

**IN THE COURT OF  
APPEAL AT  
NAKURU**

**(CORAM: MATIVO, GACHOKA & OKELLO,**

**JJ.A.) CIVIL APPEAL NO. 035 OF 2021**

**BETWEEN**

**GEORGE NDICHU MUNJUGA** (*suing as the  
legal Representative of the estate of* **SIMON  
MUTHUKU**

**MUNJUGA (deceased).....APPELLANT**

**AND**

**ESTHER NYAMBURA KARIUKI.....RESPONDENT**

*(An appeal arising from the judgment and decree of the  
Environment and Land Court of Kenya at Nyahururu (M.C.  
Oundo, J.) delivered on 25<sup>th</sup> April 2018*

*in*

***ELCC No. 199 of 2017)***

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

1. This appeal is a classic case of how a straightforward agreement can be turned into a vicious fight, which, as will appear later in the judgement, to be unnecessary. The facts are simple and largely undisputed: On 17<sup>th</sup> February 1989, **David Kariuki Kamiro** and **Simon Muthuku Munjuga**, both now deceased, signed an agreement that is at the centre of the dispute in the appeal. David Kariuki Kamiro, referred as

Kamiro, hereinafter, is the late husband of the respondent and  
Simon Muthuku Munjuga,

referred to as (Munjuga hereinafter, is the late father to the appellant. The two gentlemen, in their lifetime, signed a simple agreement whose main terms were that:

- a) Kamiro was acknowledged as the registered owner of parcel of land, **Nyandarua/Sabugo/627**, measuring 5.4 hectares.*
- b) Munjuga was to buy 4 acres to be excised from that parcel of land for a consideration sum of Kshs. 84,000.00.*
- c) Munjuga was to pay a deposit of Kshs. 60,000.00 upon signing the agreement and the balance of Kshs. 24,000.00 was to be paid upon the grant of the Land Control Board consent.*
- d) The deposit of Kshs. 60,000.00 was paid, and Munjuga took immediate possession of the 4 acres.*

2. From the record, it is not disputed that Kamiro died before the transaction could be completed and that the respondent obtained a title deed through transmission. When Munjuga learnt that a title had been issued in favour of the respondent, he lodged a caution against the land, claiming beneficial ownership of the 4 acres, to be excised from the parcel of the land.
3. It is on this premise that the respondent sued Munjuga (now deceased) by plaint dated 13<sup>th</sup> April 2015. The respondent disputed the agreement dated 17<sup>th</sup> February 1989. She

claimed

that the agreement related to a different parcel of land namely **Nyandarua, Sabugo/627B.**

4. The respondent contended that the deceased Simon Muthuku Munjuga, now represented by the appellant, showed her a sale agreement purportedly entered between her husband and the deceased. Upon scrutiny of the sale agreement, the respondent observed that the same was entered in 1989 and concerned **Nyandarua/Sabugo/627B.** She thus questioned the veracity of his allegations noting that the agreement did not concern her parcel of land. Be that as it may, it was untenable as a title deed to the suit land had not been issued at that time.
5. The respondent challenged that the deceased failed to demonstrate ownership of the 4 acres he was claiming from her land. Withal, no consent from the Land Control Board had been obtained. She lamented that on the basis of the sale agreement shown to her, the deceased deprived her of her exclusive rights of ownership by lodging a caution on the parcel of land. For those reasons, the respondent sought injunctive orders, restraining the deceased from interfering with her quiet

possession of the suit land and that the said caution be lifted.

6. Substantiating his claim of ownership, the deceased filed his statement of defence and counterclaim dated 19<sup>th</sup> June 2015. Denying the averments set out in the plaint, the deceased averred that he indeed entered into a sale agreement with the respondent's husband, the proprietor, for the purchase of 4 acres of the suit land. A consent was issued to that effect. He thereafter took possession in the full knowledge of the respondent.
7. The deceased accused the respondent of obtaining title clandestinely without his knowledge. In any event, she illegally obtained title before first undergoing the process of transmission of the suit land from her husband to her name. He maintained that he was a lawful proprietor and the respondent was interfering with his right to quiet enjoyment of the property. He explained that the caution was lawful since he was a lawful proprietor. He thus sought a mandatory injunction restraining the respondent from interfering with his 4 acres of the suit land, a cancellation of the title deed and a declaratory order that he is the lawful proprietor of four acres of the suit land.

