



Nakola (Suing as the next friend of Nailoloe Enole Nakola) v Kariankei & 7 others (Environment and Land Appeal E008 of 2022) [2025] KEELC 728 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELC 728 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL E008 OF 2022
CG MBOGO, J
FEBRUARY 20, 2025**

BETWEEN

PARKISA OLE NAKOLA (SUING AS THE NEXT FRIEND OF NAILOLOE ENOLE NAKOLA) APPELLANT

AND

**KIKANAE OLE KARIANKEI 1ST RESPONDENT
TIPAPA OLE NAIMODU 2ND RESPONDENT
DUKUNTAI OLE NAKULA 3RD RESPONDENT
TIPAPA OLE LENGUES 4TH RESPONDENT
OLE NKULUO GROUP RANCH 5TH RESPONDENT
MOSINKO OLE MORO 6TH RESPONDENT
DISTRICT LAND REGISTRAR 7TH RESPONDENT
THE HON ATTORNEY GENERAL 8TH RESPONDENT**

(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Narok (Hon. George Wakahiu, CM) delivered on 13th April, 2022 in Narok CM ELC Case No. 193 of 2018)

JUDGMENT

1. Being dissatisfied with the whole judgment in CMELC No. 193 of 2018 delivered by the Chief Magistrate Hon. Wakahiu on 13th April, 2022, the appellant herein filed the memorandum of appeal dated 29th July, 2022 challenging the said decision on the following grounds: -
 1. The learned magistrate erred in law and in fact by misconstruing the appellant's pleadings, evidence and written submissions and thus arrived at the wrong decision.



2. The learned magistrate made a finding and declared that the suit property belonged to the plaintiff but declined to cancel the same.
 3. Despite holding that the transfer of the suit property, CisMara/ Olenkuluo/ 437 was fraudulently transferred and registered in the name of the 1st defendant the learned magistrate failed to revoke the 1st defendant's title and instead ordered that the 2nd-8th respondents compensate the plaintiff with another parcel of equal value to the suit property or in the alternative the 2nd-8th respondents pay the plaintiff a sum of Kshs. 5,000,000/.
 4. That the learned magistrate erred in law and in fact when he ordered and directed that the 2nd-8th respondents compensate the appellant with another parcel of land or Kshs. 5,000,000/- yet the value of the suit property is over Kshs. 14,000,000/-.
 5. The learned magistrate erred in law and in fact in failing to take into account the evidence adduced during trial and thus fell into error when he arrived at findings and conclusions unsupported by the record.
 6. The learned magistrate erred in law and in fact by arriving at the decision he reached in complete and utter disregard of the law on irregularly acquired property hence abating fraud.
2. The appellant prays for the orders that: -
- a. This appeal be allowed.
 - b. The judgment and decree of the Narok Chief Magistrate's Court in CM ELC No. 193 of 2018 delivered on 13th April, 2022 be set aside.
 - c. Costs of this appeal be provided for.
3. The 1st to 6th respondents being aggrieved by the judgment of the Chief Magistrate, Hon. Wakahiu delivered on 13th April, 2022, have filed a memorandum of cross appeal dated 30th January, 2023 challenging the whole of the said decision on the following grounds: -
1. The learned magistrate erred in fact and law by misconstruing the 1st-6th respondents' pleadings, evidence adduced and written submissions and thus arrived at a wrong decision.
 2. The learned magistrate erred in fact and law by making a finding that the appellants herein did not produce any evidence to show that Simiren Ole Paan owned parcel number Cis-Mara/ Olenkuluo/437 when the said witness testified as DW-4 to that effect and a sale agreement dated 15th March, 2014 was produced thus failing to consider that evidence.
 3. The learned magistrate erred in fact and law by making a finding that the 1st appellant-Kikanae Ole Kariankei bought the parcel of land Cis-Mara/ Olenkuluo/ 437 at Kshs. 1,500,000/- whereas a sale agreement 26th August, 2014 and proof of payments of Kshs. 2,500,000/- was adduced before the trial court thus failed to consider that evidence.
 4. The learned magistrate erred in fact and law by reaching to a conclusion that the title for parcel number Cis-Mara/ Olenkuluo/ 437 was fraudulently transferred whereas the particulars of the fraud made against the 2nd to 6th appellants/ respondents on the pleadings and as testified are vague and very general allegations.
 5. The learned magistrate erred in fact and law by reaching to a decision that the plaintiff therein who is the respondent herein be compensated with another parcel of land or in the alternative



monetary compensation to a tune of Kshs. 5,000,000/- and not making any verdict in relation to parcel number Cis-Mara/Olenkulo/549 in which she is the registered proprietor.

