



Onyolo v Wafula (Suing as a Personal Representative of Petro Masinde Waswa aka Petero Masinde - Deceased) & another (Environment and Land Appeal E035 of 2023) [2025] KEELC 4355 (KLR) (28 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4355 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E035 OF 2023**

**A NYUKURI, J
MAY 28, 2025**

BETWEEN

WILLIAM WESONGA ONYOLO APPELLANT

AND

LUCIANO ANDREW WAFULA (SUING AS A PERSONAL REPRESENTATIVE OF PETRO MASINDE WASWA AKA PETERO MASINDE - DECEASED) 1ST RESPONDENT

GEORGE WEKESA (BEING SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF PETER MASINDE WASWA - DECEASED). 2ND RESPONDENT

(Appeal against the ruling of Hon. G.P Omondi, Principal Magistrate, delivered on 8th November, 2023 in Mumias MCL & E Case No. 37 of 2020)

JUDGMENT

Introduction

1. This appeal is a challenge against the ruling of Hon. G.P Omondi, Principal Magistrate, delivered on 8th November, 2023 in Mumias MCL & E Case No. 37 of 2020. In the impugned ruling, the learned trial magistrate found that he had no pecuniary jurisdiction to hear and determine that case.

Background

2. By a Notice of Motion dated 21st July, 2023, the appellant herein who was then a proposed interested party, sought the following orders;
 - a. That the applicant be admitted as interested parties in the suit.
 - b. That this court be pleased to issue a declaration that it lacks jurisdiction to hear the suit herein.



- c. That this court be pleased to issue a declaration that the orders issued on the 11th February, 2020 are illegal since the court lacked jurisdiction.
 - d. That this Honourable court be pleased to vacate its orders issued on the 11th February, 2020 stating inter alia that transfer of land Title Numbers N. Wanga/Kholera/624 and N. Wanga/Matungu/347 from the deceased Petro Masinde into the name of the deceased Peter Masinde Waswa on 21.11.1980 and 8.2.1980 respectively titles purportedly created from the suit title numbers, purportedly by way of correction of name was fraudulent, illegal, irregular, unlawful and untenable and the same be and is hereby revoked and cancelled and the proposed closure of the said title and all the subsequent titles purportedly created from the suit number N. Wanga/Kholera/624 and N. Wanga/Matungu/347 be and are hereby nullified, revoked and or cancelled so that the original title numbers N. Wanga/Kholera/624 and N. Wanga/Matungu/347 in the name of the deceased Petro Masinde is reverted to, to facilitate succession proceedings in respect of the said Petro Masinde's estate.
 - e. That cost of this application be provided for.
3. The application was premised on the supporting affidavit sworn by William Wesonga Anyolo the applicant. His case was that he purchased the parcel of land known as N. Wanga/Kholera/951, being a subdivision of parcel No. N. Wanga/Kholera/624 from one Isack Watsula Manase, who had purchased it from Peter Masinde Waswa and that the same was transferred and registered in his name on 20th April, 1982. According to the applicant, the value of the suit property was Kshs. 35,000,000/= hence the trial court lacked pecuniary jurisdiction to entertain the same. He argued that the suit fell within the jurisdiction of the Land and Environment Court and not the magistrates court. He maintained that there were sufficient grounds for the court to review its decision. He attached copies of the green card, letter from Assistant chief, two valuation reports and the will of Peter Masinde Waswa.
 4. The application was opposed. Luciano Andrew Wafula, the plaintiff filed a replying affidavit sworn on 4th September, 2023. He stated that the application was incompetent and baseless as the applicant had no capacity to institute the same or be joined to the suit because he was not a member of their family and does not know their names. He maintained that Petro Masinde Waswa also known as Petro Masinde died on 8th May, 1977 and was the father of Peter Masinde Waswa who died on 4th December, 2014. Further that the two are completely different persons and not one and the same person as alleged by the applicant.
 5. According to the respondent, in 1980 Peter Masinde Waswa fraudulently and secretly transferred parcel numbers N. Wanga/Kholera /624 and N. Wanga/Matungu/347 (suit properties) into his name from Petro Masinde who had died in 1977 without carrying out succession proceedings and fraudulently subdivided the said parcels and dealt with the same. He stated that the illegality could only be cured by the right heirs carrying out succession proceedings. He argued that the applicant was dishonest as he had failed to disclose the person who sold him the land and failed to produce the sale agreement.
 6. The respondent maintained that no succession for Peter Masinde Waswa had been done hence the dealing with the deceased property was unlawful. He stated that the valuation of the suit property was without his consent, hence unlawful and that the house shown is not on the suit property. Further that the applicant has another pending dispute with Fredrick Manase Watsula in Mumias SPM MCL & E Case No. 20 of 2019. He argued that the value ascribed to the suit property was fictitious and false and that the correct value was within the pecuniary jurisdiction of the court.



