



**Kaggs Investment Limited v Nyakwara & 2 others (Environment and Land Appeal E016 of 2024) [2025] KEELC 514 (KLR) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 514 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND APPEAL E016 OF 2024**

**M SILA, J**

**FEBRUARY 12, 2025**

**BETWEEN**

**KAGGS INVESTMENT LIMITED ..... APPELLANT**

**AND**

**JACKLINE NYANDUKO NYAKWARA ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR, KISII COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. Caroline A. Ocharo, Chief Magistrate, delivered on 18 April 2024, in the suit Kisii MCELC No. E074 of 2021)*

**JUDGMENT**

(1<sup>st</sup> respondent having filed suit complaining that the Land Registrar has illegally cancelled her title and in place caused a register to be created indicating that the appellant is the one with good title; at the trial, court finding that the Land Registrar erred in cancelling the title of the 1<sup>st</sup> respondent and also holding that of the two titles, it is that of the 1<sup>st</sup> respondent which is a good title; on appeal; need to establish the root of title in situations where two parties display title to the same land; court scrutinizing the root of title and the documents presented by both appellant and 1<sup>st</sup> respondent; an assessment of the documents revealing that in fact it is the appellant who has the better title and not the 1<sup>st</sup> respondent; title of the 1<sup>st</sup> respondent ordered cancelled; court of opinion that it was wrong for the Land Registrar to cancel title as he has no power to determine which of two titles is genuine; however nothing turns on that as at the end of the day, the title of the appellant is upheld; judgment of the trial court set aside and orders made for the cancellation of the title of the 1<sup>st</sup> respondent)

1. The suit upon which this appeal is founded was commenced through a plaint filed by the 1<sup>st</sup> respondent on 16 June 2021, wherein the 1<sup>st</sup> respondent sued the appellant as 1<sup>st</sup> defendant, the Land Registrar



Kisii as 2<sup>nd</sup> defendant, and the Attorney General as 3<sup>rd</sup> defendant. In the plaint, the 1<sup>st</sup> respondent averred that she acquired the land parcel Kisii Municipality/Block I/586 (the suit land) in 2018 through purchase. She pleaded that the suit land was initially registered in name of one Jared Magwaro Ondieki since 30 June 1999 having acquired it from the original allottee one Herbert Misati Momanyi who got registered on 7 January 1990. The 1<sup>st</sup> respondent averred that she conducted a search on 21 January 2020, which showed her as the registered proprietor, save for a restriction registered on 21 February 2019 by the appellant. She pleaded that on 24 January 2020, she approached the 2<sup>nd</sup> respondent (Land Registrar, Kisii) to find out the basis of the restriction and the 2<sup>nd</sup> respondent in exercise of her powers lifted the restriction with remarks that it was erroneously entered. She did a further search on 25 March 2021 and discovered that her registration as proprietor had been cancelled, and the name of the appellant entered as proprietor backdated to 18 November 2014. She contended that this was done without jurisdiction, without notice, and was a fraudulent and corrupt practice. She asserted that the register of the suit land was opened on 7 January 1990 contrary to what is now contained in the register, indicating that the register was opened on 18 November 2014 with the appellant as the 1<sup>st</sup> registered proprietor.

2. In the plaint, the 1<sup>st</sup> respondent asked for the following orders :
  - a. A declaration that the Land Registrar had no powers to cancel her registration as proprietor of the suit land;
  - b. A declaration that she was registered as owner of the suit land as purchaser for value without notice;
  - c. A declaration that the cancellation of her registration without notice was illegal, null and void;
  - d. A declaration that the cancellation and backdating of the registration of the appellant was unconstitutional, illegal and null and void.
  - e. An order for cancellation and rectification of the register in favour of herself;
  - f. A permanent injunction to restrain the defendants from dealing with the suit property;
  - g. General damages for unlawful cancellation of title;
  - h. Costs;
  - i. Interest on (g) and (h) from the date of judgment till payment in full.
3. The appellant, a limited liability company, entered appearance and filed defence. She pleaded that the suit land was originally owned by one Zachary Nyayiemi Moturi who transferred it to the appellant on 12 November 2014. She pleaded being a stranger to the pleadings of the 1<sup>st</sup> respondent and put her to strict proof. She averred that she has never colluded with the 2<sup>nd</sup> respondent and refuted all allegations of fraud.
4. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents entered appearance through the State Law Office and filed a joint statement of defence. They denied the contents of the plaint and averred that if any cancellation of title was done, it was done after following due procedure. The particulars of fraud and illegality were denied.
5. At the hearing of the suit, the 1<sup>st</sup> respondent testified that she lives and works in Seattle, USA, working as a nursing assistant, and that is where she has been living since 2014, though she comes periodically for holidays. She testified that she purchased the suit land from one Jared Ondieki and she was given the previous documents of proprietorship which she produced. I will elaborate on the documentation and her other evidence later during my analysis, suffice to state at this stage that she mentioned that



- the sale agreement dated 12 September 2016 and transfer of lease were not signed by her but by her mother one Mellen Mora Nyakwena. She alleged that she had given her mother a power of attorney which she however failed to produce. With that evidence, the 1<sup>st</sup> respondent closed her case.
6. DW-1 was Charles Kibandi Kaguoya. He is an advocate of the High Court of Kenya and a businessman. He is a director of the appellant. His evidence was that the appellant acquired the suit land in 2014 from one Zachary Moturi who was the previous registered proprietor. He produced various documents to support the contention that it was Zachary who was the first registered proprietor. I will also analyse this a little later in the judgment suffice to state at this juncture that part of what he produced was an allotment letter in name of Zachary Moturi. He was cross-examined on whether Zachary made payment within 30 days of the allotment letter but he did not know of this. He also did not have minutes allocating the plot to Zachary Moturi. He acknowledged that the transfer of lease is dated 19 November 2014 though the Certificate of Lease is dated 18 November 2014 which he attributed to errors as transfer needs to come before issue of the Certificate of Lease. He stated that he took possession and leased the property to someone. He acknowledged not having a counterclaim. The rates records are still in name of Zachary Moturi.
  7. DW – 2 was Zachary Nyayiemi Moturi. He testified that he is now retired. His evidence was that the suit property was his until 2014 when he sold it to the appellant. He testified that he was allotted the suit land as an unsurveyed plot by the Municipal Council of Kisii. Survey was done and a lease processed. While he held title he had mortgaged it to National Bank. He repaid the loan and sold the plot. He testified that he was in possession of the land growing crops before he sold it.
  8. With the above evidence the appellant closed her case.
  9. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents did not call any witness.
  10. Counsel filed their submissions culminating in the impugned judgment delivered on 18 April 2024. In the judgment, the trial Magistrate castigated the 2<sup>nd</sup> respondent (Land Registrar, Kisii) for not coming to court to testify and was of opinion that it was only the 2<sup>nd</sup> respondent who would be in a position to explain the circumstances under which the 1<sup>st</sup> respondent's title was cancelled and why the appellant registered a restriction. She found that the appellant neither pleaded fraud nor filed a counterclaim for any relief against the 1<sup>st</sup> respondent. She questioned the Certificate of Lease of the appellant dated 18 November 2014 despite transfer being effected the day after. She wondered why the appellant would register a restriction on her own property on 21 February 2019 yet she had a Certificate of Lease issued on 18 November 2014. She opined that the appellant and the 2<sup>nd</sup> respondent failed to explain under what circumstances the Certificate of Lease of the 1<sup>st</sup> respondent was cancelled. She held that the Land Registrar lacked the power to unilaterally cancel the 1<sup>st</sup> respondent's title. She could not fault the 1<sup>st</sup> respondent for forming the opinion that the appellant had colluded with the 2<sup>nd</sup> respondent to obtain title to the suit property. She was not persuaded that the appellant held a better title than that of the 1<sup>st</sup> respondent. She however found it improper for the 1<sup>st</sup> respondent's mother to have transacted on her behalf and signed documents in her absence but held that the 1<sup>st</sup> respondent had explained how she acquired her interest unlike the appellant whom she held 'did not place any document' before the court. She found no evidence that the documents of the 1<sup>st</sup> respondent are not genuine. She determined that the 1<sup>st</sup> respondent had proved her case and that the appellant does not hold a genuine or better title than her. She further held that the 1<sup>st</sup> respondent had proved that she had a valid title that was cancelled under unexplained circumstances and she needed to be put back to her position as registered proprietor. She was of the view that had the appellant been aggrieved, following the lodging of the restriction, she ought to have moved court appropriately for cancellation of title and not act in collusion with the 2<sup>nd</sup> respondent. She found that the 1<sup>st</sup> respondent was entitled to damages and awarded her



