REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

ELC APPEAL CASE NO. E008 OF 2025

MOHAMMED ABDIKADIR……..…APPELLANT

VERSUS

PETER MUTUMA……...……..……..1ST RESPONDENT

ISIOLO COUNTY GOVERNMENT……...……2ND RESPONDENT

JUDGMENT

1. The 1st Respondent herein [*who was the Plaintiff in the subordinate court*] approached the court *vide* Plaint dated **10th June 2014**; and wherein the 1st Respondent sought the following reliefs:-
    a. ***An order of declaration that plot No. 91 Chechelesi and or Plot No. 15, 16 and 17 belong to the Plaintiff .***
    b. ***A permanent order of injunction against the defendants preventing them from entering into the plaintiff's plot No. 91 Chechelesi or plot No. 15, 16 and 17 Chechelesi area.***
    c. ***Costs and interest of this suit.***
2. The Appellant herein [*who was the 1st defendant*] duly entered an appearance and filed a statement of defence dated, 8th July 2014 and wherein the appellant denied the claims by and on behalf of the 1st respondent. Furthermore, the appellant contended that the claim by the 1st respondent pertaining to ownership of the suit property was premised on the resolutions/ decisions of the dispute resolution committee which had been revoked/ cancelled. Further and in addition, it was contended that the 1st respondent has no lawful claim to the suit property or at all.
3. The 2nd respondent [the County Government of Isiolo] similarly entered an appearance and thereafter filed a statement of defence dated 24th July 2014. The 2nd respondent denied the claims by the 1st respondent.

Moreover, the 2nd respondent also posited that one Edukau had no authority to allocate any land within Isiolo county or at all.

4. The suit before the subordinate court was heard and disposed of *vide* Judgment rendered on 31st January 2025; and wherein the learned Chief Magistrate [Hon. Lucy Mutai, CM] found and held that the 1st respondent had proved his case to the requisite standard. To this end, the learned Chief Magistrate proceeded to and granted relief in the manner sought at the foot of the Plaint dated 10th June 2014.
5. It is the said Judgment and the consequential decree which has provoked the subject appeal. The appellant has filed the memorandum of appeal dated 27th February 2025; and wherein the appellant has raised the following grounds of appeal.

    i. ***THAT the Learned Trial Magistrate erred in fact and in law in finding and or inferring in its judgment that the disputed parcel on the ground was plot No. 97 Chechelsi and or plot No 15, 16 and 17 Chechelesi despite there being compelling evidence adduced at trial asserting that the disputed parcel was actually Plot No. 470 Chechelesi [PDP No. ISL/117/96/21].***

    ii. ***THAT the Learned Trial Magistrate erred in law and in fact in disregarding the expert witness testimony and evidence of DW2 – the county Physical Planner, Isiolo who equivocally testified and adduced evidence at trial that the disputed parcel on the ground was actually plot No. 470 Chechelezi (PDP No. ISL/117/96/21) which is owned by the applicant/ 1st defendant NOT Plot No. 97 Chechelezi and or Plot No. 15, 16 and 17 Chechelezi.***

iii. ***THAT the Learned Trial Magistrate erred in law and in fact in declaring that the 1st Respondent/ Plaintiff was the legitimate owner of Plot No. 97 Chechelezi and or Plot No. 15, 16 and 17 Chechelezi despite the 1st Respondent / plaintiff failing to adduce any sufficient and or credible evidence at trial to support his ownership of the property and or how he came to legitimately acquire the land/ plot property.***

iv. ***THAT the Learned Trial Magistrate erred in fact and in law in affirming the erroneous decision of the Dispute Resolution [Technical Committee] noted in its minutes of 2nd August 2012 despite the Isiolo County Executive Committee having reviewed and or set aside the same in its Resolution / Letter dated 25th April 2014.***

v. ***THAT the Learned Trial Magistrate erred in law and in fact in issuing a permanent injunction against the 1st defendant/ appellant in regard to Plot No. 97 Chechelezi and or Plot No. 15, 16 and 17 Chechelezi despite there being evidence adduced at trial indicating that the 1st defendant/ appellant was in possession and or occupation of his own plot of land known as Plot No. 470 Chechelezi (PDP No. ISL/117/96/21.***

vi. ***THAT the Learned Trial Magistrate erred in law and in fact in finding that the 1st respondent/plaintiff was entitled to any of the prayers sought in the plaint and that the plaintiff had proved his case on a balance of probabilities despite there being overwhelming evidence to the contrary.***

vii. ***THAT the Learned Trial Magistrate misdirected herself on the matters of law and facts as a result occasioned a grave miscarriage of justice against the appellant / 1st defendant.***

viii. ***THAT the whole of the judgment of the Trial Court went against the weight of the evidence adduced at trial and the testimony of the witnesses.***

