

**IN THE COURT OF APPEAL
AT NAKURU**

(CORAM: WARSAME, MATIVO & GACHOKA,

JJ.A.) CIVIL APPEAL NO. E053 OF 2024

BETWEEN

PETER MUCHIRI MWANGI.....APPELLANT

AND

TAHIRA BEGUM LUIS

*(Suing as the executrix of the estate of Vincent
Aghostinho Raphael Luis (deceased).....1ST*

RESPONDENT THE HON. ATTORNEY GENERAL.....

.....2ND RESPONDENT

*(An appeal against the judgment and decree of the
Environment and Land Court of Kenya at Nakuru (L.O.
Omollo, J.) delivered on 8th February 2024*

in

ELCC No. 185 of 2016)

JUDGMENT OF THE COURT

1. The Torrens system of land registration countenances that a title is conclusive proof of ownership. However, following the evolution of jurisprudence in our Apex Court, it is now settled that a party claiming ownership ought to demonstrate, beyond its title document, how the property was acquired, backed with cogent evidence. This means the history or the root of the

title is now

settled jurisprudence and which parties must address in land disputes. This is particularly so where both parties claim that they have proper title over the same parcel of land. That is what befell the trial court and is before us on a first appeal.

2. The present dispute concerned the ownership of parcel of land ***Nakuru/Piave Settlement Scheme/1057***. The appellant and the 1st respondent claimed that they were the rightful proprietors of the suit land.
3. According to the facts laid out by the 1st respondent in her plaint amended on 9th December 2019, her deceased husband, Vincent Aghostinho Raphael Luis was employed by the Settlement Fund Trustee as a farm manager in Cortina/Piave farm located in Njoro. He was allotted a parcel of land in Piave Settlement Scheme namely plot no. 1139 pursuant to a letter of offer dated 7th June 1980 and issued with a holding certificate of registration number 22776.
4. The 1st respondent later discovered in the course of succession proceedings taken out on the estate of her deceased husband that the appellant was issued with a land certificate in respect to the suit parcel of land. She averred that the land certificate

issued to

the appellant was not *bona fide*. She thus urged the trial court to among other prayers cancel that land certificate.

5. Finally, the 1st respondent stated that even if the appellant had a legitimate claim, he was nonetheless estopped from claiming ownership of the land 40 years after he was allegedly allotted the suit land, as the deceased was in occupation of the suit land for a continuous, uninterrupted period exceeding 12 years. Accordingly, his interests over the parcel of land were protected under the guise of sections 7 and 37 of the Limitation of Actions Act in a claim for adverse possession.
6. On his part, the appellant filed an amended statement of defence and counterclaim dated 22nd November 2019. He denied all allegations set out in the amended plaint, praying that the 1st respondent's suit be dismissed with costs. In his counterclaim, the appellant averred that he lawfully acquired the certificate of title namely **Nakuru/Piave/1057 (formerly Nakuru Piave Settlement Scheme parcel No. 1139)**.
7. Explaining the acquisition of the suit land, the appellant averred that on 17th May 1980, he purchased Piave Settlement Scheme plot number 1139 from the Settlement Fund

Trustees. He was

allotted the plot upon executing the necessary documentation. He charged the property in question to secure payment of the purchase price. Upon repayment, a discharge of charge was issued in his favor.

8. The appellant accused the 1st respondent of acting fraudulently in laying claim to ownership of the suit parcel of land. He added that his title document was genuine, lawful and legally issued; contrary to that of the 1st respondent. For those reasons, he sought several reliefs against the 1st respondent.
9. After hearing the parties to the dispute and considering their evidence and submissions, Omollo, J. found merit in the 1st respondent's claim and dismissed the appellant's counterclaim.

The learned judge held in part as follows:

“463. As has been analyzed in the foregoing paragraphs, the 1st Defendant's claim over the suit parcel is based on documents and processes that are inconsistent with the procedure of allocation of land as enumerated by PW2 (the assistant Director at the Settlement Fund Trust), explanations offered by him on documents appearing in the file which he brought to court. The notes taken during trial show that the 1st Defendant believes that he has superior rights over the suit parcel because he is an African. The court takes great

exception to the remarks

made by the 1st Defendant and informed him as much.

