



Kerianko & 3 others v PJ Dave Flowers Limited & 3 others (Environment and Land Appeal E010 of 2023) [2025] KEELC 3240 (KLR) (27 March 2025) (Judgment)

Neutral citation: [2025] KEELC 3240 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E010 OF 2023
LC KOMINGOI, J
MARCH 27, 2025**

BETWEEN

**PHILIP OLE SIRONKA KERIANKO 1ST APPELLANT
ANASTACIA TANA KERIANKO 2ND APPELLANT
COLLINS SARUNI KERIANKO 3RD APPELLANT
EMMANUEL TINGA SIRONKA 4TH APPELLANT**

AND

**PJ DAVE FLOWERS LIMITED 1ST RESPONDENT
PJ DAVE FLORA LIMITED 2ND RESPONDENT
HITESH PRAVIN DAVE 3RD RESPONDENT
LAND REGISTRAR KAJIADO 4TH RESPONDENT**

(Being an Appeal against the Judgement and Decree of Hon. I. M. Kahuya in Kajiado Magistrate's Court ELC Case No. E027 of 2022 delivered on 22nd March 2023)

JUDGMENT

1. In her Judgement dated and delivered on 22nd March 2023 in SPM ELC Case No. E027 of 2022, the learned Trial Magistrate Hon. I. Kahuya found that the Respondents had proven their case against the 1st Appellant and ordered:
 - a. That a declaration do issue that the 1st Plaintiff is the bonafide and legally registered owner of suit property namely Kajiado/Kaputiei North/ 12536 and that the same was obtained procedurally, legally and without fraud.



- b. That a declaration do issue that the 1st Plaintiff is the bonafide and legally registered owner of suit property namely Kajiado/Kaputiei North/ 23228 and that the same was obtained procedurally, legally and without fraud.
 - c. That a permanent injunction do issue against the 1st Defendant jointly and severally including any of his servants, agents and third parties purporting to derive instructions from them prohibiting them from entering, trespassing, alienating and destroying the suit properties and in any manner interfering with the peaceful occupation and possession of title number Kajiado/Kaputiei North/12536 belonging to the 1st Plaintiff and title number Kajiado/Kaputiei North/23228 belonging to the 2nd Plaintiff.
 - d. That the 1st Defendant bears the costs of this suit together with interest at court rate from the date of filing the suit to the date of judgment.
 - e. That the O.C.S Isinya Police Station to ensure compliance with the injunctive order (c) issued herein above.
2. Aggrieved, by this decision the Appellants filed this Appeal seeking the setting aside of the Judgement; dismissal of the suit against the Respondents; the Appellants Counter Claim at the Lower Court be allowed as well as costs of the suit and Appeal on the grounds that:
1. The learned Magistrate erred in Law by adjudicating a matter she lacked jurisdiction.
 2. The learned Magistrate sitting as an Environment and Land Court (Magistracy) lacked jurisdiction to hear and determine a civil/commercial dispute disguised as a land matter.
 3. The learned Magistrate lacked pecuniary jurisdiction to hear and determine the matter as the value of the suit properties exceeds the Pecuniary Jurisdiction of trial court as provided for under Section 7(1) of the *Magistrates' Courts Act* No. 26 of 2015;
 4. The learned Magistrate erred in law and in fact in disregarding the Appellants' pleadings, evidence, witnesses' testimony and submissions and by doing so doing arrived at a wrong decision;
 5. The learned Magistrate erred in law and in fact in closing her mind to the Appellant's evidence and submissions in their entirety and in doing so doing arrived at a wrong decision,
 6. The learned Magistrate erred in law and fact in disregarding the Appellants' Counter Claim and dismissing the same in limine;
 7. The learned Magistrate erred in law and fact in conferring proprietary rights of the suit property;
 8. The learned Magistrate erred in law and fact in disregarding the provision of law requiring a transfer of land to be executed by the registered proprietor;
 9. The learned trial Magistrate erred in law and in fact in failing to appreciate the principles applicable in the circumstances of the case therefore arriving at an erroneous finding.
 10. That in all the circumstances of the case, the learned Magistrate failed to do justice.
3. This Appeal was canvassed by way of written submissions.



