



Anthony Gatheca Amendi (Suing as the Legal Representative of the Estate of Anne Wangui Amendi alias Amedi - Deceased) & another v Wangugi & another (Environment and Land Appeal 71 of 2023) [2025] KEELC 5414 (KLR) (17 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5414 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL 71 OF 2023**

**JM KAMAU, J
JULY 17, 2025**

BETWEEN

ANTHONY GATHECA AMENDI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ANNE WANGUI AMENDI ALIAS AMEDI - DECEASED) 1ST APPELLANT

CYRUS WANJAGI GICHAGA 2ND APPELLANT

AND

SIMON GICHUKI WANGUGI 1ST RESPONDENT

UIGUANO NYONJORO FCS 2ND RESPONDENT

(Being an Appeal against the Judgment of Senior Resident Magistrate at Nyahururu Hon. S.N Mwangi, in CM ELC Case Number 320 of 2018 dated 18th January 2022)

JUDGMENT

1. This Appeal is against the Judgment of Senior Resident Magistrate at Nyahururu Hon. S.N Mwangi, in Nyahururu CM ELC Case Number 320 of 2018 dated 18th January 2022.
2. The Appellants have filed a Memorandum of Appeal dated 8th December 2022 which sets forth the following grounds of Appeal:
 - 1) The learned trial magistrate erred in law and in fact by directing that Title Nos.. Nyandarua/ ndaragwa Kianjogu Block(ii)nyonjoro/175 And 141 be revoked and cancelled on grounds of fraud despite the Respondents' failure to strictly prove the particulars of fraud to the required standard.



- 2) The Learned trial magistrate erred in law and in fact by finding that Title Nos. Nyandarua/ndaragwa Kianjogu Block (ii)nyonjoro/175 and 141 belong to the 1st Respondent, yet the Appellants adduced sufficient evidence to prove how they acquired ownership over the suit properties.
- 3) The Learned trial magistrate erred in law and in fact by finding that the 1st Appellant's acquisition of Title Nos.. Nyandarua / Ndaragwa Kianjogu Block (ii) Nyonjoro /141 was fraudulent on the basis that she did not carry out the succession process to have the property transferred to her after her late father's death yet, the property could not have been subject to succession proceedings at the time.
- 4) The Learned trial magistrate erred in law and in fact by finding that the 1st Appellant did not satisfy the requirements of acquisition of land by way of gift inter vivos yet the 1st Appellant did not contend that to be the manner through which she acquired the property and as such she was not required to prove to the court that she had satisfied the elements of acquisition by way of gift inter vivos.
- 5) The Learned trial magistrate erred in law and in fact by failing to find that the 1st Appellant was the registered owner of the suit land Nyandarua/ndaragwa Kianjogu Block (ii) Nyonjoro/141, having acquired it from her late father who was a member of the 2nd Respondent.
- 6) The Learned trial magistrate erred in law and in fact by entering Judgment in favour of the respondents despite their failure to prove their case on a balance of probabilities.

The Appellants therefore prayed for the following orders against the Respondents:

- a) That this Appeal be allowed
 - b) That the Judgment delivered on 18th January 2023 by Hon. S.N Mwangi be set aside in its entirety.
 - c) That costs be provided for.
3. The suit in the trial court was initially filed vide Plaintiff dated 3rd October 2014 in which the Plaintiff, who is the 1st Respondent in this Appeal claimed that he was issued with a share certificate by the 2nd Plaintiff co-operative society of 1½ shares, where one share was equivalent to 5 Acres of arable land or 10 Acres of rocky land. Thus, he was entitled to an average of 7½ Acres, which he paid for.
 4. Survey work was carried out in 1983 and the Plaintiff averred that he was allocated Plot Nos. 150, 308 and 251 as per his share certificate. Later on, the 2nd Plaintiff's management was changed and a new map introduced new entries, thus the Plaintiff was entitled d to portions 249, 175 and 141 respectively of Nyandarua/Ndaragwa Kianjogu Block II Nyonjoro.
 5. The Plaintiff's claim is that the 1st and 2nd Defendants were illegally registered as proprietors of Nyandarua/Ndaragwa Kianjogu Block II Nyonjoro/175 and 141 respectively. That a Commission of inquiry was set up in 2009 and noted that the 1st and 2nd Defendants are illegal allottees against the society's by-laws.
 6. Therefore, the Plaintiff prayed that the Titles over the suit properties in the 1st and 2nd Defendant's names be revoked as they belonged to him and that he be registered the owner thereof instead.
 7. The Defendants jointly filed a statement of Defence dated 6th November 2014 denying the Plaintiff's claim and stated that they have been the registered owners of the suit properties since the year 1998



and have already extensively developed the suit properties valued at over 10 million shillings as at the time of filing their Defence.

