



**Sepepiari v Seitai (Environment and Land Appeal E005 of 2024)  
[2024] KEELC 13252 (KLR) (18 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13252 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND APPEAL E005 OF 2024**

**EM WASHE, J**

**NOVEMBER 18, 2024**

**BETWEEN**

**BENJAMIN LEMASHON SEPEPIARI ..... APPELLANT**

**AND**

**DANIEL LESHAN SEITAI ..... RESPONDENT**

**JUDGMENT**

1. The Appellant herein being aggrieved by the Judgement and Decree delivered on the 11.12.2023 (hereinafter referred to as “the Trial Court Judgement”) by the Honourable Cyprian Wafula Waswa, Senior Resident Magistrate (hereinafter referred to as the “the Trial Court”) in the proceedings known as Kilgoris Chief Magistrates Court Environment & Land Court Case No. E001 OF 2020 (hereinafter referred to as the “the Trial Court proceedings”) filed a Memorandum of Appeal dated 01.03.2024 (hereinafter referred to as “the present Appeal”) on the following grounds;-
  - i. The Learned Trial Magistrate erred in law and in fact by not making any finding as to the existence or otherwise of the Appellant’s Title No. Transmara/Shartuka/1722.
  - ii. Even in his Orders of 11<sup>th</sup> December 2023, the Learned Trial Magistrate recognised only the Respondent’s Title No. Transmara/Shartuka/206.
  - iii. The Learned Trial Magistrate erred in law and in fact by issuing a blanket order of eviction against the Appellant from the Title No. Transmara/Shartuka/206 without mentioning the specific measurements of the portion allegedly occupied by him (appellant).
  - iv. The Learned Trial Magistrate correctly made a finding that the Appellant has his own portion of land next to the Respondent’s property but fails to state with exactitude, the measurements of the Respondent’s portion allegedly occupied by him.



- v. The Learned Trial Magistrate failed to take cognizance of the fact that the Sub-County Surveyor made a finding that the measurements of the Respondent's parcel of land could not be completed because the person in occupation was not a party to the suit.
  - vi. The Learned Trial Magistrate erred in law and fact by not taking cognizance of the fact that there was another person in occupation of the Respondent's parcel of land other than the Appellant herein.
  - vii. The Learned Trial Magistrate failed to exhaustively consider the Appellant's evidence that he legally owns the land he occupies together with his family members.
  - viii. The Learned Trial Magistrate erred in law and fact by failing to exhaustively consider the Sections of *Land Registration Act*, 2012 quoted in his submissions.
  - ix. The Learned Trial Magistrate erred in law and fact by not following precedents set by this Honourable Court, the Honourable Justice S Okongo in similar cases whose judgements were supplied to him.
  - x. The Learned Trial Magistrate erred in law and fact by not taking cognizance of the fact that the Appellant acquired his Title Deed No. Transmara/Shartuka/1722 legally and procedurally through allocation in terms of Section 7 of the *Land Act*, 2012.
  - xi. The Learned Trial Magistrate erred in law and fact by not upholding the sanctity of the Appellant's title deed.
  - xii. The Learned Trial Magistrate erred in law and fact by believing the Land Registrar's erroneous assertion that the Appellant's title deed never existed and had been cancelled.
  - xiii. In the circumstances, the Learned Trial Magistrate gravely caused a miscarriage of justice and misdirected himself on the laws governing ownership of land.
2. The Appellant based on the above grounds sought for the following Orders in the present Appeal; -
    - a. The Appeal herein be allowed and the Judgement and Orders of the Trial Magistrate delivered on the 11<sup>th</sup> December 2023 be set-aside and/or quashed wholly.
    - b. The Honourable Court be pleased to substitute therefore an Order of dismissing the Respondent's suit No. ELC NO. E001 OF 2020 in its entirety with costs.
    - c. Costs of this Appeal be borne by the Respondents.
  3. The present Appeal was duly served on the Respondent who expressed his intention to oppose the same.
  4. Consequently, the Record of Appeal was admitted for hearing on the 24.07.2024 and parties were directed to canvass the same through written submissions.
  5. On the 26.09.2024, the Appellant filed his submissions in support of the present Appeal while the Respondent had filed his written submissions earlier on the 29.07.2024.
  6. To be able to appreciate the jurisdiction of this Court handling the present Appeal as the first Appellant Court, the case of *Selle & Another-versus- Associated Motor Boat Co.ltd & Others* (1968) EA 123



comes into play where the Court of Appeal expounded on the jurisdiction of a first appellate Court as follows; -

“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. This Court therefore is under a duty to once again look into the pleadings filed before the Trial Court as well as the evidence adduced therein and make its own conclusion keeping in mind that it did not have the opportunity of seeing and/or hearing the witnesses first hand.
8. Based on the above guidance, this Court will now take an opportunity and relook at the pleadings and evidence adduced before the Trial Court to be able to identify the issues for determination and make its own conclusion thereof.

