



**Ndungu & another (Suing as the legal representatives of Francis Ndungu Njuguna - Deceased) v Kanyoro & 2 others (Civil Appeal E011 of 2020) [2025] KECA 602 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KECA 602 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL E011 OF 2020  
MA WARSAME, JM MATIVO & PM GACHOKA, JJA  
MARCH 28, 2025**

**BETWEEN**

**BEATRICE NGONYO NDUNGU ..... 1<sup>ST</sup> APPELLANT  
CYRUS CHARLES KAMAU ..... 2<sup>ND</sup> APPELLANT  
SUING AS THE LEGAL REPRESENTATIVES OF FRANCIS NDUNGU  
NJUGUNA - DECEASED**

**AND**

**SAMUEL K KANYORO ..... 1<sup>ST</sup> RESPONDENT  
THE ATTORNEY GENERAL (SUED ON BEHALF OF THE COMMISSIONER  
OF LANDS) ..... 2<sup>ND</sup> RESPONDENT  
COUNTY GOVERNMENT OF NAKURU ..... 3<sup>RD</sup> RESPONDENT**

*(An appeal from the judgment and decree of the Environment and Land Court of Kenya at Nakuru (D.O. Obungo, J.) delivered on 3rd May 2018 in ELCC No. 70 of 2006 (Formerly HCCC No. 70 of 2006))*

**JUDGMENT**

1. Land disputes are sometimes met with befuddled claims in this regard: On one part, the suit land on the ground is claimed by the proponent as to be designated a certain reference number. On the other part, a contrasting claim is made by his adversary that the same plot has a different reference number. A court is in this instance called upon to examine the evidence with extreme scrutiny and in some instances, call for the evidence of an expert witness. This is the scenario that befell the parties to the dispute before us.
2. By further further amended plaint dated 18<sup>th</sup> July 2016 and filed on 20<sup>th</sup> July 2016, the appellants, claimed that their deceased father, one Francis Ndungu Njuguna, was lawfully the owner of plot no.



- 100 Business Jewathu Site & Service, situated in Njoro Township by the 3<sup>rd</sup> respondent's predecessor, that is the County Council of Nakuru. That it was purchased by the deceased from one Ben Otube on 22<sup>nd</sup> July 1996; the first allottee. Upon settling all the rents due to the 3<sup>rd</sup> respondent, the deceased entered on the land and constructed semi-permanent houses for commercial use.
3. Come 13<sup>th</sup> January 2006, it was the appellants' case that the 1<sup>st</sup> respondent fraudulently and unlawfully caused to be amended, the layout and plans of the said parcel of land. Thereafter, he registered the suit land in his name under title number Njoro Township Block 1/1144. The appellants particularized allegations of fraud against the 1<sup>st</sup> respondent and negligence on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. They lamented that the 3<sup>rd</sup> respondent negligently allotted plot no. 100 Jewathu to the deceased.
  4. In light of the above, the appellants sought judgment against the respondents in the following terms: a declaration that the appellants were the lawful allottees of the suit land namely plot no. 100 Jewathu Site & Service; a mandatory injunction compelling the 2<sup>nd</sup> respondent to cancel and rectify the entry registering the 1<sup>st</sup> respondent as the proprietor of all that parcel of land namely Njoro Township Block 1/1144; a permanent injunction restraining the 1<sup>st</sup> respondent from claiming ownership of plot no. 100 Jewathu Site & Service; in the alternative, the 3<sup>rd</sup> respondent does indemnify the appellants for the value of the plot and the semi-permanent structures constructed thereon; and costs of the suit.
  5. The 2<sup>nd</sup> respondent entered appearance and filed its statement of defence dated 17<sup>th</sup> May 2006 denying the appellants' claim. On its part, the 3<sup>rd</sup> respondent filed its statement of defence amended on 12<sup>th</sup> May 2015. Similarly, it denied the contents of the appellants' claim.
  6. The 1<sup>st</sup> respondent entered appearance and filed his statement of defence and counterclaim dated 5<sup>th</sup> April 2006. He denied each and every allegation set out in the plaint. In counterclaiming, he averred that on 1<sup>st</sup> October 1994, a letter of allotment in respect to commercial plot no. 100 Njoro Township was allocated by the 2<sup>nd</sup> respondent to Francis Maridany. The said original allottee paid KShs. 900.00, being administrative and clearance fees, to facilitate the issuance of a title deed, on 18<sup>th</sup> April 1995.
  7. The 1<sup>st</sup> respondent then averred that on 9<sup>th</sup> May 1995, the original allottee wrote to the 2<sup>nd</sup> respondent requesting to transfer the plot to the 1<sup>st</sup> respondent. Sometime in 1999, a dispute arose between the deceased and Francis Maridany as to who was the proprietor of that plot. This dispute was escalated to the offices of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. On 4<sup>th</sup> September 1999, the 3<sup>rd</sup> respondent confirmed that the property belonged to Francis Maridany. In their subsequent respective letters, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents confirmed that plot no. 100 Njoro Township was allotted to Francis Maridany while plot no. Jewathu was situated outside Njoro.
  8. On 24<sup>th</sup> March 1999, the District Planning Officer placed an advertisement in the Daily Nation indicating plan no. L23/99/2 site for a commercial plot in Njoro Township inviting members of the public for comments and objections. This plan included the suit land. Subsequently, plot no. 100 Njoro Township was gazetted by the District Planning Officer, in Gazette Notice no. 7335, inviting interested persons to object to the issuance of the title deed, for a period of sixty days. The deceased did not object to this allocation. Instead, he entered on the premises and erected temporary structures.
  9. The 1<sup>st</sup> respondent's case was that the title was obtained procedurally and lawfully. Thus, the continuous action and occupation by the deceased and his family was illegal causing loss and damage to the 1<sup>st</sup> respondent. He therefore prayed for a mandatory injunction restraining the deceased's family from interfering with his legal possession. The 1<sup>st</sup> respondent further prayed for eviction orders, general damages as well as costs of the suit.



