



Yator v Koima & another (Suing as Legal Representatives of Estate of the Late Isaiah Kibii Boswony) & 3 others (Environment and Land Appeal E002 of 2023) [2026] KEELC 1842 (KLR) (3 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL E002 OF 2023**

**L WAITHAKA, J
MARCH 3, 2026**

BETWEEN

OBADIAH KIPKURUI YATOR APPELLANT

AND

ROSE JEPKORIR KOIMA & KENNETH KIPCHIRCHIR KIBII (SUING AS LEGAL REPRESENTATIVES OF ESTATE OF THE LATE ISAAH KIBII BOSWONY) 1ST RESPONDENT

CHEPYEGON CHEPKONGA 2ND RESPONDENT

JOSEPH KIPKEMOI CHEPYEGON 3RD RESPONDENT

DISTRICT LAND REGISTRAR, KOIBATEK/MOGOTIO 4TH 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 Boswony, 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. The learned trial magistrate also determined that the appellant, who was the 2nd defendant in the suit before the lower court, had failed to establish the root of his title and that the appellant had unlawfully acquired the suit property.



3. 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 subdivided 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 fact 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..."

4. Dissatisfied with the decision of the trial magistrate, the 2nd defendant, now appellant, appealed to this court on the grounds that the learned trial magistrate erred by:-
 - i. Failing to appreciate that the 2nd respondent being the legal and registered owner of Baringo/Sabatia-103/874 was the only one with capacity to sell the said parcel of land;
 - ii. Finding that the 2nd respondent's son had the capacity to sell to the 1st respondent the 2nd respondent's parcel of land Baringo/Sabatia-103/874 without any power of attorney or legal representation thereby upholding a transaction that was on the face of it void;
 - iii. Disregarding the evidence adduced by the appellant, the 2nd respondent and the 3rd respondent, the law, the authorities relied on and the submissions by the appellant which should have assisted the court appreciate both the law and facts at play in the matter before her thereby arriving at an erroneous decision;
 - iv. Upholding the purported transaction between the 1st respondent and the son to the 2nd respondent that would in any event have become void and ineffectual for want of Land Control Board Consent;
 - v. Purporting to cancel his title to the suit land without any evidence of fraud on his part in the process of his acquisition of the title thereto or otherwise without any evidence that he (the appellant) was party to or had knowledge of fraud respecting the transaction over the suit land;
 - vi. Failing to appreciate or totally misapprehending the effect of registration of the appellant as the proprietor of the suit land and under what circumstances such registration can be impeached and cancelled;
 - vii. Finding that the 1st respondent was the rightful owner of parcel of land Baringo/Sabatia-103/874, the 1st respondent having purchased the same from the 2nd respondent's son in totally illegal, ineffectual and meaningless transaction that could not confer an interest in land;
 - viii. Disregarding the law and due diligence followed by him (the appellant) prior to his purchasing the parcel of land Baringo/Sabatia-103/874 from the 2nd respondent hence arriving at an erroneous decision directing that his title deed be cancelled;



- ix. Directing the 4th respondent to cancel his title deed in respect of Baringo/Sabatia-103/874 when she had no jurisdiction to do so and against the provisions of the law and precedents in respect to cancellation of title deeds;
 - x. Failing to find that the only recourse the 1st respondent had was to seek refund from the so called son to the 2nd respondent in the circumstances.
5. The appellant prays that his appeal be allowed with costs, the judgment of the trial court delivered on 16th January, 2023 be set aside and a judgment finding that he is the bona fide purchaser of Baringo/Sabatia-103/874 be entered; that the directions to have his title deed cancelled be varied and/or set aside and he be found to be the bonafide purchaser of Baringo/Sabatia-103/874.
 6. The appeal was disposed of by way of written submissions.

SUBMISSIONS

Appellant's submissions

7. In his written submissions dated 24th July 2025, the appellant sets down his grounds of appeal and submits/addresses the court as follows:-

“...on grounds 1, 2, 3, 4 & 8 of the Memorandum of Appeal...

