



**Wakesho v Ali & another (Environment and Land Appeal E001 of 2025)
[2025] KEELC 6682 (KLR) (Environment and Land) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6682 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E001 OF 2025
EK WABWOTO, J
SEPTEMBER 29, 2025**

BETWEEN

JULIANA JANE WAKESHO APPELLANT

AND

ABDIRAHMAN AHMED ALI 1ST RESPONDENT

CHRISTOPHER NYANGE RIGHA 2ND RESPONDENT

*(Appeal from the Judgment of Hon. A. M. Obura (Mrs.) CM delivered on
10th December 2024 in respect to Chief Magistrate Court Case No. 31 of 2020)*

JUDGMENT

1. This is an appeal from the Judgment of Hon. A. M. Obura (Mrs.) CM delivered on 10th December 2024 in respect to Chief Magistrate Court Case No. 31 of 2020 wherein the Learned Magistrate held that the Appellant had failed to prove her case against the Respondents and proceeded to dismiss the same with costs to the Respondents.
2. The Appellant being aggrieved by the said decision filed the instant appeal vide a Memorandum of Appeal dated 31st January 2025. The said Memorandum raised 11 grounds of appeal.
3. The Appellant thus prayed for the following reliefs; that the Appeal be allowed and the Judgment of the trial court be set aside and be substituted with a finding granting the orders sought by the Appellant in her plaint. The Appellant also prayed for costs of this appeal as well as costs of the primary suit.

Directions of the Court

4. Upon the admission of the Appeal, this court issued directions directing the same be canvassed by way of written submissions. Save for the 2nd Respondent who never participated in these proceedings,



the Appellant and 1st Respondent complied with these directions and filed their respective written submissions.

The Appellant's submissions

5. The Appellant submitted on grounds 1 to 10 of the appeal together and ground 11 separately.
6. It was submitted that the Appellant maintained throughout those proceedings that although she had not been registered as the proprietor of that property as title deeds had not issued in 2002 in the area within which the suit property is situated or as at 2015 or 2017 when the Respondents purported to alienate that property, the suit property belongs to her, she has an equitable interest therein deserving of the protection of law by way of a permanent injunction to keep the Respondents and their cronies away. That the Defendants are trespassers that calculatedly, illegally, unlawfully, without any color of right or lawful justification, entered in to her property, with intent to remove her from possession, alienate her property and permanently deprive her of the lawful ownership of and peaceful occupation and use of her property, contrary to law.
7. It was also submitted that during the proceedings before the lower court, the Appellant called the following persons as her witnesses in the primary suit; PW1 Mr. Philip Msagha Mzame, her brother in law that negotiated the sale on her behalf, made payment of the agreed purchase price of Kshs. 150,000.00, executed the agreement for sale on her behalf, received original documents including an agreement for sale dated 19.2.2002 between the Appellant's vendor and the 2nd Respondent, the Letter of Allotment dated 23.1.1996 issued in favour of the 2nd Respondent, a receipt dated 9.8.96 for Kshs. 8,917.00 paid by the 2nd Respondent for such allotment, copies of a map plan of the area depicting the position of the suit property on the ground, a bankers' cheque issued in favour of the Commissioner of Lands for such payment, the 2nd Respondent's letter dated 8.8.1996 forwarding that cheque, the original agreement for sale dated 16.3.2002 between the Appellant and her vendor.
8. It was submitted that the said witness stated that his spouse who is the Appellant's sister Ms. Stella M. Felix, was present when he executed that agreement for sale on behalf of the Appellant and was the one that transmitted those documents to the Appellant. His said spouse subsequently relocated from Kenya and was unavailable to testify to that sale. Even then, he was categorical that he acted upon the Appellant's additional instructions to oversee alongside his spouse, the erection of a barbed wire and pole fence around the Appellant's property within the month of purchase, in March 2002. He was not in doubt as to the Appellant's ownership or that she took possession of the suit property upon purchase.
9. It was also submitted that the Appellant called Mrs. Olive Shighadi Mwarigha who testified as PW2 her vendor being the person that sold the suit property to her by an agreement for sale dated 16.3.2002. The witness testified that she purchased the suit property, a surveyed but unregistered residential plot number 11 Voi situated near PCEA St Stephen's Church Voi in an area known as Kariokor, from the 2nd Respondent Mr. Christopher Nyange Riga aka Righa as he interchangeably referred to himself the original Allottee of that property from the Government of the Republic of Kenya, by a written agreement for sale between them dated 19.2.2002.
10. That they both signed that agreement and she paid the 2nd Respondent the agreed purchase price of Kshs. 60,000.00 in cash in the presence of two attesting witnesses namely her spouse Mr. Nirias Mwakireti Mwanose with whom she resided back then at Sikujua Voi, effective from 1998 to the date she testified, and a worker named Mwantumu Bushenga whom she could no longer trace. That upon such payment, she took ownership and possession of that property to the exclusion of all others including that original Allottee who relinquished his ownership rights and interest in that unregistered



