



Mutentei v Kalamera Sued Through Caroline Atieno Kinampu & 3 others (Environment and Land Appeal E001 of 2023) [2024] KEELC 1346 (KLR) (12 March 2024) (Judgment)

Neutral citation: [2024] KEELC 1346 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E001 OF 2023
EM WASHE, J
MARCH 12, 2024**

BETWEEN

DANIEL DIKIR MUTENTEI APPELLANT

AND

**WILLIAM KALAMERA SUED THROUGH CAROLINE ATIENO
KINAMPU 1ST RESPONDENT**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,
TRANSMARA 2ND RESPONDENT**

**THE DISTRICT LAND REGISTRAR, TRANSMARA WEST 3RD
RESPONDENT**

THE HON.ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The Appellant herein filed a Memorandum of Appeal dated 25.03.2023 (hereinafter referred to as “the present Appeal”) challenging the Judgement and Decree of Trial Court pronounced on the 17.03.2023 (hereinafter referred to as “the Trial Court Judgement”) on the following grounds; -
 - a. The Honourable Learned Trial Magistrate erred in law and fact by entering judgement in favour of the 1st Respondent herein without any justifiable reasons whatsoever. The Judgement herein is contrary to the evidence tendered in Court and the law.
 - b. The Honourable Learned Trial Magistrate erred in law and fact by failing to understudy the evidence adduced by the 1st Respondent which was deficient in terms of its contents and therefore she arrived at a biased and slanted Judgement.
 - c. The Honourable Learned Trial Magistrate erred in law and fact by failing to make a determination that there was no appeal filed against the objection proceedings over objection



number 456 which could overturn the decision of the Land Adjudication and Settlement Officer, Transmara (if at all).

- d. The Honourable Learned Trial Magistrate erred in law and fact by failing to take cognizance of the express provisions of Section 24, 25 and 26 of the [Land Registration Act](#) No. 3 of 2012.
- e. The Honourable Learned Trial Magistrate erred in law and fact by failing to make a determination that the 1st Respondent did not have locus standi to commence the instant suit as he was not the registered owner of LR.No.Transmara / Nkararo/349.
- f. The Honourable Learned Trial Magistrate erred in law and fact by referring to Repealed provisions of law while making and/or delivering the said impugned judgement.
- g. The Honourable Learned Trial Magistrate erred in law and fact in failing to make a determination that the Appellant is in occupation of L.R.No.Transmara / Nkararo/349 a fact that was confirmed by the 1st Respondent.
- h. The Honourable Learned Trial Magistrate erred in law and in fact by failing to contend with the fact that the Appellant is the registered owner of the suit property and that the said 1st Respondent has never taken occupation of the suit property.
- i. The Honourable Learned Trial Magistrate misapprehended and/or misconceived the tenor, effect and consequences of the express provisions of Section 24,25 and 26 of the [Land Registration Act](#), No. 3 of 2012.
- j. The Honourable Learned Trial Magistrate erred in law and fact in granting an order of permanent injunction against the Appellant in absence of any factual and/or legal basis to warrant such an order being made against the Appellant whatsoever.
- k. The Honourable Learned Trial Magistrate erred in law and fact in determining and dwelling on matters relating to land adjudication when such matters were not before her thereby arriving at a misconceived judgement.
- l. The Honourable Learned Trial Magistrate erred in law and fact by awarding LR.No.Transmara / Nkararo/349 to the 1st Respondent which constitutes rectification of the register in respect of a first registration. Consequently, the judgement sought to be impeached contravenes express provisions of the [Land Registration Act](#) No. 3 of 2012.
- m. The Honourable Learned Trial Magistrate erred in law and fact by making an order that the title deed issued to the Appellant be nullified and/or cancelled without taking into consideration that the 1st Respondent has never been registered over LR.No.Transmara / Nkararo/349.
- n. The Honourable Learned Trial Magistrate erred in law and fact by failing to appreciate the substratum and/or crux of the Appellant's registration over the suit property.
- o. The judgement and/or decision of the Learned Trial Magistrate is contradictory and self-defeating. Consequently, the judgement herein has occasioned a miscarriage of justice and thus ought to be set-aside ex-debito.
- p. The Honourable Trial Magistrate erred in fact and in law in failing to properly or at all analyse, evaluate and consider the totality of evidence adduced by the Appellant and witness. Consequently, the Trial Magistrate arrived at a passionate and biased conclusion contrary to the evidence on record.



- q. The Honourable Trial Magistrate failed to properly evaluate and/or analyse the tenor of the submissions tendered by the Appellant. Consequently, the Learned Trial Magistrate misapprehended the crux of the legal issues attendant to the matter before the Court.
2. Consequently therefore, the Appellant herein sought the following Orders in the present Appeal; -
- a. The Appeal herein be allowed and the judgement and decree of the Trial Magistrate dated 17th day of March 2023 vide Kilgoris ELC No. 73 of 2021 be set-aside, reviewed, varied and/or quashed.
 - b. The Honourable Court be pleased to substitute therefore an order dismissing the 1st Respondent's suit in the sub-ordinate court vide Kilgoris ELC No. 73 of 2021.
 - c. Costs of this Appeal and costs incurred in the sub-ordinate Court be borne by the 1st Respondent.
3. The Appellant then filed a Record of Appeal dated 24.04.2023 which was duly served on the Respondents and admitted ready for hearing on the 27.09.2023.
4. The Honourable Court similarly directed that the present Appeal would be canvassed by way of written submissions.
5. In compliance of this directions, the appellant filed his submissions on the 13.10.2023 while the 1st Respondent filed her submissions on the 27.10.2023.
6. The 2nd to 4th Respondents did not file any submissions on the present Appeal.
7. In the reported case of *Selle & Another-versus- Associated Motor Boat Co.ltd & others (1968) EA 123* the Learned Court described the jurisdiction of the first Appellate Court in the following manner; -
- “A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal.
- A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”
8. Clearly therefore, this Honourable Court sitting as the first Appellate Court is invited to relook at the pleadings placed before the Trial Court, evaluate the evidence adduced therein and thereafter draw its own conclusion of the facts and issues which should have been considered in the judgement being challenged.
9. To achieve this exercise, this Honourable Court is required to begin with appreciating the pleadings placed before the Trial Court.
10. In the present Appeal, the Appellant (who was the 1st Defendant in the Trial Court) filed a Plaint dated 08.11.2021 seeking for the following Orders against the 1st Respondent (who was the Plaintiff in the Trial Court) and the 2nd to 4th Respondents (who were the 2nd to 4th Defendants in the Trial Court); -
- a. Declaration that the purported objection proceedings touching on and/or concerning LR.NO.Transmara/nakararo/349 were fraudulent, illegal, null and void.
 - b. An order cancelling and nullifying the entries in title and registration arising from and/or occasioned by the fraudulent objection proceedings carried out and/or commissioned by



the 1st Defendant in collusion with and/or connivance of the 2nd and 3rd Defendants herein and re-instatement of the name of the Plaintiff as the registered owner of parcel number LR.No.Transmara / Nkararo/349.

- c. An Order of eviction against the 1st Defendant, his agents and/or servants from parcel number LR.No.Transmara / Nkararo/349.
 - d. A permanent injunction restraining the 1st Defendant either by himself, agents, servants and/or anyone claiming under the Defendant from entering upon, re-entering, taking possession, trespassing onto, cultivating, grazing on, building structures, interfering with and/or in any other manner dealing with parcel LR.No.Transmara / Nkararo/349.
 - e. General damages for trespass.
 - f. Costs of this suit be borne by the Defendants.
 - g. Such further and/or other reliefs as the Honourable Court may deem fit and expedient so to grant.
11. The Plaintiff in the Trial Court outlined a number of particulars of fraud perpetrated by the 2nd and 3rd Defendants therein with a view of cancelling his ownership rights over the property known as LR.No.Transmara / Nkararo/349 and register the same in the name of the 1st Defendant which are as follows; -
- Particulars Of Fraud On The 2nd And 3rd Defendants.
- a. Admitting and/or acting on incomplete and fraudulent documents.
 - b. Failing to subject the Transfer instrument to thorough and exhaustive scrutiny.
 - c. Abusing office.
 - d. Manipulating and/or agreeing to manipulate the Transfer instrument.
 - e. Conniving and/or colluding with the 1st Defendant to defraud the Plaintiff of the suit property.
 - f. Defrauding the Plaintiff of the suit property.
 - g. Purporting to carry out objection proceedings long after the lapse of the statutory timelines.
 - h. Failing to (sic) serve the Plaintiff with the Adjudication summons.
12. The Plaint filed in the Trial Court was indeed served on all the Defendants therein.
13. However, it's only the Appellant who filed a Statement of Defence dated 15.12.2021 in which he denied any fraudulent acts in the acquisition of the property known as LR.No.Transmara / Nkararo/349 and therefore sought to have the said Plaint dismissed.
14. Further to that, the 1st Defendant raised other grounds for dismissal of the Plaint which included a declaration that the Plaint was time barred in view of the provisions of Section 30 of the [Land Adjudication Act](#), Cap 284 as well as Section 13 (A) of the [Government Proceedings Act](#), Cap 40 Laws of Kenya.
15. Consequently therefore, the 1st Defendant pleaded that the Plaint did not disclose any reasonable cause of action and therefore was an abuse of the Court process.



16. The pleadings were subsequently closed and the matter proceeded for full hearing.

Plaintiff's Case.

17. The Plaintiff's case at the Trial Court began on the 25.08.2022 with the evidence of Caroline Atieno Kinampu (PW1).
18. PW 1 informed the Trial Court that she was a holder of two Powers of Attorney dated 16th September 2021 and another one dated 20th of May 2021 from the registered owner by the name William Karemera. (plaintiff Exhibit 1 & 2)
19. PW 1 began her testimony by informing the Trial Court that the Plaintiff had been adjudicated the property known as LR.No.Transmara / Nkararo/349 through the Adjudication Committee of Nkararo Adjudication Section And issued with an Adjudication Record No.43749 on the 17.10.1990. (Plaintiff Exhibit 3)
20. After issuance of the Adjudication Record No. 43749 in favour of the Plaintiff, an Objection was filed by the 1st Defendant before the Land Adjudication Officer and recorded as Objection No. 456.
21. The Objection Proceedings recorded as Objection No. 456 related to the Plot. No. 349 within Nkararo Adjudication Section.
22. According to the testimony of PW 1, the Land Adjudication officer proceeded to hear and determine the Objection No. 456 in the absence and without participation of the Plaintiff herein who was the registered beneficiary on the said Plot.No. 349. (Plaintiff Exhibit 5)
23. Consequently thereafter, the Land Adjudication Officer decided in the Objection No. 456 relating to Plot.No. 349 that the entire property be registered in favour of the 1st Defendant.
24. PW 1 also produced another Objection known as Objection No. 69 of 1990 which dealt with Plot.No. 134(Plaintiff Exhibit 4).
25. However, in Objection 69 of 1990, the Plaintiff and the 1st Defendant were not parties therein.
26. Based on the determination by the Land Adjudication Officer in the Objection No. 456 relating to Plot.No. 349, the 3rd Defendant proceeded to open the Green Card on the property known as LR.No.Transmara / Nkararo/349 and issued the Title Deed to the 1st Defendant on the 29.01.2021. (Plaintiff Exhibit 6.)
27. PW 1 challenged the contents of the proceedings undertaken in the Objection No. 456 relating to Plot.No. 349 on the following grounds; -
 - a. First and foremost, the Plaintiff was never served with the Objection by the Objector before the hearing was conducted.
 - b. The Plaintiff was never served with the hearing notice and/or summons to participate in the objection proceedings before the Land Adjudication officer.
 - c. The person known as Edward Kasena who purportedly represented the Plaintiff in the said Objection proceedings is a stranger.
 - d. The said Edward Kasena did not have any authority and/or written permission to represent the Plaintiff during the said Objection proceedings.



- e. Lastly, there was no evidence and/or document adduced and/or produced before the Land Adjudication Officer confirming that the Plaintiff had indeed sold off Plot.No. 349 to the 1st Defendant.
28. In conclusion therefore, PW 1 stated that the 1st, 2nd and 3rd Defendants therein had acted fraudulently and without authority to alter the Adjudication Record No. 43749 and thereafter issued an irregular and/or illegal title of the property known as LR.No.Transmara / Nkararo/349 to the 1st Defendant herein.
29. On cross-examination, PW 1 stated that the rightful owner of the property known as LR.No.Transmara / Nkararo/349 was the Plaintiff and the issuance of the said title in the name of the 1st Defendant was fraudulent and/or illegal.
30. PW 1 reiterated that the Plaintiff had been recorded as the beneficial owner of Plot.No. 349 within Nkararo Adjudication Section and issued with an Adjudication Record No. 43749 in the year 1990.
31. PW 1 disputed the allegation that the Plaintiff was a Rwandan and stated he was a resident of Kenya.
32. PW 1 pointed out a number of times when the Plaintiff attended the Trial Court but the matter did not proceed.
33. As regards the Objection No. 456, PW 1 stated that the Plaintiff was never notified of the said proceedings and/or determination as required by law.
34. PW 1 stated that the person known as Edward Lakasema was unknown to the Plaintiff and had no authority to either sale the property known Plot.No. 349 or represent the Plaintiff in the Objection proceedings No. 456.
35. On re-examination, PW 1 stated that the title known as LR.No.Transmara / Nkararo/349 was irregularly issued to the 1st Defendant while the Plaintiff was away.
36. PW 1 stated that the Plaintiff was resident in Kenya in the year 1990 when adjudication was done in his favour.
37. PW 1 confirmed that she was the authorised Attorney of the Plaintiff and had the locus and authority to deal with the issues related to the property known as LR.No.Transmara / Nkararo/349.
38. At the end of this testimony, the Plaintiff indicated that she had no other witness and closed her case.

Defence Case.

39. The 1st Defendant witness was Daniel Dikir Mutentei (DW1).
40. The defence hearing began with the testimony of the 1st Defendant (DW1) on the 01.09.2022.
41. According to DW 1, the property known as LR.No.Transmara / Nkararo/349 was lawfully registered in his name.
42. DW 1 informed the Trial Court that the Plaintiff was a Rwandese refugee who after being allocated the Plot.No. 349 within Nkararo Adjudication SECTION wanted to relocate back to his home country.
43. Consequently therefore, the Plaintiff offered to sale the said Plot.No. 349 within Nkararo Adjudication section to him because he required funds for relocation.
44. DW 1 stated that he paid the full purchase price under the Agreement For Sale.



45. Once the purchase price was received by the Plaintiff, the Plot.No.349 was transferred to the name DW 1.
46. DW 1 indicated that the Transfer was effected by the Adjudication Committee.
47. DW 1 informed the Trial Court that there was no complaint that had been lodged by the Plaintiff against him and/or his occupation on the property known as LR.No.Transmara / Nkararo/349.
48. DW 1 insisted that he had occupied the property known as LR.No.Transmara / Nkararo/349 for over 40 years without any claim from the Plaintiff.
49. DW 1 relied on the Plaintiff's Exhibit 4 and 6 which were the proceedings of the Objection No. 456 and the Copy of the Green Card from the 2nd Defendant.
50. On cross-examination, DW 1 admitted that the Original Adjudication Record for the Plot.No. 349 had been issued in the name of the Plaintiff.
51. However, DW 1 indicated that the said Adjudication Record for Plot.No. 349 was amended on the basis of the Objection No.456 as shown in the proceedings adduced by the Plaintiff.
52. DW 1 confirmed that the Objection No. 456 which not have the year when it was registered.
53. However, DW 1 stated that the Objection No. 456 was actually lodged in the year 1993.
54. DW 1 confirmed that the Plaintiff was not present during the hearing of the proceedings of Objection No. 456 but one Edward Lakasame represented him.
55. DW 1 stated that a third party can represent an owner of a property if there is a valid Power of Attorney duly donated to him/her.
56. AS regards Objection No.69 of 1990, DW 1 stated that he was not familiar with the property in issue which is Plot.No. 134 and did not participate in the same.
57. DW 1 stated that he had photographs to confirm his occupation of the property known as LR.No.Transmara / Nkararo/349.
58. On re-examination, DW 1 was of the view that these proceedings had been instituted by the Attorney for no good reason.
59. DW 1 completed his testimony by indicating that the Objection No. 456 was against the Plaintiff and the amendment of the Adjudication Record was proper.
60. The second Defence witness was Edward Lwakasana (DW2).
61. DW 2 introduced himself as a teacher and residents in Kilgoris town.
62. DW 2 stated that the Plaintiff was his cousin.
63. DW 2 further confirmed knowing the 1st Defendant.
64. DW 2 indicated that the Plaintiff herein had moved to the United Kingdom and the suit had been instituted by PW 1.
65. According to DW 2, the Plaintiff has sold the property known as LR.No.Transmara / Nkararo/349 to the 1st Defendant.



66. DW 2 disputed the allegation that the Plaintiff was not aware of the 1st Defendant's ownership rights and/or occupation over the property known as LR.No.Transmara / Nkararo/349.
67. DW 2 indicated that the 1st Defendant has been occupying the property known as LR.No.Transmara / Nkararo/349 since the Plaintiff left.
68. On cross-examination, DW 2 stated that he did not have a copy of the Agreement For Sale between the Plaintiff and the 1st Defendant.
69. Further to that, DW 2 admitted that he did not have any bank slips and/or form of proof that the 1st Defendant paid the Plaintiff any purchase price.
70. DW 2 informed that Trial Court that he had represented the Plaintiff at the Adjudication Committee although he did not have any minutes to that effect.
71. On re-examination, DW 2 insisted that the Plaintiff is not the one that filed Plaintiff but the Attorney.
72. DW 2 reiterated that the Plaintiff had not complained about the property known as LR.No.Transmara / Nkararo/349.
73. Finally, DW 2 confirmed that he had represented the Plaintiff at the Adjudication Committee.
74. At the end of DW 2 testimony, the Defence also closed their case.
75. The parties were directed to prepare and file their respective submissions.
76. The Plaintiff duly filed her submissions on the 27.09.2022 while the 1st Defendant filed his on the 29.09.2022.
77. Indeed, this Honourable Court has gone through the Pleadings, evidence on record and the submissions by the parties and in its considered view, the issues for determination can be crystallised as follows; -

Issue No. 1- What Is The Legality Of The Objection Proceedings Undertaken On The 11.06.2003 By The Land Adjudication Officer In Relation To Parcel No.134 Within Nkararo Adjudication Section?

Issue No. 2- Were The Prayers Sought In The Plaintiff Dated 08.11.2021 Merited?

Issue No.3- Who Bears The Costs Of This Appeal?

78. This Honourable Court having identified the above-mentioned issues for determination, the same will be discussed hereinbelow as follows; -

Issue No. 1- What Is The Legality Of The Objection Proceedings Undertaken On The 11.06.2003 By The Land Adjudication Officer In Relation To Parcel No.134 Within Nkararo Adjudication Section?

79. The first issue and the most significant in the present Appeal is the validity and/or legitimacy of the Objection proceedings undertaken on the 11.06.2003 by the 3rd Respondent herein.
80. According to the 1st Respondent's documentary evidence adduced before the Trial Court, there is no doubt that Parcel No. 134 within Nkararo Adjudication section was recorded in his name and issued with an Adjudication Record which was produced as Plaintiff Exhibit 3.



81. The 1st Respondent further stated that he was never aware of the Objection No. 456 instituted by the Appellant herein before the 3rd Respondent and never authorised the person known as Edward Lwakasana To either represent him and/or undertake any proceedings relating to the Objection proceedings on his behalf as shown on the proceedings by the 3rd Defendant in the Trial Court.
82. On the other hand, the Appellant pleaded that the proceedings undertaken before the 3rd Respondents on the 11.12.2003 and which cancelled the 1st Respondent's name from the Adjudication Register of Parcel No. 134 within Nkararo Adjudication section and instead recorded his name was done lawful by the 3rd Respondent.
83. The Appellant produced a copy of the Certified proceedings undertaken by the 3rd Respondent in the Objection proceedings relating to Parcel No. 134 within Nkararo Adjudication section and the subsequent ruling thereof.
84. The 1st Respondent outlined various particulars of fraud against the Appellant, the 2nd Respondent and the 3rd Respondents herein.
85. The particulars of fraud against the Appellant include lodging an objection after the lapse of time, failing to issue the Objection to the 1st Respondent, impersonating the plaintiff, forgery and concealing material facts about the 1st Respondent.
86. Further to that, the 1st Respondent also pleaded fraud on the part of the 4th Respondent herein for admitting incomplete and fraudulent documents, failing to subject the Transfer Instrument, abusing the power vested in his office and thereby defrauding the 1st Respondent of his lawful property known as Parcel No. 134 within Nkararo Adjudication section.
87. Based on the above particulars of fraud, the 1st Respondent sought to have the cancellation of his name on the Adjudication Record of Parcel No. 134 within Nkararo Adjudication section declared fraudulent and therefore cancelled.
88. Further to that, the 1st Respondent also sought to have the Certificate of Title issued in favour of the Appellant on the 29.01.2021 also cancelled and instead the name of the 1st Respondent be recorded on the Green Card as the lawful registered owner of the property now known as LR.NO.Transmara / Nkararo/349.
89. The first aspect for determination in this issue is whether or not the Appellant's actions of lodging an Objection against the Adjudication Record relating to Parcel No. 349 within Nkararo Adjudication section is a fraudulent act or not.
90. There is no dispute that the property in dispute known as Parcel No. 349 within Nkararo Adjudication section was administered through the [Land Adjudication Act](#), Cap 284.
91. The 1st Respondent has confirmed this fact through presenting the Adjudication Record No.43749 issued in his favour on the 17.10.1990.
92. Section 26 (1) of the [Land Adjudication Act](#), Cap 284 expressly provides as follows; -
 - “(1) Any person named in or affected by the Adjudication Register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete”



93. The understanding of the Court regarding this proviso of the *Land Adjudication Act*, Cap 284 is that anyone who is affected by the Adjudication Register is at liberty to file any objection before the 3rd Respondent stating in what respect the said Adjudication Register is incorrect or incomplete.
94. The Appellant herein testified that after the Adjudication Record was issued in favour of the 1st Respondent on the 17.10.1990, he lodged an objection against the same before the 3rd Respondent which was recorded as Objection No. 456.
95. It is the Objection No. 456 filed by the Appellant against the 1st Respondent which proceeded for hearing and rectified the Adjudication Record No. 43749 by removing the name of the 1st Respondent and recording the name of the Appellant.
96. However, the 1st Respondent in his Complaint dated 08.11.2021 specifically pleaded that the Objection filed by the Appellant was fraudulent for the reasons that it was filed out of time, was never served on the 1st Respondent and the person who purported to represent the 1st Respondent was in fact a stranger and/or acted without his express authority.
97. First and foremost, the acts which the 1st Respondent has outlined in the particulars of fraud under Paragraph 10 of the Complaint dated 08.11.2021 refer to procedural omissions and/or non-compliance with the manner an Objection under Section 26(1) of the *Land Adjudication Act*, Cap 284 should be filed and heard on its merits.
98. The failure by any person to file an Objection within 60 days from the date of when the Adjudication Record is issued, or the failure to serve the said Objection on the person recorded and lastly the improper manner in which the Objection proceedings were handled cannot be construed to mean the entire process was fraudulent.
99. It is clear in the mind of this Court that the 1st Respondent was not satisfied by the manner in which the Appellant instituted the Objection proceedings against the Adjudication Record No. 43749 issued on the 17.10.1990 and or the proceedings undertaken thereafter by the 3rd Respondent.
100. Be as it may, the filing of an Objection by the Appellant under Section 26 (1) of the *Land Adjudication Act*, Cap 284 whether out of time or not, the failure to serve the same on the 1st Respondent either intentionally or otherwise and/or the inappropriate manner in which the proceedings were undertaken including the testimony of a stranger and/or person acting without authority cannot render the procedure fraudulent but only irregular, unlawful, null and void.
101. In other words, the proper way for the 1st Respondent to evaluate the compliance and/or non-compliance of the both the filing of the Objection by the Appellant and the subsequent compliance with the procedure and rules of natural justice during the Objection proceedings can only be through a Judicial Review Application and/or constitutional petition.
102. The only time the 1st Respondent can allege fraud against the Appellant and the 2nd, 3rd and 4th Respondents was if the both the alleged objection and the proceedings undertaken by the 3rd Respondents were non-existent in the records of the 3rd Respondent's office.
103. Neither the Trial Court nor this Honourable Court is vested with the powers to review, nullify and/or make any adverse findings against the decision of the 3rd Respondent on the Objection No. 456 relating to Parcel No. 346 within Nkararo Adjudication section through a declaration in a normal suit as instituted by the 1st Respondent.



