



**Kariuki v Cheruiyot (Environment and Land Appeal E041 of 2023)
[2026] KEELC 183 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 183 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E041 OF 2023
MAO ODENY, J
JANUARY 23, 2026**

BETWEEN

FESTUS KIRRITHI KARIUKI APPELLANT

AND

VICTOR CHERUIYOT RESPONDENT

(Being an appeal from the judgment delivered by Hon. Daisy Mosse Senior Resident Magistrate (SRM) on 11th October, 2023 in Molo CMELC No. E001 of 2023)

JUDGMENT

1. This appeal arises from a Judgment delivered on 11th October, 2023, in Molo CM ELC No. E001 of 2023. The Appellant being aggrieved by the said judgment filed a Memorandum of Appeal dated 24th October, 2023, and listed the following grounds:
 1. That the Learned Trial Magistrate misdirected herself as to the issues and pleadings for determination in the suit.
 2. That the Learned Magistrate erred in law and in fact by finding that the Respondent proved his case.
 3. That the Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant proved his case beyond reasonable doubt.
 4. That the Learned Magistrate misdirected herself in concluding that the Appellant should refund an amount of Kshs.250,000/= being refund of the purchase price with interest from the date of sale contract until payment in full.
 5. That the Learned Magistrate erred in law and in fact by disregarding the Appellant's Defence, counter-claim and submissions.



6. That the Learned Magistrate's findings were totally against the weight of evidence adduced in court.
2. A brief background to this appeal is that the Respondent filed a suit against the Appellant in the lower court vide a Plaint dated 9th January 2023, seeking the following orders:
 - a. A temporary order of injunction restraining the Defendant by himself, his agents or servants from entering, remaining, cultivating or in any way interfering with the Plaintiff's quiet enjoyment of the suit land.
 - b. A mandatory order of injunction do issue against the defendant by himself, his agents or servants.
 - c. Costs of the suit.
 - d. Any other relief that this honourable court may deem fit and just to grant.
3. The suit was heard and the Trial Magistrate, in her judgment dated 11th October 2023, entered judgment for the Respondent in the following terms:
 - a. The Defendant to pay Kshs. 250,000/ with interest at commercial rates from the date of the contract 24th January 2020, until payment in full.
 - b. Payment shall be made within 60 days from the date of Judgment
 - c. The Defendant shall meet the costs of the suit.

Appellant's Submissions

4. The Appellant submitted that the Respondent's plaint in the lower court only sought a temporary injunction; however, the Trial Magistrate deviated from the pleadings and granted rescission, a remedy that the Respondent never sought leading to an erroneous conclusion. The Appellant urged the court to declare that easements run with and are transferable with the land.
5. The Appellant further submitted that the trial court did not address the counterclaim therefore the judgment was incomplete and a nullity. Further, the court's silence on the counterclaim violated the requirement of a reasoned judgment and denied the Appellant his constitutional right to be heard.
6. The Appellant therefore urged the court to set aside the judgment of the lower court and enter judgment as per the counterclaim.

Respondent's Submissions

7. Counsel gave a background to the case and identified the issues for determination as captured in the Memorandum of Appeal. Counsel submitted that it is settled that the trial court must determine the real issues raised in the pleadings and evidence and relied on the case of World Explores Safaris Ltd Vs. Cosmopolitan Travel Ltd & Another [2021] eKLR, where the court stated that the issues in civil cases should be raised in the pleadings and if an issue arises which does not appear on the pleadings in their original form an appropriate amendment should be sought.
8. Counsel agreed with the findings of the trial Magistrate and urged the court to dismiss the Appeal with costs.



Analysis And Determination

9. The court is cognizant of its obligation as a first appellate court, as was stated in the case of Ramji Ratna & Company Limited V Wood Products (Kenya) Limited [2007] eKLR as follows:

“This is a first appeal and so this Court is obliged to reconsider the evidence assess it and make appropriate conclusions on such evidence, but always remembering that we have neither seen nor heard the witnesses.”

10. The issues for determination are whether the trial court erred in granting an order that was not prayed for and whether the Appellant is entitled to the prayer for payment of Kshs. 25,000/ in the counterclaim together with costs.

11. It is well settled that parties are bound by their pleadings and it is upon the pleadings that the court gets the issues for determination. In the Court of Appeal case of Independent Electoral and Boundaries Commission & another v Mule & 3 others (Civil Appeal 219 of 2013) [2014] KECA 890 (KLR), it was held that:

“As the authorities do accord with our own way of thinking, we hold them to be representative of the proper legal position that parties are bound by their pleadings which in turn limits the issues upon which a trial court may pronounce. The learned Judge, no matter how well-intentioned, went well beyond the grounds raised by the petitioners and answered by the respondents before her and thereby determined the petition on the basis of matters not properly before her. To that extent, she committed a reversible error, and the appeal succeeds on that score.”

12. It is clear from the Plaintiff that the Appellant only sought an order of injunction against the Respondent and it is surprising that the Learned Trial Magistrate went ahead and framed issues that did not originate from the pleadings. At paragraph 20 of the Judgment the trial Magistrate stated as follows:

“In my view, the prayer for injunction sought will not serve the ends of justice if the issues of acreage and registration have not been addressed. The entire land belonging to the Defendant through grant, from the evidence of both parties, has been fully sold out and the easements taken. There would therefore be no land for the Plaintiff to recover his lost portion from. The relationship between the parties is visibly acrimonious and it would not be in the interest of this court to force it to continue if there are other remedies available.

One of the remedies available is rescission. Rescission allows a non-breaching party to cancel the contract as a remedy for a breach. Rather than seeking monetary damages, the non-breaching party can simply refuse to complete their end of the bargain..... .’

Accordingly, judgment is hereby entered for the Plaintiff against the Defendant for the refund of Kshs. 250,000/ with interest at commercial rates, from the contract (24th January 2020) until payment in full. This payment should be made within sixty (60) days of this judgment. The Defendant shall also meet the costs of this suit.”



13. This rendition completely changed the character of the suit and brought in new prayers, which were neither sought nor proved. In the case of *Lamba v National Social Security Fund & another* (Civil Appeal E168 of 2021) [2023] KECA 124 (KLR) the Court of Appeal held that:

“...It is trite law that courts can only grant orders that have been prayed for in the pleadings, or make appropriate orders as it deems fit if need arises in the cause of a trial. Indeed, where a court has proceeded to grant a relief not contained in prayers in the pleading or not regularly sought by a party expressly or by implication, appellate courts have had no hesitation in annulling or overturning orders granting such reliefs. The appellant chose to abandon her prayer for special damages and must therefore lie on her own bed...”
14. It is well settled that issues for determination in a case flow from the pleadings and the decision in a case cannot be based on grounds outside the pleadings of the parties. From the record, I have not seen any amended Plaintiff that incorporated the prayers that the court granted, therefore without an amended plaintiff; the court was not entitled to grant the relief not asked for.
15. From the evidence on record, the trial court found fault on the Respondent but made an error of going beyond the pleadings to grant an order that was not prayed for. The Appellant also blamed the court for not considering the counterclaim, however, the court can see in the judgment that the Trial magistrate stated that the Appellant did not produce any evidence that he had registered the easements which he claimed that he had paid Kshs 25,000/ to a Surveyor. It follows that the Magistrate considered the defence and counterclaim and found that the Appellant had not proved the same.
16. I have considered the Appeal, the submissions by counsel and find that the Learned Trial Magistrate erred in granting orders that were never sought by the Respondent. The Respondent only sought an order of injunction against the Appellant but not the order for refund as granted by the court.
17. The court therefore sets aside the judgment of the trial court dated 11th October 2023 and substitutes it with an order of injunction against the Appellant as prayed in the plaintiff with costs. The Appellant did not prove his counterclaim which is dismissed with no orders as to costs. Each party to bear their own costs of the Appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 23RD DAY OF JANUARY 2026.

M. A. ODENY

JUDGE

