

**IN THE COURT OF
APPEAL AT NYERI**

(CORAM: KARANJA, KANTAI & ALI-ARONI,

JJ.A.) CIVIL APPEAL NO. E147 OF 2020

BETWEEN

ANDREW K. RUIRIE.....APPELLANT

AND

IRENE NYAWIRA MUCHIRI.....RESPONDENT

(Being an appeal against the Judgment of the Environment and Land Court at Kerugoya (Cherono, J.) delivered on 21st February, 2020

in

***E.L.C. Civil Appeal No. 24 'A' of 2013
As consolidated with
E.L.C. Civil Appeal No. 173 'A' of 2013.)***

JUDGMENT OF THE COURT

This is a second appeal arising from the judgment of the Environment and Land Court (“ELC”) at Kerugoya which allowed the respondent’s appeal, dismissed the suit before the Magistrates Court and allowed the respondent’s counterclaim.

It is well established that the mandate of this Court with regard to second appeals is on matters of law only. This Court in the case of **Charles Kipkoech Leting vs. Express (K) Ltd & Another [2018] eKLR** clearly stated that:

“...on a second appeal, the Court confines itself to matters of law only, unless it is shown that the

Courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

This appeal relates to land parcel **Ngariama/Nyangeni/470** (hereinafter “the suit property”) which was initially owned by Hesbon Muchira Karanja, husband to the respondent. The respondent’s sons filed a reference against their father before the Land Disputes Tribunal (“LDT”), which eventually awarded the respondent 1.2 acres of the suit property; Anne Wanja, a second wife, got 0.25 acres while Hesbon Muchira got 0.3 acres. Hesbon Muchira filed an appeal to the Land Disputes Appeals Committee but his appeal was dismissed. The LDT award was adopted by the lower court as a judgment of the Court on 17th March, 2000. The record indicates that the said judgment was not enforced as Hesbon Muchira had entered into an agreement with the appellant to exchange the said property for another property, LR Baragwe/Guama/1693, and the appellant became registered as owner of the suit property herein.

The appellant sued the respondent in Kerugoya CMCC No. 46 of 2002 seeking orders that he was the owner of the suit property and asking the court to evict the respondent from the land. He also sought mesne profits from January 2002. His case was that he acquired the suit property from Hesbon Muchira in January 2002 but the respondent had unlawfully encroached upon the land and was harvesting his tea and other crops from the suit

property.

The respondent filed a defence denying the claim and also filed a counterclaim seeking eviction of the appellant from the suit property stating that the appellant's title was obtained fraudulently. The respondent's case was that the land exchange was done to frustrate court orders and the appellant was not a bona fide purchaser for value. It was also stated that no consent was obtained from the Land Control Board ("LCB") on the exchange and transfer. The respondent sought cancellation of the appellant's title.

The trial court in a judgment delivered on 21st September, 2011, held that there was no proof that Hesbon Muchira participated in the LDT proceedings to justify the accusation that the land exchange was done to frustrate the LDT award. The court also held that the resultant decree from the said award was insufficient to prove the respondent's case. The court stated that the respondent had not shown that the land was clan land and she had not proved fraud on the part of the appellant. The appellant's case was termed as proved and the court allowed the prayer declaring the appellant as the owner of the suit property. The court did not grant the order of eviction for the reason that it was within the jurisdiction of the High Court to issue such an order. The counterclaim was dismissed as not proved as required.

Two appeals were filed to the ELC emanating from the decision of the trial court; ELCA No. "A"24 of 2013 (by the respondent) and ELCA No. "A"173 of 2013 (by the appellant) and

the two files were consolidated when they came for hearing before that court.

The appellant in his appeal at the ELC faulted the trial court for failing to grant his prayer for mesne profits which, according to him, he had proved on a balance of probabilities and for failing to award him costs of the suit.

The respondent in her appeal faulted the trial court for failing to find that there was fraud in the manner in which the appellant obtained his title. She asserted that the appellant admitted that there were no minutes of the LCB for the exchange of the two parcels of land and that the court erred in noting that she lives on the property and was not involved in the exchange but yet went ahead to find that she did not need to be consulted. The respondent also stated that the court erred in not seeing the conspiracy between the appellant and her husband regarding the property exchange and not considering the entire evidence on record. The respondent also stated that the court did not give regard to the LDT award which was never overturned.

