

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
GARISSA

ELCA NO. E009 OF 2024

HABIBA MOHAMMED

APPELLANT

VERSUS

ADAN SHEIKH HUSSEIN (Suing as

administrator of Sheikh Hussein Ali (deceased)

1st RESPONDENT

IBRAHIM SHEIKH HUSSEIN (Suing as

administrator of Sheikh Hussein Ali (deceased)

2nd RESPONDENT

**(Being an appeal against the Judgment of Hon. R.
Aganyo, PM, delivered on 29th November 2024 in Wajir
PMCELC Case No. E004 of 2020)**

JUDGEMENT

1. This appeal arises from the judgment of Hon. R. Aganyo, Principal Magistrate, delivered on 29th November 2024 in Wajir MCELC Case No. 4 of 2020. In that judgment, the learned trial magistrate found that the appellant had trespassed onto the respondent's parcel of land known as Plot No. R1199/D26/429, measuring 50 by 100 feet, and entered judgment in favour of the respondent. The court consequently issued an eviction order directing the

appellant to vacate the suit property and remove any structures erected thereon within thirty (30) days from the date of the judgment. It further granted a permanent injunction restraining the appellant, whether by herself, her agents, servants or employees, from interfering with the respondent's quiet possession and occupation of the suit property. The court also issued a declaration that the appellant was a trespasser on the said plot, and awarded the respondent mesne profits assessed at Kshs. 1,000 per month for a period of ten (10) years, together with costs of the suit.

2. Aggrieved by that decision, the appellant preferred the present appeal vide the Memorandum of Appeal dated 10th December 2024, raising sixteen (16) grounds. The appellant faulted the trial court for both errors of law and fact inter alia contending that the learned trial magistrate erred in finding that the respondent had produced an allotment letter signed by the Clerk to the former Wajir County Council, and in holding that there was no contention regarding the allocation of the suit property. The appellant further faults the trial court for failing to appreciate that the allocation of the property to the respondents' late father was a disputed issue between the parties, and for concluding that the only matter in contention concerned the location of two plots. It is also contended that the judgment was contradictory and that the learned trial magistrate relied on facts not borne out by the record.

3. The appellant also challenges the manner in which the trial court relied on the site visit and the evidence of the County Surveyor, arguing that the court misdirected itself regarding the purpose and timing of the site visit, wrongly concluded that the County Surveyor had identified the disputed property as belonging to the respondents, and erroneously held that the appellant's plot was located elsewhere and not near the suit property. Further, the appellant contends that the learned trial magistrate failed to properly consider the dispute over the authenticity of the ruling of the Wajir County Land Tribunal Committee produced by the respondents, and ignored the appellant's evidence alleging fraud and forgery by the respondents. According to the appellant, the court therefore erred in concluding that the appellant had not tendered evidence to prove fraud or forgery.

4. Finally, the appellant contends that the trial court erred in finding that she was a trespasser; that she had been allocated a different plot from the one she occupies, and in granting the reliefs sought in the amended plaint, and in failing to consider the appellant's counterclaim. On the basis of these grounds, the appellant prays that the judgment and decree of the trial court be set aside; that the respondents' claim be dismissed in its entirety; that the appellant's counterclaim be allowed, and that costs be awarded to her, both in the trial court and on appeal.

5. The respondents instituted the suit before the trial court by way of a plaint, which was later amended vide the Amended Plaint dated 28th February 2023, seeking for the reliefs that were ultimately granted by the trial court. Their case was that they were the proprietors of Plot No. R1199/D26/429, measuring 50 by 100 feet, situated at Got-Ade area within Wajir Township. They contended that the appellant had wrongfully laid claim to the plot, alleging that it belonged to her late husband, Mohamed A. Abdii, yet she had not produced any valid documentation or evidence to demonstrate such entitlement.

6. The respondents asserted that the plot claimed by the appellant, if it existed at all, was Plot No. R1280B, which they maintained was different from, and not the same as Plot No. R1199/D26/429, on the ground. They explained that the County of Wajir historically applied three recognizable systems of plot numbering. The first system, used during the 1980s allocations, carried the prefix “R” and ran serially (R1, R2, R3 ... R1197, R1198, R1199, R1200 ... R1280 and so forth). The second system used the prefix “D” under the aerial County survey maps and similarly ran serially (D1, D2, D3 ... D24, D25, D26, D27 ... up to about D110). The third system consisted of the more recent cadastral Registry Index Maps (RIMs), which allocate absolute plot numbers.

7. According to the respondents, their late father, Sheikh Hussein Ali, was allocated the suit property in 1982, and the allocation was later confirmed through a renewed allotment letter, Serial No. 1200 - Ref: R1199, dated 22nd June 2010, issued by the County Council of Wajir and signed by the County Clerk. They further stated that the requisite payment for the allotment was made vide Receipt No. 5934 dated 21st June 2010 issued by the County Council of Wajir.

8. They averred that the suit property appears in the Registry Index Map for the Halane Settlement Scheme as Plot No. 429 and is located near the Kenya Power offices in Wajir Town. According to the respondents, this position was corroborated by a joint letter from the Municipal Administrator and the Head of Land Registry, Wajir County. The respondents further stated that the 1st respondent and his family had continued paying land rates for the plot from 1982, as reflected in the Wajir County Council Temporary Occupation Licence Register. It was their case that the appellant had without any colour of right, trespassed onto the suit property, forcefully occupying it while purporting that it belonged to her late husband, who died in 1992. They alleged that the then Town Clerk of the Wajir County Council, one Issack Muhumed Mohamed Dahiye, had maliciously permitted the appellant to occupy the plot during the 2010 clan conflicts in Wajir Town, despite knowing that the respondents' father was the registered allottee.

9. The respondents also challenged the authenticity of the documentation relied upon by the appellant. They contended that the letter of allotment No. 1471 dated 8th September 2010 produced by the appellant bore a suspicious identity card number (1327332/70) which, according to them, was not registered with the Kenya National Identification Bureau. They further asserted that the said letter referred to Plot No. R-1280B, yet the plot that was allocated under that reference was R-1280, thereby reflecting two different plot numbers and demonstrating, in their view, forgery.

10. The 1st respondent stated that he formally complained about the matter to the Permanent Secretary through a letter dated 8th October 2012 (Ref. SHA/WAJIR/R1199/12/01) regarding the alleged irregular actions of the former County Clerk. He also lodged a complaint with the Office of the Ombudsman, which conducted investigations and made findings to the effect that Plot No. R1199/D26/429 had been allocated to Hussein Ali in 1983 and remained registered in his name in the Wajir County Council Temporary Occupation Licence Register, and that the plot was undeveloped and located opposite the Kenya Power station in Wajir. The respondents stated that the Ombudsman confirmed that the suit property belonged to their father.

11. They further averred that the dispute had previously been placed before the Wajir County Land Tribunal Committee in Civil Case No. 05 of 2015, in which judgment was delivered on 23rd July 2017 in favour of Adan Sheikh Hussein, one of the respondents. According to the respondents, the tribunal proceedings also revealed that the appellant had previously sold her own land to a mosque. The respondents also alleged that the appellant had not rebutted the allegations of fraud, and that she had in fact made admissions in paragraph 4 at page 6 of her counterclaim.
12. They contended that the appellant had begun developing the suit property, having already erected a perimeter wall and brought additional building materials to commence further construction. The 1st respondent stated that he wrote to the County Executive Committee Member for Lands, Housing and Physical Planning in Wajir County, complaining about the appellant's refusal to vacate the land. He further asserted that the area chief confirmed that the suit property belonged to Sheikh Hussein Ali and had never been sold to any other person. According to the respondents, unless restrained by the court, the appellant's actions would result in the loss of their family's rightful property.
13. In response, the appellant filed an Amended Statement of Defence and Counterclaim dated 24th March 2023. She

denied that the respondents were the proprietors of Plot No. R1199/D26/429 and further denied laying any claim to that parcel of land. Her case was that her late husband, Mohamed A. Abdi (deceased), was the lawful proprietor of Plot No. R1280B, which she stated was located next to the Kenya Power (KPLC) station in Wajir and that it had been allocated to him in 1982. She averred that the survey designation for her plot was D26. According to her, the Wajir County Survey Department had confirmed that Plot D26 was itself in dispute, and therefore no final determination had been reached in favour of the respondents.