10. In his judgment dated 3<sup>rd</sup> May 2018, Ohungo, J. found that the appellants case was unmerited and dismissed it with costs to the respondents. Looking at the counterclaim, the learned judge was persuaded that it was with merit and allowed it with costs to the 1<sup>st</sup> respondent. The learned judge held in part:

“So as to determine the first issue, it is important to review the respective letters of allotment and the ensuing transfers. It is the plaintiffs’ case that the deceased purchased plot no. 100 Jewathu Site & Service from Ben Otube who had been allocated the plot by the County Council of Nakuru through letter of allotment dated 20<sup>th</sup> December 1990. The letter states that “following secret ballot conducted at Jewathu Site & Service Trading Centre”, Mr. Otube was allocated “Business Plot No. 100 Jewathu Site & Service.” Subsequently, to an undated agreement, Otube sold to the deceased “his plot at Njoro – Jewathu Plot No. 100 Business.” Pursuant to transfer dated 22<sup>nd</sup> July 1996, Otube transferred to the deceased “Plot No. 100 Buss” located at Njoro. I note that whereas Otube was allocated a plot stated to be located at Jewathu Site & Service, what he transferred is not described in the transfer as being this exact location.

What about Plot No. 100 Njoro Township? The letter of allotment dated 1<sup>st</sup> October 1994 states that “Uns. Commercial Plot No. 100 Njoro Township” was allocated to Mr. Francis Maridany by the commissioner of Lands. Pursuant to letter dated 9<sup>th</sup> May 1995, Maridany informed the Commissioner of Lands that he had transferred “Plot No. 100 Njoro Township” to the 1<sup>st</sup> defendant. By letter dated 14<sup>th</sup> June 1995, the Commissioner of Lands consented to the transfer.

Though there are conflicting testimonies as to whether or not Otube was shown Business Plot No. 100 at Jewathu Site & Service by the County Council upon its allocation to him, I note that even though the letter of allotment indicated that showing fees were to be paid so that he could be physically shown the plot, no showing fees were paid until 26<sup>th</sup> October 1999 when receipt number V817853 of that date was issued to the deceased. It seems therefore that the physical location of Business Plot No. 100 at Jewathu Site & Service was not identified by the County Council to either Otube or the deceased until or after 26<sup>th</sup> October 1999. There is therefore a real possibility of Otube or the deceased being mixed up as to the location. This possibility is further buttressed by the contents of the surveyor’s report dated 4<sup>th</sup> April 2007 wherein it is stated that the distance between Plot No. 100 Jewathu Site & Service and Plot No. 100 Njoro Township is about 1.5 kilometres. Further, I note that in the respective allotment letters Business Plot No. 100 at Jewathu Site & Service is stated as being located at Jewathu Site & Service Trading Centre where its ballot was conducted while Plot No. 100 Njoro Township is specifically identified as being in Njoro Township. I also note that under cross examination, the deceased conceded that he did not ask Otube to take him to the suit plot at the time of the purchase, that he did not find any reason to ask the council to show him Plot No. 100 at Jewathu Site & Service, and that Jewathu is a village located 1 kilometre from Njoro town. In view of the foregoing, I find and hold that Plot No. 100 Jewathu Site & Service is not the same as Plot No. 100 Njoro Township. They are two distinct plots at different locations.

