



REPUBLIC OF KENYA



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**Kimathi v Ng'entu & another (Environment and Land Appeal 79 of 2021)
[2022] KEELC 12703 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12703 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 79 OF 2021
CK NZILI, J
SEPTEMBER 28, 2022**

BETWEEN

SAMUEL KIMATHI APPELLANT

AND

NJAGI NG'ENTU 1ST RESPONDENT

ESTHER KATHUKU 2ND RESPONDENT

JUDGMENT

A. The Pleadings and Evidence

1. The appeal emanated from a judgment delivered on June 22, 2021 in which the appellant had sued the respondents before the trial court as neighbours and owners of LR No Meru Municipality Block 11/730 alleging trespass into his land namely Parcel No Meru/Municipality/Block 11/733, by putting up a structure extending to it. He had prayed for declaratory orders of ownership and eviction orders.
2. The respondents denied the allegations over trespass, maintained that they were legal allottees of LR No Meru/Municipality/Block 11/730 measuring 0.0430 acres by the defunct county council together with a building thereof. The respondents also averred that the appellants' alleged plot was an illegal subdivision of their property. They denied ever erecting any building on the land after acquisition.
3. In their counterclaim, the respondents averred that the appellant was a fraudster, who abused his office to; fraudulently and or illegally alter the size, boundaries, and effected illegal subdivisions, registered and then eventually obtained a certificate of lease which they prayed for a declaration of its illegality, cancellation of the same, permanent injunction inhibiting any sale, developments or transfer of the said property, general and special damages thereof.



4. At the trial the appellant adopted his written statement dated November 22, 2019 and his reply dated June 15, 2020 as his evidence in chief. He produced a certificate of lease issued on April 8, 2019 and a surveyors report dated August 29, 2019 as P.Exh 1 & 2 respectively.
5. The appellant testified he acquired the suitland in 1998 after he received an allotment letter, paid for the requisite fees to the National Land Commission and took vacant possession. However, the respondents encroached on the same. PW1 testified that the houses on the suit land belonged to the government and the respondents had encroached on his land and put up kiosks therein.
6. PW 1 insisted that the government surveyor had shown the parties each of their respective plots. He however admitted that he acquired the plot while he was a serving councilor.
7. DW 1 adopted his witness statement dated November 17, 2020 as his evidence in chief and produced his certificate of lease issued on April 8, 1998, surveyors report dated August 29, 2019; copy of an allotment letter; notice of clerk of the county council; letter of acceptance of the lease, banker's cheque, receipts of a payment from the county council and the lands office; official search certificate, copy of letter to the chairman National Land Commission and chairman Ethics and Anti-Corruption Commission as P. Exh 1-10 respectively.
8. The 1st respondent maintained that he had been on his land for 60 years and he had never seen the appellant on the land. He was categorical that he did not know how the appellant's land came about though he had severally complained about the process as per the letters he had produced as well as through Case No 1759/2015 and reports to the Criminal Investigation Department against the appellant for forcefully and fraudulently taking his land. DW1 averred if his plot was to be subdivided it will be very small and his house shall be demolished.
9. DW 2 adopted his witness statement dated November 19, 2020 as his evidence in chief. He insisted he lived on the suit parcel and denied knowing the boundary between the two plots.
10. DW 3 admitted that the 2nd respondent had been on her land unlike the appellant who wanted to fraudulently evict him using fraudulent documents.
11. After evaluating the pleadings, evidence and the law, the trial court disallowed the appellant's suit and entered judgment in favour of the respondents for the counterclaim.

B. The Appeal

12. The appellant faults the trial court for:- finding his case unproved but the respondents counterclaim proved; failing to appreciate that no criminal case had been preferred against him based on fraud; misconstruing the evidence before it and arriving at a wrong decision; exercising its powers outside its jurisdiction by granting orders preserved for a higher court and lastly, for giving judgment against the weight of the evidence tendered and against the applicable law.
13. With leave of court parties opted to canvass the appeal by way of written submissions dated March 16, 2022, February 17, 2022 and April 26, 2022 respectively.
14. This being a first appeal, the role of this court is to rehearse, rehear and re-evaluate the record of appeal and come up with its independent findings on facts and law while bearing in mind the trial court had the benefit to hear and see the witnesses first hand. See *Peters v Sunday Post* (1958) E.A 424.
15. In this appeal the appellant's claim was based on trespass and illegal structures on his suit land by the respondents, alleged to have erected buildings on his land neighbouring the respondents' land.