It is our submission that 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 2nd Respondent 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 disowned the sale agreement purportedly signed between him and the 1st Respondent herein. He further refuted 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 2nd Respondent, being Samuel Kiprotich Chebiegon, and not the plaintiff herein.

On the part of the 2nd Respondent herein. The Appellant 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 Appellant herein paid the



consideration thereof which at the time stood at Kshs. 530,000/-. When the said Samuel failed to effect transfer, the Appellant 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 Appellant herein conducting due diligence did he confirm that indeed the said parcel of land known as Baringo/Sabatia/531 was registered in the name of the 2nd Respondent and thereafter he effected the necessary transfer documents to have the said parcel of land known as Baringo/Sabatia-103/874 transferred to the appellant herein. It is important to note that the family of Samuel being referred to herein is that of the deceased 2nd Respondent and PW3 who were his father and mother respectively.

...The first bone of contention is whether or not the 2nd Respondent, sold 3 acres to the 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 2nd Respondent 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 2nd Respondent 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 2nd Respondent was the owner of the parcel of land known as Baringo/Sabatia-103/874. He further disowned having entered into a sale agreement with the 1st Respondent herein for 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 2nd Respondent on pages 37 and 38 of the Record of Appeal confirms clearly that the 2nd Respondent 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 34 and 35 of the Record of Appeal, who upon confirming that the deceased 1st Respondent 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 2nd Respondent herein. At the time of execution of the purported sale agreement it is evident that the owner thereof, the 2nd Respondent, 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 2nd Respondent 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 2nd Respondent 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 2nd Respondent 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 2nd Respondent 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 2nd Respondent 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 2nd Respondent's son was valid enough to infer obligations on the 2nd Respondent 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 2nd Respondent 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 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 2nd Respondent's son failed to honour his obligation with the Appellant in a separate transaction between them. It is at this point that the 2nd Respondent intervened and offered to sale 1 acre of the aforesaid parcel of land as compensation to the Appellant. It is at this point that the Appellant did a search over the aforesaid parcel of land (due diligence) and established that indeed the owner thereof was the 2nd Respondent 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)e KLR...

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. Moiwo Ole Keiwua & 4 others* (2014) e KLR...

The Court in *Lawrence P. Mukiri vs. Attorney General & 4 others* (2013)e KLR 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 2nd Respondent herein thereby arriving at the erroneous conclusion that the 1st Respondent herein held a good title over that parcel of land known as Baringo/Sabatia/531.

On grounds (5) (6) and (9) of the Memorandum of Appeal the appellant submits;

“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) e KLR*, the Court held....

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 titles 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 2nd Respondent 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)e KLR*...

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 in term of the prayers sought in the Memorandum of Appeal dated 9th day of February 2023.”

1st Respondents submissions

8. In their submissions dated 15th August 2025, the 1st respondents gave an overview of the case urged by them and the other parties and identified the following as the issues for determination;
 - i. Whether the appellant purchase of land and titling is protected in law and if not what consequences ensue?
 - ii. Did the learned trial magistrate erred in finding that the 1st respondent has proved his case on a balance of probability?
 - iii. Whether the learned trial magistrate erred in finding that the appellant having failed to establish the root of his title, that it then follows that the appellant title had unlawfully acquired the suit property and in consequence the appellant title to the Land parcel Baringo/Sabatia 103-874 was and had been irregularly and unprocedurally registered and therefore null and void and liable for cancellation?
 - iv. Whether equitable doctrines of constructive trust and proprietary estoppel remain applicable and enforceable even when Land Control Board consent was not formally produced?
9. In respect of the issues, identified they submit/address the court as follows:-

“... the Appellant claims to be a bona fide purchaser yet he could not fulfil the requirements to qualify as a bona fide purchaser for lack of due diligence...the evidence by the 3rd respondent showed that the Appellant colluded with the 3rd respondent to exert unlawful pressure on the 2nd respondent to transfer the suit property. Critically, no valid sale agreement between the title holder Chepyegon Chepkonga and the Appellant was produced in court to substantiate that the Appellant legitimately purchased the parcel from the title holder. What the Appellant produced before court is an agreement between Samuel Kipkoech Chebiyegon and Obadia Kipkurui Yator dated 18th May 2025...