464. PW2's evidence remains uncontroverted as relates to the procedure in allocating land to the Plaintiff's deceased husband and the 1st Defendant. It is also uncontroverted as it relates to the authenticity of documents held by the Plaintiff. The Plaintiff produced a search certificate and green card for the suit land both of which show that it is registered in the name of Vincent Aghostinho Rafael Luis.

...466. Section 27 and 28 of the Registered Land Act; CAP 300 (Repealed) Is in pari materia with section

26 of the Land Registration Act 2012 which provides that a certificate of title shall be held as conclusive evidence of proprietorship and that such title shall not be subject to challenge except on the grounds that it has been acquired through fraud, misrepresentation, illegally, unprocedurally or through a corrupt scheme.

467. while the 1st Defendant has set out the particulars of fraud on the part of the Plaintiff he has failed to prove them. He did not call any witnesses from the land's office who are custodians of land records and would be able to speak to their authenticity and in turn negate the Plaintiff's claim or support the 1st Defendant's claim.

468. The law obligates me to protect the rights of a person who have (sic) been registered as proprietor of land unless it can be proven to have been acquired through fraud, misrepresentation, illegally, unprocedurally or through a corrupt

scheme.

469. Based on the foregoing, it is clear that the Plaintiff has discharged her burden of proof in explaining the root of her title, while the 1st Defendant has failed to do so. This court is therefore satisfied that Vincent Aghostino Rafael Luis is the lawfully registered owner of the suit property known as NAKURU/PIAVE SETTLEMENT SCHEME/1057.

10. The appellant is aggrieved by the findings of the learned judge. He filed his notice of appeal dated 14th February 2024 and memorandum of appeal dated 11th April 2024 that raised seven grounds disputing the findings of the trial court. Those grounds are summarized as follows: the trial court was incorrect in finding that Vincent Aghostinho Rafael Luis was the lawful proprietor of the suit land with a genuine title deed against the weight of the evidence adduced; that the findings of the trial court invalidating the land certificate issued to him and that the caution be lifted were in error in light of the evidence adduced; and that the learned judge ignored the appellant's evidence and submissions which supported the notion that he was the first allottee of the suit land.
11. In view of the foregoing, the appellant prayed that the appeal be allowed by setting aside or reviewing the impugned

judgment and

decree of the trial court. Furthermore, the appellant prayed for costs of the suit at trial and in this appeal.

12. The appeal was heard virtually on 27th January 2026. The appellant was present and appeared *pro se*, while learned counsel Mr. Naeko was present for the 1st respondent. The 2nd respondent failed to appear in court despite being duly served with the hearing notice. The parties present adopted their respective written submissions that were briefly orally highlighted.
13. The appellant relied on his written submissions and a list of authorities, both dated 16th January 2026. He urged this Court to reconsider the evidence to establish the root of title since both the appellant and 1st respondent held title to the same property. In so doing, the appellant opined that the Court would conclude that he is the rightful owner of the suit parcel of land. He submitted that while his evidence lacked gaps, those of the 1st respondent had several.
14. Taking another angle, the appellant posited that since the deceased was a foreigner, he was incapable of acquiring freehold property in the 1980s without first obtaining a

presidential exemption by dint of section 24 of the Land Control Board Act. He

attached a legal opinion, but the author is not disclosed, in support of that argument. He lamented that the 1st respondent did not adduce evidence on that issue and that the trial court failed to address it.

15. The appellant submitted that the doctrine of adverse possession did not apply as the deceased lived on the property by virtue of the title that was in his name. He complained that the site visit by the court was flawed because there were no expert witnesses. Additionally, the learned judge collected evidence from persons that he did not cross-examine. He added that the criminal proceedings did not render him guilty, a fact that ought to have been considered by the learned judge. Finally, this Court ought to consider that the 1st respondent was apportioned plot no. 1060 as an alternative to **parcel No. 1139/1057.**

16. The 1st respondent, on her part, relied on her written submissions, list of authorities and a case digest, all dated 20th January 2026. She summarized the facts, the evidence and the judgment of the trial court to submit that **section 6 (3) (b)** of the Land Control Board Act exempted transactions involving

the Settlement Fund Trustee and therefore, **section 24** of the statute did not apply.

