Barmasai v Rono & 9 others (Civil Appeal E068 of 2023)
[2025] KECA 1489 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KECA 1489 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT ELDORET

CIVIL APPEAL E068 OF 2023

JM MATIVO, PM GACHOKA & WK KORIR, JJA

SEPTEMBER 19, 2025

BETWEEN

WILLIAM K BARMASAI ..... APPELLANT

AND

CATHERINE RONO ..... 1ST RESPONDENT

KIPKOECH RONO ..... 2ND RESPONDENT

GIDEON KIPTOO RONO ..... 3RD RESPONDENT

MAGDALINE CHEPCHIRCHIR RONO ..... 4TH RESPONDENT

RITA CHELIMO RONO ..... 5TH RESPONDENT

KIPNGETICH RONO ..... 6TH RESPONDENT

ONESMUS KIPLAGAT RONO ..... 7TH RESPONDENT

KIMUTAI RONO ..... 8TH RESPONDENT

LAND REGISTRAR, UASIN GISHU COUNTY ..... 9TH RESPONDENT

THE COUNTY LAND SURVEYOR, UASIN GISHU COUNTY .... 10TH RESPONDENT

(Being an appeal against the judgment of the Environment and Land Court of Kenya at Eldoret (E. Obaga, J.) dated 18th May, 2023 in ELC No. 89 of 2019)

JUDGMENT

1. This protracted litigation relates to the existence or otherwise of a disputed access road alleged to be on land reference number Uasin Gishu/Elgeyo Border/261. The said land belongs to the 2nd to 8th respondents. The 1st respondent is deceased. The appellant's case is that since 1960s, he and his family

have continuously used the said road to access their adjacent land reference number Uasin Gishu/Elgeyo Border/260. The appellant's contestation is that despite using the said access road for decades, in March 2019 the 2nd to 8th respondents closed it and cut down the trees planted along the said road. Aggrieved by the closure and act of cutting down the trees, vide an amended plaint dated 12th January 2022, the appellant sued the respondents at the Environment and Land Court (ELC) at Eldoret in ELC No. 89 of 2019 seeking the following reliefs:

a. A declaration that there exists a road access into the plaintiff's parcel of land known as Uasin Gishu/Elgeyo Border/260;

b. The reinstatement of the access road in accordance with the settlement scheme original plan of 1963;

c. The County Land Registrar to be ordered to rectify the Registry Index Map register by planning the access road on the rightful position;

d. The County Land Surveyor be compelled to amend the Registry Index Map to reflect the ground position and original Development Plan;

e. A declaration order that the plaintiff is entitled by law to the access road;

f. A mandatory injunction compelling the defendants jointly and severally by themselves, their servants, agents, employees, proxies or any other person acting on their behalf to forthwith open the road access into the plaintiff's parcel.

g. An order of permanent injunction restraining the defendants jointly and severally by themselves, their servants, agents, employees, proxies or any other person acting on their behalf from trespassing, cultivating and/or in any manner whatsoever dealing with land parcel number Uasin Gishu/Elgeyo Border/260.

h. Loss of user from the time the defendants blocked the road access.

i. Special damages of Kshs.176,723/- being value of plaintiff's tress destroyed by the defendants.

j. General damages for trespass.

k. Costs of the suit and interest.

(l) Any other reliefs that the court may deem fit.

2. In their amended defence and counterclaim dated 7th March 2022, the 2nd to 8th respondents averred that the disputed access road did not exist at the point alleged by the appellant. They maintained that the appellant's family ought to access their land through a six-meter stretch at the lower part of their land. They prayed that the suit to be dismissed with costs and sought the following reliefs in their counter-claim: (a) general damages, aggravated damages and exemplary damages; (b) restitution of the appellant's land to its original state; (c) costs and interest of the suit; and, (d) any other relief the honourable court may deem fit and just to grant.

3. In the ensuing trial, the gravamen of the appellant's case was that his late father used the said access road since 1960's, and his family and himself used it for decades. In support of his case, he called three witnesses. In summation, their case was that the development map used when the land was demarcated showed the said access, but it was omitted from the RIM which should be amended accordingly to provide the access road. On their part, the 2nd to 8th respondents' case was that there was no access at the point claimed by the appellant which they described as point "A". Instead, they maintained that the appellant's land reference number Uasin Gishu/Elgeyo Border/260 had its access at the point described

as "B" specifically at the intersection between plot numbers 260, 261 and 262, though it did not exist in the RIM.

