



Muriithi & 2 others v Muthike & 2 others (Environment & Land Case 21 of 2019) [2024] KEELC 6587 (KLR) (9 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6587 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 21 OF 2019**

**JM MUTUNGI, J
OCTOBER 9, 2024**

BETWEEN

**ROBERT NDERI MURIITHI 1ST APPELLANT
ANTHONY KARIUKI MURIITHI 2ND APPELLANT
JEREMIAH MAGANJO MURIITHI 3RD APPELLANT**

AND

**FLORA NJERI MUTHIKE 1ST RESPONDENT
NANCY WANGUI NGARI 2ND RESPONDENT
JANE MUTHONI ZACHARIA 3RD RESPONDENT**

((Being an Appeal from the Ruling of the Principal Magistrate Wang’uru Hon. G. Mutiso delivered on 12th November, 2019 in Wang’uru ELC Case No. 6 of 2019))

JUDGMENT

1. The present Appeal arises from the Ruling delivered by Hon. G. M. Mutiso (P.M) Wang’uru Magistrate’s Court in ELC No. 6 of 2019 on 12th November, 2019. The Ruling was on a Preliminary Objection taken by the Defendants now Appellants in the instant Appeal, that the Subordinate Court lacked the jurisdiction to deal with the matter since the matter fell within the jurisdiction of the Scheme Disputes Resolution Mechanism established under the *Irrigation Act*. The Learned Trial Magistrate dismissed the Preliminary Objection as incompetent.
2. The brief facts of the suit before the Lower Court were that the Plaintiffs (the Respondents in the Appeal), were the sisters of the Defendants (the Appellants in the Appeal) and that their deceased father who had two wives owned Rice holding Nos. 4441 and 2058. The Respondents claimed that Rice holding 2058 was awarded to their mother’s household of which the Respondents and the Appellants



were the children. The Respondents claimed that the Appellants (their brothers) in total disregard of the award by the Scheme Advisory Committee registered themselves as the sole licencees of Rice holding No. 2058 to the exclusion of the Respondents. The Respondents claimed to be entitled to half share of Rice holding No. 2058 as children of their mother's household. They prayed vide the Complaint for:-

- a. A declaration that they were entitled to half share of Rice holding Number 2058 and were entitled to get licences from the National Irrigation Board for the half share.
3. The Appellants in a joint statement of defence denied the Respondents claim. The Appellants averred that the dispute by the Respondents ought to be dealt with in accordance with the Dispute Resolution Mechanism established under the *Irrigation Act*. The Appellants denied the Lower Court had jurisdiction to deal with the matter and gave notice they intended to raise a Preliminary Objection in that regard.
 4. The Appellants issued a Notice of Preliminary Objection dated 18th February 2019 and filed on 20th February 2019 listing four grounds; that the Court lacked jurisdiction and that the dispute had been determined by the Scheme Advisory Committee as envisaged under the *Irrigation Act*, 2019; that Rice holding Number 2058 was non-existent the same having been subdivided; that the decision of the Advisory Committee made on 18th March 2011 had been executed and had not been varied and/or challenged by the Respondents; and that the Scheme Manager, Mwea Irrigation Scheme was not a party to the proceedings and hence there was likelihood of conflicting orders/decisions in regard to rice holding No. 2058.
 5. The Learned Trial Magistrate heard the Preliminary Objection and gave the Ruling dated 12th November, 2019 disallowing the same. This was the Ruling that has provoked the present appeal. In the Memorandum of Appeal dated 10th December, 2019 the Appellant has set forth 5 grounds of Appeal as hereunder:-
 - a. The Learned Trial Magistrate erred in fact and in Law in holding that he had jurisdiction to hear the matter which had been determined by the Advisory Committee of the Mwea Irrigation Scheme.
 - b. The Learned Magistrate erred in fact and in Law in holding that he had jurisdiction to determine a dispute over a rice holding that had ceased to exist after subdivision.
 - c. The Learned Magistrate erred in fact and in law in holding that he could determine a dispute that had already been executed by the Manager Mwea Irrigation Scheme.
 - d. The Learned Magistrate erred in fact and Law in failing to hold that hearing the matter would result in conflict decisions with those of the Advisory Committee.
 - e. The Learned Magistrate erred in failing to uphold the Preliminary Objection dated 18/2/2019.
 6. The Appellant prays that the Appeal be allowed and the order dismissing the Preliminary Objection be set aside and substituted with an order upholding the Preliminary Objection and consequently ordering Wang'uru ELC No. 6 of 2019 struck out with costs and the costs of the appeal be awarded to the Appellant.
 7. The Appeal was canvassed by way of written submissions. The Appellants filed their submissions dated 24th April, 2024 while the Respondents filed theirs dated 24th May, 2024. I have duly considered the submissions made by the parties and the Authorities they referred to. The singular issue that arises in this Appeal for determination is whether the Learned Trial Magistrate had jurisdiction to deal with the