8. The hearing before the trial court commenced on 12th June 2015, when PW1, Moses Kimenju Njagu gave his testimony. He stated that he knows the Plaintiffs and that the 1st Plaintiff bought the suit lands, that he even sold to him one parcel of land. That the surveyor drew boundaries and gave the plot numbers and that the Plaintiff got 7 and a half Acres of land.
9. Upon cross-examination, PW 1 denied being present at the meeting at the chief on 30th July 1996, even though he was listed as one of the attendees.
10. PW 2 was Wangugi Simon Gichuki, the 1st Plaintiff in the trial court and 1st Respondent in this Appeal. He stated to the court that he sued the Defendants, who are the Appellants herein because they grabbed his land. He stated that he bought the share of David Maina Kariuki which was equivalent to 7 and a half Acres and had it transferred to him on 28.7.2014.
11. During the issuance of Titles, numbers of the land parcels changed and his plot 150 became 249, 251 became 175 and 308 became 141. That the maps changed in the year 1997. The 2nd Plaintiff society did not tell him that the lands were no longer his, he conducted a search and found that No.251 went to Cyrus Gichaga and No.308 went to Anne Wangui Amendi(now 141).
12. The 1st Plaintiff produced an inquiry Report which indicated that the said Cyrus Wanjagi and Anne Wangui were on his land. He denied selling the land to the 1st Defendant.
13. PW 3 Julius Kimachu Ngutu gave his testimony, stating that the 1st Plaintiff is well known to him and that he was a member of the 2nd Plaintiff's supervisory committee. That after 1983, the land was subdivided by a surveyor and everyone used to live on their land. The 1st Plaintiff was given the land he used to live on but since it was not enough, he was given another one elsewhere. Thus, he had 3 portions.
14. PW 3 stated that he was a member of the said commission for enquiry and that after subdivision, the Title Deeds issued in 1998 were not as per the 1983 list. People complained of bad management by the chairman of the society, Moses Kimenju and his entire Committee. He noted that Anne Amendi, who was the secretary then was not on that list, but got her father's (Gatheca Matu) share. Her father had land No.118 and it had No. B. If he was sold Kagiri Nyamu's land, then that would be No.204. He noted that according to the commission of enquiry's list, Gatheca and Amendi were illegally on Land Nos.251 and 308.
15. PW 4 Chrispus Nduki Karuni stated that he has been the 2nd Plaintiff's society's secretary since 2004. That before he was elected, Anne Amendi was the voluntary secretary and Gatheca was the treasurer. He stated that he knows Land No.118 was for Gatheca Matu and No.308 was for the 1st Plaintiff, Simon Gichuki. He noted that the commission of inquiry's Report gave several discrepancies on the lists of Titles. That originally, the 1st Plaintiff was to be given Land Nos. 251 and 308 but 251 changed to plot 175 and then it was grabbed. That 308 had one and a half Acres and 140 and 251 was made of 5 Acres to total to the 7 and a half Acres that the 1st Plaintiff was entitled to.
16. PW 5 Samuel Karanja Muya, stated that he knows the 1st Plaintiff, Cyrus Gichaga, who was his agemate and who he schooled with and he equally knew Anne Amendi. When referred to Defendant's list of documents No.7, he clarified that in 1989 he was 15 years old since he was born in 1989 and Cyrus Gichaga could therefore not have had an Identity Card by then and could not have entered into such an agreement. PW 5 produced his birth certificate as an exhibit.



