



Ibrahim & 3 others (Suing as Officials of Arda Adhi Farmers Women Group) v Robow & 3 others (Environment and Land Civil Appeal E008 of 2021) [2025] KEELC 6263 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6263 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND CIVIL APPEAL E008 OF 2021
JM MUTUNGI, J
SEPTEMBER 25, 2025**

BETWEEN

**KALTUMA HASSAN IBRAHIM 1ST APPELLANT
MAKAY IBRAHIM HASSAN 2ND APPELLANT
SAADIYA M. IBRAHIM 3RD APPELLANT
ABDISALAM AHMED LAKICHA 4TH APPELLANT
SUING AS OFFICIALS OF ARDA ADHI FARMERS WOMEN GROUP**

AND

**ALI ROBOW 1ST RESPONDENT
ADAN DISS ROBOW 2ND RESPONDENT
ABDI DISS ROBOW 3RD RESPONDENT
ABDI DISS ROBOW ALIAS ABDI YARE 4TH RESPONDENT**

(Being an appeal from the Judgment and Decree of the Senior Principal Magistrate at Mandera (Hon. P. W. Wasike (SRM) in Mandera SPMCC No. 5 of 2018 Delivered on 5th November, 2021)

JUDGMENT

1. This Appeal is against the Judgment and decree of the Hon. P. W. Wasike Senior Resident Magistrate delivered on 5th November, 2021 in Mandera SRMCC No. 5 of 2018. The Appellants were the Plaintiffs before the Subordinate Court and the Respondents were the Defendants.
2. By an Amended Plaint dated 9th October 2019, the Appellants claimed to be the owners of unsurveyed parcel of land measuring 4.2 Ha or 10.37 Acres or thereabouts along the Isiolo Mandera Road,



Gacbogely area, Shafshafey Location, Mandera County. The Appellants prayed for Judgment for orders:-

- aa. Declaration that the Plaintiffs are the lawful allottees and are entitled to vacant possession for that unsurveyed land measuring approximately 4.2 Ha at Shafshafey location along Mandera Isiolo Road.
 - b. Permanent order of injunction barring and restraining the Defendants, their agents, servants or employees from entering, accessing, occupying, remaining, developing, cultivating, constructing, laying any claim and in any way whatsoever and howsoever interfering with the Plaintiffs' quiet possession and or occupation of the suit land.
 - bb. General damages for trespass.
 - c. Any other relief the Court may deem necessary as the ends of Justice may require.
 - d. Costs of the suit.
3. The Respondents filed an Amended Statement of Defence dated 30th October, 2019 where they denied the Appellants averments in the Plaint. The suit was heard and the Appellants called seven (7) witnesses while the Respondents called six (6) witnesses in support of their respective cases. Upon evaluation and analysis of the evidence, the Learned Trial Magistrate held that the Appellants lacked the *locus standi* to institute the suit and in any case had not proved their case on a balance of probabilities. The Learned Trial Magistrate dismissed the suit with costs to the Respondents.
4. The Appellants being dissatisfied and aggrieved by the judgment have appealed to this Court and have set out 9 grounds of Appeal in their Memorandum of Appeal dated 4th December, 2021.
1. That the Learned Magistrate erred in fact and in law in failing to appreciate the evidence on record adduced by the Appellants.
 2. That the Learned Magistrate erred in fact and in law in disregarding uncontroverted evidence rendered by the Appellants.
 3. That the Learned Magistrate failed to explain and misdirected himself in law in making a finding that the Appellants did not prove general damages for trespass.
 4. That the Learned Magistrate erred in fact and in law in failing to take into account or consider the submissions made by the Appellants hence arriving at unjust decision in the Judgment.
 5. That the Learned Magistrate misapprehended the law and failed to find that the Defendants act of trespass attracted damages in law.
 6. That the Learned Magistrate erred in fact and in law and in fact in relying on extraneous matters in dismissing the Appellants' suit.
 7. That the Learned Magistrate erred in fact and in law dismissing the suit without any justification.
 8. That the Learned Magistrate failed to appreciate the fact that since he found the Appellants as the lawful owners of the suit property failed to grant damages for trespass.
 9. That the Judgment was against the weight of evidence on record.
5. The brief facts of this Appeal are that the Appellants filed suit before the Magistrates Court where they claimed to be suing as Officials of Arda Adhe Farmers Women Group. In the initial Plaint before



amendments the Appellants laid claim to a piece of land situated at Shafshafey Location measuring approximately 22 ½ acres but following amendment of the Plaint, the claim reduced to approximately 4.2 Ha or 10.37 Acres. Under Paragraph 4 of the Plaint they alleged they had inherited the land from their late father and had been farming and developing the land since 1980. The Appellants averred the Respondents trespassed onto the land on or about 2012. They sought to be declared as the lawful owners of the land and prayed that injunctive orders to be issued against the Respondents and an award of damages for trespass.