Now to the second issue as to whether the 1<sup>st</sup> defendant obtained registration of Njoro/ Township Block 1/1144 fraudulently and unlawfully. There is no dispute that since 13<sup>th</sup> January 2006, the 1<sup>st</sup> defendant holds a Certificate of Lease in respect of Njoro/ Township Block 1/1144. The lease is for a term of 99 years from 1<sup>st</sup> October 1994. As registered



proprietor, he is entitled to the full benefits conferred by Section 25 of the [Land Registration Act](#) which provides as follows...

The 1<sup>st</sup> defendant's title can only be defeated as provided under section 26 of the aforesaid Act which states...

I have anxiously reviewed the evidence herein as regards the plaintiffs' allegations that the 1<sup>st</sup> defendant obtained registration of Njoro/Township Block 1/1144 fraudulently and unlawfully. The 1<sup>st</sup> defendant bought the plot from an allottee. The Commissioner of Lands duly consented to the transfer of the plot to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant exhibited in court the paper trail in respect of the plot right from allotment to payment of the stand premium and other allotment charges, to his application for a title deed, publication of notices for planning purposes in the Daily Nation of 24<sup>th</sup> March 1999 and Kenya Gazette of 10<sup>th</sup> November 2000 and ultimately issuance of Certificate of Lease. Needless to state, the Commissioner of Lands who is a party to this case has not contested the validity of the 1<sup>st</sup> defendant's title. In the circumstances, I find and hold that the 1<sup>st</sup> defendant obtained registration of Njoro/Township Block 1/1144 lawfully."

11. The appellants are dissatisfied with those findings. They filed their notice of appeal dated 4<sup>th</sup> May 2018 and memorandum of appeal dated 8<sup>th</sup> October 2020. The appellants raised nine grounds impugning those findings which we have summarized as follows: the learned judge failed to take into account the evidence of PW1, PW2 and PW3 proving that the appellant's case was merited; the trial court erred in failing to find that plot no. 100 Jewathu Site & Service and plot no. 100 Njoro Township were one and the same plot; the trial court was wrong in holding that the appellants were in wrongful occupation of and wrongfully constructed upon the 1<sup>st</sup> respondent's parcel of land; in dismissing their suit, the appellants were deprived of their property rights enshrined in Article 40 of [the Constitution](#); the trial court erred in condemning the appellants to meet the costs of the counterclaim when the 3<sup>rd</sup> respondent sanctioned their occupation over the suit land; and the decision was arrived at on wrong principles against the weight of the evidence adduced.
12. In view of the foregoing, the appellants prayed that the appeal be allowed by setting aside the judgment and decree of the trial court. Furthermore, they urged this Court to allow their further further amended plaint dated 18<sup>th</sup> July 2016. Finally, the appellants prayed for costs of the suit at trial and in this appeal.
13. The appeal was heard virtually on 11<sup>th</sup> February 2025. Present and representing the appellants was learned counsel Mr. Mbiyu. The 1<sup>st</sup> respondent was represented by learned counsel Mr. Murithi who held brief for learned counsel Mr. Kisila while learned counsel Mr. Kahiga was present for the 3<sup>rd</sup> respondent.
14. We found that the parties were duly and properly served with the days' hearing notice. In the circumstances, the appeal was heard in the absence of the 2<sup>nd</sup> respondent or its representing advocate. Parties present argued the appeal on the basis of their antipodal written submissions that were orally highlighted.
15. The appellants' written submissions, list of authorities and case digest, all dated 22<sup>nd</sup> March 2024, argued that the evidence of PW1, PW2, PW3 and PW4 all established that on a balance of probabilities, the appellants were the lawful proprietors of all that parcel of land namely plot no. 100 Jewathu; a plot that was not claimed by the 1<sup>st</sup> respondent. They continued that the deceased, one Francis Ndungu Njuguna, was the allottee of the said plot. They affirmed that they were not interested in the 1<sup>st</sup> respondent's plot.



