IN THE COURT OF APPEAL
AT NAKURU

(CORAM: WARSAME, MATIVO & GACHOKA, JJ.

A.) CIVIL APPEAL NO. 30 OF 2020

BETWEEN

BERNARD KAMAU NJUGUNA.....APPELLANT

AND

NEHEMIAH GITAHI NDIRANGU.....1ST RESPONDENT REUBEN MICHIRE MUGO ..... 2ND RESPONDENT DISTRICT LAND REGISTRAR NYANDARUA...3RD RESPONDENT DISTRICT SURVEYOR NYANDARUA.....4TH RESPONDENT

ATTORNEY GENERAL.....5TH RESPONDENT

(An appeal from the judgment of the Environment and Land Court at Nyahururu (M. C. Oundo, J.) dated 4th February 2020

in

ELC Case No. 83 of 2017)

****

JUDGMENT OF THE COURT

1. This is an appeal against the judgment of the Environment and Land Court (ELC) at Nyahururu (M.C. Oundo, J.) delivered on 4th February 2020, whereby the learned judge dismissed the appellant's suit and awarded the 2nd respondent general

damages of Kshs. 100,000/= for trespass. The appellant, Bernard Kamau Njuguna, being dissatisfied with that decision,

has filed the instant appeal and now urges this Court to set aside that judgment.

2. The dispute concerns land in the Silibwet Land Registration area of Nyandarua County. In the year 1965, land parcel No. Nyandarua/Silibwet/136 (hereinafter "parcel 136"), was allocated to the appellant's father, Joseph Njuguna Wagiku, by the Settlement Funds Trustees under the Silibwet Land Settlement Scheme. The neighbouring land parcel **No. Nyandarua/Silibwet/137** (hereinafter "parcel 137"), was registered in the name of one Samuel Njuguna Chomba, now deceased. The two parcels shared a common boundary, and it is from that shared boundary that this dispute ultimately arose.

3. Joseph Njuguna Wagiku duly repaid his settlement loan, and was issued with a title deed on 26th January 1993. However, the relationship between Joseph Njuguna and his neighbour Chomba had long been strained by an access dispute. Chomba had no independent road on parcel 137 and had been using a pathway through parcel 136 to access his land, an arrangement to which Njuguna Wagiku objected. On or

about 8th December 1992, Chomba caused a surveyor to enter onto the land to

conduct a subdivision of parcel 137. The appellant contended that in the course of that exercise, the surveyor crossed the common boundary and encroached upon approximately eight acres of parcel 136, and that the parcels generated from that encroachment, among them parcel Nos. Nyandarua/Silibwet/734, 735 and 736, were produced without the consent of either the Land Control Board or his father.

4. Joseph Njuguna Wagiku reported the matter to the Assistant Chief, Silibwet Sub-Location, who issued summons to Samuel Njuguna Chomba on 18th December 1992. Chomba did not comply, and the matter was thereafter referred to the District Land Registrar, Nyandarua, who summoned all interested parties, conducted a site visit, and received the testimony of those present while physically inspecting the boundaries on the ground in the presence of all parties ultimately concluded: "***the boundaries remain in the same way they have been mentioned by the parties from the time they were allocated their land.***"

5. Following that determination, Chomba proceeded to

subdivide parcel 137. The 1st respondent, Nehemiah Gitahi Ndirangu, was

issued with title to parcel No. Nyandarua/Silibwet/734 (hereinafter "parcel 734") in June 1993, having purchased it from Chomba for Kshs. 78,000/=. The 2nd respondent, Reuben Michire Mugo, was issued with title to parcel No. Nyandarua/Silibwet/735 (hereinafter "parcel 735") on 8th March 1994, having purchased it from Samuel Njuguna Chomba for Kshs. 105,000/=. Both respondents took possession of their respective parcels and occupied them without disturbance. The Registry Index Map was subsequently amended from Silibwet Original Map Sheet 3(119/2/1) dated 7th June 2000 to Silibwet Amended Map Sheet 3(119/2/1) dated 27th January 2003 to reflect the position of the boundaries as determined on the ground.