17. Defence hearing proceeded on 16th May 2021 and DW 1 was Ann Wangui Amendi, the 2nd Defendant, whose estate in this Appeal is represented by the 1st Appellant. She adopted her witness statement, stating that both her parents died and she inherited land from them as their only child. She stated that it was Land no. 100 the mother Title measuring 2 Acres before subdivision. When the surveyor came in the year 1983, she got ‘lucky’ to be given more Land 141 which is also 2 Acres. She stated that she developed the land and has obtained change of user for the same. She had knowledge of the Plaintiff being the society’s secretary but that they had no dispute then.
18. According to the 2nd Defendant, she stated that she found out that the said David Maina Kariuki who the 1st Plaintiff alleged sold land to him did not actually sell the land, but gave his sisters shares, each 1 share.
19. DW 1 said that in the year 1982 when the society computed its loan from AFC, each member was given permission to go to the wheat plantation which had been set aside and every member was given a chance to move there from 4 Acres to 5 Acres. That the said David Maina’s sisters went to the wheat plantation and left their lands vacant and someone else was brought there. In 1997, Titles were given out.
20. Regarding the commissions of enquiry, DW 1 stated that the 1st Commission did not produce a Report as required but the 2nd one made a Report but never availed the register since then, for the 20 years that the case has been in court. She noted that she got her Title Deed in 1998, and has been on the land (141) since then and has not been disturbed by anyone.
21. On cross-examination, the 2nd Defendant stated that the land parcel 308 is the one that became 141, that she got land 100, which is 118 from her father which is referred to as 308 and that there is a confusion of 2 different maps.
22. On re-examination, she stated that she did not agree with the Report by the land commission.
23. DW 2 Cyrus Wangugi Gichaga adopted his witness statement as well, in which he stated that he bought his land on 16th August 1998 when he was 26 years old from the late Kagiri Nyamu, whose plot was No.175 as per the Title Deed. He bought the land for a sum of Ksh.65,000/= and fenced the land on 18.12.1998 and was issued with a Title Deed being Nyandarua/Nyandarua Kianjogu Block II/175.
24. On cross-examination, he stated that it was the seller, Kagiri Nyamu who took him to the ground and showed him the land. He further stated that he has never possessed any share certificate of Nyonjoro Society. He was referred to the share certificate of the said seller Kagiri Nyamu and noted that it was cancelled and written Ann Amendi and not his name.
That was the close of the trial.
25. The trial court issued Judgment in the matter on 18th January 2022, emphasizing that with regard to the 2nd Defendant’s Anne Amendi’s land, there was no succession cause filed as proof that she inherited the said parcel of land from her father despite the *Law of Succession Act* having already come into effect at the time and that there was no confirmation of grant for the same.
26. The trial magistrate also observed that if the 2nd Defendant’s land might have been a gift inter vivos there was no evidence of the same being given during the lifetime of her father. The Court therefore questioned how the 2nd Defendant acquired the land.
27. With regard to the 1st Defendant’s land, the trial court noted that as per the sale agreement dated 16th August 1989, the buyer was Cyrus Gichaga Wambugu and not the 1st Defendant, whose name as per his national identity card is Cyrus Wanjagi Gichaga, which is proof of the alleged fraud, noting PW 5 had stated they were classmates and minors at the time of the agreement’s date.



28. The Court noted that Title may be challenged under the *Land Registration Act* and the Court has powers under section 80 to rectify the register and entered Judgment in favour of the Plaintiff, revoking the Titles for the suit lands Nyandarua/Ndaragwa Kianjogu Block (II)Nyonjoro/175 and 141 which belong to the Plaintiff and ordered the Land Registrar to effect this. The Defendants were also ordered to give the 1st Plaintiff vacant possession of the suit lands, failure to which they should be evicted at their own costs.

The Appellants' submissions:

29. Counsel for the Appellant submitted the trial Court found that the Appellants' acquisition of the suit lands was fraudulently procured but the Respondents did not plead fraud. They pleaded illegality. They submit that fraud was not pleaded and proved to the required standard and relied on the case of Jose Estates Limited v. Muthumu Farm Limited & 2 others(2019)eKLR and Eviline Karigu(suing as Administratrix of the Estate of the late Muriungi M'Chuka alias Miriungu M'Gichuga) v. M'Chabari Kinoro(2022)eKLR, submitting that the standard required in respect to allegations of illegality is the same as that of fraud.
30. Secondly, counsel for the Appellants submitted that the Commission of Inquiry did not have the mandate to conduct any inquiries and make recommendations regarding the Appellants' proprietorship.
31. Their final submission is that the Appellants explained the root of the Title Deeds and their respective ownership emanates from persons who were originally members of the 2nd Respondent and have been in active use and occupation of the suit properties since then. That the trial court determined issues that were not the subject of determination and prayed that the trial court's Judgment be set aside in its entirety.