### **Pleadings Before The Trial Court**

9. According to the present Appeal, the Respondent herein who was the Plaintiff before the Trial Court filed a Plaint dated 22.09.2020 seeking for the following Orders; -
  - a. Declaration that the Plaintiff is the registered and/or lawful owner of LR.NO.Transmara/Shartuka/206 (hereinafter referred to as “the suit property”).
  - b. An order of eviction against the Defendant, his agents and/or servants from LR.NO.Transmara/Shartuka/206.
  - c. Permanent injunction restraining the Defendant, either by himself, agents, servants from entering upon, re-entering, trespassing unto, building structures, cultivating, interfering with and/or in any other manner dealing with the suit property, that is LR.NO.Transmara/Shartuka/206 and/or any portion thereof.
  - d. An Order be issued by this Honourable Court declare that title deed for LR.NO.Transmara/Shartuka/1722 as null and void.
  - e. General Damages for trespass.
  - f. Interest and costs of this suit.
10. The facts pleaded by the Respondent before the Trial Court were as follows; -
  - i. The Respondent was the lawful and registered owner of the suit property measuring approximately 14.17 Hectares having being issued with a Title Deed on the 12.06.2013.
  - ii. By virtue of the Title Deed issued on 12.06.2013, the Respondent was entitled to be the sole and exclusive use of the suit property thereof.
  - iii. However, without the Respondent’s consent and/or any lawful legal rights, the Appellant herein entered into the suit property and began occupying the same by residing on the same thereby unlawfully interfering the Respondent’s ownership rights.
  - iv. The Respondent sought for an order of eviction against the Appellant and further a permanent injunction prohibiting the Appellant of any future use, occupation and/or trespass on the suit property.



11. The Appellant herein who was the Defendant before the Trial Court proceedings was duly served with the Plaint dated 22.09.2020 and filed a Statement of Defence dated 02.10.2020.
12. The Appellant in his Statement of Defence dated 02.10.2020 denied the Respondents allegations in the Plaint dated 22.09.2020 and put him to strict proof thereof.
13. The Appellant further pleaded in his Statement of Defence dated 02.10.2020 that he was the registered owner of the property known as LR.NO.Transmara/Shartuka/1722 in whose portion of land he had constructed his house and resides with his family.
14. The Appellant therefore specifically denied the allegation that he had trespassed into the suit property owned by the Respondent and sought to have the proceedings before the Trial Court dismissed with costs.

### **Testimony & Evidence Of The Respondent**

15. The hearing before the Trial Court began on the 25.04.2023 with the testimony of Respondent herein.
16. The Respondent introduced himself as a resident of Osupuko Sub-Location in Kilgoris who engaged in farming.
17. The Respondent testified that he was the lawful and registered owner of the suit property having obtained a Title Deed on the 12.06.2013.
18. In support of this testimony, the Respondent produced the following documents; -
  - Plaintiff Exhibit 1- Copy of Title Deed of the suit property issued on 12.06.2013.
  - Plaintiff Exhibit 2- Copy of an Official Search the suit property.
  - Plaintiff Exhibit 3- Copy of a Title Deed known as LR.NO.Transmara/Shartuka/1722.
  - Plaintiff Exhibit 4- Copy of a letter dated 02.08.2019.
  - Plaintiff Exhibit 5- Copy of a letter dated 08.08.2019.
  - Plaintiff Exhibit 6- Copy of a Charge Sheet.
  - Plaintiff Exhibit 7- Copy of a judgement pronounced on the 05.01.2021.
19. The Respondent after production of the above exhibits also adopted his witness statement thereof.
20. The Respondent's further testimony was that the Appellant herein had trespassed into the suit property without any lawful ownership rights and/or his consent and developed a homestead in which he was residing and grazing his cattle.
21. The Respondent informed the Trial Court that the Appellant had his own property known as LR.NO.Transmara/Shartuka/1722 which is different and distinct to the suit property.
22. The Respondent also testified that due to this unlawful entry and occupation of the suit property by the Appellant herein, Criminal Charges were instituted before the Senior Principal's Magistrate's Court and the Appellant convicted for being in possession of a fake title deed.
23. The Respondent further averred before the Trial Court that he also informed by the District Land Registrar that the Appellant's title deed which he was using to occupy the suit property was fake.
24. In conclusion, the Respondent sought the Trial Court to grant the prayers sought in the Plaint dated 22.09.2020.



