



REPUBLIC OF KENYA



KENYA LAW
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Jombo (Suing on Behalf of Samwel Jombo Odida) & another v South Nyanza Sugar Company Limited (Environment and Land Appeal E026 of 2022) [2025] KEELC 4695 (KLR) (11 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4695 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E026 OF 2022**

FO NYAGAKA, J

JUNE 11, 2025

BETWEEN

PEREZ ANYANGO JOMBO (SUING ON BEHALF OF SAMWEL JOMBO ODIDA) 1ST APPELLANT

JULIUS OOKO MIDENYO 2ND APPELLANT

AND

SOUTH NYANZA SUGAR COMPANY LIMITED RESPONDENT

(Being an appeal from the judgement of Hon. Peter Areri (Principal Magistrate) delivered on 18th October, 2022 in Migori Magistrate's Court in ELC Case No. 14 of 2019)

JUDGMENT

1. The Appellants brought this appeal as a result of being aggrieved by the decision of Hon. Peter Areri (Principal Magistrate) delivered on 18th October, 2022 at the Magistrate's Court at Migori in ELC Case No. 14 of 2019.
2. The Appellants presented the following grounds of appeal vide the Memorandum of Appeal dated 24th October, 2022;
 - a. The learned Principal Magistrate erred in fact (sic) and in law in holding that the Appellants failed to meet the threshold of principles of granting injunction, he misconstrued the most fundamental facts that led him to wrong conclusions.
 - b. The learned Magistrate erred in law and in fact, (sic) when he granted interlocutory injunction against the 2nd Appellant in the preliminary stage of the suit when the Appellant filed an application, only to contradict himself at the conclusion of the matter, thus prejudicing the Appellants interest viz (sic) parcel No. Kanyamkago/Kawere ii/868.



3. The Appellants sought the following orders;
 - a. That the appeal be allowed.
 - b. That the judgement and orders of the learned trial principal magistrate issued on the 18th day of October, 2022 be set aside, and in its place the learned judge do allow prayers in the amended plaint dated 18/5/2018 of ELC No. 14 of 2019 with orders as to cost(sic).
 - c. Costs of the appeal be awarded to the Appellants.

Brief facts.

4. The Appellants filed the suit against one Jack Meta Okumu and the Respondent herein vide the Plaint dated 10th April, 2018 that was amended on 18th May, 2018 where they sought the following prayers;
 - a. An order for injunction against the Defendant his (sic) agent/servant/or assigns from interfering with land parcel LR No. Kanyamkago/Kawere 11/868 pending filing of letters of grant (sic).
 - b. An order for injunction against the 1st Defendant his agent/servant/or assigns from interfering with land parcel LR. No. Kanyamkago/ Kawere 11/868 pending filing of letters of grant.
 - c. An order of injunction against Sony Sugar Co. Ltd not to release payment in respect to the proceed (sic) the Defendant took from the 2nd Plaintiff portion of land viz; (sic) LR No. Kanyamkago/Kawere 11/868.
 - d. An order of injunction against the 2nd Defendant not to release any payment in respect to the proceeds that the 2nd Plaintiff is entitled to in respect to the 2nd Plaintiff portion viz(sic): LR No. Kanyamkago/Kawere 11/868, and in event (sic) payment was made to the 1st Defendant, then Court do order for the refund thereof.
 - e. Cost of the suit and interest.
5. The Respondent filed its Statement of Defence dated 16th April, 2019 by which it denied the averments in the Amended Plaint and sought that the Appellants suit be dismissed with costs.
6. The matter was heard and the trial magistrate in his judgment delivered on 18th October, 2022 dismissed the Appellants' suit with costs.

Appellants Submissions

7. Counsel for the Appellants submits that the 1st Respondent harvested the 2nd Appellant's cane on land parcel No. Kanyamkago/Kawere II/868 which was taken to Sony Sugar Company Limited. The 2nd Appellant contacted Sony Sugar Company Limited and made a request that he be paid instead of the 1st Respondent but the 1st Respondent was nonetheless paid on 13th April, 2018.
8. It is Counsel's submissions that it is not clear how the 1st Respondent went to the suit parcel as he had not leased it. It is also counsel's submissions that had the Learned Trial Magistrate stopped the payment, then the Appellants would not have lodged the present appeal. Since the suit was dismissed, Sony Sugar Co. Ltd has continued to release the proceeds to the 1st Respondent who is still trespassing on land parcel No. Kanyamkago/Kawere II/868.



