



**Mbaka v Ontiti (Environment and Land Appeal E031 of 2025)
[2026] KEELC 2637 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2637 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E031 OF 2025**

MD MWANGI, J

APRIL 30, 2026

BETWEEN

STEPHEN MICHIRA MBAKA APPELLANT

AND

JACKLINE ONTITI RESPONDENT

(Being an appeal of the judgement, decree and orders of the Magistrate's Court at Ngong delivered and made on the 8th day of May 2025 by Hon. Charles Ariba Kutwa in MCELC Case No. E036 of 2021 Stephen Michira Mbaka Versus Jackline Ontiti)

JUDGMENT

Introduction and Background

1. This is an appeal arising from the judgment and decree of the Magistrate's Court at Ngong, delivered on the 8th day of May 2025 by Hon. Charles Ariba Kutwa in MCELC Case No. E036 of 2021.
2. In the proceedings before the lower court, the Appellant (then Plaintiff) instituted a suit against the Respondent (then Defendant) seeking the following specific orders:
 - a. A permanent injunction.
 - b. A declaration that he is the owner of the suit land.
 - c. Damages and costs.
3. The Appellant's claim was predicated on the assertion that he purchased land parcel Kajiado/Ntashart/759, measuring 0.81 Ha, from the late Barnabas Gabuna Ariga on 22nd April 2014. He contended that he was the beneficial owner of the suit property having completed payment by installments by March 2019.



4. The Respondent contested the claim, averring that she was bequeathed the suit land by the deceased in a will dated 17th July 2018. She further maintained that the land remained registered in the name of the deceased at the time of his death in December 2020.
5. In dismissing the Appellant's suit, the trial court found that the sale agreements produced in evidence were undated, unexecuted, and unwitnessed. The court held that these documents failed to meet the mandatory legal threshold for the disposition of an interest in land as prescribed under Section 3(3) of the Law of Contract Act and Section 38 of the Land Act. Consequently, the trial magistrate dismissed the suit with costs.
6. Dissatisfied with the decision, the Appellant moved this Court through a Memorandum of Appeal dated 22nd May 2025 . The grounds of appeal as set out in the Memorandum are as follows:
 1. The Learned Trial Magistrate erred in law and in fact by failing to properly evaluate, weigh and appreciate the evidence on record and delivered Judgment that was contrary to and against the weight of evidence on record.
 2. That the Learned Trial Magistrate erred in law by failing to have due regard, take into account and appreciate the substantive legal issues of law and fact raised by the Appellant/Plaintiff during the hearing of the suit.
 3. That the Learned Trial Magistrate erred in law and fact in finding that there was no evidence of parties entering into a sale agreement for the suit property while the Appellant herein presented evidence and he had paid the consideration for the suit property.
 4. That the Learned Trial Magistrate erred in law by failing to reach a determination on all the issues placed before the Court.
 5. That the Learned Trial Magistrate erred in law by selectively applying the provisions of section 3(3) of the Law of Contract, and unduly failed to appreciate the proviso on subsection 4 on the creation of a resulting, implied or constructive trust, which he did not consider in his judgment whatsoever.
 6. That the Learned Trial Magistrate failed to appreciate that Courts are Courts of law and Courts of Equity and to invoke the principles of equity in the determination of the dispute therefore allowing for unjust enrichment.
 7. That the Learned Trial Magistrate erred in law and in fact by not requiring the alleged will on which the Defendant's bequest is allegedly made to be presented as evidence and proved.
 8. That the Learned Trial Magistrate erred in law and in fact by failing to appreciate and distinguish the substantive issues of law and fact raised in the submissions, authorities and other documents on record.
 9. That in all circumstances of the case, the Learned Trial Magistrate failed to render justice to the Appellant.
 10. The Learned Trial Magistrate wholly misapprehended and misapplied and or misunderstood the law applicable to the dispute and the evidence rendered thus rendering a Judgment that left the issues raised outstanding and unresolved.
7. The Appellant now prays that this Court sets aside the subordinate court's judgment and decree and enters judgment in his favor as sought in the original Plaintiff. He too prays for costs.



