



**Kamwani (Suing on Behalf of the Estate of Muganda Mukachisila – Deceased) v Mwanje  
(Environment & Land Case 65 of 2017) [2025] KEELC 4267 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4267 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 65 OF 2017**

**DO OHUNGO, J**

**JUNE 5, 2025**

**BETWEEN**

**PETER WAITI KAMWANI ..... PLAINTIFF**

**SUING ON BEHALF OF THE ESTATE OF MUGANDA MUKACHISILA –  
DECEASED**

**AND**

**JORAM MWANJE ..... DEFENDANT**

**JUDGMENT**

1. Muganda Mukachisila (hereinafter “Muganda”) moved the Court through Plaintiff dated 28<sup>th</sup> February 2017 wherein she averred that she was the legal representative and a beneficiary of the estate of Mukachisila Mafungo which comprised land parcel number South Kabras/Chesero/974 (hereinafter “the suit property”) and that she brought the suit on her own behalf and on behalf of the said estate. She also averred that she had been using the suit property at all material times to the exclusion of the Defendant and that the Defendant trespassed into the suit property sometime in the year 2007 and did not vacate despite demands to do so.
2. Muganda therefore sought judgment against the Defendant for a permanent injunction restraining the Defendant, his agents, servants, assigns and anybody claiming through him from entering, alienating, cultivating, harvesting any crop, trespassing on or committing any act that would interfere with his peaceful use and occupation of the suit property. She further prayed for costs of the suit.
3. The Defendant filed Amended Statement of Defence and Counterclaim through which he denied that Muganda had been exclusively using the suit property and averred that he was the one in exclusive possession thereof. He added that he had been in possession since 1982 and that Muganda’s case was barred by Section 7 of the *Limitation of Actions Act*. He further averred that his father purchased the suit property and took possession in 1982, that there was resultant trust in his favour and that the Muganda’s interest in the suit property had been extinguished by effluxion of time.



4. The Defendant also averred that judgment in Kakamega HCC No. 90 of 2007 was rendered by a Court without jurisdiction and was therefore not binding on this Court. He therefore prayed that Muganda's suit be dismissed with costs and that a declaration be issued that Muganda held the suit property in trust for him. He further prayed that Muganda be ordered to cause transfer of the suit property to him.
5. Muganda passed away on 11<sup>th</sup> January 2022 and was substituted on 30<sup>th</sup> January 2023 with Peter Kamwani Waiti who had obtained letters of administration ad litem in respect of her estate. Following the substitution, an Amended Plaint was filed on 27<sup>th</sup> April 2023, in which Peter Kamwani Waiti was reflected as Plaintiff.
6. Peter Kamwani Waiti (PW1) adopted Muganda's witness statement which she thumb printed and filed on 28<sup>th</sup> February 2017. He produced copies of the documents listed as item number 1 to 3 in Plaintiff's List of Documents dated 28<sup>th</sup> February 2017 (P. exhibit 1 to 3) respectively as well as copies of the documents listed as item number 1 to 5 in Plaintiff's Further List of Documents dated 29<sup>th</sup> July 2019 (P. exhibit 4 to 8 respectively).
7. Muganda stated in her said witness statement that she was the personal representative of the estate of Damara Muchisa Sila (deceased) who was her co-wife and who became the registered proprietor of the suit property after obtaining letters of administration in respect of the estate of Mafungo Mukachisila (deceased) who was the husband of both Damara and Muganda.
8. Muganda further stated that she had occupied and utilized the suit property during the lifetime of Mafungo Mukachisila (deceased) to the date of her statement and that in the year 2007, the Defendant trespassed into the suit property. That she resisted the trespass, but the Defendant filed Kakamega HCC No 90 of 2007 against her which case was heard on merit and dismissed. That even after the dismissal, the Defendant continued laying claim on the suit property and harvesting crops.
9. Under cross-examination and re-examination, PW1 stated that he is a grandson of both Muganda and Mafungo Mukachisila (deceased). That as of the date of his testimony, three of his grandfather's children were alive and that none of them had recorded any witness statement in this case. He further stated that besides this case, there had been about six other concluded cases concerning the suit property. Lastly, he stated that the Defendant was not in possession or use of the suit property, but he wanted him restrained since he goes there forcefully.
10. The Plaintiff's case was then closed.
11. Joram Mwanje (DW1) adopted his witness statement dated 24<sup>th</sup> April 2023. He stated in the statement that Peter Shamalla Mwanje (deceased) who was his father purchased the suit property from Damara and sons between 1982 to 1986 and took full possession in 1986 in the presence of the then area Chief. That his father farmed on the land and used it peacefully until his death in the year 2011. That after his father's death, he obtained letters of administration and continued using the land by growing sugarcane on it. He further stated that in 2012, Damara's grandsons started claiming the suit property and that there were several cases in Court including Kakamega CMCC No. 318 of 2018 and Butali SPMCC No. 205 of 2022.
12. Under cross-examination and re-examination, DW1 stated that the first case concerning the suit property was Kakamega HCC No. 90 of 2007 (OS) which was filed by his father and that the case was dismissed. He added that he filed Civil Appeal No. 93 of 2016 at the Court of Appeal in Kisumu and that he was using the suit property as of the date of his testimony but did not reside in it and did not construct any house on it.



