



**Karobia v Karobia (Appeal E024 of 2024)
[2025] KEELC 920 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 920 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
APPEAL E024 OF 2024
JM MUTUNGI, J
FEBRUARY 27, 2025**

BETWEEN

PETER MWANGI KAROBIA APPELLANT

AND

BETHA WANJA KAROBIA RESPONDENT

*(An Appeal arising from the Judgment of Honourable M.W. Mutuku-
CM delivered on 30th April 2024 in Chief Magistrate's court in
ELC No. E186 of 2022 in the Magistrate's Court at Kerugoya)*

JUDGMENT

1. This appeal arises from a Judgment delivered by Hon. Martha W. Mutuku (CM), in which she ruled in favour of the Respondent who was the Plaintiff in the Lower Court. The Court lifted the caution placed on land parcel Mutira/Kaguyu/4385 (the suit land) and issued a permanent injunction restraining the Appellant who was the Defendant in the Lower Court, his agents from entering or occupying the suit land. The Court further dismissed the Appellant's Counterclaim where the Appellant had sought to have the transfer in respect of land parcel Mutira/Kaguyu/4385 effected in favour of the Respondent and her deceased husband on 26th September 2022 declared illegal and unlawful and cancelled and the land reverted to Richard Karobia Muriithi (deceased).
2. Aggrieved and dissatisfied with the Court's decision, the Appellant appealed to this Court and filed a Memorandum of Appeal and Record of Appeal dated 9th May 2024 and 31st May, 2024 respectively.
3. The Appellant's Memorandum of Appeal set out 6 grounds of Appeal. The grounds are as follows: -
 1. The Learned Magistrate erred in law by ignoring Rules 49 and 55 of the [Land Registration Act](#) 2012 (The Land Registration General Regulations 2017) in sanitizing an illegal and



fraudulently acquired title deed yet the law is clear a transfer of land cannot be effected after a proprietor has died.

2. The Learned Magistrate erred in law and fact by relying on a Land Control Board Consent as basis to validate an illegally acquired title deed without a transfer form being produced by the Respondent or the Land Registrar Kirinyaga.
 3. The Learned Magistrate erred in law and fact by unfairly dismissing the Appellant's Counterclaim and entering Judgment in favour of the Respondent yet it is clear the transfer in favour of the Respondent was done on 23/9/2022 when the deceased proprietor had died earlier on 19/7/2022.
 4. The Learned Magistrate erred in law and fact by delivering a per incuriam Judgement by entertaining inter-meddling of an estate of a deceased person Richard Karobia Muriithi and illegal transfers of subject land Mutira/Kaguyu/4385 without evidence of compliance with Rule 49 of the Land Registration Act 2012 (Land Registration General Regulations 2017).
 5. The Learned Magistrate erred in law by ignoring the glaring weight of evidence in favour of the Appellant.
 6. The Learned Magistrate erred in law by ordering the Appellant to pay costs of suit and Counterclaim.
4. The Appellant prayed that the appeal be allowed and the judgment in the Chief Magistrate ELC No. E186 of 2022 be set aside and be substituted with an order allowing the Appellant's counterclaim with costs.
 5. The brief facts and evidence before the Lower Court were that Respondent stated the Appellant was her son-in-law and that the deceased's daughters were to inherit land parcel Mutira/Kaguyu/4386. During Cross-examination, the Respondent explained that the Appellant was using the suit land and that the deceased did not leave a will. The Respondent testified that she received the title deed on 23rd September 2022, after the deceased passed away on 19th July 2022, and claimed to have obtained consent from the Land Control Board before the deceased death. She admitted transferring the land to herself and the deceased after her late husband died and acknowledged that no succession had been carried out.
 6. The Land Registrar, PW2, testified that Richard Karobia Mureithi was the sole owner of the land from 21st February 2007 and that he received the certificate of title to the suit land on 20th September 2017. On 22nd September 2022, a transfer was registered in both Richard Karobia Mureithi's and Beth Wanja's names. After this transfer, the Appellant registered a caution on 11th November 2022. PW2 stated there were no issues with the registration because the proper documents were filed. When asked about a search certificate dated 23rd September 2022 showing the land was still in the deceased's name, the Land Registrar stated that if the deceased had signed the transfer documents before his death, they remained valid. He affirmed that he did not bring those documents to court and noted that the Respondent had not informed the Land Registrar of her husband's death. He testified that he believed that as long as the documents were executed before the deceased's death, they were still valid.
 7. The Appellant in his evidence stated that the Respondent was his stepmother and that she had illegally and unlawfully caused his deceased father's title to be transferred into her name and that of his father and that it was his wish that the title be reverted to his deceased father's name so that they could proceed with the succession cause. During cross-examination, he acknowledged his interest in the suit land, as the suit land was part of his sisters' inheritance. He affirmed that he had not filed a succession



