



**Munubi v Vuviya (Environment & Land Case 83 of 2013)
[2024] KEELC 13225 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 13225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 83 OF 2013**

DO OHUNGO, J

MAY 2, 2024

BETWEEN

DORCUS INYAMBULA MUNUBI PLAINTIFF

AND

RUTH AUMA VUVIYA DEFENDANT

RULING

1. Judgment was delivered in this matter by N.A. Matheka, J. on 19th September 2018 as follows:

I find that the plaintiff has established her case on a balance of probabilities and I grant the following orders;

1. A declaration that the respondent's right over a portion of land title No. Kakamega/South Maragoli/Lugovo 925 got extinguished by operation of law/adverse possession upon expiry of twelve (12) years when the applicants were in possession thereof.
2. A declaration that the registration of the respondent as owner of land title No. Kakamega/South Maragoli/Lugovo 925 was unlawful.
3. A declaration that upon the expiry of the twelve (12) years from the date of the said registration, Kakamega/South Maragoli/Lugovo 925 was held and is currently held in trust for the applicant.
4. An order that the Kakamega/South Maragoli/Lugovo 925 in applicant and that the applicant should be registered as owner thereof under section 38 of the *Limitation of Actions Act* Cap 22 Laws of Kenya.
5. An order that the respondent do sign all relevant documents to facilitate submission and transfer of Kakamega/South Maragoli/Lugovo 925 to the



applicant and that in default the deputy registrar of this honourable court to sign the same.

6. An order that each party to bear its costs.

It is so ordered.

2. The file remained dormant after delivery of the judgment until 18th October 2023 when Notice of Motion dated 17th October 2023 was filed. The following orders are sought in the application:
 - a. [Spent]
 - b. That the Honourable Court be pleased in the interim to place an inhibition order restraining the Plaintiff/Respondent from escalating any transfer, charge or parting with possession of Land Registration South Maragoli/Lugovo/925 approximately measuring 1.3 Ha pending the hearing and determination of this application and determination of the Civil Appeal No. 1 of 2019 *Ruth Auma Vuyiya vs Dorcas Inyambula Munubi*.
 - c. That further and in the affirmative the Honorable Court be pleased to order the cancellation of the New Title Numbers being South Maragoli/Lugovo/2307, South Maragoli/Lugovo/2308, South Maragoli/Lugovo/2309 and South Maragoli/Lugovo/2310 (the 'suit land'-mine) while pending the hearing and determination of the Civil Appeal No. 1 of 2019; *Ruth Auma Vuyiya vs Dorcas Inyambula Munubi* preferred by the Applicant to the Court of Appeal.
 - d. That the Defendant's/Applicant's Title South Maragoli/ Lugovo/925 be reinstated to its original state and discharged from any or further execution pending Appeal in the Court of Appeal.
 - e. That this Honourable Court be pleased to issue an order directing the Interested Party file the status report of the suit land South Maragoli/Lugovo/925 within 21 days in compliance with orders (b), (c) and (e) above in default a warrant of arrest be issued against the said Interested party.
 - f. That Plaintiff, Plaintiff Agents and Vihiga Lands Registrar do pay costs and damages for wrongful execution for want of due process and trespass.
 - g. Costs of the application be provided by the Plaintiff/Respondent and Interested party.
3. The application is supported by an affidavit sworn jointly by Franklin Munubi Vuyiya and Pamela Saisi Kioko who deposed that they are administrators of the estate of the defendant and that the defendant preferred an appeal against the judgment herein before her demise. That the plaintiff moved to execute the decree without informing them and without serving them with any decree. They further deposed that a conservatory order was issued in Eldoret Succession Cause No. 30 of 1999 to stop intermeddling with estate property. That the plaintiff transferred the suit property to herself in 2022 and subdivided it when there was a pending appeal in total disregard of due process.
4. The plaintiff opposed the application through a replying affidavit in which she deposed that the application is an abuse of due process and that the applicants had not shown any reason why she should not enjoy the fruits of the judgment. That the applicants filed a replica of the application in Eldoret Succession Cause No. 30 of 1999 and that the court is functus officio.
5. The application was canvassed through written submissions which both sides duly filed. I have considered the application, the affidavits, and the submissions. The issues that arise for determination are whether this court has jurisdiction and whether the orders sought should issue.



6. It cannot be overemphasised that jurisdiction is the cornerstone of all judicial proceedings. A court of law cannot take any valid step in the absence of jurisdiction. The court's jurisdiction flows from either the Constitution or legislation or both and it can only exercise jurisdiction as conferred on it by law. See Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR. Any order or step taken by a court in the absence of jurisdiction is a nullity. See Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR and Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR.
7. Judgment having been delivered in this matter, the court conclusively determined the rights of the parties as far as the case pleaded before it was concerned. The applicants have stated that the defendant appealed against the judgment. They have specifically mentioned Civil Appeal No. 1 of 2019 Ruth Auma Vuyiyya vs Dorcas Inyambula Munubi in their prayers.
8. A reading of the present application shows that it does not mention or seek stay of execution pending hearing and determination of the defendant's appeal. Instead, it raises such issues as an order of inhibition, cancellation of titles and reinstatement to original title. The applicants have even surreptitiously introduced the Vihiga County Land Registrar as a new party to the suit. Vihiga County Land Registrar was not a party at the time of delivery of the judgment. As the Supreme Court stated in Everton Coal Enterprises Limited v Karanja & 5 others (Application E026 of 2023) [2023] KESC 98 (KLR) (10 November 2023) (Ruling), a person cannot join a matter as an interested party after delivery of judgment.
9. The case having been determined, the court became functus officio and has no jurisdiction make new orders in the manner sought. See Raila Odinga & Others vs. IEBC & Others [2013] eKLR. The applicants, who have never been admitted into this matter to substitute the defendant, should pursue the defendant's appeal in the Court of Appeal.
10. In view of the foregoing, Notice of Motion dated 17th October 2023 is struck out with costs to the plaintiff.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 2ND DAY OF MAY 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Mondia for the Plaintiff

Mr Okungu holding brief for Ms Kitigin for the Defendant

Court Assistant: M Nguyayi

