



**Sheikh v Dubow & another (Environment and Planning Appeal  
E001 of 2025) [2026] KEELC 1733 (KLR) (24 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1733 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT AND PLANNING APPEAL E001 OF 2025  
SM KIBUNJA, J  
MARCH 24, 2026**

**BETWEEN**

**SUBANE HAJIR SHEIKH ..... APPELLANT**

**AND**

**FATUMA ADAN DUBOW ..... 1<sup>ST</sup> RESPONDENT**

**ABDISAMAD SIYAD RAHOY ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the judgment of Hon. P.W. Wasike, SPM, delivered  
on 26th November 2024 in Mandera MELC Case No. E001 of 2024)*

**JUDGMENT**

1. This appeal arises from the judgment of Hon. Wasike (SPM) delivered on 26th November 2024 in Mandera MCELC No. E001 of 2024. In that judgment, the learned trial magistrate dismissed the Appellant's suit and awarded costs to the Respondents. Aggrieved by that decision, the Appellant lodged the present appeal through a Memorandum of Appeal dated 5th December 2024, raising the following seven (7) grounds:
  - a. That the learned trial magistrate erred in law and fact in failing to properly evaluate the evidence presented, particularly when he held that there was no acceptance letter produced by the Plaintiff, yet the Appellant had furnished the court with a letter from the County Government of Mandera written by the Land Administrator dated 21st December 2021, confirming the Appellant as the rightful owner of the suit land.
  - b. That the learned trial magistrate erred in law by misinterpreting and/or misapplying the provisions of the law governing land disputes.
  - c. That the learned trial magistrate erred in law in entering judgment against the weight of the evidence adduced before the court.



- d. That the learned trial magistrate erred in law and fact by refusing to admit and hear the Appellant's Notice of Motion dated 4th June 2024, despite the existence of compelling grounds, and instead proceeded to deliver judgment.
- e. That the learned trial magistrate failed to consider that the dispute concerned land and thereby ignored the principles of natural justice requiring that a party be accorded an opportunity to be heard.
- f. That the learned trial magistrate erred in law by failing to consider material evidence presented by the Appellant.
- g. That the learned trial magistrate erred in law and fact by failing to apply established legal principles in determining ownership of the suit property.

On the basis of the foregoing grounds, the Appellant prays that the appeal be allowed; the judgment of the trial court be set aside; the costs of the appeal be awarded to the Appellant; and that this Court grant such other relief as it may deem fit and just in the circumstances.

2. The Appellant had commenced the suit before the trial court through a plaint dated 22nd January 2024, seeking for a declaration that Plot No. 215 Barwaqo Bypass, situated within Barwaqo Location in Mandera County, belonged to him. He also prayed for costs of the suit and any other relief that the court might deem just and appropriate. His case was that he was the lawful owner of the said plot, but on or about 8th March 2022, the Respondents jointly laid claim to the suit property without any lawful basis. According to the Appellant, the Respondents further caused him to be arrested and charged in Mandera Criminal Case No. MCCR/E060/2022, an action he contended was motivated by a desire to unlawfully evict him from the plot. He pleaded that the said criminal case was eventually dismissed, and that the filing of the civil suit was therefore necessary in order for the court to finally determine the rightful ownership of the property.
3. The Respondents filed a Statement of Defence dated 9th February 2024 in which they denied the Appellant's claim. Their position was that they were the lawful owners and long-standing occupants of the land forming Plot No. 215 Barwaqo Bypass in Mandera County. They asserted that they had resided on the land for a considerable period of time and had been in occupation of it since time immemorial. The Respondents further alleged that the Appellant had colluded with corrupt officials within the County Land Administration to irregularly acquire and allocate to himself the land that rightfully belonged to them. In that regard, they pleaded particulars of fraud against the Appellant, including the alleged earmarking and subdivision of the suit land without lawful authority, forging of allotment letters and related documents for personal gain, abuse of office in the allocation of land, undertaking an illegal survey exercise targeting the Respondents' land, engaging in an opaque and corrupt survey process, allocating land without compliance with applicable legal requirements such as the payment of rates and rents, and purporting to acquire the land without conducting due diligence.
4. With regard to the criminal proceedings referenced to by the Appellant, the Respondents averred that the charges therein related to malicious damage to property, and not to the ownership of the land, and that the criminal matter had been determined on its merits. They maintained that it was, in fact, the Appellant who had violated their rights by attempting to unlawfully grab their land. Consequently, the Respondents prayed that the Appellant's suit be dismissed and that the court instead declare them to be the lawful owners of the suit property, together with an award of costs and any other relief the court might deem fit.
5. Pursuant to directions issued by this Court on 24<sup>th</sup> September 2025, the appeal was canvassed through written submissions. The learned counsel for the appellant filed their submissions dated 2<sup>nd</sup> October