14. The appellant maintained that she and her family had quietly and peacefully occupied Plot No. R1280B since 1982, and that she possessed valid documentation relating to the plot. She further averred that she was not aware of the existence of Plot No. R1199, which the respondents claimed had been allocated to their late father, and contended that the respondents' claim was riddled with inconsistencies and falsehoods. She also levelled allegations of fraud against the respondents, particularizing them as follows:

- a. Obtaining the letter of allotment dated 22nd June 2010 through fraud, the same having allegedly been signed by an Administrative Officer, whereas, according to her, letters of allotment for land in Wajir were ordinarily issued and signed by the Clerk to the Council.*

- b. Forging the said letter of allotment dated 22nd June 2010 by indicating Identity Card No. 22155969 as belonging to the late Sheikh Hussein Ali, whereas that number allegedly belonged to Salahdin Adan.*
- c. Forging or fraudulently obtaining a letter referenced WCG/LHP/LTB/VOL (05) purportedly emanating from the Wajir Land Tribunal Committee, falsely indicating that a decision had been made in favour of the respondents.*

15. The appellant further denied the respondents' assertion that the allotment letter referenced R1199 had been duly signed by the County Clerk of the County Council of Wajir, maintaining that the document relied upon by the respondents was instead signed by an Administrative Officer. She also challenged the authenticity of the Registry Index Map relied upon by the respondents, asserting that it had not been stamped or signed by the relevant authority.
16. Though the respondents claimed to have paid land rates for the plot since 1982, the appellant pointed to Receipt No. 3670, which in her view, showed that the respondents had paid land rates in arrears in 2009, covering the period from 1983. In contrast, she maintained that her late husband had consistently paid land rates for Plot No. R1280B since 1982, and that she had continued making such payments to both the County Council of Wajir, and later the County Government of Wajir following her

husband's death. The appellant, therefore, maintained that she and her family were the lawful occupants of Plot No. R1280B, and that the parcel described by the respondents as Plot No. R1199/D26/429 was either non-existent or different from the land occupied by her family. She also denied the allegation that she had been allocated the plot through the intervention of the then Town Clerk.

17. With respect to the allegation regarding Identity Card No. 1327332/70, the appellant explained that it belonged to her husband and that it was an earlier generation national identity card issued before the introduction of the current series. The appellant further disputed the respondents' reliance on the alleged proceedings before the Wajir Land Tribunal Committee in Case No. 05 of 2015, contending that the ruling attached by the respondents was a forgery. She stated that it was in fact she was the one who had filed a complaint before the tribunal in Case No. 99 of 2015 against the 1st respondent, a matter that according to her, remained pending. She further asserted that the tribunal committee had written a letter dated 10th August 2018 to the Chief Officer in charge of Physical Planning and Urban Development in Wajir, indicating that it had not reached a ruling, and describing the purported ruling relied upon by the respondents as a forgery.
18. The appellant also denied that she had ever sold her late husband's plot, maintaining that she had a lawful interest in Plot No. R1280B and was entitled to use and develop it.

She admitted that she had erected a perimeter wall and gate on the property in 2014, but maintained that the development was undertaken on Plot No. R1280B, which she understood to be the parcel allocated to her late husband in 1982. She reiterated that she had no knowledge of Plot No. R1199, insisting that the respondents were attempting to rely on forged documents to mislead the court.

19. This court on 22nd September 2025 directed that the appeal be canvassed through written submissions. The learned counsel for the Appellant filed her written submissions dated 23rd October 2025, and inter alia submitted that the learned magistrate erred in holding that the respondents had produced a letter of allotment dated 22nd June 2010 signed by the Clerk to the County Council of Wajir. Counsel argued that the trial court ignored evidence tendered by the appellant regarding investigations into the authenticity of that allotment letter. In particular, counsel submitted that a complaint had been lodged regarding the alleged forgery and that a response had been received indicating that the matter concerning the plot was the subject of a pending suit before the Environment and Land Court. According to counsel, the Administrator of Wajir Municipality had confirmed in that response that only the Clerk to the Council had the authority to sign and issue allotment documents, and that the letter relied upon by the respondents had in fact been

signed by an Administrative Officer and not the Clerk to the County Council of Wajir.