6. The learned magistrate erred in fact and law by alluding that a title of an innocent person is impeachable as long as the title was obtained illegally and the title holder need not to have contributed to the vitiating factors as the same is in disregard of the law on a bona fide innocent purchaser for value without notice and on who no claim of fraud had not been proven against him.
4. The 1st to 6th respondents thus pray for the following orders: -
 - a. That this cross appeal be allowed.
 - b. That the judgment and decree of the Honourable George Wakahiu delivered at Narok on 13th April, 2022 be set aside.
 - c. That the 1st to 6th appellants be awarded the cost of this cross appeal.
 - d. Any other orders this honourable court may deem fit and just to grant.
5. The memorandum of appeal and the memorandum of cross appeal were canvassed by way of written submissions. The appellant filed his written submissions dated 11th December, 2024, where he raised four issues for determination as listed below:-
 1. What is the duty of this court with respect to this appeal.
 2. Whether the initial title held by the 2nd to 4th respondents and now the 1st respondent is impeachable.
 3. Whether the doctrine of innocent purchaser for value pleaded in the counter claim is sustainable.
 4. What orders are as to costs.
6. On the first issue, the appellant submitted that this court's role is to subject the whole of the evidence to a fresh and exhaustive scrutiny and make its own conclusions. While relying on the case of *Selle v Associated Motor Boat Co.* [1968] EA 123, the appellant submitted that this court must examine the entire record of appeal, analyse the facts and evidence as was presented before the trial court, and come to its own conclusion and determination.
7. On the second issue, the appellant submitted that the 2nd to 4th respondents fraudulently obtained the title to the suit property and their title cannot be upheld, and that the trial court wasted itself in failing to direct that the 1st respondent to pursue the 2nd to 4th respondents to recover his money. While relying on the cases of *Munyu Maina versus Gathiha Maina* [2013] eKLR, *Republic vs Minister for Transport & Communication & 5 Others ex parte Waa Ship Garbage Collector & 15 Others Mombasa HCMCA No. 617 of 2003* [2006] 1 KLR (E&L) 563, *Alberta Mae Gacci v Attorney General & 4 Others* [2006] eKLR, and *Koilel & 47 others v Ntiyia & 2 others* [2022] eKLR, the appellant submitted that there is no doubt that in so far as the title held by the 1st respondent is concerned, it was procured by way of fraud or misrepresentation, and that there is no way that the 2nd to 4th respondents could pass a better title to the 1st respondent if their title was bad. Further, it was submitted that the title held by the 1st respondent is impeachable by dint of the provisions of Section 26(1)(a) of the [Land Registration Act](#).
8. The appellant submitted that a fraudulent title cannot be allowed to stand and must be cancelled. Reliance was placed in the cases of *Arthi Highway Developers Limited v West End Butchery Limited & 6 Others*, Court of Appeal at Nairobi, Civil Appeal No. 246 of 2013 [2015] eKLR, *Alice Chemutai too*



v Nickson Kipkurui Korir & 2 others [2015] eKLR, and Funzi Development Lts & Others v County Council of Kwale, Mombasa Civil Appeal No. 252 of 2005 [2014] eKLR.