8. The suit was heard *viva voce*. Upon conclusion, *Oundo, J.* pronounced herself as follows on 25<sup>th</sup> April 2018:

***“102. After having analyzed the case as it were, I find the matters for determination as being;***

- i. Whether ther (sic) was interest registered against Parcel number Nyandarua/ Sabugo / 627 in the name of the Defendant.***
- ii. Whether the transaction between the defendant herein and the Plaintiff’s husband on the subject matter of this suit was enforceable.***
- iii. Whether this suit commenced by the Plaintiff was competent.***

***103. On the first issue, as it was rightly stated, the Land Control Act remains one of the most litigated statutes in Kenya where the Courts have had to interpret applications of various provisions of that statute with the resultant in the emergence of numerous authorities and/ or decisions.***

***104. The consistent decisions of the courts in Kenya have given full effect to the provisions of the Land Control Act to the effect that once the land in question was proved to be agricultural land within a controlled area, transactions affecting it are controlled transactions which in law become void in the absence of consent from the land control board. These provisions of the Land Control Act are of an imperative nature to the extent that there is no room for the application of any doctrine of equity to soften its provisions.***

***... 107. It is not in dispute that the agreement***

***executed between the parties herein and one Mr.***

***Josephat Ngugi (DW2) imposed an obligation on the parties to obtain the consent of the relevant***

**Land Control Board the suit land herein being An agricultural land within a controlled area Thus making transactions affecting it controlled transactions herein.**

**108. That indeed although consent to transfer of Nyandarua/Sabugo/627 was given to the defendant as a consideration of 150,000/= by the Ol Kalaou (sic) Land Control board to the effect that Josephat was transferring the said land to the defendant, however since the said consent was not presented to the land Register, according to the evidence of DW3, for issuance of title, I find that no interest was registered against Parcel number Nyandarua/Sabugo/627 in the name of the Defendant as explained by DW3, that the Land Registrar was not made aware of the existence of this Consent o Transfer.**

**109. On the second issue as to whether the Transaction between the defendant herein and the Plaintiff's husband on the subject matter being Nyandarua/Sabugo/627B was enforceable, my finding is that the agreement between the parties dated 17<sup>th</sup> February 1989 by which the Plaintiff's husband was to sell 4 acre (sic) of out of the suit land to the defendant did not obtain the necessary consent as required by Section 6 of the Land Control Act. It was therefore null and void and un-enforceable.**

**110. When the Plaintiff's husband received the Purchase price for the 4 acres and placed the Defendant on the suit land, without obtaining the consent of the relevant control board, the act constituted a criminal offence,**

***illegal to that extent, such occupation could not, with respect,***

**constitute an overriding interest under the Land Control Act to render valid and lawful conduct, which is otherwise declared by the Act to be void for all purposes.**

- 111. From the above it is clear that the transaction between the defendant and the Plaintiff's husband was null and void and therefore un- enforceable.**
- 112. On the last issue as to whether the present suit which was commenced by the Plaintiff was competent, it is not in dispute that the suit property being No. Nyandarua/Sabugo/627B had been purchased by the Plaintiff's husband.**
- 113. That upon his death the Plaintiff herein caused it to be subdivided giving rise to Nyandarua, Sabugo/6486 which registered in her name. There was however no evidence tendered to support the fact that the Plaintiff, in so dealing with her late husband's land had filed a succession cause.**
- ... 115. There having been consensus by parties that the Plaintiff herein instituted the present suit without having obtained letters of Administration, I find the issue of locus standi not being a technicality but the law and that the same does not offend the provisions of Article 22 and 159 of the Constitution to the effect that a party needs to have capacity or locus standi before bringing a claim in court.**
- 116. In the circumstance thereof, I find that the suit filed herein is incompetent and bad in law.**
- 117. After having found as above, I find that:**
- i. The Plaintiff's suit commenced through a**