6. The subject appeal came up for directions on 1st July 2025; whereupon it was confirmed that the record of appeal had been duly filed and served. Furthermore, the advocate for the parties covenanted to canvass and dispose of the appeal by way of written submissions. In this regard, the court proceeded to and issued directions including the timelines for the filing and exchange of the submissions.

7. The Appellant filed written submissions dated 25th July 2025; and wherein same has argued the grounds of appeal consecutively.

8. Regarding ground one of the Memorandum of appeal, learned counsel for the appellant has submitted that the learned trial magistrate erred in facts and in law in finding and holding that the 1st respondent had proved and established his ownership claims in respect of plot No. 91 Chechelezi [or plots No. 15, 16 and 17 Chechelezi]. Moreover, it was submitted that the finding and conclusions by the learned chief magistrate were not only contrary to the weight of evidence on record, but same were also arrived at without due regard to the content[s] of the joint report of the count physical planner and the county surveyor dated 4th September 2019; and which report is contended to have confirmed that the disputed ground constitute[s] plot No. 470 Chechelezi.

9. In addition, it was also submitted that the learned chief magistrate disregarded the evidence of DW2, which evidence confirmed the authenticity of the appellant's ownership documents.

10. Turning to ground number two [2]; learned counsel for the appellant has submitted that the finding[s] and holding[s] by the learned chief magistrate, that the suit property lawfully belonged to the 1st respondent was erroneous and unsupported by any evidence. Moreover, it was submitted that the learned trial magistrate based her evidence on hearsay; and an unauthenticated Part development plan [PDP], which had neither been approved nor confirmed. In this regard, it is posited that the judgment of the learned trial magistrate is coloured with grave misdirection[s].

11. As pertains to the third ground of appeal, learned counsel for the appellant has submitted that the learned chief magistrate failed to appreciate that the suit land fell within and or formed part of the trust land under the trust land act, Chapter 288 Laws of Kenya [now repealed] and thus same [suit land] could not be allocated by One, Edukan, either in the manner alleged by the 1st respondent or at all. Moreover, it was submitted that the said Edukan had no legal authority to allocate trust land. To this end, learned counsel has cited and referenced the provisions of **Sections 7 of the Trust land Act, Chapter 288 Laws of Kenya.**

12. Next is ground number four [4] of the Memorandum of appeal and wherein learned counsel for the appellant has submitted that the learned Chief Magistrate committed a grave error in relying and basing her judgment on the decision of the dispute resolution committee dated 2nd August 2012, yet the said resolutions stood revoked *vide* a letter of the

CEC [County Executive committee member] dated 25th April 2024. In this regard, it was posited that by relying on the decision under reference, the learned trial magistrate took into account extraneous and irrelevant matters which ought to have been excluded.

13. As pertains to ground number five [5] of the memorandum of appeal; it was submitted that the learned chief magistrate erred in law in finding and holding that the 1st respondent had established a basis to warrant the grant of an order of permanent injunction. In particular, it was submitted that the 1st respondent did not prove ownership of plot No. 91 Chechelezi; and hence the order of permanent injunction was issued/ granted in *vacuum*.

14. Regarding ground number six [6] of the memorandum of appeal; learned counsel for the appellant has submitted that the learned Chief Magistrate erred in law and fact in finding that the 1st respondent had proved his claim to the suit property. On the contrary, it was submitted that the finding by the trial magistrate ignored and disregarded credible evidence that had been tendered by the respondent including the letter of allotment issued in 1996; part development plan [PDP] No ISL/117/96/21; and the joint report prepared by the county physical planner and the county surveyor, respectively.

15. In respect of ground number seven [7]; learned counsel for the appellant has submitted that the learned chief magistrate erred in mis-identifying the disputed plot and in particular, in finding that the disputed plot constituted plot No 91 Chechelezi. It was submitted that the finding under reference is contrary to the content[s] of the joint report which was tendered and produced before the court. In addition, it was submitted that

the finding[s] under reference were also arrived at in the absence of any plausible or cogent evidence by the respondents.

16. Turning to ground number eight [8] of the memorandum of appeal; learned counsel for the appellant has submitted that the judgment by the learned chief magistrate constitutes of grave misdirection[s]. Moreover, it has been submitted that the judgment is also contrary to the weight of the evidence that was tendered by the appellant. In addition, it was submitted that in finding and holding that the 1st respondent owned the disputed property, the learned Chief Magistrate misapprehended the provisions of the Trust Land Act, Chapter 288, Laws of Kenya; and hence the Judgment under reference is manifestly unsafe.

17. Flowing from the forgoing submissions, learned counsel for the appellant has contended that the appeal beforehand is meritorious. To this end, the appellant has implored the court to find and hold that the 1st respondent did not prove his claim to the suit property or at all.

18. The 1st respondent filed written submissions and wherein same has highlighted two [2] key issues. The issues highlighted by the 1st respondent are *namely*; the Judgment of the learned chief magistrate took into account the totality of the evidence on record and same is well grounded; and that the 1st respondent discharged that burden of proof as pertains to ownership of the disputed property.

19. Regarding the first issue, learned counsel for the 1st respondent has submitted that the 1st respondent herein was lawfully and duly allocated

Plot No. 91 Chechelezi area by one Edukan. In particular, learned counsel fort the 1st respondent has reiterated that the land in question was granted to the 1st respondent long before the appellant herein staked/ laid a claim thereto.

20. It was the further submission by learned counsel for the 1st respondent that the 1st respondent herein also tendered and produced evidence before the court that a dispute pertaining to ownership of the disputed property had been placed before the dispute resolution committee of the county council of Isiolo [now defunct]; and that the said dispute committee resolved that the suit property belongs to the 1st respondent. To this end, learned counsel for the 1st respondent referenced the decision/ minutes of the dispute resolution committee dated 20th April 2012 which are said to have recommended that the disputed plot belongs to the 1st respondent.

21. In respect of the second issue, learned counsel for the 1st respondent has submitted that the 1st respondent duly established and proved his claim to the disputed property on a balance of probabilities. Moreover, it has been submitted that the findings and conclusions of the learned chief magistrate are premised/ based on the evidence that was tendered. In this regard, learned counsel for the 1st respondent has posited that the judgment of the chief magistrate is coherent and consistent with the evidence on record.

22. Arising from the foregoing, learned counsel for the 1st respondent has invited the court to find and hold that the appeal before hand is *devoid* of merit[s]. To this end, learned counsel for the 1st respondent has invited the court to proceed and dismiss the appeal. Moreover, the court has been

implored to affirm the judgment and the consequential decree of the Chief Magistrate.

23. The 2nd respondent herein does not appear to have filed any written submissions. For good measure, no such submissions are obtainable on the court tracking system [E-platform of the court].

24. Having reviewed the entire record of appeal; the pleadings that were filed on behalf of the respective parties; the evidence tendered [*both oral and documentary*] and upon taking into consideration the written submissions on record, I come to the conclusion that the determination of the subject appeal turns on two [2] key issues, *namely*; whether the 1st respondent established and proved his ownership of plot No. 91 Chechelezi or otherwise; and whether the learned chief magistrate correctly addressed her judicial mind to the legal import of the documentation relied upon by the 1st respondent or otherwise.

