



**Mukundi v Mithaa (Environment and Land Appeal E009 of 2022)  
[2025] KEELC 6084 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6084 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL E009 OF 2022**

**JO OLOLA, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**WILFRED MUTHEE MUKUNDI ..... APPELLANT**

**AND**

**NDUNGU MITHAA ..... RESPONDENT**

**JUDGMENT**

1. This is an Appeal arising from the judgment of the Honorable J. Macharia SPM as delivered on 22<sup>nd</sup> February 2022 in Nyeri CMELC Case No. E040 of 2021
2. By a Plaint dated 14<sup>th</sup> June, 2021 Wilfred Muthee Mukundi (the Appellant) had sought judgment against the Respondent for orders as follows:
  - a. That the Honorable Court be pleased to declare that the Plaintiff is the rightful absolute proprietor of the entire land parcel known as Tetu/Kabage/218;
  - b. That the Honorable Court be pleased to declare that the registration of the suit property in the name of Mithaa S/o Rebania was illegal, irregular and therefore void ab initio and as such the title deed issued to Mithaa S/o Rebania should be cancelled;
  - c. That the Honorable Court does issue an order for the rectification of the register of the suit property by the Land Registrar Nyeri by deleting all existing entries as the same are false and reverting to the names of the rightful proprietors wherein the original proprietor was Ndirangu S/o Migongo and the current rightful owner should be Wilfred Muthee Mukundi;
  - d. That a perpetual injunction (be issued) restraining the Defendant, his agents and/or servants from remaining on or continuing in occupation of the Land Parcel No. Tetu/Kabage/218;



- e. That the Honorable Court does issue an order directed to the Defendant and/or his agents requiring them to vacate the Land Parcel No. Tetu/Kabage/218 forthwith and remove all their properties therein failing which they shall be evicted from the said land;
  - f. That the Honorable Court does issue an order directing the Defendant to pay the Plaintiff damages for trespass; and
  - g. Costs and interest.
3. The basis of those prayers was the Appellant's assertion that the suit property was initially registered in the name of Ndirangu S/o Migongo who passed away on 21<sup>st</sup> April 1969. It was the Appellants case that he was the rightful heir of the estate of the deceased. He accused the Defendant of fraudulently transferring the property to the name of Mithaa S/o Rebania and of occupying the property illegally and wrongfully thereby depriving him of the use and quiet enjoyment thereof.
  4. Ndung'u Mithaa sued as the legal representative of the Estate of Mithaa S/o Rebania (the Respondent) did not enter appearance and the matter proceeded by way of formal proof.
  5. Having heard the Appellant's case and in the judgment rendered on 22<sup>nd</sup> February, 2022, the Learned Trial Magistrate dismissed the claim having come to the conclusion that the same was misconceived and devoid of merit.
  6. Aggrieved by the said determination, the Appellant lodged a Memorandum of Appeal dated 28<sup>th</sup> March, 2022 but filed in court on 23<sup>rd</sup> March, 2022 simply stating as follows:

“Memorandum of Appeal

The Appellant being aggrieved by the judgment of the Honorable J. Macharia – SPM, delivered on the 22<sup>nd</sup> February 2022 in the Chief Magistrates Court at Nyeri hereby appeal (sic) to this Honorable Court against the above – named judgment.

Reasons wherefore the Appellant prays that:-

1. This Appeal be allowed.
  2. The judgment at the lower court be substituted with orders that:
    - a. The Judgment of the lower court delivered on 22<sup>nd</sup> February 2022 is hereby set aside.
    - b. The Plaintiff's suit against the Defendant is hereby allowed as prayed.
  3. Any further order the court may think just and fair in the circumstances of this case.”
7. In regard to the form of appeal, Order 42 Rule 1 of the Civil Procedure Rules provides as follows:
    - “(1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading;
    - (2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.”



8. In addition, Order 42 Rule 4 of the Civil Procedure Rules provides as follows:

“(4) The appellant shall not, except with leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule:

Provided that the High Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.”

9. In the matter herein, the Appellant has failed to set out the grounds upon which he objects to the judgment of the trial court in the Memorandum of Appeal. While the Appellant has endeavored to submit on various grounds upon which he faults the judgment, I was not persuaded that those submissions can be entertained by this court in view of the requirements of Order 42 Rule 4 of the Civil Procedure Rules.

10. Accordingly, it is my considered view that the Memorandum of Appeal lodged herein on 28<sup>th</sup> March, 2022 is misconceived and incompetent. The same is struck out with no order as to costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Wangechi Advocate for the Appellant
- c. No Appearance for the Respondents

