

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC APPEAL NO. E034 OF 2024

MAUREEN **KARIUKO**
NJOKA.....APPELLANT
VERSUS
MARGERY NGITHI ITA.....1ST
RESPONDENT
MICAIAH JOHN NJAGI KANI.....2ND
RESPONDENT
GEORGE NYAGA NTHAKANIO.....3RD
RESPONDENT
HENRY KARIUKI MURAGE.....4TH
RESPONDENT

(Being an appeal from the Judgement of Hon. S.K Ngii PM delivered on 19th July 2024 in Siakago MCELC Case No. E047 of 2021)

JUDGMENT

1. This appeal arises from and is a consolidation of ELC Appeal No. E035 of 2024, Micaiah John Njagi and Henry Kariuki Muraya versus Margery Ngithi Ita, together with the present appeal between Maureen Kariuko Njoka

- versus Margery Ngithi Ita, Micaiah John Njagi Kani, George Nyaga Nthakanio and Henry Kariuki Muraya.
2. The Appellants herein, namely Micaiah John Njagi Kani, Maureen Kariuko Njoka, and Henry Kariuki Muraya, were the 1st, 3rd, and 4th Defendants respectively in the trial court, while George Nyaga Nthakanio was the 2nd Defendant. The 1st Respondent Margery Ngithi Ita, was the Plaintiff in the lower court proceedings.
 3. The Plaintiff and the 1st Defendant are husband and wife. The Plaintiff, had sued the Defendants vide a Complaint dated 21/06/2021 wherein she had sought: A declaration that the sub-division, sale and transfer of land parcel No. Mbeti/Gachoka/6601, 6602, 3520, 8226, 8227, 8356 and 8357 by the 1st Defendant to the 2nd, 3rd and 4th Defendants was null and void; she sought that an order be issued to the Land Registrar Mbeere South to cancel the names of the Defendants on title No's Mbeti/Gachoka/6601, 8226, 8227,8356 and 8357 and have them registered in both names of the Plaintiff and 1st defendant as co-owners.
 4. It was the Plaintiff's contention that she was married to the 1st Defendant in the year 1997 and have been blessed with one son and two daughters who are school going. She averred that together with her husband, they settled on their land parcel 6601 and cultivated miraa on land parcel 6602. She stated that they later relocated their

home to land parcel No. 3520, where they currently reside. However, in the year 2018, the 1st Defendant moved out and went to live separately, later relocating to his parents' home in Ishiara. She further stated that he began threatening to sell all the three parcels of land, prompting the Plaintiff to lodge cautions against the said parcels.

5. She averred that she learnt in the year 2021, that the cautions had been lifted and land parcel 6601 was transferred to the 4th Defendant and later to the 2nd Defendant. That land parcel 6602 had been subdivided into parcels 8826 which was transferred to the 3rd Defendant, and 8227 which was transferred to the 2nd Defendant. She stated further, that she also discovered that land parcel 3520 had also been subdivided into parcels 8356 which was transferred to the 4th Defendant, and 8357 which remained in the name of the 1st Defendant.
6. The plaintiff stated that they had cultivated miraa cash crop on land parcel 1602 and therefore she was left with nothing to survive on, or educate her school going children as the 2nd and 3rd Defendants had been harvesting the Miraa. She averred that she had acquired an interest in the said parcels of land by virtue of her marriage and the developments she had undertaken thereon over a period of about 24 years since her

marriage to the 1st Defendant, thereby rendering them co-owners of the said parcels. She maintained that the suit lands were secretly sold, fraudulently and unlawfully transferred and registered in the names of the Defendants as she did not give consent to the sale. She averred that she also discovered that there was no proper Land Control Board consent obtained to sub divide and transfer the said parcels of land. She set out the particulars of fraud against the 1st Defendant.

7. The 1st defendant in a defence dated 31/10/2023 admitted that he was married to the Plaintiff but stated that their marriage had irretrievably broken down due to the adulterous nature of the Plaintiff, violence and disrespect. He averred that he did not engage in any form of fraud since he was the registered proprietor of the suit lands and that he sold the suit lands for value and was fully paid the purchase price. He averred that land parcels 6601 and 6602 were a gift from his father and that their matrimonial home was on land parcel 8357 which he was willing to transfer to the Plaintiff and their children. He denied that the Plaintiff had made any developments on the suit lands. He averred that the Plaintiff was not destitute as he had transferred to her land parcel Mbeti/Gachoka/8780 and bought for her Mbeti/Gachuriri/3810.
8. The 2nd Defendant in a defence dated 23/07/2021 averred that land parcel 6601 was lawfully transferred to him by

the 4th Defendant and legally registered in his name and that he was the one in occupation and possession of the said land where he cultivates miraa, miguka and maize. He stated that land parcel 8227 was also lawfully transferred to him and that he had extensively developed the two parcels including sinking a borehole. He averred that he was a bonafide purchaser for value without notice of the Plaintiffs claim and that he had no knowledge of the alleged fraud.

