Tuke v Gababo & another (Environment and Land Appeal 8 of 2024)
[2025] KEELC 1051 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELC 1051 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

ENVIRONMENT AND LAND APPEAL 8 OF 2024

JO MBOYA, J

FEBRUARY 20, 2025

BETWEEN

JALDESA TUKE ..... APPELLANT

AND

HABIBA HALKANO GABABO ..... 1ST RESPONDENT

GODANA YUSUF GODANA ..... 2ND RESPONDENT

(Being an appeal arising from the judgment and decree of the chief magistrate's court at Isiolo (Hon. E. Tsimonjero – SRM; made and delivered on 16.1.2024 in Isiolo CM (ELC) Case No. 10 of 2015)

JUDGMENT

1. The Appellant herein [who was the Plaintiff in the subordinate court] filed the Plaint dated 23rd February 2015; and in respect of which the Appellant sought various reliefs inter alia a declaration that same [Appellant] was the owner of Plot No. Chechelesi/13 situated within Isiolo county[hereinafter referred to as the suit Plot].

2. Subsequently, the Plaint under reference was amended resting with the amended Plaint dated 9th December 2019; and wherein the Appellant sought for the following reliefs [verbatim]:

    i. A declaration that plot No. 360 Isiolo Township Block 1 measuring 0.0891 hectares belongs to the plaintiff.

    ii. An order for permanent injunction restraining the defendants its agents, and servants from interfering, alienating or in any manner dealing with the plaintiff's occupation of plot No. 360 Isiolo Township Block 1 measuring 0.0891 hectares.

    iii. Costs of the suit and interests.

3. Suffice to state that upon being served with the original Plaint the Respondents herein [who were the Defendants in the subordinate Court] duly entered appearance and thereafter filed a statement of defence dated 25th March 2015. Instructively, the Respondents denied the claims by and on behalf of the Appellant. Moreover, the Respondents contended that the Appellant shall be invited to strict proof.

4. The suit under reference was heard and disposed of vide Judgment rendered on 16th January 2024; whereupon the Learned Senior Resident Magistrate [namely, the trial Court] found and held that the Appellant had failed to prove his case on a balance of probabilities. Consequently, the Appellant's suit was dismissed with costs to the Respondents.

5. Aggrieved by and dissatisfied with the Judgment and decree of the Learned Senior Resident Magistrate, the Appellant has now filed the Memorandum of Appeal dated the 13th of February 2024; and wherein the Appellant has raised the following grounds:

    a. That the Learned trial magistrate erred in law and in fact by failing to find that the appellant is the registered and indefeasible proprietor of the suit property known as plot No. 360 Isiolo Township Block 1 measuring 0.0891 hectares.

    b. That the Learned trial magistrate erred in law and in fact by disregarding all the appellant's ownership documents that culminated into the issuance of the certificate of lease in his favour.

    c. That the Learned trial magistrate erred in law and in fact by failing to find that the respondent's beacon certificate indicated that the suit property was unsurveyed thus the same could not be used to locate the suit property.

    d. That the Learned trial magistrate erred in law and in fact by failing to find that the respondent relied on a PDP which was not approved and thus invalid.

    e. That the Learned trial magistrate erred in law and in fact by failing to find that the said Andrew Losaye Etalau who purportedly sold the suit property to the respondents' family did not have any ownership documents thus he could not pass good title of the suit property.

    f. That the Learned trial magistrate erred in law and in fact by failing to find that the respondents did not have the requisite locus standi to defend the trial court suit as beneficiaries of Yusuf Godana Dadacha [deceased] without obtaining a limited grant ad litem.

    g. That the Learned trial magistrate erred in law and in fact by proceeding on wrong principles and misapprehending evidence and therefore arrived at a wrong decision.

6. The appeal herein came up for directions on the 27th May 2024; whereupon the parties covenanted to canvass the appeal by way of written submissions. To this end, the court proceeded to and prescribed the timelines for the filing and exchange of the written submissions.

7. The appellant proceeded to and filed written submissions which are undated whereas the Respondents filed written submissions dated 11th January 2025. The two [2] sets of written submissions are on record.