The Appellants' submissions

4. Counsel submitted that the 1st Appellant who was the registered owner of land parcels Kajiado/Kaputiei North/12536 and Kajiado/Kaputiei North/23228 did not sell them to the Respondents. Apparently what happened was, he sought loans from one Mr. Dave -the 1st and 2nd Respondents founder who in return asked for titles of the suit properties as security. The attempts to repay the loans were frustrated by the said Dave and when the 1st Appellant sought to secure another loan using titles to the said properties, he was informed that this could not happen because he was no longer the registered owner of the properties. Upon conducting a search he discovered that the said properties had been registered in the Respondents names. The issues for determination are: whether the Magistrate had jurisdiction; whether the Magistrate erred in conferring proprietary rights of the suit properties to the Respondents; and whether the Magistrate erred in disregarding the Appellants' case.
5. On whether the Magistrate had jurisdiction, counsel submitted that the Magistrate heard and determined the suit as an Environment and Land Court while the dispute was of a commercial nature as it concerned loans advanced to the Respondents director by the 1st Appellant on diverse dates between 2002 and 2006. And that the Respondents in their response to the Counter Claim conceded as much. Therefore, the dispute was commercial in nature for breach of contract and not an environment dispute should thus be set aside citing Cooperative Bank of Kenya vs Patrick Kang'ethe Njuguna & 5 others (2017).
6. In the Supplementary submissions, Counsel also contested the Trial Court's pecuniary jurisdiction on grounds that matters presided over by a Senior Principal Magistrate should not exceed 15 million. However, the parcels in dispute Kajiado/Kaputiei North/1256 measured 5.67 hectares and Kajiado/Kaputiei North/23228 measured 12.14 hectares with the cumulative total being 17.81 or 44 acres. Whereas there was no valuation or purchase price to be used to determine the price of the said parcels, Counsel supported the pecuniary jurisdiction argument by making reference to the sale agreement dated 29th October 2021 where the 1st Appellant sold 1.8acres of land to the 1st Respondent for Kshs. 5,000,000. As such 1 acre was going for Kshs. 2,500,000 which meant that 44 acres was worth Kshs. 110,023,501.25. This thus surpassed the pecuniary jurisdiction of the Senior Principal and Chief Magistrates and the proceedings were thus null and void. Reference was made to R vs Chief Magistrate Court of Nakuru & another ex-parte Charles Njihia. In asking the Court to make a determination of the pecuniary jurisdiction using the sale agreement entered in 2021, Counsel asked Court to rely on the case of Symon Gichobi Maria vs Priscillah Muthoni Gichobi [2017] eKLR where the Court used a compensation disclosure certificate to determine the jurisdiction. Counsel also added that jurisdiction could be raised at any point even on Appeal as was held in Phoenix of E.A. Assurance Company Ltd vs S. M. Thiga t'a Newspaper Service [2019] eKLR.
7. It is worth pointing out that on 13th February 2025, Counsel for the Respondents asked that the Supplementary submissions not be placed on record for having been filed outside the 7 days period granted by Court without leave.
8. On whether the Magistrate erred in conferring proprietary rights of the suit properties to the Respondents, Counsel submitted that, the 1st Appellant gave titles to the suit property as loan security but when he tried to repay the loan, the Respondent declined to accept the repayment and at no point did he furnish the Respondents with completion documents or execute any transfer documents. Therefore, the Magistrate erred in finding that the Respondents held good title while there was no evidence of how the same was acquired as was held in Munyu Manina vs Hiram Gathiha Maina [2013] eKLR. Counsel went on to state that when the 1st Appellant stated that he did not transfer the properties, then the onus was on the Respondents to prove how they acquired the said properties



as held in *Pauline Chemuge Sugawara vs Nairuko Ene Mutarakwa Kiruti* (sued in her capacity as the Administratrix of the Estate of the late Mutarakwa Kiruti Lepaso) [2022] eKLR. Therefore, had the Magistrate considered the 1st Appellant's defence she would have found that the Respondents obtained proprietorship unprocedurally and the Respondents should not benefit from it as held in *Nelius Muthoni Thegetha vs Julius Ndung'u Mwangi & another* [2020] eKLR.