2025, and inter alia argued that the trial court erred both in law and fact in finding that there was no acceptance of the allocation of the suit plot despite the documentary evidence placed before the court. Counsel submitted that the trial court's determination turned largely on a technical finding that the Appellant had not produced a formal written acceptance of the certificate of offer. According to counsel, that finding was inconsistent with the documentary evidence on record. Counsel pointed to a letter dated 21st December 2021 from the Land Administrator, County Government of Mandera, confirming the allocation of the plot to the Appellant, as well as a certificate of offer bearing the Appellant's name and the plot number, together with receipts evidencing payment of land rent and related charges. It was submitted that these documents demonstrated that the allocation process had been completed and that the County Government had processed the relevant documentation upon confirmation of the Appellant's compliance with the allocation conditions.

6. Counsel further submitted that courts have consistently recognised documentary evidence emanating from the allocating authority as primary proof of allocation. In his view, the trial court improperly shifted the burden of proof by requiring documentary evidence that could only exist within the internal records of the County Government. He also argued that acceptance of an allotment need not always be express and may be inferred from conduct, particularly where the allottee complies with the conditions of allocation, pays the requisite charges, and acts in reliance on official correspondence confirming the allocation. On the question of the applicable legal framework, counsel submitted that the trial court elevated a procedural requirement concerning written acceptance above substantive justice, contrary to Article 159(2)(d) of *the Constitution*, section 3 of the *Environment and Land Court Act*, and sections 24, 25 and 26 of the *Land Registration Act*. Counsel further argued that the court failed to appreciate the legal authority of the County Government, through its land administration structures, to allocate plots. Instead, the court was said to have placed undue emphasis on the Respondents' alleged long occupation of the land, a consideration which counsel argued would only be relevant where no formal allocation existed.
7. Counsel also contended that the trial court misdirected itself by preferring the Respondents' oral claims of occupation over what he described as formal documentary evidence of allocation. He pointed out that the Respondents did not produce any allocation documents and admitted that they did not possess any letter of allotment. Counsel further submitted that the judgment was against the weight of the evidence adduced before the trial court. He observed that the Appellant called three witnesses and produced official documents confirming the allocation of the plot. In particular, reference was made to the testimony of PW3, who allegedly witnessed the surveyor allocate the plot on 16th October 2021. By contrast, counsel submitted that the Respondents produced no documentary evidence of ownership and gave inconsistent testimony regarding their claim to the land.
8. With regard to procedural fairness, counsel submitted that the record showed that the Appellant had filed a Notice of Motion dated 4th June 2024 which was never heard. He argued that the trial court proceeded to deliver judgment without determining that application, thereby violating the Appellant's right to a fair hearing under Articles 47 and 50(1) of *the Constitution* as well as the principles of natural justice. Counsel maintained that once an application is properly placed before the court, it ought to be determined before the court renders final judgment.
9. Counsel also submitted that the trial court failed to consider material evidence produced by the Appellant and consequently failed to apply the correct legal principles governing proof of allocation, disputes between an allottee and a person claiming occupation without allocation, the evidentiary weight of official government documents, and the burden of proof under the *Evidence Act*. In his view, the trial court therefore adopted an erroneous approach in determining the dispute. In conclusion, counsel urged the Court to allow the appeal, set aside the judgment delivered on 26th November