matter that was before him. The Appellants position is that the Lower Court never had any jurisdiction and hence the suit before the Subordinate Court was unsustainable.

8. This being an Appeal of first instance this Court is under a duty to re evaluate the facts and evidence before the Lower Court to satisfy itself that the decision of the Lower Court was justified. The Court is entitled to make its own findings and reach its own conclusions and is not bound by any findings of fact the Lower Court may have made if the facts and the evidence do not support such findings. See the Case of *Selle & another -vs- Associated Motor Boat Co. Ltd & Others* (1968) E A 123 where the Principle was enunciated thus:

“ --- this Court is not bound necessarily to accept the findings of fact by the Court below. An Appeal to this Court is by way of a 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 allowance in this respect----”.

9. The Lower Court was called upon to determine the Preliminary Objection taken by the Appellant that it lacked the jurisdiction to deal with the matter since the dispute between the parties was such as required to be handled under the Dispute Resolution Mechanism established under the *Arbitration Act*. The Appellants contended Rice holding No. 2058 was non existent as it had been subdivided following a decision of the Mwea Scheme Advisory Committee on 18th March, 2011 which decision was never challenged by the Respondents.
10. The Appellants submitted that the National Irrigation Authority established under the *Irrigation Act*, 2019 was the body that was mandated under the Law to Manage, Control, regulate and allocate land within the National Irrigation Schemes in Kenya. Further the Appellants contended that the National *Irrigation Act*, Cap 347 Laws of Kenya (now replaced with the *Irrigation Act*, 2019) was a self regulating Act with an inbuilt Dispute Resolution Mechanism and hence the Respondents dispute ought to have been referred to the Dispute Resolution Committee established under the Act. The Appellants maintained the Learned Trial Magistrate erred in conferring himself jurisdiction when he had none to handle the dispute. The Appellants relied on the Case of *Fatuma Maale Mohamed -vs- National Irrigation Board & 2 Others* (2020) eKLR where Cheron, J while striking out a suit brought by the Plaintiffs against the Defendants stated thus:-

----- it is trite that the National Irrigation Board has the sole statutory mandate to manage, control, regulate and allocate land within the National Irrigation Schemes in Kenya. It is also trite that the National *Irrigation Act* Cap 347 is a self regulating and sustaining law with definite provision for Dispute Resolution and Appeal Mechanisms for anyone aggrieved by the decision made by the Board under the Act. These decisions by the Board can only be challenged by way of Judicial /review under Order 53 CPR and Article 22 of *the Constitution* of Kenya 2010.”

11. In the suit before, the Wang’uru Magistrate’s Court the Respondents admit that there was a dispute referred to the Advisory Committee of National Irrigation Board who made a decision on 1st July, 2011 in regard to Rice holding No. 2058 which was awarded to the children of the first house of the deceased. The extract of the Minutes/Decision of the National Irrigation Board exhibited at pages 40 and 41 of the Record of Appeal indicate the Advisory Committee’s decision on 1st July, 2011 was to the effect that the Appellants were to inherit Rice holding No. 2058 and that each of them was to get 1 1/3 Acres of land. This decision was implemented and the Rice holding was subdivided and each of the Respondents was issued a Rent Card for their portion way back in 2012. In effect the Respondents



in instituting the suit before the Lower Court against the Appellants, were challenging the decision made by the Advisory Committee of the Mwea Irrigation Scheme.

