Jirma v Denge (Environment and Land Appeal E005 of 2024)
[2025] KEELC 826 (KLR) (13 February 2025) (Judgment)

Neutral citation: [2025] KEELC 826 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

ENVIRONMENT AND LAND APPEAL E005 OF 2024

JO MBOYA, J

FEBRUARY 13, 2025

BETWEEN

ABDI ADAN JIRMA ..... APPELLANT

AND

SHUKRI DENGE ..... RESPONDENT

(Being an appeal from the Judgment of Senior Resident Magistrate Hon. E. Tsimonjero at Isiolo delivered on 16th January 2024 in ELC Suit No. E021 of 2021)

JUDGMENT

1. The Appellant herein [was the Plaintiff in the subordinate court] filed the Plaint dated 28th July 2021 and wherein same [Appellant] sought for the following reliefs:

    a. An order of injunction restraining the defendant from dealing in relation to plot No.C2D23 Chechelesi area.

    b. Costs and interests of this suit.

2. Upon being served with the Plaint and sermons to enter appearance, the Respondent herein duly entered appearance and thereafter filed a statement of defence dated 9th August 2021. In particular, the Respondent contended that same [Respondent] has neither entered upon nor trespassed onto the suit property.

3. The suit before the subordinate court was heard and concluded vide Judgment dated 16th January 2024 and whereupon the learned trial magistrate found and held that the Appellant had failed to prove his case to the requisite standard. To this end, the Appellant's suit was dismissed with costs to the Respondent.

4. The said Judgment and or decree aggrieved the Appellant who thereafter filed the Memorandum of appeal dated 23rd January 2024. The Memorandum of Appeal under reference has highlighted the following grounds of appeal:

   i. That the learned magistrate erred in law and in fact by failing to consider the right of the plaintiff's ownership of plot NO. C2D23 Chechelesi in Isiolo.

   ii. That the learned magistrate erred in law and in fact by failing to consider that the suit property i.e. Plot NO. C2D23 Chechelesi in Isiolo is different from Plot No. 1489 Chechelesi is owned by the respondent and the appellant was mainly interested with his own plot.

   iii. That the learned trial magistrate erred in law and in fact in ailing to consider the standard of proof of ownership including proof by the letters of allotment by the National Land Commission.

   iv. That the learned trial magistrate did not consider the evidence of the physical planner and surveyor's report.

   v. That the learned trial magistrate did not consider the evidence of the appellant that the respondent was a trespasser.

   vi. That the learned trial magistrate did not consider the documents produced by the appellant.

5. The appeal came up for directions on the 26th February 2024, whereupon the court [differently constituted] ordered and directed that the appeal be canvassed and disposed of vide written submissions. Furthermore, the court ventured forward and circumscribed the timelines for the filing and exchange of the written submissions.

6. The appellant filed written submissions dated the 5th October 2024 whereas the Respondent filed written submissions dated 20th January 2025. Both sets of submissions are on record.

7. The Appellant herein highlighted and canvassed two [2] salient issues for consideration and determination by the court. The issues raised and canvassed by the appellant are namely; whether the appellant herein had established and proved his entitlement to and in respect of the suit property; and whether the appellant was entitled to the orders sought.

8. Regarding the first issue, learned counsel for the Appellant has submitted that the appellant herein was duly issued with the letter of allotment dated 11th November 2011 by the County Council of Isiolo, [now defunct] showing that the appellant had been duly allocated plot number C2D23[the suit property]. To this end, learned counsel for the appellant referenced exhibit P4, which was tendered and produced before the trial court.

9. Additionally, learned counsel for the appellant also submitted that other than the letter of allotment, the appellant also tendered and produced before the court various receipts confirming payments of the rates to and in favour of the County Council of Isiolo, [now defunct].

10. It was the further submissions by and on behalf of the counsel for the Appellant that the Appellant also tendered and produced a copy of the survey report which was prepared by Peter Kimani Wachira. For good measure, the report under reference was tendered and produced as exhibit P12.

11. Arising from the foregoing, learned counsel for the appellant has submitted that the appellant tendered and produced before the trial court plausible and cogent evidence to underpin his [appellant's] claim to the suit property.

