



Wamang’oli (Suing as the Administrator of the Estate of Margaret Nanjala Walubengo) v Wamang’oli & 6 others (Environment and Land Appeal E009 of 2023) [2025] KEELC 5553 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5553 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND APPEAL E009 OF 2023**

**CK NZILI, J
JULY 23, 2025**

BETWEEN

**MAUREEN NABUVA WAMANG’OLI APPELLANT
SUING AS THE ADMINISTRATOR OF THE ESTATE OF MARGARET
NANJALA WALUBENGO**

AND

**JOASH WAMANG’OLI 1ST RESPONDENT
EMMANUEL WEKESA 2ND RESPONDENT
DANIEL KAGECHA 3RD RESPONDENT
SOPHIA NALIKA KANNEJE 4TH RESPONDENT
JONATHAN WACHIRA 5TH RESPONDENT
MICHAEL WANYAMA WABUGE 6TH RESPONDENT
JULIET NAFULA NOAH 7TH RESPONDENT**

*(Being an appeal from the judgment by the Hon. M.M. Nafula
(PM) delivered on 27/10/2023 in Kitale CMELC No. E067 of 2023)*

JUDGMENT

1. What is before the court is a memorandum of appeal dated 9/11/2023. The appellant, who was the plaintiff at the lower court, by an amended plaint dated 1/2/2023, had sued the respondents as the defendants, claiming:



- (a) Declaration that land measuring 6.3 acres of Title No. Chepkoiyo/9283 in Cherangani (hereinafter the suit land), is her legal home, which the 1st respondent had no right to sell to the respondents without her consent and that of her siblings.
 - (b) Mandatory injunction removing the respondents from the suit land.
 - (c) Permanent injunction restraining the respondents from entering and or claiming interest in the suit land.
 - (d) Declaration that the amalgamation and transfer of the suit land by the 1st respondent to the other respondents and the subsequent transfers are illegal, fraudulent, null and void.
 - (e) Cancellation of Title Nos. Sinyerere/Sitatunga Block 7/Chepkoiyo/551, 555, 556, and 557.
 - (f) General damages.
2. The appellant, as the legal representative of the estate of Margaret Nanjala Walubengo and who was the wife of the 1st respondent, averred that before her mother passed on, she had purchased a piece of land measuring 6.3 acres on 30/10/1996 out of Title No. Chepkoiyo/9283, where she had set up her home for both herself and the rest of her children. It was averred that the 1st respondent had several other wives, each of whom had a distinct homestead. In this case, it was averred that without any consultation, the 1st respondent sold the suit land to the 2nd, 3rd, 4th and 5th respondents, after amalgamating Title No. Chepkoiyo/9283 with part of his property to form Sinyerere/Sitatunga Block 7/Chepkoiyo/556 and Sinyerere/Sitatunga Block 7/Chepkoiyo/557, transferred the same to the respondents and later on sold part of it to the 6th and 7th respondents, who fenced off the land, begun developments thereon, while the appellant and her siblings were still on the land, living them with nowhere to live or till.
 3. The 1st and 2nd respondents opposed the suit through a statement of defence dated 16/8/2022 and 16/8/2022. He admitted that the appellant was his daughter with his wife, the late Margaret Nanjala Walubengo. The 1st respondent denied knowledge of Title No. Chepkoiyo/9283, or being privy to any sale agreement over the said land with the 2nd respondent. It was averred that the late Margaret Nanjala and the 1st respondent had their matrimonial home in the ancestral land, Title No. Bokoli/786, Bungoma County; hence, he never settled the said late wife and the appellant on the suit land; otherwise, they abandoned the matrimonial home, which remains intact, after the wife passed on. Further, the 1st respondent averred that he did not require any consent from the appellant to deal with any of his properties.
 4. The 3rd - 7th respondents opposed the suit, through a statement of defence dated 7/7/2023, terming the alleged Title No. Chepkoiyo/9283 as fictitious or non-existent, that there was no need for consent of the appellant or her siblings, for the 1st respondent to deal with the suit land as his personal or free property. The 3rd - 7th respondents averred that there is no demonstration of any act of illegality or fraud regarding the subdivision of Title No. Sinyerere/Sitatunga Block 7/Chepkoiyo/551 into Title Nos. Sinyerere/Sitatunga Block 7/Chepkoiyo/555, 556 and 557. The 3rd - 7th respondents averred that they were innocent purchasers for value, whose transactions were above board.
 5. By a reply to defence dated 22/8/2022, the appellant averred that whereas she is a daughter of the 1st respondent, she has all the rights in law to oppose any sale by the 1st respondent, of any family property and more particularly the land where the home is established. The appellant averred that the respondents herein, especially the 1st respondent, has been on a selling spree of land in a secretive manner and is out to disinherit the appellant and her siblings. The appellant avers that the 2nd