16. The appellant produced his certificate of lease issued on August 4, 2019 and the surveyors report dated August 29, 2019.
17. The appellant's submission is that his certificate of lease was issued on April 8, 1996 whereas that of the respondents was issued on January 30, 2001, hence under Section 24 (a) of the [Land Registration Act](#), his title is older in time. The appellant relies on the case law of [Samuel Murimi Karanja & 2 others v Republic](#) as cited in [Dr Joseph Arap Ngoki v Justice Moiwo Ole Keiwua](#), [David Peterson Kiengo & 20 others v Kariuki Thuo](#) (2012) eKLR, [Wilson Kipsongok Morogo v Albert K. Morogo](#) (2017) eKLR where it was held an absolute and indefeasible title to the land which is protectable under Sections 24, 25 & 26 of the [Land Registration Act](#).
18. The appellant submitted his certificate of title is only impeachable on account of fraud, misrepresentation, illegality or acquisition out of unprocedural or corrupt scheme whose burden to discharge under Section 109 – 112 of the [Evidence Act](#) rested with the respondents but which they were unable to discharge in their evidence before the trial court given that they neither joined the land registrar to the suit, nor called any officer from the said office to point out any irregularities in the process of acquisition and registration.
19. The appellant submitted he not only pleaded but also proved his claim to the required standards as held in [Virjay Morjaria v Nansigh Madhunsigh Darbar & another](#) (2019) eKLR, [Kinyanjui Kamau v George Kamau](#) (2015) eKLR, [Charles Karathe Kiarie & 2 others v Administrator of the Estate of John Wallace Mathare \(deceased\) & 5 others](#) (2013) eKLR
20. The appellant submitted a title deed can only be rectified and or cancelled under Section 8 of the [Land Registration Act](#) once fraud is proved but in this appeal, none was proved to the required standards as held in [Laban Omuhaka Otumbula v Truphosa Okutoyi](#) (2019) eKLR and [Demutilla Nganyama Pururmu v Salim Mohamed Salim](#) (2021) eKLR
21. The 1st respondent's submissions are that once the appellants title was challenged, the onus was on him to demonstrate how he acquired it legally and procedurally.
22. The 1st respondent submitted the appellant failed to produce an allotment letter, proof of payment and all other requisite documents. The 1st respondent relied on [Munyu Maina v Hiram Gathiba Maina](#) (2013) eKLR, on [Daudi Kiptugen v Commissioner of Lands & 4 others](#) (2015) eKLR on the proposition that once the root of a title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership but a party must demonstrate through evidence that the title was properly acquired.
23. As concerns Sections 26(1) & 80 of the [Land Registration Act](#), the 1st respondent submitted while relying on Sections 26(3) and (4) of the [Environment and Land Court Act](#) and practice directions made thereunder, that magistrates court can hear and determine land cases. Reliance is placed on [Joseph Kiprotich Bor v Tabutany Chepkoech Chebusit](#) (2021) eKLR, [Albert Mae Gacie v A.G & 4 others](#) (2006) eKLR [Joseph Kagunya v Boniface K. Muli & 3 others](#) (2018) eKLR, [KACC v Online Enterprises Ltd & 4 others](#) (2019) eKLR on the propositions that sufficient proof has to be tendered on the manner of the land allocation in line with the law and [the Constitution](#).
24. Regarding whether the counterclaim was proved, it is submitted that all what was required of the 1st respondent was to demonstrate as they did, that the appellant had obtained the title unprocedurally or through corrupt scheme and this being a civil matter, they did not require to prove that some criminal charges were preferred against the appellant.



