



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**CIVIL APPEAL NO. E026 OF 2024**

**BETWEEN**

**JOSEPH KARIUKI NDUNG’U.....1<sup>ST</sup> APPELLANT**  
**BETH NJERI NGURE.....2<sup>ND</sup> APPELLANT**  
**DORCAS WANJIKU MWORIA.....3<sup>RD</sup> APPELLANT**  
**JOYCE WANJIKU KARIUKI..... 4<sup>TH</sup> APPELLANT**  
**ISAAC KIBUNJA..... 5<sup>TH</sup> APPELLANT**

**AND**

**JOYCE WAMBUI KARIUKI.....RESPONDENT**

*(Being an appeal from the judgment of the Engineer Chief Magistrate’s CMCC No. E212 of 2022 by Hon. H. Barasa– Chief Magistrate.*

**JUDGMENT**

1. Joseph Kariuki Ndung’u, Beth Njeri Ngure, Dorcas Wanjiku Mworua, Joyce Wanjiku Kariuki and Isaac Kibunja, the appellants, were the defendants in Engineer Chief Magistrate’s CMCC No. E212 of 2022. They had been sued for a claim in the amount of Kshs. 350,000.00. The learned trial magistrate allowed the claim.
2. The appellants were dissatisfied with the judgment and filed this appeal through David K. Gichuki & Company Advocates. They raised the following grounds of appeal:
  - a) The learned trial magistrate erred in law and fact in finding that the respondent was entitled to a sum of Kshs. 350,000/= when there was no sufficient evidence to support this claim.
  - b) The learned trial magistrate erred in law and fact in giving the respondent the global sum of Kshs. 350,000/= as damages against the weight of evidence.
  - c) The learned trial magistrate erred in law and in fact in failing to consider the appellant's evidence in respect of the alleged damaged property.

- d) The learned trial magistrate erred in law and in fact in failing to consider the fact that there was no evidence of what was actually damaged among the alleged damaged houses.
  - e) The learned trial magistrate erred in law and fact in not considering that there was no evidence adduced to confirm the sizes of the alleged damaged houses.
  - f) The learned trial magistrate erred in law and fact in failing to consider the fact that there was a dispute of land ownership of where the alleged damaged houses were, and the respondent never brought any evidence to confirm whether she was the owner of the land where the houses were.
3. Nyawira Mureithi & Company, Advocates, represented the respondent. She contested the appeal, asserting that the trial court's award was appropriate.
  4. As the first appellate court, I recognise my responsibility to thoroughly examine all the available evidence, given that I did not have the opportunity to observe the witnesses during their testimony. The **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123** case sets the precedent that the first appellate court must review and assess the evidence presented in the trial court and draw its conclusions accordingly.
  5. During the case hearing, the respondent submitted proceedings from Senior Principal Magistrate's Criminal Case number E1492 of 2021. The appellants were found guilty of maliciously damaging the respondent's property. They also admitted that they did not appeal their conviction. Section 47A of the Evidence Act provides:

***A final judgment of a competent court in any criminal proceedings which declares any person to be guilty of a criminal offence shall, after the expiry of the time limited for an appeal against such judgment or after the date of the decision of any appeal therein, whichever is the latest, be taken as conclusive evidence that the person so convicted was guilty of that offence as charged.***
  6. This, therefore, estops the respondent from claiming otherwise in both this court and the trial court.
  7. The only issue they should have raised is the value of the damaged property. The respondent in the criminal and civil proceedings claimed her houses were valued at Kshs. 350,000.00. In their statement of defence, the appellants raised other issues, except for the value of the damaged property. The purpose of pleading was explained by the Court of Appeal in **David Sironga Ole Tukai vs Francis arap Muge & Others, Ca No. 76 Of 2014**, as follows:

*In an adversarial system such as ours, parties to litigation are the ones who set the agenda, and subject to rules of pleadings, each party is left to formulate its own case in its own way. And it is for the purpose of certainty and finality that each party is bound by its own pleadings. For this reason, a party cannot be allowed to raise a different case from that which it has pleaded without due amendment being made. That way, none of the parties is taken by surprise at trial, as each knows the other's case as pleaded. The purpose of the rules of pleading is also to ensure that parties define the issues succinctly so as to guide the testimony required on either side with a view to expediting the litigation through diminution of delay and expense. The court, on its part, is itself bound by the pleadings of the parties. The duty of the court is to adjudicate upon the specific matters in dispute, which the parties themselves have raised by their pleadings.*

8. Since the respondents' houses values were not discussed during the pleadings, the trial court had no basis to rule on them. She was justified in awarding the respondent the original claimed value of her houses, which was not contested.
9. The upshot of the analysis of the evidence on record is that the appeal lacks merit. It is dismissed with costs.

**Delivered and signed at Nyandarua, this 5<sup>th</sup> day of March 2026**

**KIARIE WAWERU KIARIE  
JUDGE**