***plaint dated on the 13<sup>th</sup> April 2015 and  
filed in court on the on the 14<sup>th</sup> April 2015  
is unenforceable and is hereby struck  
out.***

**ii. I also find that the counter claim dated the 19<sup>th</sup> June 2015 and filed on the same day is herein dismissed.**

**iii. The Plaintiff herein to refund to the Defendant the purchase price of 4 acres of Ksh. 84 ,000/= forthwith**

**iv. Both parties (sic) to bear their own costs.”**

9. The appellant is aggrieved by those findings. He filed his notice of appeal dated 8<sup>th</sup> May 2018 and memorandum of appeal dated 25<sup>th</sup> March 2021. The appellant raised eight grounds disputing the findings of the trial court. In summation, he complained that the trial judge erred in making an order for a refund of Kshs. 84,000.00 when it was not pleaded in the plaint; the learned judge failed to find that a valid land control consent to transfer parcel title no. **Nyandarua/Sabugo /627** to the appellant existed and had not been vacated by either party to the suit; that the consent obtained by the respondent and subsequent subdivision were of no legal effect, null and void; that the trial court erred in failing to find that the sale agreement executed by the appellant was valid, compelling the respondent to comply; that title no. **Nyandarua/Sabugo/6486** ought to have been cancelled; and that his counterclaim was merited.

10. In the premised circumstances, the appellant prayed that the appeal be allowed by setting aside the judgment of the trial court. In its stead, the appellant urged this Court to order for cancellation of the title deed for parcel no. **Nyandarua/Sabugo/6486**. He further urged this Court to declare that it is entitled to 4 acres out of the suit land.
11. When this appeal was heard virtually on 24<sup>th</sup> February 2026, learned counsel Mr. Njagua informed the Court that he was representing the appellant, while the respondent was represented by learned counsel Mr. Machoka, who held Mr. Githui's brief. Parties highlighted their respective written submissions.
12. The appellant filed written submissions and list of authorities dated 11<sup>th</sup> February 2026 together with supplementary submissions dated 24<sup>th</sup> February 2026. Learned Counsel submitted that from the evidence adduced at trial, **section 6 (1)** of the Land Control Act was complied with as **DW1** obtained consent for the transfer of 4 acres of the suit land from Daudi Kariuki Kamirio (deceased). That if the respondent had issues with that consent, the onus was on her to have it

vacated as set out in **section 8 (2)** of the Land Control Act.

That upon **DW1** obtaining

the consent, he was duty bound to effect transfer of 9 acres to the respondent having purchased the 4 acres from the respondent's late husband. There was therefore no need to obtain a second consent.

13. On whether title number **Nyandarua/Sabugo/6486** was illegally acquired, learned counsel submitted in the affirmative. This is because from the evidence of **DW1**, he was not made aware that a subdivision from the mother parcel created two parcels namely: **Nyandarua/Sabugo/6485** and **Nyandarua/Sabugo/6486**. **DW3** on his part, it was submitted, acknowledged the existence of the consent from the Land Control Board and that the title deed ought to have been issued in the name of Simon Muthuku Munjuga. It was therefore the responsibility of **DW2** to transfer the 9-acre portion to the respondent and not Mr. Joshat Ngugi. Thus, the transfer effected to the respondent was illegal, null and void.
14. Additionally, it was submitted that the respondent could not seek any orders effecting title from the trial court as she admittedly failed to take out letters of administration. Accordingly, she lacked the requisite *locus standi* to institute

suit. Secondly, she could not obtain title without first undergoing the succession process in

order to transmit the property, belonging to her husband. Thus, the conclusion was that the property was illegally acquired by the respondent.