4. After considering the pleadings, the evidence and submissions by counsel, the trial Judge isolated two issues for determination, namely; (a) whether there existed an access road on the disputed area; and (b) whether the parties are entitled to the reliefs sought.

5. Regarding the first issue, the learned Judge held that the mere fact that the appellant's family had used the disputed access road for a long time is not a justification for the same to be declared as being the official access road. If the court was to order that the Registry Index Map (RIM) be amended to indicate that parcel number 260 should be accessed through the disputed area, the effect would be to reduce the respondents' land. The learned Judge stated that the RIM is the final authority and it comes after a Development Plan and all the parties were in agreement that there was an omission during the preparation of the RIM. Therefore, there was no access road at the disputed area.

6. Regarding the second issue, the learned Judge held that there was no basis to award the special damages or general damages to the appellant since the trees alleged to have been cut were planted on the 2nd to 8th respondents' land and they cannot be condemned to pay for what was planted on their land.

7. Regarding the 2nd to 8th respondents' counter-claim, the learned Judge held that it was misconceived since it is the 2nd to 8th respondents who had allowed the appellant's family to access their land through the disputed area for a long period of time, therefore, there was no basis to award damages for trespass.

8. Lastly, the learned Judge ordered the RIM to be amended to show that the access road to the appellant's land is at the intersection of parcel numbers Uasin Gishu/Elgeyo Border 260, 26I and 242. The learned Judge also held that both the appellant and the respondents had failed to prove their respective claims and dismissed them and ordered each party to bear his own costs.

9. In this appeal, the appellant seeks to overturn the said decision citing 12 grounds in his memorandum of appeal dated 23rd August 2023 contending that the learned Judge erred in: (a) holding that there existed no access road into his aforesaid land at the disputed area; (b) failing to appreciate that the disputed access road existed in the 1973 Development Plan but was erroneously omitted from the RIM; (c) failing to determine the main issue framed for determination which is whether there existed an access road between land parcel numbers Uasin Gishu/Elgeyo Border/260 and Uasin Gishu/Elgeyo Border/261 and instead delving into an extraneous issue, which is, whether there is an alternative access road near land parcel number Uasin Gishu/Elgeyo Border/242; (d) holding that the disputed access road comprises part of parcel number Uasin Gishu/Elgeyo Border/261 without any iota of evidence; (e) determining the case on the basis of an extraneous issue that is there exists an access road to parcel numbers 260, 261 and 242 which was not supported by evidence; (f) holding that the RIM is the final authority in determination of boundaries, despite finding that there was an omission in its preparation thus implicitly confirming that the RIM was erroneous and thus amenable to amendment to conform to the 1973 Development Plan; (g) disregarding the evidence of the Uasin Gishu County Land Adjudication and Settlement Officer, the Chief Land Registrar Uasin Gishu County and the Land Registrar who all confirmed that the disputed access road existed; (h) holding that "...the mere fact that the appellant's family have been using the disputed access road for a long time is not a justification for the same to be declared as being the official access road" and failing to appreciate the provisions of section 20 of the *Limitation of Actions Act* which provides that if an easement has been enjoyed, peaceably and openly as of right, and without interruption for twenty years, the right to such access and use of light or air, or to such way or watercourse or use of water, or to such other easement, is absolute and indefeasible. However, it would be remiss for us not to point out that section 20 of the *Limitation of Actions Act* has been improperly invoked and it has no relevancy in the facts and

circumstances at hand. The said section deals with actions concerning trust property. Specifically, it outlines when the standard limitation periods don't apply to actions brought by a beneficiary against a trustee. These exceptions involve fraud or fraudulent breach of trust where the trustee is involved, or when a trustee possesses or has converted trust property. Also, the said provision provides that a beneficiary's action to recover trust property or address a breach of trust must be brought within six years from the date the right of action accrued, unless another provision of the Act specifies a different period.