20. Counsel further submitted that the appellant had adduced uncontroverted evidence demonstrating that the identity card number used to procure the allotment letter did not belong to the respondents' deceased father. It was submitted that the National Registration Bureau, in response to investigations by the Directorate of Criminal Investigations (DCI), confirmed that the identity card number belonged to Salahdin Adan Sheikh. Counsel argued that this evidence demonstrated that the identity card used to obtain the allotment letter was fraudulent. Although the respondents had stated that Salahdin Adan Sheikh was a grandson of the deceased, counsel submitted that this did not explain the legality of how the allotment was obtained in the deceased's name. In support of this argument, counsel relied on the decision in the case of *Munyu Maina versus Hiram Githiha Maina*, Civil Appeal No. 239 of 2006, for the proposition that where the root of title is challenged, the registered proprietor must go beyond the instrument of title and demonstrate the legality of its acquisition.
21. With respect to ground 2 of the memorandum of appeal, counsel submitted that the learned trial magistrate erred in relying on the allotment letter dated 22nd June 2010, which counsel maintained was not a genuine document issued by the Clerk to the County Council of Wajir and

which had been fraudulently obtained using the identity card number belonging to Salahdin Adan Sheikh. Counsel further argued that the trial court erred in concluding that there was no double allocation merely because the parties referred to different plot numbers.

22. On ground 3, counsel submitted that the learned trial magistrate placed reliance on the Registry Index Map produced by the respondents despite the fact that it was neither signed nor certified, and therefore could not be treated as an authenticated document. Regarding ground 4, counsel contended that the learned trial magistrate misdirected herself by failing to conclusively address the appellant's challenge to the validity of the respondents' letter of allotment. Counsel argued that the trial court glossed over the question of the authenticity of that document, notwithstanding the fact that the appellant had adduced documentary evidence suggesting that it was not genuine. Counsel therefore maintained that if the allotment letter relied upon by the respondents was invalid, the respondents could not lawfully claim the suit property as belonging to their late father. With respect to ground 5, counsel submitted that the judgment of the learned trial magistrate contained references to facts and matters not arising from the pleadings. In particular, counsel pointed out that the learned trial magistrate referred to the parties as "*appellant*" and "*respondent*", yet the matter before the trial court was not an appeal. Counsel also took issue with the learned trial magistrate's

statement that allocation of the land to both parties by the County Council was not contested, arguing that this finding was not supported by the pleadings, since the appellant had expressly challenged the respondents' allotment letter as fraudulent and invalid.

23. On ground 6, counsel submitted that the learned trial magistrate erred in stating that the parties had filed their written submissions after receiving the report of the County Surveyor. Counsel pointed out that both parties had filed their submissions on 4th June 2024, after which the court directed that the Physical Planner to avail himself for a site visit, and subsequently fixed a date for judgment following the site visit. Turning to grounds 7, 8, 9, 10 and 14, counsel submitted that the learned trial magistrate misdirected herself in her analysis of the County Surveyor's evidence. Counsel argued that the trial court erroneously interpreted the surveyor's evidence as confirming that the respondents' father's plot corresponded with the suit property identified as D26, and on that basis concluded that the appellant was a trespasser.
24. With respect to ground 15, counsel submitted that the trial court granted the reliefs sought in the amended plaint because it had misdirected itself in evaluating the evidence tendered by the appellant. Counsel argued that the purpose of the County Surveyor's involvement was merely to determine whether the plots claimed by the

parties referred to the same property, and not to establish ownership. Counsel further submitted that no documentary evidence had been produced to demonstrate that the appellant's late husband owned a plot bearing County Survey Number D107 and RIM Number 383. Finally, regarding ground 16, counsel submitted that the learned trial magistrate failed to determine the appellant's counterclaim in the judgment, noting that the counterclaim was neither allowed nor dismissed. The Counsel therefore urged this court to allow the appeal and grant the reliefs sought therein.

25. The learned counsel for the respondents filed their written submissions dated 6th November 2025, inter alia submitting that the appeal raises one central issue of whether the respondents had adduced sufficient evidence before the trial court in MCELC No. 4 of 2020. The Counsel submitted that the respondents were the administrators of the estate of Sheikh Hussein Ali (deceased), having obtained a grant of letters of administration ad litem, and that the deceased was the registered proprietor of Plot No. R1199/D26/429. Counsel argued that the letter of allotment produced before the trial court clearly bore the signature of the County Clerk, contrary to the appellant's contention that it had been signed by an Administrative Officer. With regard to the letter referenced WCG/MN/LND/1/VOL.1/(025) dated 17th February 2022, counsel submitted that the same was written two years after the commencement of the suit in the lower court,

and therefore could not override the earlier official records. Counsel pointed out that the said letter contradicted an earlier letter issued by the same Municipal Manager, namely Ref. WCG/MN/LND/1/VOL.1/(010) dated 2nd October 2019, which confirmed that Plot No. R1199 was registered in the name of Sheikh Hussein Ali.