25. Reliance was placed upon [Alice Chemutai Too v Wilson Kipkurui Korir and 2 others](#) (2015) eKLR given that they were offered the plot, accepted the offer and there was no proof that their allotment had been cancelled as held in [Joseph Kagunya v Boniface K. Muli](#) (supra) and in [Martha Chelal & another v Elijah Kipkemoi Boiywo & 2 others](#) (2019) eKLR
26. Lastly, the 1st respondent submitted he should be awarded costs guided by the caselaw of *Rep v Rosemary Wairimu Munene (Exparte applicant) v Ihururu Dairy Farmers Cooperative Society* (JR 4/2014).
27. On the part of the 2nd respondent, it is submitted that Sections 24 (b) & 25 1 (a) of the [Land Registration Act](#) protects the interests of the proprietor of a title holder while Section 26 thereof provides that a certificate of title is a conclusive evidence of proprietorship subject to the condition under Subsection 1(b) from which the court under Sections 80 thereof can order for its cancellation if obtained by fraud or mistake, which court includes a magistrates court as defined under Sections 26 (3) and (4) of the [ELC Act](#) and 9 (9) of the [Magistrates Court Act 2015](#).
28. The 2nd respondent submitted the issue of the jurisdiction of the court was never raised after the defence and counter claim was filed. Nevertheless, the 2nd respondent relied on [LSK Nairobi Branch v Malindi Law Society and 6 others](#) (2017) eKLR on the proposition that the trial court had powers to hear and determine the suit.
29. On the manner of the acquisition of the suit land, the 2nd respondent took the view that the appellant did not acquire the title procedurally and legally since he failed to explain the manner of the acquisition, produce any documents to back the process of acquisition including PDP plans, minutes of the allocation, payment of requisite fees and rates.
30. Reliance was placed on [Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others](#) (2008) eKLR, Dr Arap Ngok (supra) & [Abdi Mohamed Kabiya v Fatuma Haji Kasim](#) (2019) eKLR
31. As to whether the trial court had the power to cancel the title, the 2nd respondent submitted the process of the suit land was not proved to the satisfaction of the court to sustain its ownership. Reliance was placed on [EACC v Joseph Oroko Ongera & another](#) (2021) eKLR, on the proposition that the acquisition of title cannot be construed only in the end result, but the process thereof is material. Further, the 2nd respondent while relying on [Mangrove Investment Ltd v AG & another](#) (2020) eKLR submitted a party has to go beyond waving the grant and demonstrate that it exercised due diligence prior to acquiring the property including on establishing the ownership and the history of the past transaction involving the suit land.
32. The 2nd respondent while relying on [Warson Ltd v Richard Mwangi Wachira & 5 others](#) (2019) eKLR, [Esther Ndegi Njiru & another v Leonard Gatei Mbugua](#) (2020) eKLR, [Elijah Makeri Nyangwara v Stephen Mungai Njuguna & another](#) (2013) eKLR, submitted that where there was no good title one cannot pass it, hence Section 26 (1) of the [Land Registration Act](#) protects real title holders from being deprived of the titles by subsequent transactions.
33. Further the 2nd respondent relied on [Godfrey N Nyaga v Margaret W Theuri & 3 others](#) & [Katende v Haridas & Co Ltd](#) (2008) 2 EA 173 on the proposition, that due diligence must go beyond merely obtaining a certificate of search. See also [KACC v Online Enterprises](#) (supra), [Rep v Ministry of Transport and Communication and 5 others exparte Waaship Garbage Collector & 15 others](#) (2006) 1 KLR E and [L Mureithi & 2 others v AG & 5 others](#) (2006) 1KLR 443, [Chemei Investment Ltd v AG & others](#), on the proposition that alienation of land that defeats the public interest goes against the letter and spirit of [Constitution](#)



34. In sum, the 2nd respondent, took the view the court had jurisdiction and was right, based on the evidence before it to cancel the title deed since the appellant was unable to produce documentary evidence that he was procedurally and legally allocated the land unlike the respondents, capable of enjoying the protection under Section 26 of the [Land Registration Act](#) as held in Martha Chelal (supra).