12. Secondly, learned counsel for the appellant has submitted that by virtue of being the lawful and legitimate owner of the suit property, the appellant was/is entitled to exclusive and absolute occupation, possession and use of the suit property. Nevertheless, it has been submitted that despite being the lawful and legitimate proprietor of the suit property, the Respondent herein has since entered upon and trespassed onto the suit property, without the consent and or permission of the appellant.

13. Owing to the foregoing, it has been submitted that the actions complained of by the appellant, constitute and amount to trespass. In this regard, it has been posited that the learned magistrate ought and should have found in favour of the appellant. However, it has been contended that despite the totality of the evidence tendered, the learned magistrate failed to protect and or vindicate the rights of the appellants over and in respect of the suit property.

14. In view of the foregoing, learned counsel for the appellant has invited the court to find and hold that the decision of the learned magistrate, which has been appealed against is erroneous and thus same [decision] ought to be set aside and or varied.

15. On behalf of the Respondent, it was submitted that the appellant herein had neither proved nor established his claim and or entitlement to the suit property. In any event, it was contended that the appellant had not shown that the suit property is one and the same plot as plot No. C/1489.

16. Additionally, it was submitted that having failed to prove/demonstrate that the suit property is the same as plot NO. C/1489, which is contended to belong to the respondent, the appellant herein was not entitled to the orders of the court.

17. Thirdly, it was submitted that the burden of proof laid on the shoulders of the appellant. In this regard, learned counsel for the respondent has submitted that the appellant failed to discharge the burden of proof in accordance with the law. To this end, it was therefore submitted that having failed to discharge the burden of proof, the learned magistrate was right/correct in finding that the appellant had not proved his case.

18. Flowing from the foregoing submissions, learned counsel for the respondent has submitted that the appeal before hand, does not espouse any reasonable cause or at all. Moreover, it has been submitted that the appeal is devoid of merits.

19. In view of the foregoing, learned counsel for the respondent has therefore implored the court to find and hold that the appeal by the appellant is devoid of merits and thus ought to be dismissed with costs. For coherence, the court has been invited to dismiss the appeal with costs and to affirm the decision of the learned trial magistrate.

20. Having reviewed the pleadings that were filed by the parties before the trial court; taken into account the evidence tendered; reviewed the record of appeal and upon consideration of the written submissions filed by the respective parties, I come to the conclusion that the determination of the instant appeal turns on two [2] salient issues, namely; whether the appellant tendered and adduced plausible evidence to demonstrate entitlement to the suit property; and whether the learned trial magistrate correctly appreciated the law as pertains to issuance of letter of allotment at the time in question or otherwise.

21. Before venturing to analyze and ascertain whether the learned trial magistrate correctly appreciated the evidence tendered and the applicable law, it is imperative to state and underscore that this being a first appeal, this court is vested and clothed with the mandate to review, re-evaluate and analyze the evidence that was tendered before the trial court and upon undertaking the requisite scrutiny, review/analysis, the court is at liberty to arrive at an independent conclusion and or finding.

22. Notwithstanding the foregoing, it is not lost on the court that even as the court undertakes the exhaustive evaluation, review, scrutiny and analysis of the evidence that was tendered before the trial court, necessary caution and circumspection must be taken to ensure that the court does not interfere with the findings of the trial court lightly and without due regard to the fact that the court [appellate court] did not have the same advantage of seeing the witnesses testify. For good measure, the appellate court is called upon to give due deference to the findings of the trial court and only to depart from such finding if same [findings] were arrived at without due regard, to the weight of evidence on record or where the findings are perverse to the evidence on record.

23. Moreover, the first appellate court is also at liberty to depart from the findings and conclusions of the trial court where it is shown and or demonstrated that the trial court committed an error of principle, either by misinterpreting and misapplying the law; or better still, applying the law which had been repealed as at the time of the suit.

24. Further and in addition, the error of principle may also occur if the trial court applied the law retrospectively and thus violating the rights of a party to the proceeding[s].

25. The scope and extent of the jurisdiction of the first appellate court while entertaining an appeal like the one beforehand has been addressed and elaborated upon in a number of decisions. To this end, it suffices to take cognizance of some of the decisions, wherein the mandate/jurisdiction of the first appellate court has been amplified.

26. The scope and jurisdictional remit of this court whilst entertaining a first appeal has been elaborated upon and underscored in various decisions. In the case of Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123, the Court of Appeal for Eastern Africa [EACA] elaborated on the applicable principle and stated thus;

> " ...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 and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that 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..."