10. Other grounds urged by the appellant are that the learned Judge erred in ordering an amendment to the RIM to indicate that the access road to Uasin Gishu/Elgeyo Border/260 be at a stretch at the intersection of Uasin Gishu/Elgeyo Border/260, Uasin Gishu/Elgeyo Border/261 and Uasin Gishu/Elgeyo Border/242 which is impassable during the rain season because it is a water pan; rendering a contradictory judgment in that he held that the 2nd – 8th respondents had not proved their case and even dismissed their counterclaim but went ahead to issue an order allowing their counterclaim by ordering that the RIM be amended to show that the access road to his land is at the intersection of parcel numbers 260, 261 and 242; disregarding the appellant's evidence and submissions and making no mention of them in the judgment; and dismissing his claim without any basis. The appellant prays that the judgment and decree of the ELC dated 18th May 2023 be set aside; this appeal be allowed and judgment be entered in his favour as prayed in his amended plaint and he be awarded costs of this appeal and the proceedings before the ELC.

11. During the virtual hearing of this appeal on 10th March 2025, Mr. Yego learned counsel appeared for the appellant, Mr. Tororei learned counsel appeared for the 2nd to 8th respondents and Ms. Cheruiyot, learned counsel appeared for the 9th and 10th respondents. They all adopted their written submissions dated 22nd February 2024, 21st March 2024 and 29th February 2024 respectively.

12. In support of the appeal, Mr. Yego condensed the appellant's 12 grounds into three broad issues, namely; whether there exists an access road between the appellant's parcel of land parcel number 260 and the respondent's parcel of land number 261; whether the appellant is entitled to the reliefs sought; and whether the appellant is entitled to costs.

13. Regarding the first issue, Mr. Yego maintained that it was common ground that the disputed access road exists in the 1963 Development Plan and the Survey Plan, which was confirmed by PW3, the County Land Adjudication and Settlement Officer, but the same was erroneously omitted during the preparation of the RIM. However, the parties continued to use the said access road until 9th April 2019 when the 2nd to 8th respondents blocked it and cut down the trees planted on the said access road. Counsel also submitted that the existence of the access road was supported by the evidence of PW4, Boniface Wanyama, a licensed land surveyor. He argued that there is a water pan at the intersection between land parcels numbers 260, 261 and 242 which is swampy and inaccessible during the rain season, therefore the RIM ought to be amended to reflect the access road as reflected in the 1963 Development Plan.

14. The appellant's counsel dismissed the 2nd to 8th respondents' evidence contending that DW2, Mr. Ng'isirei admitted that he was not a licenced surveyor and, in his report, he used the RIM and he never consulted the original Development Plan or the appellant. Further, he admitted that the RIM may be amended in case of discrepancies between the RIM, ground status report and the original development map. Counsel maintained that the access to parcel number 260 adjacent to parcel number 242 does not appear in the RIM. He contended that DW's evidence differed with the evidence tendered by the County Land Adjudication and Settlement Officer and Mr. Boniface Wanyama, a licensed land surveyor who both confirmed in their reports that there is no access on the point marked "B", yet in

DW2's report and the County Land Registrar's letter dated 27th June 2019 which was produced as exhibit 7 confirm that the access road exists. It was his submission that the trial court ought to have disregarded DW2's evidence because he admitted that he was not a licenced surveyor.

15. Mr. Yego also faulted DW3's evidence Mr. John Mukwana urging that the maker of the report never visited the site nor did he disclose the names of the surveyors from his office who visited the site. Therefore, his recommendation that the appellant's access to his land is at point "B" where a water pan exists is incorrect because the report by PW4, Mr. Wanyama, a licensed land surveyor and Mr. Keitany, County Land Surveyor agree that in the RIM, there is no access to the appellant's land. Therefore, the appellant proved that there existed an access road through plot number 261 and that the RIM ought to be amended accordingly.

16. Regarding the reliefs sought, the appellant's counsel cited section 33 of the *Survey Act* and submitted that the Director of Survey has powers to amend/rectify the RIM to reflect what is on the ground. Therefore, the trial court erred in holding that there exists an access road between plot numbers 260 and 242 when there was no access since the area is a water pan and it is impassable. To buttress his submissions, counsel cited the High Court decision in Samuel Wanjau vs. Attorney General & 2 Others [2009] eKLR in support of the proposition that where there is a dispute regarding the position and location of a boundary, unless the same is a fixed boundary, one has to go beyond the RIM in solving the dispute.

17. Lastly, the appellant's counsel submitted that the appellant has used the disputed access road for 60 years and cited section 32 of the *Limitation of Actions Act* which outlines the means by which easements may be acquired. Specifically, it states that if the access and use of light, air, a way, watercourse, or any other easement has been enjoyed peaceably and openly as of right, and without interruption for a period of twenty years, the right to that easement becomes absolute and indefeasible. Therefore, counsel urged that the appellant has acquired the right to enjoy use of the access road and maintained that the RIM should be amended to allow him to enjoy the use of the disputed road.

18. On behalf of the 2nd to 8th respondents, learned counsel Mr. Tororei maintained that the RIM clearly shows that there is no access road through the respondent's land, which was also confirmed by the testimony of PW3, Dan Kalamba, PW4 Boniface Wanyama Oluoch, DW2, Robert Ng'isierei and DW3, John Mukwana. Counsel urged that the scheme plan is the raw data which is submitted to the Director of Survey who thereafter prepares the RIM, but the Director of Survey is not bound by the scheme plan while preparing the RIM, therefore, there can be variance between the scheme plan, and the RIM. Counsel stressed that PW3, Dan Kalamba PW4, Boniface Wanyama, DW2 Robert Ng'isirei and DW3 John Mukhwana all confirmed that the Director of Survey is not bound by the scheme plan while preparing the RIM nor is he bound to give reasons for departing from the scheme plan and in this case the Director of Survey opted to do away with the road at point "A" (through the 2nd to 8th respondents' land) and instead retained an access road at point "B", that is at the intersection of parcel numbers 260, 261 and 242.

19. Mr. Tororei also submitted that the County Surveyor's Report mirrors what is on the ground, which is, the appellant's access point is marked "B", which is specifically at the intersection of parcel numbers 260, 261 and 242 as was observed by the trial court when it visited the scene. Therefore, the trial court was bound by the report of the County Surveyor. Further, the trial court visited the land and noted that there was no water pan and the appellant's family could easily access their land through the 7-meter stretch which touches the main road. Therefore, failure by the appellant to produce evidence that the RIM was inaccurate and needed cancellation, means that section 33 of the *Survey Act* is not applicable in this case. Counsel maintained that the appellant seeks to create a short cut by creating a road through the 2nd to 8th respondents' land without compensation in violation of article 40 of the

Constitution as was held by the Supreme Court in Rutongot Farm Ltd vs. Kenya Forest Service & 3 Others [2018] eKLR.

20. Submitting on the appellant's attempt to rely on section 32 of the Limitation of Action Act, Mr. Tororei maintained that the appellant did not specifically plead or argue the said issue during the trial, therefore, he cannot raise it in this appeal because parties are bound by their pleadings as was held by this Court in David Sironga Ole Tukai vs. Francis Arap Muge &__ 2__ Others,__ Civil Appeal No. 76 of 2014 [2014] eKLR.

21. Responding to the alleged trespass on the disputed access road and the alleged damage to trees which were planted along the disputed access road, Mr. Tororei contended that the prayer for damages was laughable since the disputed portion did not belong to the appellant but it is owned by the 2nd to 8th respondents whose rights are protected under the *Constitution*.

22. On behalf of the 9th and 10th respondents, learned counsel Ms. Cheruiyot urged this Court to partially allow the appeal and allow the plea for access road at the disputed portion as a matter of right under section 32 of the *Limitation of Actions Act* and as an overriding interest under section 28 (c) of the *Land Registration Act*. Counsel maintained that pursuant to a court order, the County Land Surveyor through Mr. Keitany visited the suit land on 25th November 2020 and compiled a report filed in court on 26th November 2020 and Mr. John Mukwana who was familiar with the works of Mr. Keitany testified as DW3 and produced his report as defence exhibit 2 in which it was concluded that there was no access road in the disputed area and plot 260 could easily be accessed through a 7 metre stretch at the intersection between plot numbers 260, 261 and 262. The position was confirmed by the trial court when it made a site visit to the site and established that the appellants had constructed houses on the upper side of their land which is easily accessible through the disputed access road and if an access road was to be created at the intersection of parcel numbers 260, 261 and 242 it will inconvenience the appellant's family.

23. Ms. Cheruiyot maintained that there was need for the RIM to be amended to provide for an access road as was held by the trial court notwithstanding that a Development Plan had provided for an access road through plot 261. Therefore, the learned Judge cannot be faulted for concluding that the RIM is a final authority on matters of boundary dispute in view of the evidence on record since a Development Plan has no authentication of the Director of Survey and may change after the survey since it is always not drawn to scale or by surveyors, as was held by Sila, J. in Kipkirui Arap Koske vs. Philemon Kipsigei Tangus & Ano. [2015] eKLR.

24. Ms. Cheruiyot maintained that even though the appellant did not specifically plead for right of way in accordance with section 32 of the Limitations of Actions Act, the said issue may be inferred from prayer (d) in the amended plaint where the appellant sought for a declaratory order that the plaintiff is entitled by the law to the access road and indeed, had the trial court considered the import of section 32 of the Limitations of Actions Act, then it would have definitely arrived at a different conclusion since it is not disputed that the right of easement had crystalized. Counsel maintained that the finding that the RIM ought to be amended was pursuant to the County Surveyor's report conducted pursuant to a court order.

25. This is a first appeal; therefore, it is by way of retrial. Briefly, 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 this respect. However, this Court can only interfere with the trial court's findings of fact if it appears either that the trial Judge failed to take into account relevant considerations or has taken into account irrelevant considerations. (See Abdul Hameed Saif vs. Ali Mohamed Sholan [1955], 22 E. A. C. A. 270).

26. Upon carefully considering the record of appeal, the impugned judgment, the grounds of appeal, the parties' submissions, and the law, we find that this appeal will turn on two issues, namely; whether there exists an access road between the appellant's parcel of land number 260 and the 2nd to 8th respondents' land number 261, and, whether the learned Judge erred by ordering the RIM to be amended despite having dismissed the appellant's suit and the 2nd to 8th respondents' counter-claim.

27. The appellant's case is that he has developed the upper side of his land parcel number 260 which is easily accessible through the disputed access road, which he has used for decades, and that the access road at the intersection of land parcels numbers 260, 261 and 242 is a water pan, its swampy and impassable during the rainy season. On the other hand, the 2nd to 8th respondents' case is that there is no access road at the portion claimed by the appellant and should an access road be created on the disputed portion, their land will be substantially reduced in acreage. They maintained that there exists an access road at the intersection of plot numbers 260, 261, and 242 which the appellant should use to access his land.

28. The RIM is a crucial cadastral document used in the land registration system to visually represent the location and boundaries of land parcels. It serves as an official record maintained by the Survey of Kenya and is integral to the land registration and ownership system under the *Land Registration Act*. Unlike a title deed, which certifies ownership, a RIM provides a geographical context, mapping out the physical existence and precise location of a property relative to its surroundings. It is often described as a comprehensive tool that complements other ownership documents like title deeds and green cards offering a detailed layout of land parcels, their shapes, and their boundaries. (See the ELC decision in Kitonga & Ano. vs. Nzyoka [2024] KEELC 1667 (KLR).

29. It is common ground that in the RIM, the access to land parcel number 260 is not shown. DW3, John Mukwana, Land Registrar II who produced a report prepared by Mr. Keitany, the County Land Surveyor, testified that as per the RIM, the appellant's land does not have an access road and that there was need for the RIM to be amended to reflect the existing access road to the appellant's land parcel at point "B" which is at the intersection of parcel numbers 261 and 242. The fact that a scheme plan is drawn by a land adjudication officer who is not a surveyor is not disputed. It was also DW3's evidence that the Land Surveyor is not bound by the drawings by the Land Adjudication Officer.

30. Court decisions by our Superior Courts have consistently held that a scheme plan cannot supersede the RIM. The RIM serves as the primary and authoritative record of land boundaries and parcels, and any inconsistencies between a scheme plan and the RIM are generally resolved in favor of the RIM. This principle is rooted in the legal framework that prioritizes the RIM as the definitive document for land registration and demarcation. However, the Kenyan legal framework allows for the amendment of the RIM under specific circumstances, such as: (a) boundary disputes, Government initiatives, and the correction of errors, but always emphasizes adherence to proper legal procedures and the protection of landowners' rights. (See Can the Registry Index Map Be Altered in Kenya? By Webadminhash January 1, 2025.)

31. A reading of the above paragraph shows that: (a) If there's a disagreement between landowners regarding the boundaries of their properties, a court or land tribunal may order a survey to resolve the dispute. If the survey results in a change to the original boundary, the RIM will be updated to reflect the new boundary. (b) The government may initiate changes to RIM as part of land consolidation or regularization programs. These programs aim to streamline land ownership and resolve historical land disputes. (c) If it's discovered that a RIM contains errors or omissions, it can be corrected through a formal process involving land surveyors and government officials.

32. In the definitive paragraphs, the trial judge had this to say'

> " 16. It is common sense that when survey is being done, each parcel must have an access to the road. As the position stands, there is an access to parcel 260 at the intersection of parcel 260, 261 and 262. The mere fact that the plaintiff's family have been using the disputed access road for a long time is no justification for the same to be declared as being the official access road. If the court was to order that the RIM be amended to indicate that parcel No. 260 should be accessed through the disputed area, the effect to this would reduce the defendant's land."
>
> 17. The plaintiff called an officer from the Settlement Office, Eldoret, who testified that the Development Map which the office sourced from Nairobi shows that the access road to parcel 260 is on the disputed area. He stated the plaintiff cannot access parcels 260 because the area where his land touches the main road is swampy. As I have said hereinabove, the court visited the disputed area and went to the intersection of plot 260, 261 and 262. The area was not swampy as claimed by the settlement officer. The plaintiff's family could easily access his land through the 7-meter access at the intersection.

33. The scheme plan which the appellant claims to contain the disputed access road cannot supersede the RIM. More important, the appellant failed to prove that there exists an access road at point "A" which he had been using for many years nor did he prove that the access road was erroneously left out in RIM. Significantly, during the site visit, the learned Judge confirmed the existence of a 7-meter road at the intersection of plot numbers 260, 261 and 262. The learned Judge who, unlike us, had the advantage of vising the site confirmed that contrary to the appellant's claim and those of the settlement officer, the said area was not swampy and it was passable. The learned Judge was persuaded that the appellant and his family could easily access his land through the 7-meter access at the intersection of the three plots. We are persuaded that the above findings are supported by the evidence on record. Therefore, we find no justification to interfere with the said findings.

34. Having agreed with the learned judge that there is no access road at Point "A" as claimed by the appellant, we find that the appellant's claim for special damages in the sum of Kshs.176, 723/- being the value of the trees allegedly destroyed by the 2nd to 8th respondents and the plea for Kshs.500,000/- for general damages was properly rejected. We agree with the learned Judge that the 2nd to 8th respondents could not be condemned to pay for what was allegedly planted on their land.

35. It is also our finding that the 2nd to 8th respondent's claim for general damages of Kshs.5,000,000/- for trespass was properly rejected on grounds that there was no basis for awarding the same since it was clear that the 2nd to 8th respondents had allowed the appellant to use their land or they had countenanced the access through their land.

36. The appellant is adamant that his family has been using the disputed access road for over 20 years. Therefore, pursuant to section 32 of the Limitation of Action Act, he has acquired the right to use the access road and therefore the RIM should be amended to allow him to enjoy the use of the disputed

access road. The learned Judge on the issue of the prolonged use of the disputed access road held as follows:

> " ...the mere fact that the Plaintiffs family have been using the disputed access road for a long time is no justification for the same to be declared as being the official access road."

37. Answering a question from this Court whether section 32 of the *Limitation of Actions Act* was pleaded before the trial court, Mr. Yego referred the Court to prayer (d) in the amended plaint in which the appellant prayed for "a declaration order that the plaintiff is entitled by law to the access road". Parties are bound by their pleadings. The function of a pleading in civil proceedings is to alert the other party to the case they need to meet, (and hence satisfy basic requirements of procedural fairness) and further, to define the precise issues for determination so that the Court may conduct a fair trial. The cardinal rule is that a pleading must state all the material facts to establish a reasonable cause of action (or defence). The expression "material facts" is not synonymous with providing all the circumstances. Material facts are only those relied on to establish the essential elements of the cause of action. Pleadings must therefore be lucid and logical and in an intelligible form; the cause of action or defence must appear clearly from the factual allegations made. (See Dakianga Distributors (K) Ltd vs. Kenya Seed Company Limited [2015] eKLR). Parties should not be unduly encouraged to rely, in the hope, perhaps, of obtaining some tactical advantage, to treat unpleaded issues as having been fully investigated.