9. Counsel relies on the judicial decision of Dr. Simon Naiharo Chege vs Paramount Bank Kenya Limited Nairobi (Milimani) HCCC No. 360 of 2001 and urges the Court to allow the appeal.

Respondent's Submissions.

10. Counsel for the Respondent filed submissions dated 5th March, 2025. It is Counsel's submissions that that the Appellants lack the locus standi to commence the present proceedings as the registered owners of the suit parcel are deceased and no succession proceedings have been commenced. It is also Counsel's submissions that the Respondent filed a preliminary objection on the said issue and that the Respondent relies on the submissions filed before the trial Court.
11. It is further Counsel's submissions that the 1st Appellant holds letters of administration ad litem in respect to a person who is not the registered owner of the suit parcel. Counsel submits that by extension the 2nd Appellant is equally a stranger as he alleges to have bought a portion of the suit parcel from one Samwel Jombo Odida (deceased) who was not among the registered owners of the suit parcel.
12. Counsel submits that this Court does not have jurisdiction to hear and determine the present appeal as it does not raise issues on use of land or occupation of land or title to land as provided for under Article 162 of the constitution of Kenya. Counsel therefore urges the Court to dismiss the Appellant's appeal.
13. It is Counsel's submissions that the Appellants allege that the learned trial magistrate erred by failing to issue an injunction. Counsel submits that the injunction could not be granted as the payment sought to be enjoined was not disclosed and neither was the ownership of the sugarcane alleged to have been erroneously harvested disclosed.
14. Counsel also submits that the Appellants in their Notice of Motion application dated 10th April, 2018 that was filed before the trial Court did not seek for any order of injunction against the Respondent and therefore no interlocutory injunction was granted against it. The only order of injunction granted was against the 1st Defendant which stopped him from receiving funds. The said 1st Defendant was not made a party to the present appeal.
15. Counsel concludes his submissions by urging the Court to dismiss the appeal with costs to the Respondent.

Analysis and Determination.

16. Upon consideration of the grounds of appeal, pleadings, submissions and the authorities cited, the following issues are for determination:
 1. Whether the appeal is merited.
 2. Who should bear the cost of the appeal.
17. The role of the Appellate Court was stated by the Court of Appeal in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR. It was held as follows;

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.”



18. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR the Court held as follows;

“This being a first appeal, we are reminded of our primary role as a first Appellate Court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

19. Turning to the instant matter, the Appellants contend that one Jack Meta Okumu (the 1st Defendant before the trial Court) trespassed onto land parcel No. Kanyamkago/Kawere II/868 and harvested sugar cane. The Appellants also contend that after he harvested the sugar cane, he took it to the Respondent (South Nyanza Sugar Co. Ltd). Upon discovery, the Appellants approached the Respondent and requested it not to pay Jack Meta Okumu. Despite the request, the Respondent still paid him.

20. The Appellants thereafter filed a suit against both Jack Meta Okumu and the Respondent herein seeking for an injunction stopping the Respondent from paying Jack Meta Okumu the proceeds of the delivered sugar cane. The Learned Trial Magistrate issued an interim injunction but upon delivery of judgement, dismissed the suit.

21. The Respondent on the other hand submits that the Learned Trial Magistrate could not issue an order of injunction as the payment sought to be stopped was not disclosed and neither was the ownership of the sugar cane revealed. The Respondent also submits that in any event, the Appellants did not have the locus standi to commence the proceedings before the trial Court and neither does the appeal raise any issue that touches on land. This Court does not therefore have jurisdiction to hear and determine the appeal.

22. It is important to first address the issue of jurisdiction. The Respondent contends that none of the issues raised in the present appeal touch on the use and/or occupation of land. The Respondent also contends that the Appellants claim before the trial Court was that the Respondent should not pay a certain sum of money which makes it a monetary dispute. The Respondent therefore urges the Court to dismiss the appeal for want of jurisdiction.

23. The Appellants did not submit on the issue of jurisdiction.

24. Upon perusal of the pleadings filed before the trial Court, the proceedings and the judgement of the Learned Trial Magistrate it is evident that the issue of whether or not the Court has jurisdiction to hear and determine the matter was not raised.

