



Chepkonga & another v Koima and Kibii (Suing as legal representatives of the Estate of the Late Isaiah Kibii Baswony) & 2 others (Environment and Land Appeal E003 of 2023) [2026] KEELC 1860 (KLR) (3 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1860 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL E003 OF 2023
L WAITHAKA, J
MARCH 3, 2026**

BETWEEN

CHEBIEGON CHEPKONGA 1ST APPELLANT

JOSEPH KIPKEMOI CHEPYEGON 2ND APPELLANT

AND

ROSE JEPKORIR KOIMA & KENNETH KIPCHIRCHI KIBII (SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE ISAIAH KIBII BASWONY) 1ST RESPONDENT

OBADIAH KIPKURUI YATOR 2ND RESPONDENT

DISTRICT LAND REGISTRAR-KOIBATEK/MOGOTIO 3RD RESPONDENT

(Being an appeal from the Judgment/Decree of Hon. A. Towett-SRM in Eldama Ravine ELC Case No.9 of 2019 delivered on 16th January 2023)

JUDGMENT

Background

1. The circumstances leading to filing of this appeal are that vide a judgment delivered on 16th January 2023, the learned trial magistrate determined that Isaiah Kibii Baswony, whose estate is represented by the 1st respondent herein, is the owner of the parcel of land known as Baringo/Sabatia/531 and the subdivisions emanating therefrom to wit Baringo/Sabatia-103/874 and Baringo/Sabatia-103/875 hereinafter jointly and severally referred to as the suit properties.



2. In arriving at the above decision, the learned trial magistrate inter alia stated/held:-

“...PW1 gave evidence that he bought the suit property from the 1st Defendant (Chebiegon Chepkonga). He produced a copy of the sale agreement (Pexbt 1). He testified that he never obtained the LCB consent as the suit land has never been transferred to him. He also produced a copy of the receipt for payment of the purchase price (Pexbt 2). On cross examination, he confirmed that he bought the suit property in 2007 as Baringo/Sabatia/103/280 and that it was later sub-divided and he was allocated parcel number 531. The Plaintiff’s evidence was corroborated by PW2 who testified that he purchased part of the suit property.

...The 2nd Defendant testified that he bought the same from Samuel Chebiyegon. He produced a copy of the sale agreement dated 18/05/2015. He also produced a copy of the LCB consent and transfer forms from the 1st Defendant to himself. He produced a copy of the title deed issued to him on 19/10/2018.

The Plaintiffs, on the other hand, contend that the process leading to the 2nd Defendant acquiring title to the suit property was done under coercion by the 2nd Defendant and 3rd Defendant hence was obtained unlawfully.

It is important to note that once there was challenge to the 2nd Defendant’s title, it was incumbent upon the 2nd Defendant to establish the root of the title he was putting forth as proof of ownership. It was not going to be sufficient to just wave his title and say it proves he is the owner. The process of how the title was acquired by the person who sold the land to him is equally important....

In the instant case, the 2nd Defendant adduced evidence of the certificate of title to the suit property and explained how he acquired it. DW3 and DW5 corroborated his evidence by confirming that the 2nd Defendant was indeed sold the suit property by the 1st Defendant. The 2nd Defendant testified that he had noted that the land was in the 1st Defendant’s name at the time of purchasing the suit property. The 1st Defendant also gave evidence to the effect that he had never authorized Samuel Chebiyegon to sell the suit land and further that he had never sold the land to the Plaintiff nor attended any LCB meeting with the Plaintiff.

This court notes that the 1st Defendant’s testimony was quite contradictory since during exam in chief he testified that he never sold the suit property to the Plaintiff while in cross exam he again confirmed that he never recalled going to the LCB meeting with any buyer apart from the Plaintiff.

The 2nd Defendant contends that he is the lawful owner of the suit property bearing a certificate of title. It is, in fact, intriguing how the sale agreement was between the 2nd Defendant and Samuel Chebiegon yet the transfer and consent forms that culminated to the issuance of the title was from the 1st Defendant to the 2nd Defendant. If it is anything to go by, it is this court’s view that the 2nd Defendant being an educated person and having known that at the time he was signing the sale agreement the suit land was registered in the name of the 1st Defendant, he ought to be familiar with the land buying process. He clearly knew what he was getting himself into from the onset. He would have realized that the suit property could not be sold by any other person but the 1st Defendant and therefore any purported sale of the suit property by Samuel Chebiyegon would have been null and void.