17. Regarding the site visit, the 1st respondent submitted that the requirement of expert witnesses was gratuitous. Countermanding the appellant's allegation to the extent that he was not allowed to cross-examine the witnesses, the 1st respondent submitted that the learned judge only made physical observations and did not record any testimonies. She also submitted that the criminal proceedings against the appellant were not related to the present dispute.
18. Turning to the substratum of the appeal, the 1st respondent argued that, contrary to the appellant, she had given cogent evidence to confidently establish the root of her title. She questioned the credibility of the appellant's claim, who only filed a caution, 40 years after allotment of the suit land to the deceased.
19. Finally, the 1st respondent submitted that if indeed the appellant was allocated parcels No. 1139 and 1140, then he ought to have adduced documentation in respect to both parcels of land and further an amalgamation to that effect. This is because **PW2** confirmed from his evidence that an allottee could only be allotted one parcel of land and not two. For those

reasons, the 1st respondent prayed that the appeal be dismissed with costs.

20. We have carefully considered the parties' written submissions, examined the record of appeal and analyzed the law. This Court in **Jabane vs. Olenja** [1986] KLR 661, 664 succinctly elucidated our role as a first appellate court as follows:

“More recently, however, this Court has held that it will not lightly differ from the findings of fact of a trial judge who had had the benefit of seeing and hearing all the witnesses and will only interfere with them if they are based on no evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching the findings he did - see in particular Ephantus Mwangi -vs- Duncan Mwangi Wambugu (1982-88) 1 KAR 278 and Mwanasokoni vs. Kenya Bus Services (1982-88) 1 KAR 870.”

21. From the record, the undisputed facts are that the 1st respondent is the widow of the deceased Vincent Aghostinho Rafael Luis. He died on 19th June 2012 upon which **PW1** took out a grant of letters of administration of his estate in *HC SC No. 2810 of 2012; In the matter of the estate of Vincent Agostinho Raphael Luis*. She filed a petition on 7th November 2012 listing the suit property namely **Nakuru/Piave Settlement Scheme/1057**, measuring approximately 26.5ha, as a parcel belonging to the deceased's estate.

22. A grant was issued on 1st March 2013 and confirmed on 18th November 2013. However, it came to **PW1**'s attention that the suit property had been inadvertently omitted from the list of assets when applying to confirm the grant. Thus, on 4th June 2014, her application dated 11th April 2014, seeking to rectify that error, was allowed. Accordingly, the suit property was devolved in her name.
23. Dissatisfied with those findings, the appellant, on 17th November 2014, applied to revoke the grant on the grounds that the 1st respondent irregularly included the suit land as forming part of the deceased's estate. In support of his application, he annexed a copy of a land certificate where he hinged his proprietary interest upon the suit land. In a ruling dated 9th May 2018, the High Court partially revoked the grant, removing the suit land as forming part of the deceased's estate. This triggered the filing of the suit in the ELC.
24. Considering the grounds of appeal, the submissions and the documents that were produced in evidence, it is not in dispute that the two parties hold title to the property. Ultimately, just like in the ELC, this appeal succeeds or fails on the weight of

the evidence as to the root of the title. This is a case in which
two

parties hold a title to the same parcel of land but only one can be genuine. One party is telling the truth and the other is trying their luck. In this kind of scenario, it falls on the judge to analyze the evidence, consider the weight and ultimately determine who is more believable.

25. In National Employers' General Insurance Co Ltd vs. Jagers

1984 (4) SA 437(E) at 440E, it was stated:

“... where there are two mutually destructive stories, [the plaintiff] can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's

version is false.”

26. We now return to the evidence that was adduced. According to the green card produced in evidence, the title deed was opened on 26th May 1981 in the name of the Settlement Fund Trustee. On 17th July 1987, a title deed was registered in the name of the deceased. On 29th March 1999, a charge was reserved under section 70. The last entry made is that of 20th December 2006, where the appellant claimed a beneficial interest by filing a caution.
27. It is also not disputed that the deceased was on 1st July 1976 employed as a farm manager in the Settlement Fund Trustee. This was confirmed in his letter dated 5th January 1979 to the Settlement Fund Trustee, the Department of Settlement and the Area Settlement Controller.
28. A letter of offer dated 7th June 1980 was issued in the deceased's name in respect to **parcel No. 1139, Piave Settlement Scheme**. It is not disputed that he appended his signature to the said offer, accepting the terms. On 26th May 1987, the District Commissioner Nakuru addressed the deceased and the appellant, summoning them to a meeting on 8th June 1987 to discuss matters pertaining to Piave

Settlement Scheme. The deceased further paid stamp

duty as per receipt no. 206128 on 17th July 1987 in the sum of Kshs. 16,600.00.

