



**Omar v Muhaji (Environment and Land Appeal E019 of 2022)
[2026] KEELC 1191 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 1191 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E019 OF 2022
FM NJOROGE, J
FEBRUARY 25, 2026**

BETWEEN

SALMA MOHAMED OMAR APPELLANT

AND

AISHA MOHAMED MUHAJI RESPONDENT

*(Being an Appeal from The Judgment of the Principal Magistrate Hon TA SITATI, Delivered
On The 16th Day of May 2022 In Lamu Principal Magistrates ELC Case Number 8 Of 2019)*

JUDGMENT

1. In the Memorandum of Appeal dated 15th June 2022, the following grounds are listed, namely, that the Learned Trial Magistrate erred in law and in fact by:
 - a. Taking into consideration matters and or evidence that was not placed before him and thus arrived at a wrong conclusion;
 - b. Holding that the disputes committee had powers and/or jurisdiction to hear and determine objections where titles had already been issued;
 - c. Ignoring a key fact that was not even in dispute, to wit, that the appellant had been issued with a title deed prior to the issuance of the first respondent's title and hence arrived at a wrong conclusion;
 - d. failing to appreciate that the Land Registrar lacked powers to revoke the Appellant's title;
 - e. By failing to appreciate the fact that the Land Registrar recalled the respondents' title for cancellation;



- f. Failing to appreciate at once the adjudication process is closed and titles have been issued it is only the Environment and Land Court under whose jurisdiction the trial magistrate was acting that had powers and or jurisdiction to deal with disputes emanating from the adjudication process;
 - g. Holding that the issue of whether the 1st respondent bought the suit property from her uncle Banguro was an undisputed issue whereas the same was highly contested and whereas Banguro himself testified to the contrary;
 - h. Failing to address all the issues tabled before him;
 - i. Failing to properly evaluate the evidence placed before him and hence reaching a wrong conclusion;
 - j. Failing to take into consideration matters he ought to have taken into consideration and thus misdirected himself into applying the wrong principles of law in his judgment.
2. It is proposed that the judgment of the trial magistrate delivered on 16th May 2022 be set aside and the same be substituted by the judgment of this court allow appellant's prayers as sought in his plaint dated 29th October 2019 in the lower court.

The Lower Court Case

Plaint

3. Vide a plaint dated 29th October 2019 the appellant brought an action against the respondent and sought the following orders of:
- a. Declaration that the suit property belongs solely to the plaintiff;
 - b. Eviction against the defendant, her agents and or servants from the said suit property;
 - c. Permanent injunction against the defendant restraining her, her agents or employees or beneficiaries from interfering with the plaintiff's quiet possession and enjoyment of the suit property;
 - d. Costs of the suit;
 - e. Any such other order or relief the Court may deem fit to grant.
4. It was pleaded in the body of the Plaint that the appellant is the beneficial owner of all that surveyed and registered land parcel known as Lamu /Wiyoni Scheme /568. The history of how he became the owner of that parcel is as follows: in 2005, the appellant was among the individuals who occupied the then government land and, after a long stay, the government issued the very first occupants with an allotment letter to legalize their stay on the said land. In 2018 the respondent bought another parcel of land from one Banguro. Banguro showed the defendant her rightful portion before the surveyors came to collect the coordinates from the ground. During the issuance of title deeds, the appellant discovered her land had been allocated to the respondent and she lodged complaint to the Wiyoni Local Committee. The Committee acknowledged the error. It took up the concern with the relevant authorities. Various meetings were held to resolve the issue at the CEC Lands Office. Pursuant to a hearing, a determination was made in favour of the plaintiff regarding the ownership of the land whereupon the defendant agreed to return the title deed to the Lands Department for rectification and



amendment. Parties were summoned to the Lamu Land Registrar's office. A team of surveyors visited the site on 24th July 2019 and confirmed that the plot number 568 belongs to the plaintiff and the title deed was erroneously issued to the defendant. The County Physical Planner wrote to the County Land Registrar to recall the title deed issued in the defendant's name over the suit land. The defendant was ordered to surrender the title vide a letter dated 24th July 2019. Also, the County Physical Planning and Infrastructure Department recalled the plan for the construction of a permanent structure on the suit property in a letter dated 22nd August 2019. The defendant has however refused failed and or neglected vacate the land despite all those resolutions and the correspondence, hence the suit.