26. Addressing the appellant's allegations concerning the identity card number used in obtaining the allotment letter, counsel submitted that it had emerged during cross-examination that the identity card number belonged to a relative of the respondents, being the son of the respondents' brother. Counsel explained that the respondents' father had already passed away, and that they had used the relative's identity card number in order to process the allotment documentation. According to counsel, this explanation demonstrated that the respondents had gone beyond the mere production of the allotment letter and had sufficiently explained the circumstances under which the allotment was obtained. Counsel further submitted that the learned trial magistrate correctly relied on the evidence on record in reaching the conclusion that the appellant had failed to prove her case to the required standard. With respect to the Registry Index Map (RIM), counsel submitted that the same had indeed been produced in evidence in the presence of the Appellant's advocate, who did not object to its production.
27. On the issue of the County Surveyor's report, counsel submitted that after the site visit, the trial court directed

that the report be shared with the parties and fixed a mention date to allow the parties an opportunity to file supplementary submissions. Counsel also argued that the learned magistrate did not misdirect herself in relying on the surveyor's evidence, as her findings were based on the contents of the report. Counsel further referred to the evidence recorded during the site visit, where the surveyor, upon being questioned regarding the location of Plot Nos. R1199 and R1280, stated that according to the cadastral map, Plot D26 corresponded with the plot where the parties were present, being Plot No. 429, whereas Plot D107 was located elsewhere at a distance of approximately half a kilometre from that location.

28. With regard to the appellant's allegation that the ruling of the Wajir Land Tribunal Committee relied upon by the respondents was a forgery, counsel submitted that the appellant's position was misplaced because the letter relied upon by the appellant referred to Land Tribunal Committee Civil Case No. 5 of 2015, which was distinct from Land Case No. 99 of 2015. Counsel also submitted that the respondents had continued paying land rent to the County Council of Wajir, and subsequently to the County Government of Wajir, following the demise of their father.
29. Counsel therefore concluded that the judgment of the trial court was well grounded on the evidence adduced by the parties, and that the learned trial magistrate properly

directed herself on the issues before the court, and arrived at the correct determination. Counsel urged the court to find that the appellant had not demonstrated any cogent basis upon which this court should interfere with the findings of the trial court.

30. The following issues arises for determinations by the court in this appeal:

a. Whether the respondents proved their ownership or lawful entitlement to Plot No. R1199/D26/429 to the required standard.

b. Whether the learned trial magistrate properly evaluated the documentary and oral evidence placed before the court, including the allegations that the respondents' documents were fraudulent.

c. Whether the orders issued by the trial court, including eviction, permanent injunction and mesne profits, were justified in the circumstances.

d. Who pays the costs?

31. I have carefully considered the grounds on the memorandum of appeal, record of appeal, the submissions by the learned counsel for the parties, and come to the following conclusions:

a. That this being a first appeal, the duty of this 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 ***Selle & Another versus 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.”

- b. The respondents’ claim before the trial court was that the suit property, described as Plot No. R1199/D26/429, had been allocated to the late Sheikh Hussein Ali, by the then County Council of Wajir. In support of that claim, the respondents produced a letter dated 22 June 2010 from the County Council of Wajir indicating that Plot No. R1199 in Got-Ade location had been allocated to Sheikh Hussein Ali pursuant to a decision of the Town Planning, Markets and Works Committee made in 1983. They also produced receipts evidencing payment of land and house rents covering the period from 1983 to 2006/2007 and 2009, as well as additional receipts issued in 2018, 2019 and 2020. Further reliance was placed on a letter dated 21

September 2015 from the County Government of Wajir addressed to the Commission on Administrative Justice confirming that Plot No. R1199 had been allocated to Mr. Hussein Ali in 1983, and remained registered in his name in the Wajir County Council Temporary Occupation Licence Register. The respondents also produced a letter from the area chief dated 11 March 2020 confirming that the late Sheikh Hussein Ali owned Plot No. R1199.

- c. On the other hand, the appellant relied on an allotment letter dated 8 September 2010 issued by the County Council of Wajir allocating Plot No. R1280 in Got-Ade to Mohamed A. Abdi, pursuant to a committee meeting said to have been held in 1982. The appellant also produced receipts evidencing payment of registration fees and land rates from 1982 to 2020. The documentary evidence placed before the trial court also included correspondence from the County Government of Wajir dated 17 February 2022 indicating that Plot Nos. R1280 and R1199 were held by different individuals claiming ownership of the same parcel of land, and that the dispute was the subject of MCELC Case No. 4 of 2020, that was pending before the court. It is important to note that suit is the one in which the impugned judgement subject matter of this appeal was subsequently made. In another letter dated 3 September 2019 addressed to the Directorate of

Criminal Investigations, the County Government indicated that Plot No. D26 adjacent to the Wajir Kenya Power Station was in dispute and that the office could not ascertain the rightful owner of the plot.

- d. The dispute was ultimately addressed through a site visit conducted on 3 July 2024 by a surveyor from the Department of Lands, Physical Planning and Urban Development of the County Government of Wajir. In a report dated 16 July 2024, the surveyor indicated that Plot D26 and Plot D107 were different parcels located within the Halane neighbourhood, and that the plot in dispute was Plot D26.
- e. It is a fact the learned trial magistrate placed significant reliance on the findings of the surveyor. The court observed that although both parties held plot allocation documents issued by the County Council of Wajir, the surveyor had identified the disputed plot on the ground as Plot No. D26, which corresponded with the respondents' plot described as Plot No. R1199/D26/429. On that basis, the trial court concluded that the respondents had established that the suit property belonged to them, and that the appellant had trespassed onto it.
- f. This court notes that the documentary evidence produced by the parties shows that each party held allocation documents relating to different plot numbers, namely Plot No. R1199 and Plot No. R1280

respectively. The central question for determination was therefore, not merely the authenticity of the documents, but whether the disputed parcel on the ground corresponded with the respondents' plot or that of the appellant's.

g. The trial court resolved that question by relying on the expert evidence of the county surveyor who physically identified the disputed parcel as Plot No. D26, corresponding to the respondents' plot R1199/D26/429. In the absence of contrary technical evidence, the court was entitled to rely on the findings of the surveyor, as an independent technical expert in determining the physical identity of the disputed plot.

h. The appellant contended that the respondents' allocation documents were fraudulent and that the trial court failed to properly consider those allegations. In the counterclaim, the appellant pleaded three particulars of fraud. Firstly, it was alleged that the respondents had obtained a letter of allotment dated 22 June 2010 through fraud on the basis that allotment letters in Wajir were required to be signed by the Clerk to the Council, yet the impugned letter had allegedly been signed by an administrative officer. Secondly, it was alleged that the allotment letter was forged in that it indicated

National Identity Card No. 22155969 as belonging to the late Sheikh Hussein Ali, whereas the identity number allegedly belonged to Salahdin Sheikh. Thirdly, it was alleged that the respondents had forged or fraudulently obtained a letter referenced WCG/LHP/VO (05) 2015, purportedly indicating that a land tribunal committee had made a decision in a dispute between the parties when no such decision had been made.

- i. The impugned judgement show that trial court considered the allegation of fraud and observed that fraud must be specifically proved by the party alleging it. The court noted that no evidence had been tendered to establish the alleged fraud. Upon re-evaluating the record, this court finds no basis to fault that conclusion by the learned trial magistrate. Although the appellant produced a citizen registration extract indicating that Identity Card No. 22155969 belonged to Salahdin Sheikh, no further evidence was tendered to demonstrate that the respondents' allotment letter was forged or unlawfully issued. Notably, no officer from the County Government of Wajir or the former County Council of Wajir was called to testify regarding the authenticity or otherwise of the allotment documents relied upon by the respondents. Similarly, no forensic examination of the disputed documents was presented before the trial court.

- j. The allegation that the allotment letter was irregular because it had been signed by an administrative officer was also not supported by the documentary evidence on record. The allotment letter dated 22 June 2010, upon examination, bears the signature of the Clerk to the Council, which is consistent with the requirement indicated in the County correspondence produced by the appellant. In those circumstances, the trial court cannot be said to have erred in finding that the allegations of fraud had not been proved.

- k. The appellant also argued that the trial court improperly relied on the findings of the County Surveyor following a site visit conducted on 3rd July 2024, contending that the visit was undertaken after the parties had already filed their written submissions. The record shows that on 4 June 2024, after the parties confirmed that they had filed their submissions, the court on its own motion proposed that a site visit be conducted, and that a physical planner or surveyor from the County Government assist the court in identifying the disputed plot, noting that none of the parties had called an expert witness. No objection was raised by either of the parties to that proposal.