13. Elisha Makokha Shamala (DW2) adopted his witness statement dated 24<sup>th</sup> April 2023. He stated in the statement that the Defendant's father was his brother and that the Defendant's father purchased the suit property from Damara and her sons in the year 1982. That the Defendant's father took vacant possession in 1982 and that the Plaintiff did not use the suit property from 1982.
14. Lastly, Philip Sikolia Chitayi (DW3) adopted his witness statement dated 24<sup>th</sup> April 2023. He stated in the statement that the Defendant's father was his cousin and that the Defendant's father used the suit property exclusively from 1982 until his death in the year 2011.
15. The defence case was then closed. Directions were thereafter given for filing and exchange of written submissions. The Plaintiff filed submissions dated 26<sup>th</sup> September 2024 while the Defendant filed submissions dated 10<sup>th</sup> December 2024.
16. I have carefully considered the pleadings, the evidence and the submissions. The issues that arise for determination are whether the Court has jurisdiction and whether the reliefs sought should issue.
17. As has been regularly restated by the courts, jurisdiction is the very life and soul of any judicial proceedings. Without jurisdiction, the proceedings come to a certain end and the court cannot take any further step. See Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR. Any action or step taken by a court in the absence of jurisdiction is a nullity. See Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR.
18. There is no dispute that there was litigation in Kakamega HCC No. 90 of 2007 (OS) concerning the suit property herein and that the Plaintiff in that case was the current Defendant's father and that the Defendant therein was Muganda who the original Plaintiff herein. The Defendant's father sought a declaration that he had acquired the suit property by way of adverse possession. Judgment was delivered in the matter on 24<sup>th</sup> July 2015, and the case was dismissed.
19. The Defendant has contended that judgment in Kakamega HCC No. 90 of 2007 (OS), which was written by S. J. Chitembwe, J. was rendered by a Court without jurisdiction and is therefore not binding on this Court. While it is not the mandate of this Court to revisit a decision of the High Court with a view to determining whether the said Court erred, suffice it to restate the law.
20. While jurisdiction to hear and determine disputes relating to the environment and the use and occupation of and title to land has been conferred on this Court pursuant to Article 162 (2) (b) of *the Constitution* of Kenya, 2010 and at Section 13 of the *Environment and Land Court Act*, 2011, Section 22 of the Sixth Schedule of *the Constitution* of Kenya 2010 gives the High Court residual jurisdiction to conclude matters concerning the environment and the use and occupation of, and title to land that were pending before it as of the effective date. The section provides:

All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.
21. In line with the foregoing provisions, the Chief Justice issued directions on 9<sup>th</sup> February 2012 under the title "Practice Directions on Proceedings Relating to The Environment and The Use and Occupation of, and Title to Land" and published through Gazette Notice No. 1617. Those initial directions were replaced by subsequent directions issued by the Chief Justice on 25<sup>th</sup> July 2014 under the title "Practice Directions on Proceedings in The Environment and Land Courts, and on Proceedings Relating to The Environment and The Use and Occupation of, and Title to Land and Proceedings in Other Courts" and published through Gazette Notice No. 5178.



22. Paragraphs 3 and 4 of the directions of 25<sup>th</sup> July 2014 provide as follows:
3. All pending judgments and rulings relating to the environment and the use and occupation of, and title to land pending before the High court shall be delivered by the same court.
  4. All part-heard cases relating to the environment and the use and occupation of, and title to land pending before the High Court shall continue to be heard and determined by the same court.
23. Thus, the law remains that the High Court has jurisdiction to hear and determine part-heard cases relating to the environment and the use and occupation of, and title to land that were pending before it as of 27<sup>th</sup> August 2010. The judgment that was delivered in Kakamega HCC No. 90 of 2007 (OS) on 24<sup>th</sup> July 2015 should be viewed against that background.
24. In his Amended Statement of Defence and Counterclaim, the Defendant averred that Muganda's case is barred by Section 7 of the *Limitation of Actions Act* and that his father having taken possession in 1982, there is resultant trust in his favour and that the Muganda's interest in the suit property was extinguished by effluxion of time. In other words, he is claiming title to the suit property through adverse possession.
25. Another jurisdictional issue arises, whether the Defendant's claims for declaration of trust and title through adverse possession is res judicata. The doctrine of res judicata aims to avoid multiplicity of suits, with a view to bringing litigation to an end. The Supreme Court emphasized as much in Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another [2016] eKLR where it stated:
- The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.
26. The Defendant's father's claim for title to the suit property having been dismissed in Kakamega HCC No. 90 of 2007 (OS), the Defendant is not permitted to relitigate the claim in this case. Equally, the issue of resultant trust is one that ought to have been raised in the previous suit and is therefore equally barred. That is the expectation of explanation numbers 4 and 6 of Section 7 of the *Civil Procedure Act*. I find that the Defendant's counterclaim is res judicata.
27. Muganda's case, as pleaded, is that she was the legal representative and a beneficiary of the estate of Mukachisila Mafungo (deceased) which comprised land the suit property and that she brought this suit on her own behalf and on behalf of the said estate. She alleged that the Defendant trespassed into the suit property. In essence, she sought quiet possession.
28. A perusal of the copy of the Certificate of Official Search dated 28<sup>th</sup> June 2016 which the Plaintiff produced shows that on 23<sup>rd</sup> May 1995, Damara M. Sila was registered as proprietor of the suit property as an administrator. That is in line with the Plaintiff's evidence that Damara became the registered proprietor after obtaining letters of administration in respect of the estate of Mafungo Mukachisila (deceased). Mafungo Mukachisila (deceased) was the husband of both Muganda and Damara.