8. The appellant herein raised and canvassed two [2] salient issues, namely; that the Appellant was duly and lawfully allocated the suit plot by the county council of Isiolo [now defunct] and subsequently issued with a Certificate of lease; and that the learned trial magistrate failed to correctly appreciate the totality of the evidence tendered by the parties.

9. Regarding the first issue, Learned Counsel for the Appellant submitted that the Appellant tendered evidence before the trial court and wherein same [Appellant] averred that the suit plot was lawfully allocated to and in his [appellant's] favour by the County Council of Isiolo, [now defunct]. In this regard, it has been posited that the Appellant referenced the minutes of the county council of Isiolo [now defunct] as well as the Letter of allotment dated 5th July 1999.

10. It was the further submissions by Learned Counsel for the Appellant that the Appellant herein also tendered and produced before the Court a copy of the certificate of lease that was issued in respect of the suit property. In this regard, it was posited that the Appellant had therefore placed before the court sufficient evidence and material to warrant a finding in his [appellant's] favour.

11. Secondly, learned counsel for the Appellant has submitted that the Learned Senior Resident Magistrate committed an error of law when same [learned senior resident magistrate] found and held that the Appellant's certificate of lease had been procured and or obtained in vacuum. To this end, it was submitted that in coming to the conclusion that the Appellant's certificate of lease was obtained in a vacuum, the learned senior resident magistrate failed to correctly appraise and appreciate the law.

12. Arising from the foregoing submissions, learned counsel has submitted that the Judgment and the consequential decree of the senior resident magistrate is contrary to the weight of evidence on record. In this regard, the Appellant has invited the court to find and hold that the appeal beforehand is meritorious.

13. The Respondent[s] filed written submissions dated 11th January 2025; and wherein the Respondents has raised and canvassed three [3] salient issues for consideration and determination by the Court.

14. Firstly, learned counsel for the Respondents has submitted that even though the Appellant herein had contended that same [Appellant] had been allocated the suit plot by the county council of Isiolo [now defunct], the Appellant herein failed to tender and or produce the minutes of the said council.

15. Moreover, it has been submitted that the minutes of the County Council of Isiolo [now defunct] which were referenced by the Appellants were merely marked for identification and not otherwise.

16. Additionally, it has been submitted on behalf of the Respondents that the Appellant herein equally failed to tender and or produce the Letter of allotment dated 5th July 1999. Pertinently, it was submitted that just like the minutes of the county council of Isiolo,[supra], the Letter of allotment in question was equally marked for identification.

17. Arising from the foregoing, it has been contended that having failed to tender and or produce any of the background documents underpinning the allocation of the suit property unto him, the Appellant herein failed to discharge the burden of proof cast upon him, in accordance with the Law.

18. Secondly, it was submitted that even if the Appellant herein had tendered and produced the minutes of the county council of Isiolo [now defunct] and the Letter of allotment dated 5th of July 1999 [which is not the case], it was submitted that the two [2] documents would still not be helpful to the Appellant's case.

19. Pertinently, learned counsel for the Respondent[s] submitted that the impugned minutes were issued on the 6th of October 2007 and yet the Letter of the allotment being referenced was issued on the 5th July 1999. To this end, it was therefore submitted that it was not legally possible and or feasible for the Appellant to have been allotted the Plot long before the sanctioning of the allocation by the County council of Isiolo [now defunct].

20. Moreover, it was submitted that even assuming that the Letter of allotment referenced by the Appellant was lawfully issued, it was contended that the Appellant did not tender and or produce any evidence to demonstrate that same [Appellant] had duly complied with condition number two [2] of the Letter of allotment relating to the timelines for payment of the standard [Stand] premium and making the requisite acceptance.

21. According to learned counsel for the Respondents, the Letter of allotment dated 5th July 1999; would lapse for non-compliance with condition number two [2] relating to acceptance and payment of the standard premium. In short, it was submitted that the Letter of allotment which was relied upon by the Appellant was illegal, unlawful and invalid.

22. In support of the foregoing submissions, learned counsel for the Respondents cited and referenced various decisions inter alia Ali Mohammed Dagane vs Hakar Abshir & others Garissa ELC No. 65 of 2017 [unreported] and Mbau Sawmills Ltd vs AG & 2 others (2014) eKLR, respectively.