15. The appellant urged this Court to consider that after **DW2** purchased the property from the deceased Daudi Kariuki Kamirio, he acquired possession by cultivating on his portion. Thus, a constructive trust had arisen in favor of the appellant. Finally, the appellant's advocate submitted that from the pleadings filed, the appellant did not seek an order for a refund. It was thus a grave error for the trial court to direct the respondent to refund the appellant. For those reasons, learned counsel prayed that the appeal be allowed.
16. The respondent filed written submissions, a case digest and list of authorities, all dated 13<sup>th</sup> February 2026. It was learned counsel's submission that while the appellant claimed to have obtained a letter of consent for the transfer of a portion of the suit land, he failed to demonstrate that he proceeded to obtain title; a violation of **section 6 (1)** of the Land Control Act. He lauded the findings of the trial court holding that the appellant was not the proprietor of the suit land as he failed to effect

registration.

17. Counsel submitted that following the death of the respondent's husband, the respondent obtained letters of administration that triggered the transfer of the parcel under her name. Registration of the parcel in her name was accordingly lawful. Thus, the respondent owed no duty to inform the appellant of the subdivision.
18. Be that as it may, it was submitted that the contract, if any, entered between the appellant and the respondent's husband, did not concern the respondent under the doctrine of privity of contract. She was not aware of it, did not receive consideration and was not a party to be deemed to be bound. He prayed that the appeal be dismissed with costs.
19. We have considered the parties' rival submissions, examined the record of appeal and analyzed the law. As a first appellate court, an appeal is by way of a retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and thus should make

due allowances in this respect. [See **Gitobu Imanyara & 2 others vs. Attorney General [2016] eKLR**].

20. Gathered from the record and the submissions adduced before this Court, we postulate that the following issues fall for determination: whether the order for a refund was lawfully made by the trial court; and whether the appellant's counterclaim was merited. In framing these issues, we know there was no cross appeal by the respondent, and therefore the dismissal of her suit is not an issue before us.

21. Turning to the first issue, the appellant sought the following prayers in his counterclaim:

***a. A mandatory injunction restraining the Plaintiff (now Defendant) by herself, her agents, servants and/or employees from interfering with the Defendant's (now Plaintiffs) quiet enjoyment of 4 acres excised out of parcel title no. NYANDARUA I SABU GO Block 6486.***

***b. An order for cancellation of the title deed for parcel title no. NYANDARUA I SABUGO -Block 6486 issued to the Plaintiff (now Defendant) and in the alternative an order declaring that the Plaintiff {now Defendant) and the Defendant (now Plaintiff) are co-owners of parcel title no. NYANDARIA/ SABUGO Block 6486.***

***c. Pursuant to the granting prayer (b) above, an order declaring that the Defendant (now***

***Plaintiff) is***

**entitled to 4 acres out of parcel title no. NYANDARUA I SABUGO Block 6486.”**

22. However, in the ultimate paragraph issuing the final orders, the learned judge directed the respondent to refund the appellant the sum of Kshs. 84,000.00. It is abundantly clear that those orders were not sought in the counterclaim. In the case of **Lamba vs. National Social Security Fund & another** [2023] KECA 124 (KLR), this Court held that:

**“...It is trite law that courts can only grant orders that have been prayed for in the pleadings, or make appropriate orders as it deems fit if need arises in the cause of a trial. Indeed, where a court has proceeded to grant a relief not contained in prayers in the pleading or not regularly sought by a party expressly or by implication, appellate courts have had no hesitation in annulling or overturning orders granting such reliefs. The appellant chose to abandon her prayer for special damages and must therefore lie on her own bed...”**

23. It is trite law that decisions of the court flow from pleadings. The general legal position is that the parties are bound by their pleadings. Evidence led on unpleaded issues cannot be considered by the court to support a claim or defence. This is

because pleadings serve the purpose of informing the other party and the

court of the specific issues to be determined. However, a crucial exception exists; a court may base its decision on unpleaded issues if evidence is led, and from the course, followed at the trial, it appears that the issue has been treated by both parties as part of the case and left to the court for determination. This position has been settled in numerous decisions by our superior courts. In **Odd Jobs vs. Mubia [1970] EA 476**, a *locus classicus* decision on this issue, this Court held that a court could determine an unpleaded issue if it appears from the from the course followed at trial that the parties left the issue to the court for decision.