property to her to the exclusion of all others and released all ownership documents including his original Letter of Allotment letter dated 23.1.1996, control and possession of the suit property to her upon such sale.

11. She stated that her spouse served as a Councilor at the same time as the 2nd Respondent during the KANU era, at Voi with the 2nd Respondent serving at Taita Taveta hence the 2nd Respondent was no stranger to him and she was not in doubt that the sale was valid even if no title deed had issued in respect thereof from the Government of the Republic of Kenya in favour of that Allottee as she received from the 2nd Respondent the following documents additional to the original Letter of Allotment dated 23.1.1996 in the 2nd Respondent's name: a copy of a Map of the area depicting the location of the suit property on the ground, a copy of a banker's cheque for Kshs. 8,917 for such allotment forwarded to the Commissioner of Lands by the 2nd Respondent under cover of his letter dated 8.8.1996, a copy of such letter, an equivalent original receipt from the Commissioner of Lands dated 9.8.1996 issued in favour of the 2nd Respondent over such payment and she retained an original agreement for the sale of the suit property by the 2nd Respondent to her dated 19.2.2002. By that agreement, all communication over that property was henceforth agreed to be channeled to her as owner.
12. PW2 further testified to her sale of the suit property to the Appellant, represented on the sale by her brother-in-law Mr. Philip Msagha Mzame testifying as PW1, in the company of his wife the Appellant's sister Ms. Stella M. Felix. She acknowledged receipt of the agreed purchase price of Kshs. 150,000.00 paid to her in cash by the Appellant through her brother in law PW1 in the presence of both their spouses, at the execution of the agreement for sale dated 16.3.2002 where upon she released all the ownership documents cited above along with the original agreement dated 19.2.2002 for her purchase of that property from the 2nd Respondents, to PW1 and the Appellant retained her own copy of the agreement for sale between them dated 16.3.2002 executed on her behalf by PW1.
13. She acknowledged visiting the property with PW1 in the presence of both their spouses where she and her spouse pointed out beacons to PW1 and his spouse and handed over possession of the property to the Appellant through them with all communication pertaining to the property henceforth agreed to be channelled to the Appellant as owner of that property.
14. She was in no doubt that the Appellant is the real owner of that property, acknowledged that she handed over possession of the suit property to the Appellant and has no claim at all as against the Appellant over her purchase of that property, has not received any complaint or claim against her or her spouse over her initial purchase of the suit property from the 2nd Respondent, has not been called upon to account for the manner in which or basis upon which she acquired its ownership documents including originals yet the 2nd Respondent knows where to find her and her spouse since they reside at the same location to date, has not been approached to testify to the Appellant's purported theft of those documents or fraudulent acquisition of that property by anyone not even by the 2nd Respondent who is aware of her subsequent sale of that property to the Appellant as the Appellant approached her spouse and her, some years after her purchase, to assist with the transfer of the suit property to the Appellant where upon her spouse accompanied the Appellant's contact person to Mghange whereat he introduced him to the 2nd Respondent to assist with such transfer when titles for that area issue as none had issued then and the 2nd Respondent did not protest that request. She therefore termed the 2nd Respondent's purported re-take and re-sale of that property as a dishonest ploy borne out of sheer greed, to unlawfully defeat the Appellant's legitimate ownership and interest over the suit property.
15. It was further submitted that the Appellant called Mr. Nirias Mwakireti Mwanose, her vendor's spouse and the witness that attested to the signatures by his spouse and the 2nd Respondent on the initial agreement for sale dated 19.2.2002 between PW2 and the 2nd Respondent/Allottee of the suit property