9. On whether the Magistrate erred in disregarding the Appellants' case, counsel submitted that it was on record that the 1st Respondent's former Director one P. J. Dave would advance soft loans to the 1st Appellant and he deposited title for property Kajiado/Kaputiei North/1993 for the loan of Kshs. 500,000 as per the loan agreement dated 8th April 2002. In default, part of the 12 acres of Kajiado/Kaputiei North/1993 which adjoined P. J. Dave's property would be transferred to him on default, the 1st Appellant would furnish P.J. Dave with completion documents. Counsel submitted that the terms of the loan agreement were clear, however, the Respondents claimed that the agreement dated 8th April 2002 was a sale agreement between the 1st Appellant and the Respondents' Director for parcels Kajiado/Kaputiei North/12535 and 12536. But these two parcels feature nowhere in the agreement. Further, if reliance is on the agreement dated 8th April 2002, how come the property was transferred to the Respondents whom the 1st Appellant had no contractual obligation with and not P. J. Dave. The Magistrate therefore erred in not considering that the 1st Appellant had no contractual obligation with the 1st Respondent over parcel Kajiado/Kaputiei North/12536 and the Appeal should be allowed with costs and the trial Court's decision be set aside.

The Respondents' submissions

10. Counsel submitted on the following issues for determination: Whether the trial Court had jurisdiction; whether the learned Magistrate erred in conferring proprietary rights of the suit property to the Respondents; whether the learned Magistrate erred in disregarding the Appellants' case.
11. On whether the trial Court had jurisdiction, counsel submitted that the Appellants had an opportunity to challenge the Lower Court's jurisdiction throughout the proceedings but failed to. Therefore raising a question of jurisdiction on Appeal was an abuse of the Court process and unmerited. However, counsel submitted that the Respondents' claims at the Lower Court were of a declaratory nature about the proprietary rights of the Respondents ownership to Kajiado/Kaputei North/12536 and Kajiado/Kaputei North/23238 and not pecuniary in nature. Counsel made reference to *Kisekem Ltd vs National Bank of Kenya* [2024] KEELC 5233 (KLR) where the court held that in questions of jurisdiction the issue for consideration would be the predominant purpose of the transaction and the predominant issue for determination. Therefore, the Lower Court under Section 26 of the Environment and *Land Act* had jurisdiction to determine the suit.
12. Counsel also submitted that the Appellants were misleading the Court by relying on the case of *Co operative Bank of Kenya Limited vs Patrick Kangethe Njuguna & 5 others* (2017) eKLR, in supporting the argument that their relationship with the Respondents was that of a chargor and charge without furnishing evidence of the existence of any registered charge. It was also pointed out that the Appellants counter claim, did not plead any pecuniary claim neither were their prayers of a pecuniary nature but had they challenged the amount received in exchange for the suit properties, then the Co- operative Bank of Kenya case (*Supra*), would have been applicable, and the appropriate forum would have been a commercial court.
13. On whether the Magistrate erred in law and in fact in conferring proprietary rights of the suit properties to the Respondent, counsel submitted that the decision arrived was proper because properties Kajiado/Kaputei-North 12536 and Kajiado/Kaputei North 23228 belonging to the 1st and 2nd Respondents



were acquired legally, procedurally through a valid agreement and the title held was conclusive proof of that as stipulated by Section 26 of the *Land Registration Act*. If the Appellants were challenging the validity of the said titles, the onus of proof was on them as per Section 107 of the *Evidence Act* and they did not prove their case. Counsel submitted that the allegation that the transfer was undertaken without consent was false because the 1st Appellant sought consent for the subdivision of parcel Kajiado/Kaputiei North/1993 and the consent for transfer of property Kajiado/Kaputiei North/20108 as per the documents produced at the Lower Court. Counsel went on to submit that parcel Kajiado/Kaputiei North/1993 which was the parent parcel for the subdivided properties Kajiado /Kaputiei-North/12535 and Kajiado /Kaputiei-North/12536. The 1st Appellant would then sign the transfer of the two newly subdivided properties to the 1st Respondent and that this subdivision was undertaken following the sale agreement dated 8th April 2002. Subdivision of property Kajiado/ Kaputiei North/ 23228 also followed the same procedure with the 1st Appellant entering into a sale agreement for sale of property Kajaido/Kaputiei North/20108.