cause and explained that the Respondent had not been utilizing the suit land, adding that he had not evicted her since she did not reside on the land. He further claimed that he alleged fraud against the Respondent, as the Respondent had the suit land transferred to her name and his deceased father's name two months after he had died. DW2, Eunice Wanjiku Karobia, testified that the Respondent lived with his father in their late mother's home, located at in land parcel Mutira/Kaguyu/4385. She also stated that land parcel No. 4386 was not intended for inheritance by the sisters but rather by the Dependants of her late sister, Nancy. DW2 further testified that their deceased father had bequeathed the Respondent a parcel of land in Kibirichia and further stated her deceased father did not willingly attend the Land Control Board but was manipulated as he was unwell at the time. DW3, Florence Wainoi, in her evidence asserted she had an interest in the land because it was their family home. She testified that the Respondent used to reside at land parcel No. 4385 with their deceased father, and affirmed the land was subdivided in 2007 and expressed her desire to return home and reside in the suit land. Additionally, she testified that the family had collectively decided that land parcel No. 4385 should be inherited by the sisters.

8. Upon considering the evidence, the trial court delivered the impugned Judgment, dismissing the Appellant's Counterclaim and upholding the Respondent's claim. In doing so, the Learned Trial Magistrate addressed five issues: the validity of the title held by the Respondent; whether the transfer of the title to the Respondent and her deceased husband was fraudulent, illegal, or unprocedural; whether the title should be canceled; whether a permanent injunction should be issued against the Appellant; and finally, whether the caution lodged on the land should be lifted.
9. Regarding the first issue, the Learned Trial Magistrate noted, "the existence of the title deed and the registered owners was confirmed by the Land Registrar, PW2." On the second issue, the Learned Trial Magistrate found that the Appellant had not presented any evidence to support the allegations of fraud as pleaded. She noted that the Respondent provided a certificate of title in her name and that the Land Registrar who was called as a witness confirmed that the title was properly registered with all requisite documents, highlighting that validly signed documents would remain so even after a party's death. She noted that although the defence witnesses acknowledged their father's consent to the transfer, they claimed he was sickly during the signing but did not provide any supporting evidence. Regarding the third issue, the Learned Trial Magistrate held that since the Appellant had failed to prove the Respondent's title was obtained through fraud or misrepresentation, the Respondent's title remains unchallenged and could not be cancelled. On the fourth issue, the Learned Trial Magistrate granted the order for a permanent injunction as prayed and concerning the fifth issue, she ordered the removal of the caution lodged on the land. In addressing the Appellant's counterclaim, the Learned Trial Magistrate held that the Appellants had failed to prove the particulars of fraud and consequently dismissed the counterclaim with costs to the Respondent.
10. The appeal was canvassed by way of written submissions as per the Court's direction. The Appellant filed his written submissions on 13th August 2024 and argued grounds 1, 2, and 4 together. In the submissions, the Appellant's Counsel contended that, the Learned Trial Magistrate overlooked Rule 49 and Rule 55 of the *Land Registration Act* 2012 (Land Registration General Regulations 2017) which make provision in regard to transfers and transfers by way of transmission respectively.
11. Counsel for the Appellant further argued that the Learned Magistrate relied on a copy of the Land Control Board consent without requiring the production of the transfer forms said to have been signed by the deceased to demonstrate that the deceased had indeed signed such a transfer. This reliance, according to Counsel, allowed for interference in the deceased's estate. Additionally, Counsel asserted that at the time of the deceased's death, he was the sole proprietor of the suit land. He pointed out that even the Respondent, in her testimony, admitted that the certificate of title was transferred to her on



22nd September 2022 after the deceased death. Counsel maintained that the posthumous transfer of the title was not adequately explained, and it was the responsibility of the Respondent to provide that explanation. He cited Rule 55 of the Land Registration General Regulations 2017, which provides as follows:

“Unless otherwise provided by any written law, no transfer of an interest in land of a deceased proprietor shall be registered until after the confirmation of the grant of letters of administration or the grant of probate, as the case may be.”

