



**Obuya v Mwonjoria & 2 others (Environment and Land Appeal
E164 of 2024) [2025] KEELC 6109 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6109 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E164 OF 2024**

JG KEMEI, J

SEPTEMBER 18, 2025

BETWEEN

GEORGE OBUYA APPELLANT

AND

MOSES MUKENYA MWONJORIA 1ST RESPONDENT

EMBAKASI RANCHING COMPANY LIMITED 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. This appeal arises from the decision of the Chief Magistrates Court in ELC Suit No. E056 of 2021 (hereinafter referred to as the Trial Court) by Honourable S.A. Opande (PM), delivered on 4/10/2024.
2. The Appellant herein was the 1st Defendant in the Trial Court, where he was sued alongside the 2nd and 3rd Respondents by the 1st Respondent, who sought among other orders a declaration that he is the bona fide owner of Plot C412 Embakasi Ranching Co. Ltd. The 1st Respondent also requested a declaration that the Lease and Certificate of Lease issued to the Appellant, being Nairobi/Block 136/12 359, are null and void and should therefore be cancelled. Additionally, the 1st Respondent sought an eviction order against the Appellant, among other orders.
3. In the Amended Plaint dated 8/04/2021, the 1st Respondent averred that he is the owner of Plot C412, Embakasi Ranching Company Limited, the Suit Property herein. He stated that he purchased it on 26/07/2012 from Christine Wanjiku, a member of the 2nd Respondent, at a price of Kshs. 350,000/=, with Share Certificate Number 3786 transferred to him. The 1st Respondent claimed that the Appellant encroached on the suit property on 2/12/2019 and began construction thereon. He further asserted that in 2006, the 2nd Respondent transferred the suit land to the Appellant, despite knowing that it had no valid title to do so. The 2nd Respondent later approved the issuance of a Certificate of



Lease for Title No. Nairobi/Block 136/12359, which relates to the suit property. It is based on this that he made the above orders.

4. As stated in the Judgment, the Appellant filed his Defence dated 3/05/2021, in which he denied the 1st Respondent's claim and demanded strict proof thereof. The Respondent further stated that the Appellant's cause of action, if any, was therefore untenable in Law and should be dismissed.
5. Upon considering the matter, the trial court, Hon. S.A. Opande – PM, in a judgment delivered on 4/10/2024, entered judgment in favour of the 1st Respondent, granting prayers (i), (ii), (iii), (iv), and (viii) of the Amended Plaintiff dated 8/04/2021. The prayer for eviction was to be executed once the provisions of the Land Act on eviction had been complied with. The prayer for general damages was dismissed. The 1st Respondent was also awarded costs of the suit with interest at court rates from the date of entry of judgment.
6. The Appellant was aggrieved by that judgment and filed this appeal vide the Memorandum of Appeal dated 25/10/2024 raising the following grounds:-
 - a. The Learned Trial Magistrate erred in law and fact in finding that the Appellant had not validly obtained the Title Deed to LR No. Nairobi/Block 136/12359, due to the absence of a Sale Agreement with the 2nd Respondent, as allotments were based on shares and a Sale Agreement was not applicable.
 - b. The Learned Trial Magistrate erred in law and fact in inferring misrepresentation, collusion, fraud and illegality on the part of the Appellant and the 3rd Respondent in the acquisition of the Title Deed to LR No. Nairobi/Block 136/12359 when fraud was not pleaded and proved by the 1st Respondent.
 - c. The Learned Trial Magistrate erred in principle in contradicting Plot No. V.9599 with Plot No. C412 and ended up soiling the Appellants Title LR No. Nairobi/Block 136/12359 with un-procedural acquisition much to the detriment of the Appellant.
 - d. The Learned Trial Magistrate erred in principle in ignoring the fact that the 1st Respondent purposefully failed to enjoin or call as witness Christine Wanjiku made adverse findings against such a non-party without a hearing when the evidence by the said Christine Wanjiku would controvert and disapprove the 1st Respondent's case in favour of the Appellant.
 - e. The Learned Trial Magistrate erred in law and fact in his Judgment by referring to the 1st Respondent as "she" and "her" which demonstrated misdirected attention to the pleadings and evidence.
 - f. The Learned Trial Magistrate erred in law and fact in making a Judgment based on the Amended Plaintiff dated 8/04/2021 when there was a Further Amended Plaintiff filed in Court which led to a mistrial to the detriment of the Appellant.
 - g. The Learned Trial Magistrate fell in the grave error by considering wrong reliefs as presented by the 1st Respondent in the Amended Plaintiff which did not include the 3rd Respondent as a party as opposed to the reliefs in the Further Amended Plaintiff consequently deciding on a case that was not presented by the 1st Respondent as to make the proceedings and the Judgment null and void.
 - h. The Learned Trial Magistrate erred in failing to find that the Appellant's title complied with Section 24 and 25 of the Land Registration Act 2012 as supported by the evidence produced in Court when the Appellant as registered owner has stayed on the premises since 2006, 18 years now, without any interruption until 2019 when the 1st Respondent raised unsupported claim.



