



**Baithumbi v Njau (Environment and Land Appeal E044 of 2024)  
[2026] KEELC 570 (KLR) (3 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 570 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E044 OF 2024**

**BM EBOSO, J  
FEBRUARY 3, 2026**

**BETWEEN**

**JACKSON MUGAA BAITHUMBI ..... APPELLANT**

**AND**

**CHARLES MUTURA NJAU ..... RESPONDENT**

*(An Appeal against the Judgment of the Senior Resident Magistrate Court at Maua [Hon Ken Muchiri - SRM] dated 15/11/2023 in Maua CMC E & L Case No. 228 of 2017)*

**JUDGMENT**

**Introduction**

1. This appeal challenges the Judgment of the Senior Resident Magistrate Court at Maua [Hon K Muchiri, SRM], rendered on 15/11/2023 in Maua CMC E & L Case No. E228 of 2017. Some of the key questions that arose for determination by the trial court were: (i) Whether the appellant proved his alleged ownership of land parcel number 287 located in Amungenti “B” Adjudication Section; and (ii) Whether the appellant proved that the respondent was a trespasser on the said land, liable to be evicted. Invariably, these are some of the key issues that this court is expected to determine as a first appellate court. Before I do that, I will briefly outline the parties’ respective cases in the trial court; the grounds of appeal; and the parties’ respective submissions in the appeal.

**Background**

2. Vide a consent dated 10/10/2017, the Land Adjudication & Settlement Officer for Igembe Central/ North/South Sub-Counties granted the appellant consent to institute a suit against the respondent for eviction orders in relation to land parcel number 287 Amungenti “B” Adjudication Section [“the suit land”]. Subsequent to that, on 5/12/2017, the appellant instituted Maua CMC E & L Case No



228 of 2017 against the respondent, seeking: (i) an order decreeing eviction of the respondent from the suit land; (ii) general damages for trespass; and (iii) costs of the suit.

3. The case of the appellant was that, he was the owner of the suit land. The suit land was gathered by his father, Laibuni Kilebe, who subsequently transferred it to him during land adjudication. The respondent leased the suit land from his father for miraa harvesting. The respondent subsequently declined to vacate the land on expiry of the lease, despite several notices.
4. During trial, the appellant testified as PW1 and closed his case. He adopted the contents of his written witness statement. He produced the following as exhibits: (i) Consent of the Land Adjudication & Settlement Officer in charge of the Adjudication Section; (ii) Letter dated 9/5/2017 from the Area Assistant Chief; (iii) Letter dated 11/4/2017 from the Area Deputy County Commissioner; (iv) Notice dated 19/10/2017 from his Advocates to the respondent. He urged the court to grant him the above reliefs.
5. The respondent filed a defence and counterclaim dated 25/1/2018. After the appellant had closed his case and after he [the respondent] had testified, he [the respondent] filed an application dated 24/1/2024 praying for: (i) leave to amend his defence and counterclaim; and (ii) an order that the exhibited draft defence and counterclaim be deemed as duly filed and served subject to payment of the requisite court fees.
6. When the matter came up for mention on 25/1/2023, the trial court [Hon A G Munene] allowed the respondent's application in the following terms:

“Draft defence and counterclaim be deemed as filed upon payment of requisite charges. Respondents to file response and defence to counterclaim if need be. Pre-trial on 22/03/2023. Response to defence and counterclaim be filed and served within 21 days from today.”

7. Subsequently, the case was listed before a different magistrate, Hon K Muchiri, who declined to reopen the hearing. The court subsequently rendered the impugned judgement in which it held that the appellant did not prove that: (i) the suit land was registered in his name: and (ii) he was entitled to general damages for trespass. The trial court dismissed the appellant's case for lack of merit.

## **Appeal**

8. Aggrieved by the findings and the disposal orders of the trial court, the appellant brought this appeal advancing the following verbatim grounds:
  1. The learned trial magistrate erred in law and in fact in that he misunderstood the law before him and wrong interpretation and came to a wrong conclusion.
  2. The decision of the trial magistrate is against the weight of the evidence on record.
  3. The learned trial magistrate erred in law in applying the wrong Act of Parliament to the matter before him and came to the wrong conclusion.
  4. The judgement/decision of the trial magistrate is bad in law and case law.
  5. The learned trial magistrate erred in law and fact in finding that the appellant had proved her case.
9. The appellants prayed for an order setting aside the judgment and decree of the trial court.



### **Appellant's Submissions**

10. The appellant filed written submissions dated 13/10/2025 through M/s Maitai Rimita & Co. Advocates. Counsel for the appellant submitted that it was the appellant's case in the trial court that he was the owner of the suit land, adding that, in his pleadings, the respondent never contested the appellant's ownership of the suit land. Counsel argued that the respondent merely alleged that the suit land was transferred to the appellant fraudulently through conspiracy with the Land Adjudication & Settlement Officer but did not tender evidence to prove the allegation. Counsel observed that the respondent did not tender any evidence to rebut the evidence of the appellant.
11. Counsel argued that the appellant tendered evidence to the effect that one (1) acre of miraa plantation was leased to the respondent but on expiry of the lease, the respondent refused to leave the land. Counsel added that the respondent became a trespasser when he refused to leave the land on expiry of the lease, hence the appellant was entitled to general damages, which he urged this court to assess at Kshs.1,000,000.
12. Submitting on the appellant's counterclaim, counsel argued that the appellant's evidence was uncontroverted, adding that the respondent did not tender any evidence in support of his counterclaim. Counsel urged the court to allow the appeal.

### **Respondent's Submissions**

13. The respondent filed written submissions dated 24/10/2025 through M/s Mithega & Kariuki Advocates. Counsel for the respondent identified the following as the two issues that fell for determination in the appeal: (i) Whether the appellant proved his claim on trespass against the respondent; and (ii) the question of costs of the appeal.
14. Counsel submitted that the appellant failed to prove his claim of trespass. Counsel argued that whereas the appellant alleged that he was the owner of the suit land, he failed to tender documentary evidence of ownership of the suit land. Counsel contended that the orders sought by the appellant were pegged on his alleged ownership of the suit land but he failed to prove ownership.
15. Counsel for the respondent added that whereas the appellant alleged that the respondent was a lessee on the suit land, and that the respondent failed to leave the suit land on expiry of the lease, he did not tender any evidence relating to the alleged lease. Counsel argued that the appellant did not prove existence of a lease between them. It was the position of counsel that the trial court properly declined to grant the appellant the reliefs that he sought in the plaint. Counsel urged the court to reject the appeal and award the respondent costs of the appeal.

### **Analysis and Determination**

16. The court has read and considered the entire record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. The following are the issues that fall for determination in the appeal: (i) Whether the trial court erred in its application of the law on the question of proof of ownership of the suit land; (ii) Whether the appellant proved ownership of the suit land; (iii) Whether the appellant proved trespass by the respondent; and (iv) Whether the appellant proved his claim for general damages for trespass. Before I analyse and dispose the above issues, I will briefly outline the principle that guides this court when exercising jurisdiction as a first appellate court.



17. The principle upon which a first appellate court exercises jurisdiction is well settled. The principle 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 conclusions.”

18. The above 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-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reason either way.”

19. Did the trial court err in its application of the law on the question of ownership of the suit land in the context of the appellant’s claim? In ground Number 1 of the memorandum of appeal, the appellant contended that the trial court misunderstood and misinterpreted the law and, as a consequence, came to a wrong conclusion. The court has reflected on the above ground in the context of the trial court’s analysis of the plea for an eviction order in which the trial court rendered itself as followed:

“13. The plaintiff averred that the suit land was registered in his name after it had been transferred to him by his father. However, on a perusal of the plaintiff’s list of documents which were produced at trial there is no documentary evidence to prove that the land actually belonged to him. Therefore, I am left to wonder whether the subject land actually belonged to the plaintiff. Did the plaintiff’s father actually transfer the suit land to the plaintiff? If so what portion of the parcel of land was transferred to the plaintiff? Was the law followed in effecting this transfer? Is the property still in the name of the plaintiff’s father? These are but the questions that linger in this court’s mind.

14. It is trite that whoever alleges must prove and in this case as per the witness statement and the evidence adduced by the plaintiff he does not even state the date when the parcel of land was transferred to him by his father, he does not state the particulars or duration of lease of the land to the defendant but expects this court to conjecture, fill in the gaps to his case and evict the defendant from the parcel of land that he has not proven he owns. This is trifling with the court at the very least. The fact that the plaintiff obtained a consent to institute this suit is not sufficient proof that the plaintiff is the owner of the suit land and also the assistant chief’s letter cannot be proof of the same even on a preponderance of probabilities.”



20. It is clear from the above excerpts of the impugned judgment that the trial court proceeded from the premise that the suit land was registered under one of the land registration statutes. That was an error. In paragraph 3 of his plaint, the appellant pleaded as follows:
- “3. The plaintiff was at all material times relevant to this suit the owner of land parcel No 287 – Amungenti “B” Adjudication Section.”
21. At no time did the appellant plead that he was the registered proprietor of the suit land under a land registration statute. Secondly, it is clear from paragraph 3 of the appellant’s plaint that the suit land fell within an area that was under adjudication within the meaning of the *Land Adjudication Act*. It was for this reason that the appellant sought consent of the Land Adjudication Officer to initiate the suit. Satisfied that the appellant was the adjudicated owner of the suit land, the Land Adjudication Officer granted the appellant consent to institute a suit for an eviction order against the respondent.
22. Whereas ownership rights exist and are enforceable in relation to land that falls within an adjudication area, documentary proof of ownership of land that is still under adjudication cannot be similar to documentary proof of land that is registered under one of the land registration statutes. It was therefore wrong for the trial court to expect the appellant to tender evidence showing that he was the registered proprietor of the suit land under a land registration statute or to tender a duly executed statutory instrument of transfer under one of the land registration statutes. This was wrong because the land was not yet registered. This was, however, not the only error which the trial court committed.
23. After close of trial, the trial court [Hon A G Munene] allowed the respondent to amend pleadings and proceeded to treat the exhibited and unsigned draft defence and counterclaim as the respondent’s defence and counterclaim. This was an error because the exhibited draft defence and counterclaim were unsigned. Under Order 2 rule 16 of the Civil Procedure Rules, the unsigned pleadings were invalid. [See the pronouncements in *Vipin Maganlal Shah & another v Investment & Mortgages Bank Limited & 2 others*; Nairobi HCCC No. 367 of 2010; *Phoebe Wangui v James Kamore Njomo*; and *Regina Kavenya Mutuku & 3 Others v Limited Insurance Company Limited (2002)eKLR*].
24. Yet it does emerge from paragraphs 10 and 11 of the impugned judgment that the trial court relied on the unsigned pleadings in reaching its decision.
25. For the above reasons, this court comes to the finding that the trial court committed grave errors of law which warrant the setting aside of its judgment and a fresh hearing before a different magistrate. I will, in the circumstances, not pronounce myself on the other issues in the appeal because to do so may prejudice the parties when they go for fresh hearing.
26. On costs, the above errors were committed by the trial court. Consequently, parties will bear their respective costs of the appeal.

### **Disposal Orders**

27. In the end, this appeal succeeds in the following terms:
- a. The judgement of the trial court rendered on 15/11/2023 in Maua CMC E & L Case No E228 of 2017 is hereby set aside wholly.
  - b. The respondent shall file duly signed amended pleadings within the timelines that shall be given by the trial court.
  - c. The case shall be heard a fresh by a magistrate other than the two magistrates who handled the preceding trial and the impugned judgment.



d. Parties shall bear their respective costs of this appeal

**DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY  
OF FEBRUARY, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**