Had such valid agreement existed, then Samuel Chepkonga, son to the 2nd Respondent could not have faced police arrest and the Appellant would have sought specific performance through judicial process. Moreover, the Appellant’s title is tainted ab initio, obtained through a procedurally defective and inequitable process. This is especially damning given that the 1st Respondent had already paid for, taken possession of and occupied the property since the year 2007 under a legitimate sale. That therefore is what the trial court found, that the Appellant’s certificate of title was obtained through a procedurally defective process that disregarded the 1st Respondent’s prior and legal entitlement having purchased, paid for and possessed the property since 2007...



In the instance case, it is the 1st respondent's Arguments with all due respect that the Appellant failed to prove the legitimacy of his title, to prove indeed he procured through a legitimate process and in fact the same was well noted by the learned trial magistrate in her judgment....

In conclusion, the Appellant's claim to being a bona fide purchaser status collapses under the weight of evidence demonstrating that the acquisition of the suit property was procedurally defective, did not prove the root of title and was disregarded of the 1st Respondent's pre-existing legal rights and possession since 2007....

...In light of the foregoing, it is evident that the 1st Respondent acquired an equitable interest in the suit property through purchase, payment, and long-standing possession, which the 2nd Respondent was bound to honour. The Appellant's subsequent registration was procured in disregard of this interest and is therefore incapable of displacing the 1st Respondent's overriding rights. Equity will not permit a party to benefit from conduct that is unconscionable, and the principles of justice demand that the 1st Respondent's entitlement be upheld rendering the Appellant's title defeasible, null and void.

That from the foregoing and the documentary evidence and irrefutable evidence on record showed that it is the title holder Chepyegon Chepkonga who sold the 3 acres of land to the 1st Respondent herein. That was affirmed by the sale agreement complete with ID card numbers, signatures and the witnesses and the 2nd Respondent in his evidence tried to run away but on cross examination by the 1st Respondent's counsel at page 315 of the Record of Appeal admitted that the following:

‘...I do not recall going to the Land Control Board to transfer land to other buyers apart from the plaintiff..

Most fundamentally, it is on record that subsequently the 2nd Respondent sub-divided the L.R No. Baringo/Sabatia 103/280 and the 1st Respondent acquired title No. Baringo/Sabatia/531 which was subsequently sub-divided into Land Title No. Baringo/Sabatia 103/874 and Title No. Baringo/Sabatia 103/875 was in a “choreographed narrative in an attempt to dispossess the 1st Respondent crystallized right to the title No. Baringo/Sabatia/531. The court is invited to look at the mutation form produced in court by the 1st Respondent. That filing (Mutation Form) is to be found at page 29 of the Record of Appeal. The court is also invited to have a glimpse at page 23 of the Record of Appeal.

It is to be noted something that was totally unsubstantiated, false, choreographed and indeed perverse was an effort to say without any substantial evidence, that it is one Samuel Chepkonga that sold the land to Isaiah Kibii Boswony and not Chepyegon Chepkonga. That argument was totally unsupported and had blithely ignored settled law and must therefore fail in its entirety. To start with, the Appellant presented no such evidence before court save the ‘bare allegations’. For his part, the 1st Respondent produced a written sale agreement of land dated 17th February 2007 between Chepyegon Chepkonga I.D No. 4XXXXXX16 (vendor) and Isaiah Kibii Boswony ID No. 1XXXXX10 (purchaser) over the three acres forming part of Baringo/Sabatia 103-280 and there were four witnesses complete with signatures and ID numbers. That sale agreement is found at page 20 of the Record of Appeal. That agreement was not challenged nor impeached. The 2nd Respondent herein did not adduce even a mere scintilla of evidence to disown his signature in the above agreement. No expert document examination report was adduced by the Appellant and the 2nd and 3rd



Respondent in an effort to discredit the above sale agreement. The sale agreement therefore stands in law. Further and this is something to be kept at the back of the mind that the sale agreement of land between the 1st Respondent and the 2nd Respondent was in writing and therefore oral (parole) evidence in law cannot be led in a manner in which the Appellant and the 2nd and the 3rd Respondents are trying to do here, to add to, vary or to contradict a written agreement...