23. Next, learned counsel for the Respondent[s] has submitted that the Appellant herein also failed to show and or demonstrate that same had been issued with the requisite Part Development Plan. In the absence of the Part Development Plan [PDP], it was submitted that the Appellant herein had not satisfied the requisite basis to warrant a finding that same lawfully and validly acquired the suit property.

24. To this end, learned counsel for the Respondent[s] cited and referenced the decision in *African Line Transport Company Ltd vs Attorney General Mombasa HCC 276 of 2003* [unreported].

25. Finally, learned counsel for the Respondents has also submitted that even though the Appellant tendered and produced a copy of the Certificate of lease, over and in respect of the suit property, the certificate of lease under reference was contended to have been procured/obtained without compliance with the due process of the law.

26. For coherence, it was submitted that a certificate of lease is an end product and hence it behooved the Appellant to tender and place before the court the relevant transactional documents underpinning the acquisition and ultimate issuance of the certificate of lease.

27. In a nutshell, learned counsel for the Respondents has invited the court to find and hold that the Appellant failed to discharge the burden of proof cast upon him in accordance with the law. Consequently, learned counsel for the Respondents implored the court to find and hold that the appeal beforehand is devoid of merits and thus ought to be dismissed with costs.

28. Having reviewed the record of appeal; the evidence tendered by the Parties [both oral and documentary], and upon consideration of the written submissions filed by and on behalf of the parties, I come to the conclusion that the determination of the appeal rests on two [2] salient issues, namely; whether the Appellant tendered and produced plausible evidence to demonstrate entitlement to the suit property; and whether the findings by the learned senior resident magistrate were well grounded or otherwise.

29. Before venturing to analyze the issues, which have been isolated and highlighted in the preceding paragraph, it is imperative to state and underscore that this being a first appeal, this court is mandated to undertake an exhaustive scrutiny, evaluation and analysis of the evidence that was tendered before the trial court and thereafter endeavor to arrive at an independent conclusion/finding.

30. Pertinently, by virtue of being the first appellate court, this court is at liberty to differ from the findings and conclusions of the trial court, subject to there being a reasonable and lawful basis for doing so.

31. Put differently, even though the court is at liberty to undertake exhaustive scrutiny and analysis of the evidence tendered and thereafter arrive at an independent conclusion, caution and circumspection must be taken by the court. In any event, it suffices to underscore that the 1st appellate court ought to defer to the findings of the trial court and same [first appellate court] ought only to depart from the findings of the trial court where it is shown/evident that the findings of the trial court were contrary to the weight of the evidence on record; were/perverse to the evidence tendered; were/are contrary to known and established legal principles; and where there exists an error of principle, which vitiate[s] the conclusion arrived at.

32. The extent, remit and scope of the mandate/jurisdiction of the first appellate court, while exercising its statutory powers as the first appellate court has been elaborated in a plethora of decisions. To this end, it is imperative to cite and reference Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123, where the Court of Appeal for Eastern Africa [EACA] elaborated on the applicable principle and stated 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..."

33. 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 versus John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, where the Court of Appeal held thus;

We also wish to be guided by the reasoning of this court in the case of Mwana Sokoni versus 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 versus Sauviet Sohold, the Times, March 16,1983.
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> "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"
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> Again, in Peters versus Sunday Post Limited (1958) EA424, a decision of the Court of Appeal for Eastern Africa, Sir Kenneth O' Conner, P said at page 429:
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> > "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".

34. Duly guided by the principles elaborated upon in the various decisions [supra], I am now disposed to revert to the subject matter and to discern whether the learned trial magistrate correctly appraised, analyzed and evaluated the evidence that was tendered before the court and thereafter arrived at an objective and justifiable conclusion.

35. Regarding issue number one [1], namely; whether the Appellant tendered and placed before the court plausible, cogent and credible evidence towards proving ownership of and entitlement to the suit property, it is imperative to state that the appellant tendered before the trial court evidence that same [Appellant] was allotted the suit plot by the County Council of Isiolo [now defunct]. In this regard, the Appellant referenced the minutes of Isiolo County Council [now defunct,] namely min No. 34 of 1998.

