



**Kariuki (Suing as representative of Samuel Kariuki Chege) &
8 others v Mwangi & 2 others (Environment and Land Appeal
E090 of 2022) [2023] KEELC 22213 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E090 OF 2022
BM EBOSO, J
DECEMBER 7, 2023**

BETWEEN

**DAVID CHEGE KARIUKI (SUING AS REPRESENTATIVE OF SAMUEL
KARIUKI CHEGE) 1ST APPELLANT
EDWARD WANJAGI NDUNGU 2ND APPELLANT
HENRY KIMANI WATHIRU 3RD APPELLANT
LILIAN WANJA MBURU 4TH APPELLANT
VIRGINIA NJERI NDUNGU 5TH APPELLANT
PETER KAMAU THUO 6TH APPELLANT
MARGARET WARURUGU KANYIRI 7TH APPELLANT
MATIAS NDONGA KABIRU 8TH APPELLANT
JOHN MURIITHI MBARIRE 9TH APPELLANT**

AND

**NG'ANG'A MWANGI 1ST RESPONDENT
DISTRICT SURVEY RUIRU 2ND RESPONDENT
DISTRICT LAND REGISTRAR, RUIRU 3RD RESPONDENT**

RULING

1. Falling for determination in this ruling is the notice of motion dated 19/4/2023, brought by the appellants. Through the motion, the appellants seek the following verbatim orders:



- a. Spent
 - b. That this honourable court be pleased to admit the Judgment of Hon Lady Justice Kemei J delivered on 13th February, 2023 as part of the appellants/ applicants submissions.
 - c. That costs of this application be in the cause.
2. The application is premised on the grounds outlined in the motion and in the supporting affidavit sworn on 19/4/2023 by Prof. Kiama Wangai. The appellants contend that the subject Judgment is relevant to the appeal because Kemei J pronounced herself on the question of ownership of land parcel number Ruiru/ Kiu Block 2/ (Githunguri)/ 3877, which is the subject matter in this appeal. They add that the said Judgment was not available when trial took place in the lower court. The respondents neither filed a response to the application nor attended the hearing of the application on 9/10/2023.
 3. I have reflected on the application as framed. The applicants invite this court to admit the Judgment rendered by Kemei J on 13/2/2023 “as part of the appellants’ submissions”. An appeal in this court is determined on the basis of the record of appeal, the original record of the lower court, and the legal arguments [submissions] that parties tender. The record of appeal filed in this court is supposed to be a replica of the original record of the trial court in terms of pleadings, proceedings, evidence and determination.
 4. The Judgment which the appellants want to be admitted as submissions is not part of the appellants’ legal arguments [submissions]. It is additional evidence which the appellants want the court to look at and consider. It can therefore only be admitted as additional evidence under section 78(1)(d) of the Civil Procedure Act as read together with Order 42 rules 27, 28 and 29 of the Civil Procedure Rules. That, however, is not the jurisdiction which the appellants have invited the court to exercise.
 5. For the above reasons, the court finds that the notice of motion dated 19/4/2023 is incompetent. The motion is hereby struck out. The appellants have the liberty to properly invoke the court’s jurisdiction under section 78(1)(d) of the Civil Procedure Act and order 42 rules 27, 28 and 29 of the Civil Procedure Rules. Costs of the application shall be in the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 7TH DAY OF DECEMBER 2023

B M EBOSO

JUDGE

In the presence of:

Prof Wangai for the Appellants

Court Assistant: Dominic