Defence and Counterclaim

5. The defendant filed a written statement of defence and counterclaim on 14th November 2019, stating that she is the sole registered proprietor of the suit land; that she and her husband purchased the parcel of land from Mr Banguro 6 years previously and they were shown that land parcel and the same was subsequently demarcated and registered in her name. She asserted that decisions reached to the effect that the land belonged to the plaintiff were erroneous and without any consultation or reference to her as a rightful owner, that she is currently still in possession of the land. She was not aware of any letter recording authorization for the construction of a permanent structure as none was ever served on her; that the current construction on the suit property has full approval from the County Government of Lamu. She termed her title as a valid and dismissed allegations of trespass on what she called her land.

Counterclaim

6. The defendant as sole plaintiff in her counterclaim, joined the plaintiff in the main suit, Mohamed Awadh Banguro, The County Land Physical Planner Lamu and The County Land Registrar Lamu as the 4th defendants to the counterclaim. The defendant reiterated the matters in the plaint. She stated that she and her husband entered into an agreement with Banguro for sale of the suit land for Kenya Shillings 300,000/= which portion Banguro pointed out to them. The parcel of land was demarcated and became plot number 568. Before title deeds could be issued, Banguro approached her in December 2018 with an offer to refund the purchase price paid in exchange for the defendant returning the parcel of land to him, which proposal the defendant refused, upon which Banguro threatened to change ownership of the land without further reference to her. She was not shaken by that threat having obtained the title in the right manner. The respondent obtained approval from the County Government of Lamu to build on the suit land. She sent a representative to collect her title from the Department Of Land offices; it was at that juncture that she discovered that the suit property had been registered and issued with title in the name of the appellant despite the information systems still reflecting that the land belonged to the respondent. The title was ordered to be withheld until the dispute was resolved. The Lamu County Physical Planner visited the ground and the dispute was finally resolved in favour of the respondent, and the current title deed was issued in her name, but the appellant made claims over the suit land all over again. The respondent was summoned but could not attend another meeting to resolve the dispute and a title was allegedly fraudulently issued by the defendants in collusion with one another in the name of the appellant.
7. The following prayers were sought in the counterclaim
 - a. A declaration the defendant is the legal owner of the suit land;
 - b. A declaration that the County Land Physical Planner Lamu's request and the County Land Registrar's directive that the title deed to the suit land be issued to the respondent be recalled and reissued in the appellant's name was in abuse of their respective offices, illegal, fraudulent, and void;



- c. That the appellant and his co-defendants in the counterclaim, their servants and/or agents be restrained by an order of injunction from interfering with the respondent's occupation and use of the suit property;
 - d. Costs of and incidental to the suit against the defendants jointly and severally;
 - e. Such other or further relief or order which the court may deem fit to grant.
8. Hearing took place between 27th October 2020 to and 19th November 2021. Parties filed their written submissions and the judgment was delivered on 16th May 2022, in which the court found for the defendant hence the present appeal. The appeal was disposed of by way of written submissions which the appellant filed on 26th May 2025.

Appellant's Submissions.

9. The appellant narrated the background to the dispute and submitted that the title deed was issued to the 1st respondent through the adjudication process; that two title deeds were issued in respect of the same parcel of land; that it is not clear when the title deed of the appellant was prepared but it was issued ahead of the respondents' title and that fact was confirmed by the letter of the County Physical Planner addressed to the County Land Registrar Lamu, dated 24th July 2019 produced by the appellant, and which fact has not been controverted by the defendant; that title was however never released to the appellant, hence the claim of fraud. The claim in the lower Court commenced when the appellant realized that title deed to her property was issued the names of the 1st respondent long after the adjudication mechanisms were over; that it was therefore incorrect for the learned trial magistrate to hold that he did not have jurisdiction to entertain the dispute before him because the dispute arose after the conclusion of the adjudication process and issuance of the title deeds. It was further submitted that it is only the Environment and Land Court that is clothed with jurisdiction to entertain matters of duplicity of title obtained by fraud or mistake; that it is only the ELC that has power to order for rectification of the register under Section 80 of the *Land Registration Act*.
10. Counsel cited the case of Hubert L Martin and Two Others Versus Margaret J Kamar and 5 Others 2016 eKLR and Joseph Kiprotich Bor Versus Tabutany Chepkoech Chebusit 2021 eKLR as well as Gitwany Investment Limited Versus Tajmal Limited and 3 others 2006 eKLR regarding situations where a court is faced with a case of two parties each holding a title deed on the same piece of land; that when the foregoing case law is applied to the present case it will be evident that the learned trial magistrate erred in law by holding that he had no jurisdiction to issue the orders sought by their appellant in the trial. It is also pointed out that it was interesting and contradictory that he took up jurisdiction and in the same breath granted the orders thought in the defendant's counterclaim.

1st Respondent's Submissions

11. The 1st respondent filed undated submissions. It was submitted for the respondent that the magistrate came to the correct conclusion that the sole issue for determination was whether or not the sale by Banguro to the respondent could be affirmed or voided by his court after the disputes committee had ruled in favour of the respondent on the 28th of May 2019. Counsel submitted that the Land Registrar, the Physical Planner and the 1st respondent all agree that the dispute was subjected dispute resolution mechanisms in the *Land Adjudication Act* and drew the attention of the Court to Section 23 and 29 of that Act; that having properly identified the issue the trial Court the correct conclusion that where a statute prescribes a dispute mechanism the process outlined therein has to be followed to the letter. Counsel cited the case of Peter Mbabu Patrick Vs Rose Kamwiko And Another 2020 eKLR and also



the case of Reuben Mwangela M'itelekwa Representative Of The Estate Of Mitelekwa M'mucheke Naituri Vs Paul Kigea And 2 Others 2019 eKLR; that having arrived at the conclusion regarding jurisdiction, the trial magistrate had no option but to down his tools as required in the Owners of Motor Vessel Lillian S Vs Caltex Oil Kenya Limited 1989 KLR 1.

12. Counsel argued that on the other hand, the 1st respondent had established her root of title and there was no credible defence to the counterclaim. He further argued that if this court finds that the trial magistrate had jurisdiction, in the circumstances, since he did not pronounce himself on the merits of the case, then this court ought to refer the matter back to him for a determination of the issues.
13. However, it was submitted on without prejudice basis on the merits of the case, that although the appellant alleged to be the first on the ground, evidence adduced showed that when the land adjudication process took place, it is the 1st respondent who was identified as the owner of the land; that all primary documents in the possession of the lands office show that the 1st respondent was the owner of the property. Emphasis was laid on the evidence of the Land Registrar in that regard; that although officials and the Lamu Land Office prepared a title in the name of the appellant there was an explanation given by the Registrar at page 39 to 40 of the record as to why it the appellant's title was never released to him. It was submitted that title having been withheld and the Registrar having invoked the dispute resolution mechanism the adjudication was still open; that the attempt to alter the records fraudulently was discovered, corrected and the title prepared but not issued to the appellant was cancelled. Counsel cited the case of Funzi island Development Ltd & two others versus the county council of kwale and two others 2014 K E C A 882 KLR where it was stated that registered proprietor has an absolute and indefeasible title if and only if an allocation was legal.
14. Counsel also submitted that apart from the appellant, none of the other parties who were sued responded to the counterclaim, and it was clear from the evidence adduced and from the provisions of the law that the suit property belongs to the 1st respondent; that it was ultra vires for the Land Registrar to purport to recall the respondent's title to have the same issued to the appellant. Counsel stated that rectifications of that nature would have materially affected the interest respondent contrary to Section 79 of the *Land Registration Act* 2012.
15. Counsel further submitted that there was no evidence of any meeting and or hearing conducted by the Land Registrar where the respondent was in attendance alongside the appellant to enable a hearing as provided by the law and *the constitution*. For those reasons it was submitted that the counterclaim had merit and costs should follow the event.

Analysis and determination.

16. The issues arising for determination in the present appeal are as follows:
 - a. Did the learned trial magistrate err by holding that the dispute resolution committee had jurisdiction to hear and determine objections where title had issued while only the ELC had jurisdiction to hear and determine disputes emanating from the adjudication process?
 - b. Did the learned trial magistrate ignore the fact that the appellant's title had been issued before the 1st respondent's title and that the Land Registrar lacked power to cancel it, and thus arrived at a wrong conclusion?
 - c. Did the learned trial magistrate fail to appreciate the import of the Land Registrar's recall of the 1st respondent's title?



- d. Was the issue of whether or not the 1st respondent bought the suit land from Banguro disputed and was the learned trial magistrate in error in holding it was not?
 - e. Did the learned trial magistrate consider matters or evidence not placed before him and also fail to appropriately consider all evidence placed before him and thus arrive at a wrong conclusion?
 - f. What orders should issue?
17. It was the evidence of the Land Registrar that the County Disputes Resolution Team headed by the County Planner visited the site on 28/5/2019 and awarded the land to the 1st respondent. He also stated that later the same dispute resolution team claimed that the appellant was the owner of the property. The Land Registrar could not explain those contradictory findings.
18. The trial magistrate stated as follows:
- “The only issue for determination was whether or not the sale by Banguro to Aisha could be affirmed or voided by this court after the disputes resolution committee had ruled in favour of the defendant on 28/5/2019. In other words, does this court have jurisdiction to entertain this case after the decision of the disputes committee had been rendered? This is a question of jurisdiction.”
19. He went on to observe that the occupation of the plot by the initial occupier was critical in ascertaining who was the correct beneficiary of the plot; that the dispute resolution committee had during the ascertainment process identified the 1st respondent as the occupier of the plot after having purchased the same from Banguro; that the plaintiff claim was that the sale to the 1st respondent was tainted with fraud and illegality for he had not authorized Banguro, whom she had appointed caretaker, to sell the plot; that the committee found no fraud or illegality in the sale to the 1st respondent and dismissed the appellant’s claims. The learned trial magistrate quoted extensively from two decisions Peter Mbabu Patrick Vs Rose Kamwiko & Another 2020 eKLR and also the case of Reuben Mwangela M’Itelekwa Representative of the Estate of M’Itelekwa M’Mucheke Naituri Vs Paul Kigea & 2 Others 2019 eKLR, and came to the following conclusion:
- “It was the dispute resolution committee that had the jurisdiction to determine the issue of interests in and right to ownership during that adjudication exercise before the title deed was issued to either the plaintiff or the defendant. it also had jurisdiction to determine the legality of the sale...
- What recourse, if any, did the plaintiff have after the disputes committee rejected her claim on 28th May 2019? It is important to answer this question because it affects the validity or otherwise of the present suit in terms of the court’s jurisdiction...
- The present plaintiff ought to have escalated her contentions to the next level of dispute resolution before filing the present suit. as the superior court held in the M’Itelekwa case, failure to exhaust the laid down dispute resolution mechanism deprives the litigant of a justiciable cause before the court. In the result the plaintiff’s suit fails and is dismissed with costs for the lack of jurisdiction. It means that this court downs its tools and will not make a decision to revoke or affirm the decision of the Disputes Committee....
- In the result the counterclaimant succeeds in her claim against the plaintiff only because the court lacks the jurisdiction to interfere with the decision of the County Disputes Committee



as was held in the M’Itelekwa case the court therefore upholds the counterclaim and enters judgment accordingly.”

20. It is undisputed in this case that two titles had issued with the appellant’s title being the first. There are claims that there were irregularities in the list of allottees that gave birth to the appellant’s title; that both the appellant and the 1st respondent claim to have purchased the land from the same person. Though it is therefore a common denominator that Banguro was at one time on the suit land and sold it, the appellant avers that the transaction between Banguro and the 1st respondent occurred in respect of a different parcel of land. However, for the purposes of the issue of court’s jurisdiction, those claims are secondary to the fact that the government issued two titles to two different persons.

21. Sections 24, 25 and 26 of the [Land Registration Act](#) provide as follows:

“24. Interest conferred by registration

Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. Rights of a proprietor

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26. Certificate of title to be held as conclusive evidence of proprietorship

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie



evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

22. It is the case that once a title has issued to a person the rights as prescribed in Section 24, of absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto, are capable only of being nullified on the grounds stated in Section 26. That section states that the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

23. Section 80 of the *Land Registration Act* provides as follows:

“ 80. Rectification by order of Court

- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be counselled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

24. Under Article 162(2)(b) of *the Constitution* and Section 13 of the the Environment and Land Court Actdisputes relating to title to land fall under the jurisdiction of the Environment and Land Court. Section 101 of the *land registration act* provides as follows:

“ 101. Jurisdiction of court

The Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D) and subordinate courts has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”



25. It is clear from the above cited provisions that the dispute was properly before the magistrate for determination and he ought to have resolved the same substantively rather than reject it on the basis that he lacked jurisdiction. There is also inconsistency in his holding that he lacked jurisdiction vis a vis his decision to grant the counterclaim in the same judgment. In this court's view, if the court found that it lacked jurisdiction, it ought to have not made any decision on the counterclaim too.
26. Regarding the second issue, this court observes that an original suit and a counterclaim are two separate suits. The counterclaim stands on its own. It is clear that the learned trial magistrate took the erroneous view that though he could not grant the appellant's claim, he could proceed to grant the 1st respondent's counterclaim on the basis of the same evidence that had been adduced by the parties, forgetting that the evidence included that of the plaintiff and the Land Registrar who clearly stated that the appellant's title was issued before the 1st respondent's. The course that the trial magistrate took was erroneous even at the threshold level as seen herein above. In doing that, the learned trial magistrate was in effect trying the same matter that he had determined that he lacked jurisdiction, which is impermissible in law. It is correct as posited by the appellant herein that in doing so, he ignored the fact that the appellant's title had been issued before the 1st respondent's and that the Land Registrar lacked power to cancel it, and that only a court of law could cancel it on the grounds stipulated in Section 26 of the [Land Registration Act](#). The learned trial magistrate also failed to appreciate the import of the Land Registrar's recall of the 1st respondent's title, and thus arrived at a wrong conclusion in affirming the 1st respondent's title on the basis of the decision of the County Disputes Resolution Committee which he considered to be in force.
27. Through the above discourse, the second and third issues hereinabove have thus been answered.
28. The fourth issue is whether or not the claim that the 1st respondent bought the suit land from Banguro was disputed and whether the learned trial magistrate in error in holding it was not. In his list of undisputed issues at page 16 of his judgment the learned trial magistrate included this issue as follows:
- “The defendant bought this subject parcel from her uncle Banguro who was in possession of the land prior to the adjudication process.”
29. Holding that the 1st respondent's claim of purchase was undisputed went contrary to the pleading by the appellant in paragraph 5 of his plaint that the 1st respondent purchased a different parcel of land from Banguro. The learned trial magistrate was in error in holding it was not a disputed issue. Nothing more needs be said about that issue.
30. In the light of the foregoing it is apparent that the learned trial magistrate failed to appropriately consider all the evidence placed before him as well as the provisions of law in Article 162(2)(b) and Section 13 of the [Environment and Land Court Act](#) and Section 101 of the [Land Registration Act](#) and thus arrived at a wrong conclusion.
31. Regarding what orders this court should issue, it is the appellant's plea that the judgment of the trial magistrate delivered on 16th May 2022 be set aside and the same be substituted by the judgment of this court allow appellant's prayers as sought in his plaint dated 29th October 2019 in the lower court. This court notes that the parties all gave evidence in support of their respective cases before the trial magistrate, and that he formed the opinion, erroneous though that he was not possessed of jurisdiction and at the same time issued a contradictory order allowing the counterclaim.
32. In the light of the foregoing, it is clear that not all the merits of the suit were considered in the decision, and this suit needs to be heard de novo. I hereby find that the appeal before this court by way of the Memorandum of Appeal dated 15th June 2022 has merit and I issue the following orders:



- a. The appeal is hereby allowed;
- b. The judgment and decree of T.A. Sitati, Principal Magistrate delivered on 16/5/2022 in Lamu Principal Magistrate ELC Case Number 8 Of 2019 and all consequential orders are hereby set aside;
- c. The suit Lamu Principal Magistrates ELC Case Number 8 of 2019 is hereby referred back to the Magistrate's Court at Lamu to be heard de novo by any magistrate other than Hon T.A. SITATI, Principal Magistrate;
- d. The costs of the present appeal shall be borne by the respondents jointly and severally.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 25TH FEBRUARY 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