respondent is enjoined from entering that portion of land that he had bought from the 1st respondent, as that land forms part of the home of the appellant, together with her siblings.

6. At the trial, Maureen Nabuva Mang'oli, testified as PW1, relied on her witness statement dated 1/2/2023, as her evidence-in-chief. She told the court that her mother, Margaret Nanjala Walubengo, was the first wife of the 1st respondent but passed on, on 21/2/2014. PW1 told the court that since her mother was the only wife who had not been settled together with her children, she decided to solely buy 6.3 acres, otherwise known as Chepkoiyo Farm, from Samuel K. Koskei out of Title No. Chepkoiyo/9283, Cherangany, where she built a home. PW1 said that the 1st respondent did not assist their mother in purchasing the land, only for them to learn later that the 1st respondent had consolidated Title No. Chepkoiyo/9283 with part of his property, to form Sinyerere/Sitatunga Block 7/Chepkoiyo/556 and Sinyerere/Sitatunga Block 7/Chepkoiyo/557 and transferred the suit properties to the respondents.
7. PW1 told the court that the 3rd respondent has been advertising and selling the suit property at a throwaway price, even when he knows that the suit was before the court. PW1 told the court that the 1st respondent has taken possession of the suit land parcel, fenced it off, planted maize, hence her siblings have nowhere to plant any crops or stay. PW1 relied on copies of the letters of administration ad litem dated 30/5/2022, agreement dated 30/10/1996, photographs, pleadings in Kitale High Court Civil Suit No. 59 of 2007 and an area map.
8. PW1 told the court that she got information that the 2nd respondent was selling the suit land, hence confronted him as well as the 5th respondent, who told her to go and sort it out with her father. PW1 told the court that Title No. 420 was bought by her father in 1985, while the suit land was bought by her mother in 1996, both of which are separated by a road reserve. PW1 said that it was wrong for the two parcels of land to be amalgamated to form one parcel of land that was also subdivided. PW1 told the court that out of the 6.3 acres of land, her parents sold 5 acres, leaving a balance of 1.3 acres, now fraudulently acquired by the 1st respondent as parcel No. Sinyerere/Sitatunga Block 7/Chepkoiyo/551. PW1 acknowledged that the names of both the seller and her late mother do not appear in the area list dated 27/10/2005. According to her, the 1st respondent owned 53 acres of land out of Chepkoiyo Farm, whose membership is 470.
9. Further, PW1 said that she never reported to the police for the illegal amalgamation of parcel Nos. 420 and 9283. Its resultant parcel No. Sinyerere/Sitatunga Block 7/Chepkoiyo/551 and later subdivisions Nos. Sinyerere/Sitatunga Block 7/Chepkoiyo/555, 556, and 577, whose specific sizes and owners were unknown to her. PW1 said that at the time her mother bought the land, there were no title deeds; otherwise, her name should appear in the area list.
10. Samuel Koskei Kipkurui, testified as PW2. He relied on a witness statement dated 24/7/2023 as his evidence-in-chief. He confirmed selling 6.3 acres of land to the late Margaret Nanjala Walubengo in 1996, who took vacant possession.
11. Joash Wamang'oli testified as DW1. He relied on his witness statement dated 22/8/2022. He denied the allegation contained in the appellant's statement of claim. DW1 said that parcel No. 9283 was 53 acres, which they bought with his late wife in August 2001, after which it became his. He said that he was in a position to take care of his children and give them land. DW1 relied on a copy of the green card for parcel No. Sinyerere/Sitatunga Block 7/Chepkoiyo/145, copy of title for Sinyerere/Sitatunga Block 7/Chepkoiyo/145, copies of letters dated 29/6/2023 to the Land Registrar, copy of green card for parcel Nos. Sinyerere/Sitatunga Block 7/Chepkoiyo/555, and 420, copy of the mutation form of parcel No. Sinyerere/Sitatunga Block 7/Chepkoiyo/555. According to DW1, the area list showed that