- i. The Learned Trial Magistrate erred in principles in ignoring the Appellant's evidence that the Appellant purchased Title No. Nairobi/ Block 136/12359 sometimes in the year 2006, 18 years ago from the 2nd Respondent and immediately occupied the premises, planted trees which are now huge trees, constructed permanent Main House with Guest Wing, dug a well and Latrines, Perimeter Wall thereon without any interruption from any person including the 1st Respondent.
 - j. The Learned Trial Magistrate fell in grave error of fact and considering irrelevant matters in making a finding that the 2nd Respondent allotted property based on membership certificate and not non-membership certificate when in fact it was not in dispute that property was allotted based on shares and not membership.
 - k. The Learned Trial Magistrate erred in law in granting an equitable remedy of a permanent injunction against the Appellant without sufficient material to establish a prima facie case.
7. For the above reasons, the Appellant prays that;
- a. The Judgment and Decree of Hon. S.A. Opande, PM dated and delivered on 4/10/2024 in Milimani Chief Magistrate Court ELC Suit No. E056 of 2021 be set aside and substituted with an order dismissing the 1st Respondent's suit with costs.
 - b. The Appellant be awarded costs of this Appeal.

Court's Directions

8. On 23/06/2025, the court directed that the appeal be canvassed by way of written submissions. The Appellant and the 1st Respondent complied and filed their written submissions.
9. The 2nd Respondent did not participate in the appeal.

The Appellant's Submissions

10. The Appellant's submissions are dated 3/07/2025. The Appellant raises five issues for determination. The first issue is whether the Learned Magistrate erred in finding that the Appellant had not validly obtained the title to the suit property, despite evidence supporting the Appellant's good title. The Appellant argues that the 1st Respondent failed to prove, on a balance of probabilities, that the impugned title had been obtained irregularly and without due process. He criticises the trial court for invalidating the said title without supporting evidence. He claims to have demonstrated how he first obtained the Certificate Number 022038 in relation to plot No. V9599, which subsequently resulted in the title issued for it. He states that the 1st Respondent only claimed ownership of Certificate Number C3786 and Plot No. C412. Furthermore, he notes that these Certificates were obtained from a third party, Christine Wanjiku, and are entirely different from the parcel of land described by the Appellant. He asserts that the 1st Respondent failed to prove that he lawfully and regularly acquired the title to the suit property from the 2nd Respondent.
11. The second issue is whether the trial court erred in inferring misrepresentation, collusion, fraud, and illegality in the Appellant's acquisition of the title to the suit property, despite fraud not being pleaded or proved. The Appellant asserts that he proved the origin of his title and that the 1st Respondent had not met the higher standard of proof required for claims of fraud, collusion, or illegality, which exceeds the balance of probabilities. He contends that no evidence was presented to confirm that Plot No. C412, originating from Certificate No. C3786, was the same as the Appellant's Plot No. V9599 and Certificate No. 022038. Furthermore, no surveyor was called to verify on the ground whether the two



plots were identical. The Appellant criticises the court for finding fraud on his part, especially since such allegations had not been specifically particularised, pleaded, or strictly proved.