6. The dispute escalated anew in the year 2000, when the father and son duo allegedly entered the 2nd respondent's land, constructed a fence and a wooden structure, and blocked an access road utilized by the respondents and neighbouring landowners. The District Officer ordered the fence demolished to restore access. Criminal proceedings followed in **Nyahururu PMC Criminal Case No. 1663 of**

2002, Republic v. Joseph

Njuguna Wagiku and Bernard Kamau Njuguna, where the two were charged with malicious damage to property and forcible detainer but were acquitted under Section 210 of the Criminal Procedure Code on the basis that ownership remained unresolved and was the subject of a pending civil suit. Separately, the 2nd respondent filed Civil Case No. 68 of 2001 in the Principal Magistrate's Court at Nyahururu against Joseph Njuguna Wagiku. Unfortunately, **Joseph Njuguna Wagiku** died on 9th October 2003 and the suit abated upon his death. The case was accordingly dismissed on 8th July 2004.

7. The appellant obtained letters of administration intestate in respect of parcel 136 and was issued with a certificate of confirmation of grant on 17th May 2006. He thereafter caused the subdivision of parcel 136 among the beneficiaries of the estate. One of the resultant subdivisions was parcel No. Nyandarua/Silibwet/3945 (hereinafter "parcel 3945"), in respect of which a green card was issued on 17th September 2007 and a title deed on 28th October 2007.That title deed was, however, subsequently cancelled by the District Land

Registrar, Charles Onyambu Birundu, by a letter dated 3rd April 2009, on

the ground that the subdivision of parcel 136 that gave rise to parcel 3945 had been wrongly drawn and overlapped with the already registered parcels 734, 735 and 736.

8. The appellant retained a photocopy of the cancelled title deed and reported the matter to the District Commissioner, who summoned the Land Registrar, the District Surveyor and the respondents to a meeting. The District Commissioner declined to intervene further, indicating that unless the court declared otherwise, no person could hold a title before a previous one had been revoked. It was that outcome that prompted the appellant to institute proceedings, in the High Court at Nakuru as Civil Suit No. 259 of 2010, which was subsequently transferred to the Environment and Land Court at Nyahururu as ELC Suit No. 83 of 2017 at Nyahururu (the subject of this appeal)

9. The suit thereafter proceeded by way of an amended Originating Summons dated 26th October 2018, raising nine issues for determination, among them: whether the appellant acquired parcel 3945 procedurally and legally; whether the 1st and 2nd respondents acquired parcels 734

and 735 procedurally and

legally; whether those parcels were excised from parcel 136 or from parcel 137; and, since the parcels appeared to refer to the same ground, who among the parties was the rightful owner.

10. The learned judge (*Oundo J.),* having considered the evidence and submissions of all parties, found that the Land Registrar and the District Surveyor had acted within their statutory powers under Sections 18 and 19 of the Land Registration Act in fixing the boundaries and amending the Registry Index Map following the 1993 determination. On the central factual question of the derivation of the disputed parcels, the learned judge stated as follows:

> ***"Indeed the green cards produced and the evidence***
> ***of the Land Registrar did confirm that parcel No. 137 had been first registered on the 27th March 1991 in the name of SFT wherein it had been discharged on the 7th June 1993 to Samuel Njuguna Wachomba. On the same date, he had subdivided it resulting to parcels No. 733 - 746. He confirmed that parcel Nos. 734, 735, 736 were not subdivisions or part of parcel No. 136. That equally, parcel No. 3945 was not part of parcel No.***
> ***137 and therefore should be struck off the register."***

11. The Learned Judge further found that the appellant had adduced no evidence establishing that the 1st and 2nd respondents had acquired their titles illegally, un-procedurally or through fraud, and accordingly held that they were the confirmed legal proprietors of parcels 734 and 735 respectively. The court further found that the appellant's entry onto the 2nd respondent's land constituted trespass and on that basis awarded general damages of Kshs. 100,000/= to the 2nd respondent.

12. It is that decision that is subject of the appeal before us which is premised on the grounds that the learned Judge:

    a. *misdirected herself and based her findings on wrong considerations;*
    b. *failed to consider whether the respondents had adhered to the prescribed legal procedure in subdividing the suit land and acquiring their titles;*
    c. *erred in failing to take into account and evaluate the evidence adduced on behalf of the appellant;*
    d. *failed to appreciate the appellant's submissions*
    e. *erred in law and fact by declining to award the appellant the costs of the suit;*
    f. *findings were insupportable in law and on the evidence.*

13. The appeal came up for hearing before us on 28th January 2026.

    Learned Counsel Ms. Temba held brief for Mr. Otieno for the

appellant; Learned counsel Mr. Wanjala appeared for the 1st and 2nd respondents; and the 3rd to 5th respondents, though duly served, did not participate in the proceedings. Both parties relied on their written submissions and gave brief highlights.

