

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT KILGORIS
ELC (LA) E015 OF 2025

SAMWEL KIPUEI OKIRO.....
APPELLANT

VERSUS

JOSEPH KATIM KAKUYIA.....
RESPONDENT

JUDGMENT

1. The Appellant Samwel Kipunei Okiro being dissatisfied with the Judgment and decree of Hon. W.C Waswa delivered on 25th February 2025 in Kilgoris CMELC E020 OF 2021, preferred this Appeal subject of this Judgement.
2. The Appellant vide the Memorandum of Appeal dated 24th of March 2025 penned 7 grounds of Appeal and sought for the following reliefs;
 - (i) The Appellant appeal to allowed with costs to the Appellant.
 - (ii) The Hon. Magistrate’s Judgement delivered on 25th of February 2025 and orders issued therein be set aside with costs.
 - (iii) That a judgement be entered in favour of the Appellant thus;
 - (a) A declaration that the Defendant suit herein is dismissed.
 - (b) Costs of this Appeal and costs incurred in the subordinate court be borne by the Respondent.
 - (c) Such further and/or other reliefs as the court may deem necessary just and expedient.
3. The grounds of Appeal penned by the Appellant are as follows; -
 - (i) The Learned Trial Magistrate erred in law and fact by failing to find that the 1st Defendant’s defence was never challenged by way of a Reply to Defence and the evidence stood unopposed.

- (ii) That the Learned Trial Magistrate erred in law and fact by failing to consider that the 1st Defendant's testimony was unchallenged by way of cross-examination as the Plaintiff and his counsel absconded the defence hearing and the testimony remained unchallenged.
 - (iii) That the Learned Trial Magistrate erred in law and fact by failing to consider the 1st Defendant's supplementary list of documents which included Agreements for sale and termination of the agreement for sale by mutual consent between the Appellant and the agents of the Respondent herein.
 - (iv) That the Learned Trial Magistrate erred in law and fact by considering objection proceedings where the Appellant did not participate or sign and which proceedings were not produced by the makers of the documents.
 - (v) That the Learned Trial Magistrate erred in law and fact by finding that the Appellant's title was unprocedurally registered to him and generally failed to do justice when he ordered the cancellation of the Appellant's title.
 - (vi) That the Learned Trial Magistrate erred in law by failing to protect the sancity of title registered in the names of the Appellants.
 - (vii) That the Learned Trial Magistrate failed to properly evaluate, appraise and/or analyze the entire evidence on record and thereby failing to decipher the salient features of the Appellant's case and thereby arrived at a conclusion contrary tot the weight of the evidence on record.
4. Upon admission of the Appeal, directions were issued for the Appeal to proceed by way of written submissions; which the court surmises as follows; -

Appellant's submissions

5. The Appellant framed and submitted on 5 issues for determination.

6. On issue 1, the Appellant submits that on 4th of February 2025, the Respondent and his counsel were absent, the Respondent had neither filed a Reply to defence nor cross-examined the Appellant's witnesses, hence the Appellant's testimony stood unchallenged and uncontroverted thus the unchallenged ought to be taken as true, and reliance was placed on the decision in the case of Moses Theuri Ndumia Vs. I.G Transporters Limited and Another.
7. On issue number 2, the Appellant submits that the Appellant produced certified copy of Adjudication Record, Green card and title deed, hence he was the absolute owner under Section 24(a) of the Land Registration Act and that the certificate of title was prima facie evidence of ownership.
8. That the Respondent did not plead fraud or illegality so as to impeach the Appellant's title under Section 26(1) of Land Registration Act hence the trial court erred in cancelling the Appellant's title; Reliance on this limb of submissions was placed on the decision in Gichinga Kibutha Vs. Caroline Nduku (2018) KEELC 3981 KCR.
9. On issue No. 4 the Appellant submitted that the trial court ignored critical documents produced by the Appellant including Agreement for sale dated 8th December 2015, consent to terminate the said Agreement demand letter and refund documents hence the trial court misapprehended the law and misapplied the evidence.
10. On costs the Appellant, prayed for costs to be awarded under Section 27 of the Civil Procedure Act.