12. Counsel concluded that the Respondent was not exempt from the law. He further submitted that the Respondent transferred the said title to her name and that of the deceased without letters of administration, and it was thus acquired fraudulently. He submitted that the registration of this title ought to be cancelled and that the title should be reverted back to the deceased. He relied on the case of *Joseph Ondu Nyangiri v Monicah Auma & another* (2012) eKLR, where the Court held that:

“A similar case to this one. A succession cause was pending, the second respondent went to lands office and had himself registered vide a transfer of LR Kisumu/Kogony/1931 arguing the land was held in trust for him by the deceased. The Court found the transfer illegal and reverted the land back to the deceased.”

13. Regarding grounds 3, 5, and 6 of the Memorandum of Appeal, the Counsel argued that the court made an error in its judgment because the title to the land was obtained after the proprietor's death. He contended that the evidence presented by the Land Registrar was inadmissible, as the law prohibits the transfer of land owned by a deceased person otherwise than through transmission by way of succession proceedings.

14. In opposing the appeal, Counsel for the Respondent filed her written submissions dated 30th August 2024. Counsel for the Respondent posed three questions for the court to resolve:

1. Was the consent to transfer the suit land valid despite the death of the deceased?
2. Should the Respondent have filed a succession cause, given that she had a valid consent for transfer in her favor?
3. Can a transfer be effected after the owner has died, and is the title valid?

15. Regarding the first issue, Counsel argued that the Respondent, together with her late husband, appeared before the Land Control Board and received a consent certificate dated 25th March 2021. He asserted that the consent was uncontested and that the evidence provided by the land registrar did not invalidate the Letter of consent issued by the Land Control Board.

16. Concerning the second issue, Counsel referred to Rules 49 and 55 of the Land Registration General Regulations, 2017 and submitted that these provisions did not apply to a scenario where consent to transfer the land had already been issued, as was the case here. He further contended that allegations of fraud were not substantiated, and the Appellant had not initiated any proceedings related to inter-meddling with the estate of the deceased, nor were any criminal charges brought against the Respondent. Counsel concluded that it was permissible to transfer the land based on the consent obtained prior to the death of the Respondent's husband. As regards the third issue, Counsel relied on the testimony of the Land Registrar, who stated that the death of the original owner does not invalidate the transfer of title to the Respondent and the deceased.



17. I have reviewed the evidence, the appeal record, and the parties' submissions. The key issues that arise for determination are as follows:

1. Was the Learned Trial Magistrate correct in concluding that the Respondent had a valid title?
2. Did the Learned Trial Magistrate err in finding that the Appellant failed to prove the particulars of fraud as pleaded in his counterclaim?
3. Whether it was appropriate for the Learned Trial Magistrate to issue a permanent injunction against the Appellant in the circumstances?
4. Whether it was it right for the Learned Trial Magistrate to lift the caution lodged by the Appellant?

18. This Court, being a Court of Appeal of first instance, must re-evaluate the evidence presented before the Trial Court in keeping with the principle in the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123 to ascertain whether the decision reached by the Trial Court was justified on the basis of the evidence adduced. In the case, the Court of Appeal stated as follows:-

“----- This Court is not bound necessarily to accept the findings of fact by the Court below. An Appeal to this 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 allowance in this respect.”

Was the Learned Trial Magistrate correct in concluding that the Respondent had a valid title?

