



**Mang'oli v Wanyama (Environment and Land Appeal  
21 of 2019) [2023] KEELC 17279 (KLR) (9 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17279 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL 21 OF 2019**

**DO OHUNGO, J**

**MAY 9, 2023**

**BETWEEN**

**CHARLES MAKANDA MANG'OLI ..... APPELLANT**

**AND**

**MARTIN FWAMBA WANYAMA ..... RESPONDENT**

*(Appeal was heard, and judgment delivered on December 18, 2019 by NA Matheka J)*

**RULING**

1. The appellant filed this appeal against the decision of the Western Provincial Appeals Committee read to the parties on July 10, 2003. The appeal was heard, and judgment delivered on December 18, 2019 by NA Matheka J as follows:

The provisions of section 3 (1) of the [Land Disputes Tribunal Act](#) No 18 of 1990 are very clear on what matters these tribunals had jurisdiction over claims of title to registered land is not one of the matters that can or could be laid in this tribunal and the Matungu Land Disputes Tribunal and Western Provincial appeals Committee were wrong to register, hear and pass judgment and make orders against the appellants on the title to the suit land. Having found this there will be no need to go into the merits or demerits of the proceedings in the Tribunal and Committee as they never had jurisdiction in the first place. I find that this appeal has merit and I allow the same. I quash the decision/verdict of the Matungu Land Disputes Tribunal and Western Provincial appeals Committee with no orders as to costs.

It is so ordered.

2. By Notice of Motion dated January 25, 2023, the appellant now seeks the following orders:

1. [Spent]



2. That pursuant to this Honourable Court's decision delivered on December 18, 2019 by Hon. Lady Justice NA Matheka, the applicant be and is hereby declared the lawful registered proprietor of land known as N/Wanga/Khalaba/1264 situated in Mumias.
  3. That the creation of parallel numbers being N/Wanga/Khalaba/2015 and N/Wanga/Khalaba/2016 vide mutation carried out on December 15, 2021 is illegal and void.
  4. That there be an Order directing the 2<sup>nd</sup> respondent to reverse the creation of the parallel numbers in respect of the suit property and it reverts back to its original number being N/Wanga/Khalaba/1264.
  5. That this Honourable Court do issue an order directing the County Survey Office to cancel the mutation form that were created vide N/Wanga/Khalaba/2015,2016 back to N/Wanga/Khalaba/1264.
  6. That there be an Order of injunction prohibiting the 1<sup>st</sup> respondent by himself servants or agents from interfering with the applicant's proprietorship, possession and enjoyment of the suit property.
  7. That the costs of this application be provided for.
3. The application is supported by an affidavit sworn by the applicant who deposed that following the above judgment, he noticed strangers in the suit property sometime in 2022 prompting him to conduct a search only to learn that the suit property had been subdivided into two parcels of land known as N/Wanga/Khalaba/2015 and N/Wanga/Khalaba/2016. He added that the subdivisions were done during pendency of the appeal in High Court and that since this court's judgment was not appealed against or varied, it ought to be complied with.
  4. Although evidence of service was availed, the respondent never filed any response to the application nor attended its hearing. Counsel for the applicant urged the court to allow the application.
  5. I have considered the application, the affidavit in support and the submissions.
  6. This matter was filed in the High Court as an appeal against the decision of the Western Provincial Appeals Committee read to the parties on July 10, 2003. The jurisdiction of the High Court and eventually this court while dealing with the matter was exclusively an appellate jurisdiction. The appeal having been determined, the court became functus officio in so far as its power to determine the parties' respective claims in the matter goes. The court does not have jurisdiction to revoke or vary its decision, save in cases of applications for setting aside or review. See *Raila Odinga & Others vs IEBC & Others [2013] eKLR*.
  7. The orders that the applicant now seeks raise new matters or causes of action which cannot be determined by the court in its appellate jurisdiction after delivery of judgment. The court has no jurisdiction to hear and determine the application. A case or application filed in a court without jurisdiction is stillborn and beyond redemption. See *Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service [2019] eKLR*.
  8. In view of the foregoing discourse, I strike out Notice of Motion dated January 25, 2023. Since the respondent did not resist the application, I make no order as to costs.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 9TH DAY OF MAY 2023.**



**D. O. OHUNGO**

**JUDGE**

**Delivered in open court in the presence of:**

Ms Kegehi for the appellant/applicant

No appearance for the respondent

Court Assistant: E. Juma

