

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT**  
**KERUGOYA**  
**ELCA NO. E008 OF 2025**

**JANE WANGUI WAITHAKA ..... 1<sup>ST</sup>**  
**APPELLANT**

**IRENE MUTHONI GICHERU ..... 2<sup>ND</sup>**  
**APPELLANT**

**FRANCIS MURIUKI GICHERU** (Suing as the legal administrators of the estate of **JAMES GICHERU MURIUKI**, Deceased)..... **3<sup>RD</sup>**  
**APPELLANT**

**VERSUS**

**ROSE MUMBI MURIUKI**(Sued as the legal administrators of the estate of **FRANCIS MURIUKI WAHOME** - Deceased).... **1<sup>ST</sup>**  
**RESPONDENT**

**JOSEPH WACHIRA MURIUKI ..... 2<sup>ND</sup>**  
**RESPONDENT**

**LUCY WANJIRU MURIUKI ..... 3<sup>RD</sup>**  
**RESPONDENT**

**ANN NGIMA MURIUKI ..... 4<sup>TH</sup>**  
**RESPONDENT**

**JOSEPHAT WAHOME MURIUKI ..... 5<sup>TH</sup>  
RESPONDENT**

**TERESA WANJIKU MUCHOKI ..... 6<sup>TH</sup>  
RESPONDENT**

**(Being an appeal against the judgment and decree of  
Hon. M.W. Mutuku, Chief Magistrate at Kerugoya in  
MELC Case No. E013 of 2024 delivered on 14<sup>th</sup> January  
2025)**

## **JUDGMENT**

1. The Appellants, being dissatisfied with judgement of the trial court delivered on 14<sup>th</sup> January 2025 preferred this appeal through the Memorandum of Appeal dated 7th February 2025, raising the following grounds:

**1)** *That the learned magistrate erred in law and in fact by failing to fully and fairly consider the evidence tendered by the Appellants vis-à-vis the evidence adduced by the Respondents.*

**2)** *That the learned magistrate erred in law and in fact by failing to appreciate that the court had*

*jurisdiction to hear and determine the Appellants' suit.*

- 3)** *That the learned magistrate erred in law and in fact by failing to appreciate the import and substance of the Appellants' suit, thereby wrongly framing the issues for determination.*
- 4)** *That the learned magistrate erred in law and in fact by concluding that the Respondents ought to be the ones seeking compensation from the Appellants for the portion of land upon which the building on Plot No. 38A occupies.*
- 5)** *That the learned magistrate erred in law and in fact by failing to appreciate that the Appellants had proved their case on a balance of probabilities.*
- 6)** *That the learned magistrate erred in law and in fact by wholly disregarding the authorities cited by the Appellants in support of their case.*
- 7)** *That the learned magistrate erred in law and in fact by placing undue reliance on the issue of costs payable by the Appellants and failing to properly*

*analyse and determine the real questions in controversy.*

The Appellants therefore prays that this Honourable Court be pleased to allow the appeal and grant the ten prayers set out on the memorandum of appeal.

2. On 29th September 2025, this Court directed that the appeal be dispensed by way of written submissions. The learned counsel for the Appellants' dated 21<sup>st</sup> January 2026 was filed on the same date. The counsel largely submitted on the second issue as framed by the trial court, namely whether the estate of James Gicheru Muriuki (deceased) was entitled to compensation for the developments undertaken on the suit property and, if so, the quantum thereof.

The counsel took issue with the trial court's position that *"the defendants ought to be the ones seeking compensation from the plaintiffs for the portion of land which the building which they claim to own, and have continued to collect rent from encroaches."*

It was submitted that this conclusion was reached in the absence of any evidence having been tendered by the Respondents to support such a finding.

The counsel further submitted that the trial court failed to place due reliance on the valuation report produced by the Appellants, which, according to counsel, provided evidence of the value of the developments on the suit property.

It was also submitted that the trial court erred in holding that the Appellants could not pursue their claim through the suit, arguing that it was the Environment and Land Court that had jurisdiction to determine questions relating to compensation arising from use, occupation, and development of land. Counsel maintained that the dispute before the court did not concern distribution of the estate, but rather proprietary and equitable interests arising from developments on land.

Counsel concluded by submitting that the Appellants' case was sustainable and that sufficient evidence had been placed before the trial court in support of their claim, and the court was urged to find merit in the Appellants' case and to grant the reliefs sought.

3. The learned counsel for the Respondents filed their submissions also dated 21<sup>st</sup> January 2026 on 22<sup>nd</sup> January 2026, in opposition to the appeal. the counsel urged the court to dismiss the appeal and uphold the decision of the trial court.

The counsel submitted that the dispute revolved around **Plot No. 38A, Kerugoya (Blue Canyon)**, which formed part of the estate of the late Francis Muriuki Wahome and had been conclusively distributed, pursuant to a confirmed grant issued in **Nyeri High Court Succession Cause No. 997 of 2012**, and later rectified. It was submitted that the confirmed grant was final and binding, and that the Appellants were bound by the mode of distribution set out therein.

Counsel submitted that the Appellants' claim for compensation amounted to a collateral challenge to the distribution effected in the succession cause, yet neither the deceased nor the Appellants had sought revocation or rectification of the confirmed grant. It was argued that the Environment and Land Court could not be invited to vary or re-open a confirmed grant through a separate suit.

It was further submitted that the suit, and consequently the appeal, was barred by the doctrine of res judicata, the distribution of the suit property having already been directly and substantially in issue in the succession proceedings. Counsel maintained that the Appellants, as administrators of the estate of a beneficiary, were privies to the succession cause and were estopped from re-litigating issues that had already been determined.

On the question of evidence, counsel submitted that the learned magistrate properly evaluated the material placed before the court. While acknowledging that the developments on the suit property were undertaken by the deceased, counsel argued that such developments formed part of the estate and were inherited by the beneficiaries in accordance with their respective shares. It was submitted that the Appellants failed to prove their entitlement to compensation on a balance of probabilities.

Counsel also submitted that the Appellants had been offered the portion of land occupied by the building, an offer which they declined, and that this was a relevant consideration in the trial court's determination.

It was further submitted that no sufficient evidence was tendered to demonstrate that the Appellants' share was rendered unusable or that compensation from the other beneficiaries was warranted.

On jurisdiction, counsel submitted that although the suit was filed before the Magistrate's Environment and Land Court, the substance of the dispute related to succession and distribution, matters which fell within the jurisdiction of the succession court unless the confirmed grant was first challenged. Counsel maintained that the trial court correctly appreciated this position.

Finally, on costs, counsel submitted that the learned magistrate properly exercised her discretion in awarding costs against the Appellants, in line with the general principle that costs follow the event.

4. The following are the issues arising for the court's determinations in this appeal:

*a) Whether the Magistrate's Environment and Land Court had jurisdiction to hear and determine a claim for compensation arising from developments carried out on land that had been distributed pursuant to a confirmed grant in succession proceedings.*

*b) Whether the Appellants proved, on a balance of probabilities, that the estate of James Gicheru Muriuki (deceased) was entitled to compensation from the Respondents in respect of the developments erected on **Plot No. 38A, Kerugoya (Blue Canyon).***

*c) Whether the Appellants' claim for compensation was barred by the doctrine of res judicata or by the finality of the distribution effected in **Nyeri High Court Succession Cause No. 997 of 2012.***

*d) Whether the conduct of the parties and the surrounding circumstances, including the manner of*

*occupation, use, and proposed disposition of the suit property, justified or disentitled the Appellants to the reliefs sought.*

*e) Whether the learned magistrate properly exercised her discretion on costs.*

5. I have carefully considered the grounds on the memorandum of appeal, the record of appeal, submissions by the learned counsel, superior courts decisions referred to thereon, and come to the following determinations: -

a) The Appellants commenced the suit before the trial court by way of a plaint, which was subsequently amended vide the Amended Plaint dated 4th March 2024. In the amended plaint, the Appellants sought, inter alia for: a declaration that they were entitled to compensation by the 2nd, 3rd, 4th, 5th and 6th Respondents in respect of the double-storey building erected on **Plot No. 38A, Kerugoya (Blue Canyon)** by James Gicheru Muriuki (deceased) at the prevailing market value upon the sale of the said plot; an order directing payment of compensation for the said building at its current market value; and costs of the suit together with interest at court rates.

The Appellants' case before the trial court was that they were the legal administrators of the estate of James Gicheru Muriuki, who passed away on 21st October 2020. They contended that the 1st Respondent was a legal administrator of the estate of Francis Muriuki Wahome, the father of the deceased, while the 2nd to 6th Respondents were beneficiaries of that estate. It was their position that **Plot No. 38A, Kerugoya (Blue Canyon)** had been the subject of succession proceedings in **Nyeri High Court Succession Cause No. 997 of 2012**, and that pursuant thereto, the plot was distributed such that James Gicheru Muriuki (deceased) and the 2nd Respondent were each allocated 25%, while the 3rd, 4th, 5th and 6th Respondents were to share the remaining 50 per cent.

The Appellants further pleaded that during the lifetime of his father, the deceased had been in use and occupation of the suit property and had extensively developed it by constructing a double-storey building. According to the pleadings, the building housed a club, guest rooms, stores, and office space, and occupied approximately three-quarters of the suit plot. The Appellants placed the market value of the developments at Kshs. 5,000,000.

The Appellants' case was that the Respondents intended to sell their respective portions of the suit plot, a course of action to which the Appellants did not object, provided that the estate of the deceased was compensated for the developments erected on the land. They contended that the Respondents were in the process of transferring title to the suit property into their names and that, in doing so, they had failed to disclose to the relevant county officials that the deceased was no longer alive and that there were permanent developments on the land.

It was the Appellants' apprehension that upon transfer of the suit property to the Respondents, they would be evicted and the developments demolished without any compensation being made to the estate of the deceased.

- b) In opposition to the suit, the Respondents filed a Statement of Defence dated 21st February 2024 in which they denied the Appellants' claim. It was their position that **Plot No. 38A, Kerugoya (Blue Canyon)** formed part of the estate of the late Francis Muriuki Wahome, and that any alleged occupation or development of the suit property by the deceased or the Appellants was undertaken without the consent of all the beneficiaries of that estate and without the authority of any court. The Respondents averred that

following the death of Francis Muriuki Wahome in 2012, the Appellants had continued to occupy and utilise the suit property without the requisite grant, and had been collecting rent therefrom and applying the proceeds for their own personal use. They contended that the Appellants had refused to relinquish control and collection of rent over the suit property to the 1st Respondent, who held valid letters of administration.

The Respondents denied that the developments on the suit property occupied three-quarters of the plot, asserting instead that the building occupied approximately half of the land. They further disputed the valuation of Kshs. 5,000,000, maintaining that the developments were not worth the amount claimed. It was their case that their intention was simply to receive what had been bequeathed to them from the estate of the late Francis Muriuki Wahome.

They confirmed that they were in the process of transferring the suit property, contending that the transfer was being undertaken strictly in accordance with the Certificate of Confirmation of Grant as rectified on 21st September 2023.

The Respondents further asserted that the Appellants had their rightful share of Plot No. 38A, Kerugoya, as provided for in the confirmed grant, and maintained that both the plot and the developments thereon formed part of the estate of Francis Muriuki Wahome. They contended that any objection to the distribution of the property, or any claim for compensation, ought to have been raised within Nyeri High Court Succession Cause No. 997 of 2012, and that neither the Appellants nor their deceased predecessor had appealed against the confirmation of the grant in that cause. The Respondents also averred that the Appellants had failed to disclose that negotiations had previously taken place between the parties, during which the Appellants had allegedly been requested to choose between the developed and the undeveloped portion of the land, and had opted for the undeveloped portion. On that basis, the Respondents contended that the Appellants could not subsequently lay claim to compensation for the developments. The Respondents maintained that compensation to the Appellants was unwarranted, asserting that the developments were theirs by right.

They reiterated that the issues raised in the suit had already been addressed in **Succession Cause No. 997 of 2012** and urged the trial court to dismiss the Appellants' claim with costs.

c) The proceedings in the record confirms that the matter proceeded to a full hearing on 10th September 2024, during which both sides called their respective witnesses to testify. The learned counsel then filed their submissions and thereafter trial court delivered the impugned judgment. In her judgment, the learned trial magistrate considered among others, whether the developments on **Plot No. 38A, Kerugoya (Blue Canyon)** were undertaken by the deceased; whether the estate of James Gicheru Muriuki (deceased) was entitled to compensation for the developments carried out on the said plot; and who was to bear the costs of the suit.

On the first issue, the learned magistrate answered in the affirmative and held that inter alia that:

*“the position seems to be respected by the defendants, who stated that the plaintiffs have continued to occupy, and collect from the permanent structure, without any interference from the defendants.”*

However, on the issue of compensation, the learned magistrate held that the Appellants had not presented evidence to demonstrate that the Respondents were in the process of disposing of the entire plot without considering the interests of the

estate of the deceased. On that basis, the court concluded that the Appellants' suit was not sustainable and dismissed it with costs.

- d) This being a first appeal, the duty of the Court is to re-evaluate the evidence afresh, and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses. This principle was stated in the case of **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123**, where the **Court of Appeal** held:

***“This Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this Court is by way of retrial... this Court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”***

- e) On the question of whether the Magistrate's Environment and Land Court had jurisdiction to hear and determine the Appellants' claim, it is important to understand that “Jurisdiction is everything. Without it, a court has no power to make one more step”, which principle has been reiterated time and again, most authoritatively in the case of **Owners of**

**the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1**, where the **Court of Appeal** held that a court must down its tools the moment it finds that it lacks jurisdiction.

The Appellants’ suit before the trial court was framed as a claim for compensation arising from developments allegedly undertaken by the deceased, James Gicheru Muriuki, on **Plot No. 38A, Kerugoya (Blue Canyon)**. On the face of it, and as urged by the Appellants, the claim concerned the use, occupation, and development of land.

Ordinarily, disputes of that nature fall within the jurisdiction of the Environment and Land Court pursuant to *Article 162(2)(b)* of the Constitution of Kenya and **Section 13 of the Environment and Land Court Act**.

- f) However, jurisdiction is not determined merely by the manner in which a claim is framed. The court must interrogate the substance of the dispute, rather than its form, in order to ascertain whether it properly falls within its mandate. In the present case, it is common ground that **Plot No. 38A** formed part of the estate of the late Francis Muriuki Wahome, and that its ownership and distribution were conclusively

determined in ***Nyeri High Court Succession Cause No. 997 of 2012.***

A confirmed grant was issued, and later rectified, allocating specific shares of the suit property to the beneficiaries, including the deceased, James Gicheru Muriuki. That grant remains valid, enforceable, and unchallenged.

The Appellants' claim for compensation is predicated on the assertion that the deceased developed the suit property during his lifetime, and that upon the sale or transfer of the land by the Respondents, the estate of the deceased ought to be compensated for those developments. While styled as a compensation claim, the reliefs sought would, if granted, have the practical effect of altering the proprietary consequences of the confirmed grant, issued by the High Court, by imposing new financial obligations on some beneficiaries in favour of another, arising from developments allegedly undertaken prior to distribution.

g) In the Court's view, that is where the jurisdictional difficulty arises. The succession court, in confirming the grant, was seized of jurisdiction to determine not only the beneficiaries of the estate and their respective shares, but also all questions incidental to

distribution, including the nature of the estate property being distributed and all the interests/developments attaching thereto. If the deceased had undertaken developments on the suit property and intended to assert a distinct proprietary or compensable interest arising therefrom, that claim was inextricably connected to the distribution of the estate, and ought to have been raised, interrogated, and resolved within the succession proceedings, before shares were crystallised. Alternatively, the dispute on the value of the developments on the said property should have been pursued, and determined, before the confirmation and distribution proceedings of the estate was done. Once a grant has been confirmed and distribution effected, the other courts should not re-open or indirectly vary the terms of that distribution through collateral proceedings, except through for example an appeal against succession confirmation order, review or revocation proceedings. To entertain a claim that would require the court to revisit the consequences of a confirmed grant, without that grant first being challenged, reviewed, or revoked in the succession cause, would amount to sitting on appeal over a decision of a court of concurrent or superior jurisdiction, a course that is legally not permissible.

- h) The Court therefore agrees with the Respondents' submission that, although the dispute has elements touching on land use and development, its substratum is succession. The Appellants' grievance is not merely about occupation or valuation of improvements, but about how the estate property was distributed, and whether the developments ought to have been accounted for in that process. That question lay squarely within the jurisdiction of the succession court at the time of confirmation of the grant.
- i) This Court is alive to the argument that the Environment and Land Court has jurisdiction to determine disputes relating to land, including claims founded on equitable interests and compensation for developments. However, that jurisdiction cannot be exercised in a manner that undermines the finality of succession proceedings, or renders nugatory a confirmed grant, that has not been successfully appealed against, revoked or set aside. Courts must be cautious with disputes clothed as land disputes, but which have succession consequences that have otherwise been settled through the family court as it will effectively result in the re-distribution of an estate through the back door.

- j) In the circumstances of this case, the Court finds that the trial court could not properly adjudicate upon the Appellants' claim without impermissibly encroaching upon matters already settled in the succession cause by a court with jurisdiction in addition to being superior to it. To do otherwise would be to overturn, albeit indirectly, a subsisting and enforceable decision of the succession court, without following the proper legal process.
- k) Accordingly, while in principle, the Magistrate's Environment and Land Court has jurisdiction in disputes relating to land use, occupation, and development, it lacked jurisdiction in this case to entertain the Appellants' claim in the form presented. That is because the issues raised were so intertwined with the distribution of the estate of the late Francis Muriuki Wahome that they ought to have been canvassed and resolved within the succession proceedings prior to confirmation of the grant.
- l) On the issue of whether, assuming jurisdiction, the Appellants proved entitlement to compensation for the developments on **Plot No. 38A, Kerugoya (Blue Canyon)**, the court having determined that the trial court lacked jurisdiction to entertain the Appellants' claim, this Court is, strictly speaking, required to down its tools. Jurisdiction being foundational, the absence of jurisdiction thereof

would ordinarily dispose of the appeal in limine. However, and only for the sake of completeness, and to demonstrate that the appeal would in any event have failed on the merits, this Court will briefly consider whether the Appellants proved entitlement to compensation, even assuming that jurisdiction properly lay before the trial court.

- m) It was not disputed that the developments on **Plot No. 38A** were undertaken by the deceased, James Gicheru Muriuki. The learned trial magistrate so found, and that finding is supported by the record. The mere fact of development, however, did not, without more, vest the estate of the deceased with an automatic right to compensation from the other beneficiaries, outside the succession confirmation proceedings. The undisputed position was that, pursuant to the confirmed grant issued in **Nyeri High Court Succession Cause No. 997 of 2012**, the deceased was allocated a 25 per cent share of Plot No. 38A. The Appellants' entitlement, if any, could only arise if it were shown that the Respondents were disposing of the suit property in a manner that defeated or extinguished that allocated share. In that regard, the Appellants bore the burden of demonstrating that any such intended sale or transfer related to the entire plot, or to such a portion

thereof, as would effectively absorb or negate the deceased's 25 per cent entitlement. Such a demonstrable evidence would justify compensation in lieu of proprietary enjoyment. No such evidence was tendered.

n) While the Appellants asserted that the developments occupied a substantial portion of the land, and exceeded the proportionate share allocated to the deceased, they did not demonstrate that the Respondents were selling or transferring land in excess of their own respective shares, or that the Appellants' 25 per cent share was incapable of being identified, excised, or enjoyed in specie. Indeed, the evidence on record showed that the Appellants remained in occupation of the developed portion of the land, and continued to collect rental income therefrom. There was no proof that the Respondents' actions were directed at dispossessing the Appellants of their allocated share or that the proposed transfers would necessarily encompass the Appellants' entitlement.

o) The valuation report produced by the Appellants, while indicative of the value of the developments, did not bridge that missing evidentiary gap. The valuation could only become relevant once a legal or

equitable entitlement to compensation was established. In the absence of proof that the Appellants' 25 per cent share was being appropriated or rendered nugatory, valuation alone could not sustain the claim. Put differently, the logical and legal foundation of the Appellants' claim would have required evidence inter alia indicative of that:

- i. The Respondents were dealing with the suit property as a whole;*
- ii. The developments so substantially overlapped the deceased's allocated share that proprietary enjoyment was impossible; and*
- iii. Compensation was the only reasonable substitute for that defeated entitlement.*

None of the above elements was proved on a balance of probabilities. Accordingly, even if the trial court had jurisdiction, this Court would still find that the Appellants failed to establish any legal or equitable basis upon which compensation could be awarded.

- p) On whether the Appellants' suit was barred by the doctrine of res judicata, in light of the ruling delivered on 25th June 2024, in that **Plot No. 38A, Kerugoya (Blue Canyon)** had been the subject of **Nyeri High Court Succession Cause No. 997 of 2012** and formed part of the estate of the late Francis Muriuki Wahome, the record reveals that this very question

was raised before the trial court by way of a preliminary objection. The Respondents contended that the suit was res judicata on account of the succession proceedings and that the trial court therefore lacked jurisdiction to entertain it.

That preliminary objection was heard and determined by the learned trial magistrate in a ruling delivered on 25th June 2024, in which the court dismissed the objection. In that ruling, the trial court held that the Respondents had failed to demonstrate that the Appellants were parties in **Nyeri High Court Succession Cause No. 997 of 2012**, and further failed to establish that the issues raised in the plaint were directly and substantially the same as those determined in the succession proceedings. That ruling conclusively disposed of the plea of res judicata at the interlocutory stage. It was a determination made by a court of competent jurisdiction, and was not appealed against, reviewed, or set aside. It therefore remained settled, determined and that decision was binding on the parties throughout the trial court proceedings. In those circumstances, the Respondents could not properly re-introduce the plea of res judicata at the appellate stage without first challenging the interlocutory ruling in which it was determined. To invite this Court to re-examine and overturn that

ruling, which is not subject matter of this appeal, would be to ask it to sit on appeal over a decision of the trial court that was not placed before it formally by way of an appeal.

q) This Court is mindful that an appellate court's jurisdiction is circumscribed by the matters properly brought before it. Where a party elects not to appeal an interlocutory decision, that decision attains finality as between the parties, and the appellate court is not at liberty to indirectly revisit it, through arguments advanced in opposition to the appeal. Accordingly, while the Respondents' submissions on res judicata raise issues that intersect with the broader question of jurisdiction already addressed by this Court, the specific plea of res judicata, having been conclusively determined by the trial court in the ruling of 25th June 2024, is not open for re-litigation in this appeal.

r) On the question of whether the conduct of the parties and the surrounding circumstances justified the reliefs sought by the Appellants, who urged the Court to consider the Respondents' conduct, particularly the alleged intention to sell or transfer the suit property without compensating the estate of the deceased, as a basis for equitable intervention, it is trite that while equity may, in appropriate cases, intervene to prevent unconscionable conduct,

equitable relief does not operate in a vacuum. It must be anchored on a demonstrable legal or proprietary entitlement.

As already observed, the Appellants did not establish that their allocated 25 per cent share of Plot No. 38A had been defeated, appropriated, or rendered incapable of enjoyment by the Respondents' actions.

Further, as already stated above, the evidence on record showed that the Appellants remained in occupation of the developed portion of the land and continued to collect rental income therefrom. There was no proof of actual or imminent dispossession, nor of conduct on the part of the Respondents that would warrant equitable compensation in substitution of proprietary rights. In the absence of such proof, the Court finds that the conduct of the parties and the surrounding circumstances did not justify the reliefs sought by the Appellants, before the trial court and even before this court.

- s) On whether the learned trial magistrate properly exercised her discretion on costs, the appellants contended that the learned magistrate placed undue emphasis on costs and failed to appreciate the substance of their claim. The award of costs is a matter of judicial discretion, to be exercised

judiciously and in accordance with settled principles. **Section 27 of the Civil Procedure Act Chapter 21 of Laws of Kenya** provides that costs shall ordinarily follow the event unless the court, for good reason, orders otherwise.

The court in the case of **re Estate of Monica Wanjiru Macharia (Deceased) (Family Appeal 15 of 2023) [2024] KEHC 14780 (KLR)** held that:

***“Section 27 of the Act is clear that it lies in the discretion of the court to award costs in a suit. This discretion must be exercised judiciously.”***

And in the case of **Morgan Air Cargo versus Everest Enterprises Limited [2014] eKLR**, the court set out the factors that ought to be considered when determining the costs to include the conduct of the parties; the subject of litigation; the circumstances which led to the institution of the proceedings; the events which eventually led to their determination; the stage in which they are terminated; the relationship between the parties; and the need to promote reconciliation amongst the disputing parties pursuant to **Article 159(2) of the Constitution**. Having given due considerations to the foregoing factors as discerned from the facts in

the appeal, the court find no reasons to depart from the edict that costs follow the event unless where otherwise directed.

The court therefore finds it fair and just to award the respondents the costs in this appeal and the trial court. In the present case, the Appellants' suit was dismissed in its entirety.

As the unsuccessful party, they bore the burden of demonstrating that the learned magistrate acted on wrong principles, took into account irrelevant considerations, or failed to consider relevant ones in awarding costs against them, but no such basis has been established. The record does not disclose any misdirection or improper exercise of discretion on the part of the trial court. The learned magistrate was entitled, in the circumstances of the case, to award costs to the Respondents, and there is no reason for this Court to interfere with that decision.

- t) In the end result, having found that the Magistrate's Environment and Land Court lacked jurisdiction to entertain the Appellants' claim, and further finding, in the alternative, that the Appellants failed to establish any entitlement to compensation on a balance of probabilities, the appeal is evidently without merit.

6. Flowing from the determinations set out above, the court finds and orders as follows:

**a) The appeal is without merit and is hereby dismissed in its entirety.**

**b) The judgment of the learned trial magistrate delivered on 14th January 2025 in Kerugoya CM ELC Case No. E013 of 2024 is hereby affirmed.**

**c) The Appellants to meet the Respondents' costs in this appeal.**

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 11<sup>TH</sup> DAY OF FEBRUARY 2026.**

**S. M. Kibunja**

**ELC**

**JUDGE**

**In The Presence of:**

Appellants - Mrs Makworo

Respondents - Mr. Muchangi

Kinyua - Court Assistant.

**S. M.**

**Kibunja**