The 2nd Defendant clearly knew what he was doing when he signed the sale agreement and for that reason he will suffer the consequences. The conduct of the 2nd Defendant is not that of an innocent purchaser since if he had done his due diligence he would have established that the suit property was already occupied by the Plaintiff. The 2nd defendant confirmed during cross exam that at the time he purchased the suit land it had already been fenced. Furthermore, the court conducted a site visit on 27/06/2019 and established that both the Plaintiff and the 2nd defendant had constructed structures on the land and noted that the Plaintiff was the first to erect his structure...

The Plaintiff confirmed that he was never issued with the LCB consent by the 1st defendant despite going to the LCB meeting. He also produced minutes confirming that he had attended the same. It is also a fact that the Plaintiff paid the purchase price of the suit property and thereafter took possession by developing it. It is therefore the court's view that the Plaintiff acquired the suit land by way of a constructive trust..."

3. Dissatisfied with the decision of the trial magistrate, the 1st defendant, now 1st appellant and the 2nd appellant who was the 3rd defendant in the suit before the lower court, appealed to this court on the grounds that the learned trial magistrate erred by:-
 - i. Passing judgment against them on the basis of evidence that did not prove the plaintiff's case against them on the required standard of proof, on balance of probability;
 - ii. Cancelling title legally approved by a duly constituted Land Control Board for which no judicial review was ever constituted to quash or otherwise;
 - iii. Failing to evaluate the material contradictions on the purported sale agreement between the 1st appellant and the 1st respondent;
 - iv. Applying the wrong principles of the law hence arriving at the wrong decision;
 - v. Purporting that the 1st respondent was the registered owner of the original suit property yet no such registration had been effected;
 - vi. Failing to observe that the consent of the Land Control Board expired before registration of the 1st respondent as the proprietor hence the order giving away the land for the 2nd appellant is illegal, null and void;
 - vii. Failing to observe that the consent to subdivide and transfer land cannot have possibly been granted on the same day as shown by the minutes produced hence arrived at the wrong decision.
 - viii. Re-writing agreement for the parties instead of making an independent decision.
4. For the foregoing reasons, the appellants pray that their appeal be allowed.
5. The appeal was disposed of by way of written submissions.

Submissions

Appellants submissions

6. In their submissions dated 24th July, 2025 and supplementary submissions dated 11th day of October, 2025, the 1st and the 2nd appellants identifies 6 issues for the court's determination which are;



- i. Whether the trial court adhered to the law, when evaluating evidence, rendering its decision and issuing its decree on probability of evidence placed before her.
 - ii. Whether the trial court adhered to cardinal principles of adjudication of land matters such as first in time rule, traced the root of the title and properly trained itself to the issues of fraud, irregularity or mistake by actors in conveyance of suit land in this set of circumstances.
 - iii. Whether the trial court evaluated the facts surrounding the consent of land tendered by the 1st respondent on its legality.
 - iv. Whether the 1st respondent was the registered owner of the original suit property?
 - v. Whether the trial court erred both in law and fact re-writing agreement for the parties instead of making independent decision.
 - vi. Whether the trial court appraised itself to the law when rendering its decision.
7. In respect of issue 1, they submit as follows:-

“whether the trial court adhered to law, when evaluating evidence, rendering decision and issuing its decree on probability of evidence placed before her.....adherence to the law means strict compliance to fundamental principles of law...the evidence on record is as follows; the then Plaintiff alleges he bought land i.e Isaiah Kibii Baswony (deceased) from the 1st Appellant vide a sale agreement dated 17th February 2007...a close scrutiny in (page 31 of the Record of Appeal) shows that the sale agreement was done on 5th September 2008 and the chief attested. It further shows that the last instalment was received on 11th February 2008, i.e of Kshs. 93, 750/-. Logically, a last instalment will not have been paid before the agreement is made. This...shows that the sale agreement was fraudulent. Another aspect is the sell agreement captions the land to be three (3) acres, however the plaintiff herein is seeking application to transfer 1.2 ha of land in Land Control Board meeting. It defeats logic to seek transfer of 1.2 ha yet you had entered a sale agreement to sell land measuring three (3) acres (see page 25 and 31 of the Record of Appeal)...The 2nd limb of my analysis will be the issue of Land Control Board. It is the evidence in chief of the 1st Appellant that he did not attend the Land Control Board...In any case, the Land Control Board was not attended before the lapse of six months which it is the Respondent’s case that consent was entered more than two years upon signing the alleged sale agreement. This...amounts to gross illegality and the trial court ought not to have entertained an illegality when arriving at its decision.”

