

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: KIAGE, MUCHELULE & KORIR,**

**JJ.A.) CIVIL APPEAL NO. 461 OF 2019**

**BETWEEN**

**PHILIP SAOINA ..... 1<sup>ST</sup>  
APPELLANT**

**ESTHER SAENIK ..... 2<sup>ND</sup>  
APPELLANT JONATHAN SHANKA MASHULU .....  
3<sup>RD</sup> APPELLANT**

**WILLIAM SIMEL ..... 4<sup>TH</sup>  
APPELLANT RUTH TUPEITA .....**

**5<sup>TH</sup> APPELLANT CECILIA SISIAN .  
..... 6<sup>TH</sup> APPELLANT TOMAS RUNKE  
..... 7<sup>TH</sup> APPELLANT SILVIA**

**PILASO (*Suing on their own right*  
*And as next friend of M.N. and E.P. (minors)*) ..... 8<sup>th</sup>  
APPELLANT**

**AND**

**NASSER ABDULHAMID AHMED ..... 1<sup>ST</sup>  
RESPONDENT THE DISTRICT LAND REGISTRAR, KAJIADO .  
2<sup>ND</sup> RESPONDENT THE ATTORNEY GENERAL .....  
..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Environment and  
Land Court of Kenya at Kajiado (C. Ochieng, J.) delivered on 19<sup>th</sup> November  
2018*

*in*

***E.L.C. Suit No. 601 of  
2018 (Formerly  
Nairobi***

***ELC No. 536 of 2015 & ELC No. 725 of 2015)***

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

1. This appeal arises from the judgment of C. Ochieng, J., of the Environment and Land Court (ELC) at Kajiado, dismissing the appellants' Originating Summons dated 16<sup>th</sup> June 2015, wherein they had sought orders as follows:

**a. THAT it be declared that the property known as KAJIADO/ KITENGELA/2696 [suit property] which is illegally, irregularly, wrongfully and/ or erroneously registered in the name of NASSER ABDULHAMID AHMED; lawfully and indefeasibly belongs exclusively only to the Applicants herein as bona fide beneficiaries which parcel of land devolved to them upon the death of their father and upon successful petitioning for Grant of Letters of Administration vide HC Succession Cause No. 2555 of 2014.**

**b. THAT the register at the Kajiado Lands Registry be rectified by deleting, expunging, and/or cancelling the registration of one NASSER ABDULHAMID AHMED as the alleged proprietor of all that parcel of land known as KAJIADO/ KITENGELA/2696 and the resultant Certificate of Title to the said parcel of land in the name of NASSER ABDULHAMID AHMED be cancelled.**

**c. THAT an inhibition be placed on all that parcel of land known as KAJIADO/KITENGELA/2696 pending the hearing of this matter.**

2. In dismissing the summons, the learned Judge held that there was a valid sale agreement between the administrators of the estate of the deceased father of the appellants and the 1<sup>st</sup> respondent. The learned Judge also found that the 1<sup>st</sup> respondent did not acquire **L.R. No. Kajiado/Kitengela/2696** (“**the suit property**”) fraudulently as claimed by the appellants. Additionally, the learned Judge found that the suit could not stand on its own against a purchaser who acquired the suit property from the administrators of the deceased’s estate, without making the administrators parties to the claim. As a

result, the

learned Judge declined to issue the orders sought and dismissed the summons with costs to the respondents.

3. In the Originating Summons, the appellants (*who were the applicants therein*) claimed that the 1<sup>st</sup> respondent (*who was the 1<sup>st</sup> respondent at the trial*) fraudulently acquired the suit property from the administrators who were holding the same in trust for the appellants, who were beneficiaries of the estate of the deceased. In support of the appellants' claim, the 1<sup>st</sup> appellant, Philip Saonia, testified as **PW1** stating that upon the demise of his father, Mashulu Isa Runke, on 19<sup>th</sup> May 2004, his mother, Siaita Mashulu Isa and Alice Mashulu were appointed as administrators of his estate in Nairobi High Court Succession Cause No. 2555 of 2004, and a certificate of confirmation of grant issued on 31<sup>st</sup> July 2006. He averred that the administrators of the estate were to hold the suit property in trust for the beneficiaries, the appellants herein. According to him, the 1<sup>st</sup> respondent, through fraud and forgery, procured the registration of the suit property in his name on 22<sup>nd</sup> September 2008, long after the death of his father.
4. Pointing to various documents in his possession, the 1<sup>st</sup> appellant explained that the title deed, the application for consent from the Land Control Board ("**LCB**"), the consent itself, and the transfer forms were allegedly executed by their father, even though he had died before the transaction took place. The witness stated that the beneficiaries of the estate