9. The 3rd Defendant in a defence dated 05/07/2022 averred that she conducted a search on the property transferred to her and the same was free of encumbrances and that on the strength of the official search, she acquired her title for valuable consideration. She maintained that the transfer of the property to her was legal and procedural.
10. The 4th Defendant in a defence dated 31/10/2023 denied the Plaintiff's claims and averred that he bought land parcel 8227 free of any encumbrances and proceeded to sell the same for value to the 2nd Defendant.
11. When the former suit came up for directions, the parties agreed to proceed with the hearing by way of viva voce evidence.
12. PW1 Margery Ngithi Ita, adopted her witness statement dated 21/06/2021 as her evidence in chief. She testified that she currently lives separately with her husband whom she got married to in March 1997. She averred that land

parcels 6601 and 6602 were owned by her parents in law and that the said parcels were gifted to them after marriage. She averred that land parcel 3520 was bought from their grandfather and that she contributed Kshs. 90,000/- for the purchase which she paid in cash in instalments. She denied that the land was given to the 1st Defendant by his grandfather and averred that they used to raise income from the land to feed their children. She stated that she was not informed when the cautions on the suit lands were removed and that she currently lives in a rental house with her children.

13. On cross examination, she stated that their matrimonial home was on parcel 3520 and denied that she had been given any land by the 1st Defendant. On re-examination, she stated that all the transfers happened during subsistence of their marriage and that none of the buyers sought clarification from her. She averred that the 1st Defendant did not inform her before selling the suit lands and that she left the matrimonial home because she felt threatened by those who were claiming the properties.
14. She produced in evidence copies of green cards for land parcels 6601, 6602 and 3520, copies of official searches for land parcels 6601, 8226, 8227, 8356 and 8357 and a copy of a marriage certificate.
15. DW1, George Nyaga Nthakanio adopted his written statement dated 23/07/2021 as his evidence in chief. He

testified that the Plaintiff was not known to him and that the 4th Defendant was the one who sold to him land parcels 8227 and 6601. He stated that he was the one in possession of the said parcels of land. He denied that he colluded with the Plaintiff's husband to defraud the Plaintiff and averred that he only got to know the 1st Defendant in court.

16. On cross examination, he stated that he did not find the Plaintiff on land parcel 8227 and that the land was vacant at the time. He averred he enquired from neighbors of the said land who informed him that the land was on sale. On re-examination he stated that he exercised due diligence in purchasing the suit lands and that the seller had a title deed.
17. He produced in evidence a copy of sale agreement for land parcels 8227 and 6601, copies of the title deeds for land parcels 8227 and 6601 and a copy of a mutation form for land parcel 6602.
18. DW2 Maureen Kariuko Muraya, adopted her written statement dated 05/07/2022 as her evidence in chief. She stated that she was in possession of land parcel 8226 which she bought from the registered owner and that no one was in occupation at the time of sale. She averred that the land was vacant and bushy. On cross examination, she stated that she learnt that the said land was on sale from her brother who took her to the owner

for negotiations. That the agreement for sale was drawn and executed in Embu town before a lawyer she could not recall. She averred that she bought the land at Kshs. 650,000/- and that she does not live on the land but farms thereon.

19. She stated that she enquired from neighbors who told her that the land belonged to the 1st Defendant who informed her that he had gotten the land from his father as a gift. She maintained that there was no one in occupation of the land at the time. On re-examination, she stated that the seller and his father satisfied her that they owned the land.
20. She produced in evidence a copy of a search for land parcel 6602, a copy of a sale agreement for land parcel 6602 and a copy of a title deed for the said land.
21. DW3 Micaiah John Njagi, adopted his written statement filed on 18/08/2022 as his evidence in chief. He stated that land parcels 6601 and 6602 were given to him by his father who had inherited it from his grandfather. He averred that he did not recall when the said parcels of land were given to him but it was a long time ago when he was a bachelor. He averred that parcel No. 3520 was also given to him by his grandfather because he was named after him and that it was not true that they bought the land from him. He stated that he was the one who applied for the removal of the cautions and that the Plaintiff was

