



**M’Uthari & 3 others v Raibulu (Environment and Land Appeal
E103 of 2021) [2026] KEELC 123 (KLR) (19 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 123 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E103 OF 2021**

**BM EBOSO, J
JANUARY 19, 2026**

BETWEEN

**NTONGAI M’UTHARI 1ST APPELLANT
ITHANYA M’UTHARI 2ND APPELLANT
KALUNGE M’UTHARI 3RD APPELLANT
KABUARI M’UTHARI 4TH APPELLANT**

AND

KAREMA PIZARRO RAIBULU RESPONDENT

(An Appeal against the Judgment of the Senior Principal Magistrate Court at Maua [Hon. C K Obara - SPM] rendered on 13/9/2021 in Maua CMC E & L Case No. 218 of 2018)

JUDGMENT

Introduction

1. This appeal challenges the judgment of the Senior Principal Magistrate Court at Maua [Hon C K Obara – SPM] rendered on 13/9/2021 in Maua CMC E & L Case No. 218 of 2018. The dispute in the said case related to land parcel number 547 within Mutuati/Amwathi 1A Adjudication Section. The suit was filed in the Chief Magistrate Court by the respondent after he obtained a written consent from the Land Adjudication and Settlement Officer under Section 30 of the *Land Adjudication Act*.
2. Based on the grounds that were ultimately canvassed, some of the issues falling for determination in the appeal are: (i) Whether the trial court erred in entertaining the suit before it in light of the fact that the land adjudication register had not become final; (ii) Whether the respondent’s suit in the trial court amounted to an enforcement of the judgment and decree in Maua District Magistrate Court Land Civil Case No. 22 of 1966; and (iii) Whether the trial court erred in admitting and relying on the proceedings in Maua DMC Land Civil Case No. 22 of 1966 as part of the respondent’s



evidence. Before I analyse and dispose all the issues that fall for determination, I will briefly outline the background to the appeal, the grounds of appeal, and the parties' respective submissions in the appeal.

Background

3. Vide a plaint dated 22/8/2018, the respondent sued the appellants in Maua CMC E & L Case No. 218 of 2018. He sought: (i) an order decreeing eviction of the appellants from land parcel number 547 in Mutuati/Amwathi 1A Adjudication Section [hereinafter referred to as "the suit land"]; (ii) an order of permanent injunction restraining the appellants and their agents against entering, remaining on or in any way interfering with the respondent's use and occupation of the suit land; and (iii) costs of the suit.
4. The case of the respondent was that, he was the rightful legal and registered owner of the suit land. He inherited the suit land from his father, one Peter M'Muyuri Baibulu in 1990. The respondent's father had allegedly inherited the suit land from the respondent's grandfather. In the 1960s, his father had a case with one M'Amaine M'Tuaruchiu who had allegedly sold the suit land to the appellants' father, one M'Muthari Baikuburu alias Okeiro. The case was Maua District Magistrate Court Land Civil Case No. 22 of 1966. The said case was determined in favour of the respondent's father. The appellants' father was ordered to vacate the suit land because the sale was illegal.
5. The respondent contended that the appellant's family moved out of the suit land at that point and the respondent's family moved onto the land. After the death of the respondent's father, the suit land devolved to him through succession orders issued by the High Court in Meru HC Succession Cause No 174 of 1992. The respondent developed the land by planting various tree species. When the respondent established his homestead elsewhere, the appellants invaded the suit land, erected temporary structures on it and started felling the respondents' tress. At the point the respondent moved to court, the appellants were erecting a permanent house on the land.
6. In response to the suit, the appellants filed a defence and counter claim dated 11/9/2018. They denied the allegation that the respondent was the registered proprietor of the suit land and contended that if such registration existed, the same was fraudulent and bad in law. They further denied the allegation that the respondent inherited the suit land from his father in 1990s and averred that the respondent fraudulently got the suit land into his name. They itemized various particulars of fraud.
7. The appellants admitted existence of Maua District Magistrate Court Land Civil Case No. 22 of 1966 between Baibullu S/o Baikirima and M'Amaine M'Tuaruchiu and the award in the said case but contended that the said case and the award related to a different parcel of land, adding that the award had been fully enforced. They contended that the judgment/award in the said case was statute-barred under Section 4(4) of the *Limitation of Actions Act* and could not be relied on, adding that the said case was being used as a "cover up" to steal their land.
8. The appellants emphasized that parcel number 547 Amwathi 1A Adjudication Section was not the land subject matter in Maua District Magistrate Court Land Civil Case No 22 of 1966, adding that their family moved out of the land that was the subject matter of the said suit. They contended that they had been on the suit land since the year 1965, adding that Meru High Court Succession Cause No. 174 of 1992 was conceived to assist the respondent in stealing their land. They denied the allegation that the respondent had developed the suit land, adding that all the developments on the suit land were by them. Lastly, they pleaded that the respondent's claim was statute barred under the Limitations of Actions Act.
9. By way of counterclaim, the appellants averred that the suit land was given to them by their father and they had lived on the land for over 12 year. They contended that the respondent's registration



as proprietor of the suit land rendered him their trustee in terms of Section 37 of the *Limitation of Actions Act*.

10. The appellants prayed for: (i) a declaration that the respondent was registered as a trustee of the suit land; (ii) an order decreeing registration of the suit land in their names; (iii) a permanent injunction restraining the respondent and his agents/servants/employees/family against interfering with or trespassing on the suit land; and (iv) an order awarding them costs of the suit and interest thereon.
11. Upon conducting trial and receiving submissions in the case, the trial court rendered the impugned judgement in which it found that: (i) the respondent was the rightful proprietor of the suit land; (ii) the respondent did not use fraudulent means to acquire the suit land; (iii) the respondent was entitled to the reliefs sought in the plaint; and (iv) the appellants were not entitled to the reliefs sought in the counter claim. The trial court entered judgment for the respondent in terms of the reliefs that were sought in the plaint and awarded the respondent costs of the case.

Appeal

12. Aggrieved by the judgment and decree of the trial court, the appellants brought this appeal, advancing the following verbatim grounds:
 1. The Honourable Learned Magistrate erred in law and in fact when she failed to appreciate that the orders issued in Maua Land Civil Case No. 22 of 1966 were in reference to another land parcel and not the subject parcel herein, i.e Land Parcel No. 547/Mutuati/ Amwathi/ IA Adjudication Section measuring approximately 10 acres, thereby arriving at a wrong decision.
 2. The Honourable learned Magistrate erred in law and in fact in that she failed to appreciate that the respondent had a burden of proof of showing that the orders issued in Maua Land Civil case No.22 of 1966 were never executed, thereby arriving at a wrong decision.
 3. The Honourable learned Magistrate erred in law and in fact when she failed to appreciate that the respondent herein did not dispense the burden of proof and show that the orders issued in Maua Land Civil case No.22 of 1966 were never executed thereby arriving at a wrong decision.
 4. The Honourable learned Magistrate erred in law and in fact when she came to a conclusion that the judgment in Maua Land Case No. 22 of 1966 was in reference to Land Parcel No. 547/Mutuati/ Amwathi/1A without evidence to support the assertion, thereby arriving at a wrong decision.
 5. The Honourable Learned Magistrate erred in law and in fact when she failed to appreciate that using the proceedings in Maua Land Civil Case No.22 of 1966 and issuing the orders sought by the respondents was equivalent to executing the said 1966 judgment that was time barred and made in reference to a different land parcel other than the one that the orders were issued for thereby arriving at a wrong decision.
 6. The Honourable Learned Magistrate erred in law and in fact when she failed to appreciate the appellant's objection No.37 was dismissed because their existed Maua ELC No. 218 of 2018 and as such an appeal against the decision to dismiss objection No. 37 would also be dismissed ,thereby arriving at a wrong decision.
 7. The Honourable Learned Magistrate erred in law and in fact when she failed to appreciate that the appellants had filed witness statements for the 4 appellants and documents to be relied



upon in the appellants' supporting affidavit dated 11/09/2018, thereby arriving at a wrong decision.

8. The Honourable Learned Magistrate erred in law and in fact when she failed to appreciate that the court file had been interfered with and the witness statements of the appellants removed therefore forcing /leading the Learned Magistrate to arrive at a wrong decision. The appellants will adduce stamped witness statements to proof this point.
 9. The Honourable Learned Magistrate erred in law and in fact when she failed to appreciate that the respondent's father is indicated to have acquired Land parcel No. 547 Mutuati/ Amwathi/ IA Adjudication Section in 1991 in the district land Adjudication Section in 1991 in the district land Adjudication and settlement Office Booklet dated 2/12/1991 and there was evidence on record that showed that the said respondents father died in 1990, thereby arriving at a wrong decision.
 10. The Honourable learned Magistrate erred in law and in fact when she failed to appreciate that the respondent had acquired Land Parcel No.547 Mutuati/ Amwathi/IA Adjudication Section measuring approximately 10 acres through fraud, thereby arriving at a wrong decision.
 11. The Honourable Learned Magistrate erred in law and in fact when she failed to appreciate that a trust arose after the appellants sufficiently showed that the respondents had acquired Land Parcel No.547 Mutuati/Amwathi/IA Adjudication section through fraud, thereby arriving at a wrong decision.
 12. The Learned Trial Magistrate erred in law and in fact when she failed to appreciate that the long occupation of the appellants' family (more than 55 years) automatically created an equitable interest in the Suitland in favour of the appellants herein, thereby arriving at a wrong decision.
 13. Without prejudice to the foregoing, the learned Trial Magistrate erred in law and in fact in that she failed to appreciate, if at all the said Maua Land Case No. 22 of 1966 involved Land Parcel No. 547 Mutuati/Amwathi/IA Adjudication Section, a fact that is vehemently denied, then Maua ELC No.218 of 2018 would be res judicata, thereby arriving at a wrong decision.
 14. The learned Trial Magistrate erred in law and in fact in that she failed to take enough consideration of the submissions tendered by applicant, thereby arriving at a wrong decision.
 15. The Judgment of the Learned Trial Magistrate was against the weight of the evidence tendered.
 16. The judgment of the learned Trial Magistrate is bad in law.
13. The appellants prayed for: (i) an order setting aside the judgment of the trial court; (ii) an order decreeing that the respondent holds the suit land in trust for the appellants; (iii) an order decreeing registration of the suit land in the names of the appellants or their deceased father, M'Uthari Baikibuku Okello; (iv) an order of permanent injunction restraining the respondent and his agents/servants/ employees and relatives against interfering with or trespassing on the suit land; and (v) an order decreeing the respondent to pay costs of the appeal and costs of the suit in the trial court.

Appellants' Submissions

14. . The appellants field written submissions dated 9/5/2025 through M/s Mwirigi & Nzomo Co Advocates. Counsel for the appellants submitted that Maua District Magistrate Court Land Civil Case No. 22 of 1966 related to eviction of the appellants' father from a portion of land described as "BARETA." Observing that demarcation and adjudication in Amwathi 1A Adjudication Section was done in 1991, counsel submitted that parcel numbers did not exist prior to 1991 and it was therefore



erroneous for the trial court to fault the appellants for failing to identify the other land which their father vacated in compliance with the order/decreed of the District Magistrate Court issued in Maua District Magistrate Land Civil Case No. 22 of 1966.

15. . Counsel further argued that the respondent bore the duty to show the court the sketch map drawn in Maua District Magistrate Land Civil Case No 22 of 1966 and to demonstrate that the suit land was the subject matter of the said case. Counsel argued that the respondent did not discharge the above duty, adding that it was erroneous for the trial court to make a finding that since the appellants did not tell the court the identity of the other land which their father had vacated, that other land was the suit land. Counsel argued that there was no evidence demonstrating that the suit land was “that other land” nor that the appellants had been evicted from the suit land pursuant to the order/decreed in Maua District Magistrate Court Land Civil Case No. 22 of 1966. Counsel argued that whereas the appellants admitted that the decreed in the above case was complied with it was their case that the decreed related to a different piece of land which the District Magistrate Court identified in its judgment. Counsel further argued that the two cases related to different parcels and submitted that because the trial court failed to distinguish the two parcels in dispute, it arrived at a wrong decision.
16. . Counsel added that reliance on the proceedings in Maua District Magistrate Court Land Civil Case No. 22 of 1966 amounted to executing a time-barred judgment and enabled the respondent to evict the appellants unjustly.
17. . Counsel further submitted that the proceedings in the trial court were tainted with illegalities, contending that the written statements which the appellants adopted “mysteriously disappeared during judgment and the trial court proceeded to issue orders without having the benefit of the statements”. Counsel added that failure to examine the defence witnesses rendered their evidence uncontroverted.
18. . Counsel for the appellants further submitted that it was not clear why the Land Adjudication Officer decided to dismiss the appellants’ objection without hearing them or giving them notice or reasons for the dismissal. Counsel faulted the Land Adjudication Officer for granting the respondent consent to sue while seized of objections relating to the suit land and thereafter proceeded to dismiss the objections “unlawfully and contrary to the law. Counsel argued that the respondent deliberately filed the suit in the trial court so as to avoid the dispute resolution mechanisms in the [Land Adjudication Act](#). Arguing that land occupation is a key evidence of ownership during the process of land adjudication, counsel submitted that the respondent avoided the dispute resolution mechanisms in the [Land Adjudication Act](#) because he knew the appellants were in occupation of the suit land. Counsel argued that by initiating the suit in the trial court, the respondent mischievously “dismissed the appellants’ objection”.
19. . Counsel for the appellants further submitted that the respondent failed to lead evidence explaining how his father got registered as proprietor of the suit land on 2/12/1991 yet he had already passed on in 1989. Counsel added that because the appellants’ objection focused on proprietary interest in the suit land [ownership of the suit land] while the respondent’s suit in the trial court focused on enforcement of proprietary rights in the suit land, the trial court ought to have allowed the Adjudication Committee to first ascertain the interests in the suit land before issuing enforcement orders.
20. As an alternative argument, counsel for the appellants submitted that if indeed the orders in Maua District Magistrate Court Land Civil Case No. 22 of 1966 related to the suit land, the suit giving rise to this appeal was res judicata. Counsel added that the [Limitation of Actions Act](#) barred enforcement of the judgment after 12 years, adding that the statute served as a defence against the respondent’s claim brought after expiry of 12 years from the date of the judgement. Counsel argued that the respondent could not rely on the judgment in Maua District Magistrate Court Land Civil Case No 22 of 1966 to



file a new suit. Counsel contended that the respondent ought to have established a fresh cause of action. Lastly, counsel submitted that the respondent's evidence was inconsistent with the prayers sought in the plaint and urged the court to allow the appeal.

Respondent's Submissions

21. The respondent opposed the appeal through written submissions filed by M/s Mutembei & Kimathi Advocates, dated 11/1/2024. The submissions were filed prior to the filing of submissions by the appellants. The respondent's submissions touched on the 16 grounds that the appellants had itemized.
22. . Counsel for the respondent faulted the appellants for alleging that the trial court erred in failing to appreciate that the judgment in Maua District Magistrate Court Land Civil Case No 22 of 1966 related to a different parcel of land. Counsel argued that the appellants did not and have not demonstrated that the said proceedings related to a different parcel of land. On the contention that the suit in the trial court amounted to an execution of the judgment in Maua District Magistrate Court Land Civil Case No 22 of 1966, counsel submitted that the suit in the trial court was not a plea for execution of the decree in Maua District Magistrate Court Land Civil Case No 22 of 1966 but a claim for enforcement of the respondent's proprietary rights which the applicants had breached by invading the suit land. Counsel pointed out that the respondent sought eviction and injunctive orders.
23. . Counsel for the respondent added that a party to a litigation is at liberty to adduce evidence he deems would support his case hence the respondent was within his rights to tender, as evidence, proceedings relating to Maua District Magistrate Court Land Civil Case No 22 of 1966 to demonstrate there had been a preceding litigation between the appellants' father and the respondent's father.
24. . On the appellants' contention that their objection before one of the dispute resolution organs under the *Land Adjudication Act* was dismissed because of the subsistence of the suit in the trial court, counsel submitted that the appellants did not tender any evidence relating to existence or dismissal of the alleged objection. Counsel submitted that the trial court could not, in the circumstances, draw a conclusion that the alleged objection was dismissed due to the subsistence of the suit in the trial court.
25. . On the contention that the trial court erred in failing to appreciate that the 4 appellants filed witness statements and documents to be relied on, counsel submitted that the only list of documents which the appellants filed contained a bundle of pictures identified as one exhibit. Counsel added that during pre-trial, the appellants had not filed their witness statements, adding that the court nonetheless gave the appellants the opportunity to be heard. Counsel submitted that DW2 and DW3 chose to adopt the evidence of DW1.
26. . On the allegation that the respondent acquired the suit land fraudulently and illegally, counsel submitted that the allegations of fraud ought to be pleaded specifically and proved to the required standard. Counsel argued that the land officers whom the appellants alleged colluded with the respondent were not joined as defendants in the suit, adding that the alleging of fraud was not substantiated. Counsel added that the issue of res judicata was not brought out by the appellants in their counterclaim.
27. . Lastly, counsel submitted that in arriving at its decision, the trial court properly considered the evidence that was placed before it. Counsel argued that the respondent proved his case by demonstrating that he acquired the suit land from the estate of his deceased father vide Meru High Court Succession Cause No 174 of 1992; and he had extensively developed the suit land by erecting a permanent dwelling house on it and by planting crops and trees on it, which the appellant felled. Counsel argued that the trial court had no jurisdiction to revoke the succession orders of the High Court. Counsel urged the court to dismiss the appeal and award the respondent costs.



Analysis and Determination

28. 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. The appellants itemized 16 grounds of appeal. In their subsequent submissions, they did not condense the 16 grounds of appeal into concise issues. They made general submissions raising certain issues. Based on what was ultimately canvassed out of the 16 grounds of appeal, the following are the key issues that fall for determination in this appeal: (i) Whether the trial court erred in entertaining the suit before it in light of the fact that the land adjudication register had not become final; (ii) Whether the respondent's suit in the trial court amounted to an enforcement of the judgement and the decree in Maua District Magistrate Court Land Civil Case No. 22 of 1966; (iii) Whether the trial court erred in admitting and relying on the proceedings in Maua District Magistrate Court Land Civil Case No 22 of 1966 as part of the respondent's evidence; (iv) Whether the respondent proved a case for grant of the reliefs that were sought in the plaint; (v) Whether the appellants proved a case for grant of the reliefs that were sought in the counterclaim; and (vi) What orders should be made with regard to costs. I will analyse and dispose the six issues sequentially in the above order. Before I do that, I will briefly outline the principle which guides this court when exercising appellate jurisdiction.
29. The task of a first appellate court was summarized by the Court of Appeal in *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 conclusions.”
30. The principle was similarly outlined in *Abok James Odera t/a A J Odera & Associates 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.”
31. Did the trial court err in entertaining the suit before it in light of the fact that the relevant land adjudication register had not become final? The suit land fell within Amwathi 1A Adjudication Section. There is common ground that at the time the primary suit and the counterclaim were lodged in the trial court by parties to this appeal, the land adjudication exercise in Amwathi 1A Adjudication Section was still ongoing and the relevant adjudication register had not become final. Indeed, it was for this reason that the respondent sought and was granted the mandatory consent by the Land Adjudication Officer within the framework of Section 30 of the Land Adjudication. It is, however, not clear if the appellants obtained consent to initiate their counterclaim. This was, however, not raised as an issue during trial and has not been canvassed as an issue before this court. I will therefore say no more on it.
32. From the record of the trial court, at the time of initiating the suit, the respondent was seized of the statutory consent which he presented to the trial court as part of his trial documents. At the time of commencement of trial and disposal of the suit, the trial court was seized of that consent. There was no evidence demonstrating that the appellants had successfully challenged and obtained an order quashing the consent in the manner provided by the law.



33. Secondly, no formal application was presented to the trial court inviting it to stay the proceedings and await any further determination of the question of ownership by an appellate organ under the Land Adjudication Act. Had the appellants filed a formal application and placed before the trial court appropriate evidence, the trial court would have been properly invited to make a determination. Any aggrieved party would have had a chance to canvass an appeal before this court on the issue. Instead of dealing with the issue in that manner, the appellants filed a defence and counterclaim; fully participated in the trial; and invited the trial court to dismiss the respondent's suit and grant them the reliefs which they sought in their counterclaim. It is only after they lost the case on merits that they lodged an appeal contending that the trial court erred in entertaining the cause. Clearly, this was not bona fide.
34. Thirdly, from the appellants' submissions [paragraphs 5, 11 and 21], the suit land was demarcated and adjudicated in 1991 and on 2/12/1991 the respondent's father's name was entered in the adjudication register as the legitimate owner of the suit land. The appellants had every right to pursue the appeal mechanism set out under Section 29 of the Act. There was no evidence placed before the trial court to suggest that a competent appeal relating to the question of ownership was pending disposal by an organ established under the Land Adjudication Act. All that the appellants tendered as their evidence were photographs of structures lumped together as a single exhibit.
35. Fourthly, the court has looked at the pleadings before the trial court. What the respondent presented to the trial court was not a plea for determination of the question as to whether the respondent was the registered proprietor of the suit land. The respondent pleaded that he was the owner of the suit land. He averred that they lived on the suit land peacefully until 2010 when the appellants started attacking them. He added that in 2011, the appellants erected structures on the suit land. Alive to the fact that the suit land fell within a declared adjudication section, he sought and obtained consent of the Land Adjudication Officer and thereafter came to court to seek eviction and injunctive orders against the appellants whom he alleged had invaded the suit land in 2011 during the subsistence of the land adjudication exercise.
36. Given the above circumstances, and taking into account the nature of the reliefs that were sought, this court is satisfied that the trial court properly entertained the dispute and did not err in so doing.
37. Did the respondent's suit in the trial court amount to an enforcement of the judgment and the decree in Maua District Magistrate Court Land Civil Case No. 22 of 1966? The appellants contend that the suit amounted to an execution/enforcement of the preceding judgment of the District Magistrate Court. The respondent does not agree with that view. I have looked at the pleadings and the evidence of the respondent. The case of the respondent was that he inherited the suit land from his late father through succession in the 1990s. Prior to that, his late father and the appellants' late father had an ownership dispute over the suit land and the ownership dispute was heard and determined by the Maua District Magistrate Court vide Land Civil Case No 22 of 1966. Vide a judgment dated 7/2/1967, the District Magistrate Court held that the respondent's father was the legitimate owner of the suit land and awarded him the suit land. The appellants' father vacated the suit land in compliance with the decree of the court. The respondent's family enjoyed quiet possession of the suit land until 2010 when the appellants invaded the suit land and attacked the respondent. The appellants subsequently erected structures on the suit land in 2011. This was at a time when land in the area was still undergoing adjudication. With the consent of the Land Adjudication Officer, the respondent subsequently filed the suit in the trial court seeking eviction and injunctive orders against the appellants.
38. Having evaluated the respondent's pleadings and evidence, it is clear that his cause of action arose in 2010/2011 when the appellants invaded the suit land and erected structures on it. This was a new cause of action. The respondent was entitled to seek protection of the law through a suit. The said new suit



related to the new cause of action; it was not an enforcement of the judgement of 1967. That is the finding of the court on the second issue.

39. Did the trial court err in admitting and relying on the proceedings in Maua District Magistrate Court Land Civil Case No 22 of 1966 as part of the respondent's evidence? The appellants contended in paragraph 16 of their submissions that reliance on the proceedings in Maua District Magistrate Court Land Civil Case No 22 of 1966 amounted to executing a statute-barred judgment and enabled the respondent to evict the appellants unjustly. The court has made a finding to the effect that the cause of action in the suit in the trial court arose when the appellants allegedly invaded the suit land and subsequently erected structures on it. Invasion of the suit land was alleged to have happened in 2010 while erection of the structures happened in 2011. These were new causes of action that required ventilation through a new action, given that the preceding judgment was between different parties and had already been enforced and had become stale. It is clear from the pleadings, evidence and submissions that were before the trial court that proceedings relating to Maua District Magistrate Court Land Civil Case No 22 of 1966 were tendered as evidence merely to show that the question of ownership of the suit land had hitherto been the subject of litigation and determination in a preceding suit between the appellants' father and the respondent's father. Admission of and reliance on the proceedings as part of the respondent's evidence did not, in the circumstances, amount to execution of a statute-barred judgment. The respondent was duty bound to prove the new causes of action.
40. Did the respondent prove a case for grant of the reliefs that were sought in the plaint? Did the appellants prove a case for grant of the reliefs that were sought in the counterclaim? The suit land fell within an adjudication section. The respondent demonstrated that his late father had been demarcated and adjudicated as the legitimate owner of the suit land. Indeed, the appellants conceded that the respondent's father was entered in the adjudication register as the adjudicated owner of the suit land on 2/12/1991 but questioned the propriety of the adjudication registration. The appellants did not tender evidence to demonstrate that they successfully challenged the adjudication register within the framework provided under the [Land Adjudication Act](#). They completely withheld any evidence they may have had relating to the land adjudication exercise.
41. The overarching objective of the [Land Adjudication Act](#) is spelt out in the preamble to the Act as follows: --
- “ An Act of Parliament to provide for the ascertainment and recording of rights and interests in Trust land, and for purposes connected therewith and purposes incidental thereto,”
42. The tenor and import of the foregoing is that, once an area is declared an adjudication section, every land owner is required to step forward to challenge any adjudication award that prejudices his proprietary interest. An aggrieved party who chooses not to pursue the appeal mechanism stipulated under the Act forfeits his claim over the land.
43. There was no evidence that was placed before the trial court to suggest that the adjudication decision that awarded the respondent's father the suit land had been successfully impeached and set aside. Secondly, the respondent demonstrated that following the award of the suit land to his late father, and after the demise of his late father, his estate obtained a certificate of confirmation of grant and the suit land devolved to him.
44. On their part, the appellants ignored the centrality of the adjudication award in the context of the reliefs which the respondent sought and also in the context of the reliefs which they sought. They did not demonstrate to the court that either their father or themselves had successfully challenged the award



of the relevant land adjudication body. They proceed as if the framework in the *Land Adjudication Act* meant nothing to them.

45. In their submissions before this court, the appellants focused on the identity of the land that was the subject matter of Maua District Magistrate Court Land Civil Case No 22 of 1966. They faulted the respondent for not producing the sketch map which the Maua District Magistrate Court relied on in issuing its judgement in 1967. A perusal of the record of the trial court, however, reveals that the sketch map was produced as exhibit number 5 [see page 84 of the record of appeal and page 11 of the typed proceedings of the trial court].
46. Besides the foregoing, the appellants' appear not to appreciate that the *Land Adjudication Act* vests primary jurisdiction on questions of ownership of land that is located in an adjudication section in the dispute resolution bodies established under the Act. Courts only step in to provide auxiliary reliefs but do not assume the mandate of those organs, moreso when the suit before court has been brought during the subsistence of the adjudication exercise and after an adjudication body has made decision touching on the question of ownership, such as publication of the adjudication register. The appellants also appear not to appreciate that proceedings relating Maua District Magistrate Court Land Civil Case No 22 of 1966 only constituted part of the evidence that would be relevant to the land adjudication bodies when carrying out the land adjudication exercise.
47. Taking the foregoing into account, this court comes to the finding that the respondent proved his case and made out a case for grant of the reliefs that were sought in the plaint. On their part, the appellants did not prove their counterclaim and did not make a case for grant of the reliefs that were sought in the counterclaim.
48. 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. Consequently, the appellants shall bear costs of the appeal.

Disposal Orders

49. In light of the above findings, this appeal is rejected and dismissed for lack of merit. The appellants shall bear costs of the appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

