



**Seda v Achola & 2 others (Environment and Land Appeal
E003 of 2023) [2025] KEELC 5579 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5579 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E003 OF 2023**

**SO OKONG'O, J
JULY 24, 2025**

BETWEEN

JOSWA APIYO SEDA APPELLANT

AND

VIGDIS ACHIENG ACHOLA 1ST RESPONDENT

LAND REGISTRAR, KISUMU 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

*(Being an appeal against the judgment and decree of Hon. E.A.
OBINA SPM delivered on 29th June 2023 in Kisumu CMC ELC No.
E007 of 2020, Joswa Apiyo Seda v. Vigdis Achieng Achola & 2 others)*

JUDGMENT

1. This appeal is against the judgment delivered by Hon. E.A. Obina SPM on 29th June 2023 in Kisumu CMC ELC No. E007 of 2020 (hereinafter referred to as “the trial court”). The Appellant brought a suit against the Respondents at the trial court through a plaint dated 29th September 2020. The Appellant averred that he was the registered proprietor of all that parcel of land known as Kisumu/Konya/6249, measuring 0.03Ha (hereinafter referred to as “the suit property”). The Appellant averred that he purchased the suit property from one Bob Otieno Nyunja at a consideration of Kshs. 530,000/- on or about 10th July 2010.
2. The Appellant averred that sometimes in 2019, he visited the suit property with a view to developing the same and found that a person unknown to him had entered the property without his permission and put up a temporary structure thereon. The Appellant averred that he conducted a search at the Lands Office in Kisumu and also obtained a copy of the register of the suit property which revealed that the person who had trespassed on the suit property was the 1st Respondent and that the suit



property had been transferred and registered in the name of the 1st Respondent without the Appellant's knowledge.

3. The Appellant averred that he neither sold nor transferred the suit property to the 1st Respondent. The Appellant averred that the transfer of the suit property to the 1st Respondent was carried out irregularly, fraudulently and illegally with the full knowledge and involvement of the 2nd Respondent.
4. The Appellant sought judgment against the Respondents for; a declaration that the transfer and registration of the suit property in the name of the 1st Respondent was irregular, illegal and fraudulent, an order cancelling the registration of the 1st Respondent as the owner of the suit property and the restoration of the suit property into the name of the Appellant as the owner thereof. The Appellant also prayed for the costs of the suit.
5. The 1st Respondent entered appearance and filed a statement of defence dated 6th October 2020. The 1st Respondent denied all the allegations made against her by the Appellant in the plaint. The 1st Respondent averred that she regularly and legally acquired the suit property from the Appellant for valuable consideration. The 1st Respondent averred that the suit property was sold and transferred to her by the Appellant. The 1st Respondent urged the court to dismiss the Appellant's suit with costs.
6. The 2nd and 3rd Respondents filed a joint statement of defence on 28th October 2020. The 2nd and 3rd Respondents denied all the allegations made against them by the Appellant in his plaint. The 2nd and 3rd Respondents averred that if the suit property was registered in the name of the 1st Respondent, the registration must have been done in accordance with the law. The 2nd and 3rd Respondents prayed that the suit against them be dismissed with costs.
7. The trial court heard the matter and delivered a judgment on 29th June 2023 dismissing the Appellant's suit against the Respondents with costs. The trial court made a finding that the 1st Respondent acquired the suit property procedurally and lawfully. The trial court found that the 1st Respondent's title to the suit property was supported by an agreement of sale, application for land control board consent, consent of the Land Control Board, valuation for stamp duty, transfer forms, receipts for the payments made and a title deed. The trial court held that the Appellant failed to prove the allegations of fraud made against the Respondents to the required standard. The trial court held that the Appellant failed to prove his case against the Respondents on a balance of probabilities.
8. The Appellant was aggrieved by the decision of the trial court and preferred the present appeal. In his Memorandum of Appeal dated 6th July 2023, the Appellant challenged the judgment of the trial court on the following grounds;
 1. The Learned Trial Magistrate erred both in law and fact in raising the standard of proof above a balance of probabilities to the prejudice of the Appellant.
 2. The Learned Trial Magistrate erred both in law and fact in placing unjustified capital on the issue of the absence of a letter of consent of the Land Control Board on the process of acquisition of the suit property by the Appellant as a defect in his title.
 3. The Learned Trial Magistrate erred both in law and fact in disregarding the Appellant's uncontroverted evidence that he never had any transaction with the 1st Respondent that would have been construed as a conveyance of the suit property.
 4. The Learned Trial Magistrate erred both in law and fact in failing to appreciate that the entries, the signature(s) and the photograph(s) in the documents relied on by the 1st Respondent in support of her allegation of having purchased the suit property were forgeries and fraudulent.