In this and with greatest respect, the 1st Respondent does not even admit the existence of a sale agreement between Samuel Chepkonga and Isaiah Boswony to start with but let us restate the law as it is, in 'black and white'....

That therefore and gathered all together, the argument by the Appellant and the 2nd and the 3rd Respondent narratives trying to bring in 'Samuel Chepkonga' to purport to have been the seller of the land to the 1st Respondent was not only preposterous but was totally unsupported akin to 'plucking evidence from the air'. That maths did not add up and it is not adding up now. Further, one or two other gratuitous arguments being advanced in this appeal by the Appellant is to try to say, 'look' I purchased land from the 2nd Respondent Chepyegon Chepkonga and yet his evidence on record that is there (and is here) is that the Appellant had purchased land from Samuel Chepkonga Chebiyegon (pages 102, 103 and 104 of the Record of Appeal, the Appellant's own document filed by him in court) but when he (Samuel) failed to turn up at the Land Control Board, they then brought Joseph Kipkemoi Chepiyegon and the police also got involved and after back and forth he eventually got the consent granted. It is therefore preposterous, absurd and act of splitting selected hairs for the Appellant to advance at this appeal stage that it is the 2nd Respondent who offered 1 acre of land to the Appellant hived from Baringo/Sabatia/531 and that it is after the search and confirmation of ownership that he (the Appellant) did proceed with the sale.

For the 1st Respondent part, such argument was choreographed and it is not supported by the Appellant's pleadings and evidence on record. On the contrary, circumspect analysis of the evidence on record showed the Appellant as a person who did not conduct due diligence before purchasing land and secondly when his title was challenged as it was done, by the 1st Respondent, he could not explain or demonstrate the root of his title, only dangling title. That fatally crippled his case and reliance is once again placed in Supreme Court of Dina Management...

One more issue before we go and need to break it down here is the argument that the learned trial magistrate did not have jurisdiction to revoke the Appellant title herein and that jurisdiction belongs to the Judicial Review Court and here is the rebuttal grounded in law. The Court of Appeal in Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others (2017) eKLR...

That for all the above reasons, it is fair and correct to say that the learned trial magistrate properly directed her mind on the law and evidence and did not err in reaching her conclusion that the 1st Respondent case had been proven to the requisite standard of proof, on a balance of probability. In sum there is no fault of principle exhibited by the trial magistrate and neither was the trial court judgment perverse. For all the above reasons and in a nutshell the 1st Respondent prays that the Appeal herein be dismissed with costs.

The Appellant's argument that the proof required was that of beyond reasonable doubt was unsupported in law. At any rate the 1st Respondent's case before the trial court was



clear on record. It was one based on illegality, null and void. It was never about fraud and therefore in this appeal, the Appellant was framing and asking wrong questions and giving wrong answers which are not supported by the record. We urge the court to ignore those documents as their being introduced at this stage was not only unwarranted but gratuitous...

There is one troubling issue in this appeal and the Appellant has not bothered to explain and there is not even a mere scintilla of evidence on record to explain it and this is it, that the Appellant had allegedly purchased parcel of land known as Baringo/Sabatia-103/677 and Baringo/Sabatia 103/678 and yet in this appeal, he is advancing a claim for Land Reference Baringo/Sabatia-103/874. We hasten to add that here that there is absolutely no evidence showing the connections between what the Appellant allegedly purchased and what he is now claiming. There is no nexus, no paper trail between the two parcels of land. Totally nothing but only oral narrations which does not add up.