19. There is no dispute that the original owner of the suit land was the late Richard Karobia Muriithi, who was both the father of the Appellant and the husband of the Respondent. It is also clear that the deceased and the Respondent became joint owners of the suit land on 26th September 2022, when the title was transferred into both their names, two months after the demise of Richard Karobia Muriithi (deceased).
20. The dispute between the parties centers on the Appellant's assertion that the title registered in the Respondent and deceased name was invalid because it was transferred to her name and her husband's name two months after his father's death. The Appellant argued that his father died intestate and that the Respondent obtained the title without Letters of Administration, which he contended constituted inter-meddling with the deceased's estate. On the other hand, the Respondent argued that at the time of the deceased's death, she had already obtained the letter of consent from the Land Control Board, allowing her to transfer the land even after the passing of her husband. The Respondent took the position that Rule 55 of the Land Registration Regulations of 2017 did not apply to her situation since she had already secured the necessary letters of consent to transfer the suit land.
21. In the Judgment, the Learned Trial Magistrate made a finding that the Respondent had a valid certificate of title, which she held the Land Registrar in his evidence confirmed was valid and that the Respondent and her deceased husband were the registered owners of land parcel Mutira/Kaguyu/4385.
22. The validity of the title was clearly challenged in this case. As per the law, once the title deed is questioned, the entire paper trail concerning its acquisition required to be scrutinized. A title holder cannot simply disregard this; they must provide all relevant documents demonstrating that the title was acquired lawfully. Where the registered proprietor(s) title is under challenge, it is not enough for



the proprietor to flash the certificate of title as proof of ownership. The process through which such title was acquired must be scrutinised to establish whether or not the title was acquired lawfully and/or procedurally. In the case of *Munyu Maina –vs- Hiram Gathiha Maina* (2013) eKLR the Court of Appeal held as follows:-

“---- it is our considered view that the Respondent did not discharge the evidential burden to rebut the testimony of the Appellant that it was their deceased father who put both of them into possession of the suit property and to occupy the same in equal share. We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is under challenged and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the Respondent did not go this extra mile that is required of him and no evidence was led to rebut the Appellant’s testimony. We find that a trust exists in relation to the suit property”.

23. In the present case, it was the Appellant’s case before the Trial Court that his deceased father and husband to the Respondent had not as at the time of his death effected transfer of the suit land to the Respondent and himself as alleged by the Respondent. It was the Appellant’s position that the suit property formed part of his deceased father’s estate and could only have been devolved through transmission pursuant to succession proceedings. The Appellant pointed out that a certificate of search conducted on 23rd September 2022 showed that his deceased father was registered as owner of the suit property on 21st February 2007 and was issued title on 29th September 2017 and as at the date of the certificate of search the property was still under his name and had not been transferred to anybody else. The Appellant’s father died on 19th July 2022 and the transfer to the Respondent and the deceased (jointly) was effected on 26th September 2022. Apparently because a consent by the Land Control Board had been issued on 25th March 2021 sanctioning a transfer to Richard Karobia Muriithi (deceased) and the Respondent, the Respondent reckoned that was sufficient to prove there was a valid transfer effected. The question that however remained unanswered was when the transfer if any, that was registered on 26th September 2022 was executed by the deceased. Once the Appellant questioned the validity of the transfer owing to the same having been registered after the death of the Respondent’s husband, the burden shifted to the Respondent to prove the said transfer was executed by the deceased during his lifetime as only then would the transfer be valid.
24. If indeed the deceased had executed a transfer during his lifetime, there was no explanation offered why the transfer was not processed for registration during the deceased lifetime. At the time the Respondent processed the registration of the alleged transfer, she did not disclose that the Transferor who was one of the transferees was in fact deceased. Of critical significance, however, is whether or not the transfer was executed by the deceased before he died. No evidence was led by the Respondent as to when the transfer, if any, was executed by the deceased. The instrument of transfer that was allegedly processed for registration was not tendered in evidence. The Respondent merely reiterated that the Land Control Board had given its consent to the transaction on 25th March 2021 when the deceased was alive. She did not tender evidence as to when the transfer was executed and therefore did not prove that the deceased had executed the transfer before he died.
25. There was no explanation as to why the copy of the instrument of transfer that was allegedly executed was not exhibited yet it is that transfer that was under challenge. The evidence given by the Land Registrar was speculative that the Land Registrar who processed the documents must have satisfied



himself that the documents were in order. It is indeed these documents that needed to be availed before the Court for the Court to evaluate and satisfy itself that they were in order.