12. The Appellant further argues that the trial Court's decision that Christine Wanjiku was allocated Plot No. C412 in 1982 is both incorrect concerning the Appellant's title number Nairobi/Block 136/12359, which originated from Plot No. V9599, and a significant finding concerning a non-party who was deliberately not included in the proceedings. The finding that Christine Wanjiku sold what became the title Number Nairobi/Block 136/12359 is unfounded and lacks evidence. The alleged Sale Agreement dated 26/7/2012 refers to a property known as Plot No. 2695 with Share Certificate Number 6958. However, there is no document showing how the purported plot and certificate numbers were altered or combined to form the Appellant's Plot V9599 and Certificate Number 022038, or even Plot No. C412 that the 1st Respondent claimed. Therefore, the court erred in referencing Christine Wanjiku as the original owner of the Appellant's indefeasible title and unlawfully invalidating title No. Nairobi/Block 136/12359. He asserts that the title was legitimate and indefeasible, as the root of ownership was well established from when the plot was unregistered through to its registration in 2019.
13. The Appellant further criticises the trial court for overlooking the fact that the allocation of plots by the 2nd Respondent was based on ownership within the scheme and the acquisition of shares, rather than solely on Sale Agreements. Additionally, the court's conclusion that the Appellant could not be allocated a plot because he was issued with a non-membership certificate was unfounded and failed to consider that the Appellant was issued with a Certificate number prior to receiving a plot number, and it was undisputed that the Appellant was a member of the 2nd Respondent. It was also expected that the 1st Respondent should have produced an ownership certificate, payment receipts, and a certificate number regarding the property, which he failed to do.
14. The third issue is whether the trial court erred in law and fact in making a finding based on the Amended Plaintiff when there was a further amended Plaintiff filed in Court. The Appellant submits that the trial court erred in principle by relying on the Amended Plaintiff dated 8/04/2021 in total disregard to the Further Amended Plaintiff dated 7/10/2021. He contends that parties are bound by their pleadings, and it resulted in a mistrial as the Court based its determination on the pleadings not before it.
15. Finally, the fourth issue for determination, according to the Appellant, is whether the trial court erred in failing to find that the Appellant's title complied with Sections 24 and 25 of the Land Registration Act. The Appellant argues that the trial court arrived at a judgment contrary to the doctrine of indefeasibility of title. They contend that the 1st Respondent failed to prove fraud or misrepresentation to which the Appellant was a party. Based on the foregoing, the Appellant requests that the appeal be allowed.

1st Respondent's submissions

16. The 1st Respondent filed submissions dated 4/8/2025. The first issue for determination, according to the 1st Respondent, is whether the trial court erred in holding that the Appellant did not validly obtain the title LR No. Nairobi/Block 136/12359. He argues that the Appellant did not produce a Sale Agreement duly signed between himself and the 2nd Respondent, who was the original and legal owner of the suit property. Such a sale agreement would have confirmed that the Appellant genuinely purchased the land from the 2nd Respondent. The failure to produce the sale agreement contravenes the mandatory provisions of Section 3 (3) of the Law of Contract Act, it was so submitted.
17. He argues that he has proven his case regarding how he acquired the property. He states that he purchased the land from the initial member of the 2nd Respondent, Christine Wanjiru, who held a