- he owned parcel Nos. 420, and 145, which came about after the prosecution of Case No. 59/2007. He admitted subdividing parcel No. 551 to Nos. 555, 556 and 557.
12. DW1 said that he owned jointly, parcel No. 420, with his late wife, after which he transmitted it to himself. DW1 told the court that he acquired his title deeds on 11/3/2022; otherwise, he had sold them to the 3rd - 7th respondents. He said that he had a part of parcel 420, measuring 22 acres, which he was willing to give to the children. DW1 said that in a sale agreement dated 1/8/2001, they were both selling the land as joint owners. He denied that his late father had any parcel of land under his name out of Chepkoiyo Farm.
 13. Emmanuel Juma Waswa and Michael Wabusi testified as DW2 and DW3, respectively. They all relied on witness statements dated 14/8/2022 and 11/7/2022 as their evidence-in-chief. They confirmed purchasing a parcel of land out of parcel No. 551 from the 1st respondent.
 14. The appellant appeals to this court over the judgment delivered on 27/10/2023, on the grounds that, the trial court:-
 - i. Dismissed her case.
 - ii. Failed to consider her evidence.
 - iii. Found the 1st respondent's title documents legitimate.
 - iv. For bias, hence disregarding her evidence and arguments.
 - v. For failing to accord her the right to a fair hearing.
 - vi. Failing to find the 1st respondent's evidence inconsistent and contradictory.
 - vii. For not adhering to its statutory mandate to address the issues raised in the pleadings.
 - viii. For not basing the judgment on sound legal principles, hence arriving at an unjust judgment.
 - ix. For not considering her pleadings, evidence and submissions.
 15. The appellant submitted that the 1st respondent failed to demonstrate how the 6.3 acres belonging to his wife were amalgamated with parcel No. 420 and transmitted to him without letters of administration, hence extinguishing the deceased's estate's proprietary rights. The appellant submitted that when a title is under challenge, it is not enough to waive the instrument of registration without going to the root of the title. In this case, the appellant submitted that she had demonstrated sufficient grounds to show that the estate of the deceased suffered injustice at the hands of the trial court.
 16. Further, the appellant submitted that the respondents' titles to the land were illegitimate; otherwise, they all had flaws going to the root of title, more so after the 1st respondent failed to acknowledge that his deceased wife co-owned the land, which was separate and distinct. Reliance is placed on Daudi Kiptugen -vs- Commissioner of Lands & Others [2015] eKLR. The appellant submitted that the inconsistencies and contradictions in the 1st respondent's defence showed that the title he had and transferred was not safe. Reliance is placed in Wambui -vs- Mwagi & Another [2021] KECA 144 [KLR].
 17. As to the 3rd - 7th respondents, the appellant submitted that despite warnings, the 3rd - 7th respondents, that the suit lands were under dispute, they still went ahead to acquire title; hence, they cannot be termed as bona fide purchasers for value without notice. Reliance is placed on Ibrahim -vs- Hassan & Charles Kimenyi Macharia & Another [219] eKLR and Dina Management Ltd -vs- County Government of Mombasa & Others, Petition No. 8 (E010) of 2021. The appellant submitted that



since the respondents had no good title, the titles should have been cancelled. Reliance was placed on Joyce Kemunto Osoro (Suing as the legal representative of Stephen Obonyo (Deceased) -vs- Attorney General & Another [2020] eKLR.