14. Counsel also submitted that the Appellants claim that the signatures on the agreement dated 6th March 2006 were not the 1st Appellant's signature was not proved. Counsel went on to add that it was on record that the late P. J. Dave who was the Director of the 1st and 2nd Respondents, prior to his demise in March 2021 co-existed peacefully with the 1st Appellant for over 30 years therefore the claim against the Respondents after this demise was a malicious attempt to reclaim the land they sold off over 20 years ago. Counsel pointed out that in the agreement dated 29th October 2021, the 2nd Respondent acknowledged having sold parcel Kajiado/Kaputiei North/23228 to the 2nd Respondent among other parcels. It was therefore not genuine for the 1st Appellant to go back and claim fraud and this suit was therefore frivolous.
15. On whether the Magistrate erred in disregarding the Appellants' case, Counsel submitted that the Appellants did not prove their case to the required standard as was held in *Mutuku v Kaminza* [2024] KEELC 5457 (KLR) and *James Muniu Mucheru vs National Bank Of Kenya Ltd* [2019] eKLR. And the Appeal should therefore be dismissed with costs.

Analysis and Determination

16. I have considered the grounds of Appeal, the Record of Appeal, the written submissions and the authorities cited. I find that the issues for determination are:
 - i. Whether the Lower Court had jurisdiction to determine the suit;
 - ii. Whether the Learned Magistrate erred in conferring proprietary rights of the suit property to the Respondents;
 - iii. Whether the Learned Magistrate erred in dismissing the Appellants' case;
 - iv. Whether this Appeal is merited;
 - v. Who should bear costs of the suit.
17. This being a first appeal, the Court has a duty to re-evaluate the case and make its own findings with consideration that it neither saw nor heard the witnesses. This was the Court of Appeal's holding in *Transparency International - Kenya v Omondi* (Civil Appeal 81 of 2018) [2023] KECA 174 (KLR).

“This being a first appeal, we are required to analyze the evidence afresh and reach our own conclusions but also warning ourselves that we did not have the advantage of seeing the



witnesses. It is thus the duty of the court to analyze and re-assess the evidence on record and reach our own conclusions...”

18. Similarly, the Court of Appeal in *ICEA Lion General Insurance Company Limited v Noble Merchants Shipping Limited & another* [2023] KECA 1061 (KLR) stated thus; “This being the first appeal, in *Selle v Associated Motorboat Company Limited* [1968] EA123, this Court held that; the Appellate is not bound necessarily to accept the findings of fact by the Court below. An Appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
19. In the Plaintiff filed at the Lower Court, the 1st and 2nd Respondents herein who are horticulture companies located at Isinya and the 3rd Respondent who is their Director averred that the 1st Respondent became the registered owner of a parcel known as Kajiado/Kaputiei North/12536 measuring approximately 5.57 hectares on 19th June 2002 and has been in continuous occupation since then. The 2nd Respondent became the registered owner of a parcel known as Kajiado/Kaputiei North/23228 measuring approximately 12.14 hectares on 6th September 2006 and had been in continuous occupation since then.
20. The history of the properties was outlined as follows:

On 8th April 2002, a sale agreement was entered between the 1st Appellant and the 1st and 2nd Respondents Director for the sale of land for Kshs. 600,000. This agreement was witnessed by the 2nd Appellant. On 17th June 2002 following this agreement, parcel Kajiado/Kaputiei North/1993 was subdivided into two portions being Kajiado/Kaputiei North/12535 and 12536 (one of the suit properties). A Land Control Board for the subdivision of parcel 1993 had already been granted on 9th January 2002. Transfer documents were executed and the land was registered in favour of the 1st Respondent on 19th June 2002. On 21st June 2002, the 1st Appellant acknowledged having received Kshs. 500,000 and the balance of Kshs. 100,000 was paid out as follows as per the 1st Appellant’s instructions: Kshs. 18,000 paid to the surveyor, Kshs. 8,000 paid to one David Shanka and Kshs. 74,000 paid to the 1st Appellant.
21. The acquisition history of parcel; Kajiado/Kaputiei North/23228 was outlined as follows:

On 28th June 2005, the 1st Appellant subdivided parcel Kajiado/Kaputiei North/1033 into parcels Kajiado/Kaputiei North/20108, 20109 and 20110. On 6th March 2006 a sale agreement was entered between the 1st Appellant and the 1st Respondent for the sale of parcel Kajiado/Kaputiei North/20108 and the two caused the subdivision of parcels Kajiado/Kaputiei North/20108, 20109 and 20110. These parcels would further be subdivided to parcels Kajiado/Kaputiei North/23228, 23229 and 23230 and parcel Kajiado/Kaputiei North/23228 (the second suit property) was then transferred to the 2nd Respondent.
22. Together with the Appellants who are their neighbours, they continued coexisting peacefully until the demise of the 1st and 2nd Respondents founding Director in March 2021 when the Appellants started harassing them and threatening their employees. Following these threats, the 1st and 2nd Respondents received letters dated 3rd December 2021 and 10th March 2022 from M/S Tobiko, Njoroge & Co. Advocates claiming that land parcel no. Kajiado/Kaputiei North/23228 was obtained fraudulently. The Respondents averred that on several occasions they had heard the 1st Appellant claiming that



during the lifetime of the Respondents founding Director, they could walk to the office and get things done as they wanted, but that had changed since his demise.

23. On 11th March 2021, the 3rd and 4th Appellants in the company of unknown youth under instructions of the 1st and 2nd Appellants trespassed into the Respondents' properties, removed the gate and disrupted the workers who were on the property. Following this, an incident report was made at Isinya Police station and issued with an Occurrence Book number (OB No) OB26/11/03/2022. It is alleged that the 1st Appellant had also threatened to shoot the Respondents employees and this had disrupted their quiet and peaceful possession of the suit properties. On 12th March 2022, the 3rd and 4th Defendants were also seen patrolling the suit properties' perimeter wall while intimidating the employees.
24. Despite these allegations of fraud, the Appellants had never filed any complaints for investigations. However, they asked for compensation for a road that passes through the Respondents' properties which they wanted closed. The Respondents obliged although they felt it was unjust enrichment. It was also claimed that there was an agreement dated 29th November 2021 where the Appellants acknowledged that the suit properties were owned by the Respondents. It was an afterthought to claim otherwise.
25. The Respondents thus sought to be declared as the registered owners of the suit properties; Kajiado/Kaputiei North/12536, Kajiado/Kaputiei North/23228; a permanent injunction against the Appellants for trespassing or in any way claiming against the suit properties; specific and general damages as well as costs for the suit.
26. The Appellants in their Statement of Defence and Counterclaim at the Lower Court acknowledged that they had co-existed peacefully with the Respondents for over 30 years but denied ever harassing or threatening them. They also acknowledged that: they had indeed instructed M/S Tobiko, Njoroge & Co. Advocates to issue demand letters to the Respondents; that they had benefited from loans advanced to them by Mr. Pravinkumar Jaychandra Dave (herein after referred to as P.J. Dave) the deceased Director of the 1st and 2nd Respondents but denied ever demanding for the said loans on the spot. They also denied trespassing and breaking down the Respondents' gate or disrupting and threatening the Respondents operations and its employees. The 1st Appellant pointed out that he was the area Chief and an elder in his jurisdiction and would never issue instructions to damage other people's property. They went on to state that they never instituted any cases against the Respondents because they were willing to settle the dispute amicably. It was also highlighted that the issue of hiving off a portion of the Appellants land to create a road reserve for compensation of Kshs. 5,000,000 was initiated by the Respondents because they wanted to cordon off part of the road that was passing through their property. It was also deponed that no sale agreement was ever entered between the 1st Appellant and the Respondents and no Land Control Board consent was also obtained for the alleged transfer.
27. DW1, Phillip Ole Sironka, the first Appellant stated that from 1991 the 1st Respondent would lend him money and he gave titles to his properties as security. On 8th April 2002, an agreement was entered between him and P.J. Dave for advancement of a loan of Kshs. 500,000 and he gave title for property Kajiado/Kaputiei North/1993 to him with the agreement that 12 acres of parcel 1993 would be hived off to serve as security. This was done and parcel Kajiado/Kaputiei North/12536 was used as security. The 1st Appellant tried to repay the loan but the 1st Defendant refused to accept the payment for many different reasons. Sometime in 2005, the 1st Appellant once again sought a loan of Kshs. 3,100,000 from the 1st Respondent on the same terms. He gave the 1st Respondent title to property known as Kajiado/Kaputiei North/20108 which was subdivided into three portions and Kajiado/Kaputiei North/23228



