



**Munyinyi v Ngendo; Njuguna & another (Interested Parties) (Environment and Land Appeal E001 of 2024) [2025] KEELC 5508 (KLR) (Environment and Land) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5508 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND APPEAL E001 OF 2024**

**MC OUNDO, J**

**JULY 24, 2025**

**BETWEEN**

**BONIFACE MUKURIA MUNYINYI ..... APPELLANT**

**AND**

**GRACE NGENDO ..... RESPONDENT**

**AND**

**NANCY WAIRIMU NJUGUNA ..... INTERESTED PARTY**

**KIRIKO FARM LIMITED ..... INTERESTED PARTY**

*(Being an Appeal from the Judgement and decree of the Honorable Y.M Barasa (PM) in Naivasha ELC Case No. 24 of 2020 made on 24th August 2023)*

**JUDGMENT**

1. Coming up for determination on Appeal (filed as a Misc Application) is a matter which was heard and determined by Hon. Y.M Barasa, Principal Magistrate wherein upon considering the evidence of both parties, vide his Judgment delivered on 24<sup>th</sup> August, 2023, the learned Magistrate found that the Plaintiff had proved her claim on a balance of probabilities and proceeded to enter judgement for the Plaintiff against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally for:
  - i. An order of permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their servants, employees, agents or anybody acting on their behalf from trespassing onto land parcel No. LR 10242-809 Kiriko Farm.
  - ii. The Plaintiff is awarded damages of Kshs. 100,000/=
  - iii. The Plaintiff is awarded costs of the suit plus interest.



2. The Appellant being dissatisfied with the said findings and Judgement, has now filed the present Appeal based on the following grounds in his Memorandum of Appeal:
  - i. The Learned Trial Magistrate erred in law and in fact in wholly disregarding the value of the subject matter tendered in evidence adduced and the submissions.
  - ii. The Learned Trial Magistrate erred in law and in fact in completely disregarding the extent and size of the suit property LR No. 10243-809 Kiriko Farm measuring 37 Ha, a whopping 91.43 acres whose value in Nakuru County is a conservative approximate value of not less than Ksh 50,000,000/= beyond the pecuniary jurisdiction of the Principal Magistrate.
  - iii. The Learned Trial Magistrate erred in law and in fact in arrogating to the court jurisdiction that it did not have rendering the judgment null and void by virtue of Article 162 and 169 of *the Constitution* of Kenya, Section 26 of the Environment and *Land Act*, and Section 9 of the Magistrates Court Act.
  - iv. The Learned Trial Magistrate erred in law and in fact by failing to down his tools for lack of the requisite jurisdiction as the claim in question related to ownership of the property and trespass by alleged non-owners hence without the pecuniary jurisdiction of the court.
  - v. The Learned Magistrate erred in law and in fact in upholding the claim of fraud by the Plaintiff against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants Hi guys it's me again OK I'm here to whose claim is statute-barred by the *Limitation of Actions Act*.
  - vi. The Learned Magistrate erred in law and in fact in taking into account irrelevant factors, using wrong principles and misapprehended wholly the evidence adduced therefore reaching a wholly erroneous and unfair finding which unfairly infringed on the Appellant's right to property as enshrined in article 40 of *the Constitution* of Kenya and deprivation of the appellant's property.
  - vii. The whole judgment was against the law, and the weight of the evidence adduced was erroneous and unfair.
3. The Appellant thus prayed for the following orders:
  - i. The appeal be allowed and the whole of the judgment delivered on 24<sup>th</sup> August 2023 and all consequential orders be set aside.
  - ii. The judgment of the subordinate court is substituted with an order dismissing the suit in its entirety as pleaded.
  - iii. Costs of the appeal be provided for.
4. In response and opposition to the Appellant's Memorandum of Appeal, the Respondent filed her Grounds of Opposition dated 2<sup>nd</sup> April 2025 wherein she opposed the said Memorandum of Appeal on the following grounds: -
  - i. The Appeal is devoid of merit.
  - ii. No valuation report and /or document has been presented in court to suggest that the value of the suit land exceeds the pecuniary jurisdiction of the trial court.
  - iii. During the hearing of the suit, the Appellant did not tender any evidence to controvert the evidence submitted by the Respondent.