In a judgment delivered on 21st February, 2020, the ELC held that the trial court failed to consider the issues raised by the respondent herein namely the lack of consent of the LCB; the unprocedural exchange and transfer and on the claim of trust. The trial court was also faulted for failing to consider the existence of a resultant decree from the LDT, which had never been overturned by a superior court. The appellant herein was said to have been reckless for failing to do due diligence which would have established that the respondent had possessory rights over

the property. The

ELC held that the respondent's husband caused the exchange of the land parcels to defeat the decision by the LDT in case number 21 of 1998 and that in any case, the appellant's registration was done without consent of the LCB and was therefore un-procedural. The appeal by the respondent was allowed and the ELC set aside the judgment by the lower court. The court substituted the same with an order dismissing the appellant's lower court suit and allowing the respondent's counterclaim with costs.

Being dissatisfied with the decision by the ELC, the appellant has filed the present second appeal.

The Memorandum of Appeal is dated 5th October, 2020 seeking to have the judgment of the ELC set aside. The appellant contends that the judgment was against the weight of evidence, that the court disregarded that the appellant had proved his case on a balance of probabilities while the respondent never proved her counterclaim. The appellant also holds the position that the court did not analyze the evidence properly, disregarded inconsistencies in the respondent's case and shifted the burden of proof to the appellant. The ELC is further faulted for failing to find that the appellant was not a party to the LDT while he was a bonafide purchaser for value.

The appellant has filed submissions dated 16th June, 2025 in support of the appeal and asks this Court to find the appeal merited.

The respondent has filed submissions dated 20th June, 2025 in opposition to the appeal. The respondent states that the appellant's case was a mockery of justice, that the respondent has a valid court decree that has never been set aside and that this Court ought to discourage such machinations by dismissing the present appeal with costs.

This appeal was heard on 7th July, 2025 on the Court's virtual platform. Learned counsel **Miss Njeri Magee** appeared for the appellant while learned counsel **Mr. Maina Kagio** appeared for the respondent. Both parties had filed their written submissions, which they opted to rely on fully.

We have considered the record of appeal, the submissions by the parties and the law.

The record of appeal reflects that the appellant was the sole witness in support of his case. He told the court that the properties LR Ngariama/Nyangeni/470 and LR Baragwe/Guama/1693 were swapped via an agreement dated 15th January, 2002 and he got the title deed on 16th January, 2002. He confirmed that he found the respondent on the suit property when he obtained the land but maintained that the land had no restrictions when he conducted a search.

The respondent testified as DW1 and told the court that the suit property was clan land which was given to her husband during demarcation and her entire family had lived on the land

and

developed it since 1960. She stated that her sons filed the LDT case number 21 of 1998 against their father after he left the property, left the family and went to live elsewhere. She stated that the LDT divided the land in a ruling, which her husband appealed but the appeal was dismissed and he took no further action. She stated that she did not know about the land exchange and asked the court to direct the land to revert to her husband's name.

DW2 was the respondent's son Stanley Muriithi Muchira. He told the court that he had lived on the suit land with his parents for over 20 years and was aware of the LDT ruling which gave his mother 1.2 acres of the suit property. He stated that the transaction between the appellant and his father was fraudulent and his mother ought not to be evicted from the suit property.

We note, this being a court of record, that it is unfortunate that neither the proceedings nor ruling nor resultant decree of the LDT case number 21 of 1998 were filed in the entire lifetime of the matter before the subordinate court or the ELC. However, we also note that the finding of the LDT is not contested or disputed by any of the parties. The LDT awarded 1.2 acres of the suit property to the respondent, 0.3 acres to Hesbon Muchira and 0.25 acres to his second wife Anne Wanja. This decision by the LDT was adopted as an order of the court and has never been set aside, a position which has not been disputed by any of the parties. Therefore, we can safely make findings even absent of

those proceedings or award of the LDT.

