

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC APPEAL NO. E148 OF 2024**

**THE REGISTERED TRUSTEES**

**HOSSANAH SHALOM LIBERTY CHURCH.....**

**APPELLANT**

**VERSUS**

**JULIUS MWANGI ..... 1<sup>ST</sup>**

**RESPONDENT**

**JOSEPH KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is a first appeal which arises from the judgment and decree of Principal Magistrate's Court in Ruiru MCL &E No. E164 of 2022 delivered on 9<sup>th</sup> November 2023 in which the court determined a dispute between the parties herein concerning the parcel of land known as RURIU/RUIRU EAST BLOCK 2/43278 (hereinafter the suit property).
2. The sequence of events giving rise to the litigation resulting in this appeal is that the Appellant alleged to be the registered proprietor of the suit property claiming that the same was bequeathed by the leader of the unregistered fellowship known as Murera fellowship through a contract dated 10<sup>th</sup> June 2020.

3. The Appellants contend that they had already purchased the suit property by the time they permitted the Respondents to use the suit property. A dispute crystallized between the Appellants and the Respondents which resulted in the Appellants asking the Respondents to vacate the suit property. The Respondent refused to vacate the suit property which resulted in the Appellant instituting proceedings against them in Ruiru MCELC No. E164 of 2022.
4. In response, the Respondents filed a defence and counterclaim against the Appellants. The Respondents asserted that they purchased the suit property and having been worshipping on the property for years. The Respondents contended that the Appellants did not contribute to the purchase of the suit property and sought the dismissal of the suit.
5. During trial, Paul Irungu Iria, Jacinta Wairimu Nganga and Ibrahim Kamau Njuguna testified as PW1, PW2 and PW3 respectively in support of the Appellant's case. They all adopted the contents of their pleadings and documentary evidence.
6. The Respondents herein testified as DW1 and DW2 at the hearing in the trial court.
7. Upon considering the pleadings, oral testimonies and written submissions from all parties, Principal Magistrate C. K. Kisiangani found that the Appellant herein had failed to prove that it is the registered proprietor of suit property nor that they were entitled to

the reliefs sought in the plaint and ultimately dismissed the Appellant's case.

8. The impugned judgment similarly dismissed the Respondent's counterclaim in part but ultimately granted the order cancelling the title to the suit property registered in the name of the Appellant and ordered that the same be registered afresh after the members of the Murera fellowship agree on who should be registered as the owner of the suit property.
9. The Appellant, being dissatisfied with the trial court's decision, lodged the present appeal challenging both the findings of fact and the application of the law by the trial court.
10. The appeal is premised on the Memorandum of Appeal dated 20<sup>th</sup> December 2024, in which the Appellant raises eight (8) grounds which, in substance, contend that the trial court misapprehended the evidence placed before it and arrived at conclusions that were not supported by the record.
11. The respondent opposes the appeal and maintains that the impugned judgment was properly grounded in both fact and law.
12. The Appeal was canvassed by way of written submissions duly filed by both the Appellant and the Respondents.

### **Issues for Determination**

13. Having perused the Memorandum of Appeal, the record of appeal, the supplementary record of appeal, the parties' respective

submissions and the relevant authorities, the following issues emerge for determination:

- i. *Whether the trial court erred in law or fact in ordering the cancellation of the Appellant's title.*
- ii. *What, if any, relief the Appellant is entitled to in this appeal.*

### **Analysis and Determination**

14. Being a first appeal, this Court bears the weighty responsibility of re-examining the trial court's record with deliberate care.
15. An appeal is not a mere rubber-stamping of the trial court's decision; it is a disciplined exercise of independent judgment, guided by a careful evaluation of both the evidence and the law.
16. While the trial court enjoyed the advantage of seeing and hearing the witnesses, this Court must nonetheless scrutinize the evidence in its entirety, evaluate its probative force, and draw conclusions that are legally and factually sound.
17. As eloquently stated in *Selle & Another v. Associated Motor Boat Co. Ltd & Others* [1968] EA 123:

*"...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial 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..."*

18. It is against this guiding principle of careful and independent appraisal that the Court now turns to consider the grounds of appeal. In doing so, the Court will re-examine the evidence presented at trial, assess the legal arguments advanced by the parties, and determine whether the trial court erred in law or fact in cancelling the Appellant's title. While deference is due to the trial court's opportunity to see and hear the witnesses, this Court must nonetheless form its own conclusions based on the record, ensuring that any determination made is both legally sound and factually justified.
19. Anchored in the principles articulated in *Selle*, the Court proceeds to the foremost issue in this appeal: *whether the trial court erred in law or fact in ordering the cancellation of the Appellant's title.*
20. Under sections 24, 25, 26, and 27 of the Land Registration Act, registration vests in the proprietor absolute ownership of the land or lease, together with all rights, privileges, and appurtenances thereto (section 24).
21. Section 25 establishes that a registered proprietor's rights, whether acquired on first registration, by subsequent transfer for valuable consideration, or by court order, are generally indefeasible and not liable to defeat except as provided in the Act. These rights are held free from other claims, subject only to registered encumbrances, leases, or rights declared under section 28.