7. Further that the title owned by the applicant is not subject of the suit and therefore there can be no joinder. He also argued that the applicant cannot exhume an already buried matter or set aside the parties' consent. He contended that the applicant will be joined in the succession proceedings once the same are filed and should await the filing of the same. He attached copies of death certificate of Petro Masinde Waswa and Peter Masinde Waswa and valuation reports.
8. The 2nd respondent filed replying affidavit dated 27th September, 2023. He stated that the application was full of falsehoods as Peter Masinde was his biological father and passed on aged 62 years, on 4th December, 2014. Further that Petro Masinde was his grandfather and died on 8th May, 1977 aged 72 years. He insisted that the two are not one and the same person.
9. He further stated that Petro Masinde was the registered proprietor of parcels N. Wanga/Kholera /624 and N. Wanga/Matungu/347. That the two properties are registered in his grandfather's name and that the only way to transfer then to other persons must be through succession. He maintained that he knew that after the demise of his grandfather, his father wrote a false letter to the Land Registrar for change of name indicating that he was Petro Masinde and that his father did not file succession proceedings. He averred that if there are any transfers by his father to third parties regarding the suit properties, the transfer was irregularly obtained and ought to be cancelled and reverted to the original owner so that succession may be carried out.
10. He maintained that the trial court had jurisdiction to hear and determine the suit. He stated that the applicants' valuations failed to take into account that 32 acres of the suit property are in the low land and the value is low and that the houses in the valuation reports are not on the suit properties. That the subsequent valuation by Chrisca Valuers demonstrated that the suit property is Kshs. 15,000,000/= hence the trial court had the requisite jurisdiction. He argued that the applicant had not demonstrated that all procedures were complied with before the land was transferred to his name. He stated that the subdivision of the suit property was unlawful and a nullity. That he was not aware of his alleged father's will. He attached two death certificates, official search and valuation report for parcel No. 624.
11. Upon consideration of the application, replying affidavits and parties' respective submissions, the trial court framed the issue for determination as whether the court had jurisdiction to determine the suit. The trial court found that the defendant attached a report for parcel No. 624 being Kshs. 5.5. million and that there was no valuation for parcel No. 347 from the defendant, yet the only valuation report availed for that parcel is for Kshs. 25,000,000/=. Therefore, the trial court found that as the value of parcel No. 347 was Kshs. 25 millions, the court had no pecuniary jurisdiction to hear and determine the case. From the record, it is clear that the trial court did not make any determination on the appellant's prayers for joinder, declaration that orders of 11th February 2020 were unlawful for having been issued without jurisdiction and the nullification of the same.
12. Being aggrieved with the ruling of the trial court, the appellant herein who was the applicant/proposed interested party, challenged the same vide a Memorandum of Appeal dated 17th November, 2023 citing the following three grounds;
 - a. That the learned magistrate erred in fact and law in failing to vacate the orders issued by the same court on 14th February, 2022.
 - b. That the learned magistrate erred in fact and law in failing to find that the orders issued by the same court on 11th February, 2022 were null and void for lack of pecuniary jurisdiction.
 - c. That the learned magistrate erred in fact and law by failing to pronounce himself on the prayers that the appellant sought in the application.



13. Consequently, the appellant sought the following orders;
 - a. The appellants appeal be allowed.
 - b. The said orders of the lower court issued on 11th February, 2022 be set aside.
 - c. The costs of the appeal be awarded to the appellant.
14. The appeal was disposed by way of written submissions. On record are the appellant's submissions dated 7th March, 2024 and the 1st respondent submissions dated 31st May, 2024. No submissions were filed by the 2nd respondent.

Appellant's submissions

15. Counsel for the appellant submitted that the trial court was competent to vacate the orders issued on 11th February, 2022, as the magistrate who issued the said orders was a resident magistrate and the one that heard the application in issue was a principal magistrate. That the trial court having correctly found that it had no jurisdiction to determine the suit filed before it had the requisite power to vacate earlier orders issued without jurisdiction under Section 80 of the *Civil Procedure Act*.
16. Counsel maintained that an order issued without jurisdiction is illegal and unlawful and once it is shown that the court lacks jurisdiction, such order ought to be vacated. Counsel faulted the trial court thought that the applicant was inviting it to hear the case when in fact the court was only being invited to vacate unlawful issued orders.
17. Reliance was placed on the case of Samwel Mathenge Ndiritu v Martha Wangare Wanjira & Another [2017] eKLR for the proposition that where there is an apparent error that is self ended the part of the court a review may be granted. Counsel submitted that it was clear in the matter that the court lacked pecuniary jurisdiction hence it ought to have vacated the orders issued. To buttress the said position, the court was further referred to the case of Thomas Musyoka Muanga v Mutunga Mwanga & Another [2021] eKLR.

1st respondent's submissions

18. Counsel for the 1st respondent submitted that the suit was concluded and the appellant failed to provide evidence by way of succession cause to prove that succession for the estate of Peter Masinde Waswa was undertaken. Counsel argued that the appellant was dishonest and mischievous as he had not provided a sale agreement. Counsel maintained that the respondent was merely correcting fraud and that the appellant had no authority to carry out valuation hence the trial court was wrong in taking into account the appellants valuation.
19. Counsel maintained that the appellant should await succession which is the correct forum for him to lodge his claim as a liability. Counsel argued this court not to interfere with the findings of the trial court.
20. On whether the orders of 11th February, 2022 should be vacated, counsel submitted that as those orders are a consent judgment, status quo should be maintained as the appellant is a total stranger and lacks the requisite capacity in regard to the deceased estate. Counsel argued that a consent cannot be set aside without sufficient cause and that the appellant has not shown why the consent should be set aside.



Analysis and determination

21. This court has carefully considered the appeal, parties' rival submissions and the entire record. This being a first appeal, the duty of this court is to re-evaluate, re-analyze and re-assess the record before the trial court and determine whether the trial court was right in arriving at its conclusions and give reasons either way.
22. Having considered the appeal, submissions and the entire record, two issues arise for determination;
 - i. Whether the trial court addressed all the issues raised in the application dated 21st July 2023.
 - ii. Whether the trial court upon finding that it had no jurisdiction to determine the suit ought to have set aside orders made on 11th February 2022 for having been issued without jurisdiction.
23. The application dated 21st July 2023 sought four prayers, namely; that the appellant be joined to the proceedings in Mumias SPM ELC Case No. 37 of 2020; a declaration that the trial court had no jurisdiction to try the suit before it; a declaration that orders of 11th February 2022 were illegal for having been made without jurisdiction; and that the orders of 11th February 2022 be vacated. Therefore, four issues arose for the trial court's determination, namely, whether the applicant had met the threshold for joinder; whether the trial court lacked jurisdiction to hear and determine the case; whether the orders of 11th February 2022 were illegal for having been issued without jurisdiction and whether the said orders ought to be vacated by the trial court.
24. Although the issue of jurisdiction should ordinarily be determined first, whether the same is raised by the parties to the suit or by the court suo moto, in this case the question of jurisdiction having been raised by a person who was not yet a party, but only a proposed interested party, in my view, the question of joinder which was contested by the respondents ought to have been determined first even as the court proceeds to address the issue of pecuniary jurisdiction, because, the court can raise the same suo motto.
25. I have considered the impugned ruling and it is clear that there is nowhere in the ruling where the trial court mentioned or addressed the question of joinder, which in my view, was an error on the part of the trial court. In determining a dispute, the trial court ought to address all issues of fact and law that arise from the dispute.
26. According to the appellant, he is the registered proprietor of a parcel of land that was curved out of one of the suit properties, having held the same for over 40 years. His main contention before the trial court was that the court had no pecuniary jurisdiction to determine the dispute. The appellant presented valuation reports for the suit property and the respondents contested her capacity to value the suit property on the basis that she was not a party in the dispute. Therefore, the question of joinder is closely connected to the question of pecuniary jurisdiction which is a matter of evidence, where the value of the subject matter cannot be confirmed from the pleadings. As this court has power in its appellate jurisdiction to exercise powers of the trial court, I will proceed to determine the issue of joinder.
27. Order 2 Rule 10 (2) of the Civil Procedure Rules provides for the jurisdiction of the court to join a person as interested party to proceedings as follows;

The court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the court thinks just.