- iv. The Respondent's claim was thus uncontroverted and deserving of the Orders granted by the Trial Court.
5. The Interested Parties did not enter appearance.
6. Directions were taken that the Appeal be disposed of by way of written submissions wherein the vide his submissions dated 28<sup>th</sup> March 2025 the Appellant framed two (2) issues for determination as follows:
  - i. Whether the Appeal is merited based on the grounds aforesaid.
  - ii. Who should bear the costs of this application.
7. On the first issue for determination as to whether the Appeal was merited, he placed reliance on the Court of Appeal's decision in the case of *Peters v Sunday Post Limited* [1958] EA 424 to the effect that it was now settled law that the duty of the first appellate court, (this court) was to re-evaluate the evidence which was adduced in the subordinate court both on points of law and facts and come up with its own findings and conclusions. That further, the appropriate standard of review established in cases of appeal could be stated in three complementary principles as follows:
  - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions.
  - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
  - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it was hearing the matter for the first time.
8. On the first limb, he submitted that the trial court was not clothed with the requisite pecuniary jurisdiction, pursuant to the provisions of Section 7(1) of the Magistrates Court Act, because the cumulative value of the suit property LR No. 10243-809 Kiriko Farm was more than Kshs. 20,000,000/=. He thus urged the Honorable Court to take judicial notice of what comparative land parcels of land of that size in Nakuru County were sold at. He placed reliance in the decided case of *Kobilo Farm Limited & another v Elfam Limited; Commodities Fund (Interested Party) (Environment & Land Case 24 of 2020)* [2024] KEELC 1567 (KLR) (14 March 2024) (Judgment) to submit that in a similar dispute relating to the sale and purchase of a parcel of land in Kobilo Farm, the value of 100 acres was stated to be in the region of Kshs. 150,000,000/=.
9. That the trial court had misapprehended the evidence on record and applied the wrong principles of law as the Plaintiff in the trial court did not adduce sufficient evidence to warrant the prayers that had been granted. That it had been appreciated that resolving a dispute of unregistered parcel of land was one that called for patience of an angel and a keen eye of a jingo (sic) and that in such cases, it was imperative to most scrupulously trace the root of ownership.
10. He hinged his reliance in the decided case of *Danson Kimani Gacina & another v Embakasi Ranching Company Ltd* [2014] eKLR, where J.L. Onguto, J (as he then was) (sic) when confronted with facts similar to the instance case, the court had proposed scrupulous examination of documents to trace the root as it had been insufficient for the Plaintiffs to lay claim over property without providing prove of payment of the purchase price.



11. That indeed, there was no prove of payment of any money in consideration of the purchase of the suit property. Interestingly, the Respondent in her evidence had stated that she did not know how much her husband had purchased the property for. That there was no iota of evidence showing how the suit property had been transferred from the alleged initial owner that is, Dedan Wamai, to the vendors who had sold the same to the Respondent herein. That subsequently, without such evidence, the chain on the root of the title stood broken.
12. That further, the transfer of the issued share as had been alleged in the Respondent's pleadings had not been substantiated either by way of a share transfer agreement or a share deed and that no beacon certificates and evidence of possession had been adduced. That the Respondent's evidence was also not corroborated by any independent third party thus the trial court proceeded on the wrong principles of law.
13. On who should bear the cost of the Appeal, he placed reliance on the provisions of Section 27(1) of the *Civil Procedure Act* and the decided case of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR to submit that it would not only be fair, but in the interest of justice, for costs to be awarded to the Appellant herein. He thus prayed that the court allows the Appeal as prayed.