38. Therefore, the general rule is that courts should determine a case on the issues that flow from the pleadings and the court may only pronounce judgement on the issues arising from the pleadings or such issue as the parties have framed for the court's determination. It is also a principle of law that parties are generally confined to their pleadings unless pleadings are amended during the hearing of a case. (See this Court's decision in M. N. M. vs. D. N. M. K. & 13 Others [2017] eKLR. We have carefully read the appellant's pleadings before the trial court. Section 32 of the *Limitation of Actions Act* was not pleaded nor was it canvassed before the trial court. Therefore, the trial court did not have the benefit of addressing its mind to the said issue. It cannot be raised at this stage.

39. Lastly, the appellant urges that the trial court contradicted itself by dismissing the appellant's suit and the 2nd to 8th respondents' counterclaim, yet it went ahead to direct that the RIM be amended to show that the access road to the appellant's land is at the intersection of parcel numbers 260, 261 and 242. It is common ground that there exists a 7-meter road at the said point, but it is not reflected in the RIM. The appellant expressly admits it but claims that it is water logged and impassable particularly during the rainy season. As mentioned earlier, the learned Judge disapproved this assertion during the site visit. The County Surveyor recommended that the RIM be amended to indicate that the access road to parcel number 260 should be the stretch measuring about 7 meters at the said intersection.

40. At the centre of this dispute is whether the access road to the appellant's land is located at the point described as "A" as asserted by the appellant or at point "B" described as the intersection between the three plots as was stated by 2nd to 8th respondents and the Count Surveyor who in his report urged the trial court to amend the RIM and provide the access road which already exists on the ground. The existence of this road was confirmed by the trial Judge during the site visit. There is no doubt that both parties led evidence on the said issue and submitted on the same in detail in their bid to persuade the trial court to determine the matter. Each party was seeking a finding based on his position. It is also important to mention that in his effort to persuade this Court to partially allow the appeal, learned counsel for the 9th and 10th respondents weighed into the same discourse and urged this Court to order the RIM to be amended to create the access road. It is settled law that a court may validly determine an unpleaded issue where evidence is led by the parties and from the course followed at trial it appears that the unpleaded issue has been left to the court to decide the matter. (See Odd Jobs vs. Mubea [1970]

EA 476). This Court in Ann Wairimu Wanjohi vs. James Wambiru Mukabi [2021] eKLR stated that Odd Jobs (supra) remains good law, that in limited circumstances where an unpleaded issue is crucial to the matters in issue, the court may determine a suit on the unpleaded issue, provided both parties have clearly addressed the unpleaded issue in their evidence or submissions, and left the matter for the determination of the Court.

41. We have no doubt that the issue in question was canvassed by all the parties each party seeking a finding in his favour and left the issue to the trial court to determine. The appellant prayed for a declaration that there exists an access road to his land and also specifically prayed for the RIM to be rectified. Earlier in this judgment, we set out circumstances upon which a RIM can be amended. However, both parties did not demonstrate any of the laid down grounds up which a RIM can be amended. Therefore, both the plaint and the counter claim were correctly dismissed. But noting that on the ground there existed an access road, the equity and justice of the case merited the prayer granted by the trial court. Therefore, the relief granted by the trial court directly flowed from an issue that was presented to the court and urged by the parties. In fact, doing the opposite would have been a clear dereliction from duty. We therefore find no reason to fault the trial court for ordering the RIM to be amended to create the access road to the appellant's land at the intersection of parcel numbers 260, 261 and 242.

42. Flowing from our findings on the issues discussed herein above, it is evidently clear that this appeal is devoid of merit and the only available order is to dismiss it, which hereby do. The appellant shall pay the 2nd to 8th respondents the costs of this appeal and the proceedings before the trial court.

DATED AND DELIVERED AT NAKURU THIS 19TH DAY OF SEPTEMBER, 2025.

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR.