



Thoya v Mwaro (Civil Appeal E041 of 2022) [2025] KECA 931 (KLR) (7 March 2025) (Judgment)

Neutral citation: [2025] KECA 931 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CIVIL APPEAL E041 OF 2022
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA
MARCH 7, 2025

BETWEEN

KARISA KAZUNGU THOYA APPELLANT

AND

YAA BAYA MWARO RESPONDENT

(Appeal from the judgment of the Environment and Land Court of Kenya at Malindi (Angote, J.) dated 27th September 2013 in Environment and Land Case No. 96 of 2012)

JUDGMENT

1. By way of a Plaintiff dated 25th June 2012 filed on the same day, the respondent Yaa Baya Mwaro filed a suit against the appellant, Karisa Kazungu Thoya seeking an order of rectification of the Register relating to Title Number Malindi/Pumwani Phase 1/430 (the suit property) by canceling the registration of the appellant and instead registering him as the proprietor. The respondent's case was that, in 1948, he settled on an unregistered parcel of land situated at Bomani Village in an area commonly known as Magarini- Mabomu measuring 15.3 hectares, where he built 3 houses, planted numerous trees and cultivated the suit property exclusively, openly and continuously without any interruption from the appellant or any other person. He had even buried his family members on the suit property including his mother, father, wife and brother.
2. He claimed that during demarcation and adjudication of the area in 1986, the appellant unlawfully allocated himself the suit property and, on 5th September 2006, he was registered as the proprietor. He stated that he objected to the allocation of the suit property to the appellant, but that his objection went unheard and undetermined contrary to the provisions of the *Land Adjudication Act*; and that the registration of the suit property in the name of the appellant was obtained through fraud and misrepresentation.
3. It was his evidence that he was born in 1936, and that the adjudication officers refused to take his identification details. They informed him that they were aware that the suit property had been



- purchased by the appellant from one Mr. Thulla whom he had never seen. He was aggrieved and filed a dispute before the Gongoni Lands Disputes Tribunal, which ruled in his favour; and that, further, he was paid Kshs. 26,000 as compensation by the Kenya Electricity Transmission Company for trees that were cut down when the company's power lines passed over his land.
4. In support of his case, his son Jackson Yaa Baya (PW2) testified that he was born on the suit property and that he is 31 years old; and that the suit property is the only place he has called home. PW2 confirmed that the adjudication and demarcation of the suit property was done in 1986, and that his father, the village elder and himself were present during the demarcation process. PW2 stated that his father's details were not registered by the Lands officials because it was alleged that the land had been sold to the appellant by a Mr. Thulla, the registered owner, a person he had never seen. He stated that their relatives had been buried on the suit property.
 5. The respondent's other son, Festus Yaa (PW3), also testified that he has lived on the suit property for 40 years with his father and brothers; and that the appellant had been allocated land elsewhere. It was his evidence that the appellant acquired the suit property fraudulently, as he claimed to have purchased it from Mr. Thulla.
 6. Kadogo Thoya Baya (PW4), the respondent's neighbor, stated that the suit property belonged to the respondent, and that he had known him as his neighbour since 1948 when he moved to the area; that there was no one on the land and he (Kadogo) had assisted him to clear the parcel; that the respondent had planted mango and coconut trees and cultivated the suit property without any interference; that his children were born on the suit property; and that the appellant's land borders the suit property.
 7. Rehema Ali Mzee (PW5) is Mr. Thulla's granddaughter. She testified that Mr. Thulla died in 1974. According to PW5, the initial land reference number of the suit property was LR No.11623 and belonged to her grandfather Bwana Masud Thulla; that, all along, the suit property was used by the respondent; that, in 1979, the land was taken by the government and converted into a settlement scheme and allocated to people. PW5 stated that her grandfather was never compensated for the land and, further, that it is their family which is entitled to the suit property. He stated that he had heard of Mr. Thulla but had never seen him.
 8. In his defence, the appellant denied the respondent's claim. He stated that the suit property was originally registered in the name of Masud Bin Thulla as the administrator of the estate of Bwana Bin Mshamu. The land was delineated on Plan No. 83327 as LR No.11623 comprising 21.22 acres. He claimed to have purchased it from Said Bin Thulla for Kshs. 65,000 in 1995; that Said Bin Thulla owed Kilifi Plantation, Kshs.45,000; and that a charge was registered over the property for a facility that was not being serviced. He offered to repay the loan and, after clearing the outstanding amount, he was given the title document after obtaining Land Control Board consent. He produced a transfer dated 15th December 1995.
 9. He claimed that the land he purchased measured 21 acres and was duly registered in his name. After he purchased the suit property, officials from the Ministry of Lands surveyed the land, and he informed them that he had purchased it. Thereafter, he received a letter from the Lands office which indicated that the Settlement Fund Trustees allocated plot number 430 to him after he paid the requisite fees; that he was advised to surrender the original title, which he did and was subsequently issued with a title for plot number 430. Thereafter, he issued him with a letter indicating that he had cleared all outstanding amounts with the Settlement Fund Trustees.
 10. He denied that the respondent was in possession of the suit property, or that he purchased the suit property at a public auction. He stated that, by the time he bought the suit property in 1995, it had become part of Pumwani 1 Settlement Scheme having been taken over by the Settlement Fund Trustee



