



REPUBLIC OF KENYA



KENYA LAW
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**Muchira v Njonge & another (Environment and Land Appeal
E020 of 2023) [2025] KEELC 1171 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1171 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E020 OF 2023**

**JM MUTUNGI, J
MARCH 13, 2025**

BETWEEN

JAMES NDWIGA MUCHIRA APPELLANT

AND

FRANCIS KIMANI NJONGE 1ST RESPONDENT

COUNTY GOVERNMENT OF KIRINYAGA 2ND RESPONDENT

*(Being an appeal arising from the Judgment and Decree of Hon.
Cheruto C. Kipkorir Principal Magistrate in Chief Magistrate's Court
Civil Case No. 178 of 2007 delivered and dated 23rd August 2023)*

JUDGMENT

1. This appeal is against the Judgment delivered by Hon. Cheruto C. Kipkorir (P.M) on 23rd August 2023 in Kerugoya Civil Suit No. 178 of 2007. By the Judgment, the Learned Magistrate made the following orders:
 1. The Plaintiff's claim with respect to prayers a and b in the Amended Plaintiff is dismissed as against the 1st Defendant.
 2. The 2nd Defendant is hereby ordered to show the Plaintiff the location of plot A300, Wanguru market, and the beacon certificate and minutes, if need be, for the same be issued to him. This be done within the next 90 days. In default, and at the expiry of the time period indicated, the Plaintiff is hereby awarded the market value of plot A300, to be paid by the 2nd Defendant.
 3. In addition, the 2nd Defendant will also pay general damages assessed at Kes. 800,000 to the Plaintiff, for the construction damages he incurred.



4. That a restraining order be issued restraining the Plaintiff either by his servants', agents, workmen from trespassing into the 1st Defendant's plot No. B 334 and/or interfering with the 1st Defendant's plot No. B334 either by construction or in any way.
 5. The claim for general damages against the Plaintiff by the 1st Defendant is dismissed for want of proof.
 6. The 2nd Defendant will bear the costs of the suit and the Counterclaim.
2. The Appellant, who was the Plaintiff in the suit, being dissatisfied with the Learned Magistrate's decision, lodged a Memorandum of Appeal dated 21st September 2023 and subsequently filed a Record of Appeal dated 26th April 2024. The Appellant set out 6 grounds of Appeal in his Memorandum of Appeal as follows:-
1. That the Learned Magistrate erred in Law and fact in finding that the disputed plot is Plot Number B 334 belonging to the 1st Respondent by relying on the evidence by the County Surveyor, DW2 whose report and evidence was full of inconsistencies and discrepancies with regard to the details of the disputed plot.
 2. That the Learned Magistrate erred in Law and fact in disregarding the fact that the Appellant was allocated his plot Number A300 Wang'uru Market by the 2nd Respondent via Minute number WIPN & H 116/2001 on 10th August 2002 which conferred to the Appellant absolute ownership of the said plot and that the appellant was also subsequently issued with the building certificates and approval to develop the plot Number A300 Wang'uru Market.
 3. That the Learned Magistrate erred in Law and fact in failing to take into account that one Gladys Njoki Macharia who was the original owner of plot Number A300 Wang'uru Market was allocated the said plot way back in the year 1991 and was subsequently issued with a beacon certificate on 28th November 1991 which was concrete evidence that the disputed plot is plot Number A300 Wang'uru Market.
 4. That the Learned Magistrate erred in law and fact in disregarding the fact that the 1st Respondent was allegedly allocated plot Number B 334 on 21st November 2012 way after the Appellant was allocated the plot Number A300 on 10th August 2002 and that the ownership document relied on by the 1st Respondent proving that he was the owner of plot Number B334 were suspect and full of discrepancies.
 5. That the Learned Magistrate erred in Law and fact by failing to award the general damages against the 1st Respondent as prayed by the Appellant in his Amended Plaint dated 16th April 2014 and instead issued an order that the 2nd Respondent do pay general damages to the Appellant while the Appellant had produced sufficient evidence to prove that the disputed plot is plot A 300 and that the 1st Respondent had wrongfully occupied the Appellant's plot Number A300 Wang'uru Market.
 6. That the Learned Magistrate erred in Law and, in fact disregarding the Appellant's evidence and submissions and finding the case in favour of the 1st Respondent whereas the 1st Respondent had not proved his case on a balance of probabilities.
3. The Appellant prays that the appeal be allowed and that the Judgment entered on 23rd August 2023 be set aside and be substituted with an order allowing the Appellant's case and dismissing the 1st Respondent's case.