6. The Appellants, witnesses in their testimonies were inconsistent as regards the ownership of the land, its acreage and where it originated from. PW1, Kaltuma Hassan Ibrahim testified that the land was approximately 26 Acres. She further stated the land was inherited and that the land constituted public land and they were using the land before the County Government came into being. It was her further evidence that their land was registered by the County Government and they were issued an allotment letter dated 14th April 2017. She affirmed the allotment letter did not have the particulars of the land and/or the location. She confirmed they never made any payment to the County Government before the Farm was registered/allotted.
7. PW2, Barre Mohamed Shabura was the Chief Officer Lands, Mandera County. He testified that the bulk of the land in Mandera was unsurveyed and unregistered. He testified that the land records in the Lands Registry were destroyed by fire and they relied on the public, the Village Elders and the Chief to reconstruct their records. The witness produced a report that he had prepared on the Court's directions.
8. PW3 Ali Mohamed Hassan was the Chief Shafshafey Location. He testified that he knew both the Appellants and the Respondents and that he had been involved in trying to resolve the dispute between the parties. He testified that the Women Group and the Respondents had land next to each other. According to him the dispute involved boundary and stated the Women Group claimed the Respondents had moved their boundary onto their land. He stated as per their investigations the whole land was a grazing area but when land began being utilized for farming, issues of "land grabbing" arose. He however indicated it was the Ministry of Agriculture that was responsible for allocating the land. He affirmed the status on the ground was that the land had been fenced and the Respondents were utilizing the land. The witness confirmed the property was in Shafshafey and that he was the Chief of both the parties. The Chief further explained that the parties failed to reach any amicable solution even after they referred the dispute to the Lands Ministry of the County Government. He further explained that the Local Chief signs the allocation form issued by the Agricultural Officer before a person was allocated land.
9. PW6, Abdisalam Ahmed Lakicha testified that he was the Secretary of the Women Group. He testified that the Women's Group claim was for 26 Acres. He claimed Ali Robow (1st Respondent) with a group came and chased them out of the land and occupied it.
10. PW7, Hamed Dahir Mohamed mother to PW6 testified that the land belonged to Arda-Adhi Farmers Women Group. She stated the farm was 26 acres. She testified that the 1st Respondent was given land for having been a worker on their land but not the land in dispute. She stated the land belonged to her and that she gave it to the Women Group of which she was a founder member.
11. Ali Robow Hassan testified as DW1 and it was his evidence that he acquired the land in dispute in 1997 during the El nino period. He affirmed he was in possession and occupation of the land and farms on the land during the rainy seasons. He denied he took any land from the Appellants. He relied on the exhibits filed in support of the Respondents case. DW2 Adan Ali Mohamed testified that his plot is



- No. 110 and that he is a neighbor of the 1st Respondent whose plot was No. 104. His position was that their plots were in Garbagoley location and not in Shafshafely location which it bordered.
12. DW3 Ishamael Ahmed Lakicha corroborated DW2's evidence that the land was in Garbagoley and that it belonged to the 1st Respondent. He denied that the land was inherited by the Appellants from their father explaining that the 1st Respondent acquired the land after the 1997 El nino rains when he started farming on it. He affirmed the land was grazing land before El nino and did not belong to anybody. DW5, Abdirahim Ibrahim stated he was the Chief Garbagole Location. He affirmed he knew the 1st and 2nd Appellants but not the 3rd Appellant though he knew the 4th Appellant who was a Chief. He explained he knew all the Respondents. He testified that during the rainy seasons the farms were ploughed but in the dry season livestock graze on the farms. He confirmed that in 2012 he was a Senior Chief and that he signed an allotment form for Farm No. 104 infavour of the 1st Respondent (Ali Robow). He confirmed he never signed the letter dated 23rd July 2021 (Pex 14) as the land was in Central Location which was not his location. The witness in cross examination was emphatic that the land in dispute was in Garbaqoley sub location and not in Shafshafey sub location which however border each other.
 13. DW5, Bishar Issack Adan testified that he worked with County Government Department of Agriculture and that he had worked in the Ministry for 35 years offering extension service. He stated that he personally signed the Land Allocation Form (Dex5) to the Respondents. He stated he was then the Divisional Agricultural Officer, Kalaho Division. He said their role as a Ministry was to confirm the piece of land could be used for crop production. He stated it was the Chief who confirmed to whom the land belonged. He confirmed he visited the land before he approved the form and signed. He stated under cross examination that by the time the farms were not identified by number and had not been registered. He confirmed the registration was supposed to be done by Mandera County Council. The witness stated he had not come across Pex 14 which was from the Ministry of Agriculture Central Division. He emphasized that the Chief of the area where the land was located had to confirm ownership and that Pex 14 had not been signed by the Assistant Chief, Chief and DO as required and in his view the same was not compliant.
 14. The Appeal was canvassed by way of Written Submissions. The Appellants filed their submissions dated 25th September 2024. The Respondents likewise filed their submissions dated 10th March 2025.
 15. In their submissions the Appellants reiterated the evidence tendered before the Subordinate Court. The Appellants contended they were the legal occupants and owners of the suit land measuring approximately 4.2 Ha or 10.32 Acres situated at Shafshafey Location, Mandera County and that the land was registered in the names of Arda Arthi Farmers Women Group at both the County Government Mandera and the relevant National Government Ministry since 2009. The Appellants pointed out that various Officials of the defunct County Council of Mandera and the National Government had confirmed through letters that the disputed land belonged to the Appellants and that in particular, the District Surveyor Mandera, vide a letter dated 10th June, 2009 addressed to the Provincial Physical Planner, North Eastern Province had affirmed the plot belonged to the Appellants and that the Part Development Plan (PDP) of the farm could be prepared to enable the Appellants to pursue their ownership documents. Additionally, the Appellants argued that vide a letter dated 4th May 2012, the Town Council of Mandera confirmed the land in dispute belonged to the Appellants and they paid rates and were issued receipts by the Council. Subsequently the Appellants were issued a letter of allotment for the property dated 14th April, 2017 by the County Government while vide a letter dated 22nd April, 2021 the County Government, Mandera through its Ministry of Lands affirmed the documents held by the Appellants relating to the ownership of the suit land originated from the County's Land Registry.



