Mwangi v Mwangi & another (Environment & Land Case 52 of 2019) [2025] KEELC 3622 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3622 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ENVIRONMENT & LAND CASE 52 OF 2019

JM MUTUNGI, J

MAY 8, 2025

BETWEEN

JOHN MUHORO MWANGI .... PLAINTIFF

AND

JAMES KAMAU MWANGI .... 1ST DEFENDANT

ELIJAHSAFANSON NJENGA .... 2ND DEFENDANT

RULING

1. On 11th January 2024, the Court ordered that the dispute in this case be referred to the National Irrigation Authority, Dispute Resolution Committee. The committee was directed to address the matter and file a report within 90 days from the issuance date. Additionally, all parties were directed to maintain the prevailing status quo.

2. On 23rd May 2024, the Scheme Manager submitted a copy of the report which included the extract of minutes from the Arbitration Committee. From the extracted minutes, the committee reviewed the cases of the Plaintiff and the 1st Defendant and referenced the farmers' files to support its findings. The report indicated that the courts had appointed the Plaintiff as the successor to the holding on 17th September 1981. Further, on 11th June 2004, in succession case No. 24 of 1981, the court ordered the subdivision of the holding into three equal portions among the three sons of the deceased license holder. Utilization of the rice-holding had been ongoing since 2010 on that basis. After deliberations, the Arbitration Committee issued a verdict stating that all parties involved should share the rice holding, with each party entitled to 1.42 acres.

3. On 17th October 2024, the matter was mentioned in Court to consider whether the Report Committee of the Arbitration Committee could be adopted as an order of the Court. The 1st Defendant indicated that he had no objections to the report. However, Counsel for the Plaintiff stated that he had not received a copy of the report. Consequently, the Court directed that Counsel for the Plaintiff be

provided with a copy of the report and scheduled a mention date for 26th February 2025 to consider the adoption of the report as a Court Order. When the matter came up for mention, Counsel for the Plaintiff stated that the Plaintiff did not accept the report from the Arbitration Committee. The Court indicated that it would review the parties' submissions and the report and determine whether or not to adopt the report as an order of this Court.

4. The Plaintiff filed his written submissions dated 18th December 2024 where he asserted he was denied the opportunity of being heard. He stated when he appeared before the Arbitration Committee on the scheduled hearing day, he was not allowed to present documents or share his perspective because the Secretary announced that the panel had already reviewed the case and that only the Chairperson's verdict was pending. He argued that the case was not deliberated in the conference room but rather discussed elsewhere. He claimed that despite the report stating that each person had the opportunity to narrate their side of the story, this was untrue as no such opportunities were provided, and the panel simply delivered their verdict. The Plaintiff insisted that the Arbitration Committee failed to address the issues related to the rice-holding, which was a necessary part of the proceedings. He expressed uncertainty about how it was concluded that he was not the successor to the suit land, given that he had obtained the rice-holding in 1985 through a Court Order. Therefore, he urged the Court not to adopt the order of the Arbitration Committee.

Analysis and Determination

5. I have reviewed the report dated 23rd May 2024, and the Plaintiff's submissions dated 18th December 2024. In his submissions, the Plaintiff urged the Court not adopt the report for three reasons: he was denied a fair hearing before the Arbitration Committee, he was not given the opportunity to present his documents or arguments, and the report contains factual errors, including the incorrect naming of his brothers.

6. In its directions dated 20th November 2023, the Court recognized that the dispute in this case concerned the ownership and use of rice-holding No. 1560 in the Mwea Section. The Court also acknowledged that the National Irrigation Authority (NIA) was the designated body responsible for allocating and resolving ownership disputes, as mandated under the provisions of the *Irrigation Act*, 2019. Consequently, the Court referred the matter to the NIA's Dispute Resolution Committee. The Arbitration Committee sat and heard the dispute on 5th March 2024 and gave its verdict. It is this verdict that the Plaintiff is opposed to being adopted as an order of the Court.

7. Sections 25 and 26 of the *Irrigation Act*, 2019 make provisions for the resolution of disputes arising from the management and operations of the Scheme. Section 25 (1) provides for Appeals as follows:-

   (1) Disputes related to irrigation and drainage scheme development, management, water allocations and delivery, financing, operation and maintenance, and other matters shall be resolved within the Irrigation Water Users Association or at the irrigation scheme level wherever possible.

8. Section 26 provides for Appeals, and it states as follows:-

   26. Where the Water Users Association or at the Irrigation Scheme Level is unable to resolve a dispute, the same shall be referred to the Dispute Resolution Committee at the first instance to consider and determine the matter before the same is referred to Court.

9. Regulations 82 to 84 of the Irrigation (General) Regulations 2020 provide the procedure for handling disputes arising under the *Irrigation Act* 2019. Regulation 84 provides for the execution of an order or a decision of a Dispute Arbitration Committee and it states as follows:-

> A decision or order made by the Dispute Resolution Committee in accordance with these Regulations shall be considered as the decision of a Judicial body and shall be executed unless reversed on Appeal.

10. Regulation 86 provides for Appeals and states as follows:-

    1. In case of disputes on an irrigation scheme, a dissatisfied party may Appeal to the relevant supervising entity.

    2. In case of disputes within public or national irrigation schemes meant for settlement, dissatisfied party may appeal to the Scheme Management Committee.

    3. Where a person is dissatisfied with the decision of the Dispute Resolution Committee and the Scheme Management Committee, as the case may be, the person shall exhaust the procedures specified in these Regulations before resorting to a Court of Law.

11. When the Court on 20th November 2023 referred the dispute to the National Irrigation Authority (NIA) Arbitration Committee, it was conscious that this was a matter it lacked original jurisdiction to deal with. As the record shows, there were succession proceedings initiated in accordance with the *Irrigation Act*, Cap 347 Laws of Kenya now repealed and replaced with the *Irrigation Act*, 2019 vide Wang'uru DM Misc. Succ. Cause No. 24of 1981 whereby Joyce Wanjiku was appointed guardian of John M. Mwangi as Successor of Rice holding No. 1560. The guardianship was revoked on 18th September 1985 and John M. Mwangi, the Plaintiff herein was registered as the sole successor.

12. It does appear, the Defendants who are the Plaintiffs brothers applied for a review of the succession order awarding the Plaintiff the entire Rice holding in 2004. The review application was made before the Senior Resident Magistrate at Wang'uru in Misc. Succ. Cause No. 24 of 1981. The application was heard by the Magistrate and on 11th June 2004 P. T. Nditika SRM made an order in the following terms:-

    1) That Rice Holding No. 1560 be subdivided into 3 equal portions among the 3 sons of the deceased and each be allowed to operate his own bank account.

    2) That the costs be borne by the Respondent.

12. The above decision was given effect by the Scheme Management on 16th November 2010 and each of the brothers was given a tenant card for a portion of 1.42 acres. These changes were effected in the Scheme records. The dispute having been handled pursuant to the provisions of the *Arbitration Act*, the Court lacked the jurisdiction to entertain the suit as a Primary suit and could only have dealt with the matter as a Judicial Review under the provisions of Order 53 of the Civil Procedure Rules and/or Under Article 47 of the *Constitution* and Section 4 of the *Fair Administrative Action Act*, 2015.

13. Whereas the Court would have been in a position to adopt the report of the NIA Disputes Resolution Committee if there was no objection the Court's hands are now tied as it can only rule that it lacks jurisdiction and down its tools.

15. The exhaustion doctrine has been expounded in many Court decisions. It was in the early days given prominence in the Case of Speaker of the National Assembly –vs- Njenga Karume (1992) eKLR where the Court stated:-

> "In our view, there is considerable merit in the submission that where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed."

16. The Plaintiff in the instant case was aware that the National Irrigation Board (NIB) had effected the farmer's changes in their records following a resolution of the matter. He only had the option to pursue a Judicial Review and/or Appeal. The institution of a suit by way of a Plaint was misconceived in the face of the provisions of the *Irrigation Act*, 2019. The Court lacked original jurisdiction to deal with the dispute.

17. In the premises the Plaintiff's suit is unsustainable for want of jurisdiction. The same is struck out in its entirety but considering the parties are family (brothers) I make no order for costs. Each party will bear their own costs of the suit.

RULING DATED, SIGNED AND DELIVERED VIRUALLY AT KERUGOYA THIS 8TH DAY OF MAY 2025.

J. M. MUTUNGI

ELC - JUDGE