29. It is also seen from the record that a charge dated 7th June 1980 was taken out by the deceased in favor of Dephis Bank. According to the allotment terms, the deceased was to pay a settlement charge of Kshs. 414,450.00 after paying a deposit of Kshs. 40,750.00. The interest earned, as per the terms of the contract, was rated at 6½% with the principal sum and interest amount being paid within a period of 56 monthly installments of Kshs. 16,166.00 each. He thereafter applied for a development loan from the Director of Settlement on 20th June 1980.
30. In the letter dated 8th July 1987, the Director of Land Adjudication and Settlement wrote to the District Commissioner and copied the Provincial Commissioner indicating that according to the records held at the Land Adjudication and Settlement department in the Ministry of Lands and Settlement, the deceased was allocated plot No. 1139 comprising a farm house, workshop and other minor structures. It also confirms that the deceased was employed as

a farm manager by the Settlement Fund Trustees to run Piave/Cortina farm. Further asserting the property rights of the

deceased, the National Land Commission in its letter dated 12th October 2015, addressed the 1st respondent to state that the deceased is the rightful owner of the suit parcel of land.

31. On 17th July 1987, a title deed was issued in the name of the deceased over the suit parcel of land namely **Nakuru/Piave Settlement Scheme/1057**. According to the title deed, on 29th March 1999, the deceased took out a charge in favor of Dephis Bank Limited to secure a loan of Kshs. 6,300,000.00. That charge was discharged on 4th December 2002. It is also discernible from the record that the deceased paid rates over the years in respect of the suit land and the receipts were produced in evidence.
32. It is also not disputed that from the record, the appellant paid a sum of Kshs. 4,685.00 being 10% deposit. He was issued with an official receipt dated 19th May 1980. The appellant had an offer letter and a charge, both dated 17th May 1980. Both the letter of offer and charge are in respect to plot no. 1140. He accepted the offer by executing an acceptance dated 17th May 1980 having declared that he undertook to comply with the conditions precedent in the letter of offer. He was also issued

with a charge

dated 6th March 1989 over plot no. 1011 which terms he accepted. A title deed was issued in his favor on 25th January 1994.

33. The appellant was later issued with a discharge of charge dated 26th June 1987 over parcel recorded in the document namely Nakuru/Piave/1057 (old No. 1139). He is also in possession of a transfer of land in settlement scheme document dated 26th June 1987 bearing the same property reference number as that in the discharge of charge. He was subsequently issued with a land certificate dated 16th July 1987 for all that parcel of land namely **Nakuru Piave Settlement Scheme/1057.**

34. The appellant further adduced a letter dated 9th May 1980. In it, the Director of Settlement wrote to the District Settlement Officer stating that plot No. 1139 had been allotted to the deceased who had executed documents in respect to the said parcel of land. The District Settlement Officer was therefore requested to change his records of the same documents to read plot No. 1140 as belonging to the appellant. He further stated that on their part, they had amended the record and

that the same ought to apply to the copies held by the appellant.

35. In a letter dated 18th September 2006, the Director of Land Adjudication and Settlement stated that from its records, plot No. 1139 (new No. 1057) was allocated to the deceased on 7th June 1980. The letter acknowledged that both allottees had fully repaid the Settlement Fund Trustees. That plot No. 1139 was discharged on 1st July 1987 while plot No. 1140 was discharged on 9th July 1987. It was further stated that plot No. 1139 measures approximately 26.5Ha while plot No. 1140 measures approximately 10.1Ha.
36. Come 9th July 1996, the District Environment Officer wrote to the appellant authorizing him to cut two blue gums in his plot No. 1139. On 12th October 2015, the secretary to the County Land Management Board wrote to the 1st respondent and copied the chairman of the National Land Commission, the Chief Registrar, the Director of Settlement, the OCPD and the District Land Commissioner to state that the suit land belonged to the deceased.
37. As can be seen from the evidence, it is clear that both parties were emphatic that they were the lawful proprietor of the suit land. They both adduced oral and documentary evidence to

persuade the trial court as such. Pertinently, both had title documents over

the suit parcel of land. The court was therefore invited to interrogate and scrutinize the root of title and make a just determination at trial. This is the position taken by the Supreme Court in the case of **Dina Management Ltd vs. County Government of Mombasa & 5 others** [2023] KESC 30 (KLR). The Court held as follows in dealing with such matters:

“Where the registered proprietor’s root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership. It was the instrument that was in challenge, and therefore, the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal, and free from any encumbrance, including interests which would not be noted in the register.”

