



**Njeru v Nguu (Environment and Land Appeal E004 of 2021)
[2023] KEELC 22550 (KLR) (14 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 22550 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E004 OF 2021
A KANIARU, J
NOVEMBER 14, 2023**

BETWEEN

GUSTAGIANA WAMUGO NJERU APPELLANT

AND

EUGINIA WANGAI NGUU RESPONDENT

(Being an appeal from the judgement of Hon. L.K Mwendwa on 17th May 2018 in Runyenjes ELC 103 of 2015 and the ruling for application for review delivered on 23rd March 2021)

JUDGMENT

1. This appeal arose from the lower court suit at Runyenjes filed on 4/12/2015 vide a plaint of even date. The appeal is expressed to be against “the judgement of Hon. L.K. Mwenda on 17th May 2018 in Runyenjes ELC 103 of 2015 and the ruling for application for review delivered on 23rd March 2021.” The plaintiff in the lower court suit – Euginia Wangai Nguu – is the respondent in this appeal while the defendant – Gustagiana Wamugo Njeru – is the appellant. The appellant had been sued in the lower court for placing a restriction on Land parcel No. Gaturi/Nembure/1945, which the respondent wanted removed. The appellant had filed a defence opposing the suit and pleading, inter alia, that the land in dispute belonged to her late husband and that the respondent “used illegal means” to be registered as owner.
2. It appears clear that the suit in the lower court was heard and the appellant, though having failed a defence, did not participate in the hearing. A judgement was delivered on 17/5/2018 wherein the court ordered removal of the restriction placed on the land register by the appellant. Records show that the appellant subsequently filed an application – a Notice of motion dated 23/7/2018 filed on the same date – by which orders of stay and setting aside of the judgement, among others, were asked for. The court entertained the application and vide a ruling delivered on 12/11/2019, the judgement was set aside. The matter was heard yet again and this time the appellant participated. Then another judgment was delivered on 23/3/2021 and the restriction was still ordered removed.



3. The appeal before this court was triggered by that outcome and the appellant filed the following nine (9) grounds of appeal:
 1. That the learned trial magistrate erred in law and in fact in not appreciating that the plaintiffs (*sic*) were just land grapers (*sic*) and the honourable court was being used to thump prints (*sic*) their wrongful action.
 2. The learned trial magistrate erred in law and in fact by failing to appreciate that the plaintiffs were not heirs/children's (*sic*) of the deceased Tomas Njue Kamaitha.
 3. That the learned trial magistrate erred in law and in fact by not accepting that the deceased Thomas Njue Kamaitha succession has never been filed in any court in the Republic of Kenya.
 4. That the learned trial magistrate and in fact by not appreciating that the letters of administration used to transfer the land Gaturi/Nembure/1945 were forged and not issued in the high court at Embu as indicated by the plaintiffs.
 5. That the learned trial magistrate erred in law and in fact by failing to consider that the succession cause No. 400 of 2007 was a revocation of a succession done in Nairobi and the same relate to the estate of Lawrence Muchiri Ndwiga (Deceased) and no (*sic*) Thomas Njue Kamaitha despite the defendants raising the alarm through an application filed in the same court.
 6. That the learned trial magistrate erred in law and in fact by not appreciating that the defendant was unable to file due application for revocation or annulment of the said grant for succession cause No. 400 of 2007 referred to the estate of Lawrence Muchiri Ndwiga and petition by Joel Gangara and not Thomas Njue Kamaitha's estate.
 7. That the learned trial magistrate erred in law and infact by not appreciating that the plaintiff could not produce the letters of administration despite demand by the defendant nor did they find the same list of documents (*sic*) not finding the same in a list of documents (*sic*).
 8. That the learned trial magistrate erred in law and in don't (*sic*) by don't appreciating that the plaintiff could not produce any witness in respect of their claim, that they were children/heirs of the deceased Thomas Njue Kamaitha.
 9. That the learned trial magistrate erred in law and fact by not appreciating that the plaintiff despite claiming that they were heirs of the deceased a fact (*sic*) did not attend burial of their purported father nor did they know where he was buried as the statement of the plaintiff which was properly in court indicates.
4. The appellant asked that the appeal be allowed, that judgement of Hon. L.K. Mwendwa delivered on 17/5/2015 and the ruling of the application delivered on 26/3/2021 be set aside or quashed, and finally that the appellant be awarded costs of this appeal and costs of the lower court suit.
5. The appeal was canvassed through submissions. From the outset, I would wish to state that there is no competent appeal before me. To begin with, the appellant is appealing against two decisions at the same time. One, a judgement, was said to have been delivered on 17/5/2018. The second, a ruling, was said to have been delivered on 23/3/2021. As can be seen clearly from the stated dates of delivery, the two decisions seem to have been delivered three (3) years apart. It is trite – see Section 79 (g) of the [Civil Procedure Act](#) (Cap. 21) – that an appeal is supposed to be filed within thirty (30) days after making of a decision. The appeal against the judgement delivered on 17/5/2018 came about three (3) years after the judgement was delivered. In law, such an appeal can not be filed without leave of the court. An



application seeking leave to file an appeal out of time needed to be filed, canvassed, and determined. This was not done.

6. It is also clear that that same judgment could not even be competently appealed against. It was the first judgement to be delivered by the lower court and records clearly show that he appellant herein asked that it be set aside and that was done. It is therefore a judgement which in eye of the law does not exist. It counts for nothing and no sound legal action can be taken based on that judgment. In fact records show that another judgment was delivered on 23/3/2021. This is the judgement that could competently be appealed against but the appellant decided to go for the first judgment. This was a serious tactical blunder.
7. Further, the record does not have a ruling delivered on 23/3/2021. What was delivered on that date is the second judgment in the lower court. That judgment was delivered by Hon. Gichimu at Runyenjes. There is also no application for review on which a ruling was delivered. What is there is actually an application for stay of execution and setting aside of the first lower court judgement and the ruling on that application was delivered on 12/11/2019.
8. From all this, it is clear that the appeal as filed is grossly incompetent. I may add that the grounds of appeal are supposed to be decision – specific. Where there is only one decision being appealed against, specificity is normally not a problem as all grounds can be assumed to be making reference to that one decision. But the appellant here is appealing against two alleged decisions and the focus of his grounds is not clear which particular decision – whether judgment or ruling – is being referred to. I may also add that some grounds are wanting in clarity.
9. I note that both sides have counsel on record. I am not so sure that counsel for the appellant did a good job for his client. The appellant filed the grounds of appeal in person. The lack of clarity noticeable in some grounds can probably be attributed to the fact that the appellant was not represented. But when counsel came on record for the appellant, the due diligence expected of him would require that he should have looked at the grounds of appeal afresh with a view to rectifying any shortcomings. It is clear to me that the appellant’s counsel did not do that. Had he done so, there would not be an incompetent appeal before this court.
10. The upshot, in light of the foregoing, is that the appeal before me is for dismissal and I hereby dismiss the same with costs to the respondent.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 14TH DAY OF NOVEMBER, 2023.

In the presence of Mugambi Njeru for respondent and Waititu for Gathii Irungu for Appellant.

Interpretation: English/Kiswahili

A.K. KANIARU

JUDGE

14/11/2023