24. A perusal of the pleadings and the evidence clearly shows that there was no prayer for the refund of Kshs. 84,000 and in any event the appellant had only paid Kshs. 60,000.00. It is also apparent that the issues did not flow from the evidence of the parties as to be determined by the trial court. Therefore, the Court clearly misdirected itself on this issue.
25. The last issue for determination is whether the counterclaim was merited. To make a determination, we shall examine the evidence supporting the claim set out by the appellant.

According to **DW1**, Simon Munjuga Muthuku, he entered into a sale agreement with

Josphat Ngugi Mwangi on 1<sup>st</sup> September 1987 for the sale of 11 acres of **plot no. 627 Sabugo Scheme** for a sum of Kshs. 330,000.00. Under the terms of agreement, the vendor received **plot no. 12783/77** and **plot no. 64** located in Nakuru Municipality plus extra cash of Kshs. 30,000/- in exchange of **plot no. 627**. The Ol Kalou Land Control Board issued a consent on 23<sup>rd</sup> October 1987 for the transfer of **Nyandarua/Sabugo/627** to his name.

26. Two years later, **DW1** purchased four acres to be excised from **plot no. 627'B'**, an adjacent land from Daudi Kariuki Kamirio on 17<sup>th</sup> February 1989. The agreement was attested to by **PW1**'s brother. They went to the settlement scheme after buying the land wherein Mr. Ngugi told them that he had sold the land to him and Ngugi vide a letter dated 7<sup>th</sup> March 1997.
27. **DW1** was under the expectation that the 11 acres previously purchased, together with 4 acres, would be merged and create a title deed. He stated that he settled the purchase price and took possession of the land. After Daudi Kariuki Kamirio passed on, **DW1** continued to plough, the deceased's sons began farming on his land.

**28. DW1** testified that it was after he had obtained title in **plot no.**

**6485.** However, he discovered that **plot no. 6486,** was registered in the name of the respondent. The same was done absent his consent and succession as the respondent is the widow of the deceased Daudi Kariuki Kamirio, who was the original owner. He thereafter registered a caution on 16<sup>th</sup> February 2015 claiming ownership interest. He further recalled that the parties appeared before the chief as per the minutes dated 5<sup>th</sup> May 2015. It was resolved that **DW1** retains the 4 acres as the dispute was settled by the court.

**29. DW2** Josphat Ngugi Mwangi testified that in 1965, he was allotted **plot no. 627, alias 627'B'**, measuring 25 acres, land by the Settlement Fund Trustee, at the Sabugo Settlement Scheme. 22 years later, **DW2** sold 13 acres to Daudi Kariuki Kamirio, the respondent's deceased husband. Thereafter, a surveyor subdivided **plot no. 627** into two plots shared between himself and the deceased.

**30.** He recalled that later, **DW1** purchased the remaining portion of 11 acres on condition that a consent be obtained from the Land Control Board. **DW2** sold the remainder of his property to

**DW1**

and obtained consent from the Ol Kalou Land Control Board to transfer the entire portion of **plot no. 627** on condition that he would eventually transfer the deceased's portion in the deceased's name.

31. In 2014, **plot no. 627** was registered in his name and a title deed issued. He signed the transfer forms in the company of the respondent and her sons. He thus transferred 13 acres to the respondent under the presumption that **DW1**'s four acres would be transferred to him.
32. **DW3** land registrar Nyandarua District Christopher Maina Gichuki testified that the suit land was registered in the name of Josphat Ngugi Mwangi on 26<sup>th</sup> November 2014 measuring approximately 5.45ha (13.4 acres). It was thereafter transferred in the name of the respondent on 27<sup>th</sup> November 2014. He added that on 16<sup>th</sup> February 2015, a caution was registered by the deceased Simon Muthuku Munjuga, claiming purchaser interest. Lastly, on 30<sup>th</sup> June 2016, Nakuru **ELC Case No. 110 of 2015** gave an order restricting all dealings in the property before determination of the suit.