4. The background of this matter is that the Appellant claimed ownership of Plot Number A 300 at Wang'uru Market, while the 1st Respondent asserted that what the Appellant claimed was plot Number A 300, was in fact plot Number B334, which belongs to him. In the Amended Complaint filed on 15th April 2014, the Appellant stated that he had purchased plot Number A 300 Wang'uru Market from the original allottee, Gladys Njoki Macharia, on 10th June, 1995. He claimed to have taken immediate possession of the plot and developed it with the consent of the 2nd Respondent. However, he averred that on 17th September 2002, the 1st Respondent allegedly trespassed on the plot and that 1st and the 2nd Respondent thereafter sent warning letters demanding that the Appellant vacate from the premises. On 20th September, 2002, the Appellant alleged that the 1st Respondent and the 2nd Respondent demolished his permanent structures, claiming that the plot was plot Number B 334, and that it belonged to the 1st Respondent. The Appellant contended that the 1st and 2nd Respondents had prevented him from making use of his property and in the suit prayed for a permanent injunction to prevent the Respondents, along with their servants and agents, from trespassing on and interfering with his peaceful possession and enjoyment of his property; general damages for trespass and costs of the suit.
5. The 1st Respondent filed his statement of defence and Counterclaim dated 10th December 2002 while the 2nd Respondent's defence was dated 5th December 2002. The 1st Respondent denied the Appellant's averments in the Complaint and averred that plot Number A300 was actually plot Number B334. He asserted that the plot belonged to him and denied demolishing any building or structures that belonged to the Appellant. In his Counterclaim, he reiterated that he was the legal owner of the disputed plot, which he stated was allocated to him by the 2nd Respondent. He prayed that the Appellant's suit be dismissed with costs and sought a restraining order to prevent the Appellant, along with his servants and agents, from trespassing onto his plot and interfering with it. The 2nd Respondent in its defence denied the Appellant's averments and stated that it was the Appellant who had trespassed onto the 1st Respondent's plot and not the 1st Respondent who had trespassed in the Appellant's plot.
6. The Appellant testified as PW1 on 3rd August 2022 and in his evidence he adopted the witness statement, that he had filed and relied on his initial bundle of documents and the supplementary documents, as evidence. He testified that he owned plot Number A 300 at Wang'uru Market and asserted that his plot and plot Number B334 did not occupy the same position on the ground. He stated that he followed the proper procedures to acquire the disputed plot. The Appellant stated he took occupation of the Plot Number A300 as soon as he bought the same in 1995 from Gladys Njoki Macharia who gave him copy of minutes dated 16th September 1991 regarding the plot allocation. He stated the 2nd Respondent issued him with a beacon certificate, authorizing him to develop the plot.
7. The Appellant accepted that the 1st Respondent's authority to develop and the beacon certificate were issued prior to his, but stated that these documents related to two different plots. He asserted that his plot documents were signed by all relevant Government Departments and he was issued with a beacon certificate. He admitted that he did not possess the original map or a certified copy of the same. He contended he had been paying rates for the plot to the 2nd Respondent all through. The Appellant conceded that after the 2nd Respondent had arbitrated the dispute, they demanded that he remove a fence he had constructed and structures he had on the plot as the plot was Number B334 and not Number A 300. He stated he filed the suit because the 1st Respondent had demolished his structures on the disputed plot.
8. In re-examination, the Appellant reaffirmed that the authority to develop issued to Gladys Njoki on 16th September 1991 was for plot Number A300, while the authority issued to the 1st Respondent related to plot Number B334.