Kshs. 200,000/= to be paid by the appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. She made the following final orders (verbatim) :

- i. A declaration be and is hereby issued that the Land Registrar had no powers to cancel the plaintiff's registration over the suit property LR No. Kisii Municipality Block I/586.
  - ii. A declaration be and is hereby issued that the plaintiff was the registered owner of the suit property LR No. Kisii Municipality Block I/586 as a purchaser for value without notice.
  - iii. A declaration be and is hereby issued that the cancellation of registration of the plaintiff as owner of the suit property without notice was illegal null and void.
  - iv. A declaration be and is hereby issued that cancellation and backdating of registration of the 1<sup>st</sup> defendant over the suit property was unconstitutional, illegal, null and void.
  - v. An order for cancellation and rectification of register of the suit property in favor of the plaintiff be and is hereby issued.
  - vi. Permanent injunction restraining the defendants by their agents, servants and/or any other person acting under their instructions from trespassing, alienating, charging or dealing with the suit property in any manner be and is hereby issued.
  - vii. General damages for unlawful cancellation of title at Kshs. 200,000/= to be borne by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
  - viii. Costs of the suit.
  - ix. Interest on item (7) and (8) from the date of judgment till payment in full.
11. Aggrieved, the appellant filed this appeal. Fourteen grounds are listed and I see no need of setting all of them out. I think it is enough to state that the appellant contests the decision to uphold the title held by the 1<sup>st</sup> respondent instead of the title of the appellant and the appellant wishes to have the judgment set aside together with costs.
  12. I invited counsel to file submissions and I have taken note of the submissions filed together with the oral submissions made in court by Mr. Mogire for the appellant and Mr. Ochoki for the 1<sup>st</sup> respondent. Ms. Osebe, appearing for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, stated that they support the appeal and the submissions of the appellant.
  13. This is a first appeal and the duty of a first appellate court is to reevaluate the evidence and draw its own conclusion taking into account that it did not see the witnesses who testified.
  14. The core issue in the case is who between the appellant and the 1<sup>st</sup> respondent holds a better title to the suit property. There is a secondary issue as to whether the Land Registrar has power to cancel a title, as the 1<sup>st</sup> respondent came to court on the assertion that it was wrong for the Land Registrar to purport to cancel her title. I will deal with these two main issues in the following discourse.
  15. Let me straight away go into assessing who has good title to the suit land. Invariably, this requires a review of the documentary evidence presented and an investigation of the root of title. It is the person who can trace his title to a solid foundation with no break in the chain who will need to be adjudged as having good title, or at least a better title than the one presenting the competing title which may fail the test.
  16. I will start with assessing the title of the 1<sup>st</sup> respondent. She did claim that she purchased the suit property from one Jared Magwaro and the property was transferred to her vide a transfer dated 6



November 2017. There is of course the not too small matter of her acknowledging that she never signed the transfer instrument but I will ignore that for now. She did produce an extract of the leasehold register (White Card) that bears the history of her title and it shows that the first registered proprietor was one Herbert Misati Momanyi who got registered as proprietor on 7 January 1990 and was issued with a Certificate of Lease on the same day. The second proprietor was the one who sold to her the land i.e Jared Magwaro Ondieki and the White Card shows that he became registered as proprietor on 30 June 1999, and was similarly issued with the Certificate of Lease on the same day. It was on 28 February 2018 that the 1<sup>st</sup> respondent got registered as proprietor and she got her Certificate of Lease on the same day. The root of title is therefore that of Herbert Misati Momanyi, and the chain of proprietorship from the first proprietor is to Jared Magwaro then to the 1<sup>st</sup> respondent.