### **Respondent's Submissions**

14. In opposition of the Appeal, the Respondent, vide her submissions dated 2<sup>nd</sup> April 2025 summarized the factual background of the matter and framed one issue for determination, to wit; whether the Appeal was merited.
15. That the issue of pecuniary jurisdiction had been raised at the Appeal stage since no objection on the same had been raised in the trial court. That subsequently, the Appellant having raised the issue on first appeal, he had invited the court to take judicial notice of what an acre of land should cost without placing any evidence before the court to show that the value of the suit land had not been in tandem with the pleadings and that the same had gone beyond the pecuniary jurisdiction of the trial court. That the Appellant had thus invited the court to enter into the realm of speculation in relation to the value of the land. It was her submission that in the absence of any material that included a valuation report, sale agreement and/or any document that suggested that the value of the suit land had exceeded the pecuniary jurisdiction of the trial court, the Appellant's argument had remained far-fetched and must thus fail.
16. Reliance was then hinged on the case of Trust Bank Limited v Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001 to submit that it was trite that where a party failed to call evidence in support of its case, that party's pleadings remained mere statements of fact. That subsequently, the failure to adduce any evidence by the Appellant meant that the evidence that had been adduced by the Respondent was uncontroverted and therefore unchallenged.
17. She submitted that in the instant case, an analysis of the proceedings before the trial court affirmed that the only evidence that had been submitted was that of the Respondent herein. That whereas the Appellant had been allowed an opportunity to call witnesses and tender evidence, he had failed to do so thus her case had remained uncontroverted.
18. That on the contrary she had availed evidence to the effect that her husband had purchased the suit property wherein an agreement had been presented in support of the said assertion. That subsequently, the trial court was correct in arriving at the conclusion it did, that she had proved her case to the required standards.



19. That accordingly, in the absence of any evidence to the contrary and since proof in civil cases was on a balance of probabilities, the court should not interfere with the decision of the trial court.

**Analyses of the evidence.**

20. According to the proceedings in the trial court, Grace Ng'endo, the Plaintiff/Respondent herein instituted the instant suit against Nancy Wairimu Njuguna (the 1<sup>st</sup> Interested Party herein), Boniface Mukuria Munyinyi (the Appellant herein) and Kiriko Farm Limited (the 2<sup>nd</sup> Interested Party herein) as the 1<sup>st</sup> to 3<sup>rd</sup> Defendants respectively vide Nakuru CMCELC Case No. 24 of 2020 in the Plaint dated 14<sup>th</sup> July 2020 and Amended on 17<sup>th</sup> August, 2021 wherein she had sought for the following orders;
- i. That there be an order of permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their servants, employees, agents or anybody acting on their behalf under their name from remaining on or continuing in occupation of the suit land or any part thereof.
  - ii. An order for the rectification of the register and or records held by the 3<sup>rd</sup> Defendant in respect of the suit land so as to affirm the same and purchase of the same by Godfrey Njuguna Githiru.
  - iii. General damages.
  - iv. Costs incidental to the suit.
  - v. Interest on (ii) and (iv) above at court rates.
  - vi. Any other relief that the court may deem fit and just to grant.
21. Subsequent to the filing of the suit, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had filed their Statement of Defence dated 30<sup>th</sup> October 2020 and amended on the 6<sup>th</sup> November, 2021 denying the allegations contained in the Plaint while putting the Plaintiff to strict proof and stating that the Plaintiff had no color of right to the suit property since she had never owned, legally inherited, or bought for value or even been allotted the same. That her claim thus lacked any legality and was fraudulent. That the Plaintiff her husband one Godfrey Njuguna Githiru had no capacity, legality, leave and/or authority to purchase, own, claim or possess the land known as L.R 10243-809 Plot No. 4 (Kiriko Farm Ltd) hence their claim and the suit herein was fraudulent.
22. That the subject land was bought for members of Kenya National Hawkers Association (KENAHA) wherein Geoffrey Njuguna Githiru, Nancy Wairimu Njuguna, and Ann Njeri Chege were officials and thus could not claim any ownership of the suit land. That in any case, the suit land was already occupied by third parties and that the Defendants had no interest thereon. That the Plaintiff's prayers were misguided and irregular for the Defendants had no nexus with the suit land. That in fact, the suit land had already been transferred and occupied by members hence the Plaintiff's suit had been overtaken by events and was ripe for dismissal.
23. That the Plaintiff had not exhibited any capacity or document of power of attorney and/or representation of Godfrey Njuguna Githiru, thus they had sought for the dismissal of the entire suit with costs. That the prayers sought were incapable of being granted and that the removal of the Honorable Attorney General and the Registrar of Land Naivasha had made the entire prayer for judgement null and void since the orders prayed for were incapable of being implemented.
24. In response to the statement of Defence, the Plaintiff had reiterated the contents of the Plaint and denied the allegations set out there in putting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to strict proof stating that her husband did not purchase the suit property for and on behalf of the Hawkers Association. That in any



case, the Defendants' Statement of Defence was a bare denial of their claim wherein she had sought for the dismissal of their amended Defence and Judgement be entered in her favour as prayed in the Plaint.