5. The Learned Trial Magistrate erred both in law and fact in disregarding the fact that the Appellant was in possession of the original title deed of the suit property which he was alleged to have sold to the 1st Respondent.
6. The Learned Trial Magistrate erred both in law and fact in disregarding the fact that the Appellant had made a formal complaint about the fraudulent transfer of his land to the police and that the matter was being investigated.
7. The Trial Magistrate erred both in law and fact in disregarding the Appellant's evidence on the particulars of fraud perpetrated in the transfer of the suit property from his name to the name of the 1st Respondent.
8. The judgment of the Trial Magistrate was against the weight of evidence and was not supported by the evidence on record.
9. The Appellant prayed that the appeal be allowed and the judgment of the trial court be set aside and, in its place, judgment be entered for the Appellant against the Respondents with costs as prayed in the plaint.
10. The appeal was argued by way of written submissions. Only the Appellant filed submissions. The Respondents never filed submissions even after the time was extended for them to do so.

The Appellant's submissions

11. The Appellant filed submissions dated 9th October 2024. The Appellant framed the following issues for determination by the court;
 1. Who was the legal, authentic and genuine registered owner/proprietor of the suit property, was it the Appellant or one Joshwa Apiyo Seda?
 2. Who was Joshwa Apiyo Seda in the transaction leading to the transfer of the said parcel of land to the 1st Respondent, Vigdis Achieng Achola?
 3. Did the Appellant dispose of the suit property to the 1st Respondent?
 4. Did John Rebman Achola have the capacity, locus standi by way of a Power of Attorney to enter into an agreement for the purchase of the suit property?
 5. Was the alleged transfer of the suit property by Joshwa Apiyo Seda legal, procedural, authentic and lawful?
 6. Did the 1st Respondent, Vigdis Achieng Achola get/obtain a good title to the suit property?
 7. Who should bear the costs of the appeal?
12. The Appellant submitted that as a first appellate court, the court was mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own judgment on whether or not to allow the appeal. The Appellant submitted that the first appellate court is empowered to subject the whole evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first-hand. In support of this submission, the Appellant relied on *Selle & another v. Associated Motor Boat Co. Ltd. & others* [1968] E.A 123 and *Peters v. Sunday Post Limited* [1958] E.A 424.
13. The Appellant submitted that a first appellate court has jurisdiction to reverse or affirm the findings of the trial court. The Appellant submitted that unless restricted by law, the whole case is open for



rehearing before the first appellate court, both on questions of fact and law. The Appellant submitted that the judgment of the first appellate court must, therefore, reflect the court's findings supported by reasons, on all the issues put forth by the parties for the decision of the court.

14. The Appellant submitted that 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. The Appellant submitted that a first appeal is to be decided on facts as well as law. The Appellant submitted that he discharged the burden of proof to the required standard, which was on a balance of probabilities. The Appellant submitted that he proved that he bought the suit property from its previous owner, Bobby Otiende Nyunja and had in his possession the original title deed for the property. The Appellant submitted that he established that he did not sell the suit property to the 1st Respondent and that the alleged seller was a fraudster. The Appellant submitted that he established that he did not sign the transfer of land form in favour of the 1st Respondent and that the photograph that was on the said document was not his. In support of this submission, the Appellant relied on *James Muniu Mucheru v. National Bank of Kenya Ltd* [2019] eKLR, *Miller v. Minister of Pensions* [1947] 2 ALL ER 372, and *Mbuthia Macharia v. Annah Mutua & Another* [2017] eKLR.
15. The Appellant cited Sections 40 and 44 of the *Land Registration Act* 2012 and submitted that there was no land sale agreement between Joshwa Apiyo Seda, the person who allegedly sold the said parcel of land to the 1st Respondent and the 1st Respondent. The Appellant submitted that the transaction leading to the transfer of the suit property to the 1st Respondent was not in writing in contravention of Section 3(3) of the *Law of Contract Act*, Chapter 23 Laws of Kenya and Section 38 of the *Land Registration Act*, 2012.
16. The Appellant submitted that Joshwa Apiyo Seda, the person who allegedly sold the suit property to the 1st Respondent could not pass a good title to the 1st Respondent as he had none. The Appellant submitted that the doctrine of *nemo dat quod non-habet* applied to the case. The Appellant submitted that the 1st Respondent could not purport to have been an innocent purchaser of the said property. The Appellant relied on *Katende v. Haridar & Company Limited* [2008] 2 E.A. 173 in support of this submission. The Appellant submitted that the 1st Respondent used a proxy, John Rebman Achola, while purchasing the suit property. The Appellant submitted that the 1st Respondent did not see the vendor of the property and did not execute the instrument of transfer. The Appellant submitted that the 1st Respondent could not be said to be an innocent purchaser.
17. The Appellant cited the case of *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 others* [2017] eKLR and submitted that the suit property had two title deeds, one held by the Appellant and the other by the 1st Respondent and the title held by the Appellant was first in time.

Analysis and Determination

18. I have considered the pleadings filed before the trial court together with the proceedings and the judgment of the court. I have also considered the memorandum of appeal filed by the Appellant against the said judgment and the submissions by the Appellant. I agree with the submissions by the Appellant on the powers and the role of this court as the first appellate court. This being a first appeal, the court has to reconsider and re-evaluate the evidence on record and draw its own conclusions on the issues



that were raised for determination before the trial court. In *Kenya Ports Authority v. Kuston (Kenya) Limited* [2009] 2 E.A 212, the Court of Appeal stated that:

“On a first appeal from the High Court, the Court of Appeal should 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 allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

See also, *Verani t/a Kisumu Beach Resort v. Phoenix of East Africa Assurance Co. Ltd* [2004] 2 KLR 269, *Selle v. Associated Motor Boat Co. Ltd.* [1968] E.A 123 and *Abok James Odera t/a Odera & Associates v. John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR on the duty of the first appellate court.”

19. The first appellate court will also not interfere with the findings of fact by the trial court unless they were not based on evidence at all, or they were based on a misapprehension of the evidence, or where it is demonstrated that the court acted on wrong principles in reaching its conclusion. See, *Peter v. Sunday Post Ltd.* [1958] E.A 424 and *Makube v. Nyamuro*[1983] KLR 403.

20. I am of the view that the Appellant’s eight (8) grounds of appeal can be summarised into two grounds, namely, whether the trial court erred in its finding that the Appellant had failed to prove his case against the Respondents on a balance of probabilities, and whether the trial court erred in dismissing the Appellant’s suit.

21. In *Kurshed Begum Mirza v. Jackson Kaibunga* [2017] eKLR, the court stated as follows:

“(16) Turning to the second issue; according to section 107 of the *Evidence Act*, the burden of proof in any case lies with the party who desires any court to give judgment as to any legal right or liability. It is for that party to show that the facts which he alleges his case depends upon exist. This is known as the legal burden.”

22. In *Halsbury’s Laws of England*, 4th Edition, Volume 17, at paras 13 and 14, the authors have stated as follows on the burden of proof:

“13. The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party’s case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose.

14. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.”

23. In *Miller v. Minister of Pensions* [1947] 2 All ER 372, Denning J. stated that:

“Thus proof on a balance of preponderance or probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties explanations are equally (un)convincing,



the party bearing the burden of proof will lose, because the requisite standard will not have been attained”.