neither transferred the suit property nor were they aware of what was happening, contending that the sale

agreement was not completed in accordance with the certificate confirming the grant. He stated that the administrators were illiterate and were merely directed to sign the documents. Additionally, he testified that in 2008, most of the beneficiaries were minors and could not have legally consented to the transfer of the property by the administrators.

5. In cross-examination, the 1<sup>st</sup> appellant denied being present when the sale was conducted or being aware of the sale agreement dated 19<sup>th</sup> August 2008, asserting that the administrators entered into the agreement to settle some liabilities accrued to the estate and did not understand what they were doing. He conceded that he was aware that the administrators received some money as part of the purchase price, but stated that he did not know the full amount because he was away at the time. The 1<sup>st</sup> appellant confirmed that his father had obtained a loan from a third party and used the title of the suit property as collateral. He maintained his claim that the transaction was fraudulent, arguing that the documentation indicated that his late father had transferred the land to the 1<sup>st</sup> respondent, which was impossible since his father was deceased at the time of the alleged transfer.
6. The summons was opposed through the affidavit of Nasser Abdulhamid Ahmed, the 1<sup>st</sup> respondent herein. It was his deposition that he was the registered owner of the suit property, having purchased it from Siaita Mashulu Isa and Alice Mashulu

Issa, who were the administrators of the estate of Mashulu  
Issa

Runke (deceased). The 1<sup>st</sup> respondent averred that the two administrators sold the parcel of land to him for Kshs. 10,000,000 on 15<sup>th</sup> August 2008. His testimony was that he obtained the consent of the Land Control Board, and a title deed was issued to him on 22<sup>nd</sup> September 2008. He denied any wrongdoing and all allegations of fraud, asserting that the administrators had the legal capacity to dispose of the suit property. The 1<sup>st</sup> respondent maintained that the suit was an attempt by the appellants to unjustly enrich themselves and that they should instead demand accountability from the administrators of the estate of their deceased father.

7. The case for the respondents was premised on the testimony of the 1<sup>st</sup> respondent, who testified as **DW1**, and **Mr. Nyandoro David Nyambaso (DW2)**, the Principal Land Registrar, Kajiado County. In his testimony, the 1<sup>st</sup> respondent confirmed that he was the registered owner of the suit property and presented his title deed. He averred that he purchased the property from Siaita Mashulu Isa and Alice Mashulu Issa, who were the administrators of the estate of the deceased Mashulu Issa Runke. **DW1** recalled that before he purchased the land, he received a letter of offer from the 1<sup>st</sup> appellant, Paul Nkina, Siaita Mashulu Isa, and Alice Mashulu Issa. He averred that he was unaware that the property was held in trust by the said vendors on behalf of the appellants. He further stated that under an agreement of sale dated 19<sup>th</sup> August 2008, he bought the property for Kshs. 10,000,000. This agreement was drafted

by Ndwiga & Company Advocates, who

were instructed by the vendors. The 1<sup>st</sup> respondent exhibited a photograph purportedly taken on the date of the signing of the sale agreement and identified several individuals present, including Mako Isa, Alice Mashulu Issa, Saita Mashulu Issa, Paul Nkina, and Philip Saoina ("**1<sup>st</sup> appellant**"). He insisted that even though the 1<sup>st</sup> appellant was present during the signing of the sale agreement, he did not object to the disposal of the suit property and was indeed among those who signed the letter of offer. The 1<sup>st</sup> respondent also recalled signing the transfer forms and indicated that he returned the forms to the vendors, who later processed them and gave him the title deed. Additionally, he testified that he had made improvements to the suit property, and its market value had since increased to over Kshs. 250,000,000. In cross-examination, the 1<sup>st</sup> respondent maintained that he never attended a meeting of the Land Control Board, but that it was the vendors who obtained the Board's consent for the transfer. And that after completing the payment of the purchase price, he provided the necessary documents, including his passport-size photograph, to the 1<sup>st</sup> appellant, who, along with the other vendors, processed the transfer and secured the title deed for him.