27. Likewise, the extent and scope of the Jurisdiction of the first appellate court was also elaborated upon in the case of Abok James Odera T/A A.J Odera & Associates versus John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, where the Court of Appeal held thus;

We also wish to be guided by the reasoning of this court in the case of Mwana Sokoni versus Kenya Business Limited (1985) KLR 931 page 934,934 thus:-

> " Although this court on appeal will not lightly differ from the Judge at first instance on a finding of fact, it is undeniable that we have the power to examine and re-evaluate the evidence on a first appeal if this should become necessary. As was said by the house of Lords in Sottos Shipping versus Sauviet Sohold, the Times, March 16,1983.
>
> "It is uncertain whether their Lordships should have reached the same conclusion on the evidence, but it is important that, sitting in the appellate court they should be over mindful of the advantages enjoyed of the trial Judge who saw and heard the witnesses and was in a comparably better position than the Court of Appeal to assess the significance of what was said, how it was said, and equally impotent what was not said"

> Again, in Peters versus Sunday Post Limited (1958) EA424, a decision of the Court of Appeal for Eastern Africa, Sir Kenneth O' Conner, P said at page 429:
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> "It is a strong thing for an appellate court to differ from the finding on a question of fact of the Judge who tried the case and who has had the advantage of seeing and hearing and the witnesses"

28. Duly guided by the principles espoused in the decision[s] supra, I am now disposed to revert to the subject matter and to interrogate whether the learned trial magistrate correctly appreciated and appraised the totality of the evidence on record and thereafter applied the relevant/applicable law in determining the dispute beforehand.

29. I beg to start with the evidence that was tendered by and on behalf of the appellant. Pertinently, the appellant herein tendered evidence and averred that same [appellant] was the proprietor/owner of the suit property. In addition, the appellant averred that same entered upon and took possession of the suit property on or about the year 2005.

30. It was the further testimony of the appellant that subsequently the suit plot was allocated unto to him by the county council of Isiolo [now defunct], who proceeded to and issued the appellant with a letter of allotment dated 11th November 2011. For good measure, the letter of allotment under reference was tendered and produced as exhibit P4.

31. Additionally, the appellant tendered and adduced evidence that upon being issued with a letter of allotment, same [appellant] has been paying the ground rents and rates to the county council of Isiolo and thereafter to the County Government of Isiolo. Notably, the appellant tendered and produced exhibits P6 and P7, respectively, which relate to the payment of rates and incidental statutory levies.

32. Other than the foregoing, it is also worth recalling that the appellant also tendered a copy of the surveyor's report as an exhibit. For coherence, the surveyor's report dated 27th January 2023 was tendered and produced by PW 2, namely Peter Kimani Wachira.

33. On the other hand, the respondent herein testified before the court and thereafter called 3 other witnesses. In particular, the respondents averred that the same [respondent] is the owner of plot No. 1489. In any event, it was contended that plot no. 1489 was previously a family plot but was subsequently the subject of balloting. In addition, the respondent averred that the said plot belongs to him [respondent] and to this end, the respondent tendered and produced an application for part development plan.

34. The foregoing evidence constitutes the totality of the factual matrix that was placed before the trial court. It was the duty of the trial court to interrogate the two sets of evidence on record and thereafter to form an objective conclusion/findings arising therefrom.

35. However, in his endeavor to interrogate the evidence on record, the learned trial magistrate adopted a slanted and skewed approach, which approach blinded the judicial mind of the trial magistrate. To start with, the learned trial magistrate contended that it was incumbent upon the appellant [who was the plaintiff] before the subordinate court to demonstrate that plot No. C2D23 and plot no. 1489 Chechelesi were one and the same plot and that the defendant's acquisition and registration thereof was subsequent to his registration as the proprietor thereof.

36. To my mind the appellant's case was to the effect that same [appellant] was/is the proprietor of the suit plot and furthermore, that the respondent had trespassed onto the suit plot without his [appellant's]

permission. For good measure, the appellant herein did not contend that the suit plot is one and the same as plot no 1489 Chechelesi or at all.

