



REPUBLIC OF KENYA



Njoroge v Ngata (Civil Appeal E121 of 2021) [2022] KEHC 10680 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 10680 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU**

CIVIL APPEAL E121 OF 2021

MM KASANGO, J

MAY 26, 2022

BETWEEN

MARY WANJIRA NJOROGE APPELLANT

AND

JACINTA MUGURE NGATA RESPONDENT

*(An appeal from the judgment of the Chief Magistrate's Court at Thika
(J.M. Nang'ea, CM) dated 4th June, 2021 in Civil Suit No. 556 of 2016)*

RULING

1. Mary Wanjira Njoroge, the appellant filed this appeal against the decision of Chief Magistrate J.M. Nang'ea in Thika C.M. Civil Case No. 556 of 2016. The judgment appealed was delivered on 4th June, 2021.
2. The appellant filed an application dated 30th June, 2021. By that application the appellant seeks stay of execution pending the hearing and determination of the appeal of the aforesaid Thika Chief Magistrate's court.
3. The Chief Magistrate in his considered judgment set out the issue for determination as follows:-

Whether the plaintiff is the lawful owner of the suit land on a balance of probability.
4. From the above issue, it is easy to perceive that the subject matter before the Chief Magistrate was land and what was required to be determined was who was the lawful owner of that land. Article 165(5) of *the Constitution* provides that the High Court shall not have jurisdiction of matters within the jurisdiction of the courts contemplated in Article 162(2). Article 162(2) required Parliament to establish courts of equal status with the High Court which would determine disputes relating to the



environment and use and occupation and title to land. Parliament enacted the *Environment and Land Court Act* No. 19 of 2011 (ELC Act). Section 13(1) of that Act provides:-

“ 13

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162 (2) (b) of *the Constitution*, the Court shall have power to hear and 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.”

5. I highlighted above the issue before the Chief Magistrate. Further, the appellant by her ground number 1 of appeal stated thus:-

“ That the Honourable learned magistrate erred in law and fact by failing to appreciate that the respondent acquired ownership of plot NO. L.R.10090/102 by way of transmission.”

6. The issue identified by the Chief Magistrate and the above reproduced above and the ground of appeal clearly shows that what the appellant seeks this Court to do in determining this appeal is to overturn the judgment of the chief magistrate which found the subject plot belonged to the respondent. This Court is not possessed with jurisdiction to determine the ownership and occupation of the subject property. That jurisdiction lies in the court contemplated in Article 162(2) and now in existence by virtue of the ELC Act. The appellant filed her appeal before the wrong court.
7. I also find that the appeal filed by the appellant hereof was filed one day late than the day stated under Section 79G of the *Civil Procedure Act*.
8. It is because of the above findings that the Notice of Motion dated 30th June, 2021 fails. It is dismissed with costs to the respondent. The interim orders of stay granted by this Court are hereby vacated.
9. At the reading of this Ruling a mention date will be issued for the appellant to inform this Court what she intends to do with this appeal.

RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Appellant: - No appearance

For Respondent :- No appearance

Ruling delivered virtually.

MARY KASANGO

JUDGE