38. Taking cognizance of the undisputed facts that were considered on a balance of probabilities, the trial court considered the evidence of **PW2**, an assistant director of the Ministry of Lands, Department of Lands Adjudication and Settlement. Giving a brief overview of the allotment process, he went on to state that the parcel in dispute was given plot

No. 1039 and parcel No. 1057. That change of numbers was also corroborated by the appellant

and the 1st respondent insofar as their documentary evidence is concerned. It is therefore undisputed.

39. Producing the original file, **PW2** explained that the suit land was allocated to the deceased on 7th June 1980. That the letter of offer, the charge and the discharge of charge in the file were the ones produced by **PW1**. He stated that the scheme number given was 751. He confirmed that the deceased complied with the terms of the letter of offer, and he was then issued a discharge of charge.
40. **PW2** explained that non-citizens qualified for allotment of this kind, a fact that was vehemently disputed by the appellant. **PW2** stated that the deceased was allocated the property after demonstrating that he had a work permit, legitimizing his application for allotment. He added that Article 65 of the Constitution was not in force to bar the deceased from acquiring property.
41. Disputing the legitimacy of that process, the appellant contended that the deceased was incapable of acquiring freehold property without first complying with **section 24** of the Land Control Board Act. That section provided as follows as

it was then:

“The President may, by notice in the Gazette, exempt-

(a) Any land or share, or any class of land or share; or

(b) Any controlled transaction, or any class of controlled transaction; or

(c) Any person in respect of controlled transactions or some class of controlled transaction,

From all or nay of the provisions of this Act, or from any prohibition made under section 23, on such conditions (if any) as he may think to impose.”

42. Opposing that line of thought, the 1st respondent submitted that section 6 (3) (b) of the Land Control Board Act exempted transactions involving the Settlement Fund Trustee and therefore section 24 of the statute did not apply. It is notable that the said provision was not in force at the relevant time when the deceased was allotted the suit land.

43. However, it is instructive to note that the provision relied on by the appellant did not contemplate the ban of foreigners from obtaining property. In fact, the entire Act in force did not approbate those allegations. Peradventure, the appellant may have anticipated that from a cursory look at section 23 of the Act, the President had powers to prohibit any controlled

transactions

or any class thereof. The appellant did not, however furnish such evidence as to support his allegations. We therefore find that they are baseless as they are not anchored on any provisions of the law in force at that time.

44. **PW2** clarified that the appellant was allocated plot No. 1140 which was given parcel number 1056. That is where the appellant resides to date. He observed that the appellant's property and that of the 1st respondent had different acreage, with the appellant acquiring 10.1ha and the 1st respondent acquiring 26.5ha.

45. Acknowledging that the appellant was issued with an offer letter bearing plot No. 1139, he explained that it was a clerical error that was rectified by letter dated 9th May 1980 and given plot No. 1140, one month later. He affirmed that this information was communicated to the appellant with his subsequent transaction documents referenced plot No. 1140 and was settled therein.

46. **PW2** continued that if at all the appellant was allotted parcels No.

1139 and 1140, then he would have a trail of documentation for the two plots. He therefore discredited the evidence of the

appellant in totality. He added that amalgamation did not take place and a person could only have one plot. He questioned the

veracity of the appellant's letter of offer dated 17th May 1980 which was not in their records.

47. Pertinently, he pointed out that the appellant couldn't have the same settlement amounts of Kshs. 47,400.00 on plots No. 1139 and 1140 as the acreage of the two plots was different. Additionally, the file on plot no. 1140 had a certificate of acceptance executed by the appellant.
48. **PW2** recalled that they were part of an investigation in 2020 to explain the historical acquisition of the suit property. It was here that it was confirmed that the appellant resided on plot No. 1056 on the ground, while the 1st respondent resided on plot No. 1057. They are neighbours with a road separating the two parcels of land.
49. Other than himself, the appellant did not call any other witness to rebut the evidence of **PW2**. It was incumbent on the appellant to demonstrate that the evidence of **PW2** was marred with irregularities. That would have only been achieved if he called a witness within that area of expertise to demonstrate that his evidence was marred with falsities.