16. The Appellants contended that the Respondents on or about 2012 unlawfully trespassed onto the suit land and commenced unlawful and illegal activities on portions of the land and thus precipitated the suit before the Lower Court. The Appellants thus argued that the Learned Trial Magistrate erred in his analysis and evaluation of the evidence when he held the Appellants lacked *locus standi* and that in any event their suit lacked merit and were not entitled to the reliefs sought. The Appellants in support of their submission that they had *locus standi* placed reliance on the case of [Law Society of Kenya –vs- Commissioner of Lands & 2 Others](#) (2001) eKLR and the case of [Obando –vs- Oyugi & 2 Others](#) (2014) KESC 25 (KLR). In the latter case the Supreme Court sought to distinguish between substantial justice and procedural technicalities having regard to Article 159(2)(d) of [the Constitution](#). The Court referred to its decision in the case of [Raila –vs- IEBC & Others](#) (2013) eKLR where it observed as follows:-
- “ Article 159(2)(d) of [the Constitution](#) simply means that a Court of Law should not pay undue attention to procedural requirements at the expense of substantive justice. It was never meant to oust the obligations to comply with procedural imperatives as they seek justice from the Court.”
17. Further in support of their submissions inter alia relied on the following cases [Kamau & Another \(suing as Executors of the Estate of Tabitha Muringi Ngunyi \(Deceased\) –vs- Muiruri & Another](#) (2024) KEELC 1597 (KLR); [Kiok –vs- Mpoa](#) (2024) KEELC 4171 (KLR); and [Apollo Omusula –vs- Kariuki Kiragu](#) (2022) eKLR.
18. The Respondents in their submissions supported the decision of the Learned trial Magistrate. The Respondents submitted the documents held by the Appellants relating to the suit land were not genuine and alleged collusion between the Appellants and the County Officials. They submitted the Appellants had never been in occupation of the land while the Respondents had occupied the land from 1997. The Respondents contended the evidence relied upon by the Appellants was inconsistent and that the documents adduced did not confirm the land they related to. They contended the documents obtained by the Appellants from the County Government in 2021 were suspect and could have been manufactured. The Respondents further submitted the Appellants did not demonstrate they were officials of any group and therefore, lacked the *locus standi* to file a suit on behalf of a group.
19. I have reviewed the Record of Appeal and the Memorandum of Appeal together with the evidence adduced before the Lower Court and have considered the Submissions made on behalf of the parties. The issues that arise for determination in this Appeal are as follows:-
- i. Whether the Appellants had the *locus standi* to institute the suit on behalf of Arda-Adhi Farmers Women Group?
 - ii. Whether the Appellants proved ownership of unsurveyed land measuring approximately 4.2 hectares at Shashafey location, Mandera?
 - iii. Whether there was proof the Respondents were in trespass of the Appellants land?
 - iv. Whether the Learned Magistrate erred in his analysis and evaluation of the evidence and thus reached an erroneous decision?
20. The Learned trial Magistrate in his findings held that the Appellants lacked capacity to institute the suit on behalf of a Group as they had not demonstrated they were members, Officials and/or Trustees (former or current). In reaching the finding the Learned Magistrate raised concerns with the certificate of registration of the Group No. 358xxxx shown to have been issued on 2nd February 1985. He observed that the certificate indicated it was issued in Mandera East Sub County in Mandera County, yet in



1985 there was no existence of Sub Counties and/or Counties. He noted the certificate of registration was not shown to be a renewal. On that account he held the certificate to be suspect. I would not fault the Learned Magistrate in his observations as clearly reference to Sub Counties and Counties would connote a document made after 2012 when Counties were established.

