REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC APPEAL NO. E066 OF 2025

JOHANA KIPNGENO LANGAT ……..….. APPELLANT

VERSUS

JOHN KIPKURGAT ROTICH ……..…… 1ST RESPONDENT

-AND-

THE DISTRICT LAND ADJUDICATION
& SETTLEMENT OFFICER-NAKURU ……..……..…..…… 2ND RESPONDENT

THE DIRECTOR OF LANDS ADJUDICATION
& SETTLEMENT ……..…….……...… 3RD RESPONDENT

THE DISTRICT LAND REGISTRAR-NAKURU ……..…….. 4TH RESPONDENT

THE HON. ATTORNEY GENERAL ……..…….. 5TH RESPONDENT

(Being an appeal arising from the judgment rendered by Hon. Caroline A. Ocharo delivered on 12TH September 2025 in Molo CMCELC No. 83 of 2019 – John Kipkurgat Rotich v. Johana Kipngeno Langat & Others)

JUDGMENT

1. This appeal arises from a judgment delivered on 12th September 2025, in Molo CM ELC No. 83 of 2019. The Appellant being aggrieved by the said judgment, filed a Memorandum of Appeal dated 1st December, 2025, and listed the following grounds:

    1. ***The Learned Magistrate erred both in law and fact in holding that the 1st Respondent had proved fraud against the Appellant despite the 1st Respondent failing to strictly plead, particularize and prove fraud to the required higher standard of proof above a balance of probabilities.***

2. ***The Learned Magistrate erred in law by failing to give due weight to the provisions of Sections 24, 25 and 26 of the Land Registration Act, 2012, which accord statutory protection to a registered proprietor's title, and by failing to hold that the Appellant's certificate of title was prima facie evidence of absolute ownership that could only be impeached upon proof of fraud or misrepresentation to which he was a party-proof which was wholly lacking.***

3. ***The trial court improperly shifted the burden of proof to the Appellant to explain the genesis of his title, contrary to Sections 107-109 of the Evidence Act, whereas the legal burden to prove fraud or illegality lay squarely on the 1st Respondent, which he failed to discharge.***

4. ***The Learned Magistrate erred in failing to appreciate that the 1st Respondent's allotment letter issued in the year 2002 conferred no proprietary interest in land unless perfected through payment and registration. The court ignored binding precedent, which establishes that an allotment letter is only an inchoate right subject to strict compliance.***

5. ***The Learned Magistrate erred in law in condemning the Appellant to pay costs of the suit when the evidence on record clearly showed that the Appellant lawfully obtained***

his allotment and title deed through the 2nd, 3rd and 4th Respondents, who were the government officers directly responsible for issuing the allotment letter and title deed. In the circumstances, if at all, liability existed, costs ought to have been borne by the said government officers who facilitated the process and not the Appellant, who was a bona fide recipient of a government-issued title.

6. ***The Learned Magistrate failed to judiciously exercise her discretion under Section 27 of the Civil Procedure Act, ignoring the principle that costs follow the event unless there is good cause to depart. The court wrongly penalized the Appellant despite finding that the 2nd to 4th Respondents had irregularly processed the title in question.***

7. ***The trial court erred in fact and law in failing to evaluate the evidence on record as a whole, thereby reaching a conclusion unsupported by the law and evidence, including disregarding the Appellant's submissions and authorities which demonstrated that the 1st Respondent's claim was legally untenable.***

2. The appellant therefore, seeks the following orders:

a) ***Allow this appeal and set aside the entire judgment and decree of the Honourable Chief Magistrate delivered on 26th May 2025, in Molo CMCELC No. 83 of 2019.***

b) ***Substitute therefor an order dismissing the Respondent's suit in its entirety with costs.***

3. A brief background to this Appeal is that the Respondent filed an Amended Plaint dated 26th October 2023, where he sued the Appellant with 4 others, seeking the following orders:

a) A declaration that the Plaintiff is the sole lawful allottee and owner of the suit land parcel No. KAMARA CHESUPENO SETTLEMENT SCHEME PARCEL NO. 799.

b) The 1st Defendant do execute the necessary and relevant conveyance documents to effect registration in favour of the Plaintiff as the proprietor of parcel of land KAMARA CHESUPENO SETTLEMENT SCHEME PARCEL NO. 799 and/or in the alternative the Deputy Registrar do execute the necessary and relevant conveyance document in case the 1st Defendant declines to execute.

c) A permanent injunction restraining the 1st Defendant either by himself, his agents, servants, workmen and/or interfering with the Plaintiff's land parcel No. KAMARA CHESUPENO SETTLEMENT SCHEME PARCEL NO. 799 in any manner.

d) An eviction order against the 1st Defendant.

e) Costs of the suit.

f) Any other relief the Honourable Court deems fit to grant.