8. On his part, **DW2** testified that according to the records at the Lands Registry at Kajiado, the property was registered in favour of the 1<sup>st</sup> respondent. He presented the entry from the register under Daybook Entry No. 806 dated 22<sup>nd</sup> September 2008, indicating that the title to the suit property was surrendered

upon its transfer to the 1<sup>st</sup> respondent. It was his testimony that although

the transfer was registered, he could not locate the transfer documents. In cross-examination, he explained that when a property transfer involves a deceased individual, it is carried out through transmission using forms RL 7 and RL 19, but in this case, there was no such transfer by way of transmission. He stated that the deceased's family should have provided the death certificate for the suit property to be encumbered, but they did not fulfill this requirement. Furthermore, he stated that the transfer of the suit property was granted to the 1<sup>st</sup> respondent because there had been no prior transfer through transmission.

9. When the matter came up for hearing before us, learned counsel, **Mr. Mogeni**, appeared for the appellants, while learned counsel, **Mrs. Ahomo**, represented the 1<sup>st</sup> respondent. There was no appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents despite the Office of the Attorney General being served with a hearing notice. Counsel majorly relied on the filed written submissions accompanied by brief oral highlights.
10. Learned counsel, Mr. Mogeni, for the appellant, commenced by emphasizing the role of a first appellate court, citing **Selle And Another vs. Associated Motor Boat Co. Ltd [1968] EA 123**, which encouraged the first appellate court to reevaluate the evidence before reaching its independent conclusion. Counsel referenced **Ephantus Mwangi & Another vs. Duncan Mwangi Wambugu (1982-88) 1 KAR 278**, arguing that the

first appellate court can overturn the findings of the trial court  
if they are not

evidence-based, misrepresented, or founded on incorrect principles. According to the appellants' counsel, the transfer was void because it was executed by a deceased person who lacked the capacity to act. Counsel cited **section 45** of the **Law of Succession Act** for the proposition that no one should handle a deceased's free property or take possession of the same without a grant of representation, labelling the 1<sup>st</sup> respondent an intermeddler in the estate of the deceased. Additionally, counsel submitted that the trial Judge misapplied **section 82(b)** of the **Law of Succession Act**, arguing that administrators can only effect transmission after confirmation. Counsel emphasized that while personal representatives can sell assets, immovable property cannot be sold before the grant is confirmed.

11. Counsel for the appellants argued that the 1<sup>st</sup> respondent could not legally obtain consent in the name of a deceased person. He cited ***Vivdec vs. Bhatt [1985] eKLR*** and **section 54** of the **Transfer of Property Act, 1882**, and submitted that a contract for the sale of immovable property does not create an interest unless the consents of the legal trustee and the beneficiary are obtained. According to counsel, the consent of the Land Control Board can only issue in the presence of both parties, which the deceased vendor could not fulfil, suggesting that the consent was obtained through misrepresentation or fraud.

12. Relying on **section 26** of the **Land Registration Act**, which

allows challenges to a registered title obtained improperly,  
counsel

faulted the trial Judge for failing to consider that the title was acquired through illegal and unprocedural means. He relied on **Alice Chemutai Too vs. Nickson Kipkurui Korir & 2 Others [2015] eKLR** for the assertion that it is not necessary to prove that the title holder was involved in the fraudulent act for a title to be successfully challenged under **section 26(1)(b)** of the **Land Registration Act**. According to counsel, the 1<sup>st</sup> respondent was, in any event, not an innocent purchaser, having entered into a sale agreement with trustees and obtained false consent from a deceased person, indicating he was aware of the true ownership status. Counsel contended that the transfer was null and void for lack of capacity in the transaction and requested that the appeal be allowed, the judgment set aside, and the Originating Summons allowed as prayed.

13. In opposition to the appeal, learned counsel **Mrs. Ahomo** for the 1<sup>st</sup> respondent relying on **Order 43 Rule 1** and **Order 37 Rule 1(g)** of the **Civil Procedure Rules, 2010** submitted that appeals for rectification of the lands register do not lie as of right and this appeal is therefore incompetent because the appellant did not seek leave from the trial court before lodging it. Counsel additionally cited **section 75(1)(h)** of the **Civil Procedure Act** to emphasise the need to seek leave before lodging an appeal where leave is a prerequisite. Citing **Joshua Jaoko Otieno vs. Erastus Opiyo Otieno [2021] eKLR** and **Ngugi vs. Commissioner of Lands [2023] eKLR**, counsel

maintained that the lack of leave renders the appeal moot, and stressed that a party must adhere

to procedural requirements to establish jurisdiction. He further referred to **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd (1989) eKLR** to assert that a court without jurisdiction must "*down its tools*" and cease further proceedings.

14. Turning to the merits of the appeal, counsel submitted that the 1<sup>st</sup> respondent is the rightful owner of the property, having purchased it for Kshs.10,000,000 from the administrators of the deceased's estate. Citing **section 27(a)** of the **repealed Registration of Land Act** and **sections 24(a), 25, and 26** of the **Land Registration Act, 2012**, counsel submitted that registered ownership confers absolute rights, which can only be challenged by proving fraud or misrepresentation. Adverting to **Article 40** of the **Constitution**, counsel asserted the 1<sup>st</sup> respondent's right to property. She pointed to **sections 79 and 82(b)** of the **Law of Succession Act** as affirming the legal authority of an administrator of the estate of a deceased person to sell estate assets.
15. Counsel, in reliance on the decision of **Bruce Joseph Bockle vs. Coquero Limited [2014] KECA 682 (KLR)**, argued that the onus to prove fraud lay with the appellants, which they did not establish.
16. **Trust Bank Limited vs. Ajay Shah & 3 Others [2019] KECA 353 (KLR)** was cited for the proposition that the failure to include

the vendors (administrators) in the suit over fraud was a significant procedural mistake.

17. Rejecting the appellants' contention that the 1<sup>st</sup> respondent was an intermeddler, counsel for the 1<sup>st</sup> respondent asserted that he was not, having dealt with duly appointed estate representatives. Counsel maintained that the 1<sup>st</sup> respondent, being a *bona fide* purchaser, was not an intermeddler in the terms of **section 45** of the **Law of Succession Act**. Reliance was placed on the High Court decision of **In The Matter of the Estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR)** for the proposition that transactions with administrators holding a valid grant are legal. **Stephens & 6 Others vs. Stephens & Another (1987) eKLR** was cited to emphasize that any failure by the administrators to account for sale proceeds is a succession issue, not a land dispute against a third-party purchaser. Additionally, counsel referred to **section 3(3)** of the **Law of Contract Act** to assert that the sale agreement dated 19<sup>th</sup> August 2008 met the statutory requirements of a valid contract. Counsel concluded that the trial court correctly found no illegal or fraudulent acquisition of the title, urging that the appeal be dismissed with costs.
18. We inquired from **Mrs. Ahomo** concerning the complaint that the application for the Land Control Board Consent and the letter of consent that was issued were made in the name of the deceased; whether it was possible to have that application

made in the name

of a deceased person. Counsel's rather reluctant response was that it was possible to use the deceased's name if the administrators were acting in their capacity as his legal representatives.

19. In a brief reply to submissions made on behalf of the 1<sup>st</sup> respondent, **Mr. Mogeni** submitted that there had not been shown any document of transfer that was executed by the administrators in favor of the 1<sup>st</sup> respondent and so **section 82(b)** of the **Law of Succession Act** was not acted upon to transmit the suit property from the estate to the 1<sup>st</sup> respondent.
20. We probed counsel concerning the allegation by the 1<sup>st</sup> respondent's counsel that leave was not obtained before approaching this Court. **Mr. Mogeni's** reply was that the appeal was not lodged under **Order 37** only. That it was also brought under **section 26** of the **Land Act**, and **sections 70** and **80** of the **Land Registration Act**. We further questioned counsel why the administrators were not joined to the suit, since they are the persons who were bestowed with the responsibility of the suit property. Counsel's answer was that the suit was instituted by the beneficiaries of the estate who complained that the 1<sup>st</sup> respondent had undertaken this process despite the fact there was a confirmed grant in their favour.
21. This being a first appeal, our duty as enshrined under **rule 31(1)(a)** of the **Court of Appeal Rules, 2022** was articulated in

the case of **Abok James Odera T/A A. J. Odera & Associates vs. John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR** as follows:

***“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”***

22. Upon reviewing the record of appeal and the submissions by counsel, the gist of the appeal is whether the 1<sup>st</sup> respondent fraudulently or irregularly acquired the suit property, and if so, what should be the consequences.
23. Both the appellants and the 1<sup>st</sup> respondent agree that the suit property was acquired by the 1<sup>st</sup> respondent from the estate of Mashulu Isa Runke, who died on 19<sup>th</sup> May 2004. The sale of the said property was supposedly overseen by Siaita Mashulu Isa and Alice Mashulu, who, as per the certificate of grant dated 31<sup>st</sup> July 2006, were the administrators of the estate of the deceased. What is in dispute, however, is whether the administrators had the capacity to sell the suit property to the 1<sup>st</sup> respondent and whether the transfer was legally and procedurally conducted.
24. It is evident from the certificate of confirmation of grant that by confirmation of the grant, the administrators were vested with the powers of a trustee to their children. The certificate dated 31<sup>st</sup> July 2006 stipulates that the suit property was to be

registered in

the name of **Siaita Mashulu Isa**, *'to hold in trust for the following children in equal shares namely:*

*Philip Saoina*

*Esther*

*Saenik*

*Jonathan Shanka William*

*Simel Ruth Tupeita*

*Magdaline Nailole*

The certificate further shows that the property was to be registered in the name of **Alice Mashulu Issa**, *'to hold in trust for the following children in equal shares namely;*

*Cecilia Sisian*

*Thoms Runkei*

*Silvia Pilaso*

*Elicado Parmitoro*

25. **Section 56(1)** of the **Trustee Act, Chapter 167** of the **Laws of Kenya** requires an administrator of any property who is vested with the powers of a trustee, to seek leave from the court before they can dispose of any of the trust property. The provision states;

***“Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but cannot be effected by reason of the absence of a power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon***

***the trustees either generally or in any particular instance the necessary power for the purpose, on such terms, and subject to***

***such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.”***

The Environment and Land Court also had occasion to outline the duties of trustees in relation to trust property, ***In Re Eunice Wanjeri Njenga [2013] KEELC 4 (KLR)***, as follows;

***“In summary the general duties of trustees in relation to the trust property are to safeguard the assets of the trust, to invest any trust money in his or her hands, and to distribute the assets to the beneficiaries and satisfy any claims of the beneficiaries. With relation to the beneficiaries, trustees are under a duty to maintain equality between beneficiaries and to provide accounts and information to the beneficiaries. Section 56 of the Trustees Act cited in the foregoing also gives this court power to authorize specific investments upon application by a trustee, and together with section 59 permits this court to order that costs of a sale and application to the court be met from the proceeds of sale of a trust property.”***

26. While we are cognizant that the administrators of the estate are not parties to these proceedings, we note that there is no indication on record on whether authority from the courts was sought before the suit property held in trust for the appellants was sold to the 1<sup>st</sup> respondent. Further, we take into account the appellants' skepticism as to why the application for consent of Land Control Board and the letter of consent itself, issued on 6<sup>th</sup> August 2008, were made in the name of the deceased when he

had long-departed on 17<sup>th</sup> May 2004. The appellants contend that the fact that the Land Registrar confirmed that the transfer documents in relation to the suit property were not on record at the Land Registry, besides indicating that according to the green card, the interest in the suit property was transferred from the deceased himself to the 1<sup>st</sup> respondent, was *prima facie* evidence of fraud. The appellants argue that it was not possible for the deceased to have transferred the property at the time since he was long deceased. They urge that pursuant to **section 26** of the **Land Registration Act**, any title which is obtained by fraud cannot give the person holding such title any rights in the property.

