



**Waitathu v Njogu & another (Environment and Land Appeal  
8 of 2024) [2025] KEELC 4435 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4435 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL 8 OF 2024**

**JM MUTUNGI, J**

**JUNE 12, 2025**

**BETWEEN**

**HENRY WAITATHU ..... APPELLANT**

**AND**

**BERNARD MITHAMO NJOGU ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KIRINYAGA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment of Hon. E.O. Wambo, Principal Magistrate  
in Kerugoya C.M.C No. 120 of 2014 delivered and dated on 31st October 2023)*

**JUDGMENT**

1. This Appeal is against the Judgment delivered by Hon. E.O. Wambo (P.M) on 31<sup>st</sup> October 2023, in Kerugoya CMCC No. 120 of 2014. By the Judgment, the Learned Trial Magistrate held that the disputed property was plot No. A 175 Wang’uru and that it belonged to the 1<sup>st</sup> Respondent, who was the Plaintiff in the Lower Court. The Learned Magistrate held plot No. C288 belonging to the Appellant, who was the 1<sup>st</sup> Defendant in the suit before the Lower Court, was not located at the disputed site. The Learned Magistrate granted the 1<sup>st</sup> Respondent the orders he sought in the Plaint.
2. The 1<sup>st</sup> Appellant was dissatisfied with the Learned Magistrate’s decision and has appealed to this Court against the Judgment. The 1<sup>st</sup> Appellant has set out 8 grounds of Appeal in his Memorandum of Appeal dated 23<sup>rd</sup> February 2024 as follows:
  1. The Honourable Learned Magistrate erred in law and fact by dismissing the Appellant’s case, notwithstanding the overwhelming evidence adduced in support of the Appellant’s case.
  2. The Honourable Learned Magistrate erred in law and fact by upholding the 1<sup>st</sup> Respondent’s claim, though he failed to prove his case on a balance of probability by producing any sketch maps or beacon certificate to prove his case.



3. The Honourable Learned Magistrate erred in law and fact by failing to appreciate that the Appellant had purchased the suit plot from a person who had occupied and developed the plot for seven (7) years.
  4. The Honourable Learned Magistrate erred in law and fact by failing to appreciate that the Appellant had all requisite approvals from the 2<sup>nd</sup> Respondent and proceeded to construct on Plot No. C288.
  5. The Honourable Learned Magistrate erred in law and fact by failing to appreciate that the 1<sup>st</sup> Respondent was never in occupation of the suit plot and only emerged upon the completion of the developments by the Appellant.
  6. The Honourable Learned Magistrate erred in law and fact when he considered the evidence of the County Surveyor who admitted he did not have the original maps and plans for that area.
  7. The Honourable Learned Magistrate erred in law and fact by failing to appreciate the evidence of the Appellant's witness (DW1) which evidence was crucial in the matter.
  8. The Honourable Learned Magistrate erred in law and fact by not properly considering the evidence on record and submissions by the Appellant.
3. The Appellant prays that the Judgment and decree issued on 31<sup>st</sup> October 2023 be set aside with costs of the Appeal and the suit in the Lower Court.
  4. The brief background of this Appeal is that the 1<sup>st</sup> Respondent filed a suit in the Lower Court against the Appellant and the 2<sup>nd</sup> Respondent and by an Amended Plaint dated 10<sup>th</sup> December 2014 sought a permanent injunction restraining the Appellant from interfering with and/or constructing on Plot No. A175, Wang'uru which he claimed belonged to him.
  5. The 1<sup>st</sup> Respondent claimed that he was the owner of Plot No. A175 Wang'uru having been allocated the same by the Kirinyaga County Council as per the Council minutes dated 18<sup>th</sup> July 2007. He claimed to have consistently paid land rates and maintained lawful possession of the property. He averred that in 2014, the Appellant unlawfully trespassed onto the plot and began constructing structures thereon without permission which prompted the 2<sup>nd</sup> Respondent to issue a Notice to him dated 19<sup>th</sup> May 2024 to stop proceeding with construction which the Appellant ignored.
  6. In response, the Appellant claimed he was the owner of Plot No. C288 Wang'uru Market, which he claimed to have lawfully acquired via a sale agreement dated 27<sup>th</sup> June 2013 from one James Kirumba. He contended that he had developed the plot and was awaiting transfer from the 2<sup>nd</sup> Respondent.
  7. The 1<sup>st</sup> Respondent testified in support of his claim and called PW2 Stephen Wambugu the County Surveyor as his witness. The 1<sup>st</sup> Respondent in his testimony reiterated the averments as per the Plaint. PW2, the County Surveyor gave evidence that Plot No. A 175 Wang'uru was initially owned by Francis Karango, Stephen Wanjohi, Gichobi Njoka and John Mureithi from whom the 1<sup>st</sup> Respondent bought the plot and who transferred the same to him in 2007. The Surveyor (PW2) affirmed plot A175 had a trail of documents that illustrated how it was allocated. He stated that plot No. C288 had no trail to show how it was allocated. The witness stated he under the directions of the Court visited the disputed site and prepared and filed the report dated 23<sup>rd</sup> July 2019. As per the report the previous owners of plot No. A175 Wang'uru were allocated the plot vide a minute in 1991 and that was the plot they transferred to the 1<sup>st</sup> Respondent in 2007.