21. The Appellants like the Learned Magistrate observed, did not exhibit any list of members and/or any minutes of the Membership authorizing the institution of the suit. There was no evidence to show the Appellants were officials of the group and as per clause 11(a) of the exhibited constitution of the Group;

“ All land, buildings and other immovable property and all investments and securities which shall be acquired by the Group shall be vested in the names of not less than 3 trustees who shall be members of the Group and shall be appointed at an Annual General meeting for a period of three years. On retirement such trustee shall be eligible for re-election --”.

22. As observed earlier, the Appellants did not lead any evidence to demonstrate they were elected officials or trustees of the Group. The Appellants instituted the suit ---“suing as the Officials of Arda Adhi Farmers Women Group” yet they adduced no evidence to demonstrate they were officials of the Group. On the basis of the evidence, I find and hold that the Learned Magistrate was justified to hold that the Appellants had failed to prove on a balance of probabilities that they had the legal capacity to institute the suit.
23. Although the Appeal would be liable to be dismissed on the foregoing ground of lack of *locus standi* alone, I find it necessary to consider the other issues raised in this Appeal; whether the Appellants proved they were allotted and/or were the owners of the disputed land. The Appellants evidence as regards allotment of the land was inconsistent and there was no formal letter of allotment that identified the land and/or its exact location. The Appellants in their evidence indicated the land was inherited from their deceased father and that the acreage was 26 acres. There was no doubt efforts to formalize the registration at the County Council Offices. The Appellants produced as an exhibit the Surveyor’s letter dated 10th June 2009 which they said allocated them the land but the letter did not give any particulars of the land or its acreage. The Surveyor stated the land was situated in Shafshafey area of Mandera Township and was registered with the Ministry of Agriculture and the Town Council of Mandera. No Part Development Plan (PDP) had been prepared to help identify the land.
24. The Appellants further exhibited a letter of Allotment dated 14th April 2017 which identified the parcel as No. 02 measuring 4.2 Ha and a leasehold from 1st May 2017. This allotment letter by Mandera County Government Ministry of Land, Housing and Physical Planning was not signed by anybody. The Court cannot place any reliance on an unsigned letter particularly when the issue of an interest in land is concerned.
25. The Respondents for their part adduced evidence to the effect that they occupied land at Garbaghole which borders Shafshafey area in 1997 after the El nino rains and had since then been in occupation and carrying out cultivation on the land. The Respondents testified that they were allocated the disputed land through the Divisional Agricultural Office Mandera vide the letter dated 15th June 2011 and that the area Chief confirmed they were the rightful owners of the land. The size of the land measured 12.9 Ha. The Chief and the Agricultural Officer testified and confirmed the land belonged to the Respondents. According to the Agricultural Officer (DW6), it was their Ministry which determined if the land was suitable for cultivation and that they utilized the Chiefs to confirm the ownership of the farms. In the present case he confirmed he approved the land for allocation to the Respondents after



visiting the land and after the Chief (DW5) confirmed the ownership. Both the Chief and Agricultural Officer confirmed the land of the Respondents was in Garbagole and not Shafshafey location.

26. After evaluating the evidence adduced by the Appellants and the Respondents, I find there were contradictions and inconsistencies in the Appellants evidence to establish their claim of ownership. Did they inherit the suit land? What was the size of the land and was it located in Shafshafey or Garbagole? Were they allocated 4.2. Ha or 26 Acres? There was no clear answer to these questions and hence in my view the Learned Magistrate was justified to find that they had failed to prove their case on a balance of probabilities.
27. As regards the Respondents there is evidence that they equally have some land adjacent to or at the same place that the Appellants claim their land to be located. It is noteworthy that the land claimed by both parties is unsurveyed and that until land adjudication is carried out and the land surveyed, it is only the County Government through its Physical Planning Department that can carry out Part Development Plans (PDPs) for any land that they wish to allocate and if the land falls within the Town and is not Community land, the National Land Commission definitely would have a role to play in the allocation.
28. The upshot is that I find no merit in the Appeal and I dismiss the same. However, having regard to the nature and circumstances of the matter I order that each party will bear their own costs of the Appeal.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 25TH DAY OF SEPTEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