104. For clarity purposes, this Court is not declaring that the Objection filed by the Appellant was proper or the procedure applied in the hearing of the said objection lawful but is simply saying that the evaluation of whether the Objection was filed within time or after lapse of time, the procedure and the admissibility of the evidence adduced during the Objection proceedings undertaken by the 3rd Respondent in exercising his/her administrative duties under Section 26 (2) of the Land Adjudication Act, Cap 284 cannot be challenged through a civil suit as done by the 1st Respondent.

Issue No. 2- Were The Prayers Sought In The Plaint Dated 08.11.2021 Merited?

105. The second issue for determination is whether the 1st Respondent was entitled to the prayers sought in the Plaint dated 08.11.2021.

106. According to the determination of Issue No. 1, the Honourable Court is of the considered view that Prayer No. 1 can not be granted because it would amount to a review of the 3rd Respondents proceedings under Section 26(1) and subsequently the determination made under Section 26 (2) of the Land Adjudication Act, Cap 284.

107. A review of the 3rd Respondent's determination under Section 26 (2) of the Land Adjudication Act, Cap 284 can not be done through a prayer in a civil suit as filed by the 1st Respondent before the Trial Court.

108. In essence therefore, Prayer No. 1 in the Plaint dated 08.11.2021 can not be granted as pleaded.

109. The 1st Respondent's Prayer No. 1 in the Plaint dated 08.11.2021 having been declined, then Prayer No.2,3,4 and 5 thereof also cannot be granted and are therefore declined.

Issue No.3- Who Bears The Costs Of This Appeal?

110. Costs usually follow the event and in this particular Appeal, the Appellant has been successful and the Respondents will bear the costs of the present Appeal.

Conclusion.

111. In conclusion therefore, this Court hereby makes the following Orders appertaining the Memorandum of Appeal dated 25th March 2023; -

- A. The Memorandum Of Appeal Dated 25.03.2023 Is Allowed.
- B. The Judgement And Decree Pronounced On The 17.03.2023 In The Proceedings Known As Kilgoris Elc Case No. 73 Of 2021 Be And Is Hereby Set-aside.
- C. The Plaint Dated 08.11.2021 Be & Is Hereby Dismissed Forthwith.
- D. The Costs Of Both The Proceedings Known As Kilgoris Elc Case No.73 Of 2021 As Well As The Present Appeal Shall Be Borne By The 1st Respondent.

DATED, SIGNED & DELIVERED Virtually in KILGORIS ELC Court on 12TH MARCH 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Ngeno



Advocate For The Appellant: Ms. Nyankweba H/b Ochwangi

Advocate For The Respondents: Mr. Miruka