16. In further submission, the appellants urged that since the surveyor's report pointed out that the suit land belonged to the 1<sup>st</sup> respondent, then the trial court ought to have condemned the 3<sup>rd</sup> respondent to indemnify the appellants for the monies expended in purchasing and developing plot no. 100 Jewathu. In any event, they submitted, that evidence was inconclusive. They were emphatic that the property as established on the ground was plot no. 100 Jewathu and not as described in the title deed.
17. Speaking to the title deed, the appellants posited that the court erroneously found that the suit property was lawfully registered in the name of the 1<sup>st</sup> respondent since he did not establish the sanctity of that title. In addition, they submitted that the trial court improperly ordered them to meet the costs of the 1<sup>st</sup> respondent when it was the 3<sup>rd</sup> respondent's error to improperly issue plots to the parties. They were of the opinion that the 3<sup>rd</sup> respondent ought to meet those costs.
18. The 1<sup>st</sup> respondent filed his written submissions dated 18<sup>th</sup> March 2024, a case digest dated 19<sup>th</sup> March 2024 and a list of authorities dated 20<sup>th</sup> March 2024 to submit that the findings of the learned judge ought not to be disturbed for the reason that the evidence was properly evaluated and the conclusion was arrived at on this basis. He maintained that from the surveyor's report dated 4<sup>th</sup> April 2007, what was apparent was that plot no. 100 Jewathu Site & Service, claimed by the appellants, was not plot no. 100 Njoro Township. That the suit land was plot no. 100 Njoro Township and the appellants could not claim it. He distinguished that the two plots are 1.5 kilometers apart. That since the appellant did not visit upon the land when purchasing it, he was the author of his own misfortune and confused the two plots.
19. Further opposing the appeal, the 1<sup>st</sup> respondent submitted that the appellants could not claim ownership from a letter of allotment which served the purpose of an invitation to treat and did not confer title to the appellants as alleged. Finally, the 1<sup>st</sup> respondent submitted that no allegations of fraud had been proved to the required standard. For the above reasons, the 1<sup>st</sup> respondent urged this Court to uphold the trial court's findings and dismiss the appeal with costs.
20. The 3<sup>rd</sup> respondent filed its written submissions, list of authorities and case digest all dated 1<sup>st</sup> February 2024. It submitted that the appellants failed to prove that business plot no. 100 Jewathu Site & Service and plot no. 100 Njoro Township were one and the same property. Evidence was apparent, it added, that two plots were situated in different locations. Examining the evidence, the 3<sup>rd</sup> respondent submitted that the appellant did not discharge their burden of proof on a balance of probabilities. That the appellants suffered their fate because they failed to inspect the property before its purchase.
21. The 3<sup>rd</sup> respondent submitted that no evidence was adduced in court to establish that it negligently gave the appellants the wrong property. That overwhelming evidence, coupled with the appellants' contradicting evidence, demonstrated that the suit property belonged to the 1<sup>st</sup> respondent and the appellants had no claim whatsoever. It thus prayed that the appeal be dismissed with costs.
22. We have carefully considered the parties' written submissions, examined the record of appeal and analyzed the law. The predecessor of this Court in *Kenya Ports Authority vs. Kuston (Kenya) Limited (2009) 2EA 212* succinctly elucidated our role as a first appellate court as follows:

“On a first appeal from the High Court, this 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.”