8. The Appellant testified that his plot was No. C 288 Wang'uru and that he was not aware of plot No. A175. He stated he had been in occupation of plot No. C288 since 2013. He stated there has never been any dispute with plot No. C288 which he stated he had fully developed. He admitted the Surveyor came to the disputed site and he showed him his ownership documents. He stated the plot was still in the name of James Karumba who sold him the plot as it could not be transferred to him when the dispute arose.
9. The Appellant called James Karumba (DWI) who sold him the plot as a witness. The witness affirmed he acquired the plot in 2006 as per Minute of the County Council issued on 16<sup>th</sup> August 2006 confirming and approving allocation to him. He affirmed he sold the plot No. C288 to the Appellant in 2013 though he had started developing the same in 2011. He stated the problem started after he sold the plot to the Appellant.
10. The Learned Magistrate after analyzing and evaluating the evidence agreed with the evidence adduced by the Surveyor through the report as persuasive and made a finding that the disputed plot was plot No. A175 Wang'uru and that the same belonged to the 1<sup>st</sup> Respondent. The Learned Magistrate further held that there was a case of double allocation by the 2<sup>nd</sup> Respondent as it was not disputed that both the Appellant and the 1<sup>st</sup> Respondent had valid documents of the plots they laid claim to. Indeed the Learned Magistrate noted the 2<sup>nd</sup> Respondent continues to collect rates from both the 1<sup>st</sup> Respondent and the Appellant which was not only unfortunate but punitive to the Appellant whose plot did not exist at the disputed site.
11. The parties argued the appeal by way of written submissions. The Appellant filed his written submissions dated 5<sup>th</sup> March 2025 where he reiterated his claim of ownership for Plot No. C288 which he contended was not plot No. A175. He emphasized that the two plots visited independently and confirmed that his construction was effected on Plot No. C288. The Appellant submitted that the 1<sup>st</sup> Respondent did not provide credible evidence that the disputed land was Plot No. A175. The Appellant argued that the 1<sup>st</sup> Respondent should have produced a beacon certificate or approved maps to demonstrate the exact location of Plot No A175 which he did not. Additionally, the Appellant submitted the report dated 23<sup>rd</sup> July 2019, prepared by the County Surveyor, was based on secondary sources of information and was not supported with any Survey Plan or Maps. The Appellant noted that the dispute resolution report dated 25<sup>th</sup> July 2012, which the surveyor relied upon, involved third parties who were unrelated to the current dispute. The Appellant cited the case of Jeremiah Gakuru Ng'ang'a v. Brown Inziani Shagwira & Another (2022) eKLR, to support his submission.
12. The 1<sup>st</sup> Respondent, through his written submissions dated 13<sup>th</sup> January 2025, contended that the Appellant lacked any legal or equitable title over Plot No. A175 or C288. He stated that the Appellant's development was unlawful and in blatant disregard of a stop notice dated 19<sup>th</sup> May 2014 from the County Secretary. The building approvals relied on by the Appellant were issued to James Kirumba and not transferred to the Appellant. He maintained that he remained the sole registered proprietor of Plot No. A175 and had consistently paid rates. He urged the Court to uphold the trial court's findings.
13. I have reviewed the Memorandum of Appeal, the Record of Appeal, and the evidence presented before the Lower Court and have duly considered the submissions made by the parties. This Court, being an Appellate Court of first instance, is obligated to consider and re-evaluate the evidence and material that was before the Learned Trial Magistrate at the time he rendered the impugned Judgment, to satisfy itself, whether the decision of the Learned Trial Magistrate was justified or not justified. This was in keeping with the principle established by the Court of Appeal in the case of *Selle & Another v East African Motor Boat & Others* [1968] EA 123.