18. The 1st and 2nd respondents rely on written submissions dated 8/7/2024. It is submitted that the burden of proof under Sections 107 and 108 of the Evidence Act lay with the appellant, to prove the assertion in her amended plaint that title No. Chepkoiyo/9283 existed and that there was fraud or illegality in transferring titles to land to the 3rd - 7th respondents. The 1st and 2nd respondents submitted further that the appellant failed to prove that the 1st respondent obtained title documents illegitimately and fraudulently. The 1st and 2nd respondents submitted that though fraud and illegality were pleaded, the particulars of the same and evidence to sustain them were not tendered, contrary to Order 2 Rule 10 of the Civil Procedure Rules, Section 26(1) of the Land Registration Act. Reliance was placed on Arthi Highway Developers Ltd -vs- West End Butchery & Others [2015] eKLR.
19. The 1st and 2nd respondents submitted that the 1st respondent was able to prove how he acquired 53 acres of land, comprised of Title No. Chepkoiyo/9283, through Kitale High Court Civil Suit No. 59 of 2007. The 1st and 2nd respondents submitted that the 1st respondent had a life interest in the suit property that they jointly owned with the deceased, as per Sections 35(1) and 40(1) of the Law of Succession Act. The 1st and 2nd respondents submitted that the court was biased. Reliance was placed on Accredo AG & 3 others -vs- Stefano Uccelli & another [2019] eKLR.
20. The role of an appellate court of the first instance is to re-hear and re-appraise itself with the record of the court below, come up with independent findings on both facts and the law, while giving allowance to the court that saw and heard witnesses testify. See Gitobu Imanyara & Others -vs- Attorney General & Others [2016] eKLR. The court has carefully gone through the lower court record, the memorandum of appeal and the written submissions. The issues calling for my determination are:
 - (1) If the appellant pleaded and proved that her late mother was the sole purchaser and owner of 6.3 acres comprised of Title No. Chepkoiyo/9283.
 - (2) If the appellant proves that the 1st respondent amalgamated Title No. Chepkoiyo/9283 to form part of Sinyerere/Sitatunga Block 7/Chepkoiyo/551 and illegally subdivided the same into Title Nos. Sinyerere/Sitatunga Block 7/Chepkoiyo/555, 556, and 557.
 - (3) If the appellant pleaded particulars of fraud and or illegality in the matter, on the amalgamation, subdivisions, sale, transfers and registration of the suit parcels of land and their subdivisions in favour of the 1st respondent and subsequently in the names of the 3rd – 7th respondents.
 - (4) If the aforesaid amalgamation, subdivisions, transfers and registration were subject to any overriding rights or interests in favour of the appellant.
 - (5) Whether the 1st respondent held a valid title to the suit parcels of land.
 - (6) Whether the 3rd – 7th respondents were innocent purchasers for value.
 - (7) Whether the appeal has merits.
21. The burden of proof is on he who avers and wishes the court to find that some facts do exist, in order to establish a legal right or liability. The burden of proof fell with the appellant to establish that her late mother had acquired registrable or enforceable interests to the extent of 6.3 acres, out of Title No. 9283 Chepkoiyo Farm. The appellant relied on a sale agreement dated 30/10/1996. She also called PW2 to sustain her claim. PW2 told the court that he had no evidence to support his assertion that



