU/KIU BLOCK 8/1356 to her brother the late Michael Muchina Finlayson and she was given RUIRU/KIU BLOCK 8/1357.

23. She denied that her brother was married and that she does not know that the 1st Plaintiff is the son of her deceased brother and neither is the 2nd Plaintiff a wife to her deceased brother. She stated that Plaintiffs are trespassers but she did not know when they entered the land.

24. She confirmed that she has never lived in the suit property or owned it before. She told the Court that the suit property was transferred to her by her mother but she did not have any document to support the claim for the transfer. She was not able to produce the transfer, the valuation, proof of stamp duty payment or exemption from stamp duty.

25. DW2 - Michael Muchina Chege adopted his witness statement dated 8/04/2022 as his evidence in chief. It was his testimony that the Defendant's mother is his first cousin and that he was aware that LR RUIRU KIU/BLOCK 8/1356 & 7 were purchased by Nduta the Defendant's mother from Mwanamke Cooperative and that she gave one of the said plots to DW1 as a gift.

26. That having bought two plots and she gifted the Defendant LR RUIRU KIU/BLOCK 8/1357, she also gifted Michael

Muchina Finlayson LR RUIRU KIU/BLOCK 8/1356.

27. He testified that the plot LR RUIRU KIU/BLOCK 8/1357 had a house constructed on it and that there was a woman staying there but that she was not the wife of the deceased Michael since he had a wife who he married in Murang'a with children, Dorcas Nduta Muchina and Duncan Muchina.

28. Upon cross-examination he testified that he did not know that the Plaintiffs attended Michael's burial and also that he had not produced any Marriage Certificate for the union between Dorcas and Michael.

29. DW3 - Nduta Finlayson testified and adopted her witness statement she told the Court that Michael Muchina was not her child. She testified that she did not purchase any land from Mwanamke Cooperative Society. She denied having constructed any house in Githurai and also, she told the Court that she did not own any land in Githurai.

Submissions

30. Only the Respondents who are the Cross-Appellants filed their submissions.

31. The Cross-Appellants contend that the trial Court correctly identified the Appellant's actions as fraudulent but fell short by failing to formally declare the Cross-Appellants as the legal owners of the property. They argue that the suit was a necessary response to an illegal eviction notice issued by the Appellant shortly after the death of Michael Muchina the 1st Respondent's husband and 2nd Respondent's father in 2021.

32. The Cross-Appellants submit that the Appellant failed to prove the legal acquisition of the suit property, specifically Ruiru/Kiu Block No. 8/1357. They highlight that during the trial, the Appellant could not produce basic transfer documents such as a signed Transfer of Land instrument, Land Control Board Consent, proof of stamp duty payment or valuation reports. Relying on the case of **Zacharia Wambugu Gathimu & Another v John Ndungu Maina, [2019] KEELC 4656 (KLR)**, they argue that these documents are mandatory for any valid conveyance of interest.
33. Furthermore, they emphasize the testimony of the alleged transferor, Nduta Finlayson, who categorically denied ever transferring the property to the Appellant. Under Section 26 of the Land Registration Act, while a title is generally indefeasible, it can be impeached if procured through fraud, misrepresentation, or an unprocedural scheme. The Cross-Appellants argue that the Appellant's inability to explain how she obtained the title, coupled with the owner's denial and the precedent in **James Mukuria Njoroge v Joseph Muraya & 2 Others [2019] KEELC 3832 (KLR)**, where a title was cancelled for lack of stamp duty and signed transfers, provides definitive proof of fraud.
34. A central pillar of the cross-appeal is the claim of ownership through Adverse Possession. The Cross-Appellants submitted evidence, including a Chief's Letter and witness testimony, confirming they have lived on the land peacefully and

continuously for over 20 years. They argue that even if all other claims of ownership failed, the doctrine of adverse possession stands undefeated. They assert that their occupation was never interrupted by the registered owner or the Appellant until the 2021 eviction notice, satisfying the standard of proof on a balance of probabilities as established in **Alex Kyalo Ngima & 2 Others v Kisau Girls Secondary School (Sued through Chairman Board of Governors Kisau Girls Secondary School [2021] KEHC 1347 (KLR))**.

35. The Cross-Appellants also defend the trial Magistrate's decision to exclude certain documents the Appellant attempted to introduce late in the proceedings. Citing **Mansukhalal Jesang Maru v Frank Wafula [2021] KEELC 272 (KLR)** they argue that the bar for filing additional documents after pre-trial is very high. They stress that the Appellant failed to lay a proper basis for secondary evidence or call the makers of the documents to testify, which would have resulted in the Court relying on hearsay evidence.