25. The Court of Appeal in *Kenya Ports Authority v Modern Holdings [E.A] Limited* [2017] KECA 293 (KLR) held as follows;

“We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised:

“...at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the Court itself - provided only that where the Court raises it suo motu, parties are to be accorded an opportunity to be heard.”

(See *All Progressive Grand Alliance (APGA) v. Senator Christiana N.D. Anyanwu & 2 others*, LER [2014] SC. 20/2013 Supreme Court of Nigeria). We agree with these



authorities and, hold that the question of jurisdiction was properly raised before this Court because, as they say in Latin, *ex nihilo nihil fit* (out of nothing comes nothing).”

26. The Court of Appeal in the above cited judicial decision held that the issue of jurisdiction can be raised even on appeal. I will therefore proceed to make a determination on whether this Court has jurisdiction to hear and determine the present appeal.

27. It should not be gainsaid that jurisdiction is everything. Without it a court is a hollow sounding vessel that makes meaningless noise rather than musical song for parties to sing to its tune. Thus, a court must first satisfy itself that it has jurisdiction over the subject before it sets to do anything about it, and it must down its tools once it realizes that, from the donor which is the *constitution* or statute it possesses it. Absent of that the court proceeds on a nullity and a frolic of its own. Moreover, a Court cannot arrogate itself jurisdiction: it must be given it expressly by the law.

28. In the Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR, the Court of Appeal Judge Nyarangi JA held:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. 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 pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

29. Additionally, the Supreme Court, in Samuel Kamau Macharia v Kenya Commercial Bank Ltd & 2 others [2012] eKLR, stated, on jurisdiction, thus:

“(68) 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...without jurisdiction, the Court cannot entertain any proceedings...Where the *constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

30. This Court is established under Article 162 (2) (b) of the *constitution* of Kenya which states;

“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

- (a) employment and labour relations; and
- (b) the environment and the use and occupation of, and title to, land.”

31. Section 13 of the *Environment and Land Court Act* provides as follows;

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.



- (2) In exercise of its jurisdiction under Article 162(2)(b) of the *constitution*, the Court shall have power to hear and determine disputes——
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the *constitution*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by *Act No. 12 of 2012*, Sch.
- (6) Deleted by *Act No. 12 of 2012*, Sch.
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including——
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (g) restitution;
 - (h) declaration; or
 - (i) costs”

32. The Appellants in their amended Plaint dated 18th May, 2018 sought the following prayers;

- “(a). An order for injunction against the Defendant his (sic) agent/servant/or assigns from interfering with land parcel LR No. Kanyamkago/Kawere 11/868 pending filing of letters of grant (sic).



- (b) An order for injunction against the 1st Defendant his agent/servant/or assigns from interfering with land parcel LR. No. Kanyamkago/ Kawere 11/868 pending filing of letters of grant.
 - b. An order of injunction against Sony Sugar Co. Ltd not to release payment in respect to the proceed (sic) the Defendant took from the 2nd Plaintiff portion of land viz; (sic) LR No. Kanyamkago/Kawere 11/868.
 - (c). An order of injunction against the 2nd Defendant not to release any payment in respect to the proceeds that the 2nd Plaintiff is entitled to in respect to the 2nd Plaintiff portion viz(sic): LR No. Kanyamkago/Kawere 11/868, and in event (sic) payment was made to the 1st Defendant, then Court do order for the refund thereof.
 - (d). Cost of the suit and interest.
33. The Cause of action as set out in the Amended Plaint as against the Respondent is at paragraphs 8 and 8a. It is as follows;
- “ 8. That it is in the interest of justice that the Defendant be stopped from being paid any money from Sony Sugar Company Ltd, the Defendant is a trespasser on parcel LR No. Kanyamkago/Kawere 11/868. (sic)
 - 8a. That it is in the interest of justice that the 1st Defendant be stopped from any further subsequent payment if at all from the 2nd Defendant and in event payment was made to the 1st Defendant, the same be refunded to the 2nd Plaintiff.”
34. This Court’s jurisdiction is clearly stipulated above. It has nothing to do with commercial transactions absent of any relationship with the delineation the law has given for this Court to handle. Essentially, the Appellants claim is based on the allegation that Jack Meta Okumu (the 1st Defendant in the trial Court) is a trespasser on the suit parcel. Upon trespass, the said Jack Meta Okumu harvested the 2nd Appellant’s sugarcane and supplied it to the Respondent. The Appellants therefore sought for an injunction stopping the Respondent from releasing money which constituted the proceeds from the delivery of the sugarcane to Jack Meta Okumu.
35. To the extent that the issue between the Appellants and the said Jack Meta related to trespass, this Court had jurisdiction. But how about when the appellants went further to seek an injunction regarding payments of proceeds of sugarcane whose recipient never trespassed? This Court has to grapple with the issue as to whether the all the parties’ cases herein are intertwined or they can be severed. And to arrive at the conclusion, one must look at the facts complained about in relation to each party.
36. First, the appellants claim to own land, the suit land. Second, they planted sugar cane. Third, the 1st Defendant allegedly trespasses onto the land and harvests cane. It is not pleaded that the 2nd Defendant had a hand in the entry of the 1st Defendant onto the applicant’s land. Further, the 2nd Defendant takes no part in any of the transactions except, on a purely different contractual arrangement of buying the cane (delivered) and paying for it by making payments to the person who delivers. Clearly, the latter relationship is based on privity of contract, between Jack Meta and the 2nd Defendant now Respondent.



