



Munyi v Mauta & another (Legal Representative of Jackson Kivindyo Mavulu) (Environment and Land Appeal 21 of 2019) [2022] KