

sought for a permanent injunction restraining the Appellant from trespassing thereon, eviction and other consequential reliefs. The learned Magistrate found in favour of the Respondent, declared him the lawful owner/occupier, and issued a permanent injunction against the Appellant.

2. Aggrieved by the decision, the Appellant filed a Memorandum of Appeal dated 24th October 2025 raising five grounds which, in summary, allege that the learned Magistrate erred in law and fact by:
- (a) declaring that the suit property belongs to the Respondent;
 - (b) holding that the Respondent proved his case on a balance of probabilities despite allegedly weak documentary evidence;
 - (c) disregarding the Appellant's evidence which, when taken as a whole, showed that the suit property belonged to him;
 - (d) failing to appreciate the facts and the weight of the evidence; and
 - (e) allegedly introducing extraneous material and descending into the arena of litigation.

3. The Appellant prays that the appeal be allowed, the judgment of the lower court be set aside, the Respondent's suit be dismissed with costs, and for any other appropriate relief.
4. The appeal was heard by way of written submissions. The Appellant filed submissions dated 25th March 2026 while the Respondent filed submissions dated 8th April 2026.

Appellant's submissions

5. The Appellant framed three main issues: (i) who is the legitimate owner of the suit property; (ii) the legality and validity of the records from Kishamba B Group Ranch and (iii) costs.
6. Counsel submitted that neither party holds a title deed since the land is un-surveyed and lies within Kishamba B Group Ranch. The Respondent's claim was based on alleged occupation since 2011 and acts of clearing and building, but this amounted to unlawful invasion without consent or approval of the Group Ranch Committee. The Appellant, on the other hand, demonstrated a lawful

allocation process: he applied for the land, and on 10th December 2015 the Kisumanzi cluster members formally allocated the suit property to him vide DExh 6. This allocation was supported by credible testimony from DW2 (the area chief), DW3 and DW4 (cluster members who signed the letter).

7. It was further argued that the trial Magistrate misdirected herself by declaring the Respondent the owner despite the Appellant's superior documentary and oral evidence. Counsel urged the Court to find that the cluster allocation was valid and that the totality of evidence proved the suit property belonged to the Appellant.
8. Counsel submitted that the appeal should therefore be allowed with costs.

Respondent's submissions

9. The Respondent framed two main issues: (i) whether the appeal is merited and (ii) costs.
10. Counsel submitted that the Respondent proved ownership on a balance of probabilities by showing continuous occupation since 2011, development of the land (clearing and construction of a house), and production

of a Kishamba B Group Ranch membership receipt dated 10th May 2011 (PEXh 1). He further relied on multiple Occurrence Book (OB) entries from Voi Police Station evidencing the Appellant's repeated acts of trespass, malicious damage, threats and assault.

11. The Respondent contended that the Appellant's 2015 cluster allocation was invalid and an afterthought, coming four years after the Respondent had already occupied and developed the land. Serious contradictions in DW3's evidence between the written statement and oral testimony regarding persons present during the alleged allocation rendered the Appellant's case unreliable.

12. It was emphasized that the Respondent's long, undisturbed possession and acts of ownership entitled him to protection under **Article 40(1) of the Constitution of Kenya 2010**. The learned Magistrate correctly found that the Appellant was a trespasser and properly issued a permanent injunction. Counsel urged the Court to dismiss the appeal with costs, describing it as frivolous, baseless and an abuse of court process.

Issues, analysis and determination

13. From the Memorandum of Appeal, the rival written submissions and the entire record of appeal, the following issues crystallise for determination by this Court:

- i. Whether the learned Trial Magistrate erred in law and fact in finding that the Respondent had proved ownership of the suit property on a balance of probabilities.***
- ii. Whether the Appellant's purported 2015 allocation by the Kisumanzi cluster was lawful and valid and which party has the superior claim to the suit property.***
- iii. Whether the learned Magistrate misdirected herself on the evidence, disregarded material evidence or introduced extraneous material.***
- iv. What reliefs, if any, should this Court grant, including the question of costs.***

14. The powers of this Court as an appellate court are clearly delineated by statute. **Section 13(4) of the Environment and Land Court Act, 2011** and **Section 78 of the Civil Procedure Act** confers appellate

jurisdiction on this Court to hear and determine appeals from subordinate courts or local tribunals in respect of matters falling within its jurisdiction.

15. The principles guiding appellate interference are well settled. An appellate court will not lightly disturb findings of fact made by a trial court that had the singular advantage of seeing and hearing the witnesses, unless such findings are shown to be perverse, based on no evidence, or clearly erroneous. This principle was authoritatively restated by the Court of Appeal in **Selle & another v Associated Motor Boat Co. Ltd & others [1968] EA 123 and Peters v Sunday Post Ltd [1958] EA 424.** Recent decisions of the Court of Appeal have consistently reaffirmed and applied this principle in land and civil appeals. In **M'Miti v Ndwiga (Civil Appeal 161 of 2019) [2025] KECA 2137 (KLR),** the Court held that it is not bound necessarily to follow the trial judge's findings of fact if it appears the judge clearly failed on some point to take proper advantage of having seen and heard the witnesses.

16. Similarly, in **Kenga & 12 others v Mohamed [2025] KECA 2219 (KLR)**, the Court of Appeal stated:

“The Court must therefore reconsider the entire evidence, re-evaluate it independently and draw its own conclusions while bearing in mind that it neither saw nor heard the witnesses. The appellate court will not ordinarily interfere with factual findings unless the trial judge failed to consider material evidence, misapprehended the facts, or applied the wrong legal principles.”

17. The Supreme Court of Kenya has equally underscored judicial restraint in appellate review of factual findings. In **Dina Management Limited v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)** the apex court emphasized that an appellate court must treat with due deference the conclusions of fact reached by the trial court and the first appellate court unless the findings are based on “no evidence”, are “so perverse”, or so illegal that no reasonable tribunal would arrive at the same conclusion. Only in exceptional

circumstances involving cardinal issues of law or jurisprudential moment will further interference be warranted. This Court has therefore re-evaluated the entire evidence on record while according due deference to the learned Magistrate's assessment of the witnesses and the evidence.

Issue No. 1

Proof of ownership on a balance of probabilities.

18. In civil proceedings, the burden of proof lies upon the party who asserts a fact and that fact must be proved on a balance of probabilities. See **sections 107, 108 and 109 of the Evidence Act, Cap 80; Miller v Minister of Pensions [1947] 2 All ER 372** as adopted in **Ephantus Gikunju v James Karanja [2014] eKLR.**

19. The suit property is un-surveyed land lying within Kishamba B Group Ranch. Neither party holds a formal title deed. Ownership of such land is therefore determined by reference to lawful occupation, acts of possession and development, membership in the group ranch, and any valid allocation processes recognized under group ranch

rules or customary practices, subject always to the Constitution of Kenya 2010 and statute. Long and undisturbed possession of unregistered land raises a rebuttable presumption of ownership as was applied in the cases of **Obiero v Opiyo [1972] EA 227 and Koinange & 4 others v Koinange [1986] eKLR.**

20. From the analysis of the evidence that was tendered before the trial court, the Respondent demonstrated prior occupation since 2011, membership in the group ranch, and concrete acts of ownership and development, corroborated by police OB reports. On a balance of probabilities, the learned Magistrate was entitled to find that the Respondent had proved his claim. The Magistrate did not err in her evaluation of the evidence.

Issue No. ii

Legality of the Appellant's 2015 allocation and superior claim to the suit property.

21. The Appellant's claim primarily rests on the letter dated 10th December 2015 from the Kisumanzi cluster members. However, group ranches constitute community land under **Article 63 of the Constitution of Kenya**

2010 and are governed by the **Community Land Act, 2016**. Allocations must be made by the duly authorized group ranch committee in accordance with its constitution and proper procedures. Informal cluster-level decisions that bypass these structures are generally not binding, particularly when they conflict with existing occupation by another member. See **Section 5, Community Land Act, 2016**.

22. The evidence on record confirms that the Respondent was already in occupation since 2011. The Appellant's purported allocation in 2015 came later and lacked evidence of proper authority or compliance with formal group ranch procedures. Contradictions in DW3's evidence further undermined the Appellant's case.

23. Consequently, the Respondent has the superior claim. He demonstrated prior occupation, development of the land, and continuous possession, which raises a rebuttable presumption in his favour. The Appellant's subsequent interference amounted to trespass. The Respondent's rights are protected under **Article 40(1) of the Constitution**. The learned Magistrate correctly

preferred the Respondent's prior and continuous occupation over the Appellant's later and invalid allocation.

Issue No. iii

Alleged Misdirection and Introduction of Extraneous Material.

24. The Appellant alleges that the Magistrate disregarded his evidence and introduced extraneous material. A perusal of the judgment shows that the learned Magistrate considered all the exhibits tendered by both parties and gave reasoned preference to the Respondent's version. There is nothing on record to suggest that she relied on matters outside the evidence or descended into the arena of litigation. No perversity or misdirection has been demonstrated. Grounds (3), (4) and (5) therefore fail.

Issue No. iv

Appropriate reliefs and costs.

25. The Appellant prayed that this appeal be allowed, the entire judgment of the trial court be set aside, the

Respondent's suit in the lower court be dismissed with costs to the Appellant, and for any other order this Court may deem just and expedient. However, having carefully re-evaluated the entire record, the evidence tendered by both parties, and the detailed reasoning contained in the Magistrate's judgment, I find that the appeal is devoid of merit. The learned Trial Magistrate neither erred in law nor in fact. Her judgment is sound and is hereby upheld.

26. The Learned Magistrate analysed all documentary exhibits, including the Respondent's 2011 membership receipt (PEXh 1) and the Appellant's 2015 cluster allocation letter (DEXh 6), together with the oral testimonies of PW1, PW2, DW2, DW3 and DW4. She correctly identified and gave weight to the material contradictions in DW3's evidence and properly preferred the Respondent's evidence of prior, continuous and undisturbed occupation since 2011 over the Appellant's subsequent and procedurally flawed claim.

27. The grounds of appeal essentially invite this Court to substitute its own view of the evidence for that of the trial court. However, as a first appellate court, this Court is not

entitled to do so unless the Magistrate's findings are demonstrated to be perverse, based on no evidence, or the result of a clear misapprehension of the facts or wrong application of legal principles. No such defect exists in the judgment under appeal. The Magistrate's conclusions are firmly anchored in the evidence on record and consistent with the applicable law on proof of ownership of unregistered community land.

28. This position is reinforced by recent decisions of the Court of Appeal. In **Kenga & 12 others v Mohamed [2025] KECA 2219 (KLR) (delivered 19th December 2025)**, the Court reaffirmed that an appellate court must re-evaluate the evidence independently but will not ordinarily interfere with factual findings unless the trial judge failed to consider material evidence, misapprehended the facts, or applied the wrong legal principles. Similarly, in **Munyao v Murage (Civil Appeal E693 of 2024) [2025] KEHC 19349 (KLR) (delivered 11th June 2025)**, the Court reiterated the **Selle and Peters** principles and declined to interfere because the

lower court's findings were supported by credible evidence.

29. Similarly, In **Rono v Mwichigi (Civil Appeal E033 of 2024) [2025] KEHC 17665 (KLR) (delivered 28th November 2025)**, the Court held that interference with a trial court's findings of fact is warranted only where there is a demonstrable misapprehension of evidence or application of wrong principles.

30. In view of the foregoing, it is the finding of this court that the present appeal does not meet any of these exceptional thresholds. The Learned Magistrate did not disregard material evidence, nor did she introduce extraneous material or descend into the arena of litigation. Her evaluation was balanced, evidence-based and legally sound. Consequently, there is no justification for this Court to interfere with her decision. The appeal is therefore devoid of merit and must fail.

31. On the question of costs of this appeal, the settled principle is that costs follow the event unless there are compelling reasons to depart from it. The Respondent has successfully defended the appeal. He is therefore entitled

to his costs, which this Court assesses at Kshs. 50,000/= (all inclusive) to be borne by the Appellant.

Final orders

32. In conclusion, the following orders are hereby issued in respect to this appeal:

- i. The Appeal is hereby dismissed in its entirety.***
- ii. The judgment and decree of the Magistrates' Court delivered on 13th October 2025 in Voi MCELC No. E044 of 2021 is affirmed.***
- iii. The Appellant shall pay the costs of this appeal to the Respondent, assessed at Kenya Shillings Fifty Thousand (Kshs. 50,000/=) all inclusive.***

Dated, Signed and Delivered Virtually at Voi this 14th day of April, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of: -

Mr. Motuka for the Appellant.

Ms. Kitsao h/b for Mr. Mwazighe for the Respondent.

Court Assistants: Mary Ngoira and David Ngoosa.