



**Karisa v Konde (Environment and Land Appeal E058 of 2024)
[2025] KEELC 5922 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5922 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E058 OF 2024**

**EK MAKORI, J
JULY 24, 2025**

BETWEEN

AMIN RAMADHAN KARISA APPELLANT

AND

KEA CHARO KONDE RESPONDENT

(An Appeal from the Judgment of the Senior Principal Magistrate's Court at Kilifi (Hon. J.M. Kituku) dated and delivered on December 20, 2023, in Kilifi ELC Case No. E107 of 2021.)

JUDGMENT

1. The Appellant, Amin Ramadhan Karisa, is aggrieved by the decision issued on December 20, 2023, by Hon. J.M. Kituku, Senior Principal Magistrate, in Kilifi ELC Case No. E107 of 2021, Kea Charo Konde versus Amin Ramadhan Karisa. The trial court duly granted the Respondent's suit against the Appellant and, at the same time, dismissed the Appellant's counterclaim.
2. The Appellant outlined the following grounds of appeal:
 - a. The trial court erred in law and fact by holding that the Appellant had acquired part of the suit property through adverse possession. This fact was not pleaded in court, while also recognizing that the Appellant had purchased the suit property through two valid sale agreements.
 - b. The trial court erred both legally and factually by considering irrelevant factors, specifically that the suit property was initially registered in the name of a deceased person (Respondent's father). However, there was clear evidence showing that the entire original property, Kilifi/Vipingo/620, was initially registered in the name of the Appellant in trust and was later subdivided according to two valid sale agreements in favor of the Appellant. This caused the court to mistakenly conclude that the Respondent could not sell the suit property.



- c. That the trial court erred in law and fact by contradicting and misconstruing itself, asserting that the Respondent had no legal basis to challenge the sale agreement between the Appellant and the Respondent's brother. On the contrary, it held that the Appellant had not proven the impugned second sale agreement despite the Respondent's brother acknowledging the purchase price.
 - d. The trial court made errors in law and fact by dismissing the Appellant's counterclaim with costs, even though it acknowledged that the Respondent did not file a defense to it. Moreover, the court held that the Respondent's counterclaim was identical to the prayers sought in the plaint. Additionally, the court erred in law and fact by arriving at a decision that was utterly contrary to the evidence, law, and justice.
3. Based on the above, it is requested that this Court issue the following orders:
 - a. That the appeal be granted by setting aside the Kilifi Senior Principal Magistrate's Court judgment and order dated December 20, 2023, and, in their place, allowing the Appellant's counterclaim dated June 9, 2022.
 - b. That the costs of this appeal be awarded to the Appellant.
 - c. Any other relief or orders that this Court considers appropriate.
4. The appeal was canvassed through written submissions. I acknowledge receipt of submissions from learned counsels for the parties who cited various relevant laws and judicial precedents to guide the court in arriving at a fair decision.
5. The issues I present for the court's consideration are whether the appeal has merit, primarily stemming from the memorandum of appeal, whether the trial court properly evaluated the evidence before it, applied the law appropriately, and reached a correct decision based on the law. Additionally, the matter of who should bear the costs of the appeal is to be determined.
6. The primary role of a first appellate court within Kenyan jurisdiction is to conduct a comprehensive, independent review of the evidence presented during the trial and to reexamine the findings and judgment or decision made by the trial court. This careful review ensures that both facts and law are considered, while also recognizing the trial court's advantageous position of having firsthand observation of witnesses. Additionally, the appellate court has the authority to uphold, annul, or alter the trial court's decision, and may admit additional evidence or order a new trial as appropriate. See *Okeno v Republic* 1972 EA 32.
7. The overall appeal mainly concerns two sale agreements dated July 24, 2002, and May 10, 2008, entered into between the Respondent and the Appellant, and the Respondent's brother, respectively. These agreements are significant as they form the basis of the Appellant's claim to the land. The land was initially registered in the name of the Respondent's father (deceased) before the transfer.
8. The Appellant contended that the trial court committed an error by misguiding itself and diverging from the substantive legal issues, as outlined in the pleadings submitted by the parties concerning the transaction involving the property in question. Neither the Appellant nor the Respondent made any pleadings or defenses regarding adverse possession or interference with the estate of the Respondent's deceased father; instead, the matter primarily concerned the two sale agreements, which were subject to judicial determination. In this context, the Appellant filed a counterclaim seeking enforcement of the said sale agreements.