25. On cross-examination by the Appellant's Counsel, the Respondent insisted that the Appellant had admitted to making a forged document but the admission was not recorded in the proceedings.
26. The Respondent confirmed that although the Appellant's title was deemed to be fake in the Criminal proceedings, the same was not cancelled and that is why he was seeking the said order in the Trial Court proceedings.
27. The Respondent reiterated that the District Land Registrar had actually testified in the Criminal proceedings against the Appellant and confirmed that the Title Deed for the property known as LR.NO.Transmara/Shartuka/1722 was not legitimate.
28. The Respondent informed the Trial Court that he was Member Number 206 in Shartuka Group Ranch and his details were duly recorded in the Shartuka Group Ranch register.
29. The Respondent averred that during the adjudication of Shartuka Group Ranch, the first sub-division was done under the Chairmanship of Joel Ole Tasur but the said sub-division was contested.
30. Thereafter, Joel Ole Tasur was removed as Chair of Shartuka Group Ranch and another Chair known as Moses completed the exercise of sub-division and issuance of title deeds.
31. The Respondent specifically denied any knowledge of his title deed to the suit property being cancelled.
32. On re-examination, the Respondent reiterated that the Appellant's title to the property known as LR.NO.Transmara/Shartuka/1722 was null and void.
33. The Respondent informed the Trial Court that he took a long time to file a case against the Appellant because they were related and he had actually asked for time to relocate.
34. The Respondent testified that the dispute relating to the leadership of Shartuka Group Ranch did not interfere with the suit property because the title deeds were issued by the Government.
35. At the end of this re-examination, the Respondent was discharged from the witness box.
36. The Respondent's second witness before the Trial Court was one Job Mito Kobado who was marked as PW 2.
37. PW 2 introduced himself as an Advocate of the High Court of Kenya who is currently employed by the Ministry of Lands serving as the Deputy Land Registrar, Transmara West, East and South.
38. PW 2 informed the Trial Court that he was in possession of the documents relating to the suit property in issue.
39. PW 2 stated that the suit property was registered in the name of the Respondent and is approximately 14.17 Hectares.
40. PW 2 confirmed to the Trial Court that the Green Card to the suit property does not have the name of the Appellant recorded anywhere.
41. PW 2 testified that the suit property was different and distinct to LR.NO.Transmara/Shartuka/1722.
42. Consequently, the suit property and the property known as LR.NO.Transmara/Shartuka/1722 could not possibly be in the same location.
43. PW 2 admitted that he had testified in the Criminal proceedings between the Respondent and the Appellant but was not aware of the judgement therein.