- beneficial interest in the subject property. He also claims that the 1st Respondent produced a Sale Agreement for plot No. P2695, executed in 2012. Subsequently, the 1st Respondent was issued Share Certificate Number 3786 as proof of transfer and took possession of the land. The plot in question was referred to as Plot No. C412 in the List of Plot memberships submitted by the 2nd Defendant.
18. He asserts that the claim that Plot No. C412 and Plot No. V9599 were separate and distinct, and thus the trial had no basis for invalidating the title, does not hold water. He argues that Plot C412 and Plot No. V9599 are the same property, and that the different descriptions were intentional to acquire the property already allocated to him. He contends that the allocation to the Appellant was made after the property had already been allocated to Christine Wanjiru. He states that Christine Wanjiru was allocated the land in 1982 and issued with a Letter of Allotment, whereas the Appellant was allegedly allotted the land in 2006, although the non-member certificate shows it was done in 2013. He submits that at that time, the suit property had already been allocated to the original allottee; therefore, it was not available for allotment to the Appellant.
 19. The 1st Respondent argues that the second issue is whether the trial court erred in invalidating title LR. No. Nairobi/Block 136/12359 without proof of fraud. He cites Section 26 (1) of the [Land Registration Act](#) and states that fraud is not the only reason that can make a title invalid. He asserts that the presence of illegality, procedural irregularity, or a corrupt scheme is enough to challenge a title. The trial court was therefore correct in invalidating the Appellant's title.
 20. Regarding whether the Original Allottee, Christine Wanjiku, was a necessary witness to the proceedings; the 1st Respondent contends that a litigant is not obliged to call many witnesses to prove their case. What matters is that the litigant proves their case to the required standard of proof. The allegation that Christine Wanjiku was deliberately not joined to suppress evidence is considered purely speculative and unsubstantial. He cites the provisions of Section 112 of the [Evidence Act](#) and states that Christine Wanjiku is an independent third party. He maintains that he had no control over her appearance in court, nor was she a necessary party to the proceedings. That her absence did not prejudice the proceedings.
 21. On the issue of the Amended Plaintiff and Further Amended Plaintiff, the 1st Respondent asserts that this is an error apparent on the face of the record. This error does not warrant setting aside the Judgment since the procedural lapse did not cause any prejudice to the Appellant or result in an injustice. Therefore, it is not a sufficient ground for the Appellate Court to interfere.
 22. The final issue proposed by the 1st Respondent for determination is whether the title issued to the Appellant was indefeasible. He submits that the Appellant did not sufficiently prove how he acquired the suit property. He reiterates that the Appellant failed to produce a Sale Agreement in his favour. He therefore asserts that the trial court rightfully held that the Appellant had not demonstrated that the process leading to the title was lawful and procedurally sound. He urged the court to dismiss the appeal with costs, as it is unmerited.

Analysis and Determination

23. The court has analyzed the Record of Appeal the rival submissions and considered the law. The issues commending determination are; -
 - a. Whether the Learned Magistrate based his judgment on wrong pleadings and if so, what is the consequence thereof;
 - b. Whether or not the Appeal is merited.
 - c. Costs of the appeal.



Whether the Learned Magistrate based his judgment on wrong pleadings and if so, what is the consequence thereof;

24. As this is a first appeal, this Court must assess the evidence presented in the lower Court, while bearing in mind that it did not have the chance to see and hear the witnesses.
25. The duty of an appellate court is stipulated under Section 78 of the [Civil Procedure Act](#) which states as follows;
1. “Subject to such conditions and limitations as may be prescribed, an appellate court shall have power;
 - a. to determine a case finally;
 - b. to remand a case;
 - c. to frame issues and refer them for trial;
 - d. to take additional evidence or to require the evidence to be taken;
 - e. to order a new trial.
 - (2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.”
26. The principles which guide a first Appellate Court were summarized in the case of *Selle & Another -vs- Associated Motor Boat Co. Ltd & Others* [1968] EA 123 at P.126 as follows:
- “... Briefly put they are that this 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 that respect. In particular, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression on the demeanor of a witness is inconsistent with the evidence in the case generally.”
27. In the case of *Kapsiran Clan -vs- Kasagur Clan* [2018] eKLR the summarized the applicable principles as follows:
- a. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - b. In reconsidering and re-evaluating the evidence, the first appellate Court must bear in mind and give due allowance to the fact that the trial Court had the advantage of seeing and hearing the witnesses testify before her; and
 - c. It is not open to the first appellate Court to review the findings of a trial Court simply because it would have reached different results if it were hearing the matter for the first time.
28. Regarding the first issue, it is agreed that the parties filed a series of amended pleadings. The 1st Respondent, who was the Plaintiff, amended his Plaint, culminating in a Further Amended Plaint dated 7/10/2021. According to the proceedings before the trial court, the 1st Respondent filed an