- from the Government of the Republic of Kenya. That witness also attested to the signatures of parties to the subsequent agreement dated 16.3.2002 for sale of the suit property by his spouse PW2 to the Appellant represented by her brother-in-law PW1.
16. It was submitted that the witness negotiated the terms of the sale between his spouse PW2 and the 2nd Respondent and was categorical in his testimony that he knew the 2nd Respondent from before that sale having back then served together as Councilors in the Kanu Government. That the 2nd Respondent approached him with an offer to sell to him the suit property to raise money for campaigns, he PW3 promised to discuss the matter with his spouse PW2 upon which they offered to purchase that property from the 2nd Respondent at the purchase price of Kshs. 60,000.00 proposed by the 2nd Respondent which PW2 paid in cash on 19.2.2002 in his presence, at the execution by both the 2nd Respondent and his spouse PW2 of an agreement for sale dated 19.2.2002 executed also in the presence of another attesting witness named in that agreement but who was no longer available to testify on or to attest to such sale.
 17. It was further submitted that the witness testified that he was equally privy to the terms of the sale of the suit property by his spouse PW2 to the Appellant, by an agreement for sale dated 16.3.2002 executed on behalf of the Appellant by her brother-in-law PW1. He testified that he was present when the two physically visited the property then undeveloped and witnessed the execution of that agreement by both in exchange for the agreed purchase price of Kshs. 150,000.00 paid in cash to PW2 by PW1 then accompanied by his spouse the Appellant's sister, whose details equally appear on that agreement.
 18. He testified that he witnessed his spouse PW2 release the original agreement for sale between PW2 and the 2nd Respondent, the Agreement for sale between PW2 and the Appellant as well as documents earlier received by PW2 in his presence from the 2nd Respondent relating to the property, to PW1 for onward transmission to the Appellant as the new owner of the property effective from 16.3.2002. he stated that as a resident of Voi and PW1's neighbour then and to date, he knew and knows that PW1 erected a barbed wire and pole fence around the Appellant's property shortly upon such sale thereby putting the Appellant in actual possession of that property.
 19. It was his further testimony that he subsequently accompanied the Appellant's other contact person to the 2nd Respondent's residence in Mghange in Taita Taveta years later, where he introduced that contact to the 2nd Respondent to enable the two liaise for purposes of effecting a transfer in favour of the Appellant once title deeds for that area issue as the Letter of Allotment over that property was and still is in the 2nd Respondent's name even though it was released to PW2 by the 2nd Respondent on 19.2.2002 along with the other ownership documents on the Appellant's bundle of documents, all subsequently released to PW1 by PW2 on 16.3.2002 upon the sale of that property by PW2 to the Appellant. The 2nd Respondent was therefore aware of and had no objection to the sale of that property to the Appellant by his initial purchaser PW2 and is only said in PW3's testimony to have asked for a commission from the Appellant's contact when a title deed issues for transfer to the Appellant.
 20. That witness was categorical that the 2nd Respondent sold and executed the agreement for the sale of the suit property to PW2 in his presence and that any allegation by the 2nd Respondent that he did not so sell it, are false. He denied the allegation in the 2nd Respondent's statement that he had simply lent Kshs. 60,000.00 to the 2nd Respondent for refund, wondering how the 2nd Respondent, a literate man, could otherwise have executed the agreement for sale of that property to PW2 and released all documents relating to such allotment including those in their original form to PW2 way back on 19.2.2002 if there was no sale.



21. He wondered why the 2nd Respondent, knowing where the PW3 and his spouse PW2 lived from then to date, failed to lay any claim as against them for forgery, theft, being unlawfully in possession of and for releasing his original documents and an agreement for sale of the property by him to PW2 dated 19.2.2002 to the Appellant, citing mere greed on the part of the 2nd Respondent in denouncing that sale and attempting to re-take property he long sold to PW2 relinquishing all ownership rights and interest over it to her.
22. That witness was certain of the sale of the property to his spouse and of the subsequent sale by his spouse to the Appellant, stating that if there had been no such sale, the 2nd Respondent would have stated so to him when he introduced the Appellant's contact to him at his home in Mghange to assist with the processing of a transfer in favour of the Appellant when a title deed issues, to remove PW2 from the middle of the transfer since no title deed had issued by the time she acquired and sold the suit property to the property to the Appellant.
23. It was further submitted that the witness, upon seeing the 2nd Respondent's statement, discredited the purported re sale of that property by the 2nd Respondent to his brother testifying as DW3, in June of 2015 and the equally testified to the invalidity of the purported re sale of that property by DW3 to the 1st Respondent in 2017 long after the 19.2.2002 sale between the 2nd Respondent and PW2. He confirmed his spouse has no claims against the Appellant at all over her purchase, ownership or possession of the suit property.
24. The Appellant testified last as PW4, reiterating the averments in her initial statement dated 9.9.2020 at pages 9 and 10 and her further statement dated 17.12.2021 on pages 125 to 129 of the Record as well as producing the bundles of documents on her initial and further lists and bundles of documents at pages 11 and 25 and pages 115 to 124 of the Record respectively. She testified to the validity and authenticity of the agreement for sale dated 16.3.2002 between her as Purchaser and PW2 as her vendor, stating that in early 2002 she tasked her sister Stella Felix Mshila and her brother-in-law Philip Msagha Mzame who testified as PW1, both then resident at Voi, to find her a plot to purchase at Voi township.
25. That PW1 reported back to her that he and his wife had viewed and identified an ideal plot which he described to her as an unsurveyed undeveloped residential Plot Number 11 near PCEA Church Voi Municipality (now Voi County), offered for sale at a price of Kshs. 150,000/= The Appellant was happy with the report and authorized them to engage the owner said to be named Olive Shighadi Mwarigha, her sister and husband's neighbour and the spouse of a former Counsellor, Voi named Nerius Mwakireti Mwanose.
26. She testified that PW1 and her sister informed her that that vendor had said to them that she purchased that plot in February of the same year by an Agreement for Sale dated 19.2.2002, from a person by the name Christopher N. Righa or Riga as he interchangeably wrote and went by, well known to that couple, having also served as a Counsellor in the KANU government, at the same time as that vendor's spouse, but in Taita Taveta.
27. The Appellant, trusting her sister and brother in law absolutely, authorized PW1 to transact on her behalf and to facilitate him, she remitted the agreed purchase price of Kshs. 150,000/= to her sister PW1's spouse and PW1 reported to her that accompanied by his spouse, he visited the property in the company of the vendor and her spouse to establish its real dimensions, that he executed an agreement for such sale dated 16.3.2002 on her behalf witnessed by his spouse, paid the agreed Purchase Price of Kshs. 150,000/= to the Vendor in her spouse's presence, received and subsequently remitted to her the ownership documents including that vendor's initial agreement for sale contained in her initial bundle of documents already outlined in the summary of PW1's testimony above, for safe custody



where upon she facilitated PW1 and his spouse to secure her possession of the property by erecting a pole and barbed wire fence around it and they both continued to watch over it for her, to ensure that there was no trespass in to or encroachment upon her property having been made aware by both that there was no ready Title Deed for transfer by that Vendor to the Appellant's name at the time as title deeds had not issued within that area.

28. The Appellant was no in doubt that her Vendor owned and had the capacity to sell that property to her having received an Agreement for Sale dated 19.2.2002 between Christopher N. Righa the 2nd Respondent as Vendor and her/Olive S. Mwarigha (PW2) as Purchaser of the suit property, at an agreed purchase price of Kshs. 60,000/= sale appearing thereon to have been witnessed by Cllr. Nerius M. Mwanose (PW3) and Mwanatumu Bushenga, a witness whom her vendor had lost touch with and could not avail to testify in the matter. The Appellant stated that from both agreements, it was evident that PW3 oversaw and witnessed both transactions and was a proper witness. Further, that she did not see anything wrong with her tasking her brother-in-law to oversee her purchase of a property then without a title deed, one that would not be going through a transfer process immediately therefore that PW1 did not err in representing her on that sale and on executing the agreement in her name as signed for her.
29. The Appellant asserted that the plot was fenced and there were no complaints of any nature from anyone at all. She was certain of that as she visited the property every time she came to Kenya subsequently from Germany where she resides and accessed the property uninterrupted, in the company of PW1 and her sister and later, upon her sister relocating to Germany, she visited the property alone or with another brother in law named Menrad Ndau who ultimately erected another fence around that property, upon her facilitation, in May of 2015, upon securing fencing consent or permission from the County Government, Voi, as was by then compulsory to do. The fencing Bill issued in her name as the owner of that property is dated 18.5.2015 for Kshs. 5,000.00 forming part of her initial bundle of documents on page 47 of the Record.
30. She stated that that was the third time she had fenced that property from purchase and that she retained possession thereof from 2002 until it was encroached upon in 2020 by the Respondents, their servants or agents who demolished her fence, cleared bushes and erected similar barbed wire and pole fence without her authority or approval and as proof of wrongfulness, without also the fencing permission from the County Government Voi, knowing well that they could not secure such compulsory pre fencing permission as she was the owner of that property, had paid rates a few times prior to that in her name and the records there at reflected her as the owner, explaining why that fencing Bill issued in her name as owner. She said that she did not think she would later need and had mislaid old rates payment receipts.
31. It was further submitted that the Respondents had not challenged the chain of custody of the Appellant's documents. The Respondents failed to discharge such burden and that the trial court erred in arriving at its decision.
32. It was also submitted that the trial court erred in directing that costs be paid to the 2nd Respondent when he had just participated in the proceedings as the 1st Respondent's witness having testified as DW1.
33. The court was urged to allow the appeal and grant the reliefs sought.



The 1st Respondent's submissions

34. The 1st Respondent submitted on grounds 1, 3 to 11 together and ground 2 separately. The 1st Respondent's submissions also summarised the evidence tendered by the Appellant and his witnesses who had testified before the trial court.
35. It was submitted that the Appellant never produced any registered Power of Attorney before the trial court when she had donated her power to execute/sign sale agreement pertaining to land as an immovable property to Philip Msagha Mzame to sign and execute the sale agreements on her behalf. It was also submitted that the Appellant had relied on two agreements one allegedly dated 19th February 2002 and 16th March 2002. The said agreements were entered into before 2003 and Section 3(3) of the Law of Contract Act came into force and as such the agreements were subject to the provisions of the now repealed Registered Land Act, Law of Contract Act before the amendment of Section 3 and other relevant land laws and/or laws in force at the time.
36. It was further submitted that the Appellant was not in actual possession of the suit land and thus the provisions of Section 3(3) of the Contract Act even before the amendments done in 2003 are not in support of the Appellant's case.
37. The court was urged to dismiss the appeal with costs.

Analysis and Determination

38. This being the first appeal, the mandate of this court is to consider the evidence, evaluate it and make a finding with the caveat that the Court lacks the advantage of the trial Magistrate who saw and heard the witnesses. See, the cases of *Jabane -vs- Olenja* [1968] KLR 661 and *Selle vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123 where this Court stated:

“...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 ...”
39. This being a first appeal, the power of this court is set out in Order 42 Rule 32 of the Civil Procedure Rules.
40. Having considered the entire record of appeal and the submissions for the Appellant and the 1st Respondent, the following issues arise for determination:-
 - i. Whether the Appellant's case before the trial court was proved to the required standard.
 - ii. Whether the Learned Magistrate erred in law and fact in arriving at her decision and failed to consider the Appellant's evidence and submissions on record.
 - iii. What are the appropriate reliefs to grant in respect to this appeal.
41. In revaluating the evidence, this court has an obligation to consider whether or not the Appellant's case before the trial court had been proved to the required standard.



42. It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the [Evidence Act](#), which 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 fact it is said that the burden of proof lies on that person.”

Sections 109 and 112 of the same Act states;

- “109. 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 any law that the proof of that fact shall lie on any particular person.
- “112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

43. From a perusal of the record, the Appellant called 4 witnesses who testified on her behalf before the trial court while the 1st Respondent called 3 witnesses.
44. From the analysis of the evidence that was tendered herein, the Appellant’s case was based on the sale agreement dated 19th February 2002 and 16th March 2002 together with a letter of allotment dated 26th January 1996.
45. The 1st Respondent on the other hand based his case on the sale agreement dated 3rd August 2017, transfer allotment letter dated 23rd January 1996 among other documents.
46. From the analysis of the evidence tendered, the Appellant stated that she had purchased the property from Olive Shighadi Mwarigha who testified as PW2 at a sum of Kshs. 150,000/= and the said Olive Shighadi Mwarigha had purchased the same from Christopher Nyange Righa for Kshs. 60,000/= vide an agreement dated 19th February 2002. However it emerged that she was not a party to the said agreement, there was no registered power of attorney authorizing Philip Mzame to act on her behalf and further more importantly Christopher Nyange Righa who testified as DW1 denied ever selling the suit parcel to anyone save for the Harry Mwambito Righa who later sold to the 1st Respondent.
47. It was also the evidence of Christopher Nyange Righa which was not controverted that the signature in the agreement dated 19th February 2002 was not his signature and that the original allotment letter had been lost which he had also reported the loss to Wundanyi Police Station whose police abstract was produced in evidence.
48. Having considered the said evidence and after carefully evaluating the same it is the finding of this court that the Appellant’s case before the lower court was not proved to the required standard.
49. As to whether the Learned Magistrate failed to consider the Appellant’s evidence and submissions and thus erred in law and fact in arriving at her decision, this court has carefully perused the entire record



together with the judgment delivered by the Learned Magistrate. It is worth noting that the Learned Magistrate in her Judgment held as follows:-

- “ 33. Two key issues arise in my view, that discredit the Plaintiff’s claim; one is that there is no proof on a balance of probability that the seller (PW2) had the capacity to sell the suit plot given her testimony and that of DW2. She never transferred the plot to her name if indeed she lawfully purchased it. DW1 disputed claims that he ever sold her the plot and even claimed that he lost his title documents. Further, the suit plot remained in DW2’s name even until the year 2017 when DW1 purchased it.
34. Second, PW1 had no legal capacity in the absence of any registered power of attorney to transact on behalf of the Plaintiff (PW4). There is therefore doubt in my mind as to whether the Plaintiff who trusted her own relatives to act on her behalf, properly and legally purchased the suit plot. The validity of the transactions PEXT2 and PEXT3 are questioned and not resolved in her favour.
35. Further, I find that in the absence of any proof of fraud, irregularity or misconduct, DW1 appears to be an innocent purchaser for value without notice of any prior dealings in the suit property. Both parties agree that DW2 was the initial owner of the land and he confirms that he sold it to DW1.
36. In the end, I find that a prima facie case has not been established on a balance of probabilities. I also find that the Plaintiff failed to prove any trespass and that she has a better title and interest in the suit plot as against the 1st Defendant.
37. In my respectful view, her remedy lies in seeking to recover the purchase price from the alleged seller and not injunct the Defendants. The balance of convenience does not also tilt in her favour.
38. I therefore find and hold that the Plaintiff failed to prove her case against the Defendants on a balance of probabilities. She has not demonstrated that she is deserving of the permanent injunction orders. The suit fails in the circumstances.”
50. In view of the foregoing, it is evident that the Learned Magistrate properly addressed herself to the issues raised in the matter before her, considered the evidence tendered and the Appellant’s submissions in arriving at her decision and as such this court cannot fault her in arriving at her decision.
51. In respect to the issue raised by the Appellant as to whether the Learned Magistrate erred in law and fact in condemning the Appellant to pay costs for the Defendants including the 2nd Defendant now 2nd Respondent, the court upon perusing the record of appeal note that indeed the 2nd Respondent only participated in the proceedings before the trial court as a witness to the 1st Respondent and as such he was not entitled to costs.
52. In view of the foregoing this court proceeds to uphold the judgment of the lower court but substitute with an order that the Appellant’s suit is dismissed with costs payable only to the 1st Respondent.

Final Orders

53. In conclusion, this court proceeds to issue the following final orders:-



- i. The Judgment of the lower court is upheld save for an order substituting the award of costs to the 1st Respondent only before the trial court.
- ii. Each party to bear own costs of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 29TH DAY OF SEPTEMBER 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Ms. Muyaa for Appellant.

Mr. Ratemo for 1st Respondent.

No appearance for 2nd Respondent.

Court Assistant: Mary Ngoira.