9. On the third issue, the appellant submitted that the doctrine of an innocent purchaser for value is not available to the 1st respondent, and that it cannot deprive the legitimate proprietor of his title on account of those principles. While relying on the case of Alice Chemutai Too (Suing in her capacity as the personal representative of Kipkoech Tele (Deceased) v Nickson Kipkurui Korir, Attorney General (Sued on behalf of the Chief Land Registrar) & Consolidated Bank of Kenya (Environment & Land Case 51 of 2014) [2015] eKLR, the appellant urged this court not to endorse the decision of the trial court for to do so is to sanction and give legitimacy and breathe life to the title held by the 1st respondent. Further, that the 1st respondent should have cushioned himself against any eventuality by way of a counter claim against the 2nd to 4th respondent who sold him the suit property.
10. The appellant further submitted that the 1st respondent should have known that Simiren Ole Paan was not the original allottee of the suit property by carrying out due diligence. To buttress on this submission, the appellant relied on the cases of Said v Shume & 2 others (Civil Appeal E050 of 2023) [2024] KECA 866 (KLR)(26 July 2024)(Judgment), Kukan & another (Administrators of the estate of the Late Jason Kukan Lila) vs Kibutha (Civil Appeal 339 of 2018) [2023] KECA 742(KLR), Jacob Wekesa Bokako Balongo v Kincho Olokio Adeya & another [2020] eKLR and Kawaljeet Singh Rekhi v Peter Wainaina Kamau & 2 Others [2016] eKLR.
11. On the fourth issue, the appellant submitted that the issue of costs is the discretion of courts, and he prays for costs in addition to the costs awarded by the trial court.
12. The 1st to 6th respondents filed their written submissions dated 18th November, 2024. On ground one, the 1st to 6th respondents submitted that they made comprehensive submissions dated 8th March, 2022 which had a critical analysis of the evidence adduced before the court but the trial court did not consider them thus arriving into a wrong conclusion.
13. On the second ground, the 1st to 6th respondents submitted that the trial court failed to consider the evidence adduced by the respondents, and instead went ahead to state that the land was acquired fraudulently. That if the court had formed the correct finding, it would have made further correct findings on the allegations of the alleged fraud in the amended plaint.
14. On ground three, the 1st to 6th respondents submitted that DW1, Kikanae Ole Kariankei produced documents as evidence of the procedure he undertook including due diligence, and there was no adverse claim that was recorded in the register of the suit property as per the official search dated 25th August, 2014. On ground four, the 1st to 6th respondents submitted that they produced a copy of extract of the area list showing that Simiren Ole Paan was allocated the suit property. Further, they submitted that there has never been any criminal complaint or proceedings against the respondents in relation to the acquisition of the title deed of the suit property since the year 2014.
15. On ground five, the 1st to 6th respondents submitted that besides all the evidence adduced in relation to parcel no. 549, the trial magistrate in his judgment left out the issue of the parcel unaddressed, leaving them without knowing the proprietorship of the said parcel since the court did not order the appellant to transfer the same back to the group ranch for re-allocation. On ground six, the aforementioned respondents submitted that the 1st respondent was an innocent purchaser, and that PW1 was categorical that the 1st respondent was not involved in the conspiracy. The 1st to 6th respondents relied on the cases of Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] eKLR, Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia [2018] eKLR, Lawrence P.Mukiri



v Attorney General & 4 Others [2013] eKLR, Gibbs v Messer 1891 AC 248 and Jones v Smith [1841] I Hare 43.

16. On 17th December, 2024, the learned counsel for the appellant and the learned counsel for the 1st to 6th respondents highlighted their submissions. Mr. Kamwaro, the learned counsel for the appellant submitted that the appellant was a member of Ole Nkuluo Group Ranch and being a member, he was allocated parcel no. 437 in the area list (P. ex No.1). He submitted that the parcel was later registered as parcel number CIS-Mara/ OleNkuluo/ 437, and that before the property was processed in the name of the appellant, it was registered in the names of 2nd, 3rd and 4th respondents, who later transferred the land to the 1st Respondent. The learned counsel submitted that when the appellant attempted to register the said parcel of land in her name, it dawned on her that the property was in the name of the 1st respondent, and that it is upon that realization that she filed the suit in the lower court complaining about the manner in which the property was transferred to the 2nd to 4th respondent and eventually to the 1st respondent.
17. The learned counsel further submitted that the trial court made a finding that the manner in which the property was taken away from the appellant was fraudulent, and that the trial court noticed the particulars of fraud which the appellant had outlined. Further, that the trial court having interrogated the matter fully, decided that the 2nd to 8th respondents were the perpetrators of the fraudulent scheme, and the 1st respondent was found to be an innocent purchaser. Further, that instead of cancelling the title held by the 1st respondent, the court ordered that the appellant be allocated another parcel of land. It was the learned counsel's submission that once a group ranch is subdivided and parcels of land allocated, nothing else remains to be allocated to the appellant, and the option of ordering for compensation by either allocation of land or payment of money was not available to the trial court.
18. The learned counsel further submitted that in the proceedings, DW4 disassociated himself in cross-examination from parcel number 437 as can be seen in the proceedings of the trial court. Further, that the green card for the suit property shows that entry number 1 is Ole Nkuluo Group Ranch, and that it was transferred to 2nd, 3rd and 4th respondents on 16th April, 2024. The learned counsel submitted that even on the face of the green card, DW4 has never owned the property. On the second issue, the learned counsel submitted that the title is impeachable as provided under Section 26 of the [Land Registration Act](#), and that there was no proper title to pass to the 1st respondent. Further, that the trial court made an error by sanctioning an illegality. On the third issue, the learned counsel submitted that on innocent purchaser for value, the doctrine of innocent purchaser does not come in, and if the innocent purchaser had looked at the history of the land, he would have discovered that the suit property never belonged to DW4. Further, that if the 1st respondent purchased the land from the 2nd to 4th respondents, he ought to have lodged a claim against them in the trial court. Further, that the 2nd to 4th respondents never bothered to bring 3rd party proceedings against DW4.
19. Mr. Masikonde, the learned counsel for the 1st to 6th respondents submitted that the judgment is very confusing as all the parties have run to this court to indicate that there is an error in the judgment of the trial court. On ground one, the learned counsel submitted that they presented 4 witnesses in the trial court, and that DW1 who is the 1st cross-appellant/respondent and all the other witnesses adopted their statements and were cross-examined. Further, he submitted that DW1 produced documents marked as exhibits 1 to 5, that DW2 testified with the authority of the chair and produced D. Ex. Nos. 6 to 10, and stated that the land was allocated to DW4. Further, that DW3 who is the eldest son of Nailulo enole Nakola, told the court that their house has 4 parcels of land i.e. Cis mara/Ole Nkuluo/549, 22, 2293 and 466, and that all of them are approximately 70 acres each. Further, that he explained that in the year 2013, it was him and not the appellant who was shown the land belonging to their mother, and



that the appellant was serving a jail term when the parcels of land were being shown to their owners. He submitted that DW3 produced a lease agreement in respect of parcel 549 found at pages 80-81 of their record of appeal.