Analysis of Submissions

Appellant's Submissions

8. The Appellant, through the firm of L. Maobe & Co. Advocates, filed written submissions dated 9th December 2025 in support of the appeal.
9. The Appellant begins by reminding this Court of its mandate as a first appellate court, noting that under section 78 of the *Civil Procedure Act*, this court is enjoined to evaluate and examine the trial court's record and the evidence presented to arrive at its own independent conclusion. Relying on the precedent set in *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123, the Appellant emphasizes that an appeal of this nature is a retrial where the court must reconsider the evidence, evaluate it, and draw its own conclusions.
10. The Appellant faults the trial magistrate for failing to properly evaluate the evidence on record, particularly by neglecting to summarize and weigh the testimonies of all the witnesses before making a decision. It is argued that overwhelming evidence of a sale agreement existed, given that the Appellant had paid Kshs. 1,789,450 out of the agreed Kshs. 1,900,000 consideration by the time of the vendor's death. Furthermore, the Appellant notes that the late Barnabas Ariga had executed completion documents, including an application for Land Control Board consent, transfer forms in triplicate, and had handed over the original title deed, none of which were disputed by the defense. Draft sale agreements had also been exchanged, reviewed by the Appellant's advocate, and signed by the vendor prior to his demise, though they were pending attestation. Drawing on the Ugandan Supreme Court case of *JK Patel v Spear Motors Ltd*, the Appellant contends that a valid contract can be construed from the definite conduct of the parties even where formalization is incomplete.
11. The crux of the Appellant's legal argument is that the trial court erred by selectively applying section 3(3) of the *Law of Contract Act* while ignoring the equitable exceptions provided under subsection 4 regarding the creation of a resulting, implied, or constructive trust. The Appellant asserts that paying the purchase price and taking vacant possession, evidenced by fencing the land in 2015, created a constructive trust in his favor. To support this, the Appellant invokes Article 10(2)(b) of *the Constitution* of Kenya, which anchors equity as a binding national value. Additionally, the Appellant relies on sections 25 and 28 of the *Land Registration Act*, which recognize trusts, including customary trusts, as overriding interests that subject registered land to the rights of the beneficiary without need for them being noted in the register. The Appellant also cites section 38(2)(b) of the *Land Act*, which expressly exempts constructive trusts from the requirement that land disposition contracts be in writing.
12. This equitable position is buttressed by a robust line of jurisprudence. The Appellant relies on *Macharia Mwangi Maina and 87 others v Davidson Mwangi Kagiri* (2014) eKLR to demonstrate that receiving the purchase price and putting a purchaser in possession creates an enforceable constructive trust, rendering the lack of a written agreement immaterial. Further, citing *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, the Appellant argues that equitable doctrines of constructive trust and proprietary estoppel apply to and supersede strict statutory requirements, such as those of the *Land Control Act*, to conform with *the Constitution*. Addressing the trial court's finding on the lack of Land Control Board consent, the Appellant cites *Kaposhi v Maweu & 4 others* [2024] KEELC 1276 (KLR) to assert that the duty to procure consent lay with the vendor, who cannot benefit from his own deliberate fault. The Appellant also references *Isack M' Inanga Kiebia v Isaanya Theuri M' Lintari and another* (2018) eKLR to affirm trusts as overriding interests, and *George Mbiti Kiebia & another*



v Isaya Theuri M'lintari & another [2014] eKLR to establish that actual physical possession is not a mandatory prerequisite to prove a trust in land.

13. Finally, the Appellant criticizes the trial court for failing to interrogate the Respondent's primary defense, which was based on an unproved will. The Appellant points out that the Respondent only presented the first and last pages of the will and failed to present the specific clause allegedly bequeathing her the suit property or prove the bequest in a succession court. By ignoring this deficiency and failing to recognize the Appellant's equitable rights, the Appellant argues the trial court fostered unjust enrichment by allowing the deceased's estate to retain both the purchase price and the land. In concluding the submissions, the Appellant prays that the appeal be allowed, the lower court judgment be set aside, and costs of the appeal be awarded in their favor.