The Respondents' submissions:

32. Counsel for the Respondents submitted that the Appellants failed to file a Notice of Appeal but went straight to file an Application dated 21st April 2023, where they sought for leave to file the Appeal out of time as well as stay of execution against the Decree of the lower court. The learned Justice Y.M Angima granted an order that the Appeal be filed within 14 days. The proceedings in the lower court were certified on 20th January 2022, 12 months prior to the filing of the Memorandum of Appeal and 580 days to filing of the Record of Appeal against the provision of section 79G of the *Civil Procedure Act*.
33. Noting that there is no certificate of delay and that no explanation has been given by the Appellants for the fatal delay, counsel cited and relied on the case of Nicholas Kiptoo arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others.
34. Secondly, counsel for the Respondents submitted that they were able to prove on a balance of probability the particulars of fraud and illegalities of the Appellants' acquisition of the suit properties, and that the trial court decided rightly that the Appellants did not acquire a proper Title.

Analysis And Determination:

35. As a first appellate court, this court must approach the whole of the evidence on record from a fresh perspective and with an open mind and to evaluate and re-examine the evidence adduced in the trial court, taking into account the fact that this court had no opportunity of hearing or seeing the parties



as they testified. The role of an appellate court was stated in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] e KLR, where the Court of Appeal stated that;

“An Appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an Appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it 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 allowances in this respect.”

36. Having gone through all the proceedings and pleadings filed in the trial court and the rival submissions in this Appeal, the questions that arise for determination are as hereunder:
- 1) Did the Appellants file this Appeal out of time?
 - 2) Did the trial court err in finding in favour of the Respondents and revoking the Appellants' Titles?
 - 3) Should this Court interfere with the Judgment of the trial court?

Did Appellants file this Appeal out of time?

37. The Respondents contend that the Appellants did not file a Notice of Appeal and filed the Record of Appeal late without explanation.

38. Regarding the lack of a Notice of Appeal, I note that this is not a requirement in the Civil Procedure Rules for an Appeal from a subordinate court to a superior court, unlike an Appeal to the Court of Appeal. Mogeni J. in the case of *Flamingo Towers Limited & another v Homeland Media Group Ltd* [2021] eKLR found that:

“At the outset, it is important to point out that, Appeals to a superior from the lower court do not require a Notice of Appeal. Sections 78 and 79 of the *Civil Procedure Act* and Order 42 of the Civil Procedure Rules have an elaborate framework on how such Appeals are to be lodged which are distinct from the procedures envisaged under the Court of Appeal Rules. Order 42 rule 2 of the Civil Procedure Rules; provides as follows:

“Where no certified copy of the Decree or order appealed against is filed with the Memorandum of Appeal, the Appellant shall file such certified copy as soon as possible and in any event within such a time the court may order, and the court need not consider whether to reject Appeal summarily under section 79B of Act until the copy is filed”

39. This Court notes that Judgment before the trial court was delivered on 18th of January 2022. The Memorandum of Appeal was filed on 8th December 2022, almost a year later. Section 79G of the *Civil Procedure Act* CAP 21 laws of Kenya provides that the period allowed for filing an Appeal from a subordinate court to the High Court is 30 days. The provision is as follows;

“Every Appeal from a Subordinate court to the High court shall be filed within a period of thirty days from the date of the Decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the Decree or Order.