37. Moreover, evidence abound to the effect that the suit plot is not the same as plot no. 1489 Chechelesi. In this regard, it is not lost on this court that PW 2 [Peter Kimani Wachira], attended court, produced the survey report dated 27th January 2023 and thereafter tendered evidence showing that the two plots are separate and distinct.

38. In my humble albeit considered view, the position taken and adverted to by the learned trial magistrate, whose details have been highlighted in the preceding paragraphs, made the learned trial magistrate to misapprehend the true character of the dispute that was raised and canvassed by the appellant.

39. Furthermore, the learned trial magistrate also engaged in own hypothetical analysis and a frolic of his own when the learned trial magistrate endeavored to discredit the surveyor's report dated 27th January 2023 [exhibit P 12] without appreciating that the said report had been tendered and produced before the court in the presence of the advocate for the respondent, who never objected to its production.

40. In any event, it is also important to underscore that the learned trial magistrate ventured forward and purported to disown the legitimacy of the surveyor's report, on grounds that had neither been raised nor canvassed during the cross-examination of PW 2. Quite clearly, the learned trial magistrate misconceived the legal parameters for assessing the validity and authenticity of an expert report.

41. Suffice to underscore that the surveyor's report which attracted undue and extra-judicial criticism by the learned trial magistrate, had not been challenged by a contrary report by an expert. In this regard and without belabouring the point, I beg to cite and reference the decision of the court in the case of Stephen Kinini Wang'ondu vs The Ark Limited [2016] eKLR, where the court highlighted the guidelines for assessing an expert report like the one beforehand.

42. For coherence the court stated thus;

> While there are numerous authorities asserting that expert evidence can only be challenged by another expert, little has been said regarding the criteria a court should use to weigh the probative value of expert evidence. This is because, while expert evidence is important evidence, it is nevertheless merely part of the evidence which a court has to take into account. [Huntley (also known as Hopkins) (a protected party by his litigation friend, McClure) v. Simmons [2010] E.W.C.A. Civ 54]. Four consequences flow from this. Firstly, expert evidence does not "trump all other evidence". [Abringer v Ashton {1873} 17 LR Eq 358 at 374]. It is axiomatic that judges are entitled to disagree with an expert witness. Expert evidence should be tested against known facts, as it is the primary factual evidence which is of the greatest importance. It is therefore necessary to ensure that expert evidence is not elevated into a fixed framework or formula, against which actions are then to be rigidly judged with mathematical precision. [Evan Bell, Judicial Assessment of Expert Evidence, Judicial Studies Institute Journal, 2010 Page 55] Secondly, a judge must not consider expert evidence in a vacuum. It should not therefore be "artificially separated" from the rest of the evidence. To do so is a structural failing. [Jakto Transport Ltd. v. Derek Hall [2005] E.W.C.A Civ. 1327] A court's findings will often derive from an interaction of its views on the factual and the expert evidence taken together. The more persuasive elements of the factual evidence will assist the court in forming its views on the expert testimony and vice versa. For example, expert evidence can provide a framework for the consideration of other evidence. Thirdly, where there is conflicting expert opinion, a judge should test it against the background of all the other evidence in the case which they accept in order to decide which expert evidence is

to be preferred. Fourthly, a judge should consider all the evidence in the case, including that of the experts, before making any findings of fact, even provisional ones. [Jakto Transport Ltd. v. Derek Hall [2005] E.W.C.A Civ. 1327] A further criteria for assessing an expert's evidence focuses on the quality of the expert's reasoning. A court should examine each expert's testimony in terms of its rationality and internal consistency in relation to all the evidence presented. In Routestone Ltd. v. Minories Finance Ltd. and Another [Same v. Bird and others [1997] B.C.C. 180] Jacob J. observed that what really mattered in most cases was the reasons given for an expert's opinion, noting that a well-constructed expert report containing opinion evidence sets out both the opinion and the reasons for it. The judge pithily commented "[i]f the reasons stand up the opinion does, if not, not."