- application dated 13/7/2019 seeking leave to amend his Complaint further. The said application was allowed as prayed with costs on 7/10/2021.
29. The Appellant, the 1st Defendant, filed his Statement of Defence dated 25/03/2021. He subsequently submitted an Amended Statement of Defence dated 03/05/2021. The 3rd Respondent's Statement of Defence is dated 07/12/2021.
30. In his Judgment, the trial court in its introduction stated that;
- “ Before this Court for judgment, is an Amended Complaint dated 8/04/2021...”
31. Owing to the above excerpt, the appellant is convinced that the Further Amended Complaint was disregarded, with the Learned Magistrate instead basing his decision on its earlier pleading – the Amended Complaint. It is well established law that the most recent pleading on record should guide the court. In this case, that would have been the Further Amended Complaint, the Amended Defence dated 3/05/2021, and the one of 7/12/2021.
32. The Court of Appeal in the case of Kenya Power & Lighting Company Limited –vs- Margaret Akoth Olang (2017) eKLR cited with approval the case of Mohan Meakin (K) Limited -vs- Attorney General [2014] eKLR where the court stated that: -
- “ ... We endorse Hodson, L.J.'s statement in Warner v. Sampson [1959] 2.W.L.R. 109 at page 123-124 that: 'Once pleadings are amended, what stood before the amendment is no longer material before the court.' After amendment, the case is determined on the basis of amended pleadings...”
33. So was the decision based on a flawed pleading, and if so, did the appellant suffer prejudice? The Further Amended Complaint is presented at Page 83 of the Record of Appeal. The amendment mainly appears in Paragraph 9, where the 1st Respondent stated that the 2nd Respondent lacked good title to transfer the suit to the Appellant, as it had already been allocated to Christine Wanjiku. The 1st Respondent also claimed that, according to the List of Documents dated 25/03/2021, brought forward by the Appellant, the suit property was identified as Plot C412. Consequently, the later allocation to the Appellant under a different description as Plot V.9599 resulted in double allocation. He thus requested that the 2nd and 3rd Respondents be ordered to identify the ground location of Plot No. C412 and Plot V.9599 through their Surveyors.
34. The orders sought were also amended in accordance with the changes. The 1st Respondent additionally requested an alternative plea for compensation based on the current open market value, as well as damages.
35. It is evident that the trial court erred in relying on the Amended Complaint rather than the Further Amended Complaint. However, was the error prejudicial to the Appellant? As noted earlier, the Appellant filed an Amended Defence dated 3/05/2021. The Amended Defence was in response to the Amended Complaint dated 8/04/2021. In his final submissions dated 2/08/2024 before the trial court, the Appellant referred to the Amended Complaint dated 8/04/2021 and to his Defence dated 25/03/2021.
36. It is clear that the Appellant never filed a Defence to the Further Amended Complaint. In effect, this indicated that he was not opposed to the new issues raised in the Further Amended Complaint. Therefore, he suffered no prejudice from the court relying on the Amended Complaint dated 8/04/2021. Moreover, relying on the wrong Complaint impacted the 1st Respondent, as it was his case, not the Appellant's. The Appellant did not raise a Counter-claim that remained undetermined to establish prejudice. The Court concludes that this mistake was therefore not fatal to the appellant's case.



Is the Appeal merited?

37. The Appellant has criticised the trial court for finding that he had not validly obtained the title to the suit property despite evidence showing good title in his favour. He contends that the trial court invalidated the title without supporting evidence. He asserts that he demonstrated how he first obtained the Certificate Number 022038 in respect of plot No. V9599, which subsequently resulted in the issuance of the title.
38. The trial court was criticised for making a finding that contradicts the ground that Plot No V9599 and C412 are the same.
39. He contends that the 1st Respondent only claimed ownership of Certificate Number C3786 and Plot No. C412, which certificates were solely obtained from a non-party, Christine Wanjiku. He argues that the 1st Respondent failed to show that he lawfully and properly acquired the title to the suit property from the 2nd Respondent.
40. On the other hand, the 1st Respondent stated that he purchased the land from the original member of the 2nd Respondent, Christine Wanjiru, who held beneficial interest in the property. He produced a Sale Agreement signed in 2012 for plot No. P2695. He also received a Share Certificate Number 3786 as proof of transfer and took possession of the property. The said plot was referred to as Plot No. C412 in the list of plots shared by the 2nd Defendant.
41. Having considered the competing claims of ownership, it is the court's duty to ascertain, after reviewing the evidence presented before the trial court and the respective submissions made, who the bona fide owner of the suit property is.
42. Section 26 of the *Land Registration Act*, which provides that: -
 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
43. As can be seen, the law is very protective of title and provides only two grounds for challenging it. The first is when the title is obtained through fraud or misrepresentation, and the person must be proven to be involved. The second is when the certificate of title has been acquired illegally, improperly, or via a corrupt scheme.
44. The import of Section 26 (1)(b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, un-procedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1)(b) is to protect the real title holders from being deprived of their titles by subsequent transactions.



