



**Kipkeu & another v Birgen (Environment and Land Appeal E019 of 2023)
[2025] KEELC 6321 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E019 OF 2023**

**EM WASHE, J
SEPTEMBER 18, 2025**

BETWEEN

MICHAEL L KIPKEU 1ST APPELLANT

WILLIAM K KIPTUIYEI 2ND APPELLANT

AND

KIPKENER BIRGEN RESPONDENT

JUDGMENT

1. The 1st and 2nd appellants (hereinafter referred to as “the appellants”) filed a Memorandum of Appeal dated 30.10.2023 (hereinafter referred to as “the present appeal”) against the Judgment and Decree pronounced in Eldoret Chief Magistrates Court ELC Case No. E017 of 2022 (hereinafter referred to as “the Trial Court”) challenging the same on the following grounds: -
 - i. That the Learned Trial Magistrate erred in fact and in law in holding that the Plaintiffs were not the rightful owners of Meibeki/Meibeki Block 8 (Mawe)/24 yet the Plaintiff are the title holders thereof and bonafide purchasers.
 - ii. That the Learned Trial Magistrate erred in fact and in law in holding that the Defendant jointly held the said property with the late John Chesiny Kenei when there is no evidence to this effect.
 - iii. That the Learned Trial Magistrate erred in fact and in law in holding that the Plaintiffs obtained the title by fraud when fraud was never particularized and proved in evidence by the Defendant.
 - iv. That the Learned Trial Magistrate erred in law and in fact in holding that the Plaintiffs became owners of Meibeki/ Meibeki Block 8 (Mawe)/24 by misrepresentation.



- v. That the Learned Trial Magistrate erred in fact and in law in holding that the Defendant would be aided by adverse possession yet evidence of adverse possession was never led neither was adverse possession prayed for.
 - vi. That the Learned Trial Magistrate erred in fact and in law in granting orders that were never prayed for.
 - vii. That the Learned Trial Magistrate erred in law and in fact in holding that the Defendant proved the counter-claim.
 - viii. That the Learned Trial Magistrate erred in fact and in law in failing to consider all the Plaintiffs' evidence.
2. The Record of Appeal was duly served on the Respondent who expressed his intention to oppose the same.
 3. The Court then certified the Appeal ready for hearing on the 10.06.2025 and directed parties to file the written submissions in support and opposition of the Appeal.
 4. The Appellants filed their submission in support of the Appeal on 11.07.2025 while the Respondent filed his submissions in opposition dated 08.07.2025.
 5. This Court has been called to exercise its appellate jurisdiction and is guided by the case of *Selle & Another-versus- Associated Motor Boat Co.ltd & Others* (1968) EA 123 where the Court of Appeal stated as follows; -

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”
 6. Guided by the above authority, this Court is required to re-evaluate the pleadings, testimonies and evidence placed before the Trial Court, crystallize the issues for determination and make its own independent conclusions keeping in mind that it did not have an opportunity to see the witnesses.
 7. Thereafter, the Court is to decide as to whether the Trial Court relied on the correct facts and applied the law correctly in its determination on then issues therein.
 8. The Court will therefore proceed to recapture the pleadings, testimonies and evidence produced before Trial Court before identifying the issues for determination.

The Appellants Case Before the Trial Court

9. The Appellants (who were also the Plaintiffs before the Trial Court) filed a Plaint dated 24.01.2022 seeking the following orders against the Respondent (who was the defendant in the Trial Court); -
 - a. An order of eviction against the Defendant, his servants and/or agents.
 - b. An order of permanent injunction restraining the Defendant, his servants and/or agents from trespassing, settling, planting maize, putting up structures, cultivating, ploughing, building, entering and developing or in any other way dealing with the plaintiffs' parcel of land namely L.R. No. Meibeki/ Meibeki Block 8 (Mawe)/24.



- c. General damages for trespass.
 - d. Costs of the suit.
 - e. Any other relief this court shall deem fit and expedient.
10. The facts in support of the prayers above were provided as follows: -
- i. That the Appellants were the joint registered owners of the property known as L.R. No. Meibeki/ Meibeki Block 8 (Mawe)/24 (hereinafter referred to as “the suit property”)
 - ii. That on or about January, 2021, the Respondent herein unlawfully and illegally entered into the suit property without the consent of the Appellant and put up a structure as well as planted maize on part of the suit property.
 - iii. The Appellants thereafter pleaded various particulars of illegality and unlawfulness perpetrated by the Respondent.
 - iv. The Appellants therefore stated that the Respondent’s actions violated their rights to private property as well as its use and enjoyment and therefore they had suffered loss and inconvenience.
 - v. The Appellants sought the Trial Court to issue an order of eviction and a permanent injunction, restraining the respondent’s use and/or occupation of the suit property.
 - vi. The Appellants stated that despite a demand notice being served, the Respondent had failed to comply and continued to occupy and/or use the suit property.
11. The Plaintiff was duly served on the respondent who opposed the same by filing a Statement of Defence and a Counter-Claim dated 22.02.2022.
12. In the statement of defence, the respondent stated as follows: -
- i. The Respondent denied the allegations that the Appellants were the lawful registered owners of the suit property.
 - ii. The Respondent stated that if indeed the Appellants were the registered owners of the suit property, such registration had been obtained fraudulently.
 - iii. The Respondent denied the allegation that he entered and is in occupation of the suit property unlawfully and/or illegally due to lack of consent from the Appellants.
 - iv. The Respondent stated that his entry and/or occupation on the suit property is lawful having purchased the same with one John Kenei way back in the year 1979 and has been in occupation of the 5 Acres which is his lawful portion.
 - v. The Respondent insisted that he had been in occupation of portion of the suit property for the last 40 years peacefully without any interruption.
 - vi. The Respondent pleaded that the Appellants had never been in occupation, possession and/or use of the suit property and put them to strict proof thereof.
 - vii. The Respondent denied service of any demand notice or intention to sue.
13. In addition to the Statement of Defence, the Respondent filed a Counter-claim dated 22.02.2022, in which he sought the following orders against the Appellants: -



- a. A declaration that the Defendant is the absolute lawful proprietor of 4.5 Acres curved from the suit parcel of land namely L.R. No. Meibeki/ Meibeki Block 8 (Mawe)/24 measuring 3.640Ha (9 Acres) or thereabouts.
 - b. An order of permanent injunction restraining the Plaintiffs, their agents and/or servants from encroaching, trespassing, alienating, ploughing, subdividing, encumbering and/or interfering with the Defendant's use and enjoyment of that parcel of land namely L.R. NO. Meibeki/ Meibeki Block 8 (Mawe) 24 measuring 4.5 Acres curved from the entire 9.1 Acres.
 - c. Costs of this Counter-claim
 - d. Any other or further relief this Honourable Court may deem fit and just to grant.
14. The prayers sought in the counter-claim are premised on the following facts: -
- i. The Respondent pleaded that he is the lawful owner of 5 Acres within the suit property having purchased the entire suit property in the year 1979 with another person known as John Kenei.
 - ii. The Respondent stated that he took possession of his portion of 5 Acres in the year 1979 and has occupied the same for over 40 years without any interference.
 - iii. The Respondent further pleaded that on or about 2023, the Appellants herein secretly obtained a title to the suit property without the knowledge of the Respondent.
 - iv. The Respondent therefore sought ownership of the 5 Acres portion he occupied on the suit property by way of adverse possession.
 - v. The Respondent disclosed that there was no other litigation between the parties herein over the suit property.
15. The Statement of Defence and Counter-Claim was duly served on the Appellants, who Respondent by filing a Reply to Defence and Defence to Counter-claim dated 14.03.2022.
16. In the Reply to Defence, the Appellants denied the facts stated in the Statement of Defence and put the Respondent to strict proof thereof.
17. In the Defence to Counter-Claim, the Appellants also denied the facts pleaded by the Respondent in the Counter-Claim and stated as follows; -
- i. The Appellants clarified that the Respondent was an employee and caretaker of one John Kenei, who is since deceased.
 - ii. That the late John Kenei sold the entire suit property to them and instructed the Respondent to vacate the property because his occupation was by virtue of being an employee.
 - iii. The Appellants therefore disputed the claim of adverse possession on the ground that the Respondent had entered into the suit property with the consent of John Kenei (deceased) who was his employer.
 - iv. The Appellants therefore pleaded that the Respondent is estopped from claiming adverse possession.
 - v. The Appellants further pleaded that the Trial Court did not have jurisdiction to hear and determine the counter-claim based on adverse possession.



- vi. Lastly, the Appellants stated that the Respondent's claim is full of uncertainties as to whether he occupies 5 Acres and/or 4.5 Acres.
18. The Reply to Defence and Defence to Counter-claim dated 14.03.2022 was served on the Respondent, who filed a reply to defence on the Counter-Claim dated 11.04.2022.
19. In the reply to Defence on the Counter-Claim, the Respondent stated as follows: -
 - i. The Respondent denied the allegations that he was an employee/ caretaker of the suit property on behalf of John Kenei, who was the sole owner.
 - ii. The Respondent stated that is the said JOHNKENEI sold any portion of the suit property to the Appellants, then it was 5 Acres and not the entire 10 Acres as pleaded by the Appellants.
 - iii. The Respondent reiterated that he had been in peaceful occupation and use of his portion of 5 Acres on the suit property since 1979, which is over 40 years and therefore entitled to a claim on adverse possession.
20. Upon service of the reply to Defence on the Counter-cCaim, pleadings closed and the matter was set down for hearing.

Appellants' Case Before the Trial Court

21. The Appellants' case commenced on the 13,07.2022 with the evidence of the 1st Appellant who was marked as PW1.
22. The 1st Appellant introduced himself as a retired Army Officer who is currently engaged in farming as an occupation.
23. The 1st Appellant then proceeded to adopt his witness statement dated 24.01.2022 as his evidence in chief.
24. The 1st Appellant reiterated the facts that John Kenei had sold 10 Acres to them.
25. During the purchase, a survey was done and in turned out that the suit property was 9 Acres instead of 10 Acres.
26. The 1st Appellant stated that the Vendor introduced him to the Respondent who was the caretaker of the property and was occupying 1 acre.
27. The 1st Appellant insisted that the Respondent had refused to vacate the suit property and is still trespassing on the suit land.
28. The 1st Appellant produced the original title deed to the suit property which was marked as Plaintiff Exhibit 1.
29. The 1st Appellant then proceeded to produce a demand letter to the Respondent which was marked as Plaintiff Exhibit 2.
30. The 1st Appellant last produced proceedings of a meeting that had taken place before the chief dated 10.03 as Plaintiff Exhibit 3 and proceedings dated 08.01.2017 as Plaintiff Exhibit 4.
31. In concluding his evidence in chief, the 1st Appellant denied the allegations that the Respondent was a co-owner to John Kenei.
32. The 1st Appellant therefore sought the Trial Court to grant the orders sought in the Plaint.