25. The case proceeded for hearing wherein the Plaintiff, PW1, adopted her witness statement as her evidence in chief and then proceeded to testify that her deceased husband, one Godfrey Njuguna had bought the suit land wherein the Defendants had uprooted trees, cultivated and constructed on the said land. That whereas she was aware of the group called Kenana and that whereas 85 acres of land belonged to the said group, her husband had bought 35 Ha and that it was not true that Kenana group had given her husband the money to buy the suit land. She produced the following documents in evidence;
- i. Agreement dated 21<sup>st</sup> June 2011, as pf exh 1
  - ii. Share transfer dated 28<sup>th</sup> August 2011, as pf exh 2
  - iii. Limited Grant, as pf exh 3
  - iv. Certificate of death, as pf exh 4
  - v. Photographs, as pf exh 5
26. In cross examination, she confirmed that her husband Godfrey Njuguna had bought land parcel No. 10243/809 via a Sale Agreement, which land had no title, but where he had been issued with a share certificate which she did not produce in evidence.
27. That she knew Josephine Mwanu and William M. Nguya but not Mary Kerube. That the land had been sold to her husband by Dedan and Paul although she did not know where Dedan lived. That after the demise of her husband, she had obtained Limited Grant of representation from Naivasha Law Courts wherein she had informed the court that her late husband had properties.
28. That she was not aware that the land had its owners who had titles. That whereas she knew that Kenana group had 85 acres parcel of land, she did not have a surveyor's map. That she did not know the purchase price that her husband had paid for the land. That whereas it was her son Dickson who had seen the Defendants invading her land and had taken the photos of the tractor, she did not know the owner of the said tractor but that she had reported to the police at Elementaita. She confirmed that she did not have the OB number and that her son did not record his statement.
29. In re-examination, she clarified that whereas she did not participate in the agreement, she did not have dispute with the people who had sold the suit land to her husband. She confirmed that the title was in the name of Philipo and that the people who had sold the land to her husband had not been issued with a title. That the suit land was hers because she used to cultivate it. She confirmed that she was present when the photographs were taken and that she had reported to the police.
- The Plaintiff had thus closed her case
30. The Defence Counsel having failed on several occasions to present witnesses to testify, the Defence case had been marked as closed.
31. I have looked at the Plaintiff's witness statements dated 14<sup>th</sup> July 2020 which was adopted in evidence for which she had recorded that her husband Godfrey Njuguna Githiru (deceased) died on 31<sup>st</sup> November 2019. That he had purchased land parcel number L.R 10248-809 referred to as Kiriko Farm and measuring approximately 37 Ha (suit land). That the land was not titled and had previously been owned by Dedan Wamai who had transferred his shares over the land to Paul Mutura Machine, John Mwanu Njugi and William Wachira Nguya who had subsequently and/or through their permitted representatives, entered into an agreement for sale of the suit land to the deceased.



32. That subsequently the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had through their agents and/or assigns fraudulently and/or allegedly entered into the land, fenced it off and proceeded to cultivate the same. She particularized illegality and/or fraud on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as:
- i. Permitting and/causing entry into the suit land;
  - ii. Erecting and/or causing to be erected a fence in the suit land.
  - iii. Permitting and/or causing the suit land to be cultivated;
  - iv. Making documents without authority to procure registration of the suit land;
  - v. Forging signatures on documents to procure registration of the suit land in their name.
  - vi. Procuring registration of the suit land which the 1<sup>st</sup> and 2<sup>nd</sup> Defendants knew or ought to have known belonged to the estate of Godfrey Njuguna Githiru without following due process.
  - vii. Res ipsa loquitur
33. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had fraudulently obtained title deeds over the suit land hence the said titles should be cancelled. That she had reported the matter to the area police station but they had refused to issue her with an OB number. That she had not granted the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or any other person and/or entity the rights of ingress and/or egress in relation to the suit land and despite numerous requests and/or reminders to vacate and desist from trespassing onto the land and make good their claim, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had neglected and refused to promptly honor the same thus depriving her and her family of the use and enjoyment of the suit land wherein they had suffered loss and damage. She had sought for the orders as prayed in the Plaint.