44. PW 2 concluded his testimony before the Trial Court by stating that the property known as LR.NO.Transmara/Shartuka/1722 did not exist within their records at the Lands Department.
45. At the end of his examination in chief, PW 2 produced before the Trial Court a copy of the Green Card to the suit property which was marked as Plaintiff Exhibit 8.
46. On cross-examination, PW 2 admitted that he had not visited the ground and/or any officer from his office had visited the ground.
47. PW 2 informed the Trial Court that the area known as Shartuka had experienced a lot of confusion because of various court cases which were being handled as far as Kakamega and Kisii.
48. PW 2 nevertheless stated that the property known as LR.NO.Transmara/Shartuka/1722 was cancelled in the previous proceedings relating to Shartuka Group Ranch.
49. PW 2 confirmed before the Trial Court that the sub-division of Shartuka Group Ranch was done twice initially by the Chairmanship Joel Ole Tasur and secondly during the Chairmanship of Moses.
50. However, PW 2 insisted that the title known as LR.NO.Transmara/Shartuka/1722 was cancelled in their records.
51. On re-examination, PW 2 was referred to the letter dated 08.08.2019 which indicated that the Title Deed known as LR.NO.Transmara/Shartuka/1722 did not originate from the Lands Department.
52. PW 2 further stated that the Title Deed LR.NO.Transmara/Shartuka/1722 had been signed by one Ratemo who was a Senior Clerical Officer allegedly on behalf of the Land Registrar.
53. PW 2 stated that from a perusal of the Judgement in Criminal Case No. 627 of 2017, the Appellant had been found guilty of forceful retainer of the suit property.
54. PW 2 confirmed that the Green Card to the suit property did not have the name of the Appellant.
55. At the end of this re-examination, PW 2 was duly discharged from the witness box.
56. The Respondent's third witness was one Moses Lemashon Korinko who was marked as PW 3.
57. PW 3 introduced himself as a resident of Olonkui Location and a Chairman of Shartuka Group Ranch.
58. PW 3 informed the Trial Court that the Respondent was the legitimate owner of the suit property having been allocated the same by the Adjudication Committee.
59. PW 3 denied knowledge of any allocation of the suit property to the Appellant herein.
60. According to PW 3, the Appellant was the one in occupation of the suit property that belongs to the Respondent.
61. PW 3 averred that the Appellant was indeed a resident of Shartuka because his father was one of the members of Shartuka Group Ranch and had been allocated the property known as LR.NO.Transmara/Shartuka/228.
62. In essence, PW 3 insisted that the suit property belongs to the Respondent and the Appellant did not have any rights of ownership and occupation over the same.
63. On cross-examination, PW 3 reiterated that he is the Chairman of Shartuka Group Ranch although he did not have any identification documents to that effect.



64. PW 3 informed the Court that the Respondent was a member of Shartuka Group Ranch and was allocated the suit property while the Appellant's father was also a member of Shartuka Group Ranch who was allocated the property known as LR.NO.Transmara/Shartuka/228.
65. PW 3 testified that the Appellant had invaded the suit property belonging to the Respondent and burnt down all the houses hence his arrest and arraignment in Court for criminal charges.
66. On re-examination, PW 3 informed the Trial Court that he did not come to testify on behalf of Shartuka Group Ranch.
67. However, out of his own knowledge, he was aware that the suit property belonged to the Respondent herein as per the allocation that had been done during his time as the chairman.
68. PW 3 insisted that the Appellant's father was the one that was a member of Shartuka Group Ranch and had been allocated the property known as LR.NO.Transmara/Shartuka/228.
69. At the end of this re-examination, PW 3 was discharged from the witness box and the Respondent closed his case thereafter.

### **Appellant's Testimony & Evidence**

70. The Appellant's case before the Trial Court began on the 30.10.2023 with the testimony of the Appellant.
71. The Appellant informed the Trial Court that he was not familiar with the Respondent and had only seen him in Court during this proceeding.
72. The Respondent then proceeded to adopt his witness statement dated 18.01.2021 as his evidence in chief.
73. In support of his evidence in chief, the Appellant produced the following documents; -  
Defence Exhibit 1- Copy of the title deed to the property known as LR.NO.Transmara/Shartuka/1722.  
Defence Exhibit 2- A copy of the judgement pronounced in ELC NO. 11 OF 2019.  
Defence Exhibit 3- A copy of a Ruling delivered in ELC NO.003 OF 2007.
74. In closing his evidence in chief, the Appellant denied invading the Respondent's suit property and in fact stated that he resides 25 Kilometres away from the Respondent.
75. On cross-examination, the Appellant reiterated that he was not familiar with the Respondent herein.
76. The Appellant nevertheless admitted that the Respondent had a title deed to the suit property.
77. The Appellant further admitted that he had been charged with a criminal offence wherein the Respondent was the complainant.
78. The Appellant confirmed that the Criminal Charge preferred against was that of trespassing on the suit property that belonged to the Respondent and he was subsequently convicted.
79. The Appellant averred that in his mitigation after being found guilty was that he would vacate the suit property.



