



**Njiru v Republic (Criminal Appeal E034 of 2025)  
[2026] KEHC 1221 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1221 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL APPEAL E034 OF 2025  
RM MWONGO, J  
JANUARY 27, 2026**

**BETWEEN**

**FREDRICK NJIRU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal arising from the decision of Hon. Njoki Kabara in  
Siakago MCCR No. E608 of 2023 delivered on 10th June 2025)*

**JUDGMENT**

**The Charge**

1. The appellant was charged with the offence of trespass on private land contrary to section 3(1) as read with section 11 of the *Trespass Act*. Particulars were that on 7<sup>th</sup> July 2023 at Gachoka area in Mbeere South subcounty within Embu County, the appellant trespassed onto land parcel number Mbeti/Gachoka/2124 belonging to Joseph Macharia without his permission.
2. The appellant pleaded not guilty and a full hearing was conducted. He was found guilty of the charge and sentenced to pay a fine Kshs.500/=, in default, 2 months' imprisonment.

**The Appeal**

3. Through his petition of appeal dated 17<sup>th</sup> June 2025, the appellant seeks that this court sets aside the conviction and sentence by the Principal Magistrate and acquits the accused. The appeal is premised on grounds that:
  1. The Honourable Principal Magistrate erred in law and fact in holding that the prosecution had proved their case beyond reasonable doubt;



2. The Honourable Principal Magistrate erred in law and facts in holding that the prosecution had proved a case of trespass;
3. The Honourable Principal Magistrate erred in law in holding that the prosecution had proved trespass and ignoring the legal defined ingredients of the offence;
4. The Honourable Principal Magistrate erred in law and facts in holding that photographs of laid pipes and identification by Complainant workers was sufficient evidence to prove a case of trespass;
5. The Honourable Principal Magistrate erred in law and facts in ignoring the evidence by defence and submissions by defence;
6. The Honourable Principal Magistrate erred in law and facts in ignoring that the offence of trespass cannot exist unless the land trespassed upon is defined, the Accused Person remains in the land upon being ordered off by a person authorized and the Accused refuses, stays, erects a structure and refuses to leave; and
7. The conviction and sentence of the Accused was against the weight of the evidence produced.

#### **Summary of the Evidence in the trial Court**

4. PW1 was Joseph Macharia Muchiri the complainant. He testified that on 08<sup>th</sup> July 2023, he received a call from his farm employees on land parcel No. Mbeti/Gachoka/2124 informing him that the appellant had been seen entering the land with water pipes and a pump the previous day. He had warned his employees not to engage the appellant in any way because he had threatened them before. That the appellant and some other people were pumping water onto his land. He instructed his employees to report the matter at Gachoka Police Station. He produced the title deed for the named land as evidence proving that he was the owner.
5. In cross-examination, he stated that he has owned the land since 1995 and the appellant is his neighbour. That his land and that of the appellant are separated by a stream and it is from this stream that the appellant was pumping water onto his (PW1's) land. He stated that he was not present during the incident but he was informed by his employees that the previous day, the appellant mounted the water tank 50 meters into PW1's land from the stream. Earlier that year, the appellant had dug a dam and was pumping water from his dam to PW1's land. He reported the matter at the police station but no action was taken. He said that the police collected the pump and pipes from his land as evidence in the course of investigations and they were produced in court.
6. PW2 was David Njeru, a neighbour who knows both PW1 and the appellant. He stated that on the material day he was hired to water miraa on PW1's farm when he, and another worker, heard the sound of a machine and people talking about 5 meters away from where they were. When they went to check, they saw the appellant and other people had connected a water pump onto PW1's land and they were pumping water. PW1 instructed them to report the matter at Gachoka Police Station and the police came and took the pump and water pipes away.
7. In cross-examination, he stated that he saw the appellant and other people connecting the pump and pipes on PW1's land. He identified the pump in court. He stated that there was no water in the stream at the time and that the appellant was pumping water from a dam that he had dug on PW1's farm and that was getting its water from underground. The appellant has dug a dam on PW1's land about 10 years prior and over time, he continued to deepen it using excavators. He stated that the appellant has people who threaten PW1 and his workers with pangas.