- he had a better title to pass to the appellant's deceased mother. There was no evidence tendered that the seller was a shareholder of the Chepkoiyo Farm. Evidence from the area committee was not called to support the appellant's assertions that the 6.3 acres became part of Title Nos. Sinyerere/Sitatunga Block 7/Chepkoiyo/ 555, 556, and 557.
22. The burden of proof was upon the appellant to discharge that, as at the death of her mother in 2014, the 6.3 acres of land comprised on Chepkoiyo/9283 was free property of the deceased, which devolved to her name. The 1st respondent had pleaded that parcel No. 9283 was non-existent and was never part of parcel No. 420. It was the 1st respondent's pleadings and evidence that his name, unlike his late wife's, appeared in the area list and which parcels of land were also decreed to him through a High Court decree.
 23. When ownership of property is under attack, it is not enough to dangle the instrument of title without showing that the process leading to the issuance of title was legal, formal, procedural and regular without any break in the chain of acquisition. See *Munyu Maina -vs- Hiram Gathiha Maina* [2013] KECA 94 (KLR). There is no dispute that the 1st respondent was the spouse of the late Margaret Nanjala Walubengo. The chief's letter dated 16/12/2021 ruled out the existence of Title No. Chepkoiyo/9283 in favour of Margaret Nanjala Walubengo. It is the appellant who asserted that 6.3 acres were amalgamated by his late father to form part of Title No. 420. Evidence was not led to show that Title No. Sinyerere/Sitatunga Block 7/Chepkoiyo/551, which gave forth to Nos. 555, 556, 557 and 420 were at one time merged with 6.3 acres. Tracing the 6.3 acres and showing that it ended up being part of the aforesaid resultant subdivisions and the resultant titles had to be proved through documentary evidence.
 24. Written submissions cannot replace evidence. See *Daniel Toroitich Moi -vs- Mwangi Stephen Murithi & Another* (2014) eKLR. It is not enough for the appellant to submit before this court that the trial court ignored her pleadings and evidence that the respondents did not legitimately own the suit parcels of land, without pointing out the specific evidence that was ignored. The appellant did not call any officer from Chepkoiyo Farm to testify and lead evidence to her assertions that her mother had bought land from Chepkoiyo Farm, initially belonging to PW2. It was not enough to allege that Chepkoiyo Farm had parcel No. 9283, without producing documentary evidence. The nexus between the existence of the parcel number of her mother and the resultant suit parcels of land was not established through evidence. Evidence that the parcels Nos. 9283 and 420 were neighbouring each other and were amalgamated to form land parcel No. 551 was not tendered. Maps to that effect, supported by other documentary evidence on amalgamation, were not availed. Justifying the allegation is what the law requires. See *Kagina -vs- Kagina* [2016] eKLR.
 25. In cross-examination, PW1 told the court that she was aware that 6.3 acres of parcel No. 9283 were sold in 2001, as per a sale agreement dated 19/8/2001. PW1, however, was unable to explain how the mutation to parcel No. 551 came about and if at all, it was a resultant number from the alleged amalgamation. PW1 was categorical that the only property that the late mother left at her death was parcel No. 9283, where the seller had to appear in the area list dated 27/10/2005. Equally, the name of the late mother was non-existent in the area list. Similarly, title No. 420 was not in the area list.
 26. The crux of the appellant's case was that the amalgamation, the resultant titles and subdivisions were both illegal and fraudulent. Asked in cross-examination whether she had pleaded and proved any particulars of fraud, PW1 said that she had none. She also admitted that no report was made to the police or DCI for investigations. Evidence showing that the subdivisions of parcel Nos. 551 to 555, 556 and 557 were illegal was not tendered.