#### **Determination.**

34. I have considered the record of Appeal, the holding by the trial Magistrate, the written submissions by learned Counsel. The authorities cited and the applicable law. Conscious of my duty as the first Appellate Court in this matter, I have to reconsider the decision Appealed against, assess it and make my own conclusions as was stated by the Court of Appeal in *Paramount Bank Limited v First National Bank Limited & 2 Others (Civil Appeal 468 of 2018) [2023] KECA 1424 (KLR)* where the court held as follows;

“A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of section 78 of the *Civil Procedure Act*, a first Appellate Court can appreciate the entire evidence and come to a different conclusion.”

35. The summary of the evidence adduced by the Plaintiff (1<sup>st</sup> Respondent) in the trial court which evidence was undefended as the Defendants therein did not tender any evidence, was to the effect that she was the legal representative of her deceased husband Godfrey Njuguna Githiru who died on the 21<sup>st</sup> November 2019 vide a Limited Grant issued on the 17<sup>th</sup> June 2020 in the Naivasha CMC Ad litem No. 68 of 2020 therein produced as Pf exh 3.
36. That her late husband had bought from Dedan and Paul, land parcel No. 10243/809 referred to as Kiriko Farm and measuring approximately 37 Ha (suit land) via a Sale Agreement of 21<sup>st</sup> June 2011



therein produced as Pf exh 1. That subsequently, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants (1<sup>st</sup> interested party and Appellant) had through their agents and/or assigns fraudulently and/or allegedly entered into the land, fenced it off and proceeded to cultivate the same as per the Photographs therein produced as Pf exh 5. That she had reported the matter at the Elementaita police, she had not been issued with any OB number.

37. It is trite that although the suit was undefended, yet the Plaintiff had the duty to formally prove her case on the balance of probabilities as required by law.
38. Having given a brief history of the matter herein, I find the issues arising therein for determination as follows:
- i. Whether the sale agreement dated 21<sup>st</sup> June 2011 was valid.
  - ii. Whether the sale agreement dated 21<sup>st</sup> June 2011 conferred any interest to the deceased Godfrey Njuguna Githiru.
  - iii. Whether the Appeal is merited.
39. A sale agreement for land is a crucial legal document that outlines the terms and conditions of a property transaction between a seller (vendor) and a buyer (purchaser) and protects the interests of both parties so as to ensure a smooth transfer of ownership. Some of the essential elements in such a sale agreement would include clauses of the parties involved, their full Names and Identification, detailed legal description of the land, including the Title/L.R. Number, approximate acreage, location etc, purchase price and payment terms, conditions precedent and or special conditions, execution signatures of both the seller(s) and buyer(s) which must be attested by witnesses and lastly the date the agreement is executed.
40. I have looked at the Sale agreement of 21<sup>st</sup> June 2011 therein produced as Pf exh 1 herein produced for ease of reference.

Republic Of Kenya

Sale Agreement

This sale agreement made on 21<sup>st</sup> Day of June Two Thousand and Eleven between Godfrey Njuguna Gichuru ID No.5982003 of Post Office Box number 3134 Nakuru (Purchaser) and Mr. William Wamicha Nguya ID No. 3375546 of Post Office Box number 938, Karatina. Mr. (sic) Josphine Mwiyeira Mwanu ID No 5504631 and Mary Njeri Karumba of ID No 7012400 of Post Office Box Nyeri (OWNERS) of 1.R No 10243-809 37 Ha

That the owners (Josphine Mwiyeri Mwanu, Wamicha N Mary Njeri Karumba and Mr. William Ruya PO. Box 938 Karatina have received full payment.

Now This Agreement Witnessed as Follows:

1. That the purchase (sic) have paid full amount to the vendor.
2. That the plot is sold with vacant possession.
3. That the purchaser shall take up the plot with vacant possession upon full payment of purchase price and execution of this agreement.
4. That both parties to share legal fees.
5. That the vendor shall have all transfer documents fully executed in favor of the purchaser, to enable the purchaser to transfer the said plot to himself.



6. That the land is sold free from any encumbrances.
7. That the agreement shall remain valid and binding on both parties until registration and transfer in favour of the purchaser.
8. That this agreement has been drawn in accordance with the law society of Kenya (sic) conditions for sale.
9. That both parties undertake to fulfill their obligations under this agreement.

In Witness Whereof the parties here unto have set their hands and signature the date and year hereinabove (sic) indicate.