33. **DW3** continued that on the 1<sup>st</sup> entry there was no title issued as it was as a resultant of sub division of **plot no. 627**. The owner never took title. Looking at the consent from the Ol Kalou Land Control Board issued on 23<sup>rd</sup> October 1987, **DW3** explained that though it was not presented to the Land Registrar, it related to the suit land. He added that the consent ought to have been presented for registration to the Land Registrar before the land was subdivided. That they could have transferred the land to Simon Muthungu.

34. Disputing the appellant's claim, **PW1**, Wachira Kariuki Kamirio, the respondent's son, confirmed that the suit land is registered in his mother's name where they live while **DW1** was their neighbour. He lamented that the caution entered by **DW1** was improper as he did not purchase the suit land or any portion thereof. He acknowledged the existence of the sale agreement entered between **DW1** and his deceased father, Daudi Kariuki Kamirio, who died in 2013. He however denied that his father sold land but acknowledged that **DW2** sold to his father 13 acres of the parcel of land with the remainder being purchased by **DW1**.

35. **PW1** continued that their mother executed transfer forms together with **DW2** culminating into the registration of ownership of the

suit land in her name on 27<sup>th</sup> November 2014 and a title deed issued. This was after succession proceedings were taken out. However, **PW1** did not adduce evidence of those proceedings. He therefore dismissed **DW2**'s evidence as falsities.

36. **PW1** recalled that the land was subdivided on 29<sup>th</sup> August 2014 absent **DW1**. **DW2** executed the necessary transfer documents. He was shown the minutes of a meeting held before the chief, as produced by the appellant, that it was decided that both parties keep off the 4 acres until the judgment of the court. He denied that he misled **DW2** into executing the transfer forms. At this stage it is noteworthy that the respondent did not adduce evidence and it is her son **PW1** who testified. No reason was given why she opted not to participate in the suit.

37. **Section 26 (1)** of the Land Registration Act provides that the certificate of title issued upon registration shall be taken as *prima facie* evidence that the person named as the proprietor is the absolute and indefeasible owner. However, that title deed can be impeached if it is demonstrated that it was obtained through fraud, misrepresentation, illegally,

unprocedurally or by way of a corrupt scheme.

38. The appellant herein seeks to impeach the title registered in the name of the respondent on several grounds. The first ground is that the respondent obtained title without first undergoing the process of transmission by way of succession proceedings. From the evidence above, both parties conceded that the respondent's husband, Daudi Kariuki Kamirio, had proprietorship rights at one point or another on the suit parcel of land.

39. The point of departure is **PW1**'s denial that the property was sold to **DW1**, Simon Munjuga Muthuku and we shall analyze this evidence later in our judgment. **PW1** explained that a grant of letters of administration was taken before the subdivision process of **DW2**'s parcel of land was done. However, no evidence of such proceedings were availed before the trial court to corroborate **PW1**'s evidence.

40. **Section 45** of the Law of Succession Act states:

***“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with***

***any free property of a deceased person.***

**(2) Any person who contravenes the provisions of this section shall -**

**(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both fine and imprisonment; and**

**(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”**

41. Gathered from the provisions of section 45, it is clear that as long as no succession proceedings were taken out, the respondent could not inherit, devolve or divest any proprietary interests from the deceased's estate. The provision is couched in mandatory terms. It is also abundantly clear that the respondent did not purchase the property at all or under her name. We are therefore of the inescapable conclusion that the process of transferring the property in the respondent's name was an illegality and calls for an impeachment of the entry in the title registering the property in her name.

42. The other issue raised by the appellant is that the property was transferred to the **DW1**'s name by letter of consent dated 23<sup>rd</sup> October 1987. It was thereafter incumbent on him to transfer

the

portion belonging to Daudi Kariuki Kamirio. From the evidence, it was not disputed that **DW1** and Daudi Kariuki Kamirio entered into a sale agreement dated 17<sup>th</sup> February 1989 for the purchase of four acres of the suit land. Though **PW1** attempted to deny that it was not his father who executed the agreement, nothing was adduced in evidence as to demonstrate that his contention was truthful.