9. The 1st Respondent testified and stated that he owned plot Number B334, which was adjacent to plot Number B335, owned by his brother. He stated that the boundaries of his plot were pointed out to him, and he was subsequently issued with a beacon certificate. In cross-examination, he maintained that he had been allocated the plot by the Kirinyaga County Council and that although he did not have an allotment letter, he was given authority to develop the plot on 10th July 1991. The 1st Respondent admitted he was issued the minute by the County Council respecting the allocation of the Plot on 21st November 2012 although he had been paying rates for the plot since 1991. He stated the Appellant had unlawfully constructed some structures on the Plot which he subsequently demolished.
10. On 8th March 2022, the Lower Court owing to the conflicting evidence as to the location of the plot Number A300 and B334 directed that the County Surveyor be called to testify and on 4th March 2023, Stephen Wambugu, the County Surveyor of the 2nd Respondent, testified as DW2. He stated that he visited the site and gathered information from individuals who worked at the County Council. He prepared a report, which he adduced as evidence. He confirmed that the disputed plot was located in an area where all plots begin with the prefix "B." He noted that all neighboring plots and those adjacent to it also had the prefix "B." He stated that the disputed plot could not have the prefix "A," as such plots were not located in that particular area. He concluded that the plot was Number B334 and not Number A300.
11. After reviewing the evidence and submissions from both parties, the Learned Trial Magistrate concluded that the disputed plot had been double allocated to both the Appellant and the 1st Respondent. She determined that both the Appellant and the 1st Respondent possessed valid ownership documents issued by the 2nd Respondent. It was her view that it was the 2nd Respondent that had caused the dispute between the Appellant and the 1st Respondent. The Learned Magistrate noted that the 2nd Respondent had opportunities to resolve the issue but chose not to do so and that resulted in the institution of the suit.
12. Based on these findings, the Learned Magistrate ruled that neither the Appellant nor the 1st Respondent could be held responsible for their actions. Consequently, she dismissed the Appellant's case against the 1st Respondent. She also ordered the 2nd Respondent to show the Appellant the location of plot Number A300 and to issue the Appellant with ownership documents for that plot. If the 2nd Respondent failed to comply, they would be required to pay the market value of the disputed plot to the Appellant. In addition, the Learned Magistrate ordered the 2nd Respondent to pay the Appellant Kshs 800,000/- being general damages for the construction damages incurred by the Appellant. The Learned Magistrate further issued a restraining order against the Appellant, prohibiting him and his agents from interfering with the 1st Respondent's plot Number B334. She dismissed the 1st Respondent's claim for general damages against the Appellant but she ordered the 2nd Respondent to bear the costs of both the suit and the Counterclaim.
13. The Appeal was argued by the parties by way of written submissions. The Appellant raised two issues: whether the court erred in determining that the disputed plot was plot Number B334, which belonged to the 1st Respondent, and whether the Court erred in failing to award general damages against the 1st Respondent as pleaded in the amended Pleint.
14. Regarding the first issue, Counsel for the Appellant argued that the Learned Magistrate erred in concluding that the disputed plot was indeed plot Number B334 on the basis of the County Surveyor's report, which contained significant discrepancies; such as a lack of documentation to demonstrate the systematic numbering of plots in the area, the existence of undated maps/plans for the area, and the uncertainty regarding the location of plot Number B334. Counsel contended that the County



Surveyor's report did not adequately establish, on a balance of probabilities, that the disputed plot belonged to the 1st Respondent.

15. Counsel further asserted that the Appellant had consistently shown that the disputed plot was actually plot Number A300 at Wang'uru Market, which had been allocated to him prior to the 1st Respondent's allocation. Counsel in support of her submissions relied on the case of *Salome Warware vs. George Muna and Another* (2015) eKLR, where the Court stated as follows:

“This is a case where the Appellants sought an equitable remedy of injunction in the Lower Court. It is trite law based on equitable principles that when two equities are equal, the one that came first prevails. This principle is applicable where the law is unclear. In this case, the parties have not been registered as the owners of the disputed plot hence, the principle applies. I find that the Appellant was the first to be allocated the plot and is thus entitled to be registered as its proprietor.”

The Court also found that the Learned Magistrate erred in stating that the Appellant had not proven ownership of the property, especially considering there was a beacon certificate, minutes from the Sagana County Council, and a map of the area indicating that the plot was allocated to the Appellant in June 1990. The Court agreed with the Appellant that the Learned Magistrate failed to recognize the evidence showing that both allocations were conducted by the Kirinyaga County Council, and that the Appellant had initially fenced the plot.”

16. On the issue of award general damages against the 1st Respondent, Counsel argued that the Trial Court should have ordered the 1st Respondent to pay general damages for trespass, as the 1st Respondent did not provide sufficient evidence to prove that the disputed plot was plot Number B334 and not Plot Number A300.
17. The 1st Respondent filed their written submissions dated 11th October 2024. Counsel for the 1st Respondent argued that the evidence presented by the parties clearly showed that the initial allotment of the plot was made to the 1st Respondent. He asserted that in cases of competing titles, the principle of "first in time must prevail" applies. Counsel in support of this submission placed reliance on the cases of *R v City Council of Nairobi & 3 Others* (2014) eKLR and *M'Ikiara M' Rinkanya & Another v Gilbert Kabeere M' Mbbijwr* (2007) eKLR. Counsel further contended that there was no basis for faulting the Learned Magistrate's decision, as the 1st Respondent was allocated the suit plot two months prior to the original allottee of the alleged plot Number A 300 receiving their allocation.
18. Counsel emphasized that the argument that the Court wrongfully disregarded the allocation of plot Number A300 to the Appellant was unfounded as by the time the plot was allocated to Gladys, the initial allottee, the allocation to the 1st Respondent had not been canceled, making her allocation irregular. Counsel in response to the Appellant's claim that the 1st Respondent was allocated plot Number B334 on 21st November 2012, stated that this assertion was misguided. He submitted that while the minutes document, the allotment of land, they do not confer ownership arguing that the Court has to consider various other documents to determine ownership. In support of this submission Counsel placed reliance on the case of *James Juma Kimuyu -vs- City Council of Nairobi (now Nairobi City Council)* (2023) KEELC 16288 (KLR) where the Court held that proof of ownership is found in documentary evidence which lead to the root of title. According to Counsel, the 1st Respondent established a documentary trail showing the history relating to plot Number B 334 by adducing the following documents in evidence; authority to develop dated 7th October 1991; a beacon certificate dated 12th July 1991; a copy of the physical plan for the plot; a receipt for rent payment dated 5th January



- 1995; a copy of the demand for rent payment covering the period from 1996 to 2002, dated 2nd May 2002; and the receipt of payment for that demand.
19. Regarding the issue of general damages against the 1st Respondent, Counsel argued that the Lower Court's decision was well-founded, as the fault for allocating the disputed plot lay primarily with the 2nd Respondent.
 20. The 2nd Respondent filed its written submissions dated 31st October 2024 and highlighted two issues; firstly, whether the Court erred in awarding general damages against the 2nd Respondent, and secondly, whether the Court erred in ordering that the 2nd Respondent should bear the costs of the suit.
 21. Counsel for the 2nd Respondent argued that the Learned Magistrate made an error by awarding general damages to the Appellant, as the Appellant failed to prove that the damages were caused by the Respondents. Counsel noted that the criminal charges brought against the 1st Respondent were ultimately dismissed, and the 1st Respondent was acquitted. It was Counsel's position that no fault was established against the 2nd Respondent, and therefore, it should not bear any liability. Counsel further contended that despite the fact that it did not specifically contest the issues of damages as stated in the Judgment, the Trial Court should have carefully analyzed the evidence presented to ensure the ends of Justice were met. Counsel emphasized that there was no evidence linking the 2nd Respondent to the alleged demolition. Counsel further pointed out that both Respondents were sued jointly, and any general damages should have been shared equally.
 22. Regarding the issue of costs, Counsel argued that the 2nd Respondent should not bear the costs of the trial suit or the Counterclaim. He reasoned that since the suit was decided in favor of the 1st Respondent against the Appellant, the Appellant should be responsible for the costs. Additionally, Counsel noted that the 2nd Respondent was not a party to the Counterclaim and, therefore, should not be held liable for those costs. He concluded that the Trial Court erred in imposing the costs on the 2nd Respondent.

Analysis, evaluation and determination.