33. On cross-examination, the 1st Appellant admitted that he had not produced any Agreement for Sale.
34. The 1st Appellant admitted that although the suit property was indicated to be 10 Acres, they actually bought 9 Acres.
35. The 1st Appellant stated that prior to the year 2017, there was no dispute over the suit property which they had bought in the year 2002.
36. The 1st Appellant referring to the Minutes contained in PLAINTIFF'S EXHIBIT 3 and 4, stated that the Respondent had agreed to move out of the suit property.
37. The 1st Appellant stated that he did not know the Respondent until when they were reconfirming the boundaries of the suit property in the year 2002 that he came onto contact with the Respondent.
38. The 1st Appellant insisted that the Respondent has been trespassing on the suit property without his consent.
39. The 1st Appellant reiterated that the respondent was not a co-owner of the suit property with John Kenei.
40. The 1st Appellant stated that the person known as Lasen Kimeli Mutai is the son of the Respondent while Clety Kenei was the son of John Kenei (deceased)
41. On re-examination, the 1st Appellant stated that the suit land was supposed to be 10 Acres, but on re-survey, it was found out to be 9.1. Acres.
42. The 1st Appellant insisted that the Respondent was not on the suit property before the year 2017 which is the date he entered the suit property.
43. The 1st Appellant stated that the Respondent was currently grazing his livestock on the suit property and had renovated a structure that was in existence.
44. The 1st Appellant sought to rely on the document produced as Pexhibit 4 to confirm that the Respondent was to vacate the suit property within one year from the date of the meeting which Agreement had been signed before the Chief.
45. The 1st Appellant confirmed that an official search had been done over the suit property before the same was purchased by them.
46. At the end of this cross-examination, PW1 was discharged from the witness box.
47. The Appellants' second witness was the 2nd appellant who was marked as PW2.
48. The 2nd Appellant stated that he is a chief by profession.
49. The 2nd Appellant proceeded to adopt his witness statement dated 24.01.2022 as his evidence in chief.
50. On cross-examination, the 2nd Appellant denied knowledge on where the Respondent lives.
51. The 2nd Appellant disclosed that he met the Respondent when they purchased the suit property.
52. The 2nd Appellant stated that he had not called any children of John Kenei to Court as witnesses.
53. On re-examination, the 2nd Appellant stated that the Orders being sought are to remove the Respondent from the suit property.
54. The 2nd Appellant stated that the Respondent had been given 1 Acre but the year had since lapsed and therefore he should be removed from the suit property.



55. At the end of this re-examination, the 2nd Appellant was discharged from the witness box and the Appellant closed their case.

Respondent's Case Before the Trial Court

56. The first Respondent's witness was Laban Kimeli Mutai, who was marked as DW1.
57. DW1 informed the Trial Court that he was 43 years old and that the Respondent was his father.
58. DW1 confirmed to the Trial Court that he was familiar with the Appellants.
59. DW1 stated that the Respondent started cultivating the land in the year 2006 and it is where they live.
60. DW1 stated that the suit property was owned by John Kenei and the Respondent.
61. DW1 indicated that the total acreage of the suit property was 10 Acres and his father's share was 9 Acres.
62. DW1 insisted that he had been staying on the suit property since the year 1979.
63. DW1 denied any knowledge that John Kenei had sold the suit property until the year 2017 when they received a demand letter.
64. DW1 stated that John Kenei had since passed on and his family had considered to refund an equivalent of 5 Acres to the Respondent since John Kenei was not supposed their land.
65. DW1 therefore insisted that the Respondent ought to be registered as the owner of 5 Acres in which they are in occupation of to date.
66. On cross-examination, DW1 admitted that the actual size of the suit property is 9.1 Acre but, in the title, it had been indicated as 10 Acres.
67. DW1 reiterated that the Respondent's portion was 5 Acres.
68. DW1 stated that the late John Kenei had more than 55 Acres in which the Respondent had a share.
69. DW1 stated that there was no written agreement about the portions owned by John Kenei and the Respondent save that it was a verbal agreement.
70. DW1 insisted that the Respondent had given out some property in exchange of the shares in John Kenei's land although he was still a minor.
71. DW1 stated that in the year 2017, the two families of John Kenei and the Respondent agreed on the portions of land owned by the 2 families.
72. DW1 admitted to signing the proceedings before the chief dated 08.01.2017.
73. DW1 further acknowledged that the Appellants had purchased the suit property in the year 2006.
74. DW1 alleged that John Kenei had sold part of the 55 Acres.
75. DW1 stated that John Kenei's share was 50 Acres while the Respondent's share was 5 Acres.
76. DW1 was of the view that John Kenei remained with 10 Acres which was to be shared equally between the 2 families.
77. DW1 admitted that there was no agreement by the family of John Kenei to compensate them with money.