45. It is not in dispute that the appellant and the 1st Respondent trace the origin of their claims to the 2nd Respondent.
46. The 1st Respondent's case was that he purchased the suit land from a member of the 2nd Respondent, namely Christine Wanjiku, in 2012 for a consideration of Kshs 350,000/-. He annexed a provisional letter of allotment issued in 1982 in the name of Christine Wanjiku by the 2nd Respondent. The plot number is indicated as No. 2695, and share certificate No 6958. He also presented a receipt dated 21/1/2011 for non-payment made to the 2nd Respondent. According to the members register produced in court, the said Christine Wanjiku is listed as a shareholder with certificate No 6958, which corresponds to the letter of allotment issued in 1982. The Plot No is C412. It has not been explained to the court how the plot number 2695 was changed to C412. That said, there seems to have been no controversy raised regarding the change of plot numbers.
47. Fast forward, the 1st Respondent testified that he entered into a sale agreement with Wanjiku in 2012 and was issued with share certificate No 3786 in place of the old certificate No 6958.
48. That on 2/12/2019, he found that the appellant had illegally encroached on his plot and started construction to his detriment.
49. The appellant's case is that he purchased his property Nbi/Block136/12359 from the 2nd Respondent company in 2006 and immediately occupied it, fenced it, and began developments, including planting trees and building a house in which he still resides. He states he made the required payments and was issued a non-member certificate of plot ownership on 2/8/13 for plot No V.9599. In 2018, following a successful verification exercise by the 2nd Defendant, he was issued a certificate of lease by the 3rd Respondent on 29/3/2019.
50. In this case, the 1st Respondent bore the burden of proof. I do not fault the Trial Magistrate for correctly analysing the root of the 1st Respondent's title. However, in the view of this court, this appeal will turn on ground No. 3, which is whether plot No. C412 and V9599 (Now Nairobi Block 136/12359) are the same parcels of land on the ground.
51. The 1st Respondent's case was that the 2nd Respondent alienated his plot No C412 to the appellant in 2013, and yet the said plot was unavailable, the same having been alienated to Christine Wanjiku in 1982. It was therefore his argument that the plot was not available for sale and or allotment to the appellant. That proposition is sound in law. However, did the 1st Respondent prove that Plot No. C412 is the same as Nbi/Block 136/12359?
52. I have carefully examined the record of the trial court and found no evidence, such as a surveyor's report, to demonstrate whether the two plots occupy the same ground, in other words, whether there is a duplication of allotment (double allocation).
53. This evidence was so crucial that in his further amended Plaintiff, the 1st Respondent argued that the 2nd Respondent should be compelled to identify the two parcels of land on the ground. Since the burden of proof was on the 1st Respondent, he had the primary duty of presenting evidence to the court.
54. Unfortunately, the 2nd Respondent did not present any evidence in the case, which could have clarified the dispute.
55. That notwithstanding, the absence of the 2nd Respondent in the suit does not lessen the burden on the 1st Respondent to prove his case.
56. As I mentioned, everything depends on the answer to this question. Since evidence had not been presented to the court, the trial court erred by making a decision not supported by any evidence.



57. In the end, the appeal has merit, and it is allowed as follows;

a. The Judgment and Decree of Hon. S.A. Opande, PM dated and delivered on 4/10/2024 in Milimani Chief Magistrate Court ELC Suit No. E056 of 2021 be set aside and substituted with an order dismissing the 1st Respondent's suit with costs.

b. The Appellant be awarded costs of this Appeal.

58. Orders accordingly

DELIVERED DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025

J G KEMEI

JUDGE

In the presence of;

Mr Mapesa for the Appellant

Ms Keruob HB for mr Mwaniki for the 1st Respondent

N/A for the 2nd and 3rd Respondents

Ms Yvette - CA