24. The Appellant’s case as pleaded was that the 1st Respondent in collusion with the 2nd Respondent, illegally and fraudulently caused the suit property that was registered in the name of the Appellant to be transferred and registered in the name of the 1st Respondent without the Appellant’s consent or knowledge. The 1st Respondent’s case as pleaded in paragraph 8 of her defence was that she legally, regularly and lawfully acquired the suit property from the Appellant who sold the same to her and whom upon receipt of the purchase price, transferred the suit property to her name. It appears from the pleadings that were filed before the trial court that the Appellant and the 1st Respondent agreed, or in other words, there was a consensus that the Appellant was the registered proprietor of the suit property before the same was registered in the name of the 1st Respondent. In her affidavit in reply to the Appellant’s application for an interlocutory injunction, the 1st Respondent stated as follows in paragraphs 6 to 19:

- “6. That sometime on the 17th September 2018, I entered into an agreement for sale of the suit parcel with the Plaintiff/applicant herein as the vendor.
7. That the consideration for the purchase of the suit parcel was Kshs. 1,000,000/-.
8. That at the execution of the agreement for sale I know of my own knowledge that I paid Kshs. 500,000/- to the vendor a sum of which the vendor acknowledged receipt.
9. That upon payment of the deposit I took immediate possession of the suit parcel and began to develop it.
10. That on the 20th March 2019 I know of my own knowledge that I paid the remaining balance of Kshs. 500,000/- by paying Kshs. 50,000/- in cash and Kshs. 450,000/- through Bank deposit into the vendor’s bank account on the 21/03/2019 thereby completing the sale...
11. That upon completing the sale, the vendor and I began the process of the transfer of the suit property into my name and favour.
12. That the vendor duly signed the transfer and sought consent from the Land Control Board which consent was issued to me...
13. That I then lodged the transfer form for registration with the 2nd defendant upon which valuation was done and the documents were assessed for the payment of stamp duty...
15. That the 2nd defendant/respondent upon being satisfied that I had duly complied with the relevant provisions of the law proceeded to register the transfer in my favour.
16. That I was then issued with the title deed to the suit parcel duly and regularly registered...
19. That I know that the plaintiff/applicant’s only claim is that he never sold the parcel a claim which is false and is an attempt by the plaintiff/applicant to fraudulently acquire back the title knowing that I am ordinarily a resident of



Norway and thus rarely within the country to supervise the status of the suit parcel.”

25. There being no dispute that the suit property was registered in the name of the Appellant before the same was transferred and registered in the name of the 1st Respondent, the burden was on the Appellant as the Plaintiff before the trial court to prove that he was not involved in the transfer and registration of the suit property in the name of the 1st Respondent.
26. The Appellant’s case was that his official name was Joswa Apiyo Seda. The Appellant produced in evidence a copy of the agreement of sale dated 10th July 2010 through which he purchased the suit property from the first registered owner, Boby Otiende Nyunja. In the agreement, the names Joswa Apiyo Seda and Joshwa Apiyo Seda were used interchangeably. The Appellant also produced in evidence a copy of a title deed dated 30th August 2010 that was issued to him upon the transfer and registration of the suit property in his name. The title deed was in the name of Joswa Apiyo Seda. The Appellant also produced a copy of the register of the suit property (Green Card), which showed that the suit property was indeed registered in his name on 30th August 2010, and he was issued with a title deed on the same date. The Green Card showed that the Appellant’s name was entered in the register of the suit property as Joshwa Apiyo Seda. The Green Card also showed that the property was transferred and registered in the name of the 1st Respondent on 11th April 2019, and she was issued with a title deed on 12th April 2019. The Appellant produced in evidence a copy of an official search dated 16th March 2020, which showed that the 1st Respondent was the registered owner of the suit property. The Appellant told the trial court that he never sold nor transferred the suit property to the 1st Respondent. The Appellant told the trial court that he was not the Joshwa Apiyo Seda who sold and transferred the suit property to the 1st Respondent. The Appellant told the trial court that he never received any payment from the 1st Respondent and that he did not have a bank account at Diamond Trust Bank Limited at which the balance of the purchase price of Kshs. 450,000/- was deposited for the said Joshwa Apiyo Seda. The Appellant told the trial court that the signature in the payment acknowledgement receipt, in which the said Joshwa Apiyo Seda acknowledged receipt of a total of Kshs. 1,000,000/- from the 1st Respondent, and the signature in the purported transfer of land form executed by the said Joshwa Apiyo Seda in favour of the 1st Respondent was not his signature. The Appellant told the court that the passport size photographs that were attached to the said transfer form were not his photographs. The Appellant told the court that even the Identity Card that was used in the transaction did not belong to him. I have noted from the proceedings that an attempt by the Appellant to produce his original Identity Card as an exhibit at the trial was objected to by the advocate for the 1st Respondent. The Appellant told the court that he still had in his possession the original title deed that was issued to him when he purchased the suit property from Boby Otiende Nyunja and that the same had never been surrendered to the 1st Respondent or the 2nd Respondent.
27. Whereas the legal burden of proof is static, the evidential burden of proof keeps shifting during the trial. The majority of the Supreme Court in Presidential Election Petition No. 1 of 2017, Raila Amolo Odinga & Another v. IEBC & 2 Others [2017] eKLR stated as follows on the evidential burden of proof in paragraphs 132 and 133 of the judgment:
 - (132) Though the legal and evidential burden of establishing the facts and contentions which will support a party’s case is static and remains constant through a trial with the plaintiff, however, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced.



