



**Njiru & 2 others v Mbiti (Environment and Land Appeal E006 of 2021)
[2025] KEELC 5993 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5993 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E006 OF 2021
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

PETER MURIUKI NJIRU 1ST APPELLANT

DOMINIC NJIRU ANTHONY 2ND APPELLANT

EMILIO NYAAGA NJIRU 3RD APPELLANT

AND

NJIRU MBITI RESPONDENT

JUDGMENT

1. The Appellants filed this appeal challenging the ruling dated 29/4/2021 of Honourable Wasike, Resident Magistrate, at Siakago vide which the court adopted the decree of the Land Disputes Tribunal issued on 27/7/2011. The appeal is premised on the ground that the Learned Magistrate erred by failing to take cognisance of the illegality of the decree dated 21/7/2011 and that he abdicated his jurisdiction to render sacrosanct justice as required by Article 159 (2) (d) and (e) of *the Constitution*. Further, that he erred by in construing his jurisdiction as being merely ministerial in so far as execution of the adoptive decree under the repealed Land Disputes Tribunal Act, 1990 were concerned.
2. The Appellants are the Respondent's sons borne by his estranged first wife, the late Lucia Ngari Njiru. The Appellants confirmed in their submissions that this appeal is related to Embu ELC Case No. 9 of 2021- Dominic Nieru Anthony & 2 others v Anthony Njiru Mbiti & Another, where the subject matter is the same parcels of land, namely, Mbeti/Gachuriri/1261, 1267, 1268, 1269 and 1275. Mbeti/Gachuriri/1267 and 1268 form the subject matter of ELC Case No. E006 of 2022.
3. This appeal is against the ruling dated 29/4/2021 delivered by Hon. Wasike partially allowing the Respondent's application dated 14/9/2020 seeking to enforce the decision of the Land Disputes Tribunal (the Tribunal) vide the adoption decree dated 21/7/2011. The Appellants stated that when the decree was issued, the 1st Appellant was in possession of Mbeti/Gachuriri/1269 and 1275; the 2nd



Appellant was in possession of Mbeti/Gachuriri/1267 and 1268; and that the 3rd Appellant was in possession of Mbeti/Gachuriri/1261.

4. The Appellants contended that under Section 3 of the repealed Land Disputes Tribunals Act, the Tribunal lacked jurisdiction to hear and determine the purported claim for the ownership of the above parcels of land and that the Learned Magistrate appreciated this legal position and addressed the question of the inherent illegality of the decree in relation to Mbeti/Gachuriri/1267 and 1268 registered in the name of the 2nd Appellant in the decree.
5. The Appellants urged that the execution of the decree against the 1st and the 3rd Appellants would engender the same disturbance in the ownership status of the subject parcels currently owned by and in the possession of the 1st and 3rd Appellants. The Appellants submitted that the magistrate abdicated his core jurisdiction as a dispenser of justice by resorting to robotically enforce the tainted decree dated 21/7/2011.
6. They proffered that the High Court merely struck out the application for an order of certiorari on the ground that it was lodged without leave of the court and that this Honourable Court has original jurisdiction under Order 3 Rule 9 of the Civil Procedure Rules to grant a declaratory judgment or order as sought.
7. According to the Appellants, the Learned Magistrate erred by failing to be guided by the decision of this Honourable Court in ELC Case No. 219 of 2014 where Angima J observed that it was evident that Block 148 in Gichiche Adjudication Section fell within an area declared to be an adjudication section hence the Tribunal did not have jurisdiction to entertain the dispute and that the same reasoning would apply to the award made in favour of the Respondent.
8. The Appellants explained that in ELC Case No. E009 of 2021, they seek a declaration that the decision and award of the Tribunal dated 4/4/2011 in L.D.T Claim No. 319 of 2007- Njiru Mbiti v Peter Muriuki Njiru & 2 others - Gachoka Land Disputes Tribunal - Mbeere South District) and the resultant decree dated 21/7/2011 adopting it in LDT ELC Case No. 18 of 2011 at Siakago (Njiru Mbiti v Peter Muriuki Njiru & 2 others) were illegal, null and void for contravening Section 3(1) of the Land Disputes Tribunals Act, 1990 and that any purported adoption, execution or enforcement of those orders is of no legal consequence.
9. The Appellants were emphatic that upon finding in favour of the 2nd Appellant that the execution of the subject decree was untenable on account of the inherent illegality of the decree, the Learned Magistrate was obligated to make corresponding findings of fact and law vis-a-vis the titles of the 1st and 3rd Appellants because the Respondent was also claiming Mbeti/Gachuriri/1261 and 1275 from the 1st Appellant and Mbeti/ Gachuriri/1269 from the 3rd Appellant because he appreciated that the Appellants were the putative owners and that it was quite clear that the lower court was dealing with the same jurisdictional issue.
10. The Respondent submitted that the interim stay of execution issued on 29/4/2021 was contingent upon the Appellants seeking orders from this court and on that premise, he proceeded and obtained orders on 14/12/2023 vide which the Chief Magistrate directed the Land Registrar and the surveyor to give effect to the earlier decree as ordered. He filed JR No E001 of 2025 seeking to compel the Land Registrar to comply with the court orders.
11. The Respondent urged that litigation must end and that the Appellants were circumventing the court process to deny him the opportunity to enjoy the fruits of the decree issued by the Tribunal in 2011. He maintained that the filing of a plethora of cases by the Appellants was a ploy aimed at frustrating him to surrender his properties to the Appellants.