25. Before venturing forward to analyse the issue[s] that have been highlighted, it is imperative to observe that the Appeal beforehand is a first appeal from the decision of the court of first instance, *namely*, the Subordinate Court. By virtue of being a first appeal, this honourable court is vested with the requisite jurisdiction to scrutinize; review; re-evaluate; and re-analyse the findings of the court of first instance and thereafter to arrive at independent conclusions, taking into account the pleadings filed, evidence on record and the applicable laws**.** ***[See the provisions of Section 78 of the Civil Procedure Act, Chapter 21, Laws of Kenya].***

26. Nevertheless, it is imperative to underscore that even though this court is clothed with jurisdiction to scrutinize; review; re-evaluate; and re-analyse the findings and observations of the trial court, this court is, however, called upon to exercise necessary caution and circumspection. In addition, the court is called upon to defer to the findings of the trial court

unless the findings of the trial court are informed by extraneous factors or, better still, are perverse to the evidence on record.

27. The scope and jurisdictional remit of this court whilst entertaining a first appeal has been elaborated upon and underscored in various decisions. In the case of **Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123,** the Court of Appeal for Eastern Africa [EACA] elaborated on the applicable principle[s] and stated thus;

> ***"...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. 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 this respect..."***

28. Likewise, the extent and scope of the Jurisdictional remit of the first appellate court was also elaborated upon in the case of ***Abok James Odera T/A A.J Odera & Associates versus John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR,*** where the Court of Appeal held thus;

> We also wish to be guided by the reasoning of this court in the case of ***Mwana Sokoni versus Kenya Business Limited (1985) KLR 931 page 934,934*** thus:-

> "***Although this court on appeal will not lightly differ from the Judge at first instance on a finding of fact, it is undeniable that we have the power to examine and re-evaluate the evidence on a first appeal if this should become necessary. As was said by the house of Lords in Sottos Shipping versus Sauviet Sohold, the Times, March 16,1983.***

> "***It is uncertain whether their Lordships should have reached the same conclusion on the evidence, but it is important that, sitting in the appellate court they should be over mindful of the advantages enjoyed of the trial Judge who saw and heard the witnesses and was in a comparably better position than the Court of Appeal to assess the significance of what was said, how it was said, and equally impotent what was not said"***

Again, in ***Peters versus Sunday Post Limited (1958) EA424,*** a decision of the Court of Appeal for Eastern Africa, Sir Kenneth O' Conner, ***P*** said at page 429:

> "***It is a strong thing for an appellate court to differ from the finding on a question of fact of the Judge who tried the case and who has had the advantage of seeing and hearing and the witnesses"***

29. Without endeavouring to exhaust the case law that elaborates on the scope and extent of jurisdiction of the first appellate court, it is apposite to take cognizance of the holding of the Court of Appeal in the case of ***Gitobu Imanyara & 2 others v Attorney General [2016] eKLR***, where the court held as hereunder;

As we discharge our mandate of evaluating the evidence placed before the High Court, we keep in mind what the predecessor of this Court said in <u>Peters</u> <u>–vs- Sunday Post Ltd</u> [1958] EA 424. In its own words: -

> ***"Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide ...".***

30. Duly guided by the established position [*ratio*] which underlines the scope and extent of the jurisdiction of the 1st appellate court, I am now disposed to revert to the subject matter and to discern whether the learned trial magistrate correctly appraised, analyzed and evaluated the evidence tendered before her and arrived at the correct findings.

31. Regarding the first issue, *namely*; whether the 1st respondent established and proved his ownership/ entitlement to Plot No. 91 Chechelezi, it is imperative to recall and reiterate that the 1st respondent is the one who approached the court contending that same had been given/ allocated the disputed plot by one Edukan. Furthermore, it is the 1st respondent who had contended that one Edukan owned the disputed plot before same [disputed plot] was given to the 1st respondent. In addition, the 1st respondent posited that same is the registered owner of the disputed plot.

32. Having approached the court on the basis that same was lawfully given the disputed plot and furthermore, having contended that same [1st respondent] was the registered of the disputed property, it was incumbent upon the 1st respondent to tender and place before the trial court [the chief magistrate] plausible evidence to underpin his claims. Instructively, the burden of proving the assertions laid on the shoulders of the 1st respondent and not otherwise. [**See Section 107, 108 and 109 of the Evidence Act Chapter 80 Laws of Kenya].**

33. The legal position that the burden of proof rest[s] on he/ she who asserts has been addressed in various courts decisions. In the case of **Mucheru versus National Bank of Kenya Limited [2019] eklr;** the Court of Appeal expounded on the principle and stated thus:

> ***17. On matters evidence, Madan, JA (as he then was) in CMC Aviation Ltd v. Crusair Ltd (No1) [1987] KLR 103 stated: "… Proof is the foundation of evidence. As stated in the definition of "evidence" in section 3 of the Evidence Act, evidence denotes the means by which an alleged matter of fact, the truth of which is submitted for investigation, is proved or disproved. Averments are matters the truth of which is submitted for investigation. Until their truth has been established or otherwise they remain unproven...."***
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> ***18. The Evidence Act is clear enough upon whom the burden of proof lies. Section 107 provides as follows:***
>
> ***"1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

2. When a person is bound to prove the existence of any facts, it is said that the burden of proof lies on that person."

Section 109 of the same Act further provides:

"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact lie on any particular person."

19. In <u>Karugi & Another v Kabiya & 3 Others</u> [1987] KLR 347, this Court held that the burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof."

34. Did the 1st respondent prove his entitlement to the disputed property? To start with, it is the 1st respondent who contended that one Edukan owned the disputed plot in the first instance and that the plot was thereafter given to the 1st respondent. To this end it behoved the 1st respondent to prove/ establish that indeed Edukan owned the disputed plot. Such claim could only have been proved by tendering or producing before the court a document to demonstrate ownership by the said Edukan.

35. Though the 1st respondent had anchored his claim to the disputed property on the basis of having been given the property by Edukan, the 1st respondent failed to establish the said allegations/ assertion[s]. Further and in any event, it is not lost on me that one Edukan could not purport to

give/ allocate the 1st respondent the disputed land until and unless same Edukan had ownership rights thereto.

36. In the absence of any ownership rights, to and or over the disputed land, one Edukan was divested of capacity to give the land to the 1st respondent. Instructively, anyone Edukan not *excepted*, cannot give unto a third party that which same does not own. To this end, it is imperative to invoke and reference the doctrine of *Nemo dat quo non habet* [no one can give what they do not have]

37. The import and tenor of the doctrine of *nemo dat quod non habet* was expounded by the Court of Appeal in the case of ***Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] KECA 816 (KLR)*** where the court stated thus:

> ***"69. It is our finding that as between West End and Arthi, no valid Title passed and the one exhibited by Arthi before the trial court was an irredeemable fake. It follows that Arthi had no Title to pass to subsequent purchasers, and therefore KMAH, Yamin and Gachoni cannot purport to have purchased the disputed land or portions thereof."***
>
> ***[see also the decision in the case of Diamond Trust Bank Kenya Ltd v Said Hamad Shamisi & 2 others [2015] KECA 717 (KLR]***

38. The 1st respondent had also posited that same is the registered owner of the disputed property. [See paragraph 4 of the plaint dated 10th June 2014]. In this respect, one would have expected the 1st respondent to place before the court evidence showing registration/ ownership of the disputed property. However, it is imperative to highlight that out of the 5 exhibits that were tendered by the 1st respondent, none confirmed

ownership of the plot by the 1st respondent. If anything, the letter dated 26th March 2006 was merely seeking a confirmation from the county council of Isiolo whether the 1st respondent was the owner of an unnamed plot at Chechelezi.

39. Sadly, the said letter [Exhibit PEX1] doesn't vindicate the 1st respondent's claim of ownership.

40. The 3rd aspect that merits consideration relates to the fact that the suit property, [which is being claimed by the 1st respondent and by extension the appellant] formed part of what was previously trust land. In this regard it suffice it to underscore that what previously fell under the Trust Land Act, Chapter 288, Laws of Kenya; could only be allocated to any applicant by the commissioner of lands [*now defunct*] albeit with the concurrence/ approval of the designated local authority.[See section 53 of the trust land act, chapter 288, now repealed. [See also the holding in the case of ***Rinya Hospital Limited V Awendo Town Council & 21 Others [2010] Kehc 1008 (Klr) and Funzi Island Development Limited & 2 others v County Council of Kwale & 2 others [2014] KECA 882 (KLR)*** – per DK Maraga JA as he then was].

41. Finally, I beg to state that the evidence that was tendered by and on behalf of the 1st respondent was contradictory and thus incapable of discharging the burden and standard of proof. Even though the 1st respondent [who testified as PW1] contended that the disputed land belonged to Edukan; PW2 [Leduk Eduko Umala] testified that same had no document[s] to show that his father [Edukan Lomala- deceased] ever owned the land before giving it to the 1st respondent.

42. For ease of reference, it is appropriate to reproduce the evidence of PW2 while under cross-examination by learned counsel for the 1st defendant [now appellant].

43. Same stated thus,

> ***"I have no document to show that my late father owned land or that he subdivided the land to the plaintiff and others. I have no document to prove that my father passed on."***

44. Other than PW2, it is also instructive to take cognizance of the evidence of PW3. While under cross examination by learned counsel for the 1st defendant [now appellant], same stated thus:

> ***"The plaintiff did not buy the suit land from anybody. Edukan Lomalo was our chairman. <u>He did not own the land"</u>***

45. From the totality of the evidence that was placed before the trial court, I am unable to authenticate/ confirm that the 1st respondent was ever allocated the disputed land. Further and in addition, it is not possible to vindicate the 1st respondent's contention that same was/ is the registered owner of Plot No. 91 Chechelesi [the suit property].

46. Turning to the second issue, *namely*; whether the learned trial magistrate properly interrogated the documentation relied upon and appreciated the import thereof, it is important to underscore that the judgment under reference was predicated on the basis of the decision of the dispute resolutions committee dated 20th April 2012-[PEX3]. According to the learned trial magistrate, the resolutions under reference confirmed that the 1st respondent was the lawful/ registered owner of the disputed plot.

47. However, two critical things spring to mind. Firstly, there is no gainsaying that allotment of land is only traceable to and on the basis of

documentations known to law. In particular, it behooved the learned chief magistrate to ascertain whether there ever existed any authentic minutes of the county council of Isiolo [now defunct] recommending allocation. Thereafter, the learned chief magistrate would be called upon to interrogate the process [if at all] underpinning the 1st respondent's claim ***[see Munyu Maina v Hiram Gathiha Maina [2013] KECA 94 (KLR); Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023) (Judgment); Mas Construction Limited v Sheikh & 6 others (Civil Appeal E789 of 2023) [2025] KECA 349 (KLR) (28 February 2025) (Judgment)*** respectively]

48. The other incidental issue touches on and concerns the aspect that the decision of the dispute resolution committee which was invoked and relied upon by the learned chief magistrate had been overturned/ revoked vide a letter of the town administrator dated 25th April 2014, which was tendered by the appellant. Quite clearly the invocation and reliance on the decision of the dispute resolution committee dated 20th April 2012[which had been revoked] constituted a misdirection on the part of the learned chief magistrate. [*See the decision of the Court of Appeal in* ***China Wu Yi Limited versus Edderman Property Limited [2021] eklr*****].**

49. Such misdirection[s] warrants interference with the decision and Judgment of the court of first instance. [See the holding of the Court of Appeal in the case of ***Mwanasokoni v kenya Bus Services Ltd [1985] KECA 82 (KLR) and Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja [1986] KECA 21 (KLR)]***

FINAL DISPOSITION.

50. Flowing from the analysis and the discussion highlighted in the body of the Judgment, it is apparent that the 1st respondent failed to discharge the burden of proof that laid on his shoulders.

51. Furthermore, it is also evident that the learned chief magistrate misapprehended the tenor and the Legal implication[s]of the documents that were placed before her and thus arrived at an erroneous conclusion pertaining to ownership of the disputed plot.

52. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder:

    i. **The Appeal be and is hereby <u>allowed</u>.**

    ii. **The Judgment of the learned Chief Magistrate dated <u>31ST January 2025</u>; and the consequential decree arising therefrom be and is hereby set aside.**

    iii. **<u>In lieu thereof,</u> an order be and is hereby made dismissing the 1st respondent's suit in the subordinate court.**

    iv. **Cost of the Appeal be and are hereby awarded to the Appellant only.**

    v. **The Appellant shall also have cost of the suit in the subordinate court.**

53. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 25TH DAY OF SEPTEMBER 2025.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein/Mukami – Court Assistant

Ms. Githinji for the Appellant

Ms. Gikundi for the 1st Respondent

N/A for the 2nd Respondent