in 1975; and that he was offered the land by the government on 14th June 2000 and surrendered the original title deed on 20th December 2000.

11. His case was supported by the evidence of his sons Samson Karisa Kazungu (DW2) and Justine Chengo Karisa (DW3), who confirmed that he was the owner of the suit property.

12. Upon considering the matter, the learned trial Judge held:

“The Defendant having been issued a Title Deed in respect to Malindi/Pumwani Phase 1/430 by the Director of Land Adjudication and Settlement on the basis that the Defendant was the legitimate owner of L.R.No.11623, which was not the position, I find and hold that the issuance of a title deed to the Defendant for Malindi/Pumwani Phase 1/430 was unlawful null and void.

The Settlement Fund Trustees should have allocated the suit property to the Plaintiff for having occupied it since 1948 and not to the Defendant.

I also find and hold that the Plaintiff having been in continuous and exclusive occupation and possession of the suit property and his occupation having been open and notorious before the Defendant purported to purchase the same from Masud Bin Bwana Thulla, the Plaintiff acquired the suit property by way of adverse possession before the purported purchase in 1997.

For the reasons I have given above, I find and hold that the Plaintiff has proved his case on a balance of probability and I allow the Plaintiff's Plaint dated 25th June 2012 in the following terms:

- a. An order for the rectification of the Register relating to Malindi/Pumwani Phase I/430 by canceling the registration of the Defendant as the proprietor of the said title and instead registering Yaa Baya Mwaro as the proprietor thereof be and is hereby issued.
- b. The Defendant to pay to the Plaintiff the costs of the suit.”

13. Aggrieved by the decision, the appellant filed the instant appeal to this Court on grounds that: the learned Judge misapprehended and misunderstood the chronology of events from the sale to the subsequent surrender of L.R. Number 11623 by the appellant and the implication thereof; that the learned Judge was in error in law and in fact by misdirecting himself on the process of demarcation and adjudication of the land where the suit property is situated; in failing to take into consideration all the evidence and documents produced and filed by the appellant vis-a-viz the respondent; in failing to recognise the sanctity of title as contemplated by law; in considering and relying on the proceedings of the Land Dispute Tribunal which ought to have been considered ultra vires their powers as contemplated under section 3(1) of the Land Disputes Tribunal Act (repealed); and in failing to weigh all the evidence that was before him.

