



Kinuthia & another v Kassim (Suing as the personal representative of the Estate of Mohamed Abdi Ali - Deceased) (Environment and Land Appeal E008 of 2023) [2024] KEELC 4909 (KLR) (24 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E008 OF 2023**

JO MBOYA, J

JUNE 24, 2024

BETWEEN

SARAH WANJIKU KINUTHIA 1ST APPELLANT

EMBAKASI RANCHING CO LTD 2ND APPELLANT

AND

ANAB KASSIM RESPONDENT

**SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF
MOHAMED ABDI ALI - DECEASED**

(Being an appeal to a Judgment and order of Civil Suit No. 7747 of 2018 delivered at Milimani Commercial Law Courts by Hon Cosmas Maundu [CM] delivered on the 20th April 2023)

JUDGMENT

Introduction and Background:

1. The 1st appellant herein felt aggrieved and/or dissatisfied with the Judgment delivered on the 20th April 2023 and as a result of her dissatisfaction with the decree under reference, same [1st Appellant] proceeded to and filed the memorandum of appeal dated the 7th August 2023.
2. Notably, the memorandum of appeal beforehand was filed pursuant to leave granted by the Honourable Judge, namely, Lady Justice Lucy N. Mbugua, J *vide* ELC Misc. *Application no. E011 of 2023* and wherein the honorable Judge decreed that the intended appeal [the instant appeal] be filed within 14 days w.e.f 22nd July 2023.



3. Arising from the leave granted [details in terms of the preceding paragraph], the 1st Appellant has raised the following grounds at the foot of the Memorandum of Appeal.

- i. The learned trial magistrate erred in law and in fact in failing to appreciate that the 1st Appellant acquired a clean and indefeasible title for the suit property Nairobi Block 105/1252 from the 2nd Appellant herein which rights are capable of any legal protection.
- ii. The 1st Appellant contends that the learned Magistrate erred in law and in fact by failing to consider the evidence of the Defense witness and documents produced in respect to the suit property and that the learned magistrate failed to appreciate that the suit property in contention [Nairobi Block 105/1252] was formerly Land Reference Number 129, which latter changed to Nairobi Block 105/1252.
- iii. The 1st Appellant contends that the Learned Magistrate failed to consider that she did not have control on issuance of new land reference numbers and title deed of the suit property as it was issued by the 2nd Appellant as Nairobi Block 105/1252.
- iv. The 1st Appellant further claims that the learned magistrate erred in law and in fact by disregarding that the sanctity of title deed is protected under Article 40 [1] and 40 [6] of the Constitution of Kenya and Section 26 of the Land registration Act, 2012 contrariwise that the Respondent did not have any title of the suit property.
- v. The 1st Appellant contends that despite the provisions of Section 26 of the LRA being categorical that certificate of title is prima facie evidence, the Respondent failed to challenge the 1st Appellant's title as whether it was acquired fraudulently, unprocedurally or through corrupt means.
- vi. That the 1st Appellant contends that the learned magistrate erred in law and in fact by lessening the burden of proof placed on the 1st Appellant and disregarding the maximum of he who alleges must proof as the Appellants proofed how she got the title deed and how the number changed from LR No. 129 to Nairobi Block 105/1252.
- vii. The 1st Appellant further contends that the learned magistrate erred in law in failing to appreciate the proof of legality of how the 1st Appellant acquired the title deed of Nairobi Block 105/1252 which was acquired legally a fact that was confirmed by the 2nd Appellant's official.
- viii. That the learned magistrate erred in fact and in law by totally disregarding the 1st Appellant's pleadings and submissions, thereby arriving at a wrong conclusion.
- ix. The learned magistrate erred in law and fact by failing to take into account existing and specific provisions of law and dealing with the circumstances of the case.

4. The instant appeal came up for directions on the 6th February 2024 and whereupon the advocates for the respective parties covenanted to canvass and dispose of the appeal by way of written submissions.



In this regard, the court thereafter proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.

5. Pursuant to and arising from the directions of the court, the 1st Appellant filed written submissions dated the 22nd February 2024, whereas the Respondent filed written submissions dated the 20th March 2024. For coherence, the two [2] sets of written submissions form part of the record of the court.

Parties' Submissions:

a. 1st Appellant's Submissions:

6. The 1st Appellant herein filed written submissions dated the 2nd February 2024: and wherein same [1st Appellant] has highlighted and canvassed three [3] salient issues for consideration by the court. Firstly, learned counsel for the 1st Appellant has submitted that the learned trial magistrate erred in fact and in law in finding and in holding that the Respondent herein had established and demonstrated that same [Respondent] was entitled to an order of permanent injunction.
7. Instructively, learned counsel for the 1st Appellant contends that the order granting permanent injunction to and in favor of the Respondent was erroneous insofar as the Respondent did not tender any evidence to show why same [Respondent] did not take possession of the suit property for more than 20 years, if same [suit property] lawfully belonged to her.
8. Furthermore, learned counsel for the Appellant has submitted that in granting an order of permanent injunction in favor of the Respondent, the learned trial magistrate disregarded credible evidence tendered and produced by the 1st Appellant including the certificate of title over and in respect of the suit property.
9. Arising from the foregoing, learned counsel for the 1st Appellant has invited the court to find and hold that the order of permanent injunction which was granted in favor of the Respondent was misconceived and erroneous. In any event, learned counsel has added that the said order of permanent injunction has breached and infringed upon the 1st Appellant's property rights to and in respect of the suit property.
10. Secondly, learned counsel for the 1st Appellant has submitted that the 1st Appellant tendered and produced credible evidence demonstrating how what is now the suit property was allocated to her Father, namely, Hiram Ngaihe Githiri [now deceased] and thereafter how the same [1st Appellant] procured and obtained grant of letters of administration which enabled her [1st Appellant] to be registered as the owner of the suit property.
11. Additionally, learned counsel has contended that what is now known as LR. Nairobi Block 105/1252 was hitherto plot number L129 and which plot was amalgamated with plot number L129B by the 2nd Appellant herein.
12. On the other hand, learned counsel for the 1st Appellant posited that upon the amalgamation of the two [2] plots, the resultant plot became known as LR. No. Nairobi Block 105/1252, which is now the suit property before the court.
13. Nevertheless, learned counsel for the 1st Appellant contended that despite the fact that the 1st Appellant presented credible evidence before the trial court, same [evidence] was neither considered nor acted upon by the learned chief magistrate. In this regard, learned counsel for the 1st Appellant has therefore contended that the Judgment by the learned chief magistrate was therefore skewed and thus erroneous.



14. Thirdly, learned counsel for the 1st Appellant has submitted that the learned chief magistrate failed to appreciate the import and tenor of the provisions of Section 24 and 25 of the Land Registration Act and more particularly, the significance of a certificate of title. Consequently, it was contended that by decreeing that the suit property belongs to the Respondent, the learned trial magistrate failed to appreciate that a certificate of title constitutes conclusive evidence of ownership in favor of the bearer.
15. Lastly, learned counsel for the 1st Appellant has submitted that the learned chief magistrate erred in finding and holding that the Respondent herein is the lawful and legitimate owner of the suit property, even though the Respondent herein did not tender and/or produce before the court any credible evidence to warrant such a finding.
16. Further, learned counsel for the 1st Appellant has submitted that the Respondent herein failed to demonstrate and/or prove how the transfer form and the consent upon which same [Respondent] lays a claim to the suit property were procured. In any event, counsel added that it was incumbent upon the respondent to summon and call the original proprietor of the suit property to vindicate the validity of the transfer forms and the consent that were being relied upon.
17. Based on the foregoing submissions, learned counsel for the 1st Appellant has invited the court to find and hold that Judgment and decree of the chief magistrate is legally untenable and thus same [Judgment] ought to be set aside.
18. Additionally, learned counsel for the 1st Appellant has submitted that the court should find and hold that the appeal beforehand is meritorious and thus ought to be allowed with the consequence that the Respondent's suit in the lower court be dismissed.

b. Respondent's Submissions:

19. The Respondent herein filed written submissions dated the 20th March 2024 and in respect of which same has highlighted two [2] salient issues by the court.
20. First and foremost, learned counsel for the Respondent has submitted that what constitutes the suit property was lawfully allocated to and in favor of Mohamed Abdi Ali [now deceased], who was the husband of the Respondent herein. Furthermore, learned counsel for the Respondent has submitted that the deceased was subsequently issued with duly executed transfer forms and a consent authorizing that the suit property be transferred and registered in the name of the deceased.
21. Nevertheless, learned counsel contended that the deceased passed on prior to and before the suit property could be transferred and registered in his name. In this regard, it was submitted that the Respondent herein proceeded to and obtained grant of letters of administration and thus same [Respondent] is lawfully entitled to the suit property in her capacity as the Administratrix of the estate of the deceased.
22. Other than the foregoing, learned counsel for the Respondent has submitted that the consent which was duly executed by Mr. Waireri Kagera [vice chairman] of Embakasi Ranching Company Ltd clearly stated and posited that the suit property belonged to Mohamed Abdi Ali of I.D No. 1131471.
23. In view of the foregoing, learned counsel for the Respondent has submitted that the learned chief magistrate duly appreciated the totality of the evidence that was tendered before her and thereafter same [chief magistrate] arrived at the correct decision whilst finding and holding that the suit property lawfully belongs to the respondent.
24. Secondly, learned counsel for the Respondent has submitted that the 1st Appellant herein was unable to justify her claim to and in respect of the suit property. Further and in any event, learned counsel



added that the documentation which were tendered and produced by the 1st Appellant related to Plot L129 and Plot L129B.

25. Be that as it may, learned counsel for the Respondent added that even though the documentation alluded to Plot No. L129 and L129B, respectively same [documentation] were also replete with several errors and alteration, which were never authenticated or at all. In this regard, it was posited that the learned chief magistrate was therefore correct in finding and holding that the documents tendered and produced by the 1st Appellant were illegal and unlawful on the basis of the numerous alteration[s].
26. Finally, learned counsel for the Respondent has submitted that the 1st Appellant herein cannot stake a claim to and/or ownership of the suit property on the basis of the certificate of title bearing her name yet same [1st Appellant] knows very well that the impugned certificate of title was procured during the pendency of the suit before the chief magistrate court and in any event, on the face of the orders of the court which directed the maintenance of status quo.
27. In sum, learned counsel for the Respondent has invited the court to find and hold that the Judgment rendered by the learned chief magistrate is legally sound and thus same [Judgment] ought to be sustained.

Jurisdictional Posture:

28. The matter before the court is an appeal against the decision of the learned Chief Magistrate which found and held that the Respondent herein is the lawful and legitimate owner of the suit property. Furthermore, the trial court thereafter proceeded to and issued various reliefs in favor of the Respondent.
29. Owing to the fact that this is a first appeal, it is incumbent upon this court to review and re-evaluate the totality of the evidence [oral and documentary] which was tendered before the trial court and thereafter to discern whether the findings of facts and law are premised on the evidence tendered or otherwise. In any event, it is not lost on this court that the court shall be entitled to arrive at an independent conclusion and/or evaluation, subject to the evidence of record.
30. On the other hand, it is important to underscore that whereas this court being the 1st Appellate court is entitled to undertake exhaustive scrutiny/ analysis of the evidence tendered and to arrive at an independent conclusion, the court must however give due allowance to the fact that same [court] did not see the witness testify and hence the court should be reluctant to interfere with the findings of evidence by the trial court unless there exists compelling grounds and/or basis, to warrant such interference.
31. Suffice it to point out that the scope and extent of the jurisdiction of the first appellate court is circumscribed. To this end, it suffices to highlight and reiterate the holding in the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where the principle was enunciated thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”



32. Likewise, the extent and scope of the Jurisdiction of the first appellate court was also elaborated upon in the case of *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, where the court held thus;

We also wish to be guided by the reasoning of this court in the case of *Mwana Sokoni v Kenya Business Limited* [1985] KLR 931 page 934,934 thus:-

“Although this court on appeal will not lightly differ from the Judge at first instance on a finding of fact, it is undeniable that we have the power to examine and re-evaluate the evidence on a first appeal if this should become necessary. As was said by the house of Lords in *Sottos Shipping v Sauviet Sobold*, the Times, March 16,1983.

“It is uncertain whether their Lordships should have reached the same conclusion on the evidence, but it is important that, sitting in the appellate court they should be over mindful of the advantages enjoyed of the trial Judge who saw and heard the witnesses and was in a comparably better position than the Court of Appeal to assess the significance of what was said, how it was said, and equally impotent what was not said”

Again in *Peters v Sunday Post Limited* [1958] EA424, a decision of the Court of Appeal for Eastern Africa, Sir Kenneth O’ Conner, P said at page 429:

“It is a strong thing for an appellate court to differ from the finding on a question of fact of the Judge who tried the case and who has had the advantage of seeing and hearing and the witnesses”

33. Having appraised myself of the extent and scope of the Jurisdiction bestowed upon the first appellate court, I am now disposed to venture forward and calibrate upon the various perspectives [nuances] arising from the appeal beforehand.

Issues for Determination:

34. Having reviewed the Memorandum of Appeal, the record of the trial court; as well as the written submissions filed by and on behalf of the respective parties, the following issues crystalize [emerge] and are thus worthy of determination;
- i. Whether the appeal or purported appeal by the 2nd Appellant is legally tenable.
 - ii. Whether the 1st Appellant duly established and proved her claim to and in respect of the suit property or otherwise.
 - iii. Whether the Respondent is lawfully entitled to the suit property or otherwise.

Analysis And Determination

Issue Number 1. Whether the appeal or purported appeal by the 2nd Appellant is legally tenable.

35. The Memorandum of appeal which was filed before this court indicates and/or suggest[s] that there two [2] appellants before the court. For clarity the title shown on the face of the Memorandum of appeal adverts to the 1st and 2nd Appellant, respectively.



36. Nevertheless, at the foot of the Memorandum of appeal same takes a different posture and wherein it is shown that the Memorandum of appeal has been filed on behalf of the 1st Appellant and not otherwise.
37. Other than the foregoing, the proceedings before the trial court indicate that the 1st Defendant [now shown as the Second Appellant] did not participate in the trial nor did same tender any evidence.
38. Furthermore, the record, before the lower court also demonstrate that the 1st Defendant was represented by a separate and distinct advocate from the one who represented the 2nd Defendant, who is now the 1st Appellant herein.
39. From the foregoing position, what comes out clearly is that the 2nd Appellant herein had a separate and distinct counsel from the 2nd Defendant. Consequently, if an appeal were to be filed on behalf of the 1st Defendant [now 2nd Appellant] it would have been incumbent upon the incoming advocate to file a notice of change demonstrating that same [new counsel] has taken over the conduct of the proceedings from the previous advocate, which is not the case.
40. Secondly, it is also important to point out that though the name of the 2nd Appellant has been brought and/or dragged into the Memorandum of appeal, there is no evidence that the 2nd Appellant is indeed privy to and/or knowledgeable of the appeal beforehand.
41. To this end, it is appropriate to reproduce the final [signing] aspects of the Memorandum of appeal which has been filed before the court.
42. Same states as hereunder;
J & J & Co Advocates, Advocates for the 1st Appellant
43. From the manner in which the memorandum of appeal has been crafted, it is evident and apparent that the appeal beforehand only relates to the 1st Appellant and not otherwise.
44. Arising from the foregoing, it is my finding and holding that the inclusion of the name of the 2nd Appellant in the current appeal is erroneous and thus a misnomer. Consequently and in this regard, I find and hold that there is no lawful or tenable appeal filed by and on behalf of the 2nd Appellant.
45. Before departing from this issue, it is also instructive to note that whenever a particular party is desirous to appeal, same [such party] is enjoined to file and/or lodge a memorandum of appeal in accordance with the provisions of Order 42 Rule 1 of the Civil Procedure Rules.
46. For brevity, the provisions of Order 42 Rule 1 [*supra*] are reproduced as hereunder;
[Order 42, rule 1.] Form of appeal. 1.
(1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.
(2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.
47. In a nutshell, my answer to issue number one [1] is that there is no appeal before this court filed by and on behalf of the 2nd Appellant or at all. For the avoidance of doubt, the appeal beforehand relates to and/or concerns the 1st Appellant only.



Issue Number 2. Whether the 1st Appellant duly established and proved her claim to and in respect of the suit property or otherwise.

