

**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT KILGORIS**  
**ELCA E010 OF 2024**

**JOHN MEKUYIAN NONGOBOI.....**  
**.....APPELLANT**

**VERSUS**

**JOSEPH KILINGAT & 3 OTHERS.....**  
**RESPONDENTS**

**JUDGMENT**

1. Being dissatisfied by the judgment and decree of Hon. W.C Waswa (SRM) delivered on 22<sup>nd</sup> day of March 2024 in Kilgoris SPM ELC No. E040/2021 the Appellant John Mekuyian Nongoboi vide the Memorandum of Appeal dated 24<sup>th</sup> of March 2025 penned 6 grounds of Appeal.
2. The 6 grounds of Appeal are as follows; -
  - (i) The Learned Trial Magistrate failed to cumulatively and exhaustively evaluate the entire evidence on record and hence failed to capture and decipher the salient issues and/or features of the suit before him and thus arrived an Erroneous conclusion, contrary to and in contradiction of the evidence adduced.
  - (ii) The Learned Trial Magistrate erred in fact and in law by finding that the 1<sup>st</sup> Respondent managed to prove the averments contained in the Plain on a balance of probabilities thus merits the issuance of the orders prayed for.
  - (iii) The Learned Trial Magistrate erred in fact and law in finding that there was indeed a valid transfer through objection proceedings that occurred between the Appellant herein and the 1<sup>st</sup> Respondent herein on the 25<sup>th</sup> day of April 2014, when the said

transfer was done unprocedurally without the consent of the Appellant's spouse who was DW2 in the proceedings.

- (iv) That the Learned Trial Magistrate hence arrived at a slanted and/or erroneous judgment, based on the failure to appreciate and/or discern the defence by and/or at the instance of the Appellant vide his testimony.
  - (v) The Learned Trial Magistrate erred in law and fact in disregarding evidence adduced by the Appellant on his defence and the invalidity of the alleged transfer of the sit property to the 1<sup>st</sup> Respondent herein.
  - (vi) The judgment of the Learned Trial Magistrate does not capture the issues for determination, the determination thereof and the reasons for such determination, consequently, the judgment of the Learned Trial Magistrate contravenes the mandatory provisions of order 21 Rule 4 of the Civil Procedure Rules.
3. On the strength of the above grounds of Appeal, the Appellant seeks the following reliefs; -
- (a) The Appeal be allowed and the Judgment and decree of the Learned Trial Magistrate dated 22.03.2024 vide Kilgoris SPMC ELC No. 40 of 2021 be set aside, reviewed, varied and/or quashed.
  - (b) The Honourable court be pleased to enter judgment in favour of the Appellant and dismiss the Plaint vide Kilgoris SPMCC ELC Case No. 40 of 2021.
  - (c) Costs of this Appeal and costs incurred in the subordinate court be borne by the Respondents.
  - (d) Such further and/or other orders be granted as this Honourable court may deem fit and expedient.
4. Upon admission of the Appeal directions were issued for the same to be canvassed by way of written submissions; which the court has considered and summarizes the same as herefollows; -

### **Appellant's Submissions**

5. The Appellant submits that the suit property had been transferred to 1<sup>st</sup> Respondent, Joseph Kilingat through Objection proceedings which were conducted without the Appellant's participation, notice and consent, and that the property was transferred without spousal consent contrary to matrimonial property Act.
6. The Appellant submits that the suit property formed part of matrimonial property hence spousal consent was required.
7. The Appellant placed reliance of Munyu Maina Vs. Hiram Gathitha Maina and submitted that the suit property was acquired by the 1<sup>st</sup> Respondent illegally as the 1<sup>st</sup> Respondent acquired the same without following the process laid out in the Land Adjudication Act.
8. The Appellant submitted that the judgment offended order 21 Rule 4 of the Civil Procedure Rules as the trial court did not frame any issues for determination hence the judgment fell short of this threshold and if fatally defective.
9. The Appellants thus urged the court to allow the Appeal.

### **1<sup>st</sup> Respondent's Submission**

10. The 1<sup>st</sup> Respondent framed and submitted on 4 issues for determination
11. On issue No. 1, the 1<sup>st</sup> Respondent submits that he purchased the suit property from the Appellant, and objection proceedings filed under NO. 348 confirmed the said sale and the property was transferred.
12. Reliance was placed on the decision in the case of Kukal properties Development Limited Vs. Tafazzal H. Maloo and 3 Others.
13. The 1<sup>st</sup> Respondent submits that the objection proceedings, recorded that his objection had been allowed and the property transferred to Joseph Kilingat, while the Appellants name was deleted.

14. On issue No. 2, the 1<sup>st</sup> Respondent submits that the proceedings of the objection proceedings made on 25.04.2014 were proper and a decision was reached.
15. On the third issue, the 1<sup>st</sup> Respondent submits that the impugned judgment complied with the provisions of order 21 Rule 4 of the Civil Procedure Rules and that the court was right in issuance of the reliefs sought.
16. The 1<sup>st</sup> Respondent equally cited the decision in Munyu Maina Va. Hiram Gathitha Maina on the root of the titles, and submitted that the Appellants root of title could not be traced, and that the 1<sup>st</sup> Respondent had demonstrated proper acquisition of the suit property hence the judgment of the trial court ought to be upheld.
17. Before framing the issues for determination, a number of issues have been settled by the record of Appeal and the submissions herein.
18. It is common ground that Objection proceedings were taken out in respect of the suit property by the 1<sup>st</sup> Respondent. The Appellant in his submissions submitted that the Objection proceedings were conducted without his participation hence a subtle admission that there existed Objection proceedings.
19. It is also common ground that there was a decision reached on the said Objection proceedings.
20. Having settled the uncontested facts, the issues for determination arising from the Appeal, the submissions and a consideration of the law are as follows; -
  - (i) Whether or not the Appeal is merited. In deciding this issue, the court will analyze and determined whether the plaintiff's suit was merited before the trial court.
  - (ii) What reliefs ought to issue.
  - (iii) Who bears the costs of the Appeal.