17. The 1<sup>st</sup> respondent did produce some documents supporting the first proprietorship of Herbert Misati. She produced a document said to be minutes showing allocation of the land to Mr. Misati, a letter of allotment, and a Lease instrument. I have scrutinized these documents. What was produced purporting to be the minutes is actually not the original minutes of 26 March 1973 nor a copy of the original minutes of 26 March 1973. What was produced is a document dated 21 May 1998 purporting to be an extract of the minutes of 26 March 1973. I doubt its authenticity. I would have been more impressed if the actual minutes of 26 March 1973, or a copy made from the original minutes, was presented, rather than a typing in a separate sheet purporting to be a true copy of the minutes of 26 March 1973. Whatever the case, even if we are to assume that the document depicts the correct minutes, this is all that the minutes say in respect of the suit land :

“The following names were recommended by the committee to get plots :-

(71) ... (not relevant).

(72) Herbert Misati – Nyanchwa – unsurveyed plot Box 3520 Kisii.”

18. The actual identity of the plot to be allocated is not stated, and we cannot say, merely by looking at the above minutes, that what was allocated pursuant to the above minutes is the particular plot in dispute. All the minutes say is “unsurveyed plot” with no identity of the plot provided.
19. The next document is the allotment letter which is dated 8 January 1986. I am of course now quite puzzled that an allocation made in 1973 would produce a letter of allotment in 1986 about 13 years later and this was never explained. This is extremely unusual. Neither does the allotment letter make any reference to the purported minutes of 26 March 1973, but again let us put this aside. The allotment letter says that Herbert Misati Momanyi of P.O Box 35, Kisii, has been allotted an unsurveyed residential plot- Kisii Municipality. At the outset you will see that the minutes and the allotment letter indicate different postal address numbers, but more importantly, the allotment letter is blank on the plan number of the plot being allotted, and whatever was produced did not have a Part Development Plan (PDP) attached to it. The allotment letter indicates that a sum of Kshs. 6,630/= is to be paid within 30 days but there was never produced any proof of payment of the amount indicated in the allotment letter within 30 days or at all. I see that among the payments to be made was conveyancing fees of Kshs. 500/= , registration fees of Kshs. 100/= and survey fees of Kshs. 2,290/=. No receipt showing payment of these amounts was provided. I will come to the figures indicated in the allotment letter for payment a little ahead, suffice at this juncture to emphasise the point that no evidence of payment of these fees was presented. There was also no evidence tendered of any survey of the unsurveyed plot, nor any evidence of any survey plan to indicate that indeed Herbert Misati undertook a survey of this plot for purposes of having it registered.



20. The next document that was produced was the Lease to Herbert Misati Momanyi and I have also given it a close look. It does not state the date received for registration nor does it indicate the Presentation Book number. Neither does it indicate the registration fees paid nor the receipt number. The parts of the document where these details are supposed to be filled are all blank. What this means is that there is absolutely no proof of this purported Lease being received in the Land Registry for registration and there is no proof of its registration. Moreover, we do not have exhibited any letter from the Commissioner of Lands forwarding the purported lease to the Land Registrar, Kisii, for registration. The above are very glaring omissions and they bring me to the conclusion that this is not a genuine lease, or if it is, then it was never registered in the Land Registry. Without such lease being registered, it cannot be said that Herbert Misati Momanyi, ever obtained a lease to the suit property. I have in fact not seen any evidence of a Certificate of Lease in his name produced in evidence. I am fully persuaded that this purported lease is a fake document.
21. My conclusion is that no lease was ever prepared nor registered in name of Herbert Misati Momanyi. As I have pointed out, there is absolutely no evidence of the registration of this purported lease. Moreover, there is also no evidence of Herbert Misati Momanyi ever being recognized as a rate payer. Not a single receipt in name of Herbert Misati Momanyi was produced to show that he was a rate payer of the suit property.
22. In a nutshell, there is no proof of allotment of the land to Mr. Misati; and assuming that the minutes are proof, there is no connection between the minutes and the suit land to lead to the allotment letter; and assuming that the allotment letter is genuine, there is no proof of payment of the amounts indicated in the allotment letter within 30 days or at all so as to allow a survey; and assuming that indeed the allotment letter was issued and paid for, there is no proof of the survey of the land; and assuming that all was well up to this time, there is no proof of a good lease having been issued by the Commissioner of Lands or registration of such lease. There is no proof of issuance of a Certificate of Lease in the name of Mr. Misati; and no proof of any payment of rates for the suit property by Mr. Misati. In addition, we have absolutely no evidence of a transfer of the suit property from Mr. Misati to Mr. Jared Magwaro. No transfer instrument, no consent to transfer was produced, and also nothing was produced to show that there was payment of any registration fees or stamp duty for purposes of transferring the suit property to Jared Magwaro.
23. From the blues however, we now have a Certificate of Lease in name of Jared Magwaro and some documents of 2017 just prior to the transfer to the 1<sup>st</sup> respondent of payment of rates by the said Jared Magwaro. I am not persuaded that Jared Magwaro held any good title to the suit property that he could transfer to the 1<sup>st</sup> respondent. The foundation of the title of Mr. Misati, as I have demonstrated above, is downright fraudulent, and whatever the case, there is no evidence of any transfer of the suit property to Jared Magwaro.
24. Let me pause here and now assess the position of the appellant and the documents that she presented regarding proprietorship of the suit property.
25. The case of the appellant is that the first allottee of the suit property is Zachary Moturi. The appellant not only presented Zachary Moturi as her witness but also availed the documents evidencing that Zachary Moturi was the first proprietor. I have looked at them. First was produced some two receipts issued on 21 November 1985. The first is receipt No. 17886 of Kshs. 1,000/=, being plot deposit, followed by receipt No. 17887 of 100/= being payment for application for a plot. You will recall that the 1<sup>st</sup> respondent produced no such receipts. There is an allotment letter dated 12 May 1986 which shows that Zachary Moturi was allotted an unsurveyed plot No. 34 and this allotment letter has a plan number 31002/XX/93A, contrasted with the allotment letter presented by the 1<sup>st</sup> respondent



