



**Kenik v Chelule (Environment and Land Appeal 10 of 2021)
[2023] KEELC 16259 (KLR) (13 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16259 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL 10 OF 2021**

**EM WASHE, J
MARCH 13, 2023**

BETWEEN

CHRISTINA NEBO ARAP KENIK APPELLANT

AND

THOMAS CHELULE RESPONDENT

JUDGMENT

1. The appellant herein filed a Memorandum of Appeal dated March 19, 2020 (hereinafter referred to as “the present Appeal”) against the Ruling and Decree of Hon. D.K. Matutu, PM pronounced on the 27th of February 2020 (hereinafter referred to as “the Trial Court Ruling”) in the proceedings known as Kilgoris PM ELC Case No. 102 of 2018 (hereinafter referred to as “the trial court proceedings”) seeking for the following Orders; -
 - a. The Appeal be allowed.
 - b. The Ruling and Orders of the Hon D.K.Matutu, Principal Magistrate delivered on the 27th of February 2020 be set-aside to the extent that it required the appellant to surrender the original title deed and sign the transfer form within 21 days, failure to which the Executive officer /Administrative Assistant – Kilgoris Law Courts to sign all the Transfer documents and the Land Registrar, Transmara West and East do dispense with the Original Title Deed to the Land Parcel No. Narok/Transmara/Ololmasani/426.
2. The present Appeal is premised on 10 grounds of Appeal which are outlined as follows; -
 - i. That the finding by the Learned Trial Magistrate that the appellant should surrender the original title deed and sign the transfer form within 21 days, failure to which the executive officer/administrative assistant -Kilgoris law Courts to sign all the transfer documents and the



Land Registrar West and East to dispense with the original deed to land parcel number Narok/Transmara/Ololmasini/426 was plainly wrong.

- ii. That the learned Trial Magistrate erred in law and in fact in finding the Appellant should surrender the original title for the parcel of land she has owned since time immemorial.
 - iii. That the Learned Trial Magistrate erred in law and in fact in failing to consider that the Appellant was not accorded a chance to be heard and to present her documentary evidence.
 - iv. That the Learned Trial Magistrate erred in law and fact in failing to consider the submissions by the Appellant hence he misconstrued the law on the sanctity of title and right to own property.
 - v. That the Learned Trial Magistrate erred in law and in fact in making an order for transfer of the appellant's parcel of land given the circumstances of the appellant.
 - vi. That the Learned Trial Magistrate erred in law and in fact in making the appellant's right to property and the sanctity of the title deed from being infringed upon without according the appellant a right to be heard.
 - vii. That the Learned Trial Magistrate's ruling that the appellant do surrender the original title deed and sign the transfer from within 21 days, failure to which the executive officer/administrative assistant- Kilgoris Law Court to sign all the transfer documents and the Land Registrar Transmara West and East to dispense with the Original title deed to land parcel number Narok/Transmara/Ollmasani/426 was plainly wrong and it amounted to wrongful exercise of discretion.
 - viii. That the Learned Trial Magistrate erred in law and in fact in overlooking the substance and administering justice in regards to technicalities.
 - ix. The Learned Trial Magistrate erred in law and in fact in failing to appreciate that the conditions/grounds for review had been met in the case of the appellant.
 - x. The Learned Trial Magistrate erred in law and in fact in disallowing the appellant's advocate's application for leave to come on record after the judgement had been entered.
3. The trial court ruling being challenged canvassed two separate applications namely the August 21, 2019 and September 13, 2019.
 4. The 1st Application dated August 21, 2019 was filed by the appellant seeking for the Review, set-setting aside or variation of the trial court Judgement pronounced on the 9th of July 2019.
 5. The second Application dated September 13, 2019 was filed by the respondent seeking for the execution and/or implementation of the Orders issued in the Trial Court Ruling pronounced on the 9th of July 2019.
 6. According to the Trial Court Ruling, the first application dated 21st August 2019 was dismissed for firstly having been filed by an advocate who was not properly on record and secondly, the same did not merit the granting of the orders sought.
 7. The second Application dated September 13, 2019 was granted and the appellant was directed to surrender the original title deed and sign the transfer form within 21 days, failure to which the executive officer/administrative assistant -Kilgoris law Courts to sign all the transfer documents and the Land Registrar West and East to dispense with the original deed to land parcel number Narok/Transmara/Ololmasini/426.



8. The appellant is seeking to appeal against the entire trial court Ruling dealing with the two separate applications.
9. In the file before the court, the appellant filed a Record of Appeal dated June 5, 2022 and a supplementary Record of Appeal dated July 18, 2022.
10. Referring to the Index of the documents in both the Record of Appeal dated June 5, 2022 and the supplementary Record of Appeal dated July 18, 2022, the Appellant has filed the Application dated August 21, 2022 together with the annexures therein.
11. However, the Record of Appeal does not include the respondent's Application dated September 13, 2019 which was also determined in the trial court Ruling.
12. Secondly, the Record of Appeal also does not include the Respondent's written submissions to the application dated August 21, 2019.
13. The net-effect of these omission is that the Court is not able to peruse the said Application dated September 13, 2019 as well as the Submissions filed by the Respondent in response to the Application dated August 21, 2019 to enable it re-evaluate the grounds and reasons adduced therein so that it can arrive at its own independent conclusion.
14. In other words, the Record of Appeal dated June 5, 2022 and the Supplementary Record of Appeal dated July 18, 2022 are not a complete record of the pleading and proceedings that resulted to the trial court Ruling and are therefore struck out.
15. In conclusion, the court hereby makes the following Orders as appertains the Memorandum of Appeal dated 1March 9, 2020; -
 - a. The Memorandum Of Appeal dated 19thMarch 2020 be and is hereby struck out.
 - b. The appellant shall bear the costs of this appeal.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON THE 13TH OF MARCH 2023.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: MEMPE

ADVOCATES FOR THE APPELLANT: MORANGA

ADVOCATES FOR THE RESPONDENT: N/A