Josphine M. Mwanu

Id No. 5504631

William M. Nguya

Id No. 3375546

Mary. N. Karumba

Id No 7012400

Godfrey Njuguna Githuiru

ID No. 5982003

Drawn by

Kimaru & Co Adocates

Withaga House

Kenyatta Avenue

41. On the first issue as to whether the Sale Agreement of 21<sup>st</sup> June 2011 was valid or not, I have looked at whether it met the requirements of a contract as per the provisions of Section 3(3) of the Contract Act which provides as follows;

“

“3(3) No suit shall be brought upon a contract for the disposition of an interest in land unless-

(a) the contract upon which the suit is founded-

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:”

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the *Auctioneers Act* (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

42. A look at the Sale Agreement herein, although the same was in writing, contained the names of the parties, and the description of the property, the location of the property was not provided, there was no



purchase price and payment terms, conditions precedent and or special conditions, the signatures of both the seller(s) and buyer was not attested by witnesses and lastly the same was drawn in accordance with the law society of Kenya. I find that the sale agreement did not conform to the requisite of a valid contract as per the law of Contract herein above and therefore was not a valid sale agreement.

43. On the second issue for determination as to whether the sale agreement dated 21<sup>st</sup> June 2011 conferred any interest to the deceased Godfrey Njuguna Githiru, I find that a title deed is the fundamental document that proves ownership and legal rights over a piece of land. It is conclusive evidence of proprietorship. The *Land Registration Act*, is the primary legislation governing land registration and establishes a clear legal process for land registration, provides security of tenure, and aims to prevent land fraud.
44. Section 24 of the *Land Registration Act* provides as follows
- Subject to this Act—
- 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; and
45. Section 25 of the *Land Registration Act* provides as follows
- “The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—”
46. Section 26(1) of the *Land Registration Act* provides as follows:
- “The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... 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; or
  - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
47. In the proceedings before the trial court, there was no evidence adduced that to the effect that either of the parties to the sale agreement herein above had acquired the Title to the suit land. Indeed, no Title had been produced in evidence to prove that either the vendors had any interest to pass in the suit parcel of land or that the Plaintiff’s deceased husband had acquired any interest in the said portion of land. Section 107(1) of the *Evidence Act*, provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which (s)he asserts, must prove that those facts exist.
48. The sale of land without a title deed pursuant to the agreement dated the 21<sup>st</sup> June 2011 herein, I hold, was fraught, not permissible, illegal, null and void *abi nitio* as ‘*Nemo Dat Quod Non Habet*’ (no one can give what they do not have.)



49. The Court of Appeal in *Jivanji v Sanyo Electrical Company Ltd* [2003] KLR 425 had held as follows;

“No person has legal capacity or authority to transfer to another person a registered proprietor's interest in a parcel of land registered under the Registered *Land Act* without the participation or knowledge and consent of the registered proprietor. The transfer of the suit parcel of land to the first Defendant on 5<sup>th</sup> April 1991 was done by a transferor who was not the registered proprietor of that parcel of land. It was done without the knowledge and consent, or participation of the Plaintiff. The transferor had no legal Title in the Plaintiff's said parcel of land. The transferor had no proprietary rights in that parcel of land to pass to the first Defendant. Notwithstanding the fact that the transaction was or may have been blessed with consent of the relevant Land Control Board, was or may have been registered, that transaction was null and void ab-initio in so far as it purported to transfer the suit parcel of land to the first Defendant as there could be no valid transfer where the transferor has no Title to transfer. Documents may have been prepared, consent of the land control board obtained, signatures appended and attested and the transfer registered. But all those could not give the purported transferor the Title to transfer to the first Defendant. That transfer was unlawful.”

50. Finally, Josphine Mwiyeri Mwanu, Wamicha N Mary, Njeri Karumba and Mr. William Ruya having had no legal capacity or authority to sell or transfer to Godfrey Njuguna Gichuru interest in the parcel of land No. 10243/809 as they were not the registered proprietors of the same, I hold that the Appeal is merited and is herein allowed with the following orders that the judgment of the trial court delivered on 24<sup>th</sup> August 2023 and all consequential orders be set aside and is substituted with an order dismissing the Plaintiff's suit in its entirety.

The 2<sup>nd</sup> Defendant/Appellant herein shall have costs of the appeal.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