4. The matter was heard and determined whereby the Trial Magistrate found in favour of the Respondent, and the Appellant, being aggrieved by the judgment filed this Appeal.

APPELLANT'S SUBMISSIONS

5. Counsel for the Appellant filed submissions dated 29th January 2026, and identified the following issues for determination:

   a) ***Whether the trial Magistrate erred in finding that the 1st Respondent is the lawful allottee of the suit land and ordering for the cancellation of the Appellant's Title Deed and further that the same be transferred to the 1st Respondent.***

   b) ***Whether the trial magistrate erred in ordering that the Appellant bear the 1st Respondent's costs.***

   c) ***Who should bear the costs of this Appeal?***

6. Counsel gave a brief background of the Appeal and stated that the 1st Respondent claimed to have been a member of the Kamara Chesupeno Settlement Scheme and had been allotted the said parcel of land in 2002. He further claimed that he then took possession of the suit land, built a house and resided therein until sometimes in 2013, when the Appellant who has a Title Deed to the suit land evicted him.

7. The Appellant in his defence stated that he acquired the title to the suit land in a legitimate manner pursuant to an allotment and payment of all the

requisite fees and charges. He further stated that he was in possession of the suit parcel of land which he has continued to develop.

8. On the issue as to whether the trial Magistrate erred in finding that the 1st Respondent is the lawful allottee of the suit land and ordering for the cancellation of the Appellant's title deed and further that the same be transferred to the 1st respondent, counsel submitted that the Appellant as a registered proprietor was protected under Sections 24(a), 25(1) and 26(1) of the Land Registration Act, 2012.

9. Counsel further relied on the cases of **Dr. Joseph Arap Ng'ok v Justice Moijo Ole Keiwua & 4 Others [2000] eKLR, Kinyanjui Kamau v George Kamau [2015] eKLR,** and **Vijay Morjaria –v- Nansingh Madhusingh Darbar & Another [2000] eKLR,** and submitted that there was no cogent evidence tendered to demonstrate that the Appellant participated in fraud, misrepresentation or any corrupt scheme.

10. Mr. Mutai submitted that the trial court relied largely on administrative correspondence and recommendations, by Officers of the 2nd and 3rd Respondents, which internal recommendations, cannot override a duly issued certificate of title to a registered proprietor who was not complicit in the wrongdoing.

11. It was counsel's further submissions that Appellant demonstrated that he obtained his allotment letter following the 2011–2012 government verification exercise, paid all requisite fees, and was subsequently issued with a title deed in 2016 by the Land Registrar. The Appellant was

therefore entitled to rely on the regularity of official acts of public officers.

12. Counsel faulted the trial court for failing to appreciate that the 1st Respondent's reliance on a 2002 allotment letter was legally untenable, as an allotment letter does not confer ownership unless its conditions are fulfilled. Counsel cited the case of **Torino Enterprises Ltd v Attorney General [2022] eKLR**, where the court held that a letter of allotment is merely an offer which does not confer any proprietary interest in land unless and until the conditions therein are fulfilled and the land registered in the allottee's name.

13. Mr. Mutai further submitted that the 1st Respondent admitted that he failed to pay the requisite charges within the stipulated time, and further conceded that all 2002 allotment letters were cancelled during the verification process, hence his alleged rights had lapsed both administratively and legally. By elevating an unperfected and cancelled allotment over a registered title, the learned Magistrate misdirected herself on the law, thereby arriving at an erroneous conclusion.

14. On the second issue as to whether the trial Magistrate erred in ordering that the appellant bears the 1st Respondent's costs, counsel submitted that, while Section 27(1) of the Civil Procedure Act grants courts discretion on costs, such discretion must be exercised judiciously and on sound legal principles and cited the case of **Cecilia Karuru Ngayu –v- Barclays Bank of Kenya Ltd [2016] eKLR**,

15. According to counsel, the evidence on record demonstrates that the Appellant acted in good faith, obtained his allotment and title through lawful processes conducted by the 2nd, 3rd and 4th Respondents, and further that the Appellant had no control over internal administrative lapses, if any. Counsel further stated that where a litigant relies on the acts of statutory bodies acting within their mandate, it would be manifestly unjust to punish such a litigant with costs, particularly where the dispute largely arose from institutional failures by public officers, and urged the court to set aside the order of payment of costs by the Appellant.

16. Counsel urged the court to allow the Appeal as prayed.

1ST RESPONDENT'S SUBMISSIONS

17. Counsel for the 1st Respondent filed submissions dated 18th February 2026 and identified the following issues for determination:

    a) ***Whether the trial Magistrate erred in finding that the 1st Respondent is the lawful allottee of the suit land and in ordering cancellation of the Appellant's title.***
    b) ***Whether the trial Magistrate erred in awarding costs to the 1st Respondent.***
    c) ***Who should bear the costs of this Appeal?***

18. On the first issue as to whether the trial Magistrate erred in finding that the 1st respondent is the lawful allottee of the suit land and in ordering the cancellation of the Appellant's title, counsel submitted that the Appellant

relies on Sections 24 and 25 of the Land Registration Act, but deliberately ignores Section 26 (1) (b), which expressly removes protection.

19. Counsel relied on the Supreme Court case of **Dina Management Limited v County Government of Mombasa & 5 Others [2021] eKLR**, and submitted that the Appellant's insistence that fraud must be proved against him personally is legally untenable, as once the root of the title is shown to be illegal, the title collapses, irrespective of the innocence of the holder.

20. It was counsel's submission that the trial court made a clear finding based on evidence from the Land Administration authorities that the Appellant's purported allotment emerged from an irregular exercise, which unlawfully displaced prior interests, and relied on the case of **Munyu Maina v Hiram Gathiha Maina 2013 eKLR,** where the Court of Appeal held that when a registered proprietor's root of the title under is challenge, it is not sufficient to dangle the certificate of title; the proprietor must go beyond the instrument and demonstrate the legality of how he acquired the title. Further, the Appellant failed to discharge this burden of proof on how he obtained the allotment and title when a valid allotment was still in place and while the dispute was still being investigated.

21. Ms. Kipruto submitted that by the Appellant producing receipts and a title deed, the same did not validate the allocation that was illegal from inception and further, the Appellant's argument that an allotment letter confers no rights is a gross oversimplification of the law, and while it is correct that an allotment

letter is an offer, courts have consistently held that where conditions are substantially complied with and the allotment remains unrevoked, equitable interests accrue.

22. Counsel relied on the case of **Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands & 2 others [2014] eKLR**, where the court held that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent. Counsel further submitted that evidence before the trial court demonstrated that the 1st Respondent's allotment letter was never lawfully revoked, and it is on that basis that the allotment for the Appellant could not stand despite proceeding to obtain a title deed.

23. On the issue as to whether the trial Magistrate erred in awarding costs to the 1st Respondent, counsel submitted that costs follow the event, as provided under Section 27 of the Civil Procedure Act, unless the court orders otherwise for a given reason. That the 1st Respondent was successful at the trial, and no exceptional circumstances were demonstrated to warrant a departure from this settled principle.

24. Counsel urged the court to dismiss the Appeal with costs to the 1st Respondent.

ANALYSIS AND DETERMINATION

25. The Appellant listed 7 grounds of Appeal in his Memorandum of Appeal which can be condensed to three issues for determination, namely

whether the Learned Trial Magistrate erred in concluding that the Appellant had acquired his title to the suit land fraudulently, whether the Magistrate erred in ordering the cancellation of the Appellant's title and payment of costs to the 1st respondent, who should pay costs.

26. This is a first appeal and the court is cognizant of its primary role which is to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned Trial Magistrate are to stand or not and give reasons either way as was held in the case of **Abok James Odera t/a AnJ Odera & Associates v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR.**

27. Similarly, in the case of **Okeno v Republic [1972] EA 32** at **36**, the East Africa Court of Appeal stated the duty of the Court on a first appeal as follows:

> ***"An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v. R., [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (Shantilal M. Ruwala v. R., [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the***

magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters v. Sunday Post, [1958] E. A. 424."

28. From the evidence on record, the Respondent, who filed the suit in the lower court, gave evidence and called two witnesses. The Respondent gave a chronology of how he owned the land since 1983, when it was called Mau Investment before it became the Chepsupeno Settlement Scheme in 2002. It was his evidence that the land was subdivided and was allocated Plot No. 799, which is the subject of this Appeal.

29. The Respondent produced a letter of offer dated 4th June 2002, letter dated 31st March 2002, from The Land Adjudication office, a register which showed his ID Number and Plot No. in his name, letter from the Chief about the dispute. He also told the court the process he went through, which culminated in the officers from the Lands office coming to the ground to solve the dispute between him and the Appellant.

30. It was the Appellant's case that he reported the issue to the National Land Commission, Land Adjudication Office who wrote a recommendation that the land belongs to the Respondent and advised that he goes to court for the cancellation of the Appellant's title.

31. The Appellant was aware that there was a dispute on the ownership of the suit land, and it is on record that when he took possession, the Respondent was already in possession of the land. It is also on record that the Appellant got a title to the suit land while the dispute was yet to be resolved. The Land Office, which was dealing with the dispute, had stopped the issuance of letters of offer to new applicants, pending the resolution of various disputes that had bedeviled the Mau Investment and Ndumberi Investment, and that is why it was changed to a Settlement Scheme.