36. Additionally, the Appellant also contended that subsequently same was issued with a Letter of allotment dated the 6th July 1998. Instructively, the Appellant also referenced the Letter of allotment relating to unsurveyed residential No. 13 Chechelesi-Isiolo.

37. Moreover, the Appellant tendered and produced before the court a copy of the certificate of lease bearing the details of the suit property. For good measure, the certificate of lease was neither challenged nor impugned. In any event, it is worth recalling that the Respondents herein did not file any Counter-claim or at all.

38. Though the minutes of the County Council of Isiolo [now defunct] and the Letter of allotment dated 5th of July 1999; were never produced as exhibits, it is important to state and underscore that the evidence by the Appellant that was tendered verbally before the court, namely; allotment of the suit property by the county council of Isiolo [now defunct] and the subsequent issuance of the letter of allotment, were never controverted.

39. Furthermore, it is also worth recalling that the Appellant herein was also issued with a certificate of lease. Notably, the certificate of lease would only have been issued upon due compliance with the requisite conditions. At any rate, it is not lost on this court that the validity of the certificate of lease under reference was neither impugned nor challenged.

40. On the contrary, evidence abound and was tendered by PW 3 [Rufus Karima Kalama] to the effect that certificate of leases in respect of the leasehold properties like the one beforehand would originate from Nairobi and thereafter be dispatched to the County/Land registries for purposes of execution and registration.

41. For coherence, PW 3 [Rufus Karima Kalama] is on record as testifying as hereunder;

> " The certificate of lease was issued in 2018 when the case was pending. Isiolo block 1 was a registration section. There may be other leases. The lease was signed by one Philip Mengi now a registrar in Garissa. The lease document originates from land administration office in Nairobi and is sent to the relevant registrar for signing and issuance. There were documents that triggered the registration of the lease, such as the forwarding letter, the lease agreement and the amended registry index map. If the documents are not attached, the lease cannot be registered".

42. From the testimony of PW 3, what comes out clearly is that a certificate of the lease in favour of the Appellant could not have been signed if the attendant/transactional documents had not been forwarded to the Land registry at Isiolo. In this regard, what I discern is that PW 3 was indeed vindicating the legitimacy of the Appellant's certificate of title.

43. In the absence of evidence to impugn the legitimacy of the certificate of title, the trial court was under duty to accept and act upon the certificate of lease on the basis of the assumption that unless proven otherwise, the certificate of lease is presumed as prima facie evidence of titles/ownership. [See the provisions of Section 24 and 25 of the *Land Registration Act*, 2012].

44. To this end, I beg to adopt and reiterate the decision of the court of appeal in the case of Embakasi Properties Limited & another v Commissioner of Lands & another [2019] eKLR, where a Five [5] Judge bench oif the Court of Appeal stated thus:

> Although it has been held time without end that the certificate of title is; "...conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof", it is equally true that ownership can only be challenged on the ground of fraud or misrepresentation to which the proprietor named is proved to be a party. See section 23 of the repealed Registration of Titles Act. Section 26 of the *Land Registration Act*, 2012 though not as emphatic as section 23 aforesaid on the conclusive nature of ownership, confirms that the certificate is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner.

45. Other than the foregoing, it is also worthy to recall that the contest about ownership of the suit property or better still the disputed ground, pits the Appellant on one hand and the Respondents on the other hand. Suffice it to state that the Appellant has espoused certificate of title whereas the Respondents has taken the claim to the disputed grounds on the basis of a sale agreement dated 4th July 2011; unapproved part development Plan [PDP] No. CLS/12/01; letter dated 19th January 2012; and a beacon certificate in respect of [sic] unsurveyed Plot No. 306 Chechelesi B.

46. The question that does arise, is whether the Respondents herein have any lawful rights and or entitlement to the disputed ground. To start with, there is no gainsaying that the disputed ground forms and or constitutes what was hitherto trust land and hence same [suit ground] could only be alienated in accordance with section 53 of the Trust *Land Act* [now repealed] and sections 114, 115 and 117 of the retired Constitution.