Respondent's Submission

11. Initially the Respondent was represented by Ms. Pion Learned counsel who has since been appointed to the Bench. At time of her appointment Ms. Pion had not filed submissions and the court on 09.12.2025 directed that it would not consider the Respondents submissions. By an application dated 6th of March 2026, Mr. Maito

Advocate who had taken over conduct of suit in place of Ms. Pion sought leave to file the said submissions out of time.

12. On 9th of March 2026, when the said application come up for directions. Mr. Shira Learned counsel for the Appellant conceded to the application hence the Respondent's submissions were admitted and the court shall now consider the same.
13. The Respondent framed and submitted on 3 issues.
14. On issue number 1, the Respondent submitted that the Trial Magistrate properly evaluated the evidence on record, as the Respondent had testified on 28th of November 2023 and that the suit property was allocated to the Respondent after a decision in objection number 139/1990. The Respondent having testified the Appellant's evidence cannot be said to have been uncontroverted.
15. In support of this, the Respondent relied on the decision in Gatere vs Njihia which quoted the case of Gichunga Kibutha vs Caroline Nduki (2018) eKLR.
16. On issue number 2, The Respondent submits that the protection offered to registered owners under Section 26(1) of the land Registration Act, does not extend to property acquired through illegal and unprocedural means; and that the trial court having found that the Appellant's title was procured un-procedurally the issue of sanctity of tittle and indefeasibility thereof does not arise and the decision of Dina Management Limited Vs County Government of Mombasa (2023 KESC 30 KLR was cited in this respect.
17. On issue number 3, the Respondent submits that the trial court properly exercised its jurisdiction to cancel the parcel of land Narok /Nkararo/555 and concludes that the Appeal is not merited and ought to be dismissed and the trial court's decision ought to be affirmed.

Issues for determination

18. Arising from the Record of Appeal, the submissions of the parties, and a consideration of the law; the court frames the following as issues for determination;
- (i) Whether or not the Appeal is merited, in determining this issue the court shall also determine whether the Plaintiff's claim before the trial court was merited or the Defence ought to have been upheld.
 - (ii) What reliefs ought to issue.
 - (iii) Who bears the costs of the Appeal.

Analysis and Determination

19. The Main grievance giving rise to the Appeal is that the Learned Trial Magistrate gave effect to objection proceedings and ignored the Appellant's evidence including a title deed for the suit property, adjudication record and Agreements for sale; and that having been the registered owner, the Plaintiff's title was indefeasible hence the trial court ought to have upheld the said title.
20. This being a first appeal the court is under a duty to "***reconsider the evidence, evaluate it and draw its own conclusion***", as was stated in Selle and Another Vs. Associated Motor Boat and 3 Others.
21. It is common ground that the Appellant Samwel Kipunei Okiro is the registered owner of the suit parcel, which suit property was part of Nkararo adjudication section.
22. It is also common ground that the Appellant was the 1st Defendant in Kilgoris CMELC E220 OF 2021 which suit had been commenced by a Plaint dated 26th of May 2021, in which the Plaintiff therein now Respondent in the Appeal, Mr. Joseph Katim Kakuyia, had pleaded inter alia that his father Mr. Paul Otimpau Semeyioi had filed objection proceedings in relation to Transmara/Nkararo/555 against the decision of the adjudication committee through objection proceeding No. 139/1990.

23. The Objection was heard in 2008 by the Land Adjudication officer and was allowed resulting to the award of the suit property to the Plaintiff a fact confirmed vide a letter written in 2016 by the Department of Land Adjudication and Settlement.
24. The Plaintiff further pleaded occupation of the suit property but was surprised to discover title to the suit property had been issued to the 1st Defendant who was intent on evicting him hence the suit in which he sought; declaration of ownership of the parcel, cancellation of the title issued to 1st Defendant registration of Plaintiff as owner of suit property and permanent injunction. The Plaintiff appears at pages 47-50 of the Record of Appeal vide his statement of defence appearing at pages 65 to 66 of the Record of Appeal
25. On his part the 1st Defendant now Appellant, and dated 21st of June 2021, pleaded as follows;
26. He denied that suit property had been allocated to the Plaintiff's father at the close of Nkararo Adjudication Section, and denied participating in any objection proceedings relating to the parcel of land.
27. The 1st Defendant averred being the registered owner of suit property having been issued with title over the suit property thus acquiring the rights of a registered owner and sought for dismissal of the suit.
28. The Record of Appeal reveals that the Plaintiff testified as P.W.1 and produced the Objection proceedings as P.Exhibit 1 while he marked a letter from the Adjudication Officer as well as bundle of photographs for identification.
29. The witness was cross-examined by both Mr. Shira for the Appellant herein and Ms. Osebe for the A.G's office.
30. The Defendant testified as D.W.1 on 04.02.2025 but he produced a copy of title, copy of Adjudication Record and green card, as well as an Agreement for sale dated 08.12.2015, a demand letter dated

30.11.2016, and a consent dated 07.06.2021. The Defendant was not cross-examined.