50. The Supreme Court in **Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others** [2014] eKLR held as follows on the evidentiary burden of a party:

"The person who makes such an allegation must lead evidence to prove the fact. She or he bears the initial legal burden of proof which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already-discharged initial burden. "The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue" [Cross and Tapper on Evidence, (Oxford University Press, 12th ed, 2010, page 124)]."

51. We are of the view that the appellant ought to have tabled concrete evidence to demonstrate that **PW2**'s evidence was not credible. Absent that, coupled with the fact that **PW2**'s evidence was consistent and credible, we are of the view that **PW2**'s evidence affirmed that the 1st respondent is the lawful proprietor of the suit land.

52. We find that the appellant did not do enough to demonstrate legitimacy of his title within the yardstick of this Court in the

case

of **Munyu Maina vs. Hiram Gathiha Maina**

[2013] KECA 94 (KLR) that held 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.”

53. Based on the documentation adduced by the 1st respondent, it is clear that a chain of events affirmatively took place culminating in the issuance of the title deed in favor of the deceased. He was issued with an offer letter, a charge and a subsequent discharge which documents are also synonymous with those held in the records of **PW2**’s employer. In fact, **PW2** questioned the veracity of the appellant’s letter of offer in respect to the suit land stating that he had never come across it in the suit file.

54. The appellant complained that the amendment of his parcel of

land was improper. However, he only raised that issue when the suit herein was heard. All along, he never disputed those changes

which were communicated to him, a fact he did not successfully dispute. It was never brought to the attention of **PW2**'s employer and was only raised during these proceedings. We therefore question whether those allegations were *bona fide*. **PW2** explained that it was a clerical error and was immediately effected. We have no reason to doubt that.

55. In an attempt to raise any sort of objection to the deceased ownership of the suit parcel of land, the appellant only lodged a caution in 2006. Even after that, he did not sue the deceased seeking ownership rights. He only awoke from his slumber when the 1st respondent filed the present dispute after the appellant successfully persuaded the High Court in *SC No. 2810 of 2012; In the matter of the estate of Vincent Agostinho Raphael Luis* to partially revoke the grant issued in favor of the 1st respondent. One wonders why he never pursued security of his proprietary rights much earlier if his claim was genuine.

56. It is also clear from the record that several letters from the government reinforced the deceased's proprietary rights stating that he remained the lawful proprietor. Furthermore, our attention is drawn to the fact that the appellant allegedly

had similar terms

over two properties yet both properties had strikingly different measurements. Plot No. 1139 measured approximately 26.5ha while plot No. 1140 measured approximately 10.1ha; yet he was asked to settle a similar sum of Kshs. 47,400.00. How was that possible?

57. At the risk of belaboring further, this Court notes, just as was recorded by the ELC, that the 1st respondent gave evidence in the form of receipts on how the loan was repaid. She adduced a receipt dated 25th June 1987 of Kshs. 405,798, receipt dated 1st July, 1987 for Kshs. 406, 217.65, receipt dated 28th June 1987 for Kshs 143. 80 and receipt dated 17th July 1987 for Kshs. 16,750.00. This goes to the congruency and chronology given by the 1st respondent in explaining how the deceased acquired the property. However, the appellant failed to chronologically give such evidence

58. The 1st respondent further faulted the trial judge for not affording him an opportunity to cross examine the witnesses during the site visit. That argument must fail for the reason that the court was simply gathering information from the

available parties on the ground in a quest to understand the property's acreage and

attributes. It did not amount to evidence that called for cross examination of the witnesses.

59. Ultimately, it is our finding that the trial judge properly analyzed the evidence and arrived at a just determination of the dispute. We see no reason to disturb those findings. The upshot of our above findings is that the appeal herein lacks merit. It is dismissed with costs to the 1st respondent.

Dated and Delivered at Nakuru this 25th day of March, 2026.

M. WARSAME

.....
JUDGE OF APPEAL

J. MATIVO

.....
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR