



Dikir v Singalo (Suing On Behalf Of The Estate of the Late Omoding Ole Reteti) & 3 others (Environment and Land Appeal E002 of 2023) [2024] KEELC 4889 (KLR) (20 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E002 OF 2023**

EM WASHE, J

JUNE 20, 2024

BETWEEN

JENIFER ENDOLE DIKIR APPELLANT

AND

NKODEDIA RETETI SINGALO (SUING ON BEHALF OF THE ESTATE OF THE LATE OMODING OLE RETETI) 1ST RESPONDENT

THE LAND REGISTRAR, TRANSMARA WEST SUB-COUNTY 2ND RESPONDENT

THE LAND ADJUDICATION & SETTLEMENT OFFICER TRANSMARA WEST SUB-COUNTY 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The Appellant herein filed a Memorandum of Appeal dated 23rd of August 2023 (hereinafter referred to as “the present Appeal”) against the 1st to 4th Respondents seeking for the following Orders; -
 - a. The Appeal be allowed.
 - b. The Judgement delivered on the 8th August 2023 by the Honourable H.C. Maritim, Senior Resident Magistrate be set-aside and the Court determines the issues herein raised afresh.
 - c. That costs of this Appeal be borne by the Respondents.
2. The grounds upon which the above orders were sought are contained in the body of the present Appeal and are outlined as follows; -



- a. That the Learned Resident Magistrate erred in law and fact in the way she weighed the evidence before her and arrived at a conclusion that was not supported by the evidence tendered.
 - b. That the Learned Resident Magistrate erred in law and in fact in holding that the 1st Respondent had a proprietary interest in the suit property when, in fact, no evidence was tendered before the Court to prove as much.
 - c. That the Trial Magistrate erred in considering and relying upon the testimony of PW 2 and PW 3 on grounds that they are neighbours of the 1st Respondent when in fact, they are not neighbours and therefore could only at best, give speculative testimonies.
 - d. That the Learned Resident Magistrate erred in fact and in law when she contradicted herself by on one hand holding that she would not delve into issues of how the objection proceedings under the [Land Adjudication Act](#) were carried out-specifically, that she would not determine the issue of propriety or otherwise, of representation. And on the other hand she went on to determine issues of how the objection proceedings under the [Land Adjudication Act](#) were carried out-specifically holding that the manner in which the 1st Defendant's name was inserted in those proceedings was "improper".
 - e. That the Learned Magistrate erred in law and in fact when she acted beyond her jurisdiction by making a finding on the issue of how the Objection proceedings under the [Land Adjudication Act](#) were carried out when clearly this is a preserve for the Minister as provided for under Section 26 of the [Land Adjudication Act](#).
 - f. That the Trial Magistrate erred in law and in fact when she held that since there was no clarity of facts as to how the 1st Defendant was awarded the title to TRANSMARA/NKARARO/479, then it must be that the title was improperly awarded: lack of sufficient facts is not evidence of an illegality or an impropriety.
 - g. That the Learned Magistrate erred in law and in fact in awarding the title to TRANSMARA/NKARARO/479 to the 1st Respondent without stating her reasons and reasoning in arriving at that decision.
 - h. That the Trial Magistrate erred in law and in fact in failing to accord due regard to the Appellant's submissions and authorities on applicable principles and law in determining the issues before her.
3. The Record of Appeal was duly served on the Respondents and admitted for hearing on the 14.02.2024.
 4. The Court on the same date 14.02.2024 directed parties to file their written submissions and in compliance of the same, the Appellant filed her submissions on the 26.03.2024 while the 1st Respondent filed his on the 30.04.2024.
 5. This Court has now been invited to deal with this matter as an Appellant Court against the Judgement and Decree of Honourable Hellen C. Maritim, Senior Resident Magistrate (hereinafter referred to as "The Trial Court") delivered on 08.08.2023 (hereinafter referred to as "The Trial Court Judgement").



6. The guiding principles of a Court sitting as an Appellate Court were expressed in the case of *Selle & Another-versus- Associated Motor Boat Co.ltd & Others* (1968) EA 123 the Court stated as follows as regards Appeals; -

“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.”

7. In essence, this Court is required to go through the pleadings filed before the Trial Court, the testimonies of the witnesses therein, the exhibits produced and the final submissions by the parties and arrive at its own exhaustive independent determination of the issues that were before the Trial Court.

8. To be able to appreciate the party’s pleadings before the Trial Court, this Court will revisit the pleadings filed by the parties therein so that it appreciates the issues that were contained in the said Pleadings.

Pleadings.

9. The Plaintiff before the Trial Court is the 1st Respondent in the present Appeal.

10. The 1st Respondent before the Trial Court filed a Plaint dated 03.08.2021 against the Appellant and the 2nd , 3rd and 4th Respondents in the present Appeal.

11. The 1st Respondent sought for the following Orders in the Plaint filed before the Trial Court; -

a. The Honourable Court do issue an Order to the 2nd Defendant to cancel the Title Deed issued to the 1st Defendant herein and in its place, the Court do order the 2nd Defendant to register and issue a title deed to the Plaintiff herein as the sole proprietor to parcel No. TRANSMARA/NKARARO/479.

b. An Order declaring that the Plaintiff is the rightful, bonafide and absolute owner of parcel No. TRANSMARA/NKARARO/479 and that the title issued to the 1st Defendant was illegal and fraudulent.

c. A permanent injunction restraining the 1st , 2nd , 3rd and 4th Defendants either by themselves, their agents, servants, employees or anyone working under them or under their instructions from entering, trespassing, transferring, leasing, charging, mortgaging, or carrying out or effecting any transaction and/or interfering in any manner whatsoever with the Plaintiff’s quiet possession in all that property known as TRANSMARA/NKARARO/479.

d. Costs of the suit.

e. Interest on (d) above at Court rates.

f. Any other relief that the Honourable Court may deem fit.

12. The Plaint filed by the 1st Respondent was duly served on all the parties therein.

13. The Appellant herein responded to the Plaint by filing a Statement of Defence dated 21.09.2022.

14. The Appellant in her Defence dated 21.09.2022 denied all the allegations contained in the 1st Respondent’s Plaint.



15. The Appellant confirmed that she was the holder of the Title Deed for the property known as LR.No.Transmara/Nkararo/479 which was issued lawful and therefore she was the legitimate and bonafide registered owner of the said property.
16. The Appellant proceeded to seek the Trial Court for a dismissal of the 1st Respondents case with costs.
17. As for the 2nd, 3rd and 4th Respondents, the 4th Respondent entered Appearance on behalf of himself as well as the 2nd and 3rd Respondents.
18. Thereafter, the 4th Respondent filed a Joint Statement of Defence on behalf of the 2nd, 3rd and 4th Respondents dated 01.11.2021 and opposed the 1st Respondent's Plaintiff on the following grounds; -
 - a. The 2nd to 4th Respondents denied any wrong doing in the proceedings and issuance of the Title Deed of the property known as LR.No.Transmara/Nkararo/479 to the 1st Respondent therein.
 - b. The 2nd to 4th Respondents stated that the Objection proceedings undertaken by the 2nd Respondents were legitimate, lawful and in compliance with the applicable law and therefore, there was no illegality undertaken by their offices.
 - c. In essence, the 2nd to 4th Respondent pleaded that all the legal steps and/or procedures were observed in the preparation, registration and issuance of the Title Deed to the property known as LR.No.Transmara/Nkararo/479 to the 1st Respondent.
 - d. The 1st Respondent was then put to strict proof on any allegations of fraud against Appellant and 2nd to 4th Respondent.
 - e. The 2nd to 4th Respondents also raised an issue that the 1st Respondent had not issued the mandatory Notice of Intention to Sue.
19. The 1st Respondent in response to the Appellant's Statement of Defence dated 21.09.2022 filed A Reply to Defence dated 13.12.2022 and pleaded as follows; -
 - a. The 1st Respondent specifically denied all the allegations contained in the Appellant's State of Defence dated 21.09.2022.
 - b. The 1st Respondent further pleaded that the actions of the 2nd and 3rd Respondents to delete his name as the beneficial owner of the property known as LR.No.Transmara/Nkararo/479 and instead insert that of the Appellant was unlawful, fraudulent and/or illegal.
 - c. In essence therefore, the Appellant's statement of Defence dated 21.09.2022 be dismissed.
20. The 1st Respondent also filed a Reply to the 2nd to 4th Respondent's Statement of Defence dated 01.11.2021 and pleaded as follows; -
 - a. The 2nd to 4th Respondent's allegation contained in the Statement of Defence dated 01.11.2021 were expressly denied.
 - b. The 1st Respondent further pleaded that the failure to issue a Notice of Intention to Sue was no longer fatal to the suit as recent interpretation by various Courts of law have declared that the said Notice of Intention to Sue is not mandatory.
21. After the replies by the 1st Respondent herein, the pleadings before the Trial Court were closed and the matter proceeded for hearing.



1st respondent's case

22. The 1st Respondent's case before the Trial Court began on the 14.02.2023 with the testimony of the 1st Respondent who was marked as PW 1.
23. The 1st Respondent introduced himself as a resident of Nkararo and a farmer by occupation.
24. The 1st Respondent confirmed that he was the one that had filed the Trial Court proceedings and signed a witness statement dated 03.08.2021 which he adopted as his evidence in chief.
25. The 1st Respondent then produced various documents in support of his claim before the Trial Court which include the following:-
 - Plaintiff's Exhibit 1- A copy of an Objection Case Receipt Serial No. 285937.
 - Plaintiff's Exhibit 2- Copy of a Death Certificate Serial No. 894143.
 - Plaintiff's Exhibit 3- Copy of the Objection proceedings.
 - Plaintiff's Exhibit 4- Copy of payment Receipt of the Objection proceedings Serial No. 8769070
 - Plaintiff's Exhibit 5- Copy of a Sketch Map No. 19
 - Plaintiff's Exhibit 6- Copy of a Receipt No. 2290279 for purchase of the Sketch Map.
 - Plaintiff's Exhibit 7- Copy of the Confirmation Letter.
 - Plaintiff's Exhibit 8- Copy of the Receipt for payment of the Confirmation Letter.
 - Plaintiff's Exhibit 9- Copy of the Green Card
 - PLAINTIFF EXHIBIT 10- Copy of the Caution Receipt.
 - Plaintiff's Exhibit 11- Copy of the Letters Ad-Litem.
 - Plaintiff's Exhibit 12- Copy of Photographs
 - Plaintiff's Exhibit 13- Copy of Chief's Letter.
26. The 1st Respondent upon producing the above exhibits informed before the Trial Court that he was born on the property known as LR.No.Transmara/Nkararo/479.
27. The 1st Respondent informed the Trial Court that during the Adjudication process, his deceased father filed an Objection against the recording of the Appellant as the beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section now titled as LR.No.Transmara/Nkararo/479.
28. The 1st Respondent stated that the Appellant was not in occupation of the property known as Plot. No.479 within Nkararo Adjudication Section because he was residing in OLDANYATI.
29. According to the 1st Respondent, his father's Objection was allowed by the Land Adjudication Officer and ruling pronounced to that effect.
30. Upon delivery of the Objection Ruling by the Land Adjudication Officer, the Appellant did not file an Appeal to the Minister within the 60 days.
31. The 1st Respondent referred to the Adjudication Record of Plot. No.479 within Nkararo Adjudication Section which shows that the name of the Appellant was deleted and that of his father inserted therein.



32. Thereafter, the name of the 1st Respondent's father was again deleted for no reason and the name of the Appellant recorded again in the Adjudication Record of Plot. No.479 within Nkararo Adjudication Section.
33. The 1st Respondent's testimony therefore was that after the Objection Ruling and recording of his father as the beneficial owner of Plot. No.479 within NKARARO ADJUDICATIONS SECTION, there could be no further and/or other changes to the Adjudication Record unless through a determination of the Minister in an Appeal.
34. In essence, the 1st Respondent stated that the cancellation of his father's name on the Adjudication Record after the determination of the Objection proceedings was unlawful, illegal and illegitimate.
35. The 1st Respondent further reiterated that the Appellant's registration as the owner of the property known as LR.No.Transmara/Nkararo/479 was illegal and irregular and should therefore be cancelled.
36. The 1st Respondent confirmed to the Trial Court that the property known as LR.No.Transmara/Nkararo/479 has been and is currently in their occupation.
37. At the end of the 1st Respondent's evidence in chief, he sought for the Appellant's title to be cancelled and the same issued in the name of his father as was in the Adjudication Record.
38. On cross-examination, by Counsel for the Appellant, the 1st Respondent reiterated that his deceased father had filed an Objection proceeding against the Appellant.
39. The 1st Respondent clarified that he filed the proceedings before the Trial Court on behalf of the late OMODING OLE RETETI in the year 2021 after getting the Letters of Ad Litem.
40. The 1st Respondent confirmed that his family had been on the property known as LR.No.Transmara/Nkararo/479 for over a period of 50 years and the developments are contained in the Plaintiff's Exhibit 12.
41. The 1st Respondent stated that the original name recorded in the Adjudication Record was that of the Appellant.
42. However, after the Objection proceedings, the Appellant's name was cancelled and the name of the 1st Respondent recorded based on the Ruling of the Objection in the year 2014.
43. In another Ruling of the same Objection done in the year 2020, the recording of the 1st Respondent's father seem to have been dismissed and the name of the Appellant again reinstated into the Adjudication Record of Plot. No.479 within Nkararo Adjudication Section.
44. The 1st Respondent's View was that the removal of his late father's name and recording of the Appellant as the beneficial owner of Plot. No.479 within Nkararo Adjudication Section now titled as LR.No.Transmara/Nkararo/479 was illegal and unlawful.
45. On further cross-examination by Counsel for the 2nd to 4th Respondents, the 1st Respondent stated that he instituted the Trial Court proceedings on behalf of his late father.
46. The 1st Respondent informed the Trial Court that although the Adjudication Record indicated the Appellant as the beneficial owner of the land, it was the family of the 1st Respondent who were in occupation.
47. The 1st Respondent stated that the land was subsequently given to his father through the Objection proceedings.



48. However, the 1st Respondent could not understand how the Title Deed was issued to the Appellant by the Ministry of Lands.
49. The 1st Respondent admitted that the pictures presented before the Trial Court did not have any Certificate as required by the Rules of Evidence.
50. On re-examination, the 1st Respondent informed the Trial Court that he had obtained Letters Ad-Litem to file a suit on behalf of the estate of his father.
51. The 1st Respondent informed the Trial Court that the Objection by his father was filed way back in the 1990 and therefore at the time of hearing, he was the one that represented the family before the Land Adjudication Officer.
52. The 1st Respondent confirmed that the developments in Plaintiff's Exhibit 12 were a true reflection of the developments on the property.
53. The 1st Respondent also denied knowledge of any decision that was made in the year 2020 in favour of the Appellant as no Appeal was ever filed after the Objection Ruling pronounced in the year 2014.
54. At the end of this re-examination, the 1st Respondent was discharged from the witness box.
55. The 1st Respondent's second witness at the Trial Court was one TINGOPA OLOISIRIRI KARDALE who was marked as PW2.
56. PW 2 introduced himself as a resident of OLE DIKIR and a farmer by occupation.
57. PW 2 confirmed that he had prepared and signed a witness statement dated 09.02.2022 of which he adopted the same as his evidence in chief.
58. Thereafter, PW 2 stated that he was a neighbour with the 1st Respondent and had known him since he was born.
59. On cross-examination by Counsel for the Appellant, PW 2 reiterated that he is a neighbour to the 1st Respondent.
60. PW 2 confirmed that the 1st Respondent is in full occupation of the property by farming maize, sugar cane, keeping livestock and also living on the same.
61. On being referred to Plaintiff's Exhibit 12, PW 2 confirmed that the houses therein had been built long time ago.
62. On further cross-examination by Counsel for the 2nd to 4th Respondent, PW 2 affirmed that he has known the 1st Respondent since they were very young children.
63. PW 2 stated that initially, the 1st Respondent's father had grass thatched houses but now they have been changed.
64. PW 2 confirmed that he was familiar with the 1st Respondent's parents although the father had since passed away.
65. On re-examination, PW 2 could not confirm whose houses were on the Plaintiff's Exhibit 12.
66. However, PW 2 was very clear that the 1st Respondent and his family are his neighbours and reside on the property known as LR.No.Transmara/Nkararo/479.
67. At the end of this re-examination, PW 2 was discharged from the witness Box.



68. The 1st Respondent's third witness was KASUI OLE NTABUKAI who was marked as PW 3.
69. PW 3 introduced himself as resident of ORONDAKI and a farmer by occupation.
70. PW 3 informed the Trial Court that he had prepared a witness statement dated 09.02.2022 of which he adopted as his evidence in chief.
71. PW 3 further testified that he had been neighbours with the 1st Respondent's family for a very long time.
72. On cross-examination by Counsel for the Appellant, PW 3 confirmed that there were houses and other developments on the property known as LR.No.Transmara/Nkararo/479.
73. PW 3 however could not tell how long the developments have been in existence due to the fact that he was illiterate.
74. On further cross-examination by the Counsel for the 2nd to 4th Respondent, PW 3 affirmed that the 1st Respondent had been born on the property known as LR.No.Transmara/Nkararo/479.
75. PW 3 also stated that the 1st Respondent's father had passed away long time ago.
76. On re-examination, PW 3 testified that indeed the father of the 1st Respondent had development on the property known as LR.No.Transmara/Nkararo/479 and had crops and animals on it.
77. PW 3 concluded his testimony by informing the Trial Court that he was still a neighbour to the 1st Respondent and he was one of the few remaining old men within the area.
78. At the end of this re-examination, PW 3 was discharged from the witness box and the 1st Respondent closed his case thereafter.

Appellant's Case.

79. The Appellant's case began with the testimony of the Appellant herself who was marked as DW 1.
80. The Appellant introduced herself as a resident of Nkararo who engaged with small scale farming.
81. The Appellant then proceeded to inform the Trial Court that she had prepared a witness statement dated 21.09.2022 which she adopted as her evidence in chief.
82. The Appellant stated that she was the beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section now titled as LR.No.Transmara/Nkararo/479.
83. The Appellant then proceeded to produce the Title Deed of the property known as LR.No.Transmara/Nkararo/479 as DEFENCE EXHIBIT 1.
84. Thereafter, the Appellant proceeded to produce an Official Search of the property known as LR.No.Transmara/Nkararo/479 as DEFENCE EXHIBIT 2.
85. Lastly, the Appellant also presented a Certified Copy of Green Card to the property known as LR.No.Transmara/Nkararo/479 as DEFENCE EXHIBIT 3.
86. The Appellant admitted that indeed there was a case before the Lands Offices whereby the 1st Respondent had sued her seeking to cancel her name on the Adjudication Record.
87. According to the Appellant, the person known as OMONDING OLE RETETI was unknown to her and she had never seen him.



88. The Appellant further stated that the 1st Respondent did not say that he was suing on behalf of his deceased father known as OMONDING OLE RETETI or presented any documents to confirm such an authority.
89. In essence therefore, the Objection proceedings were untrue and the cancellation of her name in the Adjudication Record was just a way to steal her property known as LR.No.Transmara/Nkararo/479.
90. The Appellant informed the Trial Court that when the Lands Department saw the mistake that her name had been removed, they cancelled that of the 1st Respondent and entered her name once again.
91. On cross-examination by the Counsel for the 2nd to 4th Respondent, the Appellant reiterated that the property known as LR.No.Transmara/Nkararo/479 was her property.
92. The Appellant insisted that according to the determination in the Objection proceedings, the property known as LR.No.Transmara/Nkararo/479 belonged to her.
93. In addition to the above, the Appellant affirmed that the Title Deed to the property known as LR.No.Transmara/Nkararo/479 was in her name since 2020.
94. The Appellant informed the Trial Court that she did not have any other litigation regarding the property known as LR.No.Transmara/Nkararo/479.
95. On further cross-examination by Counsel for the 1st Respondent, the Appellant insisted that the property known as L.RNo.Transmara/Nkararo/479 belongs to her.
96. However, the Appellant admitted that she currently does not stay on the property known as LR.No.Transmara/Nkararo/479 although she had stayed on it a few years back.
97. The Appellant further confirmed that she did not have any developments and/or any activities on the property known as LR.No.Transmara/Nkararo/479.
98. The Appellant affirmed that she had been part of the Objection proceedings with the 1st Respondent but the same were ruled in her favour.
99. The Appellant denied the contents of the Objection proceedings that awarded the property known as LR.No.Transmara/Nkararo/479 to the 1st Respondent and indicated that the same were not correct.
100. The Appellant insisted that although he testified in the Objection proceedings, the outcome was not in favour of the 1st Respondent.
101. The Appellant specifically denied the 1st Respondent's claim of ownership and reiterated that the property known as LR.No.Transmara/Nkararo/479 was hers.
102. The Appellant stated that neither the 1st Respondent was born on the property known as LR.No.Transmara/Nkararo/479 nor was his father buried on the said property.
103. The Appellant denied acts of unlawfully removing the 1st Respondent's name from the Adjudication Record.
104. In concluding her evidence in chief, the Appellant denied the contents of the Objection proceedings in toto.
105. On re-examination, the Appellant reiterated that the Objection proceedings were improper.
106. The Appellant stated that the deceased OMONDI OLE RETETI never appeared before the Committee.



107. The Appellant confirmed that the Objection proceedings were done between the 1st Respondent and herself and not the father.
108. According to the Appellant, the Objection proceedings were determined in her favour and not in favour of the 1st Respondent's father.
109. At the end of this re-examination, the Appellant was discharged from the witness box and the Appellant's case was closed.

2Nd To 4Th Respondent's Case.

110. The 4th Respondent called one SOSIAH LESHAN who was marked as DW 2.
111. DW 2 introduced himself as an officer in the 3rd Respondent's office in charge of Transmara East, West and South.
112. DW 2 confirmed to the Trial Court that he was in possession of the Demarcation Book, the Objection Register and a certified copy of the proceedings relating to the property known as Plot. No.479 within Nkararo Adjudication Section now titled as LR.No.Transmara/Nkararo/479.
113. DW 2 testified before the Trial Court that indeed there was an Objection filed by one OMONDING OLE RETETI against Appellant over the ownership of the property known as Plot. No.479 within Nkararo Adjudication Section.
114. DW 2 clarified that at the end of the Objection proceeding, the Objection was allowed and the property known as Plot. No.479 within Nkararo Adjudication Section was then declared to belong to the 1st Respondent.
115. DW 2 produced a Copy of the Adjudication Record for Plot. No.479 within Nkararo Adjudication Section, the Objection Register and a Certified Copy of the Objection proceedings as EXHIBITS 4, 5 and 6 respectively.
116. DW 2 indicated that when land is being demarcated, the information is filed in the Demarcation Book and then transferred to the Adjudication Record.
117. Once the Adjudication Register is published for inspection, people are allowed to lodge an Objection against the entries in the Adjudication Register.
118. DW2 confirmed that once the Objection proceedings are concluded, any changes are indicated in the Adjudication Register.
119. In this particular case, the Objection proceedings were determined in favour of the 1st Respondent and the Adjudication Record rectified.
120. However, the 1st Respondent's name was subsequently cancelled and the name of the Appellant was inserted back.
121. On cross-examination, DW 2 admitted that in Objection proceedings, parties were allowed to be represented by other people.
122. DW 2 informed the Trial Court that the 1st Respondent represented his deceased father based on the customary law of the Maasai.
123. Consequently, the 1st Respondent's participation in the Objection proceedings during the Objection proceedings was in order.



124. DW 2 reiterated that according to the Adjudication Record, the cancellation of the Appellant's name and the insertion of the 1st Respondent was in line with the determination of the Objection proceedings.
125. However, there are no proceedings that support the cancellation of the 1st Respondent's name and again recording the name of the Appellant for a second time.
126. DW 2 clarified before the Trial Court that the second recording of the Appellant's name was done on the basis of a purchaser's interest but there are no records of the said Objection proceedings filed by the Appellant that resulted to the said determination.
127. DW 2 categorically stated that the cancellation of the 1st Respondent's name and recording of the Appellant's name for the second time was not proper and lawful.
128. DW 2 confirmed to the Trial Court that according to their Records, the legitimate and lawful owner of Plot. No.479 within Nkararo Adjudication Section was OMONDING OLE RETETI although the Adjudication Record shows NKODEDIA RETETI SINGALO.
129. DW 2 denied knowledge that the title to Plot. No.479 within Nkararo Adjudication Section was issued in favour of the Appellant.
130. DW 2 reiterated that however cancelled the 1st Respondent's name on the Adjudication Record overreached his or her mandate in law.
131. On cross-examination, DW 2 clarified that the person who should be on the Adjudication Record is NKODEDIA RETETI SINYALO based on the outcome of the Objection proceedings.
132. DW 2 stated that the Objection was initially filed by OMONDING OLE RETETI.
133. DW 2 admitted that OMONDING OLE RETETI and NKODEDIA RETETI SINYALO are not one and the same person.
134. DW 2 informed the Trial Court that the Adjudication Records are usually handled by the Land Adjudication Officer who should execute all the entries.
135. DW 2 reiterated that during Objection proceedings, people can represent others if they are not available.
136. However, for a person to represent another, he or she would be required to produce an Identification Card of the Deceased person, a death certificate, a burial permit and/or a letter from the area chief.
137. DW 2 could not however see any of the above documents produced by the 1st Respondent to confirm he had the capacity to represent the Objector or not.
138. On re-examination, DW 2 stated that Objection proceedings are only taken once and the outcome recorded in the Adjudication Record.
139. The only other time the entry can be cancelled is through a decision in an Appeal by the Minister.
140. DW 2 further stated on clarification by the Trial Court that an Appeal must be filed within 60 days from the date of determination of the Objection.
141. Consequently therefore, the cancellation of the 1st Respondent's name and insertion of the Appellant's name for the second time is not proper and/or lawful.



142. At the end of this re-examination, DW 2 was discharged from the witness box and the 2nd to 4th Respondents closed their case.
143. Parties were then directed to file their written submissions which they complied with by 1st Respondent filing his submissions on 04.07.2023 and Appellant on the 29.06.2023.
144. The Court has carefully perused the pleadings before the Trial Court, the testimonies of the parties, the exhibits produced as well as the submissions therein and identify the following issues for determination.
- Issue No. 1- Are The Objection Proceedings Relating To Plot. No.479 Within Nkararo Adjudication Section Genuine & Legitimate?
- Issue No. 2- Who Is The Lawful And Legitimate Owner Of The Property Known As Plot. No.479 Within Nkararo Adjudication Section?
- Issue No.3- Was The Title To The Property Known As Lr.No.Transmara/Nkararo/479 Lawfully Registered In The Name Of The Appellant?
- Issue No.4- Was The 1st Respondent Entitled To The Prayers Sought In The Plaint Dated 03.08.2021?
- Issue No. 5- Who Should Bear The Costs Of This Appeal?
145. Having identified the above-mentioned issues for determination, the same will now be discussed as hereinbelow.