47. The manner in which trust land or any portion of the trust land could be alienated was highlighted [elaborated] by the Court of Appeal in the case of Ethics & Anticorruption Commission vs Eunice Mugalia & another KSM Civil Appeal No. 39 of 2019;

> The 1st respondent was purportedly allotted Government land under the Government Lands Act, and was to be issued with a certificate of lease in the form of a grant under the Registration of Titles Act. How a Government grant that was issued and accepted by the 1st respondent under the Government Lands Act pursuant to which the Government was to be the lessor changed to be a lease under the Registered *Land Act*, under which Municipal Council of Kakamega became the lessor is a mystery. As we have already stated, the Government *Land Act* vested in the President and the Commissioner of Lands power to alienate Government land as long as the procedure laid out in the Act was followed. The Trust *Land Act* on the other hand vested in the County Council the power to alienate the land in their respective counties and the Commissioner of Lands had no power to alienate the same save as directed by the County Council through a resolution. In the circumstances, we do not see how the letter of allotment dated 31st July 1998 under which the Commissioner of Lands offered to the 1st respondent a grant of Government land could have given rise to the lease dated 2nd June 2000 of Trust land that was vested in Municipal Council of Kakamega. So under what regime of the law was the Commissioner of Lands acting when he alienated the suit property? We ask this question because the two legal regimes, that is, the Government Lands Act and Trust *Land Act* have different processes as regards to alienation of land.

48. Taking into account the elaborate manner in which trust land was to be alienated, it is imperative to state that if the Respondents herein were also staking a claim to the suit ground, then it was imperative that same place before the court evidence of allocation by the County Council of Isiolo, [now defunct] and by extension the Commissioner of lands [now defunct] who was mandated to issue the Letter of allotment albeit with the concurrence of the designated local authority, in this case, the County Council of Isiolo [now defunct].

49. To my mind, the certificate of title that is held by the Appellant herein takes precedence over the documentation[s] which were relied upon and or referenced by the Respondents. I beg to repeat that unless evidence is tendered to impugn and or impeach the validity of the certificate of lease/title, courts of law are enjoined to deem same [certificate of lease/title] as prima facie evidence.

50. On the other hand, it is important to state that the learned trial magistrate was not amused with the fact that the Appellant herein proceeded to and procure a certificate of lease albeit during the pendency of the suit. Furthermore, it is worth recalling that the learned trial magistrate contended that the appellant did not justify why the certificate of title was being procured 3 years after the filing of the suit; and more than 20 years from [sic] the allocation of the suit plot.

51. Suffice it to state that the mere filing of the suit beforehand did not preclude and or prohibit the Appellant from progressing the registration of the property. At any rate, there is no gainsaying that the processes pertaining to survey, preparation of the survey plan and the ultimate issuance of a certificate of lease, are ordinarily undertaken by the relevant Government agencies and not the Appellant. In this regard, the observations by and on behalf of the learned senior resident magistrate do not in my humble view, suffice to invalidate the certificate of title.

52. Moreover, it is not lost on this court that the validity or otherwise of the certificate of title held by the appellant would only be challenged on the basis on credible and plausible evidence and not by observations [hypothesis] which are not derivable from the evidence on record.

53. Arising from the foregoing, I come to the conclusion that the Appellant herein tendered and placed before the learned senior resident magistrate evidence sufficient to tilt the pendulum [balance of probabilities] in his [Appellant] favour. In any event, this being a civil matter, all the Appellant needed to do was to place evidence before the court to persuade same on the probabilities and in particular, to ensure that the probabilities are not equal.

54. Before departing from this issue, I beg to adopt and reiterate the decision of the Court of Appeal in the case of Agnes Nyambura Munga (suing as the Executrix of the Estate of the late William Earl Nelson) v Lita Violet Shepard (sued in her capacity as the Executrix of the Estate of the Late Bryan Walter Shepard) [2018] eKLR

> " The burden of proving the existence of any fact lies with the person who makes the assertion. That much is clear from Sections 107 and 109 of the *Evidence Act*. The standard of proof is on a balance of probabilities which Lord Denning in the case of Miller vs Minister of Pensions (1947) explained as follows:-
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> > "That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'We think it more probable than not', the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence

to accept, where both parties' explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained."