23. I have reviewed the Record of Appeal and have considered the evidence adduced before the Lower Court and I have reviewed and considered the submissions of the parties. As an Appellate Court, this Court is obligated to consider and re-evaluate the evidence and material that was before the Learned Trial Magistrate when she made the Judgment that she did, to satisfy itself that the Judgment of the Learned Trial Magistrate was justified. This was in keeping with the principle established by the Court of Appeal in the Case of *Selle & Another –vs- East African Motor Boat Co & Others* (1968) EA 123.
24. The issues for determination in this Appeal can be summarized as follows:-
 1. Whether the Learned Trial Magistrate erred in finding and holding that the disputed plot was Number B334 and that it belonged to the 1st Respondent?
 2. Whether the Learned Trial Magistrate erred in failing to find and hold the 1st Respondent was liable to pay damages to the Appellant for the Appellant's demolished structures?
 3. Whether the Learned Trial Magistrate erred in awarding damages and costs of the suit against the 2nd Respondent.
25. It is not in dispute that the 2nd Respondent allocated Plot A300 Wang'uru Market initially to one Gladys Njoki Macharia who later sold the plot to the Appellant. The 2nd Respondent equally allocated plot B334 Wang'uru Market to the 1st Respondent. It is noteworthy that neither Gladys Njoki nor the 1st Respondent were issued by the 2nd Respondent formal Letters of Allotment in regard to the plots



but each of them was issued with a letter of authority to develop the designated plots. The Appellant and the 1st Respondent were equally each issued with a beacon certificate.

26. Gladys Njoki's Letter of Authority to develop plot Number. A300 Wang'uru was dated 16th September, 1991 and the beacon certificate was issued to her on 28th November 1991. As per the extract of the minutes of the relevant Committee of the Council meeting on 16th September, 1991 plot Number A 300 was amongst those plots that lacked proper documentation. The resolution of the meeting was:-

“That the various plots in the Council Markets which had no proper records and documents be confirmed as per the list annexed to these minutes.”

27. As per the Minute Gladys Njoki Macharia's plot Number A300 Wang'uru was Number 23 on the list and hence the effective allocation date of the plot was the date of the meeting.
28. The transfer of the plot by Gladys Njoki Macharia to the Appellant was approved by the Council on 10th August, 2001. The building plans on the plot were approved by the various departments of the Council on various dates in 2001/2.
29. As regards the 1st Respondent, he was issued authority to develop plot Number B334 Wang'uru vide a letter dated 10th July, 1991. On the same letter there is an endorsement that the beacon certificate was issued on 12th July, 1991. The copy of the Beacon Certificate issued to the 1st Respondent was dated 12th July, 1991 and was duly signed by the Surveyor but did not carry the Reference of the minute authorizing the allocation. However, an extract of the Minute of the Council dated 21st November 2012 confirming allocation of plots in various markets was exhibited by the 1st Respondent. As per the minute plot Number B 334 Wang'uru was confirmed belonged to the 1st Respondent.
30. Both the Appellant and the 1st Respondent apparently were paying rates to the Council. The 2nd Respondent never denied, it allocated the two plots claimed by the Appellant and the 1st Respondent respectively. In the premises on the basis of the evidence, both the Appellant and the 1st Respondent held ownership documents in regard to plot Number A300 and plot Number B334 respectively and the issue really was where these plots were located. On the evidence both the Appellant and the 1st Respondent were claiming plots on the same physical location. Of course it is not practical to have two different plots sitting on the same location, unless it is a case of double allocation. In the Case of Double allocation, the allotment of the person allocated earlier prevails, unless it is proved and demonstrated that the earlier allocation was cancelled and/or revoked before the subsequent allocation was made. The 2nd Respondent's position was that the disputed plot was plot Number B334 and that it belonged to the 1st Respondent. The evidence of the County Surveyor who testified after directions of the Trial Magistrate supported this position.
31. In the case of Republic v City Council of Nairobi & 3 Others (2014) eKLR where the Court was faced with a somewhat similar issue of apparent double allocation as in the instant matter the Court held:-

“Once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers an absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully canceled.”



32. The implication of the above holding is that once an allocation has taken place, then the land is not available for a subsequent allocation and therefore, the first allottee is held to be the legal owner and any subsequent allocation was deemed to be irregular as the same plot cannot be allocated twice.
33. In the case of *Richard Kipkemoi Limo vs. Hassan Kipkemboi Ngeny & others* [2019] eKLR the Court of Appeal considered the effect of an irregular or illegal allotment of land as distinct from a situation of double allocation and expressed itself as follows:
- “We are cognizant of the decisions such as *M’Ikiara M’Rinkanya & Another -v- Gilbert Kabeere M’Mbijiwe*, (1982-1988) 1KAR 196, where it was held that where there is a double allocation of land, the first allotment prevails and there is no power to allot the same property again. (See also *Kariuki –vs- (1982-88) KAR 26/79* and *Otieno and Matsanga*,(2003) KLR 210).
56. On our part, we have considered whether the two certificates of title that were issued over the suit property are a case of double allocation. Double allocation arises when there are two or more otherwise valid certificates of title issued erroneously and in good faith by the Lands Office. When there is fraud, misrepresentation, deliberate mistake, irregularity or unlawfulness in the procedure for registration, double allocation does not arise. The 1st Respondent has demonstrated the procedure and root of the title that he followed to obtain title to the property. The appellant purchased the suit property from a person who was not the registered proprietor. His certificate of title has no legal foothold.”
34. The Appellant claims that he purchased the suit plot from the previous owner, Gladys Njoki Macharia, who had been allocated the property by the 2nd Respondent. She had official documentation, such as Minute Number WIP & 4199/91, authority to develop and beacon certificate issued on 16th September 1991. In contrast, the 1st Respondent was granted authority to develop the plot on July 10, 1991, and received confirmation of ownership as per the minutes of 21st November 2012. By the time Gladys Njoki Macharia was issued the authority to develop her plot, and the beacon certificate issued to her the 1st Respondent had been given authority to develop his plot and he had been issued a beacon certificate. The minutes of the meeting of the Council that confirmed the 1st Respondent as the allottee of plot Number B334 in my view was merely confirming an allotment that had already been made to the 1st Respondent. It does appear the allotments in the instant case were signified by the issuance of the authority to develop and the issuance of the Beacon certificates noting as observed earlier none of the parties was issued with a letter of allotment.
35. In the premises and in the light of the evidence and guided by the reasoning in the cases referred to above, it is evident that the 1st Respondent was the first allottee of the disputed plot site. It is also noteworthy that the County Surveyor in his evidence was categorical that the plots within the locality of the disputed plot all carried a pre fix of letter ‘B’ while he was explicit the plots with the prefix of letter ‘A’ were located almost one kilometer away from the disputed site. It is my determination that in those circumstances, the Learned Trial Magistrate was justified in finding and holding that the disputed plot was plot Number B334 and that it belonged to the 1st Respondent.
36. The Learned Trial Magistrate held the 2nd Respondent culpable in damages and awarded a sum of Kshs 800,000/- in general damages for trespass and demolition of his structures in the disputed plot. The Learned Trial Magistrate under order (d) in making the award for damages ordered thus:-



- (d) In addition, the 2nd Defendant will also pay general damages assessed at Kshs 800,000/- to the Plaintiff, for the construction damages he incurred.
37. In essence what the Learned Trial Magistrate awarded was special damages for the construction damages incurred. No special damages were pleaded and none were proved. It is trite Law that special damages have to be specifically pleaded and strictly proved by evidence. There was no evidence adduced respecting what structures were demolished and/or what their value was. I therefore hold that the damages of Kshs 800,000/- awarded were not proved and the award of the same is set aside. Damages for trespass did not lie as the suit plot was adjudged to belong to the 1st Respondent.
38. The order under (b) in the Magistrate's Judgment that the 2nd Respondent do point out to the Appellant the location of Plot A300 Wang'uru Market and legal custody to be handed to him within 90 days failing which the Appellant should be paid the Market value of the plot by the 2nd Respondent is upheld. The 2nd Respondent never disputed it allocated the Appellant Plot Number A300 Wang'uru Market. Let them show him the plot and/or pay him the market value of an equivalent plot at the location where plots carrying prefix 'A' are located at Wang'uru Market.
39. The 2nd Respondent without doubt was the cause of the confusion and state of affairs respecting the allotments. The 2nd Respondent had the opportunity to sort out the mess created by their offices but they did not. The Learned Trial Magistrate properly condemned them to bear the costs of the suit in the Court below. I see no reason to interfere with that order.
40. The net result is that save for the order awarding damages of Kshs 800,000/- in favour of the Appellant which I have set aside, the Judgment of the Learned Trial Magistrate dated 23rd August, 2023 is upheld.
41. The Appellant and the 2nd Respondent will each bear 50% of the costs of the 1st Respondent of the Appeal.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 13TH DAY OF MARCH 2025.

J. M. MUTUNGI

ELC - JUDGE