A court should not therefore allow an expert merely to present their conclusion without also presenting the analytical process by which they reached that conclusion. Where there is a conflict between experts on a fundamental point, it is the court's task to justify its preference for one over the other by an analysis of the underlying material and of their reasoning". (Emphasis given)

43. The manner of assessing and dealing with an expert opinion/report [whether the report belongs to a surveyor or otherwise] was also elaborated upon by the Supreme Court of Kenya [the apex court] in the case of Attorney General v Zinj Limited [2021] KESC 23 (KLR) where the court stated and held as hereunder:

> In granting special damages, the trial judge was guided by the Valuation Report tabled by the respondent. In the absence of a contrary report on record, we have no basis upon which to interfere with the award. Even if there had been one such other report, our jurisdiction to interfere would still have been largely circumscribed, unless the award had clearly ignored the fundamental principles of valuation as demonstrated by the counter-report.

44. Premised on the ratio highlighted in the decision [supra], there is no gainsaying that the learned trial magistrate was off tangent, when same [trial court] constituted himself as [sic] the counsel for the respondent and started raising evidential issues, which were neither raised nor canvassed during the cross-examination.

45. Moreover, it was not open for the learned trial magistrate to purport to ignore and or disregard the survey report [exhibit P12], whose production was never contested and or challenged.

46. I am at pains to understand the basis of the exposition by the learned trial magistrate, whose details are reproduced herein below:

> " ThePplaintiff was only allowed to call the makers of the documents that were marked, being the letter from the Ministry of Lands on the determination of the ground position for plot numbers CD565; CD595 and C2D23, letter from the chief officer lands and physical planning to the defendant over the ownership of plot number C2D23; and the demand letter to the defendant. Strangely, however, the plaintiff counsel then proceeded to engage the county surveyor and the physical planner who purportedly visited the scene and prepared their respective reports. The surveyor's report is dated 27th January 2023. This was four days after the testimony of the plaintiff. how this happened remains a mystery. Further, the physical planner's report is dated 12th October 2023, this was procured mid-way the defence case. The two reports were neither procured by consent of the parties nor an order of the court. The court thus declines to accord any weight to the two reports. In any event, the reports do not demonstrate any impartiality. The plaintiff effectively abandoned

calling the makers of the marked documents [PMFi, PMFi 2 and PMFi 3] and changed his evidence mid-way. This cannot be allowed to go unnoticed.

47. To my mind the learned trial magistrate appears to have been incensed and or unhappy with something. However, in the course of expressing sic his unhappiness, same threw himself into the arena of controversy and forgot that his was an exercise to be undertaken with impartiality and on the basis of *the Constitution*; and the relevant laws.

48. Yet again, the discourse whose details has been highlighted herein before depicts the trial court as one who abandoned the judicial calling and disregarded the conventional practice and more particularly, the *evidence act*, Cap 80 Laws of Kenya. Surely, a court of law cannot close its eye[s] to the evidence on record unless the evidence was procured contrary to the established principles of the Law.

49. Other than the hypothetical position, underpinned by the excerpt which has been reproduced herein before, the learned trial magistrate also appears to have disregarded the fact that National Land Commission was operationalized vide the *National Land Commission Act* 2012, which act was assented to and became operational on the 6th May 2012.

50. Despite the foregoing, the learned trial magistrate is on record criticizing the letter of allotment dated and issued on the 11th November 2011, in favour of the appellant and terming same a fraud, merely because the letter of allotment was not [sic] issued by National Land Commission.

51. Quite clearly, the learned trial magistrate misapprehended the legal import and tenor of the provisions of the *National Land Commission Act*, 2012 and more particularly, when National Land Commission was constituted and operationalized.

52. Inevitably, the position taken by the learned trial magistrate that the letter of allotment dated 11th November 2011, ought to have been issued and signed by National Land Commission constitutes a serious error of law.

53. For coherence, National Land Commission had not been operationalized as at 11th November 2011. In any event, there is no gainsaying that the County Council of Isiolo [now defunct] was in existence and at the point in time, same was vested with the mandate pursuant to section 53 of the Trust *Land Act* to allocate and or sanction the allocation of land by the commission of land.

54. Without belabouring the point, I hold the humble view that the judgment/decision of the learned trial magistrate is laced and coloured with serious errors of commission and omission. For good measure, the errors include the manner in which the learned trial magistrate degenerated into the arena of controversy and [sic] constituted himself as the defence counsel, which ought not to have been the case.

55. Additionally, the error of principle is also discernible by the holding that the letter of allotment issued on the 11th November 2011, ought to have been issued by National Land Commission, which had not been operationalized at the material point in time.