9. The Appellant maintains that these sale agreements are valid and enforceable in his favor. Consequently, the Appellant contends that the trial court deliberated on issues not pleaded by either party and failed to enforce the two sale agreements in his favor, culminating in a decision that contravenes the facts, evidence, and pertinent law. Refer to *Galaxy Paints Company Limited v Falcon Guards Limited* [2000] eKLR, *IEBC v Stephen Mutinda Mule* [2014] eKLR, and *Raila Amolo Odinga and others v IEBC and 2 others* [2017] eKLR.
10. Conversely, the Respondent asserts that the Respondent's father was the initial owner of the property; thus, the children of the deceased were not authorized to sell or transfer the land to the Appellant. Nevertheless, the trial magistrate, based on the evidence submitted, determined that they had unlawfully acquired one of the properties through adverse possession. The stance adopted by the trial magistrate favored the Appellant over the Respondent. It is apparent that the family lacked the authority to sell, and consequently, the land should not have been transferred to the Appellant. In addressing the second and third grounds of appeal, evidence was introduced in court, establishing that the land in question is family land owned by the Respondent's deceased father, and any transaction involving it would constitute interference.
11. About the assertion that the Appellant registered the property in his name and consequently claims ownership, reference is made to Section 26 of the *Land Registration Act* Cap 300, which stipulates that such a title may be challenged if it is demonstrated that it was fraudulently acquired or obtained through misrepresentation or corrupt means. The Respondent contends that it was proved during the trial that the Appellant employed fraudulent methods and misrepresented facts to the Respondent. Using this misrepresentation, he was able to transfer the remaining one and a quarter portions of the land into his name.
12. I have reviewed the evidence presented to the trial court regarding the validity of the two sale agreements, interference with the deceased's estate, and adverse possession. In paragraphs 34 and 35 of the judgment, this is what the court noted about meddling:

“No evidence the vendors were legal representatives of the deceased's estate, and I find they have no capacity to enter into legally binding agreements with the Defendant.”
13. Concerning the validity of the two sale agreements, Paragraph 43 of the judgment states as follows:

“Though not pleaded in the defence or counter-claim, I find the facts disclose the defendant has acquired the suit land by way of adverse possession.”
14. Regarding the second agreement involving the brother of the Respondent, who testified as PW2 in the primary suit, the trial court held:

“Since the Defendant's claim is grounded on the sale agreement entered with PW2, it behooved that PW2 be co-Plaintiff or 2nd Defendant in the counter-claim.”
15. I agree with the Appellant that, based on the pleadings and evidence submitted to the trial magistrate, these issues were never part of his decision-making process. Neither the plaint, the defense, nor the counterclaim raised the issue of intermeddling with the deceased's estate or adverse possession, which largely influenced the case's outcome. I agree with the judicial authorities cited by the Appellant on the



issue regarding consideration of issues that are not derived from the pleadings, for example, in *Galaxy Paints Company Limited v Falcon Guards Limited* [2000] eKLR, the court had this to say:

“It is trite law, and the provisions of O.XIV of the Civil Procedure Rules, are clear that issues for determination in a suit generally flow from the pleadings, and unless pleadings are amended in accordance with the provisions of the Civil Procedure Rules, the trial court, by dint of the provisions of O.XX rule 4 of the aforesaid rules, may only pronounce judgment on the issues arising from the pleadings or such issue as the parties have framed for the court’s determination.

In *Gandy v. Caspair* [1956] EACA 139, it was held that unless the pleadings are amended, parties must be confined to their pleadings. Otherwise, to decide against a party on matters which do not come within the issues arising from the dispute as pleaded clearly amounts to an error on the face of the record. And in *Fernandes v. People Newspapers Ltd* [1972] EA 63 Law Ag V.P. said:

“A civil case is decided on issues arising out of the pleadings. No allegation of negligence against the appellant has ever been made, and it was not open to the court to find negligence on his part.”

16. Had the magistrate focused adequately on the issues raised by the parties, he would have concluded that there was not enough evidence to determine that the Defendant in the primary suit had gained one and a quarter of the suit property through adverse possession. Additionally, there were no valid grounds to order the reversion of the suit property to the deceased’s estate, as this matter was neither pleaded nor discussed during the hearing.
17. The outcome should have been that the Plaintiff’s case lacked merit and should have been dismissed, and that the counterclaim was unfounded, considering that PW2 was never listed as a co-Plaintiff or 2nd Defendant in the counterclaim.
18. The Appeal partially succeeds as the primary claim should have been dismissed, along with the counterclaim.
19. Thus, the final orders of this court are as follows:
 - a. The entire suit against the Appellant in the lower court is dismissed.
 - b. The entire counterclaim against the Respondent in the lower court is dismissed.
 - c. No order regarding costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 24TH DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Ondeng, for the Appellant

Ms. Amina, for the Respondent

Abdi: Court Assistant