22. Section 26 further confirms that a certificate of title is prima facie evidence of absolute and indefeasible ownership, and may only be challenged on limited grounds: fraud or misrepresentation involving the proprietor, or where the title has been acquired illegally, unprocedurally, or through a corrupt scheme. Section 27 clarifies that even transfers without valuable consideration are recognized upon registration, subject to any prior unregistered interests and applicable provisions of the Insolvency Act.
23. An examination of the record establishes that the Appellant produced a certificate of title for the suit property registered in the names of Paul Irungu Wanjiku, Roman Nyanjui Kariuki and John Njuguna Kahiro as trustees of Hossanah Shalom Liberty Ministry.
24. The Appellant argues that the learned magistrate acted contrary to the Land Registration Act by cancelling the title without any legal or evidentiary basis.
25. In essence, the Appellant submits that the trial court did not identify, much less establish, any of the statutory grounds prescribed under the Land Registration Act as a basis for the cancellation of its title.
26. In cancelling the Appellant's title, the trial court noted that there were no minutes on the record from the 15 members of the congregation of Murera Fellowship conceding to gifting the suit property to the Appellant. Moreover, the learned magistrates in examining the agreement dated 10<sup>th</sup> June 2020 between the Murera

Fellowship and the Appellant noted that the agreement was only signed by 3 members instead of 15. The trial court thus found that the quorum for consenting to give the suit land to the Appellants

27. In cancelling the Appellant's title, the trial court noted that the record contained no minutes or evidence showing that all 15 members of the Murera Fellowship had consented to gifting the suit property to the Appellant. In examining the agreement dated 10<sup>th</sup> June 2020 between the Murera Fellowship and the Appellant, the learned magistrate observed that the document was signed by only three members rather than all fifteen. On this basis, the trial court concluded that the Appellant could not demonstrate that the property had been validly transferred, and accordingly found the title to be liable to cancellation.
28. The Appellant, contends that the trial court's conclusion was misconceived, unlawful, and unconstitutional. It is submitted that the requirement imposed by the trial court, that all fifteen members of the Murera Fellowship must consent to the transfer of the suit property, has no foundation in law and improperly imposes an extra-statutory condition on the exercise of rights conferred by registration.
29. The Respondents, for their part, submit that the Appellant's title was fraudulently acquired and submit that the trial court was therefore justified in ordering its cancellation. They rely on section 80 of the Land Registration Act, which empowers the court to

rectify the land register where a registration has been procured through fraud or mistake.

30. The Court notes, that the trial court did not make any finding that the Appellant's title was obtained by fraud or mistake. Notwithstanding this, the trial court proceeded to cancel the Appellant's registered title and directed that the property be registered afresh once the members of the Murera Fellowship reached agreement on who should be recorded as proprietor.
31. This raises the question whether the trial court had a lawful basis to exercise its power under section 80 of the Land Registration Act which provides:

*“80. (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 who is in possession and had acquired the land, lease or charge for valuable consideration, 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.”*

32. A careful reading of section 80 shows that cancellation or rectification of a registered title is a drastic measure, permissible only where the registration was obtained by fraud or mistake, and

even then, only if the proprietor knew of, caused, or substantially contributed to the defect.

33. In the present case, there is no evidence that the Appellant engaged in or was aware of any fraud or mistake in the registration of the suit property. The trial court's conclusion appears to have rested solely on the observation that only three of the fifteen members of the Murera Fellowship signed the agreement transferring the land, and that the remaining members had not formally consented.
34. However, the Land Registration Act does not require unanimous consent of all contributors for a valid registration to occur, nor does the absence of signatures by some contributors automatically render the registration fraudulent or mistaken.
35. In ***Ann Wairimu Wanjohi v James Wambiru Mukabi [2021] eKLR*** while interpreting section 80 of the Land Registration Act the court held:

*"The effect of Section 80 of the Land Registration Act is that even where the court is satisfied that there is a mistake in the register relating to a title to land, the person who is registered as proprietor as per the title is protected to the extent that the court can only order rectification of the register if it is satisfied, that the registered proprietor either had knowledge of the mistake, or caused the mistake, or substantially contributed to it through any act, neglect or default."*

36. In this matter, the record bears no trace of fraud, mistake, or irregularity attributable to the Appellant.
37. The trial court's reliance on the number of signatories to the agreement cannot, in law, trigger the provisions of section 80 of the Land Registration Act. There is no finding, and no evidence, that the Appellant knew of, caused, or substantially contributed to any defect in the registration, nor that the title was procured by any improper act. In disregarding the statutory prerequisites, the court substituted its own subjective notion of what might be equitable for the rigorous standards the legislature imposed.
38. Section 26 of the Land Registration Act accords a registered proprietor the indefeasible protection of title, a shield that may not be pierced absent the clear statutory conditions prescribed under section 80. In the absence of such evidence, the trial court's order cancelling the registered title was legally unfounded, factually unsupported, and wholly unsustainable, and cannot bear the weight of so drastic a measure against the Appellant's indefeasible rights.
39. Accordingly, this Court finds that the trial court erred both in law and in fact by cancelling the Appellant's registered title. The decision was predicated on a factor, namely, the number of signatories, that does not, in law, constitute fraud, mistake, or any other defect under section 80, and thus cannot justify such a drastic interference with the Appellant's indefeasible rights.

40. Having found that the trial court erred in cancelling the Appellant's registered title, it follows that the Appellant is entitled to the reliefs sought.

41. In view of the foregoing, the appeal is hereby allowed with costs.

42. The judgment of the trial court together with all consequential orders are hereby set aside.

It is so Ordered.

**Dated, Signed and Delivered, at Thika this 13th day of February 2026**

.....  
**J. M. ONYANGO**  
**JUDGE**

**In the presence of:**