Respondent's Submissions

14. The Respondent, through the firm of Ngaira & Company Advocates, filed written submissions dated 22nd January 2026, vigorously defending the trial court's decision to dismiss the Appellant's suit. The Respondent contends that the trial magistrate was correct in finding that no valid contract for the sale of land existed between the Appellant and the late Barnabas Gabuna Ariga. The primary thrust of the Respondent's argument is anchored on the strict statutory requirements for the disposition of land. Relying on Section 3(3) of the [Law of Contract Act](#), the Respondent submits that any contract for the disposition of an interest in land must be in writing, signed by all parties thereto, and the signatures must be attested by witnesses present at the time of signing. The Respondent points out that the Appellant himself admitted during cross-examination that the purported sale agreements were neither signed by him nor witnessed, and that the transfer forms and Land Control Board consent forms remained unexecuted and unregistered.
15. To reinforce the necessity of strictly adhering to these statutory formalities, the Respondent relies on several key authorities. Citing the case of Kenya Airways Limited v Matterhorn Properties Limited [2014] eKLR, the Respondent argues that a contract for the sale of land that does not comply with the provisions of the [Law of Contract Act](#) is void and unenforceable. This position is further supported by the decision in National Bank of Kenya Limited v Pipeplastic Samkolit (K) Limited & Another [2001] eKLR, where the court held that parties are bound by the terms of their contract and that the court cannot rewrite a contract for the parties or ignore mandatory legal requirements. The Respondent further cites the case of Peter Mburu Echaria v Priscilla Njeri Echaria [2007] eKLR to emphasize that the court's primary role is to interpret and apply the law as it is written, particularly regarding the formal validity of legal instruments.
16. Regarding the Appellant's claim of a constructive trust, the Respondent submits that such a trust cannot arise in the absence of a clear and valid underlying agreement. The Respondent argues that the Appellant failed to prove the existence of a "common intention" or a "mutual agreement" which is a prerequisite for the invocation of equitable doctrines. Relying on the principles in Gissing v Gissing [1971] AC 886, the Respondent contends that a constructive trust cannot be used to bypass express statutory prohibitions or to validate a transaction that is fundamentally flawed under the [Law of Contract Act](#). The Respondent maintains that the Appellant's payment of money, in the absence of a signed agreement, does not automatically translate into a proprietary interest in land, citing the case of Janet Kariuki v Margaret Wanjiru [2012] eKLR, which held that part performance does not cure a contract that is void for non-compliance with Section 3(3).
17. Furthermore, the Respondent defends the trial magistrate's evaluation of the evidence, asserting that the court properly exercised its discretion in finding the Plaintiff's evidence insufficient. The



Respondent points out that the Appellant's own witness, the advocate who purportedly drafted the agreements, confirmed that the documents were never completed or witnessed.

18. The Respondent argues that the trial court was right to prioritize the sanctity of the Land Register and the legal requirements of the *Land Act* and *Land Registration Act* over the Appellant's unsupported claims of ownership. The Respondent also addresses the issue of the will, stating that since the land was still registered in the deceased's name at the time of his death, it formed part of his estate to be distributed to his beneficiaries, and the Appellant had no standing to challenge the Respondent's bequest without a valid claim of interest.
19. In conclusion, the Respondent submits that the appeal lacks merit as the trial magistrate's findings were well grounded in both law and fact. The Respondent cites the Court of Appeal decision in *Mbogo & Another v Shah* [1968] EA 93 to remind this court that an appellate court should not interfere with the exercise of discretion by a trial court unless it is satisfied that the judge misdirected himself in some matter and as a result arrived at a wrong decision.
20. The Respondent therefore prays that this Court dismisses the appeal with costs, thereby upholding the judgment and decree of the lower court.

Issues for Determination

21. Upon a careful review of the Memorandum of Appeal, the proceedings from the trial court, and the rival submissions filed by the parties, this Court finds that the following issues arise for determination:
 - i. Whether the present appeal is competent for want of compliance with the mandatory procedural requirements governing appeals to this Court.
 - ii. Whether the Learned Trial Magistrate erred in law and fact by failing to exhaustively evaluate the oral and documentary evidence of all eight witnesses.
 - iii. Whether there existed a valid and enforceable contract for the sale of land parcel Kajiado/Ntashart/759;
 - iv. Whether the Appellant's payment of the substantial purchase price and his possession of the property created a constructive trust;
 - v. Whether the Appellant is entitled to the reliefs sought in their Plaint; and
 - vi. What orders should issue in respect to the costs of the appeal and the suit before the trial court.

Analysis and Determination

i. Whether the present appeal is competent for want of compliance with the mandatory procedural requirements governing appeals to this Court

22. Before delving into the substantive merits of this appeal, this Court must first address a fundamental and dispositive issue, the competence of the appeal itself. This is not a mere technicality; it goes to the jurisdiction of this Court to entertain the appeal.
23. Upon perusal of the court record, this Court notes, with considerable concern, that there is no proper Record of Appeal filed by the Appellant.
24. Instead, what the Appellant has placed before this Court are scattered documents consisting of proceedings and the impugned judgment, wholly devoid of the structure, content, and certification required of a Record of Appeal under the law.