31. In the impugned Judgment the Learned Trial Magistrate found that the suit land was allocated through the adjudication process, and was subject of an objection proceedings whose outcome was that the property was allocated to the Plaintiff Joseph Katim Kakuyia, as was confirmed by the Objection proceedings, which noted the Objection proceeding to have been objection No. 139.

32. At paragraphs 41 and 42 of the impugned judgment the court evaluated the Adjudication Record produced by the 1st Defendant which reveals that ***“Objection number 139 was withdrawn, and at the same time, it reads that the objection was dismissed.”*** The Learned Trial Magistrate observed the Adjudication Record could not contain two outcomes that the **Objection had been withdrawn and dismissed at the same time.**

33. I have reviewed the Adjudication Record (D exhibit 2) appearing at pages 80 and 81 of the Record of Appeal and in fact the same equally indicated at 14 the ***“Land is awarded to Joseph Kakuyia katina as the objector had lodged this objection on his behalf . name of Respondent (samwel okiro) deleted”*** the above words which replicate the award in the Objection proceedings were crossed out by a pen and countersigned and, in their place, the words written were **objection was withdrawn** and at the end **objection No. 139 is dismissed.**

34. Significantly, the Adjudication Record has no remarks at no. 15 in relation to an appeal to the minister. It must be thus deemed that the Respondent in the Objection Proceedings Samuel Okiro the appellant herein did not prefer an Appeal to the minister under section 29 of the Land Adjudication Act.

35. It follows therefrom since there was no Appeal to the Minister the outcome of the Objection proceedings was the final determinant in

respect of the adjudication of Transmara /Nkararo/555 under section 26 of the Land Adjudication Act and outcome was that the said parcel was adjudicated and allocated to the plaintiff who produced the proceedings thereof in evidence before the trial court and the Learned Trial Magistrate cannot be faulted for relying on the outcome of the objection proceeding as he did to make his findings.

36. The comments inserted on the Adjudication Record that the Objection was dismissed and withdrawn are not factual as the same do not reflect what the Objection proceedings reveal and, in any event, the two scenarios are not possible outcome o the objections proceedings , to wit, **withdrawn and dismissal of the objection at the same time.**
37. Upon updating of the adjudication register on the outcome of the Objections proceedings by deletion of the Respondent's name the adjudication register in respect of Transmara / Nkarararo /555 became final under section 26 of the Land Adjudication Act and no alteration could be made to the adjudication record, it is only the Plaintiff's name that ought to have remained and thus the registration of the suit property to the respondent , though as a first registration as evidenced by the green card, was irregularly and unlawfully done as no appeal was preferred against the award of the Land Adjudication officer in the Objection proceedings.
38. The registration of the Appellant as the proprietor of Transmara /Nkararo /555 was made on the basis of an irregular alteration of the adjudication record and hence was unlawful, the title deed issued to the Appellant is not protected by law as its issuance contravened section 26(1)(b) of the Land Registration Act, after a review of the pleadings and evidence before the court the. It thus follows that this court has reached the same findings and conclusions that the Learned Trial Magistrate reached in upholding the plaintiff's claim and dismissing the Defence as filed.

39. Thus, in answer to issue number 1 the court finds that the Appeal is not merited as the learned magistrate reviewed evidence from both parties and the defendant's testimony was analyzed in light of what the Plaintiff had testified even in absence of the Cross examination of the defendant.
40. On issue number 2 the appeal having been found to lack merit the same is destined to fail as it hereby does, the court thus affirms and upholds the Judgment of the trial court in its entirety
41. The costs of this Appeal as well as the costs in the lower court are awarded to the 1st Respondent.

Dated at Kilgoris this 12th day of March, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

Sylvia C/A

Mr. Shira for the Appellant

Mr. Lenkai for the Respondent