

Transmara/Nkararo/1295 and Transmara/Nkararo/1296, which parcels were registered to other persons including the Defendant; and the Plaintiff thus lodged caution over the said subdivision.

(ii) The Plaintiff avers that the Estate of Tukai Ole Tunai had not undergone succession hence the Defendant's actions are akin to intermeddling and the subdivision and registration of the Transmara/Nkararo/1294, Transmara/Nkararo/1295 and Transmara/Nkararo/1296 were fraudulently obtained illegal, null and void. The Plaintiff pleaded and particularized fraud and malice against the Defendant.

4. On the strength of the above the Plaintiff sought for cancellation of the three subdivisions and a permanent injunction and a declaration that she was entitled to the whole of Transmara /Nkararo/496 as it originally was.

5. In his Defence the Defendant generally denied the averments in the Plaintiff and averred that the Plaintiff had no proprietary interest in the suit property, having never been registered as proprietor thereof in the first instance and hence her suit lacked merits

Plaintiff's evidence

6. P.W.1 the Plaintiff stated that the Defendant had no authority to represent the deceased in objection proceedings, as he was not a clan member, and that the Defendant had registered himself in respect of the suit property with no colour of right; there had no resolution to award the Defendant 5 acres and to subdivide the remainder to two portions between her and her co-wife. She produced in support of her case

(i) A demarcation record for parcel number Transmara/Nkararo/496 as

(ii) Green card for parcel Transmara/Nkararo/496

- (iii) Adjudication record for parcel No. 496.
- (iv) Chief Land Registrar's letter dated 28.06.2021.
- (v) Objection proceedings.
- (vi) Letter from Director of Land Adjudication and Settlement and a Limited Grant of letters of administration.

7. On cross-examination she stated that the suit property Transmara/Nkararo/1296 was hers as she was in occupation, while the whole suit property Transmara/Nkararo/496 belonged to her late husband at time of adjudication, but had not been registered to her late husband, but the Defendant had converted the whole property to himself. She did not know the acreage of the whole property. She disputed the minutes by the Chief which ostensibly authorized the defendant to subdivide the suit property and she stated that she did not accept the offer from the Defendant to issue her with a title to the parcel which she was occupying to wit Transmara/Nkararo/1296. She reiterated that she had sought for cancellation of Transmara/Nkararo/1294 registered in the name of Daniel Dikir Mutentei as well as Transmara/Nkararo/1295 as they were illegally subdivided from Transmara/Nkararo/496.
8. It was her testimony on further cross examination that she had sued the Defendant as vendor of the subdivisions, she confirmed that the Defendant had filed an objection proceedings without the family authority. The witness indicated that she had known Tikoko Ole Kipentoi who resided on the property but had not sued him.
9. On re-examination, she stated that the Tikoko's property was in Transmara/Nkararo/496 and the whole of the Transmara/Nkararo/496 was adjudicated to Tukai Ole Tunai her late husband. That the other purchasers had bought from the Defendant, who had no right. She

disputed in the minutes of the chief's meeting, the name of her co-wife was missing yet the same affected them. The witness indicated that she had not surveyed the suit property.

10. P.W.2 Mr. David Kinampu Ole Kisorok adopted his witness statement as part of his evidence in chief. It was his testimony that the Plaintiff was the 2nd wife of his late cousin Tuaki ole Tunai while the Defendant was his younger brother. He stated that Transmara/Nkararo/496 belonged to the late Tukai Ole Tunai, and there was no dispute between the two wives of the Late Ole Tunai. The witness did not know whether the Defendant had been authorized to follow up the suit property on behalf of Tukai Ole Tunai or whether the Defendant had been subsequently registered as the owner of the suit property. He disputed attending the meeting called by the chief and that his name had wrongly been minuted to have been in attendance. He stated that if the defendant had wanted to follow up the property procedurally on behalf of Tukai ole Tunai, he would have called the family and laid his claim. The witness urged the court to return the suit property to the Plaintiff. He stated that the family ordinarily settled their matters through mediation but had not met to resolve this dispute.
11. On cross-examination he stated that the Defendant was his brother and they had a cordial relationship. That the suit property had been bequeathed to the Plaintiff as the 2nd wife of Tukai ole Tunai.
12. The witness stated that he saw people at a certain gathering but by the time he arrived at the gathering, the meeting had been finalized hence he was not present as captured in the minutes thereof, he stated that he saw the Plaintiff and her sons, Charles and Richard Kinampu. He confirmed that some of the persons in the meeting were present.
13. On re-examination, the witness confirmed that Laban Njuguna was the son of the Plaintiff's co-wife Nyokabi and a son of the late

Tukai ole Tunai and had his own property while Tikoko Ole Kipentoi had lived on the suit property but was buried in his own parcel; the witness stated that he was present when the Plaintiff was bequeathed Transmara/Nkararo/496 by her late husband Tukai Ole Tunai and there was no dispute between the co wives

14. P.W.3 Mr. Elijah Kayanga Ntaiya, adopted his witness statement as part of his evidence in chief, he further stated that he was the chief of Nkararo during adjudication and the late Tukai Ole Tunai was allocated the suit property which he bequeathed his 2nd wife the Plaintiff as the first wife had a separate parcel and the parcels were separated by a river and the Defendant thus had no legitimate claim over the parcel.
15. He confirmed that he attended a meeting at chief's office but they did not discuss sharing of the property, as the property belonged to the 2nd widow of Tukai Ole Tunai the Plaintiff herein.
16. On cross-examination, the witness stated that he knew the late Tukai Ole Tunai who had two wives and the Plaintiff was the second wife. The late Tukai had allocated each wife a portion and one wife lived across the river.
17. The fourth witness (PW4) was Carolyne Otieno David Kinampu, she stated that she knew the Plaintiff who lived in Nkararo but could not recall her plot number. She further stated that the Late Tukai Ole Tunai had two wives, and the Plaintiff was the 2nd wife.
18. After the testimony of the Plaintiff and her 3 witnesses the Plaintiff case closed.

Defence case and evidence

19. D.W.1, Saitoti Kanchory, the chief of Nkararo location, testified, he indicated that he was aware of the contents of the Minutes dated 05.07.2020 in relation to the suit property and he was aware that the meeting had resolved that Transmara/Nkararo/496 to be subdivided

into 3 portions, the first portion measuring 5 acres to be owned by the Defendant as a gift/compensation for using his money to follow up the objection proceedings and the remaining portions to owned by the two widows of Tukai Ole Tunai. He produced the minutes as D.Exhibit 1.

20. On cross-examination, the witness stated that the 1st wife Nyokabi was absent from the meeting but his son present at the meeting, he did not record ID numbers or require person present at the meeting to sign the minutes which was attended by family members from different location. Before subdivision the property was known as Transmara/Nkararo/496 and Defendant was given 5 acres and the other two portions to the widows. The witness was not aware that Defendant had transferred the whole property to himself.

21. On re-examination, the witness stated that he had convened a meeting on behalf of the Plaintiff; and had not authored the minutes in conspiracy with the Defendant.

22. D.W.2 was the Defendant himself, his evidence has been summarized at paragraph 1 of this judgment and the said admission led to the entry on judgment on admission and issuance of a preliminary decree.

23. In a nutshell it was the testimony of the DW2 that he had followed up on objection proceedings in respect of the suit parcel on behalf of the family of late Tukai Ole Tunai and after the objection were successful he was registered a the proprietor of suit property, and upon having a family meeting convened by the Chief he had been authorized to subdivide the suit property into three parcel on the and he took one of the resultant parcel to wit Transmara/Nkararo 1294 as compensation for the money he had expended on the objection proceedings of the suit property, while the 2nd portion had been given to the family of the 1st wife, Nyokabi, who through her son Laban Njuguna had subdivided and disposed it off to third parties , and that he was willing and indeed ready to transfer the 3rd portion to the

Plaintiff who was in occupation and had in fact expressed his willingness to do the same , at which point the court recorded the admission and entered judgment on admission.

24. Having entered judgment on admission in respect of Transmara/Nkararo/1296 in favour of the Plaintiff the court framed the sole issue for determination as to whether the Plaintiff is entitled to the whole of Transmara/Nkararo/496 and in deciding this issue the court shall consider whether the Defendant acquired an interest in the suit property parties were directed to file their submissions on this sole issue.

Plaintiff's submissions

25. The Plaintiff submits that the Defendant did not legally and procedurally acquire the suit property Transmara/Nkararo 496 through craft after he inserted his name in the adjudication record instead of Tukai Ole Tunai, and as he did not have a legitimate title over the suit property the subdiion he undertook to create tittle numbers Transmara/ Nkararo/1294, 1295 and 1296 were a nullity hence the admission on the part oof the defendant of his willingness to transfer to parcel No. Transmara /Nkararo /1296 to the her was not sufficient as the Defendant did not acquire the whole parcel regularly in the first place.
26. The Plaintiff placed reliance on Section 26(1) (b) as well as the decision in Dina Management Limited Vs. County Government of Mombasa, as well as Munyu Maina Vs. Hiram Gathiha Maina (2013) eKLR; to buttress her point; and urged the court to allow the prayers in the Plaint.

Defendant's submissions

27. The Defendant submits that the Plaintiff was never registered owner of Transmara/Nkararo/496 and that having ceded Nkararo/1296

to the Plaintiff the same was sufficient. The Defendant submits that the suit properties having been sold to other parties thereof, the cancellation of the same would be to condemn the proprietors unheard, and reliance was placed on the decision in the case of Michael Musembi Nduva and Others Versus John Ndar and Others.

28. The Defendant thus submitted that the court confirms the preliminary decree and dismisses the other prayers in the suit.

Analysis and Determination

29. It is common ground between the parties that the Defendant lodged objection proceedings after Transmara/Nkararo/1496 was allocated to another person other than Tukai Ole Tunai who lived thereon. The objection proceedings were successful but the suit property was not registered in the name of Tukai Ole Tunai but instead was registered in the name of the Defendant Charles Kinampu.

30. That the Defendant Charles Kinampu caused the subdivision of the Transmara/Nkararo/496 into three portions in which he becomes the registered owner thereof to wit, Transmara/Nkararo/1294, Transmara/Nkararo/1295 and Transmara/Nkararo/1296.

31. The question arising is was the registration of the Defendant as the owner of Transmara/Nkararo/496, and the subsequent registration of the subdivisions thereof regular and lawful granting the Defendant legitimate rights and interests thereof?

32. The objection proceedings in relation to Transmara/Nkararo/496 were undertaken by Mr. Charles Kinampu ostensibly on behalf of Tukai Ole Tunai his relative who was deceased. Mr. Charles Kinampu did not exhibit any authority from the deceased family to undertake the said proceedings.

33. He did not equally have a Grant of letters of Administration in respect of the Estate of Tukai Ole Tunai, since the property belonged to the Tukai Ole Tunai, after the objection proceedings and Appeal to the

Minister, it ought to have been registered Tukai Ole Tunai or his legal representatives, thus the registration of Transmara/Nkararo/496 to the Defendant who was not an authorized agent and/or a legal representative amount to conversion by the Defendant and the Estate of the late Tukai Ole Tunai, was entitled to bring this action.

34. In arriving at the conclusion that the Registration of Charles Kinampu as the owner was conversion, I am guided by the Court of Appeal decision in the case of D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another[1980] eKLR where the court defined what constituted conversion at paragraph 32

"32. A conversion....14 ("A conversion is an act (or complex series of acts) of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use of possession of it.

Two elements are combined in such interference:(1) a dealing with the chattel in a manner inconsistent with the right of the person entitled to it, and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such rightIn order to amount to conversion the act done with respect to the chattel must have been one of willful and wrongful interference. He who interferes with a chattel acts at his own risk...."

35. Regulation 2 of the Land Adjudication Regulations of 1970 recognize a duly authorized agent as one who is authorized in writing by the Signatory and since Mr. Kinampu was not a duly authorized agent the suit property could not be registered in his name. The defendant's action were thus done willfully with the intention of depriving the Estate of Tukai ole Tunai their entitlement to the suit property

36. It follows therefrom that the registration of Mr. Kinampu who had no proprietary interest arising from adjudication capable of the

registration was thus irregular and unlawfully done, hence the title in the name of the Defendant having being procured irregularly and unlawfully is capable of being impeached under the provisions Section 26(1) (b) of the Land Registration Act.

37. Thus, the ensuing subdivisions and transfers made pursuant to the wrongful act were all illegal *ab initio*, as the Defendant had not proprietary interest his registration having been illegal in accordance with the maxim of *nemo dat quod non habet* as was discussed by the Court of appeal in this decision in the case of *Diamond Trust Bank Kenya Ltd vs Said Hamid Shamisi & 2 others (2015) eKLR* where the court observed in relation to the maxim as follows “

firstly, section 26 (1) and (2) are exceptions to the general rule in the sale of goods that a person who does not have title to goods cannot, without the owner’s authority or consent, sell and confer a better title in the goods than he has. (Nemo dat quod non habet). These exceptions are examples of initiatives towards the protection of commercial transactions that Lord Denning famously referred to in BISHOPSGATE MOTOR FINANCE CORPORATION LTD V. TRANSPORT BRAKES LTD (1949) 1 KB 322, at pp. 336-337 when he stated:

“In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.”

38. As well as the decision in **Mcfoy Vs. United Africa Co. Ltd 1961 3ACC ER 1169.**

Where the court observed as follows;

“if an act is void, then it is in law a nullity, it is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to say there it will collapse”.

39. The court finds that the Plaintiff has made a case of the entire parcel No. 496 and accordingly enters judgment in her favour for the entire parcels; Transmara/Nkararo/496. The subdivisions of Transmara/Nkararo/496 are all hereby nullified and since Transmara/Nkararo/1296 is a subdivision thereof, the same is nullified and the partial decree issued on 10.12.2025 is hereby set aside.
40. The court is aware that they are purchasers who bought from Mr. Charles Kinampu and since Mr. Kinampu had no valid title on the first instance he could not pass to them any valid titles,
41. Accordingly, judgment be and hereby entered in favour of the Plaintiff in terms of prayers sought in the Plaint.
42. The Plaintiff is also awarded costs of the suit.

Dated at Kilgoris this 19th day of March, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA – Sylvia/Collins
Mr. Ochwangi for Defendant
Mr. Kiprotich to Plaintiff