14. The grounds of Appeal set out by the Appellant basically challenge the assessment analysis and evaluation of the evidence by the Learned Magistrate. It is the Appellant's contention that the Learned Magistrate erred in his analysis and evaluation of the evidence thereby resulting in him reaching an erroneous decision that was unjustified.
15. I have carefully reviewed the evidence and evaluated the same and I am not able to fault the Learned Magistrate. Clearly both the Appellant and the 1<sup>st</sup> Respondent had valid documents issued by the Council but the issue was which plot was at the disputed location; was it A175 or C288? To resolve that issue it was necessary to examine and scrutinize the documentation relating to the two plots. The 1<sup>st</sup> Respondent's plot No. A175 was originally allocated to a group of four people Francis Karungu & Co and was confirmed to them vide minutes of the relevant Committee of the Council held on 15<sup>th</sup> January 1991 and extract of minute was annexed to the report prepared by the County Surveyor dated 23<sup>rd</sup> July 2023. It is this group of individuals who sold and transferred the plot to the 1<sup>st</sup> Respondent vide Min/No. WTPM & H 95/2007 of 18<sup>th</sup> July 2007. The Appellant's plot C288 was confirmed and approved to James Karumba vide Min/No. WTPM & H94/2006 of the County Council. As at that time the 1<sup>st</sup> Respondent's plot A 175 had been existence in the names of Francis Karungu & Co for well over 15 years. The 1<sup>st</sup> Respondent stated that when he was sold the plot he was shown and he took possession only for him to encounter the Appellant on the plot carrying out developments. The report prepared by the Surveyor and adduced in evidence was clear that the plot on which the Appellant carried developments was infact Plot A175 and not C288. In the year 2012 the County Council Dispute Resolution Committee while considering a dispute relating to a plot No. 174 had visited the site and verified the plots at the site were allocated sequentially and ran from plot A171 to A175. The County Surveyor in his evidence before the Court testified that he did not know where plot C.288 was located.
16. On the evidence I hold that the Learned Magistrate did not err in finding that the disputed plot was the location of the 1<sup>st</sup> Respondent's plot A175 and not C288. It is evident that the 2<sup>nd</sup> Respondent may have been culpable for double allocating the same plot site to two separate individuals. In the case of double allocations, the first in time takes preference. In the instant matter plot No. A175 was allocated earlier in time to Francis Karungu & Co who validly sold and transferred the same to the 1<sup>st</sup> Respondent. The evidence showed that plot No. A 175 was allocated to the group who sold it to the 1<sup>st</sup> Respondent in 1991 as attested by the Council Minutes.
17. The Appellant as per the evidence was issued notification by the 2<sup>nd</sup> Respondent not to carry on with the development he was undertaking but he apparently did not heed the advice. The Appellant no doubt has a right to seek to be shown his plot No. C.288 by the 2<sup>nd</sup> Respondent and/or to seek to be compensated if the plot was unavailable.
18. In the final result, I hold and find the Appeal is without any merit and the same is dismissed with costs to the 1<sup>st</sup> Respondent.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE.**