80. The Appellant testified that the District Land Registrar who came to testify in the Criminal Charges stated that the title deed known as LR.NO.Transmara/Shartuka/1722 did not exist in the Lands Department records although he did not believe this evidence.
81. However, the Appellant admitted that he was found guilty of the offence known as forcible detainer of the suit property and fined by the Criminal Court.
82. On being referred to the Plaintiff's Exhibit 5, the Appellant confirmed that the contents of the letter indicate that the title deed to the property known as LR.NO.Transmara/Shartuka/1722 did not originate from the Lands Department.
83. The Appellant informed the Trial Court that he was familiar with PW 3 who had been a Chairman of Shartuka Group Ranch.
84. The Appellant stated that he was born in the year 1982 and therefore was only 10 years old when the sub-division of Shartuka Group Ranch was being undertaken.
85. The Appellant nevertheless denied ever trespassing into the suit property owned by the Respondent.
86. The Appellant insisted that he was in occupation of the property known as LR.NO.Transmara/Shartuka/1722 and that if the Trial Court would find him to be in trespass of the suit property, he would vacate the same.
87. On re-examination, the Appellant stated that the letter dated 08.08.2019 referred to a property known as LR.NO.Transmara/Shartuka/1772 and his property known as LR.NO.Transmara/Shartuka/1722.
88. The Appellant informed the Trial Court that Shartuka Group Ranch was dissolved and therefore PW 3 was no longer the Chairman.
89. The Appellant similarly denied ever burning down the suit property that belongs to the Respondent.
90. The Appellant further denied making any fraudulent title deeds and indicated that he did not have any machine to generate any title deed.
91. The Appellant informed the Trial Court that the Title Deed to LR.NO.Transmara/Shartuka/1722 was issued to him by the Registrar known as KAJEMBE in the year 2009.
92. In concluding the re-examination, the Appellant stated that Respondent was his relative.
93. At the end of this re-examination, the Appellant was discharged from the witness box and the Appellant closed his case.
94. After the closing of the Appellant's case, parties were directed to prepare, file and serve their final submissions in support of their cases.
95. The Respondent duly filed his submissions on the 06.11.2023 while the Appellant filed his written submissions on 24.11.2023.
96. The Court has indeed perused the pleadings filed by the parties, the testimonies of the parties and their witnesses, the documentary evidence produced before the Trial Court and the final submissions herein and identify the following issues for determination; -
  1. Issue no. 1- is the respondent the lawful registered owner of the suit property?
  2. Issue no. 2- has the appellant herein trespassed into the suit property?
  3. Issue no. 3- is the appellant's title known as lr.no.Transmara/Shartuka/1722 legitimate & legal?



4. Issue No. 4- Is The Respondent Entitled To The Prayers Sought In The Plaint Dated 22.09.2022?
  5. Issue No. 5- Is The Appellant Entitled To The Prayers Sought In The Present Appeal?
  6. Issue No. 6- Who Bears The Costs Of This Appeal?
97. The Court having identified the above issues for determination, the same will now be discussed as provided hereinbelow.

**Issue no. 1- is the respondent the lawful registered owner of the suit property?**

98. The first issue for determination between the parties herein is the ownership of the suit property.
99. The Respondent according to the Plaint dated 22.09.2022 claims to be the legitimate and lawful owner of the suit property by virtue of a Title Deed issued on the 12.06.2013.
100. The Respondent to support the above allegation produced the Title Deed to the suit property and the Official Search as Plaintiff Exhibit 1 & 2.
101. PW 2 who was the District Land Registrar further collaborated the Respondent's ownership by producing a Certified Copy of the Green Card relating to the suit property which is recorded in the name of the Respondent.
102. The Appellant on the other hand has not denied that the Respondent is the registered owner the suit property or produced any documentary evidence to the contrary.
103. Section 26 (1) of the *Land Registration Act*, No. 3 of 2012 expressly provides that a Certificate of Title shall be held as prima facie evidence of proprietorship.
104. Consequently, this Court hereby makes a finding that the Respondent herein is the duly legitimate and registered owner of the suit property as contained in the Title Deed issued on the 12.06.2013 and the Green Card produced as PLAINTIFF EXHIBIT 8.