14. Both the appellant and the respondent filed written submissions, and when the appeal came up for hearing on a virtual platform, learned counsel Mr. Adoyo appeared for the appellant and Mr. Shujaa appeared for the respondent. Counsel relied entirely on their written submissions. For his part, the appellant submitted that during trial, he tendered a copy of the Sale Agreement, transfer forms, consent and a certificate of postal search, which clearly showed that he had purchased the suit property, then known as L.R Number 11623, from Masoud Bin Thulla; that the learned Judge after properly analyzing the evidence erroneously took into account the Land Tribunal's decision and concluded that the respondent was the rightful owner of the suit property after observing that the appellant did not at



- any time challenge the Tribunal's decision; and that the trial Judge restricted himself to the Tribunal's decision and the respondent's testimony where he stated that he was satisfied that the respondent had been in continuous and exclusive possession of the suit property. The trial Judge was faulted for solely relying on the oral evidence of the respondent to hold that he acquired the suit property by way of adverse possession.
16. Counsel further submitted that the trial Judge failed to consider the sanctity of the appellant's Title deed, which proved his ownership of Malindi/Pumwani Phase 1/430 and further failed to appreciate that, despite the respondent having challenged the acquisition of the appellant's title on grounds of fraud and misrepresentation, this was not proved; that, in the absence of evidence to the contrary, the Land Adjudication officer was satisfied with the appellant's sale and transfer of the suit property and proceeded to register the appellant as the rightful owner. It was urged that, for this reason, this Court should protect his title to the suit property as required by Article 40 of *the Constitution* as read together with the *Land Registration Act*.
 17. In response, the respondent submitted that the learned Judge correctly found that the Land Tribunal had no jurisdiction to entertain the respondent's claim, but merely concluded on the basis of the facts that were before the Tribunal, that the respondent was the rightful owner of the suit property. The respondent stated that the record showed that the learned Judge evaluated the evidence and arrived at his own findings and conclusions.
 18. It was further submitted that the respondent proved his case to the required standards that he was in occupation of the suit property; that he produced a receipt for payment of compensation made to him by Kenya Electricity Transmission Company for his trees that were cut down by the company to pave way for electricity transmission lines established across the suit property as well as photographs showing the houses that he had built. Finally, it was submitted that the appellant had admitted under cross-examination that he was not in occupation of the suit property.
 19. The mandate of this Court on a first appeal as set out in rule 31(1) (a) of the rules of this Court is to reappraise the evidence and draw our own conclusions. In *Peters vs. Sunday Post Limited* [1958] EA 424, the predecessor of this Court, the Court of Appeal for Eastern Africa, stated that:

"Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial Judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial Judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong, the appellate court will not hesitate so to decide."
 20. See also *Abok James Odera t/a A.J. Odera & Associates vs. John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR, where this Court held:

"This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."
 21. Whilst adhering to these principles, we find that the issues for consideration are: i) whether the appellant acquired the subject property fraudulently and through misrepresentation; and ii) whether the respondent was entitled to ownership of the suit property.
 22. It is the appellant's contention that he properly acquired the suit property, and that the trial Judge failed to recognize the sanctity of title as contemplated by law.



23. This Court in the case of Embakasi Properties Limited & another vs Commissioner of Lands & another [2019] eKLR held:

"Although it has been held time without end that the certificate of title is: '... conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof,' it is equally true that ownership can only be challenged on the ground of fraud or misrepresentation to which the proprietor named is proved to be a party. See section 23 of the repealed Registration of Titles Act. Section 26 of the [Land Registration Act](#), 2012 though not as emphatic as section 23 aforesaid on the conclusive nature of ownership, confirms that the certificate is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner. It adds that apart from encumbrances, easements, restrictions to which the title is subject, there is no guarantee of the title if it is acquired by fraud or misrepresentation or where it has been acquired "illegally, unprocedurally or through a corrupt scheme."

24. Section 26(1) of the [Land Registration Act](#), 2012 affirms the sanctity and the indefeasibility of title to immovable property in the absence of fraud, misrepresentation or other unlawful conduct in its acquisition. The section reads:

"Certificate of title to be held as conclusive evidence of proprietorship

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."

25. In the case of Chemey Investment Limited vs Attorney General & 2 Others [2018] eKLR, this Court rendered itself thus:

"Decisions abound where courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others [1996] eKLR; Funzi Island Development Ltd & 2 Others v. County Council of Kwale (supra); Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 Others KLR (E&L) 1, 563; John Peter Mureithi & 2 Others v. Attorney General & 4 Others [2006] eKLR; Kenya National Highway Authority v. Shalien Masood Mughal & 5 Others (2017) eKLR; Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others [2015] eKLR; Munyu Maina v Hiram Gathiha Maina [2013] eKLR and Milan Kumar Shah & Others v. City Council of Nairobi & Others, HCCC No. 1024 of 2005. The effect of all



those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense.”

26. This Court in the case of *Munyu Maina vs Hiram Gathina Maina* [2013] eKLR held:

“...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 that is under challenge and the registered proprietor must go beyond the instrument and prove 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.”
27. This position was reiterated by the Supreme Court in the case of *Funzi Development Ltd & Others vs County Council of Kwale*, [2014] eKLR where the court held that:

...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”
28. In the case of *Dina Management Limited vs County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR), the Supreme Court reiterated that:

“Article 40 of *the Constitution* entitled every person to the right to property, subject to the limitations set out therein. Article 40(6) limited the rights as not extending them to any property that had been found to have been unlawfully acquired. As the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter could not therefore be protected under Article 40.”
29. Section 26 of the *Land Act* as considered alongside the above cited authorities clearly provides that for a registered proprietor to acquire good title, he or she must go beyond the instrument and prove how the title was acquired and show that the acquisition was legal. In other words, that the land was legally acquired.
30. As to whether the suit property was properly acquired, the appellant claimed to have purchased it from one Mansud Bin Thulla in 1994. As proof of his purchase of the suit property, he produced 4 sale agreements dated 17th December 1994, 17th August 1995, 15th November 1995 and 17th December 1995 made between himself and one Said Masoud Abubakar in which Said Masoud Abubakar claimed to have been the owner of the parcel L.R. No. 11623 and who received the sale proceeds.
31. He also produced as evidence a Certificate of title in the name of Mansud Bin Thulla as administrator, showing that the property was registered under Land Titles Act as L.R. No. 11623 and comprised 21.22 acres (approx 8.587 hectares). It was his case that, having acquired title to the suit property, he later surrendered it to the government despite it being private property as, during demarcation and survey, it was discovered that the suit property was part of the Pumwani 1 Settlement Scheme. He claimed that, in exchange, he was allocated Malindi/Pumwani/Phase 1/430 measuring approximately 15.3 hectares (approx. 37.807 acres) or thereabouts as compensation for the suit property.
32. Notwithstanding that the appellant stated that the suit property was registered in the name of Mansud Bin Thulla, he did not show under what authority Said Masoud Abubakar transacted on behalf of Mansud Bin Thulla. The transaction becomes even more sinister when it is observed that the Transfer



indicated that it was signed by Mansud Bin Thulla on 15th December 1995, which was two days before the last agreement between the appellant and Said Masoud Abubakar was executed. It begs the question as to why Mansud Bin Thulla was not available to sign the sale agreements, but was available to sign the Transfer two days before the last agreement.

33. In addressing this question, the evidence of the Rehema Mzee (PW5), the grand daughter to Mansud Bin Thulla, is instructive. According to her evidence, Mansud Bin Thulla died in 1974. This evidence was not challenged by the appellant. In fact, he confirmed not having transacted with him, but rather with his relative in 1995, about 20 years after his death. This would mean that, by the time of his demise in 1974, the parcel L.R. No. 11623 was still registered in the name of Mansud Bin Thulla (deceased).
34. What this evidence would point to is that the appellant did not purchase the suit property from the registered proprietor, but from an imposter or unauthorized person, who did not hold letters of administration in respect of the estate of Mansud Bin Thulla, the registered owner. Consequently, there being no documentation capable of passing on good title to the suit property, the sale agreement and transfer between Said Masoud Abubakar or Mansud Bin Thulla (deceased) and the appellant was rendered illegal, null and void by operation of law.
35. In this regard, the learned Judge observed:

"The purported transfer of LR to the Defendant by someone who was already dead can therefore only amount to fraudulent dealings in the suit property by the Defendant and Said Masud Abubakar"
36. This Court in the case of *Wambui vs Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) held that:
 - i. no court of law should sanction either the acquisition of title to property in favour of a party (christened crooks by the court) who has acquired such title from a legally registered innocent proprietor using forgery, deceit or any kind of fraud;
 - ii. nor the transfer of title from the person who acquired it through forgery, deceit and or fraud from a legally registered innocent proprietor to a 3rd party even if it were acquired innocently and for valuable consideration for the reason that the person who had acquired it through forgery, deceit and or any form of fraud from the innocent legally registered proprietor had no valid or legally acquired title in the property to pass on to the third party;
 - iii.
 - iv.
 - v. no court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing the obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court; and lastly, that it is trite law that where an act is a nullity it is void and every proceeding founded on it is also in law a nullity."
37. Owing to the unlawful and fraudulent manner in which the appellant acquired the suit property, we agree with the learned Judge that the appellant did not acquire good title. As a consequence, we find that he is not entitled to be registered as proprietor since the title he held was a nullity.
38. On the question of adjudication in the area, the learned Judge had this to say:

...it was discovered during the demarcation and survey that LR No. 11623 was part of Pumwani I Scheme and the Plot Identification Committee identified the Defendant who



was the owner of LR 11623 by virtue of a title he held for the allocation of Malindi Pumwani Phase 1/430...”

39. The Judge went on to observe as follows:

...this was in conformity with the evidence of PW1 that during the demarcation and adjudication process, he was informed by officials from the adjudication section that he could not be allocated the land because they were aware that the same land had been purchased by the Defendant. The officials from the Ministry of Lands promised to give him another land which they never did.

That is the same position that the defendant has taken in this matter. It was the Defendant’s testimony ... that after the purchase of LR No 11623 measuring 21 acres from Said Bin Thula, he found the officials from the Ministry of Lands surveying the land upon which he informed them that he had purchased the land. He thereafter surrendered the title document in respect to LR No. 11623 and was allocated the suit property.”

40. In the plaint, the respondent specified the particulars of fraud and misrepresentation as, inter alia: i) fraudulently misrepresenting himself to the Demarcation officer and Adjudication officer at the time of demarcation and adjudication of the interests or claims to the suit property that he was the rightful beneficial owner through purchase from Said Masud Bin Thulla while knowing or having reason to believe that the person did not have any saleable interest; ii) knowing or having reason to believe that the respondent has been in rightful physical possession of the suit property from time immemorial misrepresenting himself to the Demarcation officer and Adjudication officer of the interest and claims to the suit property that he was the one in physical possession of the suit property; and iii) obtaining registration of the suit property in his name while knowing that he had no registrable interest or claim to the suit property.

41. As proof of the fraud and misrepresentation on the appellant’s part, the record clearly demonstrated that the respondent, who had been residing on the suit property since 1948, was denied settlement on the land by the Demarcation and Adjudication officers because the appellant claimed to have purchased it from the registered proprietor owner, Mansud Bin Thulla, who had long died. It was on the strength of his alleged ownership that he waved the title in front of the Land officers during demarcation and adjudication and misled them into issuing him, and not the respondent, with the title to the settlement scheme. As a result, the appellant was issued with the Title No. Malindi/Pumwani/Phase 1/430 in respect of the suit property. The appellant placed reliance on the letter from the Scheme project manager dated 11th January 2006 to show that he was allocated the suit property. The letter reads in part:

“The land (suit property herein) was initially PLOT L.R No 11623 registered under the Land Titles Act. During acquisition by the Government the eastern Boundary which the plot falls was not set on the ground and the owner Karisa Kazungu Thoa who had bought the plot was not certified by the compensation committee hence was not compensated. This was in 1979. It is noteworthy that the area was private land.”

42. The letter further stated that:

“Once the government had acquired the land under the Registered *Land Act* the initial documents under the Land Title Act become invalid and efforts to validate the ownership under the existing Act governing the plot should be perused.”



43. However, from the above excerpt several issues emerge. To begin with, there is no question that, as at 1979, the title of Mansud Bin Bwana Thulla allegedly issued under the Land Titles Act was rendered invalid. Further, by this time, neither the appellant nor Mansud Bin Bwana Thulla owned plot L.R. No. 11623 since it belonged to the government as part of the Pumwani 1 Settlement scheme. Yet it is the illegal, and invalid title that the appellant sought to wave in front of the Demarcation and Adjudication officers, and misrepresent to them that he was the registered proprietor of the suit property. Clearly, the appellant's title to the suit property, that is LR No. 11623, that was relied upon to misrepresent to the Demarcation and Adjudication officers that it was acquired from Mansud Bin Bwana Thulla, having been found to be illegal, invalid and a nullity, we find that it was rendered incapable of passing on good title, or being relied on as the basis for compensating the appellant as registered proprietor of the suit property. Essentially therefore, on account of the fraudulent and irregular acquisition, he was not entitled to be issued with title to the suit property following the adjudication process.
44. Given the foregoing conclusion, was the respondent entitled to ownership of the suit property?
45. In addressing this issue, the learned Judge stated:
- "The Defendant having been issued a Title Deed in respect to Malindi/Pumwani Phase 1/430 by the Director of Land Adjudication and Settlement on the basis that the Defendant was the legitimate owner of L.R.No.11623, which was not the position, I find and hold that the issuance of a title deed to the Defendant for Malindi/Pumwani Phase 1/430 was unlawful null and void.
- The Settlement Fund Trustees should have allocated the suit property to the Plaintiff for having occupied it since 1948 and not to the Defendant".
46. In concluding that the respondent ought to have been issued with title to the suit property, the learned Judge took certain factors into consideration. Firstly, there was the question of whether the respondent resided on and was in possession of the suit property. In this regard, the learned Judge observed that the respondent moved onto the land way back in 1948, which was confirmed by PW4 who was already residing in the area at the time; that PW4 assisted him to clear the land and, thereafter, the respondent planted mango and coconut trees, and had been cultivating the suit property to date. He also buried his relatives on the land without anyone stopping him. By this time, the land was registered in the name of Mr. Thulla, whom no one had seen or met. On the basis of this evidence, as did the learned Judge, we similarly conclude that the respondent was in peaceful and quiet possession on the suit property well before the appellant came on the scene.
47. Secondly, there was the decision of the Land Tribunal that awarded the suit property to the respondent. The appellant alleges that the trial Judge relied on the Tribunal's decision, yet section 3 (1) of the Land Disputes Tribunal Act (repealed) limits the jurisdiction of the Land Disputes Tribunal to handling claims in only matters concerning (a) division of, or the determination of boundaries to land, including land held in common, (b) a claim to occupy, or work land or (c) trespass to land. As we understand it, the learned Judge's reference to the proceedings of the Land Disputes Tribunal was not so much to endorse the decision, but to emphasize that the proceedings demonstrated that at all times the respondent had laid claim to the suit property which the adjudication officers had effectively denied him. The Land Disputes Tribunal proceedings clearly showed that the respondent was, and remained in possession of the suit property, which was the basis of his continued and consistent claims of ownership. We find that the appellant's complaint that the learned Judge endorsed the decision of the Tribunal when it had no jurisdiction to determine the dispute on the ownership of the suit property to be misconstrued and unwarranted.



- 48. Thirdly, the respondent produced a receipt from the Kenya Electricity Transmission Company being compensation for his trees that were cut down when the power transmission line traversed across the suit property. This evidence would once again point to the fact that it was the respondent who was at all times in possession of the suit property. Unlike the appellant, who according to the documentary and oral witness evidence resided elsewhere and was not in occupation of the suit property, and therefore not entitled to ownership or compensation.
- 49. As was the learned Judge, we too are persuaded that the instances above mentioned served to demonstrate that the respondent was in possession of the suit property since 1948. For this reason, he was entitled to ownership of the suit property pursuant to the demarcation and adjudication process, and that the Demarcation and Adjudication officers ought to have issued him with title to the suit property instead of the appellant for whom no basis was established for the issuance of the title to him, and we so find.
- 50. From the foregoing, there is no question that the appellant’s acquisition of the suit property that was marred with illegality and irregularity rendered issuance of the suit property to him a nullity, and that the suit property ought properly to have been allocated to the respondent.
- 51. In sum, the appeal is without merit and is accordingly dismissed with costs to the respondent.
- 52. It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 7TH DAY OF MARCH, 2025.

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA, CArb, FCIArb.

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JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