- (133) It follows therefore that once the Court is satisfied that the petitioner has adduced sufficient evidence to warrant impugning an election, if not controverted, then the evidentiary burden shifts to the respondent, in most cases the electoral body, to adduce evidence rebutting that assertion and demonstrating that there was compliance with the law or, if the ground is one of irregularities, that they did not affect the results of the election. In other words, while the petitioner bears an evidentiary burden to adduce ‘factual’ evidence to prove his/her allegations of breach, then the burden shifts and it behooves the respondent to adduce evidence to prove compliance with the law...”
28. I am satisfied from the evidence that was adduced by the Appellant before the trial court that he had established on a prima facie basis that he was not involved in the transfer of the suit property to the 1st Respondent. The evidential burden of proof shifted to the 1st Respondent to prove that she acquired the suit property lawfully from the Appellant, as he alleged in her defence. I have carefully considered the evidence that was adduced by the 1st Respondent and her witness. The 1st Respondent’s case was that she was only involved in the negotiations for the purchase of the suit property during which period she met the person who sold the suit property to her, Joshwa Apiyo Seda. The 1st Respondent told the court that she was not involved in the execution of the agreement of sale of the suit property and the payment of the purchase price, which was done on her behalf by two gentlemen, John Rebman Achola and David Odhiambo Onuong’a. The 1st Respondent told the court that she did not meet the said Joshwa Apiyo Seda during the execution of the agreement of sale because she was out of the country. When asked during cross-examination whether she knew the Appellant, the 1st Respondent told the trial court that the Appellant was not known to her. The 1st Respondent told the court that she purchased the suit property from the person whose photographs were on the instrument of transfer. The advocate (DW2) who handled the transaction for the 1st Respondent told the trial court that it was the 1st Respondent who took Joshwa Apiyo Seda, who sold the suit property to the 1st Respondent, to his office. DW2 told the court that the said Joshwa Apiyo Seda signed the acknowledgement of payment and discharge dated 20th March 2019 and the transfer of land in favour of the 1st Respondent. The 1st Respondent produced in evidence an acknowledgement of payment and discharge dated 20th March 2019, said to have been signed by the 1st Respondent’s agent and the said Joshwa Apiyo Seda, an application dated 21st March 2019 for transfer of Kshs. 450,000/- through PESALINK from David Odhiambo Onuonga’s account at Standard Chartered Bank to Joshwa Apiyo Seda’s account at Diamond Trust Bank, undated transfer of land form signed by Joshwa Apiyo Seda and the 1st Respondent, undated application for land control board consent said to have been signed by the 1st Respondent and Joshwa Apiyo Seda, consent of the land control board dated 7th November 2018, valuation requisition for stamp duty, a receipt for the payment made for registration and certificate of title dated 11th April 2019, a copy of her title deed for the suit property dated 12th April 2019 and a copy of the title deed for Joshwa Apiyo Seda said to have been handed over to her.
29. The main issue that the trial court was called upon to determine was whether the Joshwa Apiyo Seda who sold the suit property to the 1st Respondent was the Appellant, Joswa Apiyo Seda who was also referred to as Joshwa Apiyo Seda. According to the trial court, whether or not the Appellant, Joswa Apiyo Seda and Joshwa Apiyo Seda from whom the 1st Respondent purchased the suit property, were the same person did not matter. According to the trial court, if Joswa Apiyo Seda and Joshwa Apiyo Seda were the same person, then that was the person who transferred the suit property to the 1st Respondent, and if the Appellant, Joswa Apiyo Seda and Joshwa Apiyo Seda, who sold and transferred the suit property to the 1st Respondent, were different, then the transfer that was effected by Joshwa