On issues 2, 3, 4 and 5, the appellants submit;

“...the trial court did not properly train itself in the cardinal principles such as first in time rule, did not trace the root of title and failed to consider fraud perpetuated by Samuel Chebiegon in rendering her decision. The root title belonged to the 1st appellant. This can be confirmed by certificate of search dated 5th October 2018...

It is not in denial that the land at all material times belonged to the 1st appellant ...

This court can construe that the root title was at all material times belonged to the 1st appellant.



The 1st appellant...submitted to this court that the sale agreement which his son (Samuel Chebiegon) was a vendor is a perpetuation of fraud as he had not given him permission to sell the land at all material times...it is save to submit that the trial court tendered a fraudulent sale of land and considered it legitimate...

The sale of land contract by Samuel Chebiegon was irregular and unsanctioned by the 1st appellant. It is worth noting that the 1st appellant did tell the court he did not receive any monies from the purported purchasers of the suit property...

The facts surrounding the consent is sketchy. The purchaser of the suit property alleges they attended Land Control Board together with 1st appellant...

A close scrutiny on the minutes, i.e 73/10/73 Baringo/Sabatia/531-1.2 Ha shows no deferral since one party was absent instead it depicts “approved” very far from the margin of the other parcels which were “approved” a clear indication that the consent allegedly obtained was either a perpetuation of fraud or outright forgery. It is worthy noting that a certified copy by Land Control Board depicting consent was not tendered in court as evidence, neither did a member of the Land Control Board committee stand in court to tender the minutes as evidence. As such, the trial court failed to ascertain the truthfulness of the Land Control Board minutes...

It is not in dispute that the bona fide owner of the suit property is the 1st appellant. It is not in dispute also that in any sale the bona fide seller will have been the 1st appellant or if not be, a person given permission to sell the suit property on behalf of him.

Reading at the prayers granted by the trial court, it is worthy noting that the prayers granted were a kin to writing a contract between the appellants and 1st respondent. The trial court granted prayers which imposed blame on appellants yet the sale agreement from the onset could not be construed to have happened. Neither did the exchange of money.

The trial court decision was read on 16th January 2023 while the decree was granted on 1st January 2023. This is not right in law as it insinuates either a collusion to defeat justice or that the court had made up her mind when making the decision without formally issuing a judgment.

My last limb of the submissions is that the trial court failed to properly appraise itself to the law and facts in making her decision. This cannot be cured by re-trial or upholding the decision. This court can reaffirm the law by quashing decision of the trial court.”

Finally, they submitted that;

It is not disputed that the Land Control Board consents obtained were all null void ab initio and the contract entered between the 1st respondent and the son of the 1st appellant was an illegality. According to them the trial court misapprehended the law by upholding an illegality and by in its decision issued orders akin to rewriting a contracts.

1st Respondents submissions

8. In their submissions dated 17th November 2025, the 1st respondents give an overview of the cases urged by the appellant and respondents and submits as follows;

The 1st respondent (Isaiiah Kibii Boswony-deceased), entered into a sale agreement dated 17th February 2007 with the 1st appellant (Chebiegon Chepkonga) for purchase of three acres



of the suit properties for a consideration of Kenya shillings one hundred and five thousand only (Kshs 105,000.00) per acre; that he paid a total of Kenya shillings three hundred and fifteen thousand only (Kshs.315,000); that the agreement was written, dated, signed and witnessed by his family members. After paying the full purchase price, the 1st respondent took possession, started ploughing, constructed structures thereon and generally exercised possession of the land without interruption for a period of 10 years; that on 12th January 2010, he went to the Land Control Board with the 1st appellant; that the Land Control Board consent was approved but it was not issued to him; that in the year 2018, he received a call from Joseph Kipkemoi (the 2nd appellant herein and son to the 1st appellant) who told him that he does not have any land and forcefully entered the suit property and tried to evict him therefrom.

9. The 1st respondents submit that the trial court in the presence of the parties and the lawyers, visited the suit property on the 27th June, 2019; that he showed the court his land measuring three(3) acres which was fenced with a live fence and also showed the portion that Obadiah (2nd respondent) had fenced off. He relied on the cases of Willy Kimutai Kitilit v Michael Kibet, [2018] eKLR and Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri (2014) eKLR.
10. They submit that nothing was placed before the court to show that the Land Control Board sat and approved the transfer of land parcel Baringo/Sabatia-103/875 to the 2nd respondent and if it did, then that parcel of land had long been sold to the 1st respondent in the year 2007 and therefore not available for “gifting” in the year 2018 by the father to the son. Additionally, he submits that the appellants cannot in this appeal, advance arguments around Judicial Review to quash the Land Control Board Consent in favour of the 2nd appellant; that there is no such consent on record and secondly, this was a new argument which had not been pleaded or canvassed before the trial court. To buttress his point, he relied on the case of Openda v Ahn(1987)KLR.
11. They submit that the evidence of the 1st respondents was corroborated by PW2 who had also purchased land from the 1st appellant. PW2 stated that he knew the 1st respondent in the year 2009 and that they visited the Land Control Board together with other purchasers (they were 9 in total) in the year 2010 seeking consent to transfer the land to their names. He further submits that whereas the Land Control Board Consent was granted by the Land Control Board, failure to produce the minutes during the hearing is not fatal to the case as was stated in Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri[2014].
12. On whether the 1st respondent is a purchaser of land whose purchase is protected by the equitable doctrines of constructive trust and proprietary estoppel that supersedes the Land Control Act, he relied on the case of Willy Kimutai Kitilit v Michael Kibet, (supra).
13. They submit that no action, suit or complaint has ever been lodged by the 1st appellant and/or his family or even by the 2nd appellant in any court of law be it civil or criminal against the 1st respondent despite the 1st respondent having been in possession of the suit property carrying out farming activities, leasing out the land and even constructing a pit latrine in plain sight of the 1st appellant and his family which clearly shows that the 1st appellant and his family were aware of the sale of the suit property to the 1st respondent. He relied on the decisions in Benja Properties Limited vs. Syedna Mohammed Burhannudin Sahed & 4 Others [2015] eKLR, Pankajkumar Hemraj Shah & Another v Abbas Lali Ahmed & 5 Others [2019] eKLR, Dina Management Ltd vs County Government of Mombasa & 5 Others (Petition 8(E010) of 2021) (2023) KESC 30 (KLR), Katende v. Haridar & Company Limited [2008] 2 E.A.173, Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 [2015] eKLR, Munyu Maina v Hiram Gathiha Maina Civil Appeal No.239 of 2009 [2013] eKLR and



submitted that the trial magistrate was right in concluding that the 1st respondent's case had been reached on a balance of probability. He urged this court to uphold that finding based on its independent evaluation of the evidence on record and dismiss the appeal with costs to the 1st respondent.

2nd Respondent's submissions

14. In his submissions dated 5th November 2025, the 2nd respondent submits as follows:-

“...the Appellant herein is the rightful owner of all that parcel of land known as Baringo/Sabatia-103/874. Our aforesaid position stems from the history of the issues before court...the 1st respondent's claim over the said parcel is mistakenly informed by the fact that he purports to have entered into a sale agreement with the 1st defendant sometime in the year 2007 for the purchase of 3 acres that was to be hived off from the mother title known as Baringo/Sabatia 103/280. It was the 1st Respondent's claim pursuant to the said purchase that a consideration was paid. It is further the 1st respondent's claim that as a result of the said agreement the said mother parcel of land was subdivided which bore other parcels of land of which the suit parcel known as Baringo/Sabatia/531 is one of such parcels. It was also the 1st respondent's position that he entered into the said parcel of land and put up a latrine therein and has been in occupation of the same since 2008.