- summoned by the Land Registrar but failed to appear prompting the Registrar to remove the cautions.
22. He stated further, that he had built on land parcel 3520 which was subsequently subdivided into two and that the home on the said land is registered in his name. He denied that the Plaintiff developed the land and averred that he was the one who planted the miraa. He stated that land parcel 8780 was subdivided into two by the Plaintiff and that she returned a $\frac{1}{4}$ acre and gave the other $\frac{1}{4}$ acre to the man she is cohabiting with. He maintained that he sold the suit lands procedurally and there was no fraud involved. He also stated that he intended to transfer land parcel 8357 to the Plaintiff but she did not co-operate or attend the Land Control Board.
23. On cross-examination, he stated that he was still married to the Plaintiff and had not divorced her, and that only two of the children were biologically his, excluding the last-born child. He averred that the parcels of land involved were not acquired during the subsistence of their marriage and averred that the Plaintiff is now married to someone else whom they live together.
24. He produced in evidence a photograph of the Plaintiff and the man she is currently living with, an affidavit sworn by Davis Kani Karige, copy of Land Control Board Forms duly filled and copies official searches.

25. DW4 Henry Kariuki Muraya, adopted his written statement dated 31/10/2023 as his evidence in chief. He testified that he was the 1st Defendants brother in law and that he had sold land parcel 8227 and 6601 to the 2nd Defendant having bought them from the 1st Defendant. He maintained that he bought the said parcels of land procedurally and that the titles were free of any encumbrances at the time of purchase. He averred that the said parcels of land were vacant at the time of purchase and resale. On cross examination, he stated that land parcel 6601 had miraa growing thereon and a borehole which has been abandoned. He stated that he did not involve the 1st Defendants wife as he did not know her.

26. He produced in evidence a copy of the title deed for land parcel 6601, a sale agreement for land parcel 8227 and 6601.

27. DW5 Davis Kani Karige adopted his written statement dated 16/08/2022 as his evidence in chief. He stated that the 1st Defendant was his son and the 4th Defendant his son in law. He averred that the Plaintiff was his son's wife but for 8 years now he did not have any knowledge of her whereabouts. He stated that he gave land parcels 6601 and 6602 to the 1st Defendant and that they were registered in the 1st Defendant's name in 1997 but prior to that, he was the one utilizing them before getting

married. He averred that the original land was bought by his father who gave them their respective shares. He denied that he gave the two land parcels to the Plaintiff and the 1st defendant jointly. He averred that land parcel 3520 was given to the 1st Defendant by his father as his namesake.

28. On cross examination, he stated that the Plaintiff and the 1st Defendant had married each other at the time of transfer of the parcels of land to the 1st Defendants name. On re-examination, he stated that he gave the parcels of land in question to the 1st Defendant before he got married and that it was only the titles that were issued after marriage.

29. The trial court, in its judgment, found that the Plaintiff had proved her case and that the suit properties were matrimonial properties, and therefore the spousal consent of the Plaintiff was required before the suit lands could be alienated. The court also found that the Defendants had not proved that they were innocent purchasers for value without notice. The court found that the sale and transfer of the suit lands to the Defendants was null and void and ordered that the resultant subdivisions of the said lands be cancelled and reverted to the name of the 1st Defendant. The court also declared that the 1st Defendant was registered as the proprietor of the original land

parcels, being parcels 6601, 6602 and 3520, in trust for the Plaintiff.

30. The Appellants were aggrieved with the impugned decision and preferred the present Appeals on various grounds. In the present appeal the 3rd Defendants grounds of appeal were as follows:

1. That the learned magistrate erred in law and fact by stating that a transaction that is illegal is void ab initio and a nullity and in his view, it does not matter whether the 3rd Defendant had notice of the Plaintiff's claim or not.
2. That the learned magistrate erred in law and fact by stating that the 1st defendant could not pass good title to the 3rd Defendant in parcel No. Mbeti/Gachoka/8226.
3. That the learned magistrate erred in law and fact by stating that the transactions resulting to the alienation of the suit properties were a nullity.
4. That the learned magistrate misdirected himself in stating that the registration of the 3rd Defendant as the proprietor of Mbeti/Gachoka/8226 cannot be allowed to stand.
5. That the learned magistrate erred in law and fact by stating that the Plaintiff is entitled to reliefs to the extent of cancellation of the registration and the title in the name of the 3rd Defendant and reversion of the

suit properties to their original titles as they were prior to the illegal subdivision and transfer to the defendants.