14. Ms. Temba submitted that the learned judge misdirected herself by treating the dispute as a purely boundary matter falling within the jurisdiction of the Land Registrar, when in truth it was a dispute over ownership and proprietary rights that required the court's intervention. She submitted that the jurisdiction of the Land Registrar is limited to the variation and adjustment of boundaries, and that even if the Registrar had the power to fix boundaries, he could not lawfully hive out a portion of parcel 136 and add it to parcel 137 without affording the owner of parcel 136 the right to be heard. Reliance was placed on ***Msagha v Chief Justice & 7 Others*** **Nairobi HCMCA No. 1062 of 2004** for the principles of natural justice, submitting that a decision reached without affording an affected party the opportunity to be heard is no decision at all.

15. It was urged that the learned judge failed to take into account the evidence of DW1, the Land Registrar, who conceded during

cross-examination that the ruling on which the amendment of the Registry Index Map was based was undated and therefore not proper and incapable of serving as a lawful basis for amending the RIM. He further submitted that DW1 himself conceded that where there is a conflict between the original map and the amended map, the original map prevails, and that the correct procedure where parcels overlap is for the surveyor to go to the ground accompanied by the Land Registrar and guided by the original map. He submitted that none of this was done, and that the amendment of the RIM was un-procedural and illegal, rendering the parcels shown on the amended map non-existent and the titles issued pursuant to that amendment null and void.

16. Relying on ***R v Registrar of Titles, Mombasa & Others Ex Parte A.K. Abdulgani Limited*** **[2018] eKLR** and ***Lawrence Muriithi Mbabu v District Land Registrar, Nyeri & Another*** **[2019] eKLR** the appellant further submitted that the Land Registrar acted unlawfully in confiscating his original title deed without a court order.

17. Lastly, the appellant submitted that courts should nullify titles obtained through land grabbing and ought not to give sanctuary to the principle of indefeasibility of title in such circumstances and that the court, under Section 80(1) of the Land Registration Act 2012, had a duty to rectify the register by cancelling titles obtained through illegality. See ***Republic v Minister for Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others*** **Mombasa HCMCA No. 617 of 2003 [2006] 1 KLR (E&L) 563**.We were urged to allow the appeal, set aside the judgment of the superior court below, declare the appellant to be the rightful owner of parcel 3945, cancel title Nos. 734, 735 and 736.

18. In opposition to the appeal, Mr. Wanjala submitted that the boundary dispute between parcels 136 and 137 was heard and conclusively determined by the District Land Registrar in 1993 in accordance with Section 19 of the Land Registration Act, that the determination was made in the presence of all the parties including the appellant's late father, that it was never challenged or appealed, and that it accordingly

remained binding. He submitted that by operation of that determination

and the subsequent amendment of the Registry Index Map, the boundaries between the two parcels were conclusively fixed, and the registrations that followed were lawful and regular.

19. It was the respondents' contention that the titles issued to them were indefeasible as no fraud had been proved, and the burden of proof lay on the appellant under Sections 107 to 109 of the Evidence Act. Relying on ***Munyu Maina v Hiram Gathiha Maina*** **[2013] KECA 94 (KLR)**, they submitted that when a registered proprietor's root of title is under challenge it is not sufficient to produce the title instrument alone, but the respondents had in any event demonstrated that their acquisition was legal, formal and procedurally sound. They further relied on ***Arthi Highway Developers Limited v West End Butchery Limited & 6 Others*** **[2015] eKLR**, where overlapping titles were resolved on the basis of first registration and due process. They also relied on ***Chemey Investment Limited v Attorney General & 2 Others*** **[2018] KECA 863 (KLR)** for the proposition that the sanctity of title was never

intended to be a vehicle for fraud or illegality and since no fraud

had been proved here, the appellant could not invoke that principle to defeat the respondents' titles.

20. Lastly, the respondents emphasized that the dispute was at its core a boundary dispute that ought to have been resolved under Section 19 of the Land Registration Act, and that was precisely what had been done. That mechanism had been properly invoked, a decision rendered in 1993, and that decision had never been appealed. That being so, there was no competent claim properly before either the trial court or this Court, and consequently, the appeal ought to be dismissed with costs.