- 2024, and substitute it with a declaration that the Appellant is the lawful owner of Plot No. 215 Barwaqo Bypass. He further prayed that the Appellant be awarded the costs of both the appeal and the proceedings before the trial court together with any other relief that the Court may deem just and equitable.
10. The learned counsel for the Respondents filed their written submissions dated 26<sup>th</sup> November 2025, submitting inter alia that the Appellant had failed to prove ownership of the suit property. The counsel submitted that the burden of proof lay squarely on the Appellant. The counsel relied on the case of Wreck Motors Enterprises versus Commissioner of Lands, Civil Appeal No. 71 of 1997, for the proposition that an allotment does not confer title unless the allottee complies with all the conditions attached to it. Counsel also cited the case of African Line Transport Co. Ltd v Attorney General (2019) for the principle that an allocation only becomes valid upon acceptance of the offer, payment of the requisite charges, and eventual issuance of title.
  11. Counsel submitted that the trial court properly applied those principles in the present case. According to counsel, the Appellant did not produce any written acceptance of the alleged offer, did not produce a formal letter of allotment, and did not demonstrate compliance with the conditions attached to the alleged allocation. Counsel further submitted that the Appellant did not rebut the Respondents' evidence that they were already in occupation of the land prior to the purported allocation.
  12. With respect to the evidentiary value of the certificate of offer relied upon by the Appellant, counsel submitted that the reasoning of the trial court was legally sound. He argued that the document itself required acceptance within thirty days and that failure to accept within that period rendered the offer void. Counsel maintained that the Appellant failed to prove that he had accepted the offer within the stipulated time. In addition, counsel pointed out that the certificate expressly stated that it did not constitute a letter of allotment. On that basis, counsel submitted that the learned trial magistrate correctly concluded that the Appellant had not established a valid claim to the suit property.
  13. Counsel further submitted that the trial court properly considered the Respondents' occupation of the land. He argued that the Respondents demonstrated that they had lived on and developed the land for more than a decade, that the area was already occupied prior to the County survey exercise, and that they had been promised regularisation as long-term occupants. Counsel contended that the County authorities later attempted to allocate the land to the Appellant despite the Respondents' occupation. While acknowledging that occupation alone does not confer title to public land, counsel submitted that courts treat long-standing occupation as a material factor in determining whether a purported allocation was illegal, irregular, or unreasonable. In conclusion, counsel submitted that the Appellant had not demonstrated any error on the part of the trial court that would warrant appellate interference. He therefore urged this Court to dismiss the appeal, uphold the judgment of the trial court, and award the costs of the appeal to the Respondents.
  14. From the grounds on the memorandum of appeal and submissions the following are the issues for determinations by the court:
    - a. Who is the lawful owner of Plot No. 215, Barwaqo Bypass?
    - b. Whether the trial court misdirected itself in law or fact in evaluating the evidence and applying the law, including its treatment of the Appellant's Notice of Motion.
    - c. What orders should this Court make?
  15. I have carefully considered the grounds on the memorandum of appeal, record of appeal, the submissions by the parties counsel, and come to the following determinations:



- a. 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 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.”
- b. The appeal raises a fundamental question of ownership of Plot No. 215, Barwaqo Bypass. The Appellant contends that he was lawfully allocated the plot by the County Government of Mandera, while the Respondents assert that they have occupied the land prior to the alleged allocation. At trial, the Appellant relied on a Certificate of Offer dated 16th October 2021, and a letter from the Mandera County Land Administrator dated 21st December 2021 confirming that the plot had been allocated to him. The Certificate of Offer required the Appellant to pay survey fees of Kshs. 3,000 and land rates of Kshs. 1,000 for 2021, and to give written acceptance within thirty days, failing which the offer would lapse. It also expressly stated that the certificate did not constitute a letter of allotment. The Land Administrator’s letter referred to an alleged letter of allotment, which was not produced in evidence.
- c. The trial court found that the Appellant had not produced a written acceptance of the offer within thirty days, nor proof of payment of the required charges. Consequently, the trial court held that the Appellant’s claim of ownership was unsustainable. The court further noted that the Respondents’ witnesses attested to their occupation of the plot but did not produce any formal evidence of ownership. The law is clear as can be seen in the decision in the case of *Wreck Motors Enterprises versus Commissioner of Lands & 3 Others* [1997] eKLR, where the Court of Appeal stated that:
- “Once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allocation to any other person.”
- d. Applying the above principles to the situation in this dispute, it is clear the Appellant’s failure to demonstrate compliance with the conditions attached to the certificate of offer means that his claim of allocation had not crystallised into a legally enforceable interest. However, the Respondents did not produce any evidence of formal allocation or other documentary proof of ownership, but their claim rested solely on oral testimony of occupation. As a matter of law, occupation alone, particularly of public land, does not confer ownership. In any case a claim of adverse possession must be specifically pleaded and proved, which was not done.
- e. It follows that the trial court was correct in observing that the Appellant had failed to prove a perfected allocation. However, the Respondents did not establish ownership through documentary evidence or legal recognition. On the record, neither party proved a legally enforceable interest in the suit property. Accordingly, the Appellant’s claim fails, but this does not confer ownership upon the Respondents.
- f. The Appellant, in his grounds of appeal, contended that the trial court erred in refusing to admit and consider a Notice of Motion dated 4th June 2024, which was said to contain compelling grounds. The court has carefully perused the record of appeal filed herein, and



noted that there is no application dated 4<sup>th</sup> June 2024 among the documents attached. Accordingly, this Court cannot make any finding based on the alleged motion that is not before it. The main issue in the appeal is therefore limited to reviewing whether the trial court properly evaluated the evidence presented by the parties, including documentary and oral testimony, in determining ownership of the suit property.

- g. Having found that the trial court did not properly determine the question of ownership of Plot No. 215 Barwaqo Bypass, then it falls upon this Court to determine the appropriate orders to make for the ends of justice to be met in the circumstances of this case. From the record, both parties claimed ownership of the suit property, but neither produced conclusive proof of lawful allocation. The Appellant relied on a certificate of offer, whose acceptance and compliance with conditions was not fully demonstrated, while the Respondents relied largely on oral testimony of occupation, without producing allocation documents or any formal evidence of title.
  - h. The material question of who the lawful allottee of the plot is, can only be properly resolved through the official records relating to the allocation of Plot No. 215 Barwaqo Bypass, and evidence from the relevant allocating authority. No such evidence was availed before the trial court, and in its absence, this Court is not in a position to conclusively determine the question of ownership on appeal. However, the deficiencies in the trial court's evaluation of the evidence, and the failure to call or obtain evidence from the allocating authority render the impugned judgment unsafe to stand.
  - i. In the circumstances, I find it fair and just to accord the parties a second bite at the cherry, as it were, by setting aside the judgment of the trial court and remit the matter back to the trial court for further hearing, with directions that the relevant authority responsible for allocation of the plot be summoned to produce the official records on the plot's allocation and report confirming the lawful allottee of the property. Such an order will not only accord the parties an opportunity to cross examine the officer on the documents and report produced, but also enable the trial court to determine the dispute of ownership of the plot conclusively on the basis of the official allocation records.
  - j. In view of the determination in (h) above, and considering no party is the victor at this stage, and noting costs under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, are at the discretion of the court, I find it appropriate to order that each party bears their own costs on this appeal.
16. As a consequent of the foregoing determinations, the court finds and orders as follows:
- a. That the appeal is allowed.
  - b. The learned trial magistrate's judgement delivered on 26<sup>th</sup> November 2024 is hereby set aside.
  - c. That the suit is remitted back to the trial court for further hearing, with directions that the relevant authority responsible for allocation of the suit plot be summoned to produce the relevant official records on the plot's allocation and report confirming the lawful allottee of the property, to enable the court determine the ownership dispute conclusively.
  - d. That each party to bear their own costs in the appeal.

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 24<sup>TH</sup> DAY OF MARCH 2026.**



**S. M. KIBUNJA, J.**

**ELC GARISSA.**

In The Presence Of:

Appellant: Mr. Oloo

Respondents: N/a

Muhamed-court Assistant.

**S. M. Kibunja, J.**

**ELC GARISSA.**