78. DW1 further stated that they currently use 3 Acres which they have been using since they were young.
79. DW1 referring to the proceedings dated 08.01.2017 stated that there were 5 Acres to be shared.
80. According to DW1, the 5 Acres were to be given to the Respondent.
81. In re-examination, DW1 reiterated that the family of John Kenei was to refund the Respondent an equivalent of 5 Acres within 1-year period.
82. However, DW1 stated that the terms of that agreement were not adhered to.
83. At the end of this re-examination, DW1 was discharged from the witness box.
84. The Respondent's second witness was Clety Kimeli Kenei who was marked as DW2.
85. DW2 proceeded to adopt his witness statement as his evidence in chief.
86. DW2 stated that he was the son of John Kenei who had since passed away.
87. DW2 confirmed that the late John Kenei and the Respondent were partners.
88. DW2 stated that the late John Kenei owned 50 Acres within which 5 Acres belonged to the Respondent.
89. DW2 stated that the consideration of the 5 Acres purchased by the Respondent were cows and maize.
90. DW2 confirmed to the Trial Court that the Respondent moved to a portion of the suit property equivalent to 5 Acres in the year 1979.
91. DW2 reiterated that the Respondent had been living on a portion of 5 Acres since then.
92. As regards the Appellants, DW2 denied knowledge of the acquisition of 10 Acres of the sui property.
93. DW2 stated that there was a meeting over the disputed land but his father the late John Kenei refused to sign the agreement.
94. DW2 insisted that his father could not sell the 5 Acres owned by the Respondent yet it was not his property.
95. On cross-examination, DW2 stated that 5 Acres were to be bought by the Appellants at a proposed rate of Kshs.325,000/- per acre.
96. However, both the late John Kenei and the Respondent refused to sign the agreement.
97. DW2 averred that the late John Kenei had denied selling any land before his death.
98. DW2 disclosed that some family members of the Respondent signed the agreement but the late John Kenei did not sign the agreement.
99. DW2 stated that he was not aware when the Appellant entered into the suit property.
100. DW2 also testified that he never knew whether his deceased father had complained about the manner in which the Appellants obtained their titles.
101. DW2 confirmed that the suit property was registered in the name of John Kenei in trust of both families.
102. On re-examination, DW2 accepted that the late John Kenei had sold 5 Acres to the Appellants.



103. DW2 further stated that a proposed figure of Kshs.325,000/- per acre had been proposed for a portion of 5 Acre owned by the Respondent.
104. At the end of this re-examination, DW2 was discharged from the witness box.
105. The Respondent's third witness was the Respondent himself who was marked as DW3.
106. The Respondent introduced himself as a resident of Moiben and a farmer by occupation.
107. The Respondent then proceeded to adopt his statement dated 04.07.2022 as his evidence in chief.
108. The Respondent denied knowledge of the Appellants at all.
109. The Respondent insisted that the suit property belonged to him.
110. The Respondent reiterated that he had lived on the suit property since the year 1979.
111. According to the Respondent, the suit property was 10 Acres which was to be equally shared between the late John Kenei and himself.
112. The Respondent stated that he currently occupies his portion of 5 acres while the Appellants occupy John Kenei's portion of 5 Acres.
113. The Respondent denied knowledge of how the Appellants acquired the entire suit property yet they were only entitled to 5 Acres owned by the late John Kenei.
114. On cross-examination, the Respondent reiterated that the suit property was supposed to be 10 Acres but in his witness statement he stated it to be 9 Acres.
115. On that basis, the Respondent clarified that his portion of land was 4.5. Acres instead of 5 Acres.
116. The Respondent indicated to the Trial Court that John Kenei and himself were partners.
117. The Respondent admitted that he does not live on plot No. 78.
118. According to the Respondent, plot No. 78 was purchased by the late John Kenei from one Joseph Cheron.
119. The Respondent averred that John Kenei is the one who showed him where to occupy.
120. The Respondent stated that the late John Kenei initially had 55 Acres, of which 40 Acres were sold off leaving a balance of 10 Acres.
121. The Respondent did not have any documents to prove that he had purchased 5 Acres from John Kenei.
122. The Respondent informed the Trial Court that he paid 5 cows, Kshs. 5,000/- and 35 bags of maize in the year 1959.
123. The Respondent stated that he did not fence the portion of land he purchased on the lower side.
124. The Respondent informed the Trial court that he owns 3 terraces and each terrace is 1 Acre.
125. The Respondent informed the Trial Court that his maize was on 1 Acre but the whole land is 10 Acres.
126. The Respondent stated that in the year 2017, there was a dispute between the family of John Kenei and himself and a resolution was made that he takes possession of 5Acres.
127. In concluding his cross-examination, the Respondent stated that he was not ordered to vacate his portion of land and the late John Kenei does not owe him any money.



128. On re-examination, the Respondent reiterated that he entered the suit property in the year 1979 where he has been in occupation since then.
129. The Respondent accused the Appellant of trespassing onto his land which constitutes a criminal offence.
130. The Respondent reconfirmed that he paid 5 cows, Kshs.5,000/- and 36 bags of maize for the 5 Acres he purchased.
131. The Respondent therefore denied receipt of any money from the Appellants and stated that he did not know why any funds were being paid to him.
132. The Respondent closed his evidence by stating that the appellants have never asked him why he was living on the suit land.
133. At the end of this re-examination, the Respondent closed his case.
134. Parties were then directed to file their final submissions with the Appellants dated 11.09.2023 while the Respondent submissions are dated 02.10.2023.
135. The Court has indeed carefully perused the pleadings before the Trial court, the testimonies of the parties as well as the documentary evidence produced and identified the following issues for determination: -
 - Issue No. i – Who is the registered owner of the suit property?
 - Issue No. ii – Is there occupation by the respondent on the suit property?
 - Issue No. iii – Did the respondent prove any fraud or unlawful acquisition of the suit property by the appellant?
 - Issue No. iv – Is the respondent entitled to a claim of adverse possession?
 - Issue No. v -Whether the orders sought in the plaint should be granted?
 - Issue No. vi- Whether the respondent are entitled to the prayers sought in the counter-claim?
 - Issue No. vii – Whether the present appeal is merited?
 - Issue No. viii – Who bears the costs of the present appeal?
136. The Court having identified the above mentioned issues for determination, the same are hereby discussed below.

Issue No. i – Who is the registered owner of the suit property.

137. The first issue for determination who is recognized as the registered owner of the suit property.
138. The Appellants in their pleadings and the documentary evidence marked as Plaintiff Exhibit 1 confirmed that they are the registered owners of the suit property.
139. Section 24 of the *Land Registration act* No. 3 of 2012 demands this Court to recognize the person appearing on the title as the absolute owner unless otherwise proved.
140. The Respondent has not produced any document to deny that the Appellants are the registered owners of the suit property.
141. What the Respondent is alleging is that the registration of the Appellants as owners of the suit property was not lawful and in the alternative claim's adverse possession.



142. Unless and until the Respondent is able to prove his claim, this Court makes a finding that the registered owner of the suit property are the Appellants.

Issue No. ii – Is there occupation by the respondent on the suit property.

143. As regards the second issue, the Appellants have pleaded and testified that the Respondent is on the suit property illegally and unlawfully for the reason that his occupation does not have their consent and/or authority.

144. The Appellants during their testimony before the Trial Court stated that the Respondent is only occupying 1 Acre of the suit property which he had been given authority to occupy for one year in 2017 and the that one year has since lapsed.

145. The Appellants sought to rely on the proceedings before the Chief marked as Plaintiff's Exhibit 3 and 4.

146. The Respondent together with his witnesses pleaded and testified that indeed they are in the suit property and they claimed a portion of 5 Acres.

147. DW2 who was the son of John Kenei also testified denying that his late father had sold the other portion of 5 Acres to the Appellants.

148. However, DW2 did not disclose whether the family of John Kenei was in occupation of the other 5 Acres or not.

149. Be as it may, it is clear that there is occupation of the suit property by the Respondent be it on 1 acre or 5 Acres.

Issue No. iii – Did the Respondent prove any fraud or unlawful acquisition of the suit proeprty by the Appelants.

150. The Respondent in his Defence and Counter-Claim raised two issues which require to be addressed.

151. The first issue was the manner in which the Appellants had acquired the suit property.

152. The Respondent stated that the suit property measuring 10 Acres belonged to the late Joh Kenei and himself in equal shares of 5 Acres.

153. The Respondent did not deny the fact that the suit property was registered in the sole name of the late John Kenei.

154. The Respondent nevertheless insisted that his ownership rights had been acknowledged by the late John Kenei and he had taken possession of 5 Acres within the suit property.