23. By now, it is clear that this appeal will succeed or fail on a reevaluation of the evidence. We, therefore, find it necessary to summarize the evidence as captured in the record of appeal before us before postulating the issues for determination.
24. The appellants called three witnesses. Before his death, PW1 Francis Ndungu Njuguna the deceased herein testified that he purchased the suit land from Ben Otube pursuant to an undated sale agreement on 22<sup>nd</sup> July 1996. The vendor was then furnished with a letter from the Council dated 24<sup>th</sup> January 1996. Subsequently, a document of transfer was drawn in his favor. He also furnished three receipts all dated 30<sup>th</sup> January 1996 as proof that he had settled the full purchase price amount. He also adduced receipts for payment of rent accumulated from the plot totaling Kshs. 7,370.00.
25. PW1's evidence was that in 1997, he moved into the suit premises, fenced the plot and constructed a toilet and 19 residential houses. He was shown the property by the vendor and Otube but would later state that he was not shown the property neither by the vendor nor the Council. His testimony was that he began to collect rent from tenants living in those residential homes in the sum of Kshs. 300.00. He captured the rent payments in his receipt book. Those houses were approved by a building plan but was not produced in evidence.
26. In 1997, one Francis Maridany entered on the plot and informed PW1 that he had constructed on his parcel of land. He asked PW1 to vacate property on that ground. The said Francis Maridany reported the matter to the police station where PW1 was arrested and spent the night in the police cells and was released later.
27. Six years later, the said Francis Maridany returned to the suit land in the company of an unknown man, the 1<sup>st</sup> respondent and representatives from the Council. They were informed by the Council that the property belonged to PW1. He also relied on two letters dated 4<sup>th</sup> June 1999 indicative that he was the owner of the plot.
28. Later on, PW1 was issued with a notice to vacate the suit land on 23<sup>rd</sup> February 2006 by the 1<sup>st</sup> respondent; yet upon clearing the debts owed to the Council, he was issued with a clearance form on 15<sup>th</sup> March 2001. That he submitted this form to Ardhi House Nairobi but was never issued with a title deed.
29. Justifying ownership further, PW1 relied on a clearance certificate from the Council dated 15<sup>th</sup> March 2001, minutes of a meeting conferring land to him, a letter dated 8<sup>th</sup> October 2001 from the Commissioner of Lands Nakuru District Land Office, a letter of demand for payment of rates by the Council dated 21<sup>st</sup> August 2000, allotment letter, photographs and a notice to the tenants.
30. PW1 complained that on 8<sup>th</sup> April 2010, the 1<sup>st</sup> respondent invited a group of people to destroy the buildings that he had constructed. One month later he was summoned by the police and arrested. He was charged with the offence of forcible retainer in Criminal Case no. 2493 of 2010 which charge sheet was adduced in evidence. He urged the trial court to grant the reliefs sought.
31. PW1 confirmed that surveyor surveyed the property pursuant to a court order. Furthermore, the plot that he purchased was not plot no. 100 Jewathu Site & Services; separate and distinct from plot no. 100 Njoro Township. He however stated that Jewathu was located in Njoro but there was no Jewathu Trading Center. That he did not have a title deed.
32. The appellants also called PW2 Laban Otieno Ayanga, a planning officer from Nakuru County Council to the stand. He testified that plot no. 100 Jewathu Site & Service and plot no. 100 Njoro Township are the same plot with the names used interchangeably. That Njoro Township is the entire region of Njoro while Jewathu (an acronym for Jesse Waweru Thuku- a name of a councilor) was



located in Njoro. That the property is owned by the Council and visited the suit land when directed by the court. Explaining the process of allotment, PW2 expounded that an allotment letter is given by the Council who writes to the Commissioner of Lands informing the office that the property has been allotted. He affirmed that the property was allotted to PW1. That no title deed has been issued in respect to the plot.

