



**M'Mboroki v M'Mithirwa & another (Environment and Land Appeal  
E002 of 2024) [2026] KEELC 118 (KLR) (19 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 118 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E002 OF 2024  
BM EBOSO, J  
JANUARY 19, 2026**

**BETWEEN**

**JACOB M'NGONDU M'MBOROKI ..... APPELLANT**

**AND**

**ISAIAH THUKU M'MITHIRWA ..... 1<sup>ST</sup> RESPONDENT**

**JOHN KAUNGURU M' LIMUNGI ..... 2<sup>ND</sup> RESPONDENT**

*(An appeal against the Judgment of the Senior Principal Magistrate Court at Tigania [Hon. J. Macharia, SPM] dated 28/11/2023 in Tigania SPMC E & L Case No. E019 of 2023)*

**JUDGMENT**

**Introduction**

1. This appeal challenges the judgment of the Senior Principal Magistrate at Tigania [Hon J. Macharia – SPM] rendered on 28/11/2023 in *Tigania SPMC E & L Case No. E019 of 2023*. The key question that fell for determination in the suit was whether the two respondents trespassed onto the appellant's land, described as parcel number 4454 Karama Adjudication Section, and cut down his crops worthy Kshs 49,000. Invariably, it is the same key issue that falls for determination in this first appeal. Before I analyse and dispose the issue, I will briefly outline the background to the appeal.

**Background**

2. The appellant instituted *Tigania SPMC E & L Case No. E019 of 2023* against the respondent vide a plaint dated 9/3/2023. His case was that he was the registered proprietor of land parcel number 4454 Karama Adjudication Section [the suit land]. He averred that “on or about November 2022”, the respondents encroached onto the suit land and cut down his crops worthy Kshs 49,000/=. He sought an order of permanent injunction restraining the respondents and “their family” against encroaching on or trespassing onto the suit land. He also prayed for Kshs 49,000 and costs of the suit.



3. The respondents entered appearance and filed a joint statement of defence dated 23/3/2023. They denied encroaching onto the suit land and cutting down the appellant's crops as alleged. They contended that the appellant's suit was frivolous, vexatious and an abuse of the court process.
4. Subsequently, the trial court conducted trial on 29/8/2023. The appellant testified as PW1 and closed his case without leading evidence by any other witness. The two respondents testified as DW1 and DW2 and closed their respective cases without leading evidence by any other witness. Upon receiving submissions, the trial rendered the impugned judgment. The trial court found that in his evidence, the appellant had exonerated the 2nd respondent. The trial court further found that the appellant had failed to prove the case against the 1st respondent. In the end the appellant's suit was dismissed with costs for being misconceived and an abuse of the court process.

### **Appeal**

5. Aggrieved by the judgment of the trial court, the appellant brought this appeal, advancing the following grounds of appeal:
  1. The Learned Magistrate erred in law and in fact by wrongly analyzing the evidence on record and came to a wrong finding.
  2. The Learned Magistrate erred in law and in fact in failing to grant the appellant damages for damaged crops when there was sufficient evidence.
  3. The Learned Magistrate erred in law and in fact in deciding the entire case against the weight of evidence.
6. The appellant prayed for "the lower court judgment to be set aside and the appeal be allowed with costs."

### **Appellant's Submissions**

7. The appeal was canvassed through written submissions dated 6/8/2025, filed by M/s L. Kimathi Kiara & Co. Advocates. Counsel submitted that during trial, the appellant testified and produced consent of the Land Adjudication Officer permitting him to initiate the proceedings; the Sub County Officer's Assessment Report; and what he described as the "LAO Report" On the identity of the person who destroyed the crops, counsel submitted thus:

"BY WHO? By the respondent since he was the one who was sued by the Appellant."

8. Counsel for the appellant submitted that "the respondent" did not cross-examine the appellant during trial, adding that in the impugned judgment, the trial magistrate seemed to cross-examine the appellant. He urged this court to go to the aid of the appellant by stopping "the trial court's cross-examination of the appellant."
9. Counsel argued that the "respondent" did not deny that the suit land belonged to the appellant and did not also dispute the fact that the assessment report "was not collected from the appellant's parcel of land." He faulted the trial court for failing to evaluate the evidence that was placed before it. Counsel urged the court to allow the appeal with costs.

### **Respondents' Submissions**

10. Acting in person, the two respondents filed written submissions dated 1/8/2025. They argued that the appeal lacked merit and was an abuse of the process of the court. They contended that had they



committed the alleged transgression, criminal charges could have been preferred against them. They further submitted that the assessment report which the appellant relied on did not disclose the parcel of land where the alleged damage was caused, adding that the trial court had no way of establishing the parcel of land on which the damage was done.

11. The respondents faulted the appellant for failing to plead particulars of the sum of Kshs 49,000 and for failing to call the Agricultural Officer who prepared the report to produce it and be cross-examined.
12. The respondents added that because land in Karama was still under adjudication, the appellant did not have any crystalized legal rights and could therefore not maintain the claim against them. They argued that the applicant failed to prove his case to the required standard. They urged the court to dismiss the appeal.

### **Analysis and Determination**

13. The court has read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. As observed in the opening paragraph of this judgment, the key issue to be determined in the appeal is whether the appellant proved to the required standard that the two respondents encroached onto his land and cut down his crops worthy Kshs 49,000. Before I analyse and dispose the issue, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.
14. This task of a first appellate court was summarized by the Court of Appeal in the case of [\*Susan Munyi v Keshar Shiani\*](#) (2013) eKLR as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusion.
15. The principle was similarly outlined in [\*Abok James Odera t/a A J. Odera & association v John Patrick Machira t/a Machira & Co Advocates\*](#) [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”
16. Under Sections 107, 108 and 109 of the [\*Evidence Act\*](#), the burden of proof is always on the party who desires the court to give judgment dependant on the existence of facts which he asserts and on the party who would fail if no evidence at all were given on either side. It was therefore the duty of the appellant to tender evidence that proved his case as pleaded.
17. What was the case of the appellant? The pleaded case of the appellant was contained in paragraphs 3, 4 and 5 of the plaint in which he averred thus:-
  3. That at all material times the plaintiff was the registered owner of L.R No. 4454 Karama Adjudication Section.
  4. That on or about November 2022, the defendants without any colour of right encroached onto the plaintiff's LR No. 4454 Karama Adjudication Section and cut down his crops worthy Kshs 49,000/=.



5. The plaintiff's claim against the defendant is for an order of injunction restraining the defendants, their family members and agents from trespassing, encroaching and/or interfering with the plaintiff's peaceful occupation of L.R No. 4454 Karama Adjudication Section.
18. Did the appellant tender evidence to support the case which he had pleaded? The appellant's case was that on an undisclosed date in November 2022, the two defendants encroached onto land parcel number 4454 Karama Adjudication Section and cut down his crops worthy Kshs 49,000. In his witness statement, he presented evidence advancing a case of damage to crops by spraying herbicides on them. In the Agricultural Officer's report dated 19/11/2023, he wholly advanced a case of damage to crops by spraying herbicides on them. He advanced the above evidence yet the only case he had pleaded against the respondents was the case of cutting down crops. He never pleaded a case of damage to crops by spraying of herbicides on them.
19. Secondly, he never pleaded the exact date when the alleged tort was committed by the respondents. He pleaded that the tort was committed "on or about November 2022." The month of November has 30 days. It was the duty of the appellant to plead his claim with precision and invite the respondents to answer the claim. In their joint defence, the respondents denied ever cutting down the appellant's crops. The appellant did not bother to lead evidence relating to the exact date when the alleged tort was committed. Neither his oral evidence nor the assessment report focused on this important aspect.
20. Thirdly, the Sub County Agricultural Officer's report, which the appellant relied on, did not disclose the identity of the land on which the assessment was carried out. It is clear from the exhibited Land Adjudication Officer's Award/Decision dated 12/11/2021, that the appellant's land had been demarcated and was clearly identifiable by a parcel number. If indeed the crop assessment was carried out on the suit land, the Agricultural Officer ought to have captured the parcel number on which the assessment was carried out. On the face of the report, on 19/11/2021, the Agricultural Officer conducted his assessment on a parcel that was yet to be demarcated and assigned a parcel number. The undemarcated and unparcelled land could not be parcel number 4454 Karama Adjudication Section because this particular parcel had been demarcated and assigned a parcel number as early as 19/4/2017.
21. Fourthly, while aware that the respondent had vehemently denied committing the tort and that the assessment report lacked essential features such as the date when the tort was committed and the identity of the parcel number on which the assessment was carried out, the appellant elected not to lead evidence by an eye witness. The result was that there was no conclusive evidence to suggest that either or both respondents committed the alleged tort.
22. Lastly, the court has read the original record of the trial court. In his evidence during cross-examination by the 2nd appellant, the appellant testified as follows in reference to the 2nd respondent:
- "The 1st defendant used chemicals to burn my crops.  
You did not burn my crops but only the 1st defendant was (sic)  
You have only trespassed into my land.  
I fear any time you can enter my land.  
You have not trespassed into my land.  
That is all."
23. Clearly, the above testimony was an exoneration of the 2nd appellant against the pleaded cause of action. Strangely, after tendering this kind of evidence in cross-examination, the appellant is faulting the trial court for not finding the 2nd respondent liable.



24. Having evaluated the pleadings and the evidence that was before the trial court, this court comes to the finding that the appellant did not prove the claim which he had pleaded against the two respondents. He did not prove that in the month of November 2022, the two respondents encroached onto land parcel number 4454 Karama Adjudication Section and cut down his crops worthy Kshs 49,000.
25. On costs, the general principle in Section 27 of the *Civil Procedure Act* is that costs follow the event. No proper grounds have been demonstrated to warrant a departure from the general principle.

**Disposal**

26. The result is that this appeal is rejected and dismissed for lack of merit. The appellant shall bear costs of the appeal.

**DATED, SIGNED AND DELIVERED AT MERU THIS 19<sup>TH</sup> DAY OF JANUARY, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**