48. The 1st Appellant herein contends that same is the lawful and legitimate proprietor of the suit property and hence same [1st Appellant] ought to have been declared as the legitimate proprietor.
49. According to the 1st Appellant, the suit property was lawfully allocated to her Father namely, Hiram Ngaithe Gathiri, now deceased and that upon the death of the deceased, same [1st Appellant] was duly constituted as the legal Administratrix of the estate of the said deceased.
50. Furthermore, the 1st Appellant contended that her late Father was allocated various plots by the 2nd Appellant herein and that subsequently, two [2] of the plots, namely, plot L129 and L129B were subsequently amalgamated culminating into the creation of the suit property.
51. According to the 1st Appellant, the amalgamation of plots L129 and L129B respectively was undertaken by 2nd Appellant [Embakasi Racnhing Company Ltd] and hence same [1st Appellant] was not responsible for the amalgamation and the ultimate creation of the suit property.
52. Additionally, the 1st Appellant contend that the suit property was subsequently transferred and registered in her name culminating into the issuance of a certificate of title over and in respect of the suit property.
53. Nevertheless, it is important to point out and underscore that the totality of the document[s] which are being relied upon by the 1st Appellant were presented before and reviewed by the trial court, which discerned various anomalies to the documents that were presented by the 1st Appellant.
54. To start with, the 1st Appellant herein tendered and produced before the trial court copies of the allotment relating to plot L129 and L129B, but the documents in question were variously altered, so much so that the authenticity and validity thereof was not proved or established.
55. Secondly, even though the 1st Appellant contended that plots number L129 and L129B were amalgamated by the 2nd Appellant culminating into the creation of LR No. Nairobi/Block 105/1252 [suit property] the 1st appellant neither tendered nor produced any documentation to anchor the claim pertaining to and/or concerning the amalgamation.
56. Thirdly, even though the 1st Appellant is staking a claim to and in respect of ownership of the suit property, same [1st Appellant] has however failed to demonstrate any nexus between herself [1st Appellant] and the suit property.
57. Fourthly, the 1st Appellant also contends that the learned trial magistrate failed to appreciate that same [1st Appellant] held a certificate of title over and in respect of the suit property. However, what the 1st Appellant is not disclosing to this court, but which is discernable from the record of the trial court is that the certificate of title which is being waved by the 1st Appellant, was indeed procured during the subsistence of the suit before the chief magistrate court.
58. Furthermore, it is also not lost on this court that the certificate of title which the 1st Appellant wishes to base her claim to ownership of the suit property on, was also procured on the face of an existing order of status quo which had been issued by consent of the parties. [See the orders of status quo issued on the 4th October 2019].



59. Pertinently, what is apparent is that the 1st Appellant herein is trying to build her case on the basis of documentation that were being manufactured during the subsistence of the suit, which scenario does not augur/portend well with the rule of law and the general administration of justice.
60. Be that as it may, it is important to point out that whenever a dispute arises as pertains to ownership of a designated property, it behooves the disputants, the 1st Appellant not excepted, to place before the court plausible and credible evidence speaking to the process leading to the certificate of title, if any, which has since been issued.
61. Simply put, it is not enough for the 1st Appellant herein to wave and/or display a certificate of title and thereafter to contend that mere possession of such certificate of title [which is an End product] connotes conclusive evidence of ownership.
62. To my mind, the possession of a certificate of title does not per se constitutes conclusive evidence of ownership. In any event, the validity of a certificate of title is anchored on and dependent upon the propriety, legality and validity of the process that birthed the certificate of title.
63. To this end, it suffices to cite and reiterate the holding of the Court of Appeal in the case of *Funzi Developers Ltd v County Government of Kwale* [2014]eKLR, where the court stated as hereunder;
- “...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.”
64. In the case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment), the court held as hereunder;
64. The jurisprudence relied upon by the appellant and which we find prudent not to replicate are as already highlighted above. We have given due consideration to them in light of the record as assessed herein by us. Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedurality or otherwise a product of a corrupt scheme.
65. Other than the foregoing, the necessity to demonstrate and prove the root of [sic] the certificate of title was also highlighted by the Court of Appeal in the case of *Munyu Maina v Hiram Gathiba Maina* [2013]eKLR, where the court stated and held thus;
- We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant’s testimony. We find that a trust exists in relation to the suit property.
66. Having taken into account the obtaining jurisprudential position [details in terms of the preceding paragraphs] and having evaluated the totality of the evidence that was placed before the trail court by



the 1st Appellant, it is my finding and holding that the documentation that was tendered was replete with alterations and hence same were not authentic.