33. PW3 Bernard Simiyu Otube testified that that plot no. 100 Jewathu Site & Service Njoro was allocated to him by the Council on 20<sup>th</sup> December 1990. This property was separate and distinct from plot no. 100 Njoro Township. He explained that he was allocated the plot after paying the requisite fees to the Council. He then paid survey fees and showing fees in 1996 and took possession subsequently.
34. PW3 continued that he however did not settle on it and instead sold the plot to PW1 by way of a sale agreement. That they executed a transfer before the Council. Upon clearing any payments due to the Council, PW1 was recorded as the new owner of the said plot. He showed PW1 the plot in 1990 that was previously shown to him by an unknown person but at this time, he had not paid for the property. That the property was not surveyed by the Council. He however did not pay a sum of Kshs. 2,000.00 as a prerequisite indicated in the letter of allotment.
35. PW4 Maritha Wangechi testified that she was the proprietor of plot no. 74B Njoro Business a neighbor to PW1, the owners of the suit land, located in Jewathu Site & Service. She explained that Jewathu is a trading center. That the property in question is in Njoro town but that Njoro is also called Jewathu.
36. On the part of the respondents, the 1<sup>st</sup> respondent testified as DW1. His evidence was that the suit property was sold to him by a friend former councilor named Francis Maridany for the sum of Kshs. 145,000.00. The said Francis Maridany was issued with a letter of allotment on 1<sup>st</sup> October 1994. DW1 conducted a search that revealed that the property was not encumbered. He was shown the property and was given vacant possession. He also stated that he paid all the requisite fees required. DW1 further testified that Francis Maridany informed the Commissioner of Lands about the transaction in his letter dated 9<sup>th</sup> May 1995.
37. In addition to the above assertions, DW1 adduced a consent transfer letter (sic), rates and survey receipt for the sum of Kshs. 7,550.00 dated 16<sup>th</sup> May 1995, receipt for consent fees dated 3<sup>rd</sup> November for the sum of Kshs. 2,500.00, a certificate for clearance of the rates and administrative costs dated 18<sup>th</sup> April 1995 together with the receipts thereof, letter from the Council dated 22<sup>nd</sup> February 1999, letter from the District Public Health Officer dated 13<sup>th</sup> February 2001, receipt to the Public Health for the sum of Kshs. 1,500.00, certificate from Public Health, advertisement in the Daily Nation inviting objectors to his issuance of a title deed, a notice of objection in the Kenya Gazette dated 10<sup>th</sup> November 2000 and receipt in settlement of the sums due dated 27<sup>th</sup> November 2000.
38. One year later, the deceased approached DW1 and informed him that he had purchased the said property from Ben Otube. This gave rise to a dispute that was presented before the District Lands Officer. Both parties were summoned therein and informed the property belonged to the 1<sup>st</sup> respondent. By letter dated 7<sup>th</sup> June 1999, one Mr. Muthomi, land officer, clarified that the properties claimed by the deceased and DW1 were two different, separate and distinct plots.
39. In 1998, DW1 discovered that the deceased had set up temporary structures on the parcel of land. Consequently, DW1 instructed his Advocates to draft the letters dated 30<sup>th</sup> August 1999 and 13<sup>th</sup> September 1999 asking the deceased to vacate the plot. On 4<sup>th</sup> September 1999, the Council confirmed that the property was owned by Francis Maridany. It further advised the deceased to look elsewhere for plot no. 100 Jewathu Site & Service issued to him by the Council.



40. DW1 further testified that in 2006, he was issued with a title deed in respect to the property and has paid rates up to date. He produced the title deed, a certificate of clearance, an official search and the surveyor's report dated 4<sup>th</sup> April 2007 which informed that plot no. 100 Jewathu Site & Service and plot no. 100 Njoro Township were two different plots. He urged the trial court to allow his counterclaim and dismiss the deceased's claim.
41. The 2<sup>nd</sup> respondent called DW2 Charles Birundu, a land registrar based in Nakuru Land Registry. He testified that the property namely Njoro Township/Block 1/1144 initially belonged to the Government of Kenya. It was then allocated to the 1<sup>st</sup> respondent on 13<sup>th</sup> January 2006 and a certificate of lease issued. A certified copy of the register was produced in evidence. Though not having the Part Development Plan, DW2's evidence was that the property belonged to the 1<sup>st</sup> respondent.
42. The main issue for determination here is whether the trial court arrived at an incorrect finding in stating that the suit land, originally plot No. 100 Njoro Township, now Njoro/Township Block 1/1144, lawfully belonged to the 1<sup>st</sup> respondent herein as per the entry in the title deed. We restate that section 26 (1) of the [Land Registration Act](#) CAP 300 provides that the certificate of title issued upon registration shall be taken as prima facie evidence that the person named as the proprietor is the absolute and indefeasible owner unless it is demonstrably apparent that the title deed was obtained by means of fraud, misrepresentation, illegally, unprocedurally or by way of a corrupt scheme.
43. Both parties do not dispute that on one hand, the deceased entered into an undated sale agreement with Ben Otube for the purchase of plot no. 100 Jewathu Site & Services while the 1<sup>st</sup> respondent purchased from Francis Maridany, plot no. 100 Njoro Township. Focally however, the appellant contended that the suit property on the ground was plot no. 100 Jewathu Site & Service while the 1<sup>st</sup> respondent was adamant that the property was plot no. 100 Njoro Township.
44. The evidence of the appellants was that the deceased was not shown the plot upon the time he was purchasing the suit land. Furthermore, the Council did not show unto the deceased where the property was located. Though PW3 testified that the location of the property was shown to the deceased, PW1 did not corroborate this evidence. One wonders how then they were unequivocal that the suit property was indeed the property allotted to the deceased person. Be that as it may, based on those contradicting testimonies of PW3 and PW1, we are not satisfied that indeed PW1 could point out the location of the property.
45. Secondly, as rightly observed by the trial court, the showing fees were only paid on 26<sup>th</sup> October 1999 as shown in receipt number V817853; yet the letter of allotment is dated 20<sup>th</sup> December 1990 and was subsequently transferred to the deceased on 22<sup>nd</sup> July 1996. Evidently, it is not established that on a balance of probabilities, the physical location of Business Plot No. 100 at Jewathu Site & Service was identified by the County Council to either Otube or the deceased raising a real likelihood of a mix up on the location of this particular property.
46. Thirdly, the surveyor's report dated 4<sup>th</sup> April 2007, that was uncontroverted, and set out in detail, revealed firstly that these were two separate plots and that secondly, two plots were in different localities. It stated that the distance between plot No. 100 Jewathu Site & Service and plot No. 100 Njoro Township is about 1.5 kilometres. This confirmed that not only were the plots indeed in existence, they were also different and in different areas. This is what could have then informed the information in the respective allotment letters Business Plot No. 100 at Jewathu Site & Service stated as located at Jewathu Site & Service Trading Centre while plot No. 100 Njoro Township was in Njoro Township.
47. Although PW2 purported to state that the two plots are one and the same thing and that their names are used interchangeably, no concrete evidence was adduced before the trial court to explain what