Provided that an Appeal may be admitted out of time if the Appellant satisfies the court that he had a good and sufficient cause for not filing the Appeal in time”

40. There is an order on record from the Environment and Land Court Judge at Nyahururu, Hon. Y.M Angima J given on 24/11/2022 and issued on 1/12/2022 granting the Appellant leave to file the intended Appeal out of time, within 14 days. I note that the memorandum of Appeal was filed on the 8th of December 2022, within the ordered time.
41. The proceedings in the Record of Appeal were certified on the 20th of January 2022, while the Record of Appeal was filed on 9th July 2024. Therefore, it is only the Record of Appeal that was delayed and not the actual Appeal herein. There are no Directions on record that the Appellants disobeyed as the proceedings in the Appeal file began on the 14th of October 2024.
42. Article 159 2(d) of *the Constitution* of Kenya 2010 are relevant in this case. Sections 3A of the *Civil Procedure Act* provide for the overriding objective of the Court as:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

43. The Appeal is properly on record, though it may have delayed to be heard for a while. This Court is bound by Article 159(2)(d) of *the Constitution* of Kenya, 2010 and the overriding objective of the court to have no undue regard to procedural technicalities and to facilitate the resolution of disputes. In the case of: *Stecol Corporation Limited v Susan Awuor Mudemba* [2021] eKLR the Court held that:

“The ultimate goal and purpose of the justice system is to hear and determine disputes fully. It follows that no person who has approached the court seeking an opportunity to ventilate their grievances fully should be locked out. In the instant case, the Applicant filed the Appeal one day late and has approached this court for extension of time as stipulated in Section 79G of the *Civil Procedure Act*, the proviso thereof. Reasons or no reasons for that delay, it is before the court seeking to be granted a chance to agitate its Appeal challenging the Judgment of the lower court. There is no evidence that the Application is an afterthought or how the same is intended to abuse court process. Further, it is not uncommon for clients to instruct their counsel who procrastinate on filing court processes and only wake up when time for such filing has elapsed.

SUBDIVISION 2 - Did the trial court err in finding in favour of the

Respondents and revoking the Appellants’ Title s?

44. The Appellants’ case is that the Respondents did not specifically plead and prove fraud to the required standard. It was held by the Court of Appeal in the case of *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000]eKLR which was cited with approval by this Court in the case of *Jose Estates Limited v. Muthumu Farm Limited & 2 others*(2019)eKLR relied on by the Appellants that:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved,



and it is not allowable to leave fraud to be inferred from the facts. See *Davy v Garrett* (1878) 7 Ch. D 473 at 489.”

45. The Plaintiff dated 3rd October 2014 filed before the trial court which appears to have been amended even though it is not indicated in the heading reads as follows at paragraph 14:

“.....The 1st Plaintiff avers that he is entitled to Nyandarua/Ndaragwa Kianjogu Block 2 Nyonjoro/175 and Nyandarua/Ndaragwa Kianjogu Block 2 Nyonjoro /141 and thus prays for an order declaring that the said two parcels are subjected to illegality created on registration and that the same portions of land should be re-registered in the names of the 1st Plaintiff.....”

46. Thus, the Respondents amended the claim of fraud to illegality in the Plaintiff. It is not fully evident whether the trial court revoked the suit property on the claim of fraud or illegality as it is evident that there are missing pages from the Record of Appeal’s copy of Judgment just before the last two pages. However, let us examine the meanings of the two words to establish if there is any difference.

47. The Black’s Law Dictionary 6th Edition defines ‘fraud’ as:

“An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture.”

47. Illegality is defined therein as:

“That which is contrary to the principles of law, as contradistinguished from mere rules of procedure”

47. Thus, fraud is a false representation while illegalities are contrary to the law. It is clear why the 1st Plaintiff amended the claim to illegality, as the Appellants may not have openly misrepresented any facts when acquiring the Titles suit properties. However, the standard of proof remains the same, as C.K Yano J in the case of *Eviline Karigu (Suing as Administratrix of Estate of Late Muriungi M’Chuka alias Miriungu M’Gichuga) v M’Chabari Kinoro* [2022] KEELC 1483 (KLR) , a case that was cited by the Appellants, held that:

“The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules. As regards the standard of proof, this court in the case of *Kinyanjui Kamau –vs George Kamau* [2015] eKLR expressed itself as follows;-

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo –vs- Ndolo* [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on



the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

48. Having established that the 1st Respondent pleaded illegality in the Complaint, the next step is to establish whether the same was proved to the required standard. The 1st Appellant stated that she acquired her Title as inheritance from her father, but did not produce a confirmation of grant for the same. Further, she stated that her Title Number changed from 100 to 308 and that she was added 141 ‘luckily’ which was an additional 2 Acres.