Apiyo Seda was still valid. I do not fully agree with the findings of the trial court on this issue. The Appellant's case, as I mentioned earlier, was that his official name was Joswa Apiyo Seda and that he was not the Joshwa Apiyo Seda who sold the suit property to the 1st Respondent. The success or failure of the Appellant's case therefore, rested on the determination of the issue of whether or not Joswa Apiyo Seda, the Appellant and Joshwa Apiyo Seda the seller of the suit property to the 1st Respondent was the same person. The trial court was not correct when it pronounced that whether Joswa Apiyo Seda and Joshwa Apiyo Seda were the same person or not did not matter, as the 1st Respondent had proved her ownership of the suit property in any event.

30. I agree with the trial court, however, that the Appellant needed to have presented more evidence before the trial court than he did to prove that Joswa Apiyo Seda, the Appellant and Joshwa Apiyo Seda, the seller of the suit property to the 1st Respondent, were not the same person and that it was Joshwa Apiyo Seda and not the Appellant, Joswa Apiyo Seda, who sold the suit property to the 1st Respondent. The Appellant also needed more evidence to prove that the suit property was owned by the Appellant, Joswa Apiyo Seda and not by Joshwa Apiyo Seda, the seller of the suit property to the 1st Respondent. The state of the evidence before the trial court at the conclusion of the hearing of the parties' respective cases was that the suit property was registered in the name of Joshwa Apiyo Seda and not Joswa Apiyo Seda, and that it was Joshwa Apiyo Seda who sold the suit property to the 1st Respondent. The Appellant needed to have done more than just placing before the court a copy of the agreement of sale between him and Bobby Otiende Nyunja, which had conflicting information regarding his name and a copy of the title deed allegedly issued to him in the name of Joswa Apiyo Seda. The Appellant should have noted that the title deed that he produced in evidence was not supported by the register (Green Card), which was also produced by him which showed that the suit property was registered in the name of Joshwa Apiyo Seda and not Joswa Apiyo Seda. The Appellant should have moved the court for leave to produce in evidence a copy of his National Identity Card, which he claimed to have the name of Joswa Apiyo Seda. The Appellant should have noted that the agreement of sale that he produced in evidence had his name both as Joswa Apiyo Seda and Joshwa Apiyo Seda. The Appellant should have produced other documents through which he purchased the suit property such as the transfer form and consent of the land control board to show that the registration of the suit property in the name of Joshwa Apiyo Seda rather than Joswa Apiyo Seda was a mistake. The Appellant should also have obtained confirmation from Diamond Trust Bank that the account to which the 1st Respondent had deposited Kshs. 450,000/- was not his bank account. The Appellant should also have dealt with the issue of how the said Joshwa Apiyo Seda came to have an Identity Card which had a similar number to his Identity Card, and how Joshwa Apiyo Seda became privy to his KRA PIN Number and postal address. There should have been some evidence placed before the court showing that a report had been made to the police about possible fraud and that some action had been taken to investigate the same. Let me repeat what the court stated in *Miller v. Minister of Pensions*(Supra):

“... So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained”.

31. Having regard to the state of the evidence that was before the trial court, I am unable to fault the trial court's finding that the Appellant had failed to prove his case against the Respondents on a balance of probabilities. There was no sufficient evidence upon which the trial court would have reached a finding that the suit property was owned by the Appellant, Joswa Apiyo Seda and that the same was sold to the 1st Respondent by a stranger by the name Joshwa Apiyo Seda. The Appellant did not prove that Joswa Apiyo Seda and Joshwa Apiyo Seda were not the same person. I agree with the trial court that



the 1st Respondent proved that the suit property was sold to her by Joshwa Apiyo Seda, who was the registered owner thereof.

Conclusion

32. In conclusion, I find no merit in the Appellant's appeal. The appeal is dismissed with costs to the Respondents.

DELIVERED AND SIGNED AT KISUMU ON THIS 24TH DAY OF JULY 2025

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Onsongo for the Appellant

N/A for the Respondents

Ms. J. Omondi-Court Assistant