26. Section 44 of the *Land Registration Act* 2012 provides how an instrument effecting any disposition of an interest in land requires to be executed while Section 45 of the Act provides for verification of execution by a person authorised under the Act unless the Land Registrar dispenses with such verification.

Section 44 (1) (2) and (3) provides as follows:-

- (1) Except as otherwise provided in this Act, every instrument effecting any disposition under this Act shall be executed by each of the parties consenting to it, in accordance with the provisions of this section.
- (2) The execution of any instrument referred to in subsection (1), by a person shall consist of appending a person's signature on it or affixing the thumbprint or other mark as evidence of personal acceptance of that instrument.
- (3) The execution of any instrument referred to in subsection (1) by a corporate body, association, co-operative society or any other organization shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.

Section 45 of the Act provides:-

- 1) Subject to subsection (3), a person executing an instrument shall—
 - (a) appear before the Registrar, public officer or other person as is prescribed; and
 - (b) be accompanied by a credible witness for the purpose of establishing identity, unless the person is known to the Registrar, public officer or other person.
- (2) The Registrar, public officer or other person shall identify the person and ascertain whether the person freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.
- (3) The Registrar may dispense with verification under this section—
 - (a) if the Registrar considers that it cannot be obtained or it can only be obtained only with difficulty and is otherwise satisfied that the document has been properly executed; or
 - (b) if the Registrar knows the document has been properly executed, and shall record on the document the reasons for dispensing with the appearance of the parties.

27. Considering the above Legal provisions, it is evident that there is a clear procedure of how a transfer requires to be executed. In the instant case it is unclear whether such process was adhered to as the instrument of transfer was not produced and nor was the person who may have verified the execution called to testify. In the premises there was no basis to hold and find that the transfer was executed by the deceased prior to his death. The Learned Trial Magistrate therefore erred in finding and holding that there was a transfer that was executed by the deceased prior to his death.

28. Having come to the conclusion that the Respondent did not prove that the transfer effected to her and her deceased husband was procedurally effected, it follows that the transfer cannot stand and should be cancelled so that the suit property can be subjected to succession proceedings.

29. Although under Section 26 of the *Land Registration Act*, 2012 a duly issued certificate of title to a proprietor is deemed as conclusive evidence of proprietorship, such certificate maybe challenged on



grounds of fraud and/or if the certificate was obtained illegally and/or unprocedurally. Section 26(1) of the *Land Registration Act* provides as follows:-

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
29. I have in the instant matter made a finding that the Respondent did not prove she obtained the certificate of title regularly and procedurally and hence the Appellant properly challenged her title under the provisions of Section 26 (1) (b) of the Act. If it was the intention of the deceased that the Respondent should be the beneficiary of the suit land, that can be ventilated before the succession Court. If the deceased intended to pass a gift inter vivos to the Respondent as maybe deduced from the letter of consent from the Land Control Board, the gift did not vest during the deceased lifetime as he died before the transfer had been effected. It is evident from the abstract of title that the transfer was effected to the Respondent at least two months from the date of the deceased death.
30. On the basis of the evidence, the Learned Trial Magistrate erred in her analysis and evaluation of the evidence in reaching the determination that the Respondent had proved her case on a balance of probabilities. The evidence did not justify such a finding and the Respondent's case having not been proved ought to have been dismissed.
31. As regards the Appellant's Counterclaim, the Appellant being a son to the deceased who was the registered proprietor of the suit land before it was transferred to the Respondent and deceased unprocedurally had a valid interest in the suit land as a potential beneficiary and was entitled to place a caution against the title to restrain any transactions as may have affected the land to his prejudice.
32. In the premises, I find merit in the Appeal. I allow the Appeal and set aside the Judgment delivered by the Honourable Chief Magistrate on 30th May, 2024. In place thereof I substitute an order dismissing the Respondent's suit before the Lower Court with an order allowing the Appellant's Counterclaim as prayed. Taking cognisance that the parties are members of the same family (son and stepmother), I order that each party bears their own costs of the Appeal and of the Court below.

It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 27TH DAY OF FEBRUARY 2025.

J. M. MUTUNGI

ELC - JUDGE