circumstances would have led to one property having two names. It was merely stated on the dock but without any proof of it beyond that statement.

48. The 1<sup>st</sup> respondent's evidence on the other hand was that he was shown the property by the said Francis Maridany. He confirmed that it was not encumbered and was given vacant possession. By letter dated 7<sup>th</sup> June 1999, one Mr. Muthomi, land officer, clarified that the properties claimed by the deceased and DW1 were two different, separate and distinct plots. By letter dated 4<sup>th</sup> September 1999, the Council confirmed that the property was owned by Francis Maridany. It further advised the deceased to look elsewhere for plot no. 100 Jewathu Site & Service issued to him by the Council.
49. The evidence above tilted in the favor of the 1<sup>st</sup> respondent. The appellants failed to demonstrate how the learned judge arrived at improper finding. In view of the above analysis, we are indeed persuaded that the property on the ground was originally plot no. 100 Njoro Township located in Njoro and not plot no. 100 Jewathu Site & Service. We will therefore not interfere with those findings of the learned judge.
50. The 1<sup>st</sup> respondent chronologically explained how he acquired the title. It was sold to him by a friend and former councilor named Francis Maridany for the sum of Kshs. 145,000.00 who had been previously issued with a letter of allotment on 1<sup>st</sup> October 1994. Upon setting the requisite fees, Francis Maridany informed the Commissioner of Lands about the transaction in his letter dated 9<sup>th</sup> May 1995. Later on, the 1<sup>st</sup> respondent placed an advertisement in the Daily Nation inviting objectors to his issuance of a title deed. The same notice was placed in the Kenya Gazette dated 10<sup>th</sup> November 2000.
51. There being no objections, the 1<sup>st</sup> respondent was registered as the proprietor of all that parcel of land namely Njoro/Township Block 1/1144 on 13<sup>th</sup> January 2006. This evidence was corroborated by that of DW2 Charles Birundu, a land registrar based in Nakuru Land Registry.
52. The appellants particularized the allegations of fraud as captured in paragraph 7 of their further further amended plaint. However, those allegations were not proved and set out glisteningly or at all. The validity of the 1<sup>st</sup> respondent's title has not been questioned. The 1<sup>st</sup> respondent is entitled to protection of his rights as set out in Section 25 of the *Land Registration Act*. We therefore find that title was procedurally, lawfully and regularly obtained.
53. It is trite law that an appellate court will only interfere with findings of fact only if, it is demonstrated that such findings are based on no evidence or the court considered irrelevant considerations or omitted to consider relevant considerations. None of the grounds of appeal cited have demonstrated the above as to warrant an interference by this Court. We find no reason to interfere with the learned judge's findings. The upshot of our above findings is that the appeal herein lacks merit. It is dismissed with costs to the 1<sup>st</sup> and 3<sup>rd</sup> respondents.

**DATED AND DELIVERED AT NAKURU THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

**M. WARSAME**

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**JUDGE OF APPEAL**

**J. MATIVO**

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**JUDGE OF APPEAL**

**M. GACHOKA C.Arb, FCI Arb.**



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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