43. It is also not denied that **DW1** had previously purchased 11 acres of **plot no. 627 Sabugo Scheme** from Josphat Ngugi Mwangi on 1<sup>st</sup> September 1987. The vendor, **DW2**, is the same person who sold 13 acres of his land to Daudi Kariuki Kamirio. In his evidence, **DW2** testified that he was allotted **plot no. 627**, alias **627'B'**, measuring 25 acres, land by the Settlement Fund Trustee, at the Sabugo Settlement Scheme. He sold 13 acres to Daudi Kariuki Kamirio and 11 acres to **DW1**. When **DW1** purchased his portion, he obtained consent from the Ol Kalou Land Control Board to transfer the entire portion of **plot no. 627** to **DW1** on condition that he would eventually transfer the deceased's portion of 13 acres to himself.

44. **DW2** recalled that in 2014, plot no. 627 was registered in his name and a title deed issued. He signed the transfer forms in the company of the respondent and her sons. He thus transferred 13 acres to the respondent under the presumption that **DW1**'s four acres would be transferred to him.
45. What is nascent from the evidence is that Daudi Kariuki Kamirio obtained 13 acres from **DW2**. The entire parcel underwent the process of subdivision giving rise to plot no. Nyandarua/Sabugo/6486 measuring approximately 5.45ha. It is also apparent from the evidence that Daudi Kariuki Kamirio sold 4 acres of his 13 acres to **DW1**. That is the bone of contention.
46. All the appellant is seeking is those 4 acres by relying on the letter of consent dated 23<sup>rd</sup> October 1987. Indeed according to the letter of consent, the entire plot belonging to **DW2** was transferred in the name of **DW1**. That consent was not challenged by Daudi Kariuki Kamirio or the respondent. We therefore see no reason to disturb its validity.
47. This Court is also cognizant of the fact that **plot no. 627** has already been subdivided into two portions. The appellant was

not involved in the process given the proprietary rights enshrined in

the letter of consent. However, the appellant's only challenge is that he was not given his 4 acres. He does not challenge the entire subdivision process into two parcels. Accordingly, to meet the ends of justice, we interfere with the findings of the learned judge by making the following orders:

- 1. The appeal is hereby allowed;**
- 2. The order directing the respondent to refund to the appellant the purchase price of 4 acres of Ksh. 84,000/= is hereby set aside and struck out;**
- 3. An order for cancellation be and is hereby given of the title deed for parcel title no. NYANDARUA/ SABUGO/6486 registering the property in the name of the respondent;**
- 4. Given that the appellant is entitled to 4 acres of the suit land, an order be and is hereby issued registering 4 acres of NYANDARUA/SABUGO/6486 in the name of the appellant;**
- 5. Since one Josphat, Ngugi Mwangi was not a party to the proceedings, and to prevent a lacunae, we order the appellant and the Deputy Registrar to execute the necessary consent, transfer forms, mutation forms and other ancillary documents, sign the requisite application for consent to subdivide, in compliance with order 4 above, for the transfer of the said 4 acres, after the subdivision, and surrender such documents as may be necessary to finalize the said process, within 30 days from the date of this order;**

**6. A mandatory injunction be and is hereby issued restraining the respondent by herself, her agents,**

***servants and/or employees from inferring with the appellant's quiet enjoyment of 4 acres excised out of parcel title no. NYANDARUA/SABUGO/6486;***

***7. For avoidance of doubt, the order by the trial court striking out the respondent's suit commenced through a plaint dated on the 13<sup>th</sup> April 2015 as it is unenforceable is upheld;***

***8. The appellant shall have costs of the suit and trial and this appeal.***

**Dated and Delivered at Nakuru this 8<sup>th</sup> day of May, 2026.**

**J. MATIVO**

.....  
**JUDGE OF APPEAL**

**M. GACHOKA C.Arb, FCIArb.**

.....  
**JUDGE OF**

**APPEAL DR. J.**

**OKELLO**

.....  
.....  
**JUDGE OF APPEAL**

*I certify that this is a true*

*copy of the original*  
**Signed**  
**DEPUTY REGISTRAR**