25. Order 42 Rule 13(4) of the Civil Procedure Rules is explicit and mandatory in its terms. It provides:

“Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—the memorandum of appeal; the pleadings; the notes of the trial magistrate made at the hearing; the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing; all affidavits, maps and other documents whatsoever put in evidence before the magistrate; the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal...”

26. The operative word in the rule is “shall”, which denotes a mandatory obligation. The Appellant has completely failed to comply with this provision. What has been presented cannot be construed as a Record of Appeal.

27. This Court must state, in the clearest possible terms, that filing proceedings and a judgment is not equivalent to filing a Record of Appeal. Such conduct denotes a fundamental misunderstanding of appellate procedure.

28. The Court of Appeal has consistently held that compliance with procedural requirements governing appeals is not optional. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR, the Supreme Court stated:

“Courts must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed.”

29. The Supreme Court of Kenya in the case of *Bwana -vs- Bonaya & 2 others* [2015] KESC 8 (KLR) pronounced itself on the issue as follows;

“Without a record of appeal a Court cannot determine the appeal cause before it. Thus, if the requisite bundle of documents is omitted, the appeal is incompetent and defective, for failing the requirements of the law. A Court cannot exercise its adjudicatory powers conferred by law, or *the Constitution*, where an appeal is incompetent. An incompetent appeal divests a Court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues.”

30. The Appellant has not merely fallen short of procedural compliance, he has altogether ignored the foundational requirements of instituting an appeal before this Court. This Court therefore finds that the appeal, as filed, is incompetent and liable to be struck out in limine.

31. However, in the interest of completeness, and noting that the parties have extensively addressed the merits, this Court shall nonetheless proceed to consider the substantive issues. This is done purely for the record and does not cure the fundamental defects identified above.

ii. Whether the Learned Trial Magistrate erred in law and fact by failing to exhaustively evaluate the oral and documentary evidence of all eight witnesses.

32. This being a first appeal, this Court is obligated to subject the entire evidence on record to a fresh, exhaustive, and independent re-evaluation, and thereafter arrive at its own conclusions. This duty has



been consistently reaffirmed in recent jurisprudence. In *Nguwa alias Kandili & another v Republic* [2025] KECA 2107 (KLR), the Court of Appeal restated the principle as follows:

“This being a first appeal, it is by way of a retrial and this Court, as the first appellate court, has a duty to re-evaluate, re-analyze and re-consider the evidence afresh and draw its own conclusions thereon.”

33. Further, in the same decision, the Court emphasized the standard expected of such re-evaluation by adopting the classical dictum in *Okeno v Republic* [1972] EA 32, stating:

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination... and to the appellate court’s own decision on the evidence.”

34. Similarly, in *Aseneka & 2 others v Republic* [2026] KEHC 1893 (KLR), the High Court reiterated that:

“This being a first appeal, this court has a legal duty to re-analyze, re-evaluate and re-assess the evidence adduced in the lower court so as to come up with its own conclusions...”

35. The same position was echoed in *Njiru & another v Republic* [2025] KECA 2328 (KLR), where the Court of Appeal emphasized that:

“The first appellate court must itself weigh conflicting evidence and draw its own conclusion... It is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s findings...”

36. Guided by the foregoing binding principles, this Court has carefully revisited the entire record of the trial court, including the oral testimonies and documentary exhibits.

37. Turning to the impugned judgment, the central complaint by the Appellant is that the Learned Trial Magistrate failed to comprehensively evaluate the evidence of the eight witnesses and instead confined the determination to the formal validity of the alleged sale agreements. Upon scrutiny, this Court finds merit in that contention.

38. While the trial court correctly identified the statutory requirements under Section 3(3) of the *Law of Contract Act*, its judgment does not demonstrate that it undertook a holistic evaluation of the evidentiary material placed before it. In particular, the judgment does not sufficiently engage with critical aspects of the Appellant’s case, including the evidence relating to payment of a substantial portion of the purchase price; the preparation and exchange of completion documents; the conduct of the parties preceding the death of the vendor; and the testimonies of the witnesses who spoke to these transactions.

39. A trial court is under a primary duty to analyze all the evidence, especially where it is conflicting, and to give reasons for preferring one version over another. This duty is not discharged by merely identifying a dispositive legal issue while leaving material factual issues unexplored. Indeed, failure to evaluate evidence may vitiate a judgment entirely.

40. In the present case, although the trial magistrate addressed the issue of formal compliance with statutory provisions, there is no clear demonstration that the court weighed the totality of the evidence or analyzed the probative value of the testimonies of all the witnesses.



