



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Ikahu (Civil Appeal E192 of 2021)
[2023] KEHC 1582 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E192 OF 2021
LN MUGAMBI, J
FEBRUARY 28, 2023**

BETWEEN

FRANCIS KINYANJUI MWANGI APPELLANT

AND

SARAFINA WANJIRU IKAHU RESPONDENT

*(An appeal from the judgment of the Chief Magistrate's Court
at Thika (Ekhubi B.M, PM) in civil suit no.966 of 2013)*

RULING

1. This is an appeal arising from the decision of the trial magistrate sitting at the Chief Magistrate's court, Thika.
2. The memorandum of appeal raises several grounds of appeal, the main grounds being as follows:
 - 3) That the learned trial magistrate erred in law and in fact in finding that the respondent had adduced evidence to show that the appellant was not registered as the owner of Land Parcel No Ruiru/Kiu Block 12/329 and that the respondent's title was prima facie evidence of her proprietorship of land contrary to the facts and relevant law.
 - 4) That the learned trial magistrate erred in law and fact in disregarding sanctity of Certificate of Ownership of land parcel Ruiru/Kiu Block 12/329 and upholding the respondent's Certificate of title.
 - 5) That the learned trial magistrate erred in law in disregarding the evidence that the appellant had purchased parcel of land known as Ruiru/Kiu Block 12/329 and paid for purchase price from Celestine Mwangi Kinuthia thus respondent had no claim to the suit land against the appellant whatsoever.



- 6) The land learned trial magistrate erred in fact finding that the suit property belonged to the respondent and that the appellant had ingressed into the respondent's land without authority, consent or permission.
 - 7) That learned trial magistrate erred in law and in fact in failing to uphold the principle of first in time and failing to investigate the root title which would have been rule in favour of the appellant.
 - 8) That the learned trial magistrate erred in law and in fact in failing to find that the respondent claim, if any, did not lie with the appellant but land buying company which sold the land to both the appellant and respondent and which company's directorship dispute was pending hearing and final determination in Milimani HCCC No 170 of 2012.
3. I have also examined the original plaint before the lower court which initiated this suit against the appellant (then defendant). The prayers in the plaint dated November 15, 2013 by the respondent(then plaintiff) were as follows:-
- i. An order directing the defendant to remove the building materials deposited and structures erected on plaintiff's parcel of land known as Ruiru/Kiu Block 12/329 and giving the possession thereof to the plaintiff.
 - ii. An order evicting the defendant from Ruiru/Kiu Block 12/329 and OCS Githunguri Police station to enforce the same.
 - iii. A permanent injunction to restrain the defendant by himself his servants or agents or otherwise howsoever from entering into, removing or continuing in occupation of and/or destroying building materials, erecting any structure or any other way interfering with plaintiff's ownership and possession of parcel of land known a Ruiru/Kiu Block 12/327.
 - iv. Damages for illegal trespass.
 - v. Costs of the suit.
 - vi. Any other relief that this honourable Court may deem fit to grant.
4. The decree issued by the lower court granted all the above prayers plus general damages for trespass assessed by the court at Kshs 200,000/= .
5. I have extensively set out the nature of the claim that was presented before the lower court for determination to enable me address the issue of jurisdiction in so far as this Court is concerned.
6. Section 3A of the Civil Procedure Act empowers this Court to make such orders as it deems necessary for the ends of justice to be met or to prevent abuse of the process of the court.
7. This means therefore that if it becomes obvious that the court should take a particular action in order to meet the ends of justice or protect the process of the court from abuse, the court may take that necessary action or step even on its own accord without waiting to be moved by or the parties.
8. After examining this appeal keenly, I am of the firm view that the issues herein relate to either use of land, occupation of land and/or title to land.



9. The question then becomes, does this court have jurisdiction to deal with these matters? Section 162(2) & (3) of the Constitution provides: -

- “2. Parliament shall establish courts with the status of High Court to hear and determine disputes relating to: -
 - a. Employment and labour relations; and
 - b. Environment and the use and occupation of, and to land.
3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”

10. In relation to land and Environment Court, the relevant statute is the Environment and Land Court Act Section 13 which confers jurisdiction to the Environment and Land Court Act as hereunder:-

- “1. The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Section 162(2) of the Constitution and with the provisions of this Act or any other law applicable relating to environment and land.
2. In exercise of its jurisdiction under Article 162(2) of the Constitution, the Court shall have the powers to determine disputes: -
 - a. Relating to environmental planning and protection, climate issues, land use, planning, title, tenure boundaries, rates, rents, valuations, mining, minerals and other natural resources.
 - b. Relating to compulsory acquisition of land
 - c. Relating to land administration and management
 - d. Relating to public, private, community land and contracts, chose in action or other interests granting any enforceable interests in land.
 - e. Any other dispute relating to environment and land.
3. Nothing in this Act shall preclude the court from hearing and determining application for redress of denial, violation or infringement or for threat to rights or fundamental freedom relating to clean and healthy environment under Article 42, 69 and 70 of the Constitution.
4. In addition to matters referred to in sub-section 1 and 2, the court shall exercise appellate jurisdiction over decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the court.
5.
6.
7. In exercise of its jurisdiction under this Act, the court shall have power to make any order and grant any relief as the court may deem fit to grant, including-
 - a. Interim or permanent preservation orders including injunctions



- b. Prerogative orders
- c. Award of damages
- d. Compensation
- e. Specific performance
- f. Restitution
- g. Declaration
- h. costs"

11. Matters relating to ownership, occupation and use of land are thus set apart for the Land and Environment Court by both the Constitution and the Statute as shown above.
12. In fact, Constitution under Article 165(5) clearly ousts the jurisdiction of the High Court in matters that squarely fall within the competence of the special courts of equal status, namely ELC and ERLC.
13. The Supreme Court addressed the mandate of special courts vis a vis the High Court in the case of Karisa Chengo & 3 others v Republic (2017) eKLR where it held as follows:-

“ ... Article 162(1) categorises the ELC and ELRC among Superior Courts and it may be inferred, then, that drafters of Constitution intended to delineate the roles of ELC and ELRC, for purposes of specialisation and conferring equality of status of the High Court and the new category of courts ... The three are different and autonomous courts and exercise different and distinct jurisdictions ... it follows the Judges appointed to those courts exercise jurisdictions depending upon particular court in which they are appointed...”
14. Once a court is satisfied that it has no jurisdiction in a matter, then it has no business whatsoever in that suit/dispute. As is often said, it must down its’ tools. Nyarangi, JA in Owners Of Motor Vessel Lilian v Caltex Oil (1989) KLR commenting on effect of lack of jurisdiction remarked:

“Jurisdiction is everything. Without it, the court has no jurisdiction, there would be no basis for continuation of the proceedings.”
15. In this matter I do not require persuasion to determine that I have no jurisdiction. It is manifest. None of the parties raised it but as was pointed out in Jared Salim vs Yusuf Abdulabi & Anor (2018) eKLR.

“jurisdiction either exists or it does not. Neither can it be acquired or granted by consent of the parties.”
16. The upshot is that this Court lacks jurisdiction to dispose of this appeal.
17. The inevitable result therefore is that this appeal is struck out.
18. Each party shall bear its own costs of this appeal.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF FEBRUARY, 2023.

L.N. MUGAMBI

JUDGE

In the presence of: -



Coram:

Court Assistant- Annette

Appellant: -

Respondent: -

Advocate for the Appellant-

Advocate for the Respondent-

COURT

To be transmitted digitally by the Deputy Registrar to the Parties Advocates on record through their respective email addresses.

L.N. MUGAMBI

JUDGE