20. The learned counsel for the 1st to 6th respondents further submitted that DW4 produced a sale agreement dated 15th March, 2014, and that the trial magistrate did not see the said sale agreement, as stated in the impugned judgment. He invited this court to consider the sale agreement at page 82 and the area list at page 43 of their record of appeal. The learned counsel submitted that this error is the one that has made the whole judgment erroneous. On ground two, the learned counsel referred the court to the sale agreement at page 82 of their record of appeal, and confirmed that indeed there was a sale agreement and that the root of the title has been explained from the green card, to the title of 2nd to 4th respondent and eventually to the 1st respondent. On ground no. 3, the learned counsel submitted that the trial court fell into error, since they produced a sale agreement dated 26th August, 2024 and proof of payment amounting to Kshs.2,500,000/=. He submitted that the trial court reaching a conclusion that the property was purchased at Kshs. 1,500,000/- instead of Kshs. 2,500,000/- shows that their evidence was not considered.
21. On ground four, the learned counsel submitted that the allegations of fraud were not proved at the trial court as they were too general and vague. Further, that DW2 produced an extract of the area list which had been countersigned by the officials, and that the explanation was satisfactory thus there was no fraud by the 2nd to 6th respondents. Further, that DW2 produced an official search and title deed for parcel number 549 belonging to Nailole Enole Nakola. The learned counsel submitted that it is trite law that fraud must be proven, and that the appellant did not bother to call the office of Ombati Daniel and company advocates who prepared the sale agreement and transfer between the 2nd to 6th respondents to 1st respondent. Further, that they did not bother to call advocate Chemutai Caroline who prepared the sale agreement between DW4 and the 2nd to 4th Respondents to prove their claim of fraud. He submitted that the District Land Registrar was party to the suit but the appellant was not keen to have him participate in the suit or even testify.
22. On the issue of compensation as captured in ground five, the learned counsel submitted that the trial court did not make a verdict that parcel no. 549 belonged to Nailole Enole, and on proof of parcel no. 549, DW3 testified and confirmed that they had leased the land as can be seen at page 82 of the record of appeal. He submitted that the trial court did not refer the land to the group ranch for re-allocation if indeed the appellant did not want it, as it is still in her name.
23. On ground six, the learned counsel submitted that the 1st respondent is an innocent purchaser for value, and that no claim of fraud was proved against him. Further, that PW1 produced evidence of the manner in which he purchased the suit property as contained in the record of appeal. He submitted that there has never been entry to show that Nailole enole Nakola has ever owned the parcel of land, and that the purchaser having proved that he carried out a search, paid for the parcel of land, he could not have known of any other issue. He submitted that the 1st respondent had no actual knowledge of the defect to the title.
24. I have carefully considered the memorandum of appeal, the memorandum of cross appeal, the written submissions as well as the oral highlights. In my view, the issue for determination is whether the appeal and cross appeal have merit. Before getting into the substance of the appeal, it is instructive to note the duty of this court. In *Selle Vs Associated Motor Boat Co.* [1968] E.A 123, the court stated as follows:

“ The appellate court is not bound necessarily to accept the findings of fact by the court below.
An appeal to the court of appeal from a trial by the high court is by way of a retrial and



the principles upon which the court of appeal acts are that the 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. In particular, the court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

25. Also, in the case of *Peters v Sunday Post Ltd* [1958] EA 424, as quoted in the case of *Jackson Kaio Kivuva v Penina Wanjiru Muchene* [2019] eKLR the Court held: -

"Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide."

26. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the court held that:

"This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

27. The appellant herein filed the amended plaint dated 20th September, 2020, seeking the following orders: -

- a. A declaration that p/no. Narok Cis/ Mara-Olenkuluo/ 437 was fraudulently and illegally transferred in the name of the 2nd, 3rd and 4th defendants, and any subsequent transfer is a nullity.
- b. A declaration that p/no. Narok Cis/Mara-Olenkuluo/437 belongs to the plaintiff, and consequent cancellation of the title now in the names of the 1st defendant, and the same do revert back to the plaintiff.
- c. Compensation to the plaintiff at the current market price of land parcel no. Cis/Mara-Olenkuluo/437.
- d. Costs of the suit.

28. In the amended plaint, the appellant pleaded that prior to the dissolution of the 5th respondent, a meeting was held for all members, and the names of all those who were to benefit from the group's land were read, the membership register compiled and finalized among other items in the agenda. The appellant further pleaded that subdivision was done, and members were allocated their land, and more particularly, the plaintiff (appellant) was shown her share, the beacons and perimeter.

29. The appellant further pleaded that sometime in the month of November, 2018, they presented transfer form duly executed by the 6th, 7th and 8th defendants as the officials of the 5th respondent, and they learnt that the suit property was registered in the names of the 1st respondent which was transferred to him by the 2nd, 3rd and 4th respondents who had earlier transferred the same in their names from the 5th defendants.