C. Issues for Determination

35. Having carefully gone through the pleadings, list of documents filed, evidence tendered and written submissions to this appeal, the entire record of appeal and the grounds thereof, the issues calling for the court's determination are:
- i. Whether both the appellant and the respondents filed proper pleadings, pleaded and proved their claims.
 - ii. If the parties were entitled to the prayers sought in their respective pleadings.
 - iii. If the trial court had jurisdiction to hear and determine the suit.
 - iv. If the trial court applied the court law and principles to the facts and the evidence before it.
 - v. If the appeal has merits.
36. The appellant claim is contained in the plaint dated November 20, 2019 in which he states he is the owner of LR No Meru Municipality Block/11/733 whereas the respondents are joint owners of LR No Meru Municipality Block/11/730 bordering each other.
37. The appellant's contention was that the respondents had trespassed into his land and proceeded to erect a permanent building without his consent, approval or justification. He sought for a declaration that he was the exclusive owner of his plot and for eviction orders against the respondents.
38. By an application dated May 5, 2020 the respondents sought for leave to file a defence out of time and for an interim injunction pending the hearing and determination of the suit. In the said application, the respondents attached a draft joint statement of defence which is undated.
39. Through a ruling delivered on October 6, 2020 the respondents were granted leave to enter appearance and file a defence. The defence attached to the application was deemed to have been properly filed. Further, the trial court granted a temporary injunction against the appellant pending the hearing of the suit and ordered the parties to comply with Order 11 [Civil Procedure Rules](#) within 15 days and further directed that the matter to proceed for hearing on November 19, 2020.
40. The respondents filed a list of documents, list of witness's statements, issues for determination and a pre-trial questionnaire all dated November 17, 2020 and filed on December 3, 2020. The appellant on the other hand complied by filing a list of witness statements, list of documents and issues for determination dated November 20, 2020 and a case summary dated October 30, 2020.
41. At page 10-11 of the Record of Appeal, there is included a document namely a draft joint statement, defendants' statement purportedly dated and stamped on November 16, 2020.
42. From the original court file this court is unable to find any record to indicate whether the respondents ever filed and or paid for the draft defence and counterclaim after the ruling delivered by the trial court on October 6, 2020.
43. The record of appeal however shows that on March 4, 2021 the court made an order for the service of the respondents' list of documents after the close of the appellant's case. There is also no indication if



- the appellant was ever served with a duly filed defence and a counterclaim other than the draft defence for him to reply to it and or file a defence to the counterclaim.
44. From the ruling, the trial court made an order that the draft defence be deemed as filed. It did not however state the payment of the statutory filing fee and service thereof be dispensed with. The court Receipt No A0735134 issued on May 14, 2020 was for Kshs 2,100/=. This only includes the filing fees for the notice of motion and the annexures thereto. The draft defence statement was assessed as Kshs 75/= while the verifying affidavit was assessed at Kshs 75/=.
 45. The draft defence was accompanied by a counterclaim with five principal prayers. Each prayer would have attracted at least Kshs 1500/= making a total of Kshs 7500/= filing fees.
 46. There are no receipts or an assessed and paid for defence and counterclaim for November 16, 2020 when the respondents purport to have caused the said defence and counterclaim to be court stamped.
 47. In *Stanley Kangethe Kinyanjui v Tony Keter & 5 others* (2015) KLR the Court of Appeal held, litigation is a game with clear rules of engagement and it is not open for parties to pursue and for the court to allow a path of circumventing the rules that are imposed to aid the attainment of justice and that the oxygen rule cannot assist such a party.
 48. In this appeal, there is no indication if the respondents ever filed and or paid for the defence and counterclaim.
 49. Order 4 Rule (5) *Civil Procedure Rules* requires that where there are two defendants in a counterclaim, a verifying affidavit be accompanied with a written authority filed with the verifying authority on behalf of the other party.
 50. Order 7 Rule 5 (a) of the *Civil Procedure Rules* requires a counterclaim to be accompanied by an affidavit under Order 4 Rule (1) (2) *Civil Procedure Rules*.
 51. The failure to pay the court filing fees is a jurisdictional issue. A party coming to court is supposed to pay court filing fees unless there has been orders to the contrary if such a party is a pauper.
 52. In this suit, the duty was upon the respondents to comply with the law. It did not matter that the trial court granted leave and made an order that the draft defence and counterclaim be deemed as duly filed.
 53. In my considered view, this order did not mean that the respondents could overlook an elementary statutory provision or assume it amounted to waiver of the court duty to pay filing fees.
 54. The failure to pay the court filing fees on time or at all renders the defence and counterclaim invalid, fatal and of no effect in law.
 55. Section 96 of the *Civil Procedure Act* provides that where fees for any document has not been paid the court has discretion at later stage to allow such a person to pay and once paid the document shall have the same force and effect as if such fees had been paid in the first instance.
 56. Mativo J. as he then was in *Mombasa Cement Ltd v Speaker National Assembly & another* (2018) eKLR held that the failure to pay court fees renders the suit incompetent because there is no competent suit filed before the court and that the failure to remedy the situation once given an opportunity leaves the court with no option but to declare the suit incompetent and strike it off.
 57. In this appeal, the respondents failed to pay for the draft defence and counterclaim yet they are enjoying the judgment.