155. The Appellants pleaded and testified that they had purchased the suit property from the late John Kenei in its entirety.

156. The Appellants submitted that all the due process had been done and a valid title deed issued in their names.

157. The Respondent upon realizing that the Appellants had obtained a title deed for the entire suit property had the provisions of section 26 of the [Land Registration Act](#) No. 3 of 2012 to correct the omission or unlawful transfer of the suit property to the appellant.

158. Section 26 (1) (a) and (b) of [Land Registration Act](#) No. 3 of 2012 gives the two instances of which a registration can be cancelled.



159. Looking at the Plaintiff's Exhibit 1, there is no doubt that a title was issued on the 30.01.2003 in the names of the Appellants.
160. The Title Deed issued on 30.01.2003 is a public document.
161. Since 30.01.2003, neither the late John Kenei nor the Respondent has ever taken steps to challenge the Appellants' registration.
162. In the Counter-Claim filed by the Respondent, there were no particulars of any fraud or illegal acquisition of the suit property as required under section 26 (1) (a) and (b) of the Land Registration Act No. 3 of 2012 pleaded.
163. Section 107 of the Evidence Act places the burden of proof on he who alleges any fact in support of his case to prove the same.
164. In the proceedings before the Trial Court, the Respondent did not produce any document to prove that the Appellants had acquired registration either fraudulently or through illegal and corrupt means in line with section 26 (1) (a) and (b) of the Land Registration Act No. 3 of 2012.
165. In fact, it is settled law that he who alleges fraud must specifically plead the same in his pleadings and prove before strictly prove the same.
166. In other words, this Court is of the considered view that the Respondent failed to prove the allegations of that the Appellants had acquired registration of the suit property either fraudulently or in a corrupt and illegal manner to warrant a cancellation of their title deed.
Issue No. iv – Is the respondent entitled to a claim of adverse possession.
167. The second issue raised in the Counter-Claim was that of adverse possession.
168. The Respondent pleaded and testified that he had been in occupation of 5 Acres within the suit property from way back in the year 1979 when he purchased the same from the late John Kenei.
169. The Respondent was of the considered view that his occupation on the suit property since the year 1979 had been peaceful and without interruption to date.
170. In other words, the Respondent was claiming adverse possession having occupied the suit property for more than 12 years.
171. The Appellants admitted the Respondent's occupation on the suit property but stated that he on the land with the permission of the previous registered owner known as John Kenei as a caretaker thereof.
172. The Appellants further stated that time for calculation of the 12 years prescribed by law cannot start running where consent had been granted by the previous registered owner.
173. The Appellants specifically in paragraph 9 of their reply to defence denied the jurisdiction of the trial court to hear and determine a claim of adverse possession.
174. Before this Court proceeds to evaluate whether the claim of adverse possession is merited or mot, it is mandated to confirm if the Trial Court had jurisdiction to hear and determine an issue of adverse possession.
175. In the Judgment dated 18.10.2023, the Trial Court failed to discuss the issue of its jurisdiction to determine a claim on adverse possession.



176. However, despite the Trial Court failing to discuss the issue of jurisdiction proceeded to hear and determine on merit the issue of adverse possession raised by the Respondent.
177. It is now settled law that jurisdiction to hear and determine claims on adverse possession is exclusively reserved for the Superior Courts.
178. In other words, the Trial Court did not have jurisdiction to hear and determine a claim of adverse possession.
179. The Respondent's Counter-Claim raising the issue of adverse possession against the Appellants was in the wrong forum and Could not be granted by the Trial Court.

Issue No. v – Whether the orders sought in the plaint should be granted.

180. In view of the determination in issues No. I and II hereinabove, this Court is of the considered opinion and finding that the Appellants were entitled to prayer No. (a) and (b) in the Plaint dated 24.01.2022.
181. This is because the Appellants are duly recognized in law as the registered owners of the suit property and keeping in mind that occupation has not been denied by the Respondent, then an order of Eviction should be issued to facilitate the enjoyment of the rights and privileged guaranteed under sections 24 and 25 of the Land Registration Act No. 3 of 2012.
182. In addition to the above, the Appellants are also entitled to an order of Permanent Injunction to prohibit any present or future interference with the suit property from the Respondent or any other party who does not derive any ownership rights or benefits from them.