37. What then is the nexus between the Respondent and the Appellants? From the prayers in the Plaint, it is evident that the main issue or predominant issue for determination in the lower court, as between the appellants and the Respondent was whether the Court should issue an injunction stopping payment a payment which is due from the Respondent. It has nothing to do with trespass.
38. It is the view of this Court that the case against Jack Meta Okumu (the 1st Defendant in the suit before the trial Court) and the Respondent herein is not so intertwined that the claim against the Respondent cannot be determined separately without first determining the claim against Jack Meta Okumu. In any event the two are diametrically diverse from each other.
39. That is to say, the Court can make a determination on whether or not an injunction can be issued to restrain the Respondent from making the said payments without first making a determination on the issue of whether Jack Meta Okumu trespassed onto the suit parcel. Further, it is important to note that the present appeal is filed solely against the Respondent.
40. I therefore must make a determination as to whether when the Appellants sought an injunction against the Respondent in a purely commercial transaction the court had jurisdiction to determine the same. The crux of the present appeal is that the Learned Trial Magistrate erred in failing to grant an injunction which injunction had the effect of stopping payments by the Respondent to one Jack Meta Okumu.
41. In their submissions, the Respondents contend that none of the issues raised touch on land. The Appellants on their part contend that the issues of jurisdiction were not raised in the trial court. The Court of action as set out between the parties is at the paragraphs 8 and 8A of the Amended Plaint. At paragraph 8 it was pleaded that the Defendant was a trespasser. At paragraph 8A of the Amended Plaint, pleadings at that the Defendant be stopped from making any payment to the 1st Defendant or further payments to the 1st Respondent. These constituted proceeds of the cane delivery at the 2nd Respondent. This being the predominant issue for determination in the trial court was an injunction on payment.
42. Thus, the argument that the Respondent did not raise the issue of jurisdiction is neither here nor there. The Respondent is not said to have trespassed onto the suit land. Further, there was no evidence that the Respondent was an active participant in the processing of the case before it was delivered to themselves.
43. This Court is inclined to agree with the submissions of the Respondent that the said issue is not within the jurisdiction of this Court as it is essentially a monetary claim. This Court lacks jurisdiction to hear and determine the issue of payment of the money.
44. It is further my view that this Court would have had the jurisdiction to hear the appeal if firstly, it was filed against both Jack Meta Okumu and the Respondent herein. Secondly, if the issue of whether or not there was trespass on the suit parcel was raised as the determination of this issue would have formed the basis for determining whether an injunction could be issued against the Respondent.
45. Given the circumstances of this case, it is my view that this Court lacks the jurisdiction to hear and determine this appeal. The trial Court was right in refusing the injunction but did not have jurisdiction to determine that issue of payment. The appeal is therefore struck with costs to the Respondent.
46. Orders accordingly.

JUDGMENT DATED SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 11TH DAY OF JUNE 2025.

HON. DR. IUR NYAGAKA,



JUDGE

In the presence of,

Agure Advocate for the Appellants,

Bosire Advocate for the Respondent