58. [*Paresh Kamlakar Naik and another v Cabinet Secretary Ministry of Interior and Co-ordination of National Government and 2 others*](#) (2017) eKLR Aburili J took the view that the failure to pay the court filing fees is not a procedural technicality as it goes to the substance of the main pleading which cannot be deemed as duly filed without court filing fees being paid and an acknowledgment receipt issued to that effect unless exempted by law or by the court on an application.
59. Additionally, the court held a party cannot unilaterally choose to deny the government and the people of Kenya who deserve government services, revenue.
60. The court held in the absence of an assessed fees and duly stamped document, the party knew or ought to have known that the required court fees were not paid for.
61. The court further held it could not exercise discretion under section 96 of the [*Civil Procedure Act*](#) where a party assumed that the court would not countercheck to establish whether or not court fees was paid especially where there was deliberate move by the applicants in collusion with the registry staff not to pay the requisite fees.
62. In this matter, the court has already observed an attempt was made to have the draft defence and counterclaim court stamped. Unfortunately, there is no assessed defence and counterclaim or receipt for the court fees, by way of a receipt.
63. This court cannot be complicit in such misdeeds for a party who seeks equity must also do equity. The respondent knew that they had not paid for the defence and counterclaim and tried to cure this irregularity.
64. I therefore find the draft defence and counterclaim incompetent and incapable of being relied upon by the respondents before this court.
65. Coming to the issue of jurisdiction, section 26 (3) & (4) of the [*Environment and Land Court Act*](#) grants the Hon. Chief Justice with powers to appoint magistrates with jurisdiction and the power to handle disputes relating to matters of civil nature involving occupation and title to land whose value does not exceed the pecuniary jurisdiction as set out in the [*Magistrates Court Act*](#) 2015.
66. The appellant as indicated above did not reply to the defence or file a defence to the counterclaim and or raise the issue of jurisdiction. Section 101 of the [*Land Registration Act*](#) that provides that the Environment and Land Court established by the [*Environment and Land Court Act*](#) including subordinate courts have the jurisdiction to hear and determine disputes, actions and proceedings concerning land under the act as set out in Act No 15 of 2015. It follows therefore that a subordinate court as long as it has been gazetted as an Environment and Land Court by the Honourable Chief Justice and the subject land is within its pecuniary and territorial jurisdiction, can exercise all the powers under the [*Land Registration Act*](#) including the cancellation of a title to land.
67. Turning to the issue of the appellant's claim, the appellant pleaded that he was the legal owner of LR No Meru Municipality Block 11/733 which the respondents as owners of LR Meru Municipality/Block 11/730 had encroached into by putting up permanent buildings without his consent hence interfering with his rights to land ownership.
68. In support of his claim, the appellant produced a certificate of lease issued on April 8, 1998 and a survey report dated August 29, 2019.
69. In the survey report made pursuant to a court order dated January 18, 2016, it is indicated that the boundary to the two parcels of land in dispute passes through an existing boundary. It is stated plot No Meru Municipality/Block 11/730 is between plot No 729 to the left and 733 to the right.