27. The 1<sup>st</sup> respondent does not contest that the application for Land Control Board Consent, the letter of consent and the transfer itself were made in the name of the deceased, when he was already 4 years dead. He instead maintains, notwithstanding that glaring irregularity, that he properly acquired the suit property. He contends that he transacted with the Administrators of the estate who had power under **section 82(b)** of the **Law of Succession Act** to sell the property.

28. **Section 82(b)** of the **Law of Succession Act** provides that,  
***“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-***

***[...]***

***to sell or otherwise turn to account, so far as seems***

***necessary or desirable in the execution of their duties,  
all***

***or any part of the assets vested in them, as they think best:"***

29. We think this provision would ordinarily apply to personal representatives who have not been granted, and are therefore untrammelled by, trusteeship. Once however they are bestowed with that role, it behooves them to comply with the **Trustee Act**. Indeed, that provision seems to recognize that fact by stating that, "*Personal representatives shall, 'subject to any limitation imposed by their grant,'*". In any case, if truly the administrators are the ones who sold the suit property to the 1<sup>st</sup> respondent, then the transactional documents should have reflected their names as the vendors, not the name of the deceased. For that reason, we are of considered view that by the very fact that the sale and transfer of the suit property to the 1<sup>st</sup> respondent was supposedly made in the name of the deceased, rendered the entire transaction to be an illegality, incapable of passing good title. We note the submission by 1<sup>st</sup> respondent that, the 1<sup>st</sup> appellant himself was present during the transaction and that he was a signatory to the letter of offer. To our thinking, even that could not possibly regularize or sanitize a glaring illegality. Moreover, there is no indication that the rest of the beneficiaries, some of whom were minors at the time, participated in or were even aware of the transaction that deprived them of their patrimony.

30. This Court and the Supreme Court has in a litany of cases pronounced that courts will not hold titles of property to be

indefeasible where a registered owner cannot show that the

acquisition was legal, regular and free from any encumbrances and all interests. In **Munyu Maina vs. Hiram Gathiha Maina [2013] KECA 94 (KLR)**, this Court expressed itself as follows;

***“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”***

The Court was of a similar view in **Funzi Island Development Limited & 2 Others vs. County Council of Kwale & 2 Others [2014] KECA 882 (KLR)**, where it observed;

***“...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot, on the basis of indefeasibility of title, sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”***

In **Dina Management Ltd vs. County Government of Mombasa & 5 Others [2023] KESC 30 (KLR)**, the Supreme Court held as follows;

***“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, HE Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co (1993) Ltd, who in turn could pass to the***

***appellant.”***

31. Accordingly, we respectfully find that the learned Judge erred when she held that the 1<sup>st</sup> respondent did not acquire the title to the suit property illegally since it is the vendors who purportedly are administrators of the deceased's estate who effected the transfer of the said land to him. As we have already stated, the record shows that the deceased himself is the one who effected the transfer, when he had already expired, a natural and legal impossibility. We are mindful that this decision may have grave ramifications in view of the submission that the 1<sup>st</sup> respondent has developed the property. However, it is also common knowledge that when the sword of justice cuts, it cuts in the middle. It is also not lost to us that in purporting to sign the application for Land Board consent and the transfer, with the deceased named as his counterpart, the 1<sup>st</sup> respondent lost any pretensions to being an innocent purchaser for value without notice: he knew that the then registered owner/transferor was a dead man who would not sign those documents. The holding in ***Alice Chemutai Too vs. Nickson Kipkurui Korir & 2 Others*** [2015] eKLR (supra) is thus apposite.

32. In the upshot, we find the appeal to have merit and allow it. We set aside the judgment and decree of the Environment and Land Court at Kajiado, issued on 19<sup>th</sup> November 2018. We substitute in its place judgment to be entered for the appellants against the 1<sup>st</sup> respondent as prayed for in the Originating Summons dated 16<sup>th</sup>

June 2015, in terms of prayer 1 and 2. The 1<sup>st</sup> respondent shall bear the costs of this appeal.

33. Order accordingly.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of March 2026.**

**P. O. KIAGE**

.....  
..... **JUDGE OF APPEAL**

**A. O. MUCHELULE**

.....  
**JUDGE OF APPEAL**

**W. KORIR**

.....  
**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**