M'Mukindia v Nyamu (Environment and Land Appeal E076 of 2024)
[2025] KEELC 8248 (KLR) (20 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8248 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E076 OF 2024

JO MBOYA, J

NOVEMBER 20, 2025

BETWEEN

JOSPEH KIRUGI LAIBONI M'MUKINDIA ..... APPELLANT

AND

ASENATH KAIMURI NYAMU ..... RESPONDENT

JUDGMENT

1. The subject appeal arises from the Judgment and decree of Hon. J.M Njoroge [Chief Magistrate] delivered on 11th September 2024; and wherein the learned trial magistrate found and held that the appellant [who was the Plaintiff in the subordinate court] had failed to prove and establish his case to the requisite standard. To this end, the trial court proceeded to and dismissed the appellant's claim. Furthermore, the trial court awarded costs to the respondent.

2. It is the said judgment and the consequential decree which has aggrieved the appellant and thus provoking the subject appeal. The appellant has raised and canvassed various grounds of appeal.

3. The grounds of appeal are as hereunder;

    i. That the learned trial magistrate erred in law and fact in dismissing the suit herein on account of the appellant's failure to prove the case on a balance of probabilities against the weight of the evidence.

    ii. That the learned trial magistrate erred in law and fact by failing to find that plot No. 398 is non-existent, contrary to the weight of the evidence.

    iii. That the learned trial magistrate erred in law and fact by arriving at the conclusion that the appellant did not prove trespass against the respondent, whereas there was overwhelming evidence in support of the same.

iv. That the learned trial magistrate erred in law and fact by finding that the appellant did not establish that he was the owner of the plot NO. 1261 contrary to the weight of the evidence herein.

v. That the learned trial magistrate erred in law and fact by arriving at the conclusion that the respondent was a director of Kaaga printers, whereas there was no evidence in support of the same.

vi. That the learned trial magistrate erred in law and fact by arriving at the conclusion that the suit plot No. 1261 and the alleged plot No. 398 are separate and distinct, whereas there is no evidence of the existence of plot No. 398.

vii. That the learned trial magistrate erred in law and fact by arriving at the conclusion that plot No. 398 exists and was allotted to the respondent via the minutes of the town planning and market committee meeting held on 19112008 under minute No. 182008.

viii. That the learned trial magistrate erred in law and fact by failing to find that the minutes of the town planning and market committee meeting held on 19112008 corroborated the allotment of the suit plot No. 1261 to the appellant in 1996.

ix. That the learned trial magistrate erred in law and fact by failing to reasonably and adequately evaluate the evidence and exhibits adduced herein, thereby arriving at a decision that is unsustainable in law.

x. That the learned trial magistrate erred in law and in fact by failing to consider the evidence and statements of the appellant, hence arriving at a decision that was without merit.

4. The appeal came up for directions on 16th September 2025, whereupon learned counsel for the appellant confirmed that same had indeed filed and served the record of appeal. In addition, the counsel intimated that the record of appeal was complete and thus the appeal was ready for hearing. In this regard, learned counsel sought for directions as pertains to the hearing and disposal of the appeal. Moreover, learned counsel proposed to canvass the appeal by way of written submissions.

5. With the concurrence of learned counsel for the respondent, the court proceeded to and issued directions as pertained to the hearing of the appeal. In particular, the court directed that the appeal be canvassed by way of written submissions. Furthermore, the court also circumscribed the timelines for the filing and exchange of the written submissions.

6. The appellant filed written submissions dated 16th October 2025 and wherein the appellant has canvassed two [2] salient issues for consideration by the court. The issues highlighted by the appellant are, namely; whether the appellant proved his claim on trespass; and whether the appellant is entitled to the prayers sought or otherwise.

7. Regarding the first issue, learned counsel for the appellant has submitted that the appellant tendered and produced before the court documents to demonstrate that same is the lawful and registered proprietor of L.R No. Meru MunicipalityBlock 1261 [hereinafter referred to as the suit property]. In particular, learned counsel for the appellant has submitted that the appellant was allocated the suit property on 1st January 1999 and thereafter issued with a certificate of lease on 2nd July 2019. Moreover, learned counsel referenced a copy of the certificate of lease and search which were tendered and produced before the court.

8. Additionally, learned counsel for the appellant has submitted that by virtue of being the lawful and registered proprietor of the suit property, the appellant is entitled to absolute and exclusive occupation,

possession and use of the suit property. However, it was contended that despite the fact that the appellant is the owner of the suit property, the respondent herein has trespassed thereto and remained in occupation, albeit without lawful authority, consent or permission of the appellant. To this end, it has been submitted that the appellant duly established and proved his claim as pertains to trespass.

9. It was the further submission by learned counsel for the appellant that though the respondent had laid a claim to and in respect of plot No. 398, it was contended that the respondent neither proved nor established allotment of the said plot. Moreover, it was submitted that the documentation that were tendered by and on behalf of the respondent do not demonstrate allotment of the said plot.

10. In addition, learned counsel for the appellant has submitted that the agreement dated 1st December 2005, which has been relied upon by the respondent, is not only illegal but void. Besides, learned counsel has also submitted that the agreement under reference relate[s] to the property known as RCDA old Court Hall T398 whose premises are contended to be situated within the suit property.

11. In a nutshell, learned counsel for the appellant has submitted that the appellant has demonstrated that same has lawful title to and in respect of the suit property. In any event, it has been submitted that the appellant's title has not been challenged and or impugned. To this end, counsel has invoked the provisions of sections 24 & 26 of the *Land Registration Act* 2012.

12. Secondly, learned counsel for the appellant has submitted that the respondent herein forcefully and legally entered upon the suit property on or about November 2021. It was contended that the respondent does not have any lawful authority or rights to remain on the suit plot. Moreover, it was contended that the respondent also chased away security personnel [guards] who had been designated to guard the suit property on behalf of the appellant. Simply put, the learned counsel for the appellant has invited the court to find and hold that the impugned actions by the respondent constitute and amount to trespass.

13. Finally, learned counsel for the appellant has submitted that the appellant has demonstratedproved his case on a balance of probability. In this regard, it was contended that the appellant was therefore entitled to the various relief[s] that were sought at the foot of the amended Plaint. Additionally, learned counsel has submitted that arising from the actions of the respondent, the appellant has been deprived of the opportunity to benefit from the suit property. To this end, learned counsel for the appellant has invited the court to award general damages for trespass in the sum of Kshs.10,000,000= only.

14. In support of the foregoing submissions, learned counsel for the appellant has referenced the holding in the case of Mariera and another vs Ongwachu and 2 others (2023) KEELC 21423; and Rhoda S. Kiilu vs Jiang Xi Water Hydropower Construction (K) Ltd (2019) eKLR and Willesden Investment Ltd vs Kenya Hotel Properties Ltd Nrbi HCC NO. 367 of 2000 (unreported).

15. Premised on the foregoing submissions, learned counsel or the appellant has implored the court to find and hold that the subject appeal is meritorious. In this regard, the court has been invited to allow the appeal; set aside the judgment and decree of the subordinate court; and to enter judgment in favour of the appellant in terms of the amended Plaint dated 11th June 2023.

16. The respondent filed written submissions dated 5th November 2025 and wherein same has raised and highlighted four [4] salient issues. Firstly, learned counsel for the respondent has submitted that though the appellant contends to be the lawful owner of the suit property, the appellant has failed to demonstrate how the suit property was allocated unto him. Moreover, it has been contended that the appellant has only waved a certificate of lease, without demonstrating the process attendant to the issuance of the said certificate of lease.

17. Secondly, it has been submitted that the respondent has placed before the court credible evidence to demonstrate that same entered upon and has been in occupationpossession of plot No. T 398 since the year 1988. In addition, it has been contended that the respondent entered upon the named plot vide an agreement which was executed between the Municipal counsel of Meru and Kaaga Printers. Furthermore, it has been submitted that subsequently, the leasetenancy agreement with the municipal council of Meru was extended. To this end, the learned counsel for the respondent has submitted that the respondent's occupation, possession and use of plot No. 398, has been lawful and valid.

18. Furthermore, it has been submitted that the respondent herein also tendered and produced before the court evidence pertaining to the minutes of the municipal council of Meru relating to the allotment of Plot No. 398 to the respondent. In this regard, learned counsel for the respondent has posited that the respondent's occupation of plot No. 398 and which is being claimed by the appellant, has been lawful. In short, it has been contended that the appellant has neither proved nor established trespass as against the respondent.

19. Finally, learned counsel for the respondent has submitted that the appellant herein failed to tender and produce before the court any report by a registered physical planner or surveyor to demonstrate the ground position of his plot. In the absence of a report by a physical planner or a surveyor, it was contended that the appellant failed to prove whether the suit plot occupies the same geographical position [Geo-space] as plot No. 398, the latter which is occupied by the respondent.

20. Additionally, it was submitted that the contention that plot NO. 398 does not legally exist, is misleading and erroneous. In any event, it was contended that the plot numbers are ordinarily issued and assigned by the county council, Municipal council or the county government. In this regard, it was submitted that if the appellant was serious in his contention that plot No. 398 does not exist, then it behooved the appellant to call a witnessofficer from the County Government of Meru to confirm the said allegation. Nevertheless, it was posited that no such witness was called by the appellant.

21. Flowing from the foregoing, learned counsel for the respondent has submitted that the appellant did not establishprove his claim as pertains to trespass. In this regard, learned counsel for the respondent has cited and referenced the decision in the case of Jamal Salim vs Yusuf Abdullahi Abdi & another (2018) KECA 14, wherein the Court of Appeal underscored the obligation of the claimant to demonstrate the ingredients underpinning trespass.

22. In the premises, learned counsel for the respondent has contended that the appeal beforehand is devoid of merits. In this regard, the court has been invited to dismiss the appeal and to affirm the judgment of the subordinate court.

23. Having reviewed the record of appeal, the pleadings, the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the subject appeal turns on two key issues, namely; whether the appellant provedestablished ownership of the suit property or otherwise; and whether the appellant established the ingredientselements underpinning a claim for trespass or otherwise.

24. What is before me is a first appeal. By virtue of being a first appeal, this court is vested with the mandate and authority to subject the entire evidence to fresh and exhaustive scrutiny and evaluation in an endeavor to discern whether the conclusions arrived at by the learned trial magistrate accord with the evidence. Moreover, the court is also seized of jurisdiction to arrive at an independent conclusion and, where appropriate, to depart from the findings or the trial court.

25. Nevertheless, it is important to underscore that even though the court is seized of the jurisdiction to depart from the factual and legal conclusions arrived at by the trial court, such departure can only be

undertaken where it is shown that the findingsconclusions were arrived at on the basis of no evidence; were perverse to the evidence on record; were based on misapprehension of the evidence on record; or where it is shown that the trial court committed an error of principle which vitiates the findings under reference. Simply put, the first appellate court cannot depart from the findings and conclusions of the trial court at will, or arbitraily.

26. The jurisdictional remit of the 1st appellate court has been the subject of various pronouncements by the Court of Appeal. In the case of Kenya Urban Roads Authority & another v Belgo Holdings Limited (Civil Appeal E011 of 2021) [2025] KECA 764 (KLR) (9 May 2025) (Judgment) the court stated thus;

> 37. We have considered the appeal and this being a first appeal, we are under a duty to subject the entire evidence and the judgment to a fresh and exhaustive examination with a view to reaching our own conclusions in the matter. In carrying out this duty, we have to remember that we had no opportunity of seeing and hearing the witnesses who testified during the trial and to make an allowance for the same. We have also to remember that it is a big thing to overturn the findings of a trial court which has had the singular opportunity of reaching its conclusions based on a combination of the evidence adduced and observation by the court of the demeanour of witnesses. In a nutshell, a first appellate court must of necessity proceed with caution in deciding whether or not to interfere with the findings of a trial court, but of course where such findings are not supported by the evidence on record or where they are founded on a misapprehension of the law, the axe must fall on the impugned judgement. This position is anchored in section 78 of the *Civil Procedure Act*, which requires a first appellate court to re-evaluate, reassess and reanalyse the extracts of the record and draw its own conclusions. These provisions have been underscored in numerous decisions of the Superior Courts, among them Peters v Sunday Post Limited [1958] EA 424, where the predecessor to this Court expressed itself as follows:
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> > "Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law, an appellate court has jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this really is a question of law), the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to the courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given...
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> > Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion. The appellate court may take the view that, without having seen or

> heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question...It not infrequently happens that a decision either way may seem equally open and when this is so, then the decision of the trial Judge who has enjoyed the advantages not available to the appellate court becomes of paramount importance and ought not be disturbed. This is not an abrogation of the powers of a Court of Appeal on questions of fact. The judgment of the trial Judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong."

27. Back to the issues for consideration. It is the appellant who approached the subordinate court contending that same is the lawful and registered owner of L.R No. Meru MunicipalityBlock 1261 [the suit property]. In so far as the appellant had contended that same is the lawful and legitimate owner of the suit property, it was incumbent upon the appellant to place before the trial court the requisite documents to underpin his contention pertaining to ownership of the suit property.

28. Furthermore, there is no gainsaying that the mere possession or holding of a certificate of title does not by and of itself denote that the certificate of title or certificate of lease [whichever is applicable] is lawful. Instructively, the holder of a certificate of titlecertificate of lease is obligated to demonstrate the root of the certificate of title. The need to demonstrate and prove the root of the certificate of title is more so imperative where there is a dispute pertaining to its legality, validity or even where there is a contest relating to the ground location which is being claimed. [See the holding in the case of 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) and Frank Logistics Limited v Golden Lion Real Estate Company & 6 others (Civil Appeal E303 of 2024) [2025] KECA 1471 (KLR) (12 September 2025) (Judgment)].

29. In respect of the subject matter, the appellant had contended that same had been duly allocated the suit property and thereafter issued with a certificate of lease on 2nd July 2019. Nevertheless, it is not lost on me that the appellant herein only tendered and produced two documents before the court. The documents which were tendered and produced before the court were a copy of the lease and a copy of the certificate of lease. For good measure, the appellant neither tendered nor produced a copy of the certified minutes [if any] of the municipal council of meru recommending allocation; a letter of allotment; letter of acceptance; a payment receipt in respect of the standard premium [if any]; the cadastralsurvey plan and the deed plan.

30. Suffice it to state that the lease instrument and the certificate of lease which are the only documents which were produced by the appellant herein, are the end products. The said documents cannot issue and or be generated in the absence of the backgroundtransactional documents underpinning the process culminating into their issuance.

31. Furthermore, it is important to observe that in respect of this matter, the contest beforehand touches on and concerns whether the suit property is one and the same with plot number 398, the latter which

belongs to the county government of meru and has only been leased to the respondent. To this end, there is no gainsaying that the background document[s] to underpin the legality of the appellants title were critical and paramount.

32. Did the appellant prove ownership of the suit property? I am afraid that the documentation that were tendered and adduced by the appellant do not suffice to demonstrate ownership. For good measure, it is important to reference the holding in the case of Dina Management Ltd vs the County government of Mombasa and 7 others 2023 KESC where the Supreme court [the apex court] stated as hereunder;

> 108..... Further, we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property. In the case of Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005 [2014] eKLR the Court of Appeal, which decision this court affirmed, stated that:
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> > "...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title."
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> > 110. Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, HE Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co (1993) Ltd, who in turn could pass to the appellant.

33. Turning to the second issue, namely; whether the appellant established the ingredientselements underpinning a claim for trespass or otherwise. To start with, it is important to recall and reiterate that trespass denotes offensive entry or encroachment onto the landproperty belonging to another. The entry must be one undertaken without any color of right, permission, consent or authority. Moreover, the claimant espousing the claim based on trespass is obligated to demonstrate title to the land or a right to immediate and exclusive possession of the property.

34. In the case of Doshi v Chemutut & 7 others (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment) the court stated as hereunder;

> Trespass, as stated by this Court in the case of Charles Ogejo Ochieng v Geoffrey Okumu [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in William Kamunge Gakui v Eustace Gitonga Gakui (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land. Justice Chemutut did not name Mr. Doshi as a defendant in the suit.

35. To my mind, it is the appellant who was contending that the respondent has trespassed onto the suit property. In this regard, the first element to be established and proved was the appellant's right to or title in respect of the suit property. Suffice it to state that the appellant was obliged to demonstrate a clean, lawful and valid title. Simply put, possession of a clean, lawful and valid title is integral and essential in a claim pertaining to trespass.

36. In the case of Charles Ogejo Ochieng vs. Geoffrey Okumu [1995] eKLR the Court of Appeal stated as hereunder;

> "Trespass is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass." Emphasis supplied.

37. Other than the foregoing, the appellant was also obligated to demonstrate that same has a right to immediate and exclusive possession of the suit property. For good measure, the appellants' claim to possession was directed against the respondent, who was contended to have trespassed onto [sic] the suit property.

38. Nevertheless, it is not lost on me that the respondent herein tendered evidence before the court to demonstrate that same entered upon and took possession of plot No. 398 on or about 1988. Moreover, the respondent posited that her entry onto plot No. 398 was premised on the basis of a lease agreement between the Municipal Council of Meru [now defunct] and Kaaga Printers. Furthermore, it is also important to highlight that the respondent also referenced a subsequent lease agreement entered between the Municipal council of Meru and herself in the year 2005.

39. What I hear the respondent to be stating is that same entered upon and took occupation of plot NO. 398 on the basis of a lease agreement duly entered into and executed by the municipal council of Meru [now defunct]. In short, the respondent is contending that same has lawful authority and color of right over and in respect of plot No. 398.

40. The suit property and plot No. 398, may bear different parcel numbers. However, it appears that what the appellant is laying a claim to is the Geographical location that housessits plot number 398. It is for this reason that the appellant contends that the respondent has trespassed onto the suit property, while the respondent contends that same has lawful authority to remain in plot No. 398.

41. Taking into account the foregoing position, it was incumbent upon the appellant to tender and produce evidence that same has a right to immediate and exclusive possession as against the respondent. However, the totality of the evidence that was tendered byon behalf of the appellant fell short of the requisite standard.

42. The other aspect that merits consideration relates to whether or not the appellant proves and establishes the ground location [geo-reference] of the suit plot. It is the appellant who was contending that the ground location occupied by the respondent falls within the suit property. To this end, the appellant bore the burden of placing before the court the cadastralsurvey plan to show the ground position and the coordinates of the suit property. Notably, the cadastralsurvey plan, [if any], would have been helpful in picking out the ground location and thereafter contrasting the picked ground location vis a vis plot no. 398 occupied by the respondent. In the absence of such a cadastralsurvey plan, the trial court was left in wonderland as pertains to the placement [Geo-space] of the suit property.

43. Moreover, it is important to recall that the respondent herein testified that the plot that is being claimed by the appellant is opposite Consolidated bank while the plot occupied by the respondent is next to the county assembly. For ease of reference, the respondent [DW 1] stated as hereunder during her testimony in chief:

> " My plot is no. 398. Plaintiff's plot is opposite consolidated bank. Mine is next to the county assembly"

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44. What I hear the respondent to be contending is that the ground position of plot number 398 is separate and distinct from the suit property. The appellant may be of the contrary position. Instructively, the appellant posits that the ground occupied by the respondent forms part of the suit property. However, it is common ground that there is a dispute as pertains to the geographical location of the suit property and thus the appellant was obligated to prove the said ground location, with some degree of precision.

45. I have pointed out elsewhere herein before that such proof would have required production of a cadastral survey plan; a deed plan or a survey report. However, no such evidence was tendered by the appellant. In this regard, the fact as pertains to trespass was not established.

46. In the case of Jamal Salim v Yusuf Abdulahi Abdi & another [2018] eKLR - Civil Appeal 103 of 2016, the Court of Appeal while considering a similar situation like the one beforehand stated and observed as hereunder:

> Having considered the evidence on record and taking note of the lack of clarity as to the actual position of the plots in issue, we believe that the tort of trespass as against the appellant had not been proved. We say so, because from the totality of the evidence it is uncertain whether Plot Nos. 39 & 40 had been consolidated to give rise to Plot 84 or whether the three plots were distinct or whether the construction of the said petrol station was on the respondents' plots. We, unlike, the learned Judge find that the letter dated 24th March, 2009 which alluded to the fact that the Minjila Section had been re-planned, did not establish that there was a consolidation of the respondents' plots or that the alleged consolidation gave rise to Plot 84.

47. Flowing from the foregoing, and having taken into account the established legal principles espoused in the case of Mwanasokoni vs Kenya Bus Services Ltd (1985) eKLR, and Jabane vs Olenja (1986) eKLR, respectively, I come to the same conclusion as the learned chief magistrate. In particular, I reiterate the finding that the appellant did not prove his claim to and in respect of the disputed ground. Moreover, the appellant did not demonstrate the plea of trespass.

48. In a nutshell, I come to the conclusion that the appeal beforehand is meritless.

Final Disposition.

49. For the reasons which have been highlighted herein before, it must have become evident that the appeal is for dismissal.

50. Consequently, and in this regard, the final orders that commend themselves to the court are as hereunder:

    i. The Appeal be and is hereby dismissed.

    ii. The Judgment delivered on 11th September 2024 and the consequential decree arising therefrom be and are hereby affirmed.

    iii. Costs of the Appeal be and are hereby awarded to the Respondent.

    iv. The Costs in terms of clause [iii] shall be agreed upon and in default be taxed in the conventional manner.

51. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH DAY OF NOVEMBER 2025.

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

JUDGE

In the presence of:

Court Assistant Hussein

Mr. Kariuki for the Appellant

Mr. Thuranira Atheru for the Respondent