



REPUBLIC OF KENYA



**Syongoh v Syongoh & another (Environment and Land Appeal
E013 of 2021) [2023] KEELC 22110 (KLR) (5 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22110 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E013 OF 2021
GMA ONGONDO, J
DECEMBER 5, 2023**

BETWEEN

JATO LUGONZI NYARAMBE SYONGOHO APPELLANT

AND

GRACE AKUMU SYONGOHO 1ST RESPONDENT

KENNEDY ODERO SYONGOHO 2ND RESPONDENT

(An Appeal from the Judgment of the Honourable Nichodemus N. Moseti (SRM) delivered on 27th October 2021 in Mbita SRMC Environment and Land Case No. E006 of 2021; Jato Lugonzi Nyarambe Syongoh versus Grace Akumu Syongoh and Kennedy Odero Syongoh)

JUDGMENT

1. The instant appeal was ignited by the judgment of the trial court rendered on 27th October 2021 where the learned trial magistrate dismissed the plaintiff/appellant's suit initiated by a plaint dated 26th February 2021 with no orders as to costs.
2. On 29th November 2021, the appellant through Juliet Dima & Associates mounted the appeal by way of a memorandum of appeal dated 23rd November 2021 based on the following grounds;
 - a. That the learned magistrate erred in law and in fact that the land parcel in dispute was subject to the [Land Consolidation Act](#) Cap 28, Laws of Kenya.
 - b. That the learned magistrate erred in law and in fact in finding that the land parcel the subject of the litigation was still under adjudication whereas the evidence before him clearly confirmed otherwise.
 - c. That the learned magistrate erred in law and in fact in finding that he lacked jurisdiction to grant the prayers sought in the suit.



- d. That the learned magistrate erred in fact in finding that exhibit number PExhibit 1 only related to parcel number 160 Uterere Adjudication section and not parcel number 159 (The parcel land in dispute herein).
3. Thus, the appellant prays that the appeal be allowed, the said judgment and decree be set aside and in their place, an order be made allowing the appellant's prayers in the plaint dated 26th February 2021.
 4. On 27th July 2023, this court directed that the appeal be heard by written submissions.
 5. It must be noted that the appellant's counsel as well as respondents duly notified, failed to file submissions in this appeal.
 6. The appellant filed the original suit by way of a plaint dated 26th February 2021 where he sought, inter alia, a permanent injunction, an order of eviction against the 1st and 2nd respondents over the parcel land in dispute and other further relief that the court deemed just and fit to grant. In a nutshell, the appellant asserted that he was the son of one Hellen Adel Syongoh (Deceased) who until her death was the registered proprietor and or beneficial owner of the parcel land in dispute. That he was a beneficiary and the legal representative of the estate of the deceased. That the respondents trespassed into the parcel of land in dispute thus, precipitating the suit.
 7. Notably, the learned trial magistrate observed in the impugned judgment that the 1st and 2nd respondents were duly served but failed to file a statement of defence. So, the suit was not defended thus, hearing of the same was by formal proof as per the trial court's proceedings of 8th September 2021.
 8. Thus, Wanzala Steve Womwaga (PW1) testified that he had a power of attorney to represent the plaintiff/appellant and relied on his statement as part of his evidence in chief. Further, he relied on the following documents; a certified copy of land adjudication record, a certified land adjudication sketch, death certificate and plaintiff's identity card (PExhibits 1, 2, 3 and 4 respectively).
 9. In his judgment, the learned trial magistrate was of the considered view that the certified land adjudication record and register (PExhibits 1 and 2) relied upon in support of the appellant's claim, did not conclusively prove that the land adjudication officer had determined ownership of the parcel of land in dispute with finality. He stated that PExhibit 1 was in respect of parcel number 160 which shows the land owners as PW1 and Ferdinand Herbert Otero but pointed out the parcel land in dispute. He relied upon the case of *The Owners of Motor Vessel Lilian "S"-vs-Caltex Oil Kenya Ltd* (1989) KLR 1, among other authorities in the judgment.
 10. Moreover, the trial court held that;

“No consent of the adjudication officer was sought and filed with the plaint herein.....I find that this suit was filed before exhausting the mechanisms provided for in the *Land Consolidation Act* Cap 283 laws of Kenya. Hence, this court lacks jurisdiction to grant orders sought.....”
 11. It is borne in mind that the appellate court has the jurisdiction to reconsider the evidence on record, assess it and reach its conclusions and inferences; see *Watt-vs-Thomas* (1947) 1 ALL ER 482, *Kamau-vs-Mungai & Another* (2006) 1 KLR 150.
 12. In that regard, the issues for determination are contained in the grounds of appeal which are condensed to whether;
 - a. The trial court was devoid of jurisdiction over the suit.



- b. Subject to issue (a) above, is the appellant deserving of the orders sought in this appeal?
13. The *Land Consolidation Act* Cap 283 Laws of Kenya is a legislation as regards ascertainment and recording of rights and interests in trust land, and for purposes connected therewith and purposes incidental thereto. Staying of land suits in cases ownership or the existence under native law and custom of any right or interest, is stipulated under Section 8 of the *Act*.
 14. Also, staying of land suits in the adjudication process is provided for under Section 30 (1) of the *Land Adjudication Act* Cap 284 Laws of Kenya. There is an elaborate process in the said Act and adjudication register becomes final under Section 29 (3) of the same *Act* regarding appeals.
 15. In *Halsbury's Laws of England* 4th Edition Volume 9 at page 350, the term "Jurisdiction" means;
"The authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for decision."
 16. It is well settled that jurisdiction is everything. Without it, a court has no power to make one more step. As such, a court of law downs it's tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction; see the case *The Owners of Motor Vessel Lilian "S"*(*supra*).
 17. Further, it is established law that lack of jurisdiction renders a court's jurisdiction void as opposed to being merely voidable; see *Republic-vs-Karisa Chengo and 2 others* (2017) eKLR.
 18. Where there is a clear procedure of redress of any particular grievance, the same to be adhered to since there are good reasons for such special procedures; see *Speaker of National Assembly-vs-Karume* (1992) KLR 21.
 19. In *Geoffrey Muthinja Kabiru & 2 others-vs-Samuel Muguna Henry & 1756 others* (2015) eKLR, the Court of Appeal held;
"...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is postponement of judicial consideration of matters to ensure that a party is first of all diligent..."
 20. It is noted that PExhibit 1 related to parcel No.160 and the land owner thereof was one Ferdinand Herbert Odero. The name of PW1 was cancelled thereon. It was not proof of finality as noted in paragraph 14 hereinabove.
 21. PExhibits 3 and 4 contain the names of the deceased and the plaintiff respectively. It is crystal clear from the instant record that the plaintiff had no *locus standi* in the suit. Indeed, he was not clothed with either limited or full grant of letters of administration in respect of the estate of the deceased as noted in *Rajesh Pranjivan Chudasama-vs-Sailesh Pranjivan Chudasama* (2014) eKLR and Section 2 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, to fortify the allegations in paragraphs 4 and 6 of the plaint to prompt the trial court to even grant any relief sought in the suit.
 22. The learned trial magistrate dismissed the suit after he opined that he had no jurisdiction in respect of the suit. There is a distinction between a dismissed case and a struck out one as held in *Ngoni Matengo Cooperative Marketing Union Ltd-vs-Alimohamed Osman* (1959) EA 577. In the circumstances, he ought to have struck out the suit.



23. Besides, the impugned judgment is sound at law bearing in mind the material placed before him. Therefore, the said judgment is hereby affirmed in entirety save for part of the finding that the suit is

“dismissed with no orders as to costs”

is substituted with

“struck out with no orders as to costs.”

24. Wherefore, this appeal generated by way of a memorandum of appeal dated 23rd November 2021 fails. The same is hereby dismissed with no orders as to costs.

25. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 5TH DAY OF DECEMBER 2023

G. M. A. ONGONDO

JUDGE

Present;

Luanga, Court Assistant