**Issue No. 2- Has The Appellant Herein Trespaced Into The Suit Property?**

105. The second issue for determination is whether or not the Appellant herein trespassed into the Respondent's suit property.
106. According to the evidence by the Respondent, the Appellant herein entered into the suit property without his consent and/or any legal rights of ownership and constructed his homestead on the same.
107. The Respondent testified that the Appellant's actions of trespassing into the suit property resulted to Criminal proceedings being preferred against the Appellant and a conviction obtained.
108. The Respondent to proof the Appellant's actions relied on the proceedings on Kilgoris Criminal Case No. 627 Of 2019 Between Republic-versus- Benjamin Lemashopn Seperiari (The Appellant) which were produced as Plaintiff Exhibit 7.
109. The Appellant on the other hand denied trespassing and/or entering into the suit property belonging to the Respondent.
110. The Appellant testified that he is in occupation of a property known as LR.NO.Transmara/ Shartuka/1722 which in fact is about 25 Kilometres from the suit property.



111. The Appellant nevertheless admitted that he was the accused in the proceedings known as KILGORIS CRIMINAL CASE NO. 627 OF 2019 wherein the Respondent was the Complainant and the subject matter was the suit property herein.
112. To be able to ascertain whether or not the Appellant trespassed into the Respondent's suit property, this Court has taken time to go through the Criminal Charge Sheet against the Appellant wherein the Respondent was the complainant.
113. The Criminal Charge Sheet against the Appellant herein was produced as Plaintiff Exhibit 6 and it shows that the Complainant was the Respondent herein.
114. The offence indicated in the Criminal Charge Sheet against the Appellant is that of forcible detainer contrary to Section 91 of the Penal Code Cap 63 Laws of Kenya.
115. The facts on the Criminal Charge Sheet against the Appellant was that in the year 2010, the Appellant forcefully took possession of the suit property from the Respondent without any colour of right and held possession of the said land in a manner likely to cause a breach of peace against the Respondent.
116. The Appellant during cross-examination by the Respondent's Counsel before the Trial Court admitted to have been charged with the above offence and convicted accordingly.
117. The Respondent's evidence which is marked as Plaintiff Exhibit 7 is a copy of the Judgement emanating from the proceedings known as Kilgoris Criminal Case No. 627 OF 2019 dated 03.02.2023.
118. A perusal of the Judgement pronounced on 03.02.2023 in the proceedings known as Kilgoris Criminal Case No. 627 OF 2019 confirms that the Appellant herein forcefully entered into the suit property owned by the Respondent and occupied the same without any legal right and/or his consent.
119. Based on the contents of the Judgement pronounced on 03.02.2023 in the Kilgoris Criminal Case No. 627 OF 2019, this Court hereby makes a finding that there is no doubt the Appellant trespassed into the suit property belonging to the Respondent and should therefore vacate and hand over possession of the same as he is a trespasser on the same.

**Issue No. 3- Is The Appellant's Title Known As Lr.no.Transmara/Shartuka/1722 Legitimate & Legal?**

120. The third issue for determination is the legality of the Appellant's title known as LR.NO.Transmara/Shartuka/1722.
121. The Appellant testified before the Trial Court that he was the registered owner of the property known as LR.NO.Transmara/Shartuka/1722 based a Title Deed issued on the 22.09.2009 which was produced as Defence Exhibit 1.
122. In support of his ownership of the property known as LR.NO.Transmara/Shartuka/1722, the Appellant also produced the Judgement pronounced on the 12.04.2016 by Hon Justice S. Okongo in the proceedings known as Kisii High Court Case NO. 37 OF 2012 which was produced as Defence Exhibit 2 and a Ruling pronounced on the on 19.05.2020 in the proceedings known as Kilgoris Elc Petition No. 3 OF 2017 produced as Defence Exhibit 3.
123. The Respondent in response to the above testimony and documentary evidence adduced by the Appellant called the District Land Registrar who testified as PW 2.