21. This being a first appeal, the Court is enjoined to reconsider the evidence, evaluate it and draw its own conclusions. Nevertheless, we ought to give due deference to the findings of the trial court unless they fall foul of proper evaluation in line with the evidence on record or the trial Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did. See ***Ephantus Mwangi vs Duncan Mwangi Wambugu*** **(1982-88) 1 KAR.**

22. The appellant raises six grounds of appeal which, when

reduced to their substance, amount to the complaint that the trial court

misdirected itself by treating a dispute over proprietary rights as a boundary matter, failed to evaluate the evidence of DW1 properly, and wrongly upheld titles that allegedly derived from an illegal subdivision of his father's parcel. We consider those complaints in turn.

23. The most fundamental complaint raised by the appellant is that the Land Registrar's 1993 determination wrongly hived out a portion of parcel 136 and annexed it to parcel 137, and that the learned judge was wrong to treat the outcome of that determination as beyond scrutiny.

24. Before engaging the substance of this appeal, it is necessary to examine the nature of the appellant's claim. The amended originating summons raises nine issues for determination. The first three ask whether the respective parties acquired their parcels procedurally and legally, framed, on their face, as questions of title and due process. Issues four and five, however, ask plainly and directly from which parent parcel the disputed titles were excised: from parcel 136 or from parcel 137? These are inescapably boundary questions. Ownership in a dispute of this character is not a freestanding

question. Who owns which

parcel depends entirely on where the boundary falls. The ownership question is not irrelevant; it is the destination. But to reach it, the court must first pass through the boundary question, which has a designated forum. That forum is not the courts. It is the Land Registrar, vested by Section 19 of the Land Registration Act with the duty to fix boundaries to registered land, after giving all persons appearing in the register an opportunity to be heard. The nine issues, read together, reduce to a single inquiry: where does the boundary between parcel 136 and parcel 137 lie? Beneath each of those nine issues, and woven through their very terms, the boundary question persists, and that question was answered in 1993, on the ground, in the presence of all the parties who mattered. It remains a boundary dispute today, however clothed, and it is that question which has, in truth, always been at the centre of this dispute.

25. The statutory position is clear. Section 18 of the Land Registration Act, No. 3 of 2012, provides as follows:

> "***(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any***

filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section."

26. Section 19 of the same Act, provides as follows:

"***(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.***
(2)The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.
(3)Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority

responsible for the survey of land, a note shall be made in the

***register, and the parcel shall be deemed to have had its boundaries fixed under this section.*"**

27. The reason for this statutory architecture is neither arbitrary nor obscure. The parcels in the Silibwet Settlement Scheme were registered under the repealed Registered Land Act (Cap.

300) and accordingly carry general boundaries, which in essence means boundaries that are approximate in nature, identified by reference to physical features on the ground rather than by mathematically precise coordinates. The Land Registrar brings to that exercise a command of surveying resources and technical expertise that a court simply does not possess, and Parliament accordingly vested the function in him. Consequently courts have no jurisdiction to entertain a boundary dispute unless the Land Registrar has first made his determination This Court affirmed that principle in ***Azzuri Properties Limited v Pink Properties Limited*** **[2018] eKLR**, holding that the court's jurisdiction over boundary disputes is excluded by statute, and that the Land Registrar's mandate in such matters is not a technicality to be sidestepped but a substantive allocation of authority by

Parliament. If the court

has no jurisdiction to entertain a boundary dispute where the Land Registrar has not yet acted, it follows with even greater force that it cannot be invited to re-examine and reverse a determination that was duly made, completed in the presence of all interested parties, and then allowed to stand without challenge or appeal for over thirty years. There is, in such circumstances, nothing left for the court to examine. The determination is final.

28. In the present matter, the boundary dispute between parcels 136 and 137 was duly reported to the District Land Registrar in 1992 by the appellant's father. The Registrar summoned all interested parties including the appellant's father and the appellant himself, conducted a site visit, heard the testimony of those present, and physically inspected the boundaries on the ground. He made his determination, namely that the boundaries remained as found on the ground. This was not a case where the prescribed mechanism existed but was bypassed. The appellant's own testimony at trial confirmed that he attended the Land Registrar's hearing. His father initiated the dispute. Both of them stood on the ground as

the Registrar

conducted his inspection. What the appellant complains of is not that he was unheard, but that he never received a copy of the written ruling and was therefore unable to appeal. That is a complaint about the document, not about the process.