was retained by the 1st Respondent as security. Once again, the 1st Respondent refused to accept the refund. It was until sometime in 2021 when he carried out a search that he discovered the suit properties Kajiado/Kaputiei North/12536 and Kajiado/Kaputiei North/23228 had been transferred to the 1st and 2nd Respondents un-procedurally, fraudulently and without his knowledge and/or consent.

28. They sought a declaration that the 1st Appellant was the legal owner of the suit properties; that any titles issued to the Respondents and charges over the suit properties be cancelled; the structures on those properties be demolished; and an injunction against the Respondents interference be issued together with costs.

29. Having outlined the background of this dispute, I will first deal with the issue of jurisdiction which the Appellants claim the Lower Court did not have. The Respondents have however contested this on the grounds it is an abuse of the Court process having been raised at the Appeal stage.

Did the trial court have jurisdiction to determine the suit and can the question of jurisdiction be raised on appeal?

30. Counsel for the Respondents argued that the question of jurisdiction could not be raised on Appeal, since the Appellants had all the time to raise it at the lower Court. The Court however begs to differ.

31. The issue of jurisdiction is so significant that it can be raised at any point in the proceedings, including on appeal, even if it wasn't raised at the trial court. The Court can also raise the issue of jurisdiction suo motu. This was the holding of the Court of Appeal in Kenya Ports Authority v Modern Holdings [E.A] Limited [2017] eKLR:

“... We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised:

“...at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the Court itself

- provided only that where the Court raises it suo motu, parties are to be accorded an opportunity to be heard.”

32. In the case of Donald Earle Smith & another VS Kenya Deposit Insurance Corporation(as Receiver as Chase Bank LTD & another [2025] KECA 294 (KLR) the Court of Appeal observed thus;

“It is trite that the guiding principle in determining whether a Court has jurisdiction to determine a matter is derived from the Pleadings filed since they contain the legal basis of the claim under which the Plaintiff had chosen to invoke the Court's competence...”

33. It was also held in The Owners of Motor vessel “Lillian” S VS Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR) that a question of jurisdiction ought to be raised at the earliest opportunity. I have gone through the proceedings in the Trial Court and nowhere do the Appellants raise the issue of jurisdiction. I find that for them to raise the issue now is an afterthought. The issue ought to have been raised at the earliest opportunity to give the learned Trial Magistrate an opportunity to deal with the issue.

34. The Appellants claim that the trial Court was bereft of jurisdiction due to nature of the dispute which was of a commercial nature and the pecuniary interest of the properties which exceeded the Magistrate's Court pecuniary jurisdiction.



35. Counsel for the Respondent contested that the Respondents' claim at the Lower Court were of a declaratory nature about the proprietary rights of the Respondents and not pecuniary jurisdiction of the lower Court, which it had.
36. The test for pecuniary jurisdiction emanates from the value of the dispute. This Court has not been accorded evidence of the value of the suit properties which the Appellants claim are worth over one hundred million Kenya shillings. Counsel for the Appellants asked this Court to find that the Lower Court did not have jurisdiction on inference or probative value of the land citing *Symon Gichobi Maria vs Priscillah Muthoni Gichobi* [2017] eKLR where Court made a determination of the pecuniary interest of the damages by using the compensation disclosure certificate. In this case, however, there was no iota of evidence adduced to persuade the Court that the lower Court lacked jurisdiction. Further, if indeed there was a question of pecuniary jurisdiction, nothing stopped the Appellants from filing a valuation report at the Lower Court to contest jurisdiction then. I am of the view that raising this question at this stage and without evidence is an attempt to have a second bite at the cherry.
37. The other contention to jurisdiction was that the dispute was of a contractual nature which ought to have been determined by a commercial court. I have outlined the pleadings filed at the Lower Court at length. It is crystal clear that the dispute emanates from the Appellants' claiming that the suit properties in question belong to them. Whereas the Respondent alleges that the properties were acquired from a sale agreement, the issue for determination is not on tenets of the contract but if indeed there were any proprietary interests passed on to the Respondents, and whether the said interests were validly, regularly and legitimately acquired.
38. I therefore find that the trial Court sitting as an Environment and Land Court had jurisdiction to hear and determine the suit.
- The next issue for determination is whether the learned Magistrate erred in her decision.
39. It is not in contention that the dispute at hand emanates from parcels of land which the Appellants claim that the Respondents fraudulently transferred to themselves. He stated that the Respondents had titles to the suit properties but only as security for the loans they advanced to the 1st Appellant. The Respondents however claimed that the said transfers were executed by the 1st Appellant through duly executed sale agreements.
40. The parties produced the following documents in support of their claims:
- Mutation form dated 17th June 2002 for subdivision of parcel Kajiado/Kaputiei North/1993 to Kajiado/Kaputiei North/12535 and 12536. The mutation form shows that the survey was certified as undertaken on 16th June 2002. As per the green card on record, the register for parcel 12356 was then opened on 17th June 2002 with the first entry being in favour of the 1st Appellant and the 2nd entry in favour of the 1st Respondent.
41. There is a mutation form for parcels Kajiado/Kaputiei North/20110, 20109 and 20108 with the new parcel numbers being Kajiado/Kaputiei North/23228, 23229 and 23330. The instructions on the mutation form read "the proprietors' wish to change their common boundary..." It shows that the persons interested are the 1st Appellant and the 1st Respondent whose signatures are appended on page four dated 28th March 2006. The green card shows that the register for parcel 23228 was opened on 28th March 2006 and registered in favour the 1st Respondent and title issued. It was then registered in favour of the 2nd Respondent on 6th September 2006 and on 4th September 2006 a title was issued.



42. The learned Trial Magistrate in her judgement held:

“According established to the 1st Defendant, elements of fraud by the Plaintiffs was established by the lack of both transfer forms and letter of consents showing intention to change ownership from the 1st Defendant, to the 1st and 2nd Plaintiffs. However, the letter of consent dated 8/2/2006 shows that the Kajiado Land Control board sat down and oversaw the transfer of the 2nd Plaintiff’s parcel of land from the 1st Defendant to the 1st Plaintiff. There is a letter of consent by the Purka Land Control Board dated 9/1/2002 that proves there was a subdivision of the 1st Defendant’s land no. 1993 into one portion of 12 acres as per the agreement of sale dated 8/4/2002....

As such, the 1st Defendant ought to have availed the land registrar either as their witness or have him appear as a court witness in order to shed light on any grey areas with respect to the subject documentations. Similarly, the 1st Defendant stated that the former director avoided receiving back the monies lent. However, there is no evidence that he reported this refusal of his title deeds to any authorities both in the years 2002 and 2005 for action to be taken. Had he moved the court then and not in 2022 vide a Counter-Claim, I am certain any alleged mischief would have been put to rest. The rules of equity dictate that it helps the vigilant not the indolent. Subsequently, the Counter-Claim filed on 24th March 2022 lacks in merit thus is dismissed with Costs.

Nonetheless, the Plaintiffs have proven on a balance of probability that they legally obtained ownership of the suit properties and were the bonafide owners therein thus deserving of the injunctive orders sought. Nonetheless, the evidence adduced showed that the principal offender was the 1st Defendant as the previous owner of the suit properties with the 2nd, 3rd & 4th Defendants only coming in as family members. Similarly, the 5th Defendant was not liable for any breaches thus the suit as against them is dismissed...

In conclusion the Plaintiffs’ case succeeds as against the 1st Defendant with orders as follows...”

43. Looking at the documents on record and chronology of events, this Court equally finds that the allegation of fraud against the Respondents was not proved by the Appellants to the required standard.

44. I find no reason to interfere with the decision of the learned Trial Magistrate Hon. Kahuya I. M, in the judgement dated 22nd March 2023.

45. I find no merit in this Appeal and the same is dismissed. In essence the judgment dated March 22, 2023 is hereby upheld.

46. The costs of this Appeal shall be borne by the Appellants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF MARCH 2025.

L.KOMINGOI

JUDGE

In the presence of:

N/A for the Appellants

Ms. Mureithi for the Respondents