29. Damara was registered as proprietor pursuant to Section 119 (1) of the Registered Land Act (repealed) which was then in force and which provided:

If a sole proprietor or a proprietor in common dies, his personal representative, on application to the Registrar in the prescribed form and on production to him of the grant, shall be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after his name of the words “as executor of the will of ..... deceased” or “as administrator of the estate of ..... deceased”, as the case may be.

30. Similar provisions are found at Section 61 (1) of the Land Registration Act and Section 50 (1) of the Land Act, 2012. Based on the material on record, it is manifest that transmission from the estate of Mafungo Mukachisila (deceased) has not been completed in the sense that no distribution has been done. Thus, the suit property remains part of the estate of Mafungo Mukachisila (deceased). It could not possibly be Damara’s personal property since she was registered as proprietor as administrator of the estate of Mafungo Mukachisila (deceased).

31. As fate would have it, Damara passed away on 17<sup>th</sup> July 2001 and Letters of Administration Intestate in respect of her estate were issued to Muganda on 25<sup>th</sup> September 2007. The Plaintiff produced a copy of the said Letters of Administration. It is important to note that “estate” is defined at Section 3 (1) of the Law of Succession Act to mean “the free property of a deceased person.” The suit property is not Damara’s property.

32. Although Muganda averred that she brought this suit as the legal representative and a beneficiary of the estate of Mukachisila Mafungo (deceased), she did not produce any letters of administration in her favour in respect of the said estate. The only letters of administration that were produced were in respect of Damara’s estate, yet the suit property is still an asset belonging to the estate of Mafungo Mukachisila (deceased).

33. When Muganda passed away on 11<sup>th</sup> January 2022, she was substituted by Peter Kamwani Waiti, the current Plaintiff, on the strength of Letters of Administration Ad Litem in respect of Muganda’s estate. It is plain enough that the suit property is equally not an asset belonging to Muganda’s estate.

34. The jurisdictional question that arises is whether Muganda and the Plaintiff have locus standi to bring this suit since the suit property remains part of the estate of Mafungo Mukachisila (deceased). Neither Muganda nor the Plaintiff are personal representatives of the estate of Mafungo Mukachisila (deceased).

35. It follows therefore that neither Muganda nor the Plaintiff could validly agitate a cause of action belonging to the estate of Mafungo Mukachisila (deceased). See *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR and *CKM v ENM & another* (Civil Appeal 250 of 2019) [2024] KECA 293 (KLR) (8 March 2024) (Judgment).

36. As the Court of Appeal stated in *Rugiri v Kinuthia & 3 others* [2024] KECA 1601 (KLR):

Decided cases are in agreement that where a suit is filed relating to a deceased’s estate without a grant of representation, the proceedings are null and void for want of locus standi. (See *Virginia Edith Wamboi vs. Joash Ochieng Ougo & Another* [1982-88] 1 KAR and *Trouistik Union International & Another vs. Jane Mbeyu & Another* Civil Appeal No. 145 of 1990). It follows, therefore, that for a party to have locus standi to institute or defend a case for and on behalf of a deceased person, he or she must first obtain a grant of letters of administration



empowering him or her to administer the deceased's estate or a limited grant limited for the purpose of filing or defending the suit.

37. In the circumstances, the Plaintiff's case is null and void for want of locus standi, and this Court therefore lacks jurisdiction to hear and determine it. The family and heirs of the estate of Mafungo Mukachisila (deceased) may consider concluding the administration and distribution of the said estate to enable them resolve underlying disputes.
38. Flowing from the foregoing, both the Plaintiff's case and the counterclaim are dismissed. Each party to bear own costs.

**DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**D. O. OHUNGO**

**JUDGE**

Delivered in the presence of:

The Plaintiff present in person

The Defendant present in person

Court Assistant: B Kerubo