28. Therefore, where it is necessary to join a party to a suit so that the court may effectually and completely determine all the matters in question, such necessary party may be added to such proceedings. Such party must demonstrate that they have a recognizable stake in the proceedings.
29. In the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2015] e KLR the Supreme Court held that to succeed in an application for joinder as interested party, the interest or stake of the party must be evident in the application for joinder; the prejudice to be suffered by the intended interested party must be demonstrated to the court's satisfaction; and the applicant must set out its case in the application which should not be a mere replication of the primary parties case.
30. In the instant case, the appellant's position that he is the owner of the parcel of land known as N.Wanga/Kholera/951, which is a subdivision of parcel No. 624, the subject of the suit before the trial court. This position is admitted by the respondent who insist that the appellant's acquisition was unlawful as there has not been succession proceedings in regard to the estate of Petro Masinde. The question of joinder does not need the applicant to prove their claim in the application for joinder. That would be done at trial once the applicant is joined to the proceedings. At the stage of joinder, all that an applicant is expected to demonstrate is a recognizable stake in the proceedings.
31. I have considered the fact that the register shows that the appellant has owned parcel No. 951 from 1982, which is a period of about forty years to the date of the consent dated 11th February 2022. The appellant stated that he has put up a home on his property measuring 2.27 hectares. This fact is confirmed in the 1st Respondent's valuation report by Chrisca Valuers at page 4 thereof that the property is occupied by several buyers and family members of the registered owner. It is clear that when the court was cancelling subdivisions of parcel No. 624 it was also cancelling the appellants' registration even without giving him a hearing which is a clear violation of the basic tenets of fairness, fair hearing and a right to be heard before one is condemned, and which should not be countenanced by a court of law.
32. For those reasons I find and hold that the appellant demonstrated that he has a recognizable stake in the suit and therefore he ought to have been joined to the suit since he claims part of the suit property and the plaintiff accuse him of fraud.
33. On jurisdiction, a court must first be satisfied that it has jurisdiction before it embarks on hearing and determining a matter.
34. Jurisdiction is the power of the court to determine a dispute. Jurisdiction is everything, hence before a court starts the trial of a dispute, it must first be satisfied that it has the requisite jurisdiction to hear and determine the same. In the case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1, the court stated as follows;

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings.
35. The jurisdiction of a court flows from *the Constitution* or statute or both and a court cannot arrogate itself jurisdiction it does not have. In the case of *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others* [2012] e KLR the Supreme Court of Kenya stated as follows;

A court's jurisdiction flows from either *the constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
36. The jurisdiction of the Magistrates court is provided for in section 7 of the Magistrates court Act as follows;