30. The plaintiff pleaded particulars of fraud as follows: -
- a. The 6th, 7th and 8th defendants deliberately signed transfer instrument in favour of the 2nd, 3rd and 4th defendants with full knowledge that the name reflected in the area list for the 5th defendant was that of the plaintiff.
 - b. The 2nd, 3rd and 4th defendants fraudulently executed transfer instruments in their favour with full knowledge that they were not the legal owners of the suit land.
 - c. The 2nd, 3rd and 4th defendants misrepresented themselves before a government officer (Land Registrar) for the transfer of the suit land to be effected in their favour, with full knowledge that they were not the legal owners of the suit land.
 - d. The 6th, 7th and 8th defendants misinterpreted the numbering of plots in the groups area list to misguide the plaintiff.
 - e. The land registrar registered a transfer form and issued land title certificate in the names of the 2nd, 3rd and 4th defendants while fully aware their names are not appearing in the register as presented in the lands registry.
31. The appellant's claim as pleaded in the amended plaint is for declaration and permanent injunction against the respondents. The 1st to 8th respondents filed their statement of defence dated 13th August, 2019. While denying the contents of the amended plaint, they pleaded that the appellant has her parcel of land known as Cismara/ Olenkuluo/ 549 which is distinct from the suit property registered in the name of the 1st respondent who has been in occupation since the year 2014. The 1st to 8th respondents pleaded that if there was any fraud, the appellant would be landless, and further that she has never been denied a share of the group ranch. They pleaded that unless the appellant proves the allegations of fraud, the claim by the appellant is not tenable.
32. In response thereto, the appellant filed her reply to defence dated 2nd January, 2020, and while reiterating the contents of the amended plaint, they stated that her names appear clearly in the Ole Nkuluo Group Ranch list, and that the suit property is still unavailable to her and she is apprehensive that she may become a victim of land grabbing hence rendering the suit necessary.
33. The matter proceeded for hearing before the trial court on 3rd March, 2021, 7th July, 2021, 31st August, 2021, 8th September, 2021, 22nd September, 2021, 15th October, 2021, and 17th November, 2021 respectively. Thereafter, the appellant filed their written submissions dated 8th March, 2022. The 1st to 8th respondents filed their written submissions dated 8th March, 2021 (sic). The trial court pronounced itself vide the judgment delivered on 13th April, 2022 that is now the subject of this appeal.
34. The main issue that was pleaded before the trial court was fraud as particularized in paragraph 8 of the amended plaint. Fraud is a very serious allegation as it has been held in numerous decisions. In the case of Samuel Samita Namunyu v Philmon Machina Ndiwa & 3 Others (2014) eKLR, the court held that:-
- “Fraud is a very serious allegation and one that warrants and attracts serious consequences under the law. It is trite that for fraud to lie, the alleging party should prove the existence of that fraud not on a balance of probabilities but a much higher standard of proof albeit below beyond reasonable doubt.”
35. In my view, and from the reading of the impugned judgment, the trial did not analyse the evidence of the parties, and instead, it relied on the written submissions filed. What then was the essence of subjecting witnesses to trial if at all the same would not be recorded or summarized in a judgment. It



is my finding that the trial court ought to have pronounced itself on the evidence tendered before it, in order for it to arrive at a fair determination.

36. The trial court did not subject the evidence and testimonies of the witnesses to scrutiny. This then resulted in a situation where parties are left more confused than before. For example, the learned counsel for the appellant has made it clear during the highlighting of their submissions that the appellant is not interested in parcel no. 549. What then is left of this parcel of land. However much this court understands that the parties in this case testified and produced evidence, the same was not reflected in the judgment.
37. This court is left with no option but to invoke the provisions of Section 78 of the Civil Procedure Act which stipulates as follows:-

“Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—

- a. to determine a case finally;
- b. to remand a case;
- c. to frame issues and refer them for trial;
- d. to take additional evidence or to require the evidence to be taken;
- e. to order a new trial.”

38. Bearing in mind the time spent in trial before the lower court, it is my view that justice ought to prevail, and in this case a trial would suffice. The upshot of the foregoing is that this court finds merit in the memorandum of appeal dated 29th July, 2022 and the memorandum of cross appeal dated 30th January, 2023 and I proceed to grant the following orders:-
- i. The judgment and decree of the Narok Chief Magistrate’s Court in CM ELC No. 193 of 2018 delivered on 13th April, 2022 be set aside.
 - ii. The matter is hereby referred back to the magistrate’s court for trial on a priority basis by a magistrate other than the trial magistrate.
 - iii. I make no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 20TH DAY OF FEBRUARY, 2025.

HON. MBOGO C.G.

JUDGE

20/02/2025.

