



**Njagi v Njeru & 2 others (Environment and Land Appeal 6 of 2022)
[2023] KEELC 22549 (KLR) (20 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 22549 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL 6 OF 2022
A KANIARU, J
NOVEMBER 20, 2023
(FORMERLY EMBU HCCA 33/2019)**

BETWEEN

MICHAEL GICOVI NJAGI APPELLANT

AND

FELISTA GATHONI NJERU 1ST RESPONDENT

JOSEPH NJERU MUKUTHI 2ND RESPONDENT

**J.P. NANDI ACTING RESIDENT MAGISTRATE RUNYENJES 3RD
RESPONDENT**

*(Being an appeal from the judgement and decree of the Senior Principal Magistrate
at Embu Hon. T. Kwambai dated 17th June, 2019 in Embu CMCC No. 19 of 2017)*

JUDGMENT

1. The appeal herein is indicated on the face of it to be against “the judgement and decree of the honourable T. Kwambai Senior Principal Magistrate at Embu issued on June 17, 2019 in Embu High Court Mis. ELC Application No. 19 of 2017. When the matter came up in court on 15/2/2023, the court appreciated that the appellant was not represented by counsel. The respondents have a counsel on record. For that reason it inquired of him if he could file written submissions. The appellant indicated that he could file submissions and as the respondents were represented by counsel, the court directed that submissions be filed. By 22/6/2023, everybody had filed submissions and the court gave the date of judgement as 8/11/2023.
2. The time then came to prepare the judgement and upon careful perusal and scrutiny of both the record of appeal and the lower court file, it became impossible to locate the judgement and decree said to be appealed against. It therefore became impossible to prepare the judgement in the circumstances and on



8/11/2023 – which was the date of judgment given earlier by the court – the court asked the appellant to locate for it in the record of appeal what he was appealing against. This was done in open court.

3. At this juncture, it is useful to point out that the matter has two records of appeal – one filed on 7/3/2022 and another amended one filed on 12/10/2022. The appellant pointed to the court a certificate of costs at page 239 of the record of appeal filed on 7/3/2022. The same certificate of costs is at page 241 of the amended record of Appeal.
4. The appeal before the court is obviously incompetent. First, the record starts on a misleading note by indicating that it is a judgement and decree that are being appealed. It turns out that it is a certificate of costs which the appellant – Michael Gicovi Njagi – has made the basis of his appeal. The certificate of costs relates to costs assessed at 123,600. The grounds of appeal make reference to costs amounting 123,000 and it seems reasonably clear that the appellant is contesting the taxed costs indicated on the certificate of costs that he showed the court. But the grounds continue to raise many other issues that are difficult, infact even impossible, to relate to the contents of the record of appeal.
5. There is a procedure for contesting taxed costs. What the appellant should have filed is obviously a reference, not an appeal.

Rule 11 of the *Advocates (Remuneration) Order* states as follows:

- (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision given notice in writing to the taxing officer of the items of taxation to which he objects.
- (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipts of the reasons apply to a judge by chamber summons, which shall be served on all parties concerned, setting out the grounds for this objection.
- (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the court of Appeal.

6. It appears clear that the appellant herein is complaining about costs but he failed to follow the procedure provided by law. The appellant was not supposed to file an appeal. He was supposed to follow the procedure prescribed in the provision that the court has already set out. In other words, the court expected to see a chamber summons in which the grounds of objection, or complaint if you like, would be clearly spelt out.
7. But even if the court were minded to treat what is before it as acceptable, there would still be serious problems. As already pointed out, the appeal is expressly stated to be against a judgement and a decree. But it turned out to be an appeal against a certificate of costs. Further, the memorandum of appeal first sets out four (4) grounds before asking that the appeal be allowed. After that, there is a fresh start in the same memorandum setting out another nine (9) grounds of appeal. And after setting out the nine (9) grounds of appeal, the appellant does not ask for any other orders. What is before the court therefore is a strange and confusing memorandum of appeal.
8. But that is not all. The record of appeal is poorly or shoddily done. For instance, the certificate of costs said to be appealed against is at page 239 of the record of appeal filed on 7/3/2022. In the index on the same record, it is indicated to be at page 248. It is important to point out that the record as compiled does not even have page 248. The entire record only reaches up to page 239.



9. Further, in the record of appeal filed on 12/10/2022 the same certificate of costs is at page 241. In the index on the same record, it is indicated to be at page 248. Additionally, this is the record said to be amended but is not clear what the appellant was amending.
10. It was pointed out earlier that the matter was to be canvassed by way of written submissions. The appellant's submissions were filed on 20/4/2023. The submissions are completely unhelpful. As filed, the submissions seem to be contesting the merits of the cases that he lost in other courts. The issue of the costs being contested is not addressed at all.
11. The submissions of 1st and 2nd respondents were filed on 17/4/2023 while those of the 3rd respondent were filed on 19/6/2023. The submissions of the 1st and 2nd respondents point out clearly that:

“it's unclear what the appellant is appealing from ...”.

His record of appeal is described as:

“unclear and mixed up ...”

I very much agree.

12. The 3rd respondents submissions allege that the appeal herein was filed out of time. This observation is not right in my view. The alleged judgement and decree said to be appealed against were indicated to be issued on 17/6/2019. The original memorandum of appeal on court record was filed on 26/6/2019. On this point, I don't agree with the respondents that the appeal was filed out of time. But I am generally in agreement with the respondents concerning other shortcomings relating to the appeal.
13. When all is considered, the matter before me is not one that can succeed. I have already pointed out some of the shortcomings in the matter. I may lastly add that the appeal as filed lacks clarity of expression. The upshot is that the appeal herein is for dismissal and I hereby dismiss it with costs to the respondents.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 20TH DAY OF NOVEMBER, 2023.

A.K. KANIARU

JUDGE

In the presence of M/s Wamatu for Kiongo for 3rd Respondent and in the absence of other counsels.