Civil jurisdiction of a magistrate's court

1. A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—
 - a. Twenty million shillings, where the court is presided over by a chief magistrate;
 - b. Fifteen million shillings, where the court is presided over by a senior principal magistrate;
 - c. Ten million shillings, where the court is presided over by a principal magistrate;
 - d. Seven million shillings, where the court is presided over by a senior resident magistrate; or
 - e. Five million shillings, where the court is presided over by a resident magistrate.
37. Section 9 of the magistrates Courts Act grants a magistrates court the jurisdiction to hear and determine land disputes as long as the value of the subject matter falls within the pecuniary jurisdiction of the court.
38. Therefore, a Magistrates court has jurisdiction to hear civil matters including land disputes as long as the value of the subject matter is within its pecuniary jurisdiction. Hence a chief magistrate's pecuniary jurisdiction is Kshs. 20 Million; a Senior Principal Magistrate's is Kshs. 15 Million; a Principal Magistrate's is Kshs. 10 Million; a Senior Resident Magistrate's is Kshs. 7 Million and a Resident Magistrate's is Kshs. 5 Million.
39. In this case, a resident Magistrate issued a decree dated 11th February 2022, being a consent decree whereof the court declared that the transfer of parcels N. Wanga/Kholera/ 624 and N.Wanga/ Matungu/347 from Petro Masinde to Peter Masinde Waswa on 21st November 1980 and 8th February 1980 respectively by correction of names was fraudulent and unlawful. The court further cancelled and revoked both the closure of the two titles and the subdivisions of the two titles and reverted the original titles to Petro Masinde (deceased). The Magistrate who issued this order was a resident magistrate whose pecuniary jurisdiction is Kshs. 5 Million. The magistrate who was asked to declare that the court had no jurisdiction to hear and determine the matter was a Principal magistrate whose pecuniary jurisdiction is Kshs. 10 Million.
40. I have considered the valuation reports of the parties herein. The appellant presented valuation reports by Premium valuers limited in regard to parcels 624 and 347. For parcel 624, measuring 12.36 acres and having several homesteads, the valuer placed a value of Kshs. 10 Million. Land parcel No. 347 measuring 31 acres was valued at Kshs. 25 Million. This makes a total of Kshs. 35 Million.
41. On the other hand, the 1st respondent gave the value for parcel No. 347 measuring 31 acres at Kshs. 450,000/= per acre and gave a value of Kshs.10 Million. While parcel 624 measuring 12.5 acres he gave it a value of Kshs. 500, 000/= per acre and valued it at Kshs. 5, 500, 000/=. Both reports by the 1st respondent stated that there were several homesteads of purchasers and family members of the registered owner, sugar cane and mature eucalyptus trees, but that the valuation was only for the land excluding the buildings, sugarcane crop and Eucalyptus.
42. It is clear that from the valuation of the 1st respondent, the total value is Kshs. 15, 500, 000/= although excluding buildings and trees, demonstrating that the value of the subject matter was clearly outside the jurisdiction of a principal magistrate whose jurisdiction is Kshs. 10, 000, 000/=. Considering that buildings are part of land, it is clear that the value of the land is over 15. 5 Million as accorded by the



respondents. Even if the value ascribed by the respondents of Kshs. 450, 000/= per acre and Kshs 500, 000/= per acre for parcels 437 and 624 respectively, taking into account the acreage for each parcel, that would not be Kshs. 15.5 Million as alleged by the respondent, but Ksh. 20, 200, 000/=; which is way outside the pecuniary jurisdiction of the entire magistrates court including a chief magistrate. In the premises, I find and hold that the dispute that was determined by the resident magistrate on 11th February 2022 was a dispute that ought to have been filed in the Environment and Land Court and not the subordinate court. Therefore, the magistrates court had no pecuniary jurisdiction to determine the dispute and the trial court rightly found as much.

43. A decision made without jurisdiction is a nullity and the court ought to make that clarification. In the case of *Macfoy v United Africa Co. Ltd* [1961] 3 All E.R. 1169 Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

44. In the instant case, the orders of 11th February 2022 were made by a subordinate court when it had no pecuniary jurisdiction and therefore the court has an inherent power to correct its own errors including declaring that the orders made in a matter were made without jurisdiction. In my view such declaration is just the reinforcement of the fact that the court from the onset had no jurisdiction. It does not amount to acting without jurisdiction.

45. In the premises, the trial court acted in error in not making a determination on the three issues raised herein regarding joinder, declaration of the orders of 11th February 2020 as unlawful for having been issued without jurisdiction and setting aside the said orders. Therefore, for the reasons given above, I find and hold that the appellant was entitled to orders joining him to the proceedings in the court below, a declaration that the orders of 11th February 2020 were a nullity for having been issued without jurisdiction and orders vacating the orders of 11th February 2022 as the same were made without jurisdiction and were therefore a nullity with no legal effect.

46. The upshot is that the appeal herein succeeds and the same is allowed. The findings of the trial court are hereby set aside and substituted with an order that the appellant’s Notice of Motion dated 21st July 2023 is hereby allowed as prayed in terms of prayers 2, 3 and 4 of the application. The appellant shall have the costs of the application before the subordinate court as well as the costs of this appeal.

47. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 28TH DAY OF MAY, 2025

A. NYUKURI

JUDGE

In the presence of;

Prof. Nandwa for the appellant

Mr. Shiloya holding brief for Mr. Akwala for the respondents



Court Assistant: M. Nguyai