29. The appellant's complaint is that the ruling was undated and that he and his father were unable to obtain a copy in time to lodge an appeal. We have considered this carefully. The concession by DW1 that the ruling was undated is a genuine deficiency and we acknowledge it. It does not, however, carry the weight the appellant places upon it.

30. First, the undated character of the written ruling is an irregularity in the formality of the document; it does not vitiate the substantive process that produced it. The Land Registrar went to the ground, saw the boundaries as they stood, heard both sides, and determined that the boundaries should remain as found. That is a complete exercise of the statutory mandate. The absence of a date on the written record of that decision is an imperfection in the paperwork, not a nullity in the determination itself.

31. Second, and of greater weight: the determination became final by operation of law because it was never appealed. Section 150 of the former Registered Land Act (Cap. 300) provided a clear avenue of appeal to the Chief Land Registrar within thirty days. That right was never exercised. Titles were thereafter issued to the 1st and 2nd respondents. That period of undisturbed possession that followed was not accidental. It was consistent with the determination having been accepted on the ground. The 1st and 2nd respondents fenced, occupied and used their parcels openly, paid for them, and were left in peace. That reality matters when assessing the appellant's claim that the 1993 determination was somehow defective — parties who consider a determination to have wronged them do not typically sit quietly for seven years while the beneficiaries of that determination settle, build and occupy.

32. When the dispute did erupt again in the year 2000, the appellant and his father responded, not by invoking the statutory appeal mechanism against the 1993 determination, but by entering the 2nd respondent's land,

erecting a fence, and blocking an access road; conduct that resulted in criminal

charges. What the record actually discloses is not a bona fide ownership claim but a persistent pattern of seeking, by one mechanism after another, to disturb a question that was resolved in 1993. Physical entry and fencing in the year 2000 was followed by a private surveyor drawing a conflicting boundary in 2007, which was followed by this suit. A party who responds to a boundary determination not by appealing it through the avenue the law provides, but by serially re-igniting the dispute on the ground, cannot invoke the court's jurisdiction years later to relitigate the same underlying question. The form of each successive attempt changes; the substance does not. The attempt, more than thirty years after the Land Registrar's determination, to re-litigate its outcome by framing a boundary complaint as a question of procedural acquisition cannot succeed.

33. The appellant contended throughout that parcels 734, 735 and 736 were generated from parcel 136 and not from parcel 137. That contention is met head-on by the green cards produced in evidence by DW1 as the official register entries. Those records showed, without ambiguity, that

parcels Nos. 3938 to 3945

were excised from parcel 136, while parcels Nos. 733 to 746 were excised from parcel 137. The green cards are the primary documentary record of what was registered. They were never challenged as forgeries or fabrications; their accuracy as official register entries was never challenged. The position is plain: parcel 3945, the appellant's own parcel, derived from parcel 136; parcels 734 and 735, the respondents' parcels, derived from parcel 137. The two chains of title do not intersect.

34. The appellant sought to unsettle this by pointing to a discrepancy between the mutation form for parcel 137 which recorded a subdivision into fourteen portions yielding title numbers 733 to 746 and the green card for parcel 137, which recorded only seven portions yielding title numbers 733 to 739. He invited the court to infer from that discrepancy that the original map had been tampered with. We are unable to accept that invitation.

35. A mutation form is the prescribed instrument by which a registered proprietor instructs the Director of Surveys to carry out a subdivision. It records what was proposed. The

green card records what was ultimately registered. A discrepancy between

the two does not, without expert evidence to explain it, establish that any document has been tampered with. The appellant adduced no such expert evidence. He produced two maps and a mutation form and invited the court to draw the gravest possible inference from their comparison. A court of law requires more than an invitation to speculate.

36. As this Court stated in ***Arthi Highway Developers Limited v West End Butchery Limited & 6 Others*** **[2015] eKLR**, fraud and illegality must be specifically pleaded and proved; they are not established by bare assertion, and they are not established as in this case, by a discrepancy between a mutation form and a green card.