At any rate if there is any proof that the Appellant claim was really faulty and a nullity from the beginning is to purport to shift the parcels of land from Baringo/Sabatia-103/677 and Baringo/Sabatia-103/678 into the suit property herein Baringo/Sabatia-103/874 and one must ask and indeed a fair minded and informed observer would ask, why was that not firmed by a written sale agreement of land that satisfies Section 3(3) of the Law of Contract Act, where is the valid sale agreement to that effect? There is nothing to that effect and there is no paper trail to that effect. One cannot reconcile the sale agreement found at page 102, 103 and an acknowledgment at page 104 of the Record of Appeal and the suit land Land L.R No. Baringo/Sabatia-103/874 and it does not matter that there is a Land Control Board consent for L.R No. Baringo/Sabatia-103/874 somewhere and the real danger here is that the person purporting to apply for the Land Control Board consent is not the seller (vendor) of the land to Obadia Kipkurui Yator, making the whole issue an illegality, null and void ab initio...”

2nd and 3rd Respondents submissions

10. In their submissions dated 13th August 2025, the 2nd and 3rd respondents gave an overview of the cases urged by the appellant and themselves and identified the following as the issues for determination;
 - i. Whether the 2nd respondent is the owner of suit property referenced Baringo/Sabatia-103/874 and Baringo Sabatia-103/534 in which the suit property was hived from.
 - ii. Whether the 2nd respondent’s son referenced Samuel Chepyegon, had legal capacity to sell and whether sale of land contract entered was valid between the said 2nd respondent’s son and the 1st respondent.
 - iii. Whether the trial magistrate and the trial court had power to cancel a properly constituted title and in the contrary upheld a defective title in the face of record.
11. In respect of the issues identified herein above, they submit that the title held by the appellant was acquired through the proper channel/way in adherence to the law.
12. Claiming that the sale agreement relied on by the 1st respondents was entered into between the 1st respondent and the 2nd respondent’s son Samuel, without the consent, permission or authority of the 2nd respondent, the 2nd and the 3rd respondents submit that one cannot construe any implication in fact that there was authority to grant Samuel Chebiegon power to make a contract on behalf of the 2nd respondent.



13. According to the 2nd and 3rd respondents, the 2nd respondent's interest in the suit property, at the material time, was indefeasible. For that reason, the 2nd and the 3rd respondents submit that the learned trial magistrate did not have jurisdiction to revoke a properly constituted title.
14. The 2nd and the 3rd respondents further submit that the remedy of the 1st respondent lay in instituting criminal proceedings against Samuel.

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 and *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 2nd respondent (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 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 the knowledge of the 2nd respondent.
17. On 18th May 2015, long after 1st respondent had gained proprietary interest in the 3 acres sold to him, one of the sons of the 2nd respondent, Samuel Kipkoech Chebiargon, purportedly sold to the appellant (Obadiah Kipkurui Yator) his purported beneficial interest in the parcels of land known as Baringo/Sabatia-103/677 and Baringo/Sabatia/103-678 measuring 0.40ha and 0.028 hectares respectively.
18. It is noteworthy that during trial, the appellant did not demonstrate any nexus between the parcels of land he bought from the 2nd respondent's son. He only led evidence to the effect that the 2nd respondent's son, Samuel, failed to honour his contractual obligation to him leading to intervention by his brother, DW3 and his father, the 2nd respondent. Other than the sale agreement entered into between him and the 2nd respondent's son Samuel, he neither pleaded that he was offered another parcel of land by the 2nd respondent nor proved that fact.
19. In the absence of any evidence from the appellant adduced before the lower court capable of showing how the appellant ended up being registered as the owner of a parcel of land which is different from the parcels he purchased from the 2nd respondent's son Samuel, the learned trial magistrate cannot reasonably be faulted for determining that the appellant did not prove the root of his title.
20. The totality of the evidence adduced before the lower court shows that the portion of land sold to the appellant herein by the 2nd respondent's son Samuel, comprises a portion of the land that had already been sold to the 1st respondent by the 2nd respondent.
21. At the time the appellant purportedly purchased his portion of the suit property from the 2nd respondent's son Samuel, the property was registered in the name of the 2nd respondent and not the person who purportedly sold it to the appellant, Samuel. The person who purportedly sold the suit property to the appellant Samuel, declined to transfer the parcels of land sold to the appellant causing the appellant to seek the input of the police to compel the purported seller to transfer the parcels to him.