- l. The site visit was subsequently conducted on 3rd July 2024 in the presence of the parties and their

advocates. The County Surveyor from the Department of Lands, Physical Planning and Urban Development participated in the visit and was questioned by counsel for both parties during the exercise. Following the site visit, the court directed that the surveyor's report be shared with the parties upon receipt and expressly granted them liberty to file additional submissions after perusing the report. When the matter later came up before the court on 18th September 2024, counsel for the appellant indicated that no further submissions would be filed and that the court could proceed to fix a date for judgment since the parties had already filed their main submissions.

m. In those circumstances, it cannot be said that the appellant was denied an opportunity to respond to the surveyor's findings or that the trial court relied on evidence introduced without affording the parties an opportunity to address it. The site visit and the surveyor's report formed part of the evidentiary record in the proceedings, and the parties were accorded an opportunity to interrogate the surveyor and, if they so wished, to make further submissions.

n. The appellant also faulted the trial court for referring to the parties in the judgment as "*appellant*" and "*respondent*" instead of "*plaintiff*" and "*defendant.*" While the terminology of "*appellant*" and

“respondent” is ordinarily used, in appellate proceedings, the use of those terms by the trial court in the present case appears to have been a drafting error, and there is nothing presented to show any party was prejudiced in any way in their use in a trial case. The record of the proceedings clearly identifies the parties as plaintiff and defendant, respectively, and the judgment itself leaves no doubt as to the roles of the parties in the suit. In the circumstances, the use of the terms “*appellant*” and “*respondent*” did not affect the substance of the court’s determinations.

- o. Upon a re-evaluation of the entire record, this court is satisfied that the learned trial magistrate considered the material evidence placed before the court and correctly concluded that the appellant had not proved the alleged fraud. The reliance placed on the surveyor’s findings in identifying the disputed parcel was also justified in the circumstances of the case, particularly given the observed fact that neither party had called expert evidence to clarify the physical identity of the plots in dispute on the ground.
- p. The trial court, having found that the respondents were the lawful owners of Plot No. R1199/D26/429, and that the appellant had trespassed onto the said plot, proceeded to grant orders of eviction, a

permanent injunction restraining the appellant from interfering with the respondents' quiet possession of the property, and an award of mesne profits calculated at Kshs. 1,000 per month for a period of ten years. As already observed above, this court is satisfied that the trial court properly identified the disputed parcel as the respondents' plot, and correctly concluded that the appellant had encroached onto the same. Once the court reached that finding, it was entitled to grant appropriate remedies to protect the respondents' proprietary interest in the suit property. An order of eviction is a natural consequence of a finding that a party is in unlawful occupation of another person's land. Similarly, the grant of a permanent injunction restraining further interference with the said property was justified in order to secure the respondents' quiet enjoyment of the plot.

- q. With regard to the award of mesne profits, the trial court awarded compensation for a period of ten years at the rate of Kshs. 1,000 per month. The appellant did not place before this court any material demonstrating that the award was excessive or unsupported by the evidence. In the absence of such material, and considering that the award was modest in nature, this court finds no basis upon which to interfere with the discretion exercised by the trial court. In the circumstances, the reliefs granted by the

trial court were justified, and flowed logically from the findings made on the ownership and occupation of the suit property. In the end result this court finds that the appeal lacks merit, and is for dismissal.

- r. That as the appellant has failed in the appeal, then, in terms of *section 27* of the Civil Procedure Act chapter 21 of Laws of Kenya, to the effect that costs follow the event, she should pay the respondents' costs.

32. Flowing from the foregoing determinations, the court finds and orders as follows:

- a. That the appeal is without merit and is dismissed in its entirety.***
- b. That the judgment and decree of the trial court delivered on 29 November 2024 in Wajir MCELC Case No. 4 of 2020 is hereby upheld.***
- c. That the Appellant to meet the respondents' costs***

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 24TH DAY OF MARCH 2026.

S. M. Kibunja, J.
ELC GARISSA

IN THE PRESENCE OF:

APPELLANT: MR. NJENG'A
RESPONDENTS: N/A
MUHAMED-COURT ASSISTANT.

J.

S. M. Kibunja,

ELC GARISSA