37. On the Registry Index Map, the appellant relied on DW1's concession that where there is a conflict between the original map and the amended map, the original map prevails. That may be so as a general surveying principle, but it carries no weight in the circumstances of this case. Because the Silibwet parcels carry general boundaries, the RIM shows only the approximate boundaries and approximate situation of each parcel it is not, and has never

been, an authority on precise boundary lines.

Physical features on the ground are what give content to a general boundary, which is precisely why the Land Registrar's 1993 on-the-ground inspection was the correct and only proper way to resolve the dispute. The RIM was subsequently amended by the Land Registrar following that determination as an authorized act in the exercise of his statutory powers. It was the formal cartographic expression of what was found on the ground, not a rogue alteration. Having allowed that amendment to stand without challenge for decades, the appellant cannot now invoke the primacy of the original map to undo the authorized outcome of a process that was never appealed or challenged.

38. The appellant's title to parcel 3945 has had a troubled history that tells its own story. The title was issued on 28th October 2007. It was cancelled by the District Land Registrar in April 2009 on the express ground that the private surveyor's subdivision had been wrongly drawn and its boundaries encroached upon the already-registered parcel 735. It was never formally restored. A further search conducted in July 2017 revealed that parcel 3945 was by

then registered in the name of

one Fresiar Njoki Njuguna, a stranger to these proceedings. DW1 confirmed that this was a case of duplicated numbers arising from irregular subdivisions, and testified that as between two competing registrations, the one registered first in time would prevail.

39. The law on competing titles is settled. In ***Wreck Motor Enterprises v Commissioner of Lands & Others,*** **Civil Appeal No. 71 of 1997**, this Court held that where there are two competing titles, the one registered earlier takes priority. Parcels 734 and 735 were registered in 1993 and 1994 respectively, more than a decade before parcel 3945 was surveyed or registered in 2007. The private surveyor engaged by the appellant in 2007 drew parcel 3945 in a manner that overlapped with parcels that had already stood on the register for fourteen years. No private surveyor has the power, and no registered proprietor has the right, to extinguish or diminish an earlier and validly registered title by the expedient of drawing a conflicting boundary on a plan. The learned judge correctly found that parcel 3945 ought to be struck from the register. We affirm that finding.

40. The appellant has also raised the argument that Land Control Board consent was never obtained for the subdivision of parcel

137 and that the titles of the 1st and 2nd respondents were therefore void. The learned judge made no specific finding on this issue having resolved the case on the derivation of parcels from the green cards and the validity of the 1993 boundary determination, and it is on that basis that the judgment stands.

41. In our view, the burden of establishing that no consent was obtained lay squarely on the appellant. It was his case and his allegation. He pointed to the fact that the 2nd respondent did not produce consent documents in evidence at trial and invited the court to infer from that non-production that no consent was ever obtained. That inference cannot be drawn. One cannot prove a negative, and the respondents were under no obligation to produce consent documents merely because the appellant alleged their absence. The burden lay on the appellant to establish by positive evidence that the subdivision was conducted without consent. He adduced

none. Section 107 of the Evidence Act places the burden of proof on the party who asserts the existence of a fact. The appellant asserted that no

consent was obtained. He did not prove it. Illegality is not established by bare assertion or inference. Consequently, the allegation remained unproved.

42. The registration of parcels 734 and 735 followed the Land Registrar's 1993 boundary determination, the mutation of parcel 137, the payment of consideration and stamp duty, and the issue of title deeds through the established machinery. The chain of title is traceable and unbroken. The protections of Section 26 of the Land Registration Act remain intact, and the titles of the 1st and 2nd respondents stand.

43. Having re-evaluated the totality of the evidence and the law applicable thereto, we are satisfied that the learned judge reached the correct conclusion. The 1993 boundary determination, was made after due process, in the presence of all interested parties and was never appealed. The green cards conclusively establish the correct derivation of the disputed parcels. The learned judge correctly ordered parcel 3945 struck from the register. It was wrongly drawn and encroached upon titles that had stood on the register for over a decade before it was surveyed. The appellant failed to

establish the fraud,

illegality or procedural irregularity necessary to defeat the titles of the 1st and 2nd respondents.

44. In those circumstances, the dispute ought to have rested where it was resolved: before the Land Registrar in 1993, through the very mechanism the law provides for. This Court will not disturb a result that the law and the evidence both compel.

45. The appeal accordingly lacks merit and is dismissed with costs to the 1st and 2nd respondents.

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