56. Arising from the foregoing, I come to the conclusion that the learned trial magistrate failed to correctly evaluate and appraise the evidence [both oral and documentary] that was tendered by the appellant. In this regard, the learned trial magistrate therefore missed a critical point, which would have enabled same [trial court] to come to the conclusion that the appellant had duly proved his case.

57. On my own, I am persuaded that the appellant placed credible evidence before the court to prove and demonstrate that same [appellant] was the legitimate owner and or propriety of the suit property.

58. Before departing from this issue, it is also important to point out that even though the respondent had contended that same [respondent] is the proprietor of plot 1489, it suffices to state that the respondent

did not produce any legal document to underpin his claim. Instructively, the only documents that were tendered by the respondent are a copy of the application for PDP dated 4th April 2017 and a receipt for payment of rent.

59. Be that as it may, it is worthy to underscore that the application for part development plan [exhibit D1] did not advert to and or reference any plot number. In addition, it is also evident that the said exhibits are substantially blank. Moreover, even though the chief officer – lands is purported to have signed same, no date is shown and or reflected on the face thereof.

60. Other than the foregoing, it is worthy to recall and reiterate that an application for part development plan [PDP], which is not even the PDP itself is such a preliminary document, which cannot underpin a claim for ownership/rights/interests over any land or at all.

61. Flowing from the foregoing analysis and appraisal, it is my finding and holding that the appellant discharged his burden of proof. For good measure, it is imperative to underscore that the burden was to be discharged on a preponderance of probabilities.

> [see Agnes Nyambura Munga vs Lita Violet Shephad [2018] eKLR; Daniel Toroitich Arap Moi vs Mwangi Stephen Murithi [2014] eKLR and Dr. Samson Gwer & 5 others vs KEMRI (2020) eKLR, respectively.

62. Regarding the second issue, namely; whether the appellant was entitled to the reliefs sought, it is apposite to state and underscore that having found and held that the appellant is the proprietor of the suit property, it follows as a matter of course that the appellant was entitled to the requisite protection under the law.

63. Whereas the appellant has not procured and obtained registration of the suit property, there is no gainsaying that the documentation espoused by the appellant underscores the legitimate rights of the appellant to the suit property. In any event, the moment the suit plot was allocated to the appellant, same [suit plot] ceased to be available for allocation and or alienation to any other person, the respondent not excepted.

64. To this end, it suffices to take cognizance of the decision in the case of Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others [2019] KECA 157 (KLR) where the court stated as hereunder;

> 36. On our part, we have considered the evidence on record on the two letters of allotment. The evidence on record shows that the first allotment to the suit property was to Mr. Joseph Muturi Muthurania. In Benja Properties Limited -v- Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, this Court stated that an allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.
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> 37. In the instant case, the second letter of allotment to the appellant did not attach in rem to any land since there was no parcel upon which the allotment could attach. The first allotment to Mr. Joseph Muturi Muturania effectively made the suit property unavailable for allotment to the appellant the more when the first allottee had fulfilled the terms and conditions of the allotment.

65. I am convicted that the appellant was entitled to the reliefs sought at the foot of the Plaint dated 28th July 2021. To this end, I am minded to and do grant the orders of permanent injunction restraining the defendant either by himself, agents, servants, employees and or anyone acting under the defendant from entering onto, remaining on or otherwise dealing with the suit plot.

Final Disposition:

66. For the reasons, [which have been highlighted in the body of the judgment], I come to the conclusion that the appellant herein has established and proved that the appeal beforehand was/is meritorious.

67. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder:

    i. The Appeal be and is hereby allowed.

    ii. The Judgment and decree of the trial magistrate dated 16th January 2024 be and is hereby set aside.

    iii. Judgment be and is hereby entered in favour of the Appellant and in particular, an order of permanent injunction is hereby issued restraining the defendant either by himself, agents, servants, employees and or anyone acting under the defendant from entering onto, remaining on or otherwise dealing with the suit plot.

    iv. Costs of the appeal be and are hereby awarded to the Appellant.

    v. The Appellant be and is hereby awarded the costs in the subordinate court.

68. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 13TH DAY OF FEBRUARY 2025.

OGUTTU MBOYA

JUDGE.

In the presence of

Mutuma Court Assistant

Mr. Kelvin Nyenyire for Appellant.

Ms Gitari for the Respondent.