Issue No. 1- Are the objection proceedings relating to Plot. No.479 within Nkararo Adjudication Section genuine & legitimate?

146. The first issue for determination is the legality and legitimacy of the Objection proceedings relating to the property known as Plot. No.479 within Nkararo Adjudication Section.
147. The 1st Respondent pleaded that during the demarcation exercise, the property known as Plot. No.479 within Nkararo Adjudication Section was recorded in the name of the Appellant as the beneficial owner thereof.
148. However, after the Adjudication Register was published by the 3rd Respondent, the 1st Respondent's father known as OMONDING OLE RETETI lodged an Objection against the recording of the Appellant as the beneficial owner of the property known as LR.NO.479 within Nkararo Adjudication Section.
149. Unfortunately, before he could prosecute the said Objection before the 3rd Respondent, he passed away and the 1st Respondent stepped into his shoes of prosecuting the said Objection.
150. At the end of the Objection proceedings before the 3rd Respondent, the 1st Respondent was declared the rightful owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
151. It is on the basis of the Ruling by the 3rd Respondent in the Objection proceedings that the name of the Appellant was cancelled in the Adjudication Record and the 1st Respondent's recorded as the legitimate and rightful owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
152. The 1st Respondent in support of the above facts produced a Certified Copy of the Objection proceedings relating to the property known as Plot. No.479 within Nkararo Adjudication Section as well as various receipts confirming the filing of the Objection and payment for securing the certified copy of the Objection proceedings.



153. The Appellant on the other hand did not dispute the fact that the late OMONDING OLE RETETI filed an Objection against the recording of her name as the beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
154. The Appellant admitted that the Objection proceedings actually took place but the 1st Respondent who appeared and/or purported to represent the late OMONDING OLE RETETI did so without authority and was therefore a stranger in the proceedings.
155. Secondly, the Appellant stated that although the proceedings took place with his participation, he did not agree with the determination by the 3rd Respondent to the effect that the 1st Respondent was the rightful and legitimate beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
156. According to the Appellant, the person who was declared as the rightful and legitimate beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section was her and therefore the cancellation of her name from the Adjudication Record was illegal, irregular and fraudulent.
157. The 3rd Respondent who testified as DW 2 appeared before the Trial Court and produced two crucial documents namely the Adjudication Record and the Objection proceedings relating to the property known as Plot. No.479 within Nkararo Adjudication Section.
158. The 3rd Respondent confirmed before the Trial Court that indeed an Objection was lodged by one OMONDING OLE RETETI against the recording of the Appellant as the beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
159. However, at the time of hearing the Objection, the person known as OMONDING OLE RETETI had since passed away and the 1st Respondent appeared as the son and/or representative of the late OMONDING OLE RETETI.
160. The 3rd Respondent stated that usually in Objection proceedings, parties can be represented by other persons for various reasons as long as it is confirmed that they have the authority to do so.
161. In essence, the 3rd Respondent testified that the 1st Respondent's presence and/or prosecution of his late father OMONDING OLE RETETI Objection was within the law.
162. In addition to the above, the 3rd Respondent confirmed that after the Objection proceedings were concluded, the 1st Respondent was declared to be the rightful beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section and not the Appellant.
163. It was on the basis of this determination by the 3rd Respondent that the name of the Appellant was cancelled from the Adjudication Record of Plot. No.479 within Nkararo Adjudication Section and replaced with that of the 1st Respondent.
164. However, later on, the 1st Respondent's name was cancelled and the Appellant's name re-entered again in the year 2020.
165. Unfortunately, there are no proceedings undertaken by the Appellant that declare the Appellant as the true beneficial owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
166. The 3rd Respondent's opinion was that once an Objection has been heard and determined, the only person who can overturn the 3rd Respondent's decision is the Minister after hearing of an Appeal.



167. So far, there are no records in the offices of the 3rd Respondent and/or the Minister that the Appellant filed any Appeal within the prescribed time of 60 days and/or undertook any Appeal proceedings that were concluded in her favour.
168. In conclusion, the 3rd Respondent was very clear that the cancellation of the 1st Respondent's name on the Adjudication Record of Plot. No.479 within Nkararo Adjudication Section was unlawful and irregular because whoever did it lacks the jurisdiction to make any further entries.
169. The first aspect of this issue is whether the 1st Respondent had the power and/or capacity to represent his late father OMONDING OLE RETETI.
170. The Appellant is of the view that the 1st Respondent is simply a stranger to this dispute as he lacks capacity to act on behalf of the late OMONDING OLE RETETI.
171. The Appellant advanced the argument that the 1st Respondent needed to have obtained authority from the Court to be able to appear before the 3rd Respondent to prosecute the said objection.
172. The Appellant purported to rely on the provisions of Order 22 Rule 51 of the Civil Procedure Rules.
173. The Objection that the Appellant is seeking to base his argument is one that deals with Objections to attachment of assets emanating from a Decree issued by a Court of Law.
174. To participate in any legal proceedings before a Court of Law on behalf of a deceased party, one is required to apply and be issued with Letters of Administration Ad-Litem.
175. However, the Objections proceedings undertaken before the 3rd Respondent under Section 26 of the [Land Adjudication Act](#), Cap 284 are distinct and completely different from Objections to attachment under Order 21 Rule 51 of the Civil Procedure Rules, 2010.
176. The Objection proceedings undertaken under Section 26 of the [Land Adjudication Act](#), Cap 284 deal with the process of establishing the beneficial owner of land at the adjudication stage by the 3rd Respondent outside the strict legal system of the Court proceedings.
177. Section 30 of the [Land Adjudication Act](#), Cap 284 further provides as follows;-
- “(1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29(3) of this Act”
178. Section 30 of the [Land Adjudication Act](#), Cap 284 emphasize the point that an Objection before the 3rd Respondent under Section 26 of the Land Adjudication Section, Cap 284 is actually an internal dispute resolution mechanism in ascertaining the ownership of community land and is not subject to the [Civil Procedure Act](#) Cap, 21 and/or Rules thereof.
179. According to the proceedings produced by both the 1st Respondent and the 3rd Respondent, the 1st Respondent was clearly described as the Son of the late OMONDING OLE RETETI who had since passed away.
180. Throughout the Objection proceedings which were done in the presence of the Appellant, there was no issue as to the participation of the 1st Respondent as the son of the late OMONDING OLE RETETI.



181. In other words, the Appellant throughout the Objection proceedings knew very well that the 1st Respondent was the son of the late OMONDING OLE RETETI and the allegation that he was a stranger and/or appeared without any legal authority is in the Court's view an afterthought.
182. The 1st Respondent had a right as the son of the late OMONDING OLE RETETI to represent his deceased father known as OMONDING OLE RETETI before the 3rd Respondent on behalf of the entire family even without any letters of administration.
183. The second aspect of the Appellant's argument on the legitimacy of the Objection proceedings is that she does not agree with the determination pronounced by the 3rd Respondent.
184. The Appellant insisted that the determination of the Objection with the 1st Respondent was in her favour.
185. However, the Appellant did not produce any Objection proceedings and/or determination to support her allegation.
186. Section 83 of the *Evidence Act*, Cap 80 provides as follows;-

- “(1) The Court shall presume to be genuine every document purporting to be certificate, certified copy or other document which is;-
- a. Declared by law to be admissible as evidence of any particular fact; and
 - b. Substantially in the form, and purporting to be executed in the manner, directed by law in that behalf; and
 - c. Purporting to be duly certified by a public officer.
- (2) The Court shall also presume that any officer by whom any document purports to be signed or certified held, when he signed it, the official character which he claims in such document”

187. The 1st Respondent during the hearing of this matter before the Trial Court did not only produce the Certified copy of the Objection proceedings before the 3rd Respondent, he also procured the attendance of the 3rd Respondent to verify that the Objection proceedings which he produced are genuine and legitimate.
188. In the circumstances, this Court is satisfied that the Objection proceedings presented by the 1st Respondent and confirmed by the 3rd Respondent are the true and genuine proceedings reflecting the true outcome of the dispute between the 1st Respondent and the Appellant relating to Plot. No.479 within Nkararo Adjudication Section.

Issue No. 2- Who Is The Lawful And Legitimate Owner Of The Property Known As Plot. No.479 Within Nkararo Adjudication Section?

189. The second issue for determination is who is the legitimate and rightful owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
190. According to the Appellant, the rightful and legitimate owner of the property known as Plot. No.479 within Nkararo Adjudication Section is her.



191. The Appellant seeks to rely on the recording of her name on the Adjudication Register of the property known as Plot. No.479 within Nkararo Adjudication Section which was used to process the Title Deed known as LR.No.Transmara/Nkararo/479.
192. The 1st Respondent on the other hand is disputing the Appellant's recording as the owner of the property known as Plot. No.479 within Nkararo Adjudication Section on the basis of the outcome pronounced in the Objection proceedings on 02.04.2014.
193. A perusal of the Objection No. 235 which was filed by the late OMONDING OLE RETETI and prosecuted by the 1st Respondent, the 3rd Respondent declared the property known as Plot. No.479 within Nkararo Adjudication Section to be the rightful and legitimate property of the Estate of OMONDING OLE RETETI and/or the 1st Respondent.
194. Once the 3rd Respondent made the above decision on the 02.04.2014, the Adjudication Record was duly amended by deleting the name of the Appellant and recording the name of the 1st Respondent.
195. The significance of the determination pronounced on 02.04.2014 was that it recognised the 1st Respondent to be rightful and legitimate owner of the property known as Plot. No.479 within Nkararo Adjudication Section henceforth.
196. Similarly, the powers and/or jurisdiction of the 3rd Respondent to entertain any further objections between the Appellant and the 1st Respondent became spent and no further objections proceedings between the Appellant and the 1st Respondents would be entertained.
197. The only remaining option for the Appellant after the determination of the 3rd Respondent relating to the Objection proceedings with the 1st Respondent was an Appeal before the Minister as provided for under Section 29 of the [Land Adjudication Act](#).
198. Unfortunately, the Appellant did not present any written Appeal or proceedings of an Appeal before the Minister that overturned the determination of the 3rd Respondent pronounced on 02.04.2014 and reinstated her as the legitimate and rightful owner of the property known as Plot. No.479 within Nkararo Adjudication Section.
199. In the absence of any Appeal or proceedings of Appeal before the Minister, the cancellation of the 1st Respondent's name from the Adjudication Record and reinstatement of the Appellant's name is not only irregular and illegal but fraudulent in nature.
200. The Appellant acted fraudulently by using non-existing proceedings either from the 3rd Respondent and/or the Minister to alter a Government document known as the Adjudication Record for the property known as Plot. No.479 within Nkararo Adjudication Section with a view of procuring a Title Deed of the said property knowing well that the same was the property of the 1st Respondent.
201. In conclusion therefore, the rightful and legitimate owner of the property known as Plot. No.479 within Nkararo Adjudication Section now titled as LR.No.Transmara/Nkararo/479 is the 1st Respondent.

Issue No.3- Was The Title To The Property Known As Lr.No.Transmara/Nkararo/479 Lawfully Registered In The Name Of The Appellant?

202. The third issue for determination is whether the Title Deed known as LR.No.Transmara/Nkararo/479 was lawfully registered in the name of the Appellant.



203. Based on the determination of Issue No.2 hereinabove, this Court is of the finding that the registration of the Appellant as the owner of the property known as LR.No.Transmara/Nkararo/479 was not only obtained through irregular and illegal means but also fraudulent.
204. The registration of the Appellant as the owner of the property known as LR.No.Transmara/Nkararo/479 is therefore annuity.

Issue No.4- Was The 1st Respondent Entitled To The Prayers Sought In The Plaint Dated 03.08.2021?

205. The fourth issue is whether or not the 1st Respondent was entitled to the prayers sought in the Plaint dated 03.08.2021.
206. The 1st prayer was the cancellation of the Appellant's registration as the owner of the property known as LR.No.Transmara/Nkararo/479 and instead the 2nd Respondent be directed to register the 1st Respondent as the lawful and rightful owner of the said property.
207. The 1st Respondent sought the above prayer on the basis of the determination in the Objection proceedings pronounced on the 02.04.2014.
208. On the other hand, the Appellant challenged this prayer on the basis that she is already the registered owner of the property known as LR.No.Transmara/Nkararo/479 and as such enjoys the protection of Section 40 of the Kenyan Constitution, 2010.
209. It is clear in the mind of this Court that the Appellant obtained the title to the property known as LR.No.Transmara/Nkararo/479 through the Adjudication Record of the property known as Plot. No.479 within Nkararo Adjudication Section.
210. It is also this Court's finding that the reinstatement of the Appellant's name in the Adjudication Record of Plot. No.479 within Nkararo Adjudication Section after the determination of the 3rd Respondent on 02.04.2014 was irregular, illegal and fraudulent, then it does without saying that the issuance of the title known as LR.No.Transmara/Nkararo/479 in the name of the Appellant was unlawful, illegal and fraudulent.
211. This being the scenario, the next aspect is whether the said title issued to the Appellant can be cancelled.
212. Section 26 of the *Land Registration Act*, No. 3 of 2012 provides as follows; -

- “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts a prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easement, 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.”



213. The above provision statutorily gives the Courts of Law powers to cancel any title that has been issued through fraud and misrepresentation or illegally, unprocedurally and/or corruptly acquired.
214. In this particular case, the Appellant altered the Adjudication Record of the property known as Plot. No.479 within Nkararo Adjudication Section by deleting the name of the 1st Respondent and reinstating her own name without following the required procedures of an Appeal under Section 29 of the [Land Adjudication Act](#), Cap 284.
215. The Appellant's act or alteration was not only illegal and unprocedural but also fraudulent in toto.
216. Consequently, the Adjudication Record which the Appellant used to process the Title Deed of the property known as LR.No.Transmara/Nkararo/479 misrepresented the true facts as to who is the legitimate and true owner of the said property.
217. As a result of the Appellants omissions and/or commissions, this Court has no other choice but to make a finding that the Appellant's title known as LR.No.Transmara/Nkararo/479 was procured illegally, unprocedurally, fraudulently and through misrepresentation of facts and is hereby cancelled forthwith.
218. The second prayer by the 1st Respondent at the Trial Court was for an order directed to the 2nd Respondent to cancel the name of the Appellant and instead record his name as the legitimate and true owner of the property known as LR.No.Transmara/Nkararo/479.
219. According to the testimony of the 3rd Respondent, the correct person who is entitled to the property known as LR.No.Transmara/Nkararo/479 is the 1st Respondent.
220. It therefore goes without saying that the Appellant's ownership having been cancelled herein, then the suit property should be registered in the name of the 1st Respondent in line with the determination of the 3rd Respondent on the 02.04.2014 which declared the true and legitimate owner of the property.
221. The third prayer is one seeking for a permanent injunction against the Appellant in whatsoever manner and in which way dealing with the suit property herein.
222. Section 24 of the [Land Registration Act](#), No. 3 of 2012 provides that where a person and/or entity is registered as the absolute proprietor of a piece of land, then the ownership of that piece of land shall vest in that person to the exclusion of any other person.
223. This Court having made a finding that the suit property should be registered in the name of the 1st Respondent, then it should be for his exclusive use to the exclusion of the Appellant in the dealings of the same in whichever or whatsoever manner.
224. Consequently therefore, this Court hereby finds that a permanent injunction against the Appellant herein is required to protect the 1st Respondent from any interference by the Appellant in the future.

Issue No. 5- Who Should Bear The Costs Of This Appeal?

225. On the issue of costs, the principle is that costs follow the event.
226. Based on the determination of the issues above, the Appeal has not succeeded and as a result, the Appellant is condemned to pay costs.



Conclusion

227. In conclusion, this Court hereby upholds the Judgement and Decree of HON.HELLEN C. MARITIM, SRM delivered on the 08.08.2023 in its entirety and has no reason to interfere with the same as sought for in the present Appeal.

228. The final orders as relates to the Memorandum of Appeal dated 23.04.2023 are as follows; -

- A. The Memorandum Of Appeal Dated 23.04.2023 Be And Is Hereby Dismissed.
- B. The Appellant Will Bear The Costs Of This Appeal.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 20TH OF JUNE 2024.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of:

Court Assistant: Mr Ngeno

Advocate For The Appellant: Mr. Kiprotich

Advocate For The Respondents: Mr. Seriani (N/B)