12. The appeal was canvassed through written submissions, which the court has considered. The issue for determination is whether the court should allow the appeal by partially setting aside the order made by the Learned Magistrate on 29/4/2021 and substitute it with an order dismissing the notice of motion dated 14/9/2020 in its entirety.
13. The Respondent filed the application dated 14/9/2020 seeking an order directing the Officer Commanding Kitiriri Police Station to provide security to ensure compliance with the decree issued on 21/7/2011. The application was supported by the Respondent's affidavit and the grounds on the face of the application.
14. In the ruling delivered on 29/4/2021, the Learned Magistrate summed up the issues for determination as whether the decree dated 21/7/2011 was valid and whether he had jurisdiction to interfere with the Tribunal's decision. The Learned Magistrate observed that following the adoption of the award issued by the Gachoka Land Disputes Tribunal, the decree became an order of that court. The court noted that aggrieved by the Tribunal's decision, the Appellants filed Kerugoya High Court Misc. No. 11 of 2012 (JR) which was dismissed and that the decree was therefore valid. The court allowed execution in respect of parcel numbers Mbeti/Gachuriri/1261 and Mbeti/Gachuriri/1269 registered in the Respondent's name.
15. The main contention by the Appellants in this appeal is that the Land Disputes Tribunal lacked jurisdiction to hear and determine ownership of the suit land. What this court understands the Appellants to be challenging is the jurisdiction of the Tribunal to have made the award, which was adopted by the Principal Magistrate at Siakago on 21/7/2011 as the judgment of the court.
16. The application dated 14/9/2020 sought to have the Officer Commanding Kitiriri Police Station provide security to ensure compliance with the decree issued on 21/7/2011. The Learned Magistrate allowed the application in part with respect to Mbeti/Gachuriri/1261 and Mbeti/Gachuriri/1269 registered in the Respondent's name.
17. An appeal is not the proper forum for the Appellants to challenge the jurisdiction of the Tribunal to have made the award which was adopted by the Magistrates Court, and whose enforcement the Respondent sought the assistance of the police through the application dated 14/9/2020. That should have been done through judicial review proceedings.
18. The court declines to grant the orders sought in the appeal. Since the parties are related, each party will bear its costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF SEPTEMBER 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Chadianya Kennedy for the Respondent

No appearance for the Appellant