It is quite telling that the appellant did not see fit to involve Hesbon Muchira to take part in the suit when he approached the magistrate's court for orders. Perhaps the appellant might have benefitted from the presence of Hesbon Muchira to clarify if indeed the land changed hands in good faith or in a way that would be sanctioned in law. However, in our view, that was highly unlikely. We say so because Hesbon Muchira was aware that he had lost a big portion of the land in a decision of the LDT and he even appealed the said decision unsuccessfully. It is most probable that the action of swapping the land for another was clearly intentional to outmaneuver what the respondent had gained at the LDT. On this point, we are in agreement with the learned ELC Judge who read the mischief that took place in how the land changed hands from Hesbon Muchira to the appellant after the decision of the LDT. The award of LDT, proceedings which Hesbon Wachira participated in was adopted as a judgment of the court on 17th March, 2000. The purported exchange of the lands between the appellant and Hesbon Muchira happened in 2002, two years after adoption of the award. The said Hesbon Muchira knew very well that he was by then only entitled to 0.3 acres of the suit property and he wanted to steal a match against his family (the respondent and their children) by attempting to by-pass a lawful process where the LDT had heard and determined the dispute involving ownership of the suit property, and had determined the dispute in one award, which the said Hesbon Muchira challenged unsuccessfully in an appeal to the

Lands Disputes Appeals Tribunal. Having failed in that process,
he

designed what he considered a clever scheme to exchange the suit land with a parcel of land owned by the appellant in a scheme which section 26 of the Land Registration Act cannot allow or sanction. It was the kind of scheme envisaged by that section as:-

a) “... on the ground of fraud or misrepresentation to which the person is proved to be a party; or

b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

In light of the above, can it then be said that the appellant obtained a good title from Hesbon Muchira? We think not. We echo the sentiment of this Court in the case of **Gathundu (As Administrator of the Estate of the Late Thumbi Kariuki) & 3 Others vs. Registrar & 7 Others [2024] KECA 668 (KLR)** where it was stated;

“Indeed, days are gone when a title deed was sacrosanct and assured one of ownership of a property. For now, a title deed is but just a piece of paper with information that has to be verified with the Office of the Chief Land Registrar, and even then an official search may not re-assure one that the title is authentic, one has to dig deeper to get to the root of the title.”

Our jurisdiction is now replete with jurisprudence that a party has to show proper lawful root of their title deed to landed property and not just rely on their present registration to protect

their claim. In the present case, the appellant is indeed the registered owner of the suit property, which he obtained from Hesbon Muchira.

However, Hesbon Muchira had lost the prerogative to deal with the suit property after the decision of the LDT and the adoption of that decision as a judgment of the court. The appellant himself confirms that the respondent was living on the suit land when he obtained it and it appears that he made no effort to engage the person (s) who were on the land, prior to the land swap. If he had done so, he would have known that there was a court order regarding ownership of the property and that Hesbon Muchira owned only 0.3 acres of the land and could not have passed to him the entire suit property. Consequently, the title held by the appellant is not a good title in view of the circumstances in which it was obtained.

We agree with the position adopted by this Court in the case of **Kukan & Another (Administrators of the Estate of the Late Jason Kukan Lila) vs. Kibutha** [2023] KECA 742 (KLR) where the Court was unable to protect a title that did not have good legal foundation. It was held that:

“In the circumstances of this case, we are not satisfied that Bemwa conducted proper due diligence before purchasing the suit land. We, just like the trial court sympathize with Bemwa, especially in light of the huge sums of money it expended to acquire the suit land. The circumstances of this case, however, puts Bemwa’s title on the suit land in conflict with the law and therefore not capable of legal protection. We agree with the view expressed by the learned judge that any claim by Bemwa lies as against the appellants and/or the beneficiaries of the estate of the deceased

from whom it purchased the suit land and not the respondent.”

Having reached that conclusion we need not address the other grounds of appeal as this finding determines the whole appeal. We may, however, say in passing that the exchange of the parcels of land was irregular and voidable as the transactions involved dealing with lands subject to the provision of the Land Control Act which required consent of the LCB be first hand and obtained. The way that Hesbon Muchira attempted to deal with the land in cahoots with the appellant was something that the law would not allow or sanction. The two of them could not deal with a controlled transaction in breach of the provisions of the said Act.

We find no merit in this appeal and we dismiss it with costs.

Dated and delivered in Nyeri this 13th day of March, 2026.

W. KARANJA

.....
JUDGE OF APPEAL

S. ole KANTAI

.....
JUDGE OF APPEAL

ALI - ARONI

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original
Signed*

DEPUTY REGISTRAR