32. PW3, Samuel Thiongo, the Deputy Director of Land Adjudication and Settlement, in charge of Nakuru Settlement Office, gave evidence and stated that the Kamara Chepsupeno Scheme had been affected by the 2008 ethnic clashes, which made people who were not beneficiaries encroach and settle on other people's land. That some people had settled on plots that did not tally with their numbers.

33. PW3 further confirmed that the 1st allocation in 2002 was to the Respondent John Kurgat Rotich, and the second in 2012 was to the Appellant Johana Kipng'eno. He also stated that a team was sent from Nairobi to verify what was on the ground, summoned both parties, but the Appellant did not appear. He later procured a title while the dispute remained unresolved.

34. It is also on record that the team verified the issue of the suit land on the ground, and confirmed that the land belonged to the Respondent. The verification team agreed that the letter of offer was supposed to be given to the Respondent and not the Appellant, but the report was not implemented. PW3 also stated that the Land Registrar acknowledged that the title was issued to the Appellant irregularly. He therefore told the court that the Land Adjudication and Settlement Office wrote to the Land Registrar to restrict the title.

35. The Appellant also gave evidence and claimed to have been allocated the suit land in 2012, and that there was a dispute which was resolved at the District Officer's office. It was his case that he was not on the land in 2002, when the Minister nullified all the previous documents so as to start afresh. He also admitted that there was a verification exercise in 2011.

36. The Appellant further stated that in 2013, the verification team recommended that his letter of offer be cancelled and be given to the Respondent and that among the disputed plots which were not to be given offer letters were Plot Nos 799 and 800. The Appellant also confirmed that the Land Office admitted that they gave him the land by mistake and that they had lodged a restriction on the land.

37. Section 26(1) of the Land Registration Act provides that:

"…the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the

proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

a) on the ground of fraud or misrepresentation to which the person is proved to be a party

b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme."

38. The Appellant obtained his title unprocedurally, knowing that he was not entitled to the land which had been the subject of a prolonged dispute. The verification team including the Land Adjudication office had told him that they had issued the letter of offer irregularly as the same belonged to the Respondent. It is also significant that the Appellant went ahead and obtained the title of the suit land when the dispute was still pending resolution. The Appellant waving a title for the suit parcel of land does not make it indefeasible, if the same falls under 26 (1) a & b of the Land Registration Act, which comes to the aid of litigants to correct the anomaly.

39. In the Supreme Court of Kenya case of **Dina Management Ltd vs County Government of Mombasa & Another [2023] KESC 30 (KLR**), (**supra)** the court held that a title is not an end in itself but rather the culmination of a legally sound process. The mere fact that an individual's name appears on a green card does not, in and of itself, validate the

integrity of their title, particularly in cases where the court is called upon to investigate the root of ownership.

40. I have reconsidered the evidence on record, and the documents produced by both parties. The Respondent was the one who was allocated the land earlier in 1983 and later in 2002 when the area was converted to a Settlement Scheme. The Respondent gave a chronological process how he got the land and the dispute that he had with the Appellant. The Appellant on the other hand admitted that he was not on the land in 2002 when the previous allocations were nullified.

41. The Appellant also admitted that there was a verification exercise whereby he was summoned but did not attend. He also acknowledged the evidence of the Deputy Director of Land Adjudication and Settlement, who stated that the verification team that went to the ground confirmed that the land belonged to the Respondent and that he was given a letter of offer by mistake.

42. The court is empowered under Section 80(1) of the Land Registration Act to cancel a title which was procured unprocedurally. The Section provides as follows:

> ***"(1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.***

(2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default."

43. On the issue as to whether the Trial Magistrate erred in awarding costs to the Respondent, it is well recognized that the principle of costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case, as was held in the case of **Jasbir Singh Rai & 3 others vs Tarlochan Signh Rai & others [2014] eKLR.**

44. In Halsbury's Laws of England, 4th Edition (Re-issue), [2010], Vol.10. Para 16, states as follows

"The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially."

45. The Appellant blamed the government officials for issuing him a title to the suit land, hence they were liable to pay the costs of the suit. This line of argument meant that the Appellant was admitting that the title was irregularly issued to him. Having gone ahead and participated in the

procurement of the title while there was a pending dispute as to the ownership of the suit parcel of land, the Appellant was complicit in the transaction.

46. Having analyzed the evidence on record, there would be no need to interfere with the judgment of the Trial Magistrate as she came to the right decision that the Respondent is the rightful owner of the suit land hence the Appellant's title would suffer the fate of being cancelled and registered in the name of the Respondent.

47. The Appeal is hereby dismissed with costs to the 1st Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF MAY 2026.

M. A. ODENY

JUDGE