22. It is in the aforementioned circumstances, that the 2nd respondent caused the parcel he had earlier sold to the 1st respondent to wit Baringo/Sabatia-103/531 to be subdivided and the portions emanating therefrom to be transferred to the appellant.
23. Both the appellant and 1st respondent have erected homes on the suit property. The 1st respondent was the first to erect his structures/home in the suit property. The trial court visited the suit property and confirmed that fact.
24. Whilst the 2nd respondent in his testimony before the 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 in the lower court, I entertain no doubt that the 2nd respondent (who was at the material time the registered proprietor of the mother title, Baringo/Sabatia-103/280) did indeed sell 3 acres of land comprised in the mother title to the 1st respondent.
25. The claim by the appellant that the suit property was sold to the 1st respondent by a son of the 2nd respondent without the permission or authority of the 2nd respondent, even though supported by the testimony of the the buyer's wife, is nevertheless not supported by the totality of evidence adduced before the trial court.
26. The evidence adduced before the lower court comprised in the evidence of the buyer and the sale agreement executed between Isaiah Kibii Boswony and the 2nd respondent, among other pieces of evidence, shows that the son of the 2nd respondent, Samuel, who allegedly sold the suit property to the appellant was just but a witness to the sale agreement between the 2nd respondent and Isaiah Kibii Boswony.
27. Whereas the appellant in his evidence maintained that the portion he bought was vacant when he bought it, his conduct of buying it from a person who was not the registered owner says a lot about his innocence in buying the contested land.
28. The circumstances upon which the appellant got registered as the proprietor of the portion purportedly sold to him by Samuel, also shows or indicates that the transfer was not done by the 2nd respondent voluntarily. If the transfer was done voluntarily as the appellant and the 2nd respondent wants this court to believe, there would have been no need to seek the services of the police to compel Samuel, who in any event had no legal interest in the land in question, to transfer the land to the appellant.
29. The trial court, which had the advantage of observing the demeanor of the witnesses, did find the claim by the 2nd respondent 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 from that conclusion by the learned trial magistrate.
30. 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 land and fulfilment of the terms of the sale agreement, the 1st respondent was given possession and began utilizing the land with knowledge of the 2nd respondent.
31. The fact that the 1st respondent was using the suit property long before the appellant got his interest in it, is borne out in the testimony of DW5, Joseph Kipkemoi Chepyegon, who informed the court that his brother, Samuel, told him that he had leased the land to the 1st respondent.
32. 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 property in the name of the 2nd respondent, pursuant to the sale agreement



executed between him and the 2nd respondent, the learned trial magistrate determined that the 2nd respondent held the suit property in trust for the 1st respondent.

33. The question before this court to answer 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 2nd respondent, taken possession of it and had been in use of it for a long period of time without interference by the 2nd respondent.

34. Faced with an appeal whose facts were more or less similar to those of the instant appeal, the Court of Appeal in the case of *Willy Kimutai Kitilit v Michael Kibet* (2018)eKLR, 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.”

35. 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 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.”

36. 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.”

37. Having determined that the totality of the evidence adduced before the lower court shows that the 2nd respondent sold 3 acres 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 2nd respondent before the 2nd respondent later on caused the portion he sold to the 1st respondent to be registered in his name and later to be subdivided and the subdivisions emanating therefrom to be transferred to the appellant and the 3rd respondent, despite the fact that the suit property was never transferred and registered in the name of the 1st respondent (as indicated/alluded in the decree executed in respect of the lower court’s judgment), I do find that as at the time the suit property was registered in the name of the 2nd respondent, the 2nd respondent held it 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.



38. The upshot of the foregoing is that the appeal by the appellant, Obadiah Kipkurui Yator, has no merit.
39. Consequently, I dismiss it with costs to the 1st respondent, who opposed it.
40. Orders accordingly.

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

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Mureithi for the Appellant

Mr Kibet holding brief for Mr Arusei for the 1st Respondent

Mr Sirma holding brief for Mr Kipkenei for the 2nd Respondent

Court Assistant; Tracy