12. It was not disputed by the parties that the Advisory Committee had mandate to deal with the matter when they made the decision on the distribution of Rice holding No. 2058. The Advisory Committee was acting as a quasi-Judicial body and having made its decision, such decision could only be challenged not by way of filing a fresh suit in Court but by way of Judicial Review to have the decision and/or the proceedings quashed for either being unreasonable and/or irrational and/or having been reached without observing due process.
13. In the Case of *Veronica Wangari Karinga –vs- National Irrigation Authority & 3 Others* (2023) eKLR this Court dealing with a somewhat similar situation where the Dispute Arbitration Committee of the National Irrigation Board had dealt with the Succession of a Rice holding and made a decision which an aggrieved party rather than challenging the decision by way of Judicial Review filed a Plaint before the ELC, the Court stated thus:-

“My view is that the issue of the licence in regard to Rice holding 2277 and the Succession thereof following the death of the licensee is a matter that fell within organs established under the *Irrigation Act* 2019 to decide and exercising their mandate they were acting in a quasi-Judicial capacity and decisions emanating from their Administrative Actions would be subject only to Judicial Review by the Court. In the instant case, the Plaintiff is challenging the decision of the Dispute Arbitration Committee which as I have observed was lawfully exercising its mandate. This court exercises supervisory jurisdiction over the Subordinate Court and over any person, body or authority exercising a Judicial or quasi – Judicial function that relates to matters that fall under its jurisdiction. Where such a body or authority exercises its administrative function as required by the statute and renders a decision, such decision cannot be challenged by way of commencing a suit by way of Plaint as that would constitute seeking to have the matter re-heard through another Judicial process ignoring the fact that already there is a decision made by a duly authorised and mandated body. Such decisions can only be challenged by way of Judicial Review as contemplated under Order 53 Rule 1 and 2 of the Civil Procedure and under the Fair Administrative Actions Act, 2015.”

14. In the matter before the Lower Court, the Respondents filed a Plaint and were essentially challenging the decision of the Scheme Advisory Committee to distribute the Rice holding 2058 solely to the Appellants to their exclusion. The Learned Trial Magistrate did not have jurisdiction to entertain the suit. Section 25 and 26 of the *Irrigation Act*, 2019 makes provision for resolution of disputes regarding disputes arising from the management and operations of the Scheme. Section 26 provides for appeals as follows:-

26. Where the Water Users Association or at the Irrigation Scheme Level is unable to resolve a dispute, the same shall be referred to the Dispute Resolution Committee at the first instance to consider and determine the matter before the same is referred to Court.

Regulation 82 and 83 of the Irrigation (General) Regulations, 2020 provide for the procedure of handling disputes arising under the *Irrigation Act*, 2019. Regulation 86 provides for Appeals as follows:-

SUBPARA 86.

SUBPARA (1)



In case of disputes on an irrigation scheme, a dissatisfied party may appeal to the relevant supervising entity.

SUBPARA (2)

In case of disputes within public or national irrigation schemes meant for settlement, dissatisfied party may appeal to the scheme management committee.

SUBPARA (3)

Where a person is dissatisfied with the decision of the Dispute Resolution Committee and the Scheme Management Committee as the case may be, the person shall exhaust the procedures specified in these Regulations before resorting to Court of Law.

15. The Respondents quite evidently had not exhausted the Dispute Resolution Mechanisms established under the *Irrigation Act*, 2019 and the Regulations thereunder and the reference of the suit to Court was premature. The Court was without jurisdiction and could not confer itself jurisdiction. The Preliminary Objection taken by the Appellants was well founded and the Court ought to have sustained it. As indicated the decision of the Scheme Advisory Committee could only be challenged by way of Judicial Review and not by filing a suit.
16. The upshot is that I find merit in the Appeal and I allow the same with the consequence that Wang'uru Magistrate's Court ELC No. 6 of 2019 is ordered struck out for want of jurisdiction on the part of the Court.
17. I have taken cognizance of the fact that the parties in this appeal and in the Court below are siblings and in exercise of my discretion I order that the parties will bear their own costs of the appeal and of the Court below.

Orders accordingly.

JUDGMENT DATED, SIGNED AND DEVIVERED VIRTUALLY AT KERUGOYA THIS 9TH DAY OF OCTOBER 2024.

J. M. MUTUNGI

ELC - JUDGE