70. The respondents denied the claim and produced a certificate of lease issued on January 13, 2001, a letter of allotment dated December 15, 1995, and a letter from the clerk.
71. The two certificates of lease indicate the acreage as 0.0380 ha and 0.0235 ha respectively. The official search by the respondents issued on 14.8.2019 confirms the acreage for LR No Meru Municipality/Block 11/730 as 0.0235 ha.
72. In the two letters of complaint by the respondents to EACC and the National Land Commission, the issue raised is over the discrepancy in acreage between the certificate of lease and the letter of allotment which difference is 0.0195 ha alleged to have occurred out of the change of boundary said to have been done by the appellant as a former chair of the defunct county council of Meru.
73. The appellant alleged that the respondents were trespassers to his land while the respondents defence before court was that the appellant had fraudulently obtained his parcel to their detriment.
74. The respondents attached the complaint letters other than the two letters and a formal report to the police, the respondent produced no report by either the land surveyor, land registrar and or the police, showing any wrong doing on the part of the appellant.
75. In re-examination, the respondents claimed if parcel No 733 was allowed on the ground, their parcel No 730 would be very small and the buildings where they have lived since 1979 would be demolished.
76. Trespass is defined under the *Trespass Act* as an illegal entry or intrusion on the land of another without his consent, authority or approval.
77. Whereas the appellant produced his certificate of lease and a surveyor's report, the two were not conclusive on the extent of the alleged trespass by the respondents.
78. The two parties rely on the surveyor's report but none called the maker to testify for or against each other's claim and explain the report in terms of the nature and the extent of the encroachment, if any. Other than stating that the two plots were distinct, the report does not indicate whether they overlap and the extent of the overlap, if any.
79. Further, none of the parties called the land registrar and or the county physical planner to shed light on the extent of the encroachment, if any and the exact boundary and its features on the ground in line with sections 16-19 of the *Land Registration Act*.
80. The onus was on the appellant to prove the encroachment of his land by the respondents. He did not produce any part development plans, survey maps and or beacon certificates to show that indeed his land on paper and on the ground was smaller and the balance thereof was allegedly occupied by the respondent's contrary to the documentation held by the Land Registrar, Land Surveyor and the County Physical Planner.
81. In absence of the said documentation and evidence from the said key officers, my finding is that the appellant's claim was not proved to the required standards.
82. As regards the defence by the respondents, this court has already made a finding that what was in the court file was a draft defence and counterclaim, which was not duly filed and paid for, it is therefore defective in law.
83. The respondents in support of the said defective defence and counterclaim produced a certificate of lease, a letter of allotment, a search certificate and couple of complaint letters over the difference in acreage to the tune of 0.0195 ha, allegedly cause by the appellants while curving out his parcel No 733.



84. Other than the said documents, the respondents failed to call any experts or officers from the lessor, land registry, land surveyors or the allocating authority to give credence to their claims that there was fraud or illegalities during and at the registration of the certificate of lease in favour of the appellant.
85. It is trite law going by *Ariithi Highway Developers v West End Butchery Ltd & 6 others* and Virjay Morjaria (supra) that fraud must not only be pleaded but must also be proved to the required standards. Fraud cannot be inferred from facts.
86. In this suit, the facts as pleaded by the respondents were not backed by any definite and or conclusive proof that the difference in acreage was fraudulently and or illegally made in favour of the appellant.
87. It is common knowledge that the allocating authority was the Commissioner of Land presently, the National Land Commission. The respondents accepted the lease as it was sent to them. If there was any discrepancy, there is no evidence that the respondents sought for the rectification and or amendment of the boundaries to their suit land in line with sections 16, 17 & 18 of the *Land Registration Act*.
88. There is also no evidence that the respondents made a complaint with the police and investigations were undertaken finding fault or illegality on the part of the appellant.
89. Further, there was no evidence produced before the trial court to show that the appellant was the one who undertook the illegality or fraud and falsified or altered the boundary to the two plots and curved out a chunk of the respondents parcel of land.
90. In absence of such evidence, my finding is that the respondents were unable to substantiate the contents of the alleged defence and counterclaim even if the court were to find or assume, that there was a valid defence and counterclaim notwithstanding, the earlier finding above.
91. An issue was raised by the respondents that the appellant failed to produce documentation on the history of the acquisition of the suit land. It is trite law that the burden of proof does not shift to the appellant to prove his innocence. The onus was on the respondents to prove their counterclaim that there was fraud or illegality in the manner the appellant allegedly obtained his certificate of title.
92. There is no evidence that a duly filed defence and counterclaim was served upon the appellant and that he failed to file a reply to defence and a defence to the counterclaim.
93. Even if there was a valid defence to the counter claim on record, still it was upon the respondents to prove their counterclaim which is a separate suit to the required standard.
94. In absence of such pleadings and or evidence, my finding is that the respondents did not file a valid defence and counterclaim and substantiate it to the required standard.
95. In the premises, I find no merits in the appeal save that the respondents failed to file, serve or prove their defence to the appellants claim.
96. The judgment by the trial court is hereby set aside. Both the plaint and the alleged defence and counterclaim are hereby dismissed with costs no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 28TH DAY OF SEPTEMBER, 2022

In presence of:

C/A: Kananu



Soi for appellant

Karatu for 1st respondent

Karanja for 2nd respondent

HON. C.K. NZILI

ELC JUDGE