### **Analysis and Determination**

21. As a first Appellate court, the court is aware of its duties as stated in Selle Vs. Associated Motor Boat Co. (1968) EA 123, which held *inter alia* **“An appeal to this court from a trial by the High Court is by way of retrial by and the principles upon which this court is such an appeal are well settle. Briefly put they are that this court must reconsider the evidence evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.....”**
22. In exercise of the said duties the court shall re-analyze and re-evaluate the Record of Appeal so as to reach a conclusion.
23. As observed earlier in this judgment it is undisputed that there was an objection proceedings that were filed by the 1<sup>st</sup> Respondent; the Appellant indicates contended that the objection proceedings were conducted without his knowledge and consent.
24. The Objection proceedings were produced as P.Exhibit No. 1, and were registered as Objection No. 348.
25. The Objection proceedings appear at page 67 and 68 of the Record of Appeal. The Objection proceedings revealed the Appellant John Ole Nongoboi **...“was present on 25.04.2014 and he had agreed reconciled with the Objector, who wished to withdraw this Objection and the land parcel No. 512 be given to him”**. The same was thumbprinted by the Appellant and the Objector was recorded as having being present and stated that he had reconciled with Appellant, and he to buy the property and had fully paid for the had settled on it and was using it.
26. The decision of the Objection proceedings, was that **“the objection was allowed and the property transferred to Joseph Kilingat and name of John Makuyiani was deleted”**.
27. The adjudication record appearing at page 70-71 of the Record of Appeal shows cancellation of both the Appellants and first Respondents name, and insertion of the Appellants name.

28. The remarks on the Adjudication Record indicate that the land was transferred without an objection.
29. Having found that an objection No. 348 existed from the objection proceedings and that a decision was made in respect of the said objection, it thus bluffs the court as to why the remarks land transferred without an objection was indicated in the Adjudication Record while objection proceedings adduced before court revealed the existence of an objection proceedings.
30. The Appellant had divested any interest by the sale as confirmed by the witness, PW2 an Advocate as well as by the objection proceedings.
31. The Appellant had a recourse to file an appeal to the Minister which he did not file. The effect is that by virtue of Section 26 of the land Adjudication Act, the outcome of the Objection proceedings ought to have been taken account, this was not done and the property was unprocedurally and unlawfully registered in the name of the Appellant and thus the same could not confer any proprietary interest on the Appellant and his spouse so as to claim that the same was matrimonial property, as the act of registration of the green card in the name of the Appellant was unlawfully done as the outcome of the objection proceedings that deleted the Appellant's name was not taken into consideration contrary to Section 26 of the Land Adjudication Act.
32. The Result is that the title issued to the Appellant did not have any root to base its foundation on the adjudication process and the same was as a result of an illegal action and the title was rightly impeached by the trial court. That title thus had no protection of the law as it was issued in contravention of Section 26(1)(b) of the Land Registration Act, and it was a nullity *ab initio*, as was held in Kipkobel Arap Misoi Vs. Priscilla Chepkorir, where the court observed interalia ***that "non-adherence to the procedure set out in the Lands Adjudication Act, rendered all titles as a result of the flawed***

***process a nullity***"; as per the reasoning in Macfoy Vs. United Africa Co. Limited IALLER 1169 where the court held *inter alia* ***"If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much and though sometimes convenient to have the court to declare it to be so; and every proceedings which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there it will collapse..."***

33. In this regard the Plaintiff's claim before the trial court was merited and the trial magistrate was right in finding and holding so.
34. The Appellant had equally sold the suit property to the 1<sup>st</sup> Respondent in the presence of an advocate and two witnesses, he thus divested himself on any interest in the suit property, which sale was regularized by the objection proceedings, in which the transfer to the 1<sup>st</sup> Respondent was sanctioned.
35. The Appellant indicates that the judgment did not conform to the requirements of order 20 Rule 4 of the Civil Procedure Rules, but the judgment by the trial court, summarizes the pleadings, evidence and facts, it gave reasons for the determination. At paragraph 70 to 81 of the judgment for example the Learned Magistrate gave reasons for determination, when he found that no appeal had been preferred against the decision of the objection proceedings; which this court has equally found. This ground of Appeal is tantamount to splitting hair and has no merit.
36. All in all, the court finds that the Appeal herein lacks merit, and in dismissing the same proceeds to uphold the judgment of the trial court issued on 22<sup>nd</sup> March 2024 in its entirety.
37. Costs of this Appeal and in the lower court are also awarded to the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> to 4<sup>th</sup> Respondents having not participated in this Appeal.

Dated at Kilgoris this 28<sup>th</sup> day of April, 2026

Hon. M.N. Mwanyale  
Judge

**In the presence of**

Mr. Seriani for 1<sup>st</sup> Respondent

Ms. Mireri for the Appellant

Mr. Nyauma h/b for Mr. Rana for 2<sup>nd</sup> to 4<sup>th</sup> Respondents