8. PW3 was Benson Mugo who was also working on PW1's farm with PW2. He stated that while they were weeding and watering PW1's miraa, at around 4pm, he saw the appellant with 6 other people going to the dam on PW1's land and they connected pipes. On cross-examination he stated that the appellant and his people were connecting the pump and pipes about 50 meters from where they were working. That the dam was on PW1's land but it had been dug by the appellant. He did not know whether there was a land dispute between the appellant and PW1. That the police were called and they took away the pump and pipes that were set up by the appellant and his men.
9. PW4 was CI Sarah Bokosh who produced photographic evidence of the scene together with the certificate of photographic print. The photographs showed a water pump mounted in a farm and water pipes running through the farm. In cross-examination, she stated that according to the photographs there was a dam on the property but there were no water pipes connected to the dam. She did not personally visit the scene so she could not tell whether the pump was pumping water.
10. PW5 was PC Samuel Wanjora of Gachoka Police Station who stated that PW2 reported the matter at the police station upon instruction of PW1. He visited the scene with PC Chebos and they observed that a water pump had been erected on the farm with pipes attached to it to enable water from the dam to supply a nearby shallow well. He took photographs of the scene and dismantled the water pump which was confiscated as evidence. At the scene, he was informed that the place where the water was being dumped belonged to the appellant but the dam was on PW1's land.
11. He conducted official searches of all the land opposite PW1's land but none of them belonged to the appellant. He arrested the appellant and interrogated him but the appellant did not claim ownership of the land Mbeti/Gachoka/2124. He was then charged with the offence. In cross-examination, he explained how he processed the scene and took photographs. He stated that investigations revealed that the appellant entered PW1's land and erected a water pump and pipes in the presence of 2 eye witnesses.
12. He stated that there is another case where the appellant was charged with cutting trees on PW1's land and he was a witness in that case too. He stated that the workers at the scene were locals in the area and they are the ones who informed the police that the land where the water being pumped was directed, belonged to the appellant or he is the one who manages it. The dam was 50 meters into PW1's land away from the seasonal stream which is the boundary between Mbeti Gachoka and Mbeti Kiamuringa locations.
13. DW1 was the appellant who stated that he never trespassed onto PW1's land and that he saw him in 2022. He was summoned to Gachoka Police Station by the OCS and he went, accompanied by 4 other people. He learned that he was being accused of pumping water from PW1's farm. That PW1 was called to go to the station and he went accompanied by PC Wanjora carrying a water pumping machine which was not his. He denied that his land borders PW1's land and stated that his is Mbeti/Kiamuringa/2140.
14. He stated that on one occasion, PW1 attempted to fence his land and he reported the matter at Gachoka Police Station. That the land Registrar and a surveyor had attended to the boundary issue severally. He denied the allegations and stated that there are many boreholes in the area and that the seasonal stream is on his land. The alleged source of water where the water was being pumped does not exist. He said that there is a small swamp in the area and people dig trenches to control water overflow into farms.
15. In cross-examination, he stated that Mbeti/Kiamuringa/2140 is not in his name but he had initiated the process of changing it to his name although he had not completed the process. He said that his land is about 10 meters from PW1's land and that PW1's immediate neighbour is Ruth Waithira. That the



stream referred to is not natural and that it is man-made. He admitted that there is another case against him in Siakago MCCR 144/2023 where he was convicted and sentenced to pay a fine.

16. DW2 was Salesio Njagi Nthirimano, a licensed land surveyor in private practice as Nthirimano & Associates. He stated that Mbeti/Kiamuringa/2709 and Mbeti/Gachoka/3858 and 11247 are separated by a permanent boundary that is Itabua River. That there is a short river canal dug on Mbeti/Kiamuringa/2709 and on Mbeti/Gachoka/11247 and both canals supply water onto Mbeti/Kiamuringa/2709. In essence, Mbeti/Gachoka/11247 has encroached onto 2 parcels of land and has gained 2 acres on the Mbeti Kamuringa adjudication section side.
17. He referred to survey maps and stated that there are no dams dug on the side of Mbeti Gachoka. In cross-examination, he stated that he did not enter PW1's piece of land and he was required to survey the land for court purposes. He did not verify whether the appellant was the owner of the land. According to him, Mbeti/Gachoka/2124 does not exist neither does it appear on the original registry index map produced as evidence.

### **Parties' Submissions on the appeal**

18. The appeal was canvassed by way of written submissions.
19. The appellant relied on sections 3(1) and 11 of the *Trespass Act* and the meaning of the phrase "beyond reasonable doubt" as defined under Black's Law Dictionary. He argued that the elements of the offence were not proved to the required standard. He pointed out that the defense evidence adduced toppled the prosecution's case.
20. The respondent submitted that the elements of the offence as provided for under section 3(1) of the *Trespass Act* were proved beyond reasonable doubt. It relied on the case of *Telengech v Lonrho Agri Business (E.A LTD) & 5 others (Environment & Land Case 308 of 2017) [2022] KEELC 4 (KLR)* and stated that the complainant had proved that he was the owner of the property according to section 26 of the *Land Registration Act*, hence the appellant was trespassing thereon. That the testimony by the defense was not enough to create reasonable doubt. It urged the court to dismiss the appeal.

### **Issue for Determination**

21. The issue for determination is whether the offence was proved beyond reasonable doubt and, if so, whether the appeal should be dismissed.

### **Analysis and Determination**

22. The appellate court is tasked with re-evaluating the evidence adduced at trial and making its own finding. In so doing, it has to bear in mind that the trial court had the opportunity to see the witnesses testifying, an advantage that a first appellate court does not have. This was echoed in the case of *Okeno v Republic [1972] EA 32* where the Court of Appeal set out the duties of a first appellate court as follows:

"....It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters vs. Sunday Post [1958] E.A 424.*"



23. Section 3(1) of the *Trespass Act* provides:

“(1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”

24. For this offence to stand, the prosecution must prove first, that the land is occupied by the complainant, and second, that the accused person has entered it without reasonable excuse to do so. PW1 produced a title deed for land parcel number Mbeti/Gachoka/2124 that is registered in his name as the proprietor. From the prosecution evidence, it is clear that PW1 does farming activities on his land and at the time of the incident, he had hired PW2 and PW3 to weed and water his Miraa crop.

25. PW2 and PW3 testified that the appellant had dug a dam on PW1’s land and he had entered the land in order to pump water from that dam to his own farm. According to PW2, the appellant had dug the dam 10 years prior to the incident. PW1 and PW3 stated that the appellant had formed a habit of threatening them and when he trespassed, they reported the matter to the police. PW1 testified that he had been seen trespassing the previous day too.

26. PW5 testified that he visited the crime scene with his colleague and they examined the place. He observed that there was a water pump and pipes at the scene. That the pipes were transporting water from the dam on PW1’s land to the appellant’s land. In his defense, the appellant denied any wrongdoing and stated that his land is farther away from PW1’s land than it had been alleged. There was another case between himself and PW1 and it appeared that there is a long-standing land dispute between them.

27. The standard of proof in criminal cases is settled; It is proof beyond reasonable doubt (see the case of *Miller v Minister of Pensions* 1947 2 ALL ER 372 at 374). Regarding occupation of the named land, PW1 provided proof of ownership and PW2 and PW3 confirmed that they were tending to the land on the instruction of PW1 who is farming thereon. The defense evidence did not counter this fact nor did it counter the assertion that PW1 and his employees were rightfully working on the land which he encroached upon. On the first element of the offence, it is undisputed that PW1 was lawfully occupying the land. The question of ownership does not arise and cannot be determined within the confines of a criminal suit, as there is a specialized court to determine that question. However, evidence of ownership through production of a title deed in a trespass case is sufficient to support or prove occupation.

28. It is evident that DW2 did not look into the land occupied by PW1. He alleged that Parcel No. Gachoka Mbeti 2124 did not exist. Therefore, DW2 did not assist in any way to establish whether or not the appellant had entered PW1’s land without reasonable excuse. On the other hand, PW1, PW2 and PW3 testified that it was not the first time that the appellant had entered PW1’s land. This evidence proves beyond reasonable doubt that the appellant did not have a reasonable excuse to enter the complainant’s said land.

### **Conclusion and Disposition**

29. It follows that the findings of the trial court are not in error. The conviction and sentence are safe and there is no reason to disturb them.

30. In the result, I find that the appeal lacks merit and it is hereby dismissed.

31. Orders accordingly.



**DELIVERED ELECTRONICALLY, DATED AND SIGNED AT EMBU HIGH COURT THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2026, PURSUANT TO NOTICE ISSUED ON 27<sup>TH</sup> JANUARY, 2026 AS TO ELECTRONIC DELIVERY.**

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**R. MWONGO**

**JUDGE**