Issue No. vi – Whether the Respondent is entitled to the prayers sought in the counter-claim.

183. Based on the determination on issues No. III and IV, the Respondent failed to prove any fraud and/or illegal or corrupt acquisition of the suit property by the Appellants.
184. Similarly, the Trial Court did not have jurisdiction to entertain and/or determine the claim of adverse possession raised by the Respondent against the Appellants.
185. As such, the Respondent's Counter-Claim is not merited and cannot be granted.

Issue No. vii – Whether the Present Appeal is Merited.

186. Looking at the totality of the determinations in issues No. I, II, III, and IV, this Court is of the considered opinion and finding that the Trial Court misdirected itself on issues of law applicable to the facts of the case.
187. To begin with, the Trial Court placed the burden of proof on the Appellants to defend their registration.
188. The obligation to challenge the Appellants' registration fell squarely on the Respondent in line with the provisions of section 26 (1) (a) and (b) of the Land Registration Act No. 3 of 2012 as read with section 107 of the Evidence Act.
189. Consequently, therefore, the Respondent having failed to plead any particulars of fraud and/or illegal or corrupt acquisition of the suit property by the Appellants in line with section 26 (1) (a) and (b) and having strictly proven those particulars in line with section 107 of the Evidence Act, then there was no basis to cancel the Appellants' registration off the suit property.



190. In addition to the above, the Trial Court decided that due to the Respondent's occupation since the year 1979, the Respondent had proved a claim of adverse possession.
191. The Court takes cognizance that indeed the Trial Court visited the suit property and verified that indeed the Respondent was in occupation of the suit property.
192. However, the Trial Court erred by assuming jurisdiction to hear and determine claims of adverse possession yet the law did not allow the same to be handled by the Trial Court.
193. Where a Court lacks jurisdiction, it ought to down its tools.
194. In totality therefore, the present appeal is merited and should be granted.

Issue No. viii – Who Bears the Costs of the Present Appeal.

195. Based on the fact that the appeal is merited, the Respondent is condemned to pay the costs.

Conclusion

196. In conclusion, the court hereby makes the following orders in determination of the present appeal: -
 - a. That the memorandum of appeal dated 30.10.2023 is merited and allowed.
 - b. The judgment and decree dated 18.10.2023 in the proceedings known as eldoret chief magistrates court elc no. e017 of 2022 be and is hereby set aside forthwith.
 - c. That the plaint dated 24.01.2022 be and is hereby allowed in terms of following prayers; -
 - i. An order be and is hereby issued to the defendant, his agents, servants, employees and/ or any other person in occupation and use of the suit property known as meibeki/ meibeki block 8 (mawe)/24 deriving their occupation or use from the respondent to vacate and yield vacant possession within 30 days from the date of this judgment.
 - ii. In default of (i) above an order of eviction be and is hereby issued against the respondent, his servants, employees, agents or any other person who is in the suit property on the instruction or alleged ownership of the respondent, which order will automatically issue upon lapse of 30 days from the date of this judgment and the same will be issued by the deputy registrar, environment and land court eldoret upon application by any party.
 - iii. That a permanent injunction be and is hereby issued restraining the defendant, his agents, servants and/or employees from trespassing, settling, planting maize, putting up structures, cultivating, ploughing, building, entering and developing or in any other way dealing with the plaintiffs' parcel of land known as l.r. no. meibeki/ meibeki block 8(mawe)/24.
 - iv. That the plaintiffs are awarded costs of the suit.
 - d. The counter-claim dated 22.02.2022 be and is hereby struck out with costs.
 - e. The appellants are awarded costs of the present appeal payable by the respondent.

DATED, SIGNED AND DELIVERED AT ELDORET THIS ON THIS 18TH DAY OF SEPTEMBER, 2025.

EMMANUEL M. WASHE



JUDGE

In the presence of:

Court Assistant: Brian

Advocate for Appellants: Ms. Munyua holding brief for Dr. Chebii

Advocate for Respondent: Mr. Lelei