6. That the learned magistrate erred in law and fact in determining and declaring that the subdivision of Land Parcel No. Mbeti/Gachoka/6602 into parcels No. Mbeti/Gachoka/8226 and Mbeti/Gachoka/8227 and their subsequent sale to the 3rd and 2nd Defendants respectively was null and void.
 7. That the learned magistrate erred in law and fact in issuing an order requiring the land registrar of Mbeere South to cancel the title deed for Mbeti/Gachoka/8226 and revert the registration to the original title Land Parcel No. Mbeti/Gachoka/6602 in the name of the 1st Defendant.
 8. That the learned magistrate erred in law and fact in issuing orders that each party bear their own costs.
31. In ELC Appeal No. E035 of 2024, the 1st and 4th Defendants grounds of appeal were as follows:
1. That the learned Magistrate erred in law and fact by disregarding crucial evidence from the 1st Defendant's father that he had bequeathed land parcels 6601 and 6602 as a gift not intended to be held in trust for the Plaintiff.

2. That the learned Magistrate erred in law and fact by ignoring the express provisions of the law on status of a gift in a matrimonial setting.
3. That the learned Magistrate erred in law by determining an issue to do with the doctrine of trust in a suit instituted as a regular civil suit and also when he did not have pecuniary jurisdiction to determine the same.
4. That the learned trial Magistrate misdirected himself in both law and fact by finding that the 1st Defendant is registered as the proprietor of land parcels No. Mbeti/Gachoka/6601, 6602, and 3520 in trust for the Plaintiff while he had no jurisdiction to determine trust over a land worth that amount and in a suit instituted by way of plaint.
5. The learned trial Magistrate erred in both law and fact by ordering the cancellation of the title deeds issued to the 1st and 4th Defendants in respect to parcels no. 8356 and 8357.
6. That the learned trial Magistrate erred in both law and fact by finding that the subdivision of land parcel No. Mbeti/Gachoka/3520 into parcels No. 8356 and 8357 and their subsequent sale and transfer to the 4th and 1st Defendants was null and void.
7. The learned trial Magistrate erred in law and fact by disregarding the appellant's averments as to the

parcels of land transferred by the 1st Defendant to the Plaintiff.

8. That the learned trial Magistrate erred in law and fact by failing to analyze the evidence adduced by both parties critically, hence giving a judgment which was against the weight of the evidence adduced and the applicable law.
32. The Appellants sought to have the appeal allowed, the Judgment of the trial Court set aside and substituted with an order dismissing the Plaintiffs case.
33. When the appeal came up for directions, the parties agreed to canvass the appeal by way of written submissions. The Plaintiff filed submissions dated 09/06/2025 through the firm of Mogusu and Company Advocates. She submitted that the trial Court was right in finding that the failure to obtain the Plaintiff's consent rendered the whole transaction illegal and therefore null and void. She averred that the trial Court was also right in finding that the 1st Defendant could not pass good title to the Defendants and that the suit lands were matrimonial properties since they were acquired during the subsistence of the marriage.
34. She argued that the 1st Defendant did not conduct due diligence as she never said that she made any inquiry from the family members or from the lands office as she would have found out the origin of land parcel 8226. That

she would have also seen a caution which had been removed a month earlier and which had been registered by the Plaintiff and that she would have found out who the cautioner was and why they had cautioned the land. She averred that the 3rd Defendant was unable to say which neighbors she made enquiries from.

35. The 1st Defendant filed submissions dated 18/06/2025 through the firm of Mugambi Njeru and Company Advocates. They submitted that the trial Court erred in finding that land parcels 6601, 6602 and 3520 were matrimonial property and hence required spousal consent before being sold to the 2nd, 3rd and 4th Defendants. He submitted that properties registered in his names did not automatically grant the Plaintiff a share of the property and the Plaintiff had to prove the extent of her monetary and non-monetary contribution towards the purchase, improvement or development of the property registered in the 1st Defendants name in accordance with section 7 of the Matrimonial Property Act. He maintained that the Plaintiff did not prove any contribution towards the acquisition of the suit lands such as purchase receipts.

36. He submitted that the matrimonial home is situated on land parcel 8357 and which he was ready to transfer to the Plaintiff and the children of their marriage. He averred that the Plaintiff did not disclose to the Court that the 1st Defendant had transferred to her land parcels 8780 and

bought for her land parcel Mbeti/Gachuriri/3810 during the subsistence of their marriage.

37. He submitted further that the trial Court erred in ordering the cancellation of titles to land parcel 8356 and 8357 which were the resultant subdivisions of land parcel 3520 which was registered in favour of the 1st Defendant having acquired it as a gift from his grandfather. He argued that he did not require spousal consent before selling the land as it did not amount to matrimonial property having acquired it by way of a gift. He urged that the appeal be allowed and the Judgement of the trial Court be set aside.

38. The 3rd Defendant filed submissions dated 28/05/2025 through the firm of Kamotho Njomo and Company Advocates. It was submitted that the lower Court erred both in law and fact in finding that land parcel 8226 was matrimonial property and hence required the consent of both spouses before it was sold to her. She averred that the land parcel 6602 from which land parcel 8226 was excised was given as a gift to the 1st Defendant by his father Mr. Davis Kani Karige. The Court was referred to the Affidavit by the said Davis Kani. The case of Christine Nekesa Wafula versus Janerose Sakina Nduguyu (2021) Eklr was cited where the Court held that the law does not deem every property acquired during marriage as matrimonial property.

39. It was submitted further that section 7 of the Matrimonial Property Act requires the Plaintiff to prove her contribution towards the acquisition of the matrimonial property and not just state she is entitled to the benefits in the suit properties solely for being a wife. It was submitted further that the 1st Respondent did not produce any evidence such as purchase receipts to prove that she made any monetary contribution towards the acquisition of land parcel 6602 or that she had been farming on the property nor did she prove that her matrimonial home is built in the suit property. The cases of MO versus AJA (Matrimonial Cause E008 of 2022)(2023) KEHC 21343 (KLR) (Family)(4 August 2023) (Judgement) which cited with the approval the case of PWK versus JKG (2015)Eklr and CWN versus PNK (Civil Case No. 36 of 2010(2023)KEHC 25661(KLR)(Civ)(17 October 2023) (Judgement) were cited to support that position.

40. It was further submitted that the 3rd Defendant secured a good title to land parcel 8226 since she conducted the requisite due diligence to ascertain if the vendor had an apparent valid title and paid the full purchase price to the said property in the amount of Kshs. 650,000/=. The 3rd Defendant averred that therefore, she should be declared a bona fide purchaser for value. She submitted that section 26 of the Land Registration Act provides that a certificate of title shall be held as conclusive evidence of

absolute proprietorship except on the ground of fraud or misrepresentation to which the person is proved to be a part of.

41. She submitted that no evidence was adduced to prove that the Appellant participated in any fraud or was part of a corrupt scheme. The case of ENM versus SMN & Another (2017) Eklr was cited which set out the factors to be considered in determining innocent purchasers for value. The 3rd Defendant argued that the trial Court went contrary to the provisions of section 80(2) of the Land Registration Act by ordering the cancellation of the title deed for land parcel 8226 when there was no evidence of an omission, fraud or mistake. The Court was urged to allow the appeal.
42. The 4th Defendant filed submission dated 18/06/2025 through the firm of Mugambi Njeru and Company Advocates. He submitted that he was a bona fide purchaser for value with no notice to any defect to land parcels 6601 and 8356 a resultant subdivision of parcel 3520. He submitted that he purchased the suit lands in good faith and exercised due diligence and that, at the time, the lands were registered in favour of the 1st Defendant and therefore he had no reason to believe that the said parcels of land were matrimonial property thus requiring the Plaintiff's consent for sale.

43. He averred that the trial Court erred in ordering the cancellation of the titles to the said parcels of land as he was an innocent purchaser for value with no notice to any defect therefore he acquired the said land parcels legally and his title was therefore indefeasible. He urged that the appeal be allowed.
44. The issue for determination is whether the appeal has merit.
45. It is not in dispute that the Plaintiff and the 1st Defendant are husband and wife having been married in the year 1997. The Plaintiff claims that suit land parcels 6601, 6602 subdivided into parcels 8826 and 8227 and parcels 3520 subdivided into parcels 8356 and 8357 and transferred to the 2nd, 3rd and 4th Defendants constituted matrimonial property and that the 1st Defendant unlawfully subdivided, sold, and transferred the same without her consent.
46. The trial court held that land parcels No. Mbeti/Gachoka/6601 and 6602 were acquired during the subsistence of the marriage between the Plaintiff and the 1st Defendant and, as such, constituted matrimonial property at the time of their subdivision and alienation by the 1st Defendant. The court observed that although there was evidence suggesting that the said parcels of land were gifted to the 1st Defendant by his father, DW5, the registration of the parcels in the name of the 1st

Defendant occurred on 20/07/2018 during the subsistence of the marriage. The court found that there was no proof that the parcels had been gifted to the 1st Defendant prior to the marriage, as alleged by DW5. Consequently, the court reasoned that legal title in the two parcels passed to the 1st Defendant upon registration which took place during the subsistence of their marriage.

47. With regard to land parcel No. Mbeti/Gachoka/3520, the trial court found that the Plaintiff's evidence that the land was purchased from the 1st Defendant's grandfather was corroborated by the green card produced in evidence. The green card indicated that the land was registered in the name of the 1st Defendant on 16/08/2012 for a consideration of Kshs. 300,000/= and a title deed issued on 23/08/2012. The court therefore rejected the 1st Defendant's claim that the property had been gifted to him and found instead that the property was acquired during the subsistence of the marriage. Accordingly, the court held that the parcel also constituted matrimonial property as envisaged under Section 6 of the Matrimonial Property Act which provides that:

“For the purposes of this Act, matrimonial property means—

- a) the matrimonial home or homes;
- b) household goods and effects in the matrimonial home or homes; or

c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”

48. The trial court further held that even in the absence of express joint ownership, the Plaintiff’s interest in the suit properties was protected under Section 14 of the Matrimonial Property Act, 2013 which provides that:

“Where matrimonial property is acquired during marriage—

a) in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and

b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

49. The court went on to find that, pursuant to Section 12(1) of the Matrimonial Property Act, the 1st Defendant was required to obtain the consent of the Plaintiff prior to subdividing and alienating the suit properties, given that the parties were in a monogamous marriage. Section 12 (1) provides that:

“An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated

in any form, whether by way of sale, gift, lease, mortgage or otherwise.”

50. On the issue of whether the 2nd, 3rd, and 4th Defendants were innocent purchasers for value, the trial court found that the requirement for spousal consent under Section 12 of the Matrimonial Property Act is couched in mandatory terms. As such, the failure by the 1st Defendant to obtain the Plaintiff’s consent rendered the impugned transactions illegal. The court further observed that spousal rights over matrimonial property are recognized as overriding interests under Section 28 of the Land Registration Act.

51. The court therefore held that a transaction that is illegal is void ab initio and a nullity, and that it is immaterial whether the 2nd, 3rd, and 4th Defendants had notice of the Plaintiff’s interest or not. In reaching this conclusion, the court was guided by the decision in *Marteve Guest House Limited v Njenga & 3 Others* (2022) KECA 539 (KLR), which cited with approval *Wambui v Mwangi & 3 Others* (2021) KECA 144 (KLR), where it was held that no court ought to enforce an illegal contract or obligations arising from an illegal transaction once the illegality is brought to its attention.

52. Having carefully reviewed the record, the evidence adduced, and the applicable law, I find no basis to fault the findings of the trial court. I agree with the trial court’s determination that the suit properties constituted

matrimonial property and that the 1st Defendant lacked the legal capacity to alienate the same without the Plaintiff's consent.

53. Accordingly, I am satisfied that the 1st Defendant could not pass a valid title to the 3rd and 4th Defendants in parcels 8226 and 8356 and consequently the 4th defendant did not acquire good title in parcel 8227 and 6601 and therefore could not pass it to the 2nd defendant. Further, I agree with the findings of the trial court that the defence of a bona fide purchaser for value without notice cannot avail the said Defendants in the circumstances of this case. This is because the transactions giving rise to their titles were tainted with illegality, having been undertaken without the requisite spousal consent, and were therefore null and void ab initio.

54. Consequently, the judgement of the trial court is hereby upheld in its entirety.

55. Each party shall bear their own costs of appeal.

DATED, DELIVERED AND SIGNED AT EMBU THIS 09TH DAY OF APRIL, 2026.

HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. M/S Nyasikei H/B Njomo for the Appellant in ELCLA E035/2024

2. Mr. Kiplimo H/B for Mugambi Njeru for the Appellant in
E035/2024

3. Diana Kemboi C/A