49. Section 45(1) of the *Law of Succession Act* CAP 160 provides that:

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

50. In the case of *Njoki Gicheru Ndiuni v Dadson Githenji Wahome & 3 others* [2016] eKLR it was held that:

“The section is clear that the status quo as at the time of the deceased's death ought to be maintained. The law requires that the deceased's persons' estate ought to be preserved as at the time of death. In the matter of the estate of M'mugambi M'guoko alia Mugambi Gwoko alia Mugambi Guoko- Deceased. Makau J held that the Petitioners acts in the said case of attempting to sell or selling the deceased's property to anyone was illegal, null and void for contravening section 45(1) cited above.....interpreting the section 45 (1) cited above Musyoka J in the Estate of Veronica Njoki Wakagoto-Deceased had this to say:-

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

51. It is definitely suspicious how the 1st Appellant came to be added 2 additional Acres of land when it was not the original share. It brings up the question whether the 1st Appellant used her position as the secretary of the 2nd Respondent Society to acquire the same.

52. As for the 2nd Appellant, PW 5 testified that the two schooled together and thus he could not have attained the age of majority at the date of the agreement for sale that he produced dated 16th August 1989 on page 204 of the Record of Appeal, as they were only 15 years at the time, PW 5 having being born in the year 1974. It was also noted by the Trial Court that the agreement of sale and the 2nd Appellant's Identity Card bear two different names.

53. The Commission of Inquiry's Report indicated that the suit properties belonging to the 1st Respondent constituted some of the private parcels of land grabbed, with Plot No.141 being grabbed by Anne Wangui Amendi, the 1st Appellant herein and Plot No. 175 being grabbed by the 2nd Appellant on page 148 of the Record of Appeal. The resolution number 6 was revocation of all the illegally allocated Title Deeds with reference to the 1983 demarcation plan and this Resolution was supported by 132 members.



54. The trial Magistrate was merely enforcing the recommendations of the Commission of Inquiry's Report. As a Court, we are not privy to the internal dealings of a co-operative society. It is therefore such structures such as the commission of inquiry that are best suited to determine such dispute.

55. The *Co-operative Societies Act* CAP 490 Laws of Kenya provides at Section 58 that:

“The Commissioner may, of his own accord, and shall on the direction of the Cabinet Secretary, as the case may be, or on the Application of not less than one-third of the members present and voting at a meeting of the society which has been duly advertised, hold an inquiry or direct any person authorized by him in writing to hold an inquiry, into the by-laws, and the working and financial conditions of any co-operative society.

(2) All officers and members of the co-operative society shall produce such cash, accounts, books, documents and securities of the society, and furnish such information in regard to the affairs of the society, as the person holding the inquiry may require.

(3) The Commissioner shall Report the findings of his inquiry at a general meeting of the society and shall give directions for the implementation of the recommendations of the Inquiry Report.....”

56. It is trite law that where a mechanism for dispute resolution exists outside the courts, it ought to be followed. The Court of Appeal in *Geoffrey Muthinja & Another Vs Emanuel Muguna Henry & 1756 Others* [2015] eKLR held that:

“We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside of courts. This accords with Article 159 of *the constitution* which commands Courts to encourage alternative means of dispute resolution.”

3) Should this Court interfere with the Judgment of the trial court?

57. Hancox JA sitting at the Court of Appeal Kisumu in the case of *Makube v.Nyamuro*(1983)eKLR was of the following view:

“A Court of Appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.”

58. As discussed above, this Court has gone through the evidence presented before the trial court and has evaluated the reasoning of the said court. This Court does not find any reason to overturn the Judgment of the trial court as it was based on sound principles of law and I therefore uphold the same and dismiss this Appeal with costs to the Respondents.

JUDGEMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 17TH DAY OF JULY 2025.



MUGO KAMAU

JUDGE

In the presence of:

C/A.....Samson

Ms. Ndegwa for the Appellant.

Mr. Wambugu for the Respondents.