41. This Court is mindful that a trial court is not required to reproduce every piece of evidence in its judgment. However, it must be apparent from the judgment that the court considered the substance of the evidence and applied its mind to the issues in controversy. Where such demonstration is lacking, an appellate court is entitled to interfere.
42. Accordingly, this Court holds that the Learned Trial Magistrate erred in failing to exhaustively evaluate the oral and documentary evidence presented. This finding justifies this Court's intervention and necessitates a fresh and independent determination of the remaining issues based on a complete re-evaluation of the evidence on record.

iii. Whether there existed a valid and enforceable contract for the sale of land parcel Kajiado/Ntashart/759 and; whether the Appellant's payment of the substantial purchase price and his possession of the property created a constructive trust

43. These two issues are so inextricably intertwined that they are appropriately considered together.
44. The starting point is the statutory framework governing contracts for the disposition of interests in land in Kenya. Section 3(3) of the *Law of Contract Act*, Cap 23 Laws of Kenya provides that no suit shall be brought upon a contract for the disposition of an interest in land unless, the contract upon which the suit is founded is in writing; is signed by all the parties thereto; and the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.
45. In addition to the above mandatory requirements, transactions involving agricultural land are further subject to the provisions of the *Land Control Act*, Cap 302 Laws of Kenya, which requires that any sale, transfer, lease, mortgage, exchange or other disposal of agricultural land must obtain consent of the Land Control Board. Section 6(1) of that Act is explicit in its terms, and failure to obtain such consent renders the transaction void for all purposes.
46. The Court of Appeal in *Kenya Airways Limited v Matterhorn Properties Limited* [2014] eKLR, reaffirmed the strict application of Section 3(3) of the *Law of Contract Act*, holding:

“A contract for the disposition of an interest in land which does not comply with Section 3(3) of the *Law of Contract Act* is not enforceable and no court of law can enforce it.”
47. Similarly, in *David Sirona Ole Tukai v Francis Arap Muge & 2 others* [2014] eKLR, the Court emphasized the mandatory nature of compliance with land statutes and declined to uphold interests arising from non-compliant transactions.
48. In the present case, the evidential record is unequivocal. The alleged sale agreements were undated, unsigned by the parties, and unwitnessed. More fundamentally, it is also not disputed that no Land Control Board consent was ever obtained in respect of the purported transaction concerning agricultural land. This omission is fatal under Section 6 of the *Land Control Act*, rendering the transaction void for all legal purposes.
49. In law, a void transaction is a nullity from inception. It is incapable of conferring rights, creating obligations, or forming the basis of enforcement. The legal effect is that no valid contract ever came into existence. The purported transaction was therefore null ab initio, and incapable of transferring or creating any proprietary interest in land.
50. The Appellant's invitation to this Court to invoke equitable doctrines must be examined against a fundamental principle of jurisprudence: equity follows the law. Equity cannot be used as an instrument to defeat clear statutory provisions or to validate that which Parliament has expressly declared void.



51. The Court of Appeal in *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, recognized the applicability of constructive trusts in land transactions, but did not derogate from the principle that equity operates within the framework of the law. Equally, in *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR, the Court underscored that legal certainty in land registration is paramount and cannot be undermined by informal arrangements.
52. The doctrine of constructive trust, as articulated in *Gissing v Gissing* [1971] AC 886, requires a clear common intention and conduct, giving rise to an equitable obligation. The doctrine is not and should not be used as a device for curing statutory non-compliance or reviving void transactions.
53. In the present case, there is no evidence of a legally cognizable or concluded agreement capable of founding such common intention. What exists is an incomplete, unexecuted arrangement which never attained legal validity due to failure to comply with both Section 3(3) of the [Law of Contract Act](#) and the mandatory requirement of Land Control Board consent under Section 6 of the [Land Control Act](#). That failure is not peripheral; it is foundational and fatal.
54. The Appellant's reliance on payment of purchase price and alleged possession does not alter the legal position. Payment, however substantial, cannot override statutory nullity. Possession, however long, cannot confer title where none exists in law. To hold otherwise would be to undermine the entire statutory regime governing land transactions.
55. The principle of indefeasibility of title further reinforces this position. Section 24(a) of the [Land Registration Act](#) provides:

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
56. Section 25(1) further provides:

“The rights of a proprietor... shall not be liable to be defeated except as provided in this Act.”
57. In *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR, the Court of Appeal emphasized that:

“The law is extremely protective of title and provides only two instances for challenge of title, namely fraud or misrepresentation to which the registered proprietor is proved to be a party.”
58. In this case, the suit property remained registered in the name of the deceased at the time of his death. No transfer was effected in favour of the Appellant. No overriding interest capable of defeating title has been established. There is no allegation of fraud or illegality attributable to the Respondent in relation to the registration of the property.
59. This Court must emphasize that equity cannot be invoked to circumvent statutory requirements. Equity follows the law; it does not supplant it. Where Parliament has declared a transaction void for failure to obtain Land Control Board consent and for non-compliance with mandatory contractual formalities, equity cannot breathe life into that which is legally dead.
60. Accordingly, this Court finds that no valid contract existed, no enforceable interest in land arose, and no constructive trust can be sustained in the circumstances of this case. The Learned Trial Magistrate was therefore correct in law and principle in dismissing the Appellant's claim.



61. For completeness, and without creating any enforceable right in land, this Court observes that the Appellant may, if so advised, pursue recovery of any monies allegedly paid to the deceased under a separate cause of action founded on restitution or unjust enrichment. Such a claim would not be premised on any proprietary interest in land, but purely on recovery of money had and received. That, however, lies outside the scope of the present proceedings.

iv. Whether the Appellant is entitled to the reliefs sought in their Pleint.

62. Having found that no valid and enforceable contract for the sale of land existed, that no equitable proprietary interest arose in favour of the Appellant, and that the transaction was void ab initio for failure to comply with the mandatory provisions of Section 3(3) of the *Law of Contract Act* as well as Section 6 of the *Land Control Act* for want of Land Control Board consent, the remaining issue is whether the Appellant is entitled to the reliefs sought.

63. The reliefs sought by the Appellant in the subordinate court were principally for a declaration of ownership of the suit property, a permanent injunction, damages, and costs. Each of these remedies is predicated upon the existence of a legally recognizable proprietary interest in the suit land.

64. The law is well settled that declaratory and injunctive reliefs in land matters can only issue where a claimant demonstrates a valid legal or equitable interest in the subject property. In the absence of such an interest, the court cannot grant remedies whose foundation has not been established.

65. In *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR, the Court of Appeal emphasized the sanctity of title under the *Land Registration Act* and held:

“The law is extremely protective of title and provides only two instances for challenge of title, namely fraud or misrepresentation to which the person is proved to be a party.”

66. In the present case, the Appellant has not demonstrated any legal or equitable proprietary interest capable of defeating the Respondent’s claim derived from the estate of the deceased as the registered proprietor. No fraud, misrepresentation, or illegality has been pleaded or proved against the Respondent in the manner contemplated under the law.

67. Further, Section 24(a) of the *Land Registration Act* is categorical that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. Section 25(1) of the same Act reinforces this position by providing that such rights of a registered proprietor are not to be defeated except as provided in the Act.

68. In light of the foregoing, the Respondent, being a beneficiary of the estate of the deceased registered proprietor, cannot be divested of rights that have not been lawfully transferred or impeached in accordance with the law.

69. This Court is further guided by the principle that a court of law cannot grant reliefs that are not anchored in a legally cognizable cause of action. As the Court of Appeal stated in *Kenya Airways Limited v Matterhorn Properties Limited* [2014] eKLR:

“A court of law cannot enforce what is in law unenforceable.”

70. The Appellant’s claim for declaration of ownership and injunctive relief is therefore unsustainable in law, as it is founded on a transaction that failed to meet the mandatory statutory thresholds and is therefore void.



71. Similarly, the claim for damages cannot stand in the absence of a valid underlying contract or actionable wrong. Damages in land transactions are not awarded in vacuo; they must be anchored in either breach of a valid contract or a tortious wrong, none of which has been established in this case.
72. Accordingly, this Court finds that the Appellant has failed to prove any entitlement to the reliefs sought either in the plaint or in this appeal. The Learned Trial Magistrate cannot therefore be faulted for dismissing the suit in its entirety.
73. Finally on the issue of costs, the Supreme in its decision in *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR) is instructive on that aspect. The court held that;

“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.”

74. In this case since the appeal fails, the costs will follow the event.
75. Consequently, the appeal is hereby dismissed in its entirety with costs to the Respondent both in this Court and in the subordinate court.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL, 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Maobe for the Appellant

Ms. Khisa for the Respondent

Court Assistant: Alex

M.D. MWANGI

JUDGE