which has no plan number. The allotment letter indicates that part of what is payable is conveyance fees of Kshs. 350/=, registration fees of Kshs. 50/= and survey fees of Kshs. 970/= . (I will come back to these amounts indicated in the allotment letter). There is a receipt No. 642388 dated 22 March 1989 indicating payment inter alia of Kshs. 350/= for conveyancing, Kshs. 50/= for registration and Kshs. 970/= for survey fees. In essence there is proof of payment of the monies indicated in the allotment letter. There was produced a letter dated 25 September 1987 from the Kisii Municipal Council to Zachary N. Moturi informing him that the Plot No. 34 allotted to him has been surveyed. There was also produced a letter dated 11 November 1994 from the Commissioner of Lands to the District Registrar, Kisii, forwarding a lease in quadruplicate for registration. The lease in favour of Zachary Nyayiemi Misati was produced. It shows that it was received for registration on 29 November 1994 vide Presentation Book number 333/11/94. The amount of registration fees is indicated as paid vide receipt number 062509. I see nothing wrong in this lease as there is proof of it being forwarded for registration and there is proof of registration as compared to the lease produced by the 1<sup>st</sup> respondent which does not have these details. I have also seen documents whereby Mr. Moturi applied for change of user of the property from residential to commercial and a clearance certificate dated 2 December 1996 accompanied by a receipt of Kshs 500/= being payment for the clearance certificate. There are various receipts indicating payments being done by Mr. Moturi to the Kisii Municipal Council, for example Kshs. 1,200/= for rates, paid on 2 December 1996. There was also produced the transfer of lease from Mr. Moturi to the appellant and I see that it shows it was executed on 12 November 2014 and registered on 19 November 2014. That is indication of transfer of title from the first proprietor to the appellant without a break therein.

26. I really see nothing wrong with the documents of the appellant. As I have said they demonstrate that Mr. Moturi was allotted the land; that it was surveyed; that he got a lease; that the lease was registered; and that he transferred the title to the appellant. I have already poked holes in the documents presented by the 1<sup>st</sup> respondent which to me look extremely dubious.
27. I had earlier mentioned the amounts indicated in the two allotment letters and promised to have a discussion on the same. I think this is a good place to have that discussion. The Government Lands Act, Cap 280, provided for fees payable for registration and conveyancing in respect of Government land. These fees were contained in schedules to the Government *Land Act*. Two Schedules are relevant in our case, that is, The Government Lands (Fees) Rules ([Legal Notice No. 172 of 1976](#)) and The Government Lands (Conveyancing Fees) Rules ([Legal Notice No. 173 of 1976](#)). These were the fees applicable as at 1986. In respect of a lease, conveyance, agreement, concession, or licence, the amount payable under the Government Lands (Conveyancing Fees) Rules was Kshs. 350/=. In respect of registration, the Government Lands (Fees) Rules provided that the amount payable was Kshs. 50/= per title. Now, let us look again at the two allotment letters. It is the allotment letter produced by the appellant in name of Mr. Moturi which indicates the correct fees and in addition, there is evidence of their payment. The allotment letter produced by the 1<sup>st</sup> respondent shows Kshs. 500/= for conveyancing and Kshs. 100/= for registration, yet these were not the fees payable at the time. Moreover, as we have already seen, no receipt was produced. My conclusion that it is the allotment letter of Mr. Moturi which is the genuine one is fortified by this finding.
28. From the foregoing , it is as clear as day, that it is the title of the appellant which is a better title and not that of the 1<sup>st</sup> respondent. There was some heavy weather made regarding the date in the title of the appellant, i.e 18 November 2014 yet registration was done on 19 November 2014. That to me, is nothing more than a clerical error.
29. In my assessment, it is most likely that the person who purported to sell the suit property to the 1<sup>st</sup> respondent is the one who perpetrated the fraud. I sympathise with the 1<sup>st</sup> respondent, and regret to



inform her that she was not sold a genuine title, but only hot air, by some very good and sophisticated fraudsters.

30. The 1<sup>st</sup> respondent of course came to court complaining that her title was irregularly cancelled by the Land Registrar, which brings me to the second issue, that is whether the Land Registrar was correct in cancelling her title. It was not correct for the Land Registrar to take the law into his/her hands and cancel the title of the 1<sup>st</sup> respondent. One cannot ask the Land Registrar to hear a dispute regarding two titles for that is a jurisdiction that only the court has. I was in fact not referred to any law that justifies cancellation of a title by the Land Registrar in favour of another, or the Land Registrar sitting to determine which of two titles is the one to be upheld. If there is a scenario where there are two registers and two titles, then the person who contests the register needs to come to court for that to be resolved. That would be my short answer to this second issue. Thus it was wrong for the Land Registrar to purport to cancel the 1<sup>st</sup> respondent's title and it must have been in collusion with the appellant. If the appellant thought that there is somebody else with her title the appellant ought to have filed suit for the cancellation of that other title, not go and ask the Land Registrar to change the records without an order of court.
31. But in the context of this case, nothing of significance turns out on the action of the Land Registrar. It does not change the fact that the title of the 1<sup>st</sup> respondent is a bad title. The material finding is that it is the title of the appellant which is found to be the better title, and that being the case, the title of the 1<sup>st</sup> respondent must be declared null and void, and is hereby cancelled.
32. There was contention that the appellant had no counterclaim, which is true. I agree that the appellant could have come to court with better pleadings. However, again we cannot run away from the reality that the 1<sup>st</sup> respondent has no title and that this court finds that it is the appellant with the better title. The poverty in the pleadings of the appellant will not change the fact that the 1<sup>st</sup> respondent's title has a fraudulent origin and is not good.
33. From the foregoing it will be seen that I am persuaded to set aside the judgment of the trial Magistrate. It is substituted with an order that the title of the 1<sup>st</sup> respondent is declared to be fraudulent, null and void, and is hereby cancelled. The Land Registrar, Kisii is hereby ordered to cancel the register indicating the origin and current status of the purported title of the 1<sup>st</sup> respondent and no dealings ought to be registered in it. The register to be maintained in the Land Registry should be that demonstrated by the appellant.
34. In essence I find no merit in the case of the 1<sup>st</sup> respondent and I substitute the judgment of the trial court with an order that the suit of the 1<sup>st</sup> respondent is dismissed with costs. The appellant shall also have the costs of this appeal against the 1<sup>st</sup> respondent. There is no order made in favour of or against the 2<sup>nd</sup> & 3<sup>rd</sup> respondents in respect of costs.
35. Judgment accordingly.

**DATED AND DELIVERED THIS 12 DAY OF FEBRUARY 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Omagwa h/b for Mr. Mogire for the appellant

Mr. Ochoki for the 1<sup>st</sup> respondent



Mr. Wabwire for the 2<sup>nd</sup> & 3<sup>rd</sup> respondents

Court Assistant : Michael Oyuko