55. Arising from the foregoing, I come to the conclusion that the findings by the learned senior resident magistrate, namely; that the Appellant had not proved his case on a balance of probability, was arrived at in error and without appreciation of the applicable principles of the law.

56. Having come to the foregoing conclusion, I am constrained to and do hereby depart from the factual findings and conclusions, that were arrived at by the learned Senior magistrate.

57. Notably, I depart despite being privy to and knowledgeable of the legal position that the first appellate court must only depart from the factual findings/conclusions of the trial court, only where it is shown that the conclusions were contrary to or perverse to the evidence on record.

58. Next is the issue as to whether the orders that were issued by the learned trial magistrate were well grounded or otherwise. Suffice it to state that the contest beforehand touched on or concerned ownership of the suit property. Whereas the Appellant espoused a certificate of lease, the Respondents on their part laid a claim to the disputed ground on inter alia unapproved part development plan[PDP] and a sale agreement entered into in the year 2011.

59. The learned trial magistrate after evaluating the entirety of the evidence, came to the conclusion that the Appellant had not proved his case. Nevertheless, this court has come to the contrary conclusion.

60. Be that as it may, the issue that concerns me at this juncture relates to the legal implication[s] of the decision that was arrived at by the learned senior resident magistrate. To this end, one can venture forward and ask whether the appellant's certificate of title was cancelled or otherwise.

61. Conversely, one can also ask the question whether vide the Judgment under reference, the learned senior resident magistrate [sic] bestowed and or better still, conferred ownership of the disputed ground to the Respondents or otherwise.

62. The foregoing questions remain alive and it was therefore incumbent upon the learned magistrate to come out clearly as pertains to the legal implication[s] of the orders made.

63. However, after reviewing the applicable law, I hold that without cancelling the certificate of lease in favour of the Appellant the said certificate of lease remains in situ and thus the appellant is entitled to partake of the statutory rights and privileges attendant to and arising from the provisions of section 24 and 25 of the *Land Registration Act*, 2012. [See also Mwea Drift Farm Ltd vs Theuri (1973) E.A 173].

Final Disposition:

64. Having analyzed the two [2] thematic issues, [details enumerated in the body of the Judgment] I come to the conclusion that the appeal beforehand is merited.

65. Consequently, and in the premises the final orders that commend themselves to the court are as hereunder;

    i. The Appeal be and is hereby allowed.

    ii. The Judgment and consequential decree of the learned senior resident magistrate dated 16th January 2024 be and is hereby set aside.

    iii. Judgment be and is hereby entered in favour of the Appellant in terms of amended Plaint dated 9th December 2019.

iv. In particular, a declaration be and is hereby issued that the Appellant is the lawful and registered proprietor of Plot [LR No] No. 360 Isiolo Township Block I measuring 0.0981 ha.

v. An order of permanent injunction be and is hereby issued restraining the defendants either by themselves, agents, servants, and or anyone claiming under them from interfering with, alienating or in any manner whatsoever dealing with the suit property, namely; No. 360 Isiolo Township Block I measuring 0.0981 ha.

vi. For the avoidance of doubt and taking into account the provisions of section 13 (7) of the Environment and *Land Act* 2011; the Respondents herein shall vacate and hand over vacant possession of the suit property to the Appellant within 120 days.

vii. That in default to vacate and hand over vacant possession in terms of clause [vi] hereof, the Appellant shall be at liberty to levy eviction against the Respondents and in the event of such eviction, the costs and expenses shall be recovered from the Respondents.

viii. The Appellant be and is hereby awarded the costs of the Appeal.

ix. The Appellant and is hereby awarded costs of the proceedings in the subordinate court.

x. The Costs in terms of clauses [viii] and [ix] above shall be taxed/assessed in the conventional manner.

66. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 20TH DAY OF FEBRUARY, 2025

OGUTTU MBOYA

JUDGE.

In the presence of

Mr. Mutuma – Court Assistant

Mr. Muchiri holding brief for Mr. Ken Muriuki for the Respondents.

Mr. Mwirigi Mbaya holding brief for Mr. Kitheka for the Appellant.