124. The District Land Registrar testified before the Trial Court and stated that the property known as LR.NO.Transmara/Shartuka/1722 did not exist in the Land Departments records and the Title Deed held by the Appellant in fact did not emanate from Kilgoris Land Registry.
125. In essence, the District Land Registrar disputed the legitimacy of the Appellant's property known as LR.NO.Transmara/Shartuka/1722 in toto.
126. To resolve the legality of the Appellant's title deed known as LR.NO.Transmara/Shartuka/1722, this court refers to Section 7 of the [Land Registration Act](#), No. 3 of 2012 which provides as follows; -
- “(1) There shall be maintained, in each registration unit, a land registry in which there shall be kept-
- a. A land register in the form to be determined by the cabinet secretary;
  - b. The cadastral map;
  - c. Parcel files containing the instruments and documents that support subsisting entries in the land register;
  - d. Any plans which shall, after a date appointed by the cabinet secretary be geo-referenced;
  - e. The presentation book, in which shall be kept a record of all applications numbered consecutively in the other in which they are presented to the registry.
  - f. An index, in alphabetical order, of the names of the proprietors; and
  - g. A register and file of Power of Attorneys.
127. Section 26 of the [Land Registration Act](#), No. 3 of 2012 provides that a Certificate of Title shall be held as prima facie evidence of proprietorship.
128. Section 35 (3) of the same [Land Registration Act](#), No. 3 of 2012 provides as follows; -
- “Every entry or note in or on any register, cadastral map or filed plan shall be received in all proceedings as conclusive evidence of the matter or transaction that it records”
129. This Court having gone through the above Sections of the [Land Registration Act](#), No. 3 of 2012, it is important for the Appellant's title to be verified in its legality against the provisions of the law.
130. To begin with, the Appellant produced a Title Deed over the property known as LR.NO.Transmara/Shartuka/1722 issued on the 22.09.2009.
131. However, the Appellant did not produce an Official Search from the offices of the District Land Registry to verify the entries contained in the Title Deed issued on the 22.09.2009 relating to the property known as LR.NO.Transmara/Shartuka/1722.
132. PW 2 who was the District Land Registrar testified that the property known as LR.NO.Transmara/Shartuka/1722 did not exist in their District Land Registry and in fact the Title Deed produced by the Appellant did not emanate from their offices.



133. PW 2 sought to rely on the letter dated 08.08.2019 which was signed by one H.N.RATEMO on behalf of the District Land Registrar.
134. Based on the above facts, it is clear to this Court that the District Land Registrar who is in charge and/or mandated to run the Land Registry within Kilgoris Land Registry as provided for under Section 7 of the Land Registration Act, No. 3 of 2012 does not have any register of the Appellant's property known as LR.NO.Transmara/Shartuka/1722.
135. In other words, the District Land Registrar who appeared as PW 2 does not have any Land Register (Green Card), Cadastral Map and/or Parcel file containing the instruments and documents that support the subsisting entries in the Land Register to confirm the validity of the Appellant's title deed known as LR.NO.Transmara/Shartuka/1722.
136. This being the case, then it goes without saying that neither the Land Registrar nor this Court can undertake an Official Search of the Appellant's property known as LR.NO.Transmara/Shartuka/1722 as the Kilgoris Land Registry does not have any Land Register whose entries, cadastral maps or filed plans can be used as conclusive evidence that the Appellant's property known as LR.NO.Transmara/Shartuka/1722 is indeed lawful and legitimate.
137. The inevitable conclusion from the above scenario is that the Appellant's Title Deed known as LR.NO.Transmara/Shartuka/1722 is illegitimate, forged, null and void and cannot be used a prima facie evidence of ownership as envisaged under Section 26 of the Land Registration Act, No.3 of 2012.

**Issue No. 4- Is The Respondent Entitled To The Prayers Sought In The Complaint Dated 22.09.2020?**

138. Based on the findings issues No.1,2 and 3, this Court is of the considered view that the Respondent was indeed entitled to the prayers sought in the Complaint dated 22.09.2020.

**Issue No. 5- Is The Appellant Entitled To The Prayers Sought In The Present Appeal?**

139. Unfortunately, this Court makes a finding that the Trial Court Judgement pronounced on 11.12.2023 was proper and in accordance to the law hence the Appellant herein is not entitled to the prayers sought in the present Appeal.

**Issue No. 6- Who Bears The Costs Of This Appeal?**

140. Costs usually follow the event and, in this Appeal, the Appellant has not been successful and will therefore pay the costs of this Appeal to the Respondent.

**Conclusion**

141. In conclusion, this Court hereby makes the following Orders in determination of the present Appeal; -
- A. The memorandum of appeal dated 01.03.2024 be and is hereby dismissed.
  - B. The appellants shall bear the costs of this appeal.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 18.11.2024.**

**EMMANUEL.M.WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Mr. Ngeno



Advocate For The Appellant: Mr. Bigogo

Advocate For The Respondent: Mr. Ochwangi