The 1st Appellant herein however denied ever having engaged with the 1st respondent herein for the purchase of land, specifically for the purchase of 3 acres to be hived off from Baringo/Sabatia 103/280. Further in his witness statement, which was adopted as part of his evidence in chief he (the 1st appellant) disowned the sale agreement purportedly signed between him and the 1st respondent herein. He further refuted the claim of having received any form of payment from the 1st respondent herein in consideration for the sale of the said 3 acres. In addition to the aforesaid, during cross examination of the 1st respondent it was apparent that the person who actually engaged the 1st respondent herein in the purchase of the said 3 acres is the son to the 1st appellant, being Samuel Kiprotich Chebiegon, and not the Plaintiff herein.

On the part of the 2nd respondent herein, the same led evidence to show that he entered into a sale agreement with one Samuel Chebiegon for the purchase of 2 parcels of land Baringo/Sabatia-103/677 and Baringo/Sabatia 103/678 through a sale agreement dated the 18th day of May 2015. The said Samuel Chebiegon presented himself as the rightful owner of the said parcels of land and indeed the 2nd respondent herein paid the consideration thereof which at the time stood at Kshs. 530,000/-. When the said Samuel failed to effect transfer, the 2nd respondent herein reported the issue to Police. The said issue was resolved by the family intervening and offering an acre from the parcel of land known as Baringo/Sabatia/531, specifically that parcel known as Baringo/Sabatia/874. It was after the 2nd respondent herein conducting due diligence and confirming that the said parcel of land known as Baringo/Sabatia/531 was registered in the name of the 1st appellant and thereafter he effected the necessary transfer documents to have the said parcel of land known as Baringo/Sabatia-103/874 transferred to 1st appellant herein. It is important to note that the family of Samuel being referred to herein is that of the deceased 1st appellant and PW3 who were his father and mother respectively.

...The first bone of contention is whether or not the 1st appellant sold 3 acres to th 1st respondent herein to be hived off from all that parcel of land known as Baringo/Sabatia



103/280. It is our submission that this transaction was in no way effected by the 1st appellant herein as the owner of all that parcel of land to the 1st respondent herein. Our aforesaid submissions is guided by the following facts:-

1. That the 1st appellant herein testified before court and adopted his witness statement dated the 23rd day of September 2019 as his evidence in chief. In the said witness statement it is apparent, which is not disputed, that the 1st appellant was the owner of parcel of land known as Baringo/Sabatia-103/874. He further disowned having entered into a sale agreement with the 1st respondent herein on the purchase of 3 acres from the mother title number Baringo/Sabatia-103/280. Moreover, he went ahead and disowned the signature appearing in the agreement between him and the 1st respondent herein. A look at the testimony of the said 1st appellant confirms clearly that he said he was unaware of any sale of land transaction between himself and the 1st respondent herein.
2. That, this position was corroborated with the evidence of PW3 on pages who upon confirming that the deceased 1st appellant was his husband, proceeded and confirmed, in her evidence in chief that the agreement was between her husband and one Samuel Chebiegon Chepkonga. This position was reiterated during cross examination of the said witness.
3. That the aforesaid fact as presented by the wife to the deceased are similar to PW2 who apparently purchased 2 acres from one Samuel Chebiegon which was to be hived off from all that parcel of land known as Baringo/Sabatia/103-280.

From the aforesaid facts it is evident ...

That the agreement that purported to give the 1st respondent herein interest in 3 acres to be hived off from all that parcel of land known as Baringo/Sabatia 103/280 was between the 1st respondent and Samuel Chebiegon and not the 1st appellant herein. At the time of execution of the purported sale agreement it is evident that the owner thereof, the 1st appellant, was unaware of the sale transaction and he never gave any permission to his son Samuel Chebiegon to sell the same but merely live on it. As such it is our submission that it cannot be said that there was any privity of contract between the 1st appellant and the 1st respondent for the purchase of 3 acres to be hived off from all that parcel of land known as Baringo/Sabatia 103-280. Our aforesaid position is guided by the following cases...

It is as such that we do submit that the instant case cannot be stated that there existed an offer made by the 1st respondent to the 1st appellant herein for the purchase of 3 acres to be hived off from all that Baringo/Sabatia 103/280 as claimed neither was there any acceptance as the 1st appellant herein was categorical in denying ever having received any consideration for the purported sale of the aforesaid parcel of land. As such it is our submission that the learned magistrate in the primary file erred in finding that indeed there was a valid contract for sale between the 1st respondent herein and the 1st appellant in the claim.



In addition to the aforesaid and there being enough evidence that the said sale of 3 acres to be hived off all that parcel of land known as Baringo/Sabatia 103/280 was actually by the son of the 1st appellant without his knowledge, authority and consent, the learned magistrate further erred in law and fact in finding that the purported transaction between the 1st respondent and the 1st appellant's son was valid enough to infer obligations on the 1st appellant who was not privy to the terms of the contract. Moreover, no transfer forms have been adduced before this honourable court confirming that indeed the 1st appellant herein effected transfer of the aforesaid parcel of land to the 1st respondent herein.

Contrary to the position of the 1st respondent, it is our submission that indeed there existed a valid contract between the 1st appellant and the 2nd respondent for the purchase of that parcel of land known as Baringo/Sabatia-103/874. In this case the said transaction arose after the 1st appellant's son failed to honour his obligation with the respondent in a separate transaction between them. It is at this point that the 1st appellant intervened and offered to sale 1 acre off the aforesaid parcel of land as compensation to the appellant. The appellant is at this point that he did a search over the aforesaid parcel of land (due diligence) and established that indeed the owner thereof was the 1st appellant herein. It is as such that we do submit that there was a valid contract of sale and the appellant herein is an innocent bona fide purchaser for value thereof.

Jurisprudence from the Kenyan Courts with respect to the doctrine of innocent purchaser for value without notice is firm and cogent. In this regard, we are persuaded by the holding by the Court of Appeal in *Weston Gitonga & 10 others vs. Peter Rugu Gikanga & another* (2017) eKLR...

The position of a bona fide purchaser with respect to the purchase of property whose initial acquisition was tainted by fraud or illegality was emphasized in the case of *Joseph N.K Arap Ng'ok v. Moiyo Ole Keiwua & 4 others* (2014) eKLR...

The Court in *Lawrence P. Mukiri vs. Attorney General & 4 others* (2013) eKLR cited with approval the holding of the Court in *Katende vs. Haridar & Company Limited* which provided the test for determining whether or not the purchaser of suit property whose initial ownership was fraught with illegalities could claim that they did not have notice of such illegalities or fraud and as such ought to be regarded as innocent purchasers for value of the properties in question. The Court asserted thus:-...

The acquisition by the appellant of the suit property herein satisfies the above threshold and thus answers to the conceptualization of a bona fide purchaser of property for value without notice of any irregularity or fraud relating to its initial acquisition. The following comprehensive demonstration of the existence of the above elements as asserted in the case of *Katende vs Haridar Company Limited* affords the appellant herein the absolute, unqualified and valid defence against respondents as the legal and equitable owner of the suit property. It is therefore our submission in reiteration that the learned magistrate erred in finding validity in the contract of sale between the 1st



respondent and the 1st appellant herein thereby arriving at the erroneous conclusion that the 2nd respondent herein held a good title over that parcel of land known as Baringo/Sabatia/531.

It is our submission that no proof of fraud was ever established warranting cancellation of titles to the appellant herein as ordered by the court. On this issue we are first guided by the case of Kisumu Misc. No.80 of 2008 of 2008-Republic vs. Kisumu District Lands Officer & another (2010) eKLR,

In the instant case while we do acknowledge that the court had jurisdiction to cancel titles, in this specific case the court ought to have been satisfied that indeed there was fraud proved on the part of the appellant herein. No evidence of such nature was proved in the instant case and as such it is our submission that the cancellation of tiles thereof was erroneous on the part of the learned magistrate. It is not denied that the same were pleaded but it is our position that the same was not proved to the required standard which is proof beyond reasonable doubt. As is evident on record, the appellant herein was offered 1 acre to be hived off Baringo/Sabatia/531 by the 1st appellant who was confirmed to be registered owner thereof through search conducted by the said appellant at the lands registry. It is only after confirmation of ownership did the said transaction over the said parcel of land proceed. There is therefore no evidence of fraud on the part of the appellant as he fully relied on the confirmation of ownership of the said parcel of land. On this we are guided by the case of the Court of Appeal in Civil Appeal No. 156 of 2023-Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others (2019) eKLR...

From the aforesaid it is our submission in reiteration that the learned magistrate erred in law and fact in holding that there existed fraud on the part of the appellant herein warranting cancellation of his title.

In conclusion thereof it is our submission that the judgment of the primary court was wholly erroneous and the appellant herein was the proper purchaser of all that parcel of land known as Baringo/Sabatia-103/874. It is therefore appropriate that this court do set aside and/or vary the terms of the judgment delivered in the primary suit.”

Analysis and determination.

15. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard, see *Selle & Another vs. Associated Motor Boat Co. Ltd* (1968) E.A 123, *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88) 1 KAR and *Kiruga vs. Kiruga & Another* (1988) KLR 348.
16. The totality of the evidence adduced before the lower court comprised in the sale agreement signed between the 1st appellant (Chepyegon Chepkonga) and Isaiah Kibii Boswony on 17th February 2007, the oral testimony of Isaiah Kibii Boswony and the conduct of the parties after signing the agreement is that the 1st appellant applied for consent of the Land Control Board to subdivide and transfer three



- acres of land comprised in the original parcel of land, Baringo/Sabatia/103/280 to the 1st respondent. Pursuant to the sale agreement executed between Isaiah Kibii Boswony and the 1st appellant, the 1st respondent took possession of the portion of land sold to him and began utilizing it without any interference from the 1st appellant.
17. I note that issues of ownership of the parcel of land in question arose on 18th May 2015, long after the 1st respondent had gained proprietary interest in the 3 acres sold to him by the 1st appellant. The issue arose when one of the sons of the 1st appellant, Samuel Kipkoech Chebiargon, purportedly sold to the 2nd respondent herein (Obadiah Kipkurui Yator) his purported beneficial interest in the parcels of land known as Baringo/Sabatia-103/677 and Baringo/Sabatia/103-678 measuring 0.40 hectares and 0.028 hectares respectively. It is noteworthy, that the two parcels are different from the suit property. (There is no nexus offered by the 1st appellant between the two properties and the suit properties).
 18. The evidence adduced before the lower court shows that the portion of land sold to the 2nd respondent herein by the 1st appellant's son comprises a portion of the land that had already been sold by the 1st appellant to the 1st respondent herein. The evidence further shows that at the time the 2nd respondent purportedly purchased his portion of the suit property from the 1st appellant's son (Samuel), the property was registered in the name of the 1st appellant.
 19. The person who purportedly sold the suit property to the 2nd respondent herein declined to facilitate the transfer of the portion purportedly sold to the 2nd respondent causing the 2nd respondent to seek the input of the Directorate of the Criminal Investigation Department to compel the purported seller to transfer the suit property to him.
 20. It is in the aforementioned circumstances, that the 1st appellant subdivided the portion of land that he had earlier sold to the 1st respondent and transferred the subdivisions emanating therefrom to the 2nd appellant and the 2nd respondent herein.
 21. The 1st and 2nd respondents have developed their portions of the suit property by erecting houses/homes therein. The trial court visited the suit property and confirmed that fact.
 22. According to the trial court, the 1st respondent was the first to develop his portion.
 23. Whilst the 1st appellant in his testimony before the trial court denied having sold or having been party to selling of the suit property to the 1st respondent, upon review of the totality of the evidence adduced before the lower court, I have no doubt that the 1st appellant who was at the material time the registered proprietor of the mother title Baringo/Sabatia-103/280, sold 3 acres of land comprised in the mother title to the 1st respondent.
 24. The evidence adduced before the lower court shows that the son of the 1st appellant who sold the suit property to the 2nd respondent, was but a witness to the sale agreement between the 1st appellant and Isaiah Kibii Baswony.
 25. The trial court which had the advantage of observing the demeanor of the witnesses, did find the claim by the 1st appellant that he neither sold the suit property to the 1st respondent nor authorized his son to sell it, to be unbelievable. I have no reason whatsoever to depart or fault the learned trial magistrate for arriving at that conclusion.
 26. The totality of the evidence shows that the suit property was sold to Isaiah Kibii Boswony whose estate is represented by the 1st respondent. Upon sale of the suit property and fulfilment of the terms of the sale agreement, the 1st respondent was given possession and began utilizing the land with knowledge of the 1st appellant. The fact that the 1st respondent was using the suit property long before it was



subdivided and portions emanating from the subdivision transferred to the 2nd appellant and the 2nd respondent by the 1st appellant, is borne out in the testimony of the 2nd appellant Joseph Kipkemoi Chepyegon, who testified as DW5. In that regard, the 2nd appellant informed the court that his brother, Samuel, told him that he had leased the land to the 1st respondent.

27. Based on the fact that the 1st respondent was in use and possession of the suit property, which was at all times material to the suit registered in the name of the 1st appellant, pursuant to the sale agreement executed between the 1st appellant and the 1st respondent, the learned trial magistrate determined that the 1st appellant held the suit property in trust for the 1st respondent.
28. The question to be determined is whether the learned trial magistrate erred by making the said determination, in the circumstances of this case, where there is evidence that the 1st respondent had indeed bought the suit property from the 1st appellant, taken possession for a long period without interference by the 1st appellant.
29. In *Willy Kimutai Kitilit v Michael Kibet* (2018)eKLR, the Court of Appeal faced with an appeal whose facts were more or less similar to those of the instant appeal, stated/held:-

“...It was not indispute that the appellant sold a 2 acre portion of his land comprising 2.440 hectares to the respondent in 2008. He gave possession of the land to the respondent who fenced the land and developed ...by planting trees. The respondent paid the last instalment of the purchase price in 2010. However, the appellant did not transfer the 2 acres to the respondent and instead caused the whole land to be registered in his name on 4th December 2012, and filed a suit for the eviction of the respondent thereafter. By the time the appellant caused himself to be registered as the proprietor of the whole piece of the land he was a constructive trustee for the respondent and it would be unjust and inequitable to allow the appellant to retain the 2 acres that he had sold to the respondent in the circumstances of the case.”

30. As to whether the appellant could rely on want of consent of the Land Control Board to vitiate the transaction between him and the respondent, the Court Appeal stated/held:-

“...Since *the Constitution* has by virtue of Article 10(2)(b) elevated equity as a principle of justice to a constitutional principle and requires the courts in exercising judicial authority to protect and promote that principle, amongst others, it follows that the equitable doctrines of constructive trust and proprietary estoppel are applicable and supersede the *Land Control Act* where a transaction relating to an interest in land is void and unenforceable for lack of the consent of the Land Control Board.”

31. The court further stated/held:-

“As we have held in essence that the lack of the consent of the Land Control Board does not preclude the Court from giving effect to equitable principles, in particular the doctrine of constructive trust, we find that the trial court ...correct decision and therefore the appeal has no merit.”

32. Having determined that the totality of the evidence adduced before the lower court shows that the 1st appellant sold 3 acres of land comprised in the parcel of land identified as Baringo/Sabatia/103/531 that was a subdivision of Baringo/Sabatia/103/280, to the 1st respondent and that the 1st respondent was given possession of the portion he bought by the 1st appellant before the 1st appellant caused the



portion he sold to the 1st respondent to be registered in his name and later to be subdivided and the subdivision emanating therefrom to be transferred to the 2nd appellant and the 2nd respondent, despite the fact that the suit property was never transferred and registered in the name of the 1st respondent, I do find that as at the time the suit property was registered in the 1st appellant name, the 1st appellant held the suit property in constructive trust in favour of the 1st respondent and for that reason, lacked capacity to transfer it to any other person other than the 1st respondent who was the beneficial owner thereof.

33. The upshot of the foregoing is that the appeal by the appellants has no merit.
34. Consequently, I dismiss the appeal with costs to the 1st respondent who opposed it.
35. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT BUSIA THIS 3RD DAY OF MARCH, 2026

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Sirma h/b for Mr Kipkenei for thee Appellants

Mr Kibet h/b for Mr Arusei for the 1st Respondent

Mr Mureithi for the 2nd Respondent

Court Assistant; Tracy