67. Furthermore, even though the 1st Appellant herein was laying a claim to and in respect of the suit property, same did not place before the court any singular thread of evidence to connect same [1st Appellant] to the suit property.
68. Lastly, the mere fact that the 1st Appellant herein hastened and procured a certificate of title pertaining to the suit property during the pendency of the suit, [pendete lite] which smacks of mala-fides, does not propel the 1st Appellant's case any further. In any event, I have held elsewhere herein before that mere possession of a certificate of title, whose root cannot be justified, does not bespeak and/or confirm the validity of such title.
69. In a nutshell, I come to the conclusion that the findings of the learned chief magistrate as pertains to the lack of authenticity in the documentation which were uttered by and on behalf of the 1st Appellant, was well informed and legally sound.
70. Put differently, I find and hold that the learned chief magistrate was right in finding and holding that the 1st Appellant herein did not prove her claim to and in respect of the suit property.

Issue Number 3. Whether the Respondent is lawfully entitled to the suit property or otherwise.

71. As pertains to the claim by and on behalf of the Respondent herein it was found and held that same [Respondent] had tendered and placed before the court credible evidence to buttress her claim to ownership of the suit property.
72. First and foremost, it is important to recall that the Respondent herein tendered and produced before the court duly executed transfer forms as well as a consent to transfer, the later which was authored by Walter Waireri Kagera [vice chairman of Embakasi Ranching Company Ltd].
73. Instructively, the letter of consent which was executed by the vice chairman of Embakasi Ranching was addressed to the permanent secretary, ministry of lands and physical planning and same [letter of consent] was confirming to the ministry that the suit property lawfully belongs to Mohamed Abdi Ali, now deceased.
74. Suffice it to point out that the duly executed transfer forms and the letter of consent relate to the suit property. Furthermore, it is also not lost on this court that the validity of the named documents were never impugned and/or impeached.
75. Unlike the 1st Appellant, who did not demonstrate affinity or nexus to the suit property, the Respondent herein has indeed placed before the court plausible and cogent evidence showing how the suit property came to be.
76. On the other hand, the Respondent has also demonstrated that the suit property was intended to be transferred to and in favor of Mohamed Abdi Ali, save that the said Mohamed Abdi Ali passed on and or died before the transfer could be effected in his name.
77. To my mind, the evidence tendered and produced by the Respondent and which evidence was not controverted, whatsoever, demonstrates that the Respondent herein is lawfully and legally entitled to the suit property.
78. In my humble view, the Respondent was able to demonstrate the root of her claim to and in respect of the suit property and thus same [Respondent] has satisfied the threshold highlighted at the foot of the holding in the case of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR.



79. For coherence, the court underscored the threshold in the following terms;
31. A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld.
80. Simply put, I am in agreement with the finding and holding by the learned chief magistrate that the Respondent herein truly justified her claim to and in respect of the suit property. Consequently and in this regard, the Judgment of the chief magistrate which found and held that the Respondent is the legitimate owner of the suit property is well founded and is hereby affirmed.

Final Disposition:

81. Arising from the discussion, [details in terms of the preceding paragraphs], it is crystal clear that the appeal beforehand is not only misconceived but devoid of merits.
82. Consequently and in the premises, I am minded to and do hereby make the following orders;
- i. The Appeal or [sic] the purported Appeal by the 2nd Appellant be and is hereby struck out.
 - ii. The Appeal by the First Appellant be and is hereby dismissed.
 - iii. Costs of the Appeal [by the First Appellant] be and are hereby awarded to the Respondent to be taxed by the Deputy Registrar in the usual manner.
83. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JUNE 2024.

OGUTTU MBOYA,

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JUDGE.

In the presence of:

Benson/ Brian - Court Assistant

Mr. Wang'ang'a for the 1st Appellant

Mr. Kinyanjui for the Respondent

N/A for the 2nd [sic] Appellant