27. Fraud or illegality cannot be inferred or assumed. Parties are bound by pleadings. The particulars of fraud or illegality on the part of the respondents were not specifically pleaded and proved. See *Vijay Morjaria -vs- Nasingh Madhusingh Darbar & Another* [2000] eKLR, *R.G. Patel -vs- Lalji Makanja* [1957] EA 314, *Belmont Finance Corporation -vs- William Furniture Ltd (no. 2)* 1980 1 All ER 393, *Ndolo -vs- Ndolo* [2008] 1KLR A&F 732, and *Kagina -vs- Kagina & Another* [2016] eKLR.
28. Laying a basis by credible evidence upon which a court would make a finding that indeed there was fraud in the transactions leading to the merger of title Nos. 9283 and 420 creating title No. 551, its subdivisions and resultant titles and transfers to Nos. 555, 556 and 557, all the way into the names of the 3rd - 7th respondents, is what the appellant failed to do. See *Moses Parantai & Another (Suing as the legal representative of the estate of Sospeter Mukuru Mbeere (Deceased) -vs- Stephen Njoroge Macharia* [2020] eKLR. A vague and very general allegation of fraud and illegality against the respondents was not enough. In *Central Kenya Limited -vs- Trust Bank Limited & 4 others* [1996] eKLR, the court observed that fraud and conspiracy are very serious allegations, whose burden of proof is heavier than in ordinary civil suits.
29. Amalgamation is a term of art. When it occurred and was registered could only be through documentary evidence. See *Caroget Investment Limited -vs- Aster Holdings Limited & 4 others* [2019] eKLR. The 1st respondent pleaded and testified that his late wife was a co-tenant. He testified that as a co-tenant, he had a right to possess and use the entire land, or dispose of or transfer it. It is the appellant who was alleging that the 1st respondent merged the land belonging to her mother without letters of administration. There was no evidence to indicate whether the tenancy was in common or joint. Joint tenancy is where land is conveyed in the names of two or more without any word to show that they are distinct or separate shares. Tenancy in common on the other hand, is where parties hold property in equal and undivided shares. The two or more have separate interests, only that they remain undivided.
30. The difference between the two is the doctrine of survivorship. No evidence was led by the appellant to counter the assertion by DW1 that the doctrine of survivorship was not applicable. Section 60 of the *Land Registration Act* does not require a joint tenant to obtain a grant of letters of administration of the estate of the deceased joint tenant, before he can deal with such property. All that is required upon death is proof of the death, and the land registrar to cancel the name of the deceased tenant from the register by registering the death certificate. It therefore follows that once Margaret Nanjala Walubengo passed on, any jointly owned property devolved upon the 1st respondent as sole proprietor, free to exercise all the rights that appertain to a sole proprietor, including selling the land.
31. Coming to whether the 3rd - 7th respondents were innocent purchasers for value without notice. In *Sehmi & another -vs- Tarabana Company Limited & 5 others (Petition E033 of 2023)* [2025] KESC 21 (KLR) (11 April 2025) (Judgment), the court said that the burden of proof lay upon the person claiming to be a bona fide purchaser, to prove an innocent purchase for value and a legal estate. The bona fide purchaser must act in good faith. His conduct must not raise any doubt as to whether, indeed, he did not have any notice or knowledge as to the existence of overriding or adverse interests in the suit land.
32. Purchase must be for value and be in reference to a legal estate. Parents have no obligations to share land with their children during their lifetime. In *Nahashon Karengi & another -vs- Lawrence Karengi* [2014] eKLR, the court observed that there is no vested right to inheritance during the lifetime of parents. The appellant could not force the 1st respondent to subdivide and distribute his land or assets unless such land or assets were held in trust, prior to the parents' acquisition of title to the same.



33. In *Marigi -vs- Muriuki & Others* [2008] 1 KLR 1073, the court held that the law recognizes the right of children over their father's estate and that such rights are inchoate and accrue upon the death of their father. The suit by the appellant was not based on trust. Evidence of trust as an overriding interest under Section 28 (h) of the *Land Registration Act*, was not led. There was no such evidence of trust or beneficial interest registered, which the 3rd - 7th respondents ignored. From the pleadings and evidence, the appellant was accorded all the rights to present her case. The court took into consideration all the relevant factors and legal principles, arriving at the decision.
34. The issue of bias was not raised at the earliest opportunity possible. Equally, evidence that the trial court was biased was not produced before this court. In *Home Park Caterers -vs- Attorney General* [2006] eKLR, the court held that the test is whether the objective onlooker might have a reasonable apprehension of bias. The apprehension of bias has to be reasonable. The appellant has not laid the basis other than citing the case law. I find no basis to hold that the trial court was biased or did not accord the appellant a fair hearing. The trial court had an occasion to visit the locus in quo in the presence of the parties' advocates, the Land Registrar and the Land Surveyor. A comprehensive report was also produced by the Land Registrar. It established that L.R. No. Chepkoiyo Block 7/9283 was owned by Europeans and after subdivision, it became non-existent. That L.R. No. Sinyerere/Sitatunga Block 7/Chepkoiyo/420 is owned by the 1st respondent.
35. The court observed that the appellant was living on 23 acres of land and that the parcel sold by the 1st respondent to the 3rd - 7th respondents was adjacent to the appellant's homestead. The doctrine of innocent purchaser, therefore, was ably raised and proved by the 3rd - 7th respondents.
36. The upshot is that I find no basis to interfere with the findings of the trial court. The appeal lacks merits. It is dismissed with no order as to costs.
37. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 23RD DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

Orengo for the appellant present

Mukamu for Ambutsi for 1st and 2nd defendants present

Khisa for the 3rd - 7th respondents absent

HON. C.K. NZILI

JUDGE, ELC KITALE