36. Regarding the Appellant's claim that the Respondents lacked the standing to sue, the Cross-Appellants clarify that they obtained a Limited Grant Ad Litem to represent the Estate of Michael Muchina. They further argue that the Court's order restraining the Appellant from transferring any of Nduta Finlayson's properties was a necessary exercise of jurisdiction to protect an elderly, frail woman from a corrupt

scheme, a principle supported by the Ruling in **Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] KEELC 151 (KLR)**.

37. The Cross-Appellants conclude by requesting the Court to dismiss the Appellant's Appeal with costs and allow the cross-appeal. They seek a formal declaration that they are the legal owners of the suit properties based on their long-term occupation and the fraudulent nature of the Appellant's claims. They maintain that costs should follow the event as per Section 27 of the Civil Procedure Act, given the malicious and illegal acts of the Appellant.

Analysis and Determination

38. This being a first Appeal, the role of the Court is to re-appraise the evidence and draw inferences before arriving at my own impartial conclusion always bearing in mind that, unlike the trial Court, I did not see and hear witnesses testify and due allowance must be made for that; see **Selle-vs-Associated Motor Boat Company (1968) 123**.

39. The Appellant relied on the principle of indefeasibility of title, arguing that her registration as owner was absolute. However, the Court scrutinized the process of acquisition.

40. Under Section 26(1) of the Land Registration Act (2012), a Certificate of Title is only *prima facie* evidence of ownership. It can be impeached if it was acquired through fraud, misrepresentation or an unprocedural scheme.

41. The Appellant failed to produce a Land Control Board Consent, valuation reports, or proof of stamp duty. Land transfer processes are rigorous statutory processes. The absence of these documents, coupled with the owner who is the mother testifying that she never signed a transfer, moves the title from protected to one where the acquisition process is under scrutiny and question.
42. At the same time, the Appellant challenged the Respondents' right to sue, claiming they lacked a Grant of representation for the deceased Michael Muchina.
43. The Court noted that the Respondents obtained a Limited Grant Ad Litem. In environmental and land matters, the Court often prioritizes the protection of the subject matter over strict Probate formalities to prevent the wastage of an Estate. Furthermore, since the Respondents were protecting their own occupation rights, they had a direct interest in the suit.
44. The Cross-Appeal focused on whether the Respondents should be declared owners by virtue of their 25-year occupation. Under the Limitation of Actions Act (Cap 22), a person who occupies land for more than 12 years in a manner that is open, notorious and without the owner's permission, *nec vi, nec clam, nec precario* acquires legal rights to that land.
45. The Respondents proved exclusive possession since 1996. The Appellant's argument that they were licensees failed because she could not prove she or the mother had ever

exerted control or given revocable permission that would stop the limitation clock. The case of **Alice Chemutai Too v Nickson Kipkurui Korir [supra]** was used to establish that the Court has the power to look behind a title deed. If the procedural trail constituting of stamps, consents, payments is missing, the title is unprocedural and liable for cancellation.

46. In the case of **Zacharia Wambugu Gathimu v John Ndungu Maina [2019] eKLR** the Court reinforced the requirement for specific documents, RL 1 forms, PINs, IDs to prove a valid transfer. The Court used this to dismiss the Appellant's claim of a gift.

47. In **James Mukuria Njoroge v Joseph Muraya & 2 Others [2019] KEELC 3832 (KLR)** the Court established a direct precedent for cancelling titles where the holder cannot prove the payment of government revenue that is stamp duty, as this implies a bypass of the legal registry system.

48. My view of what is emerging is that the Appeal lacks merit and the Cross-Appeal is successful. In my view, the Appellant's title was a legal nullity. The testimony of the mother Nduta Finlayson denying the transfer is the most potent evidence. No person can transfer what they do not own, and no transfer is valid without the consent of the registered owner.

49. By failing to file submissions and missing Court dates, the Appellant failed to rebut the Respondents' overwhelming evidence.

50. It therefore follows that the Respondents met the Limitation threshold. Their occupation was not interrupted for over two decades. It is my considered view that the Trial Magistrate erred in only granting an injunction; once adverse possession is proven, the Court is obligated to declare ownership.

Final Orders:

- i) The Appeal is dismissed in its entirety.***
- ii) The Cross-Appeal is allowed.***
- iii) The Respondents are hereby declared the absolute legal owners of LR Ruiru/Kiu Block 8/1356 and LR Ruiru/Kiu Block 8/1357 by way of Adverse Possession.***
- iv) The Land Registrar is directed to cancel the Appellant's title and issue new title in the names of the Respondents.***
- v) The Appellant is permanently barred from the properties.***
- vi) The Appellant shall bear the costs of the lower Court, the Appeal and the cross-appeal.***

It is so ordered.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS AT THIKA THIS 12TH DAY OF MARCH, 2026.

**MOGENI J
JUDGE**

In the presence of:-

Ndanu Wambui for the Appellant

Charles Kimathi for the 1st and 2nd Cross-Appellants/Respondents
Melita - Court Assistant

MOGENI J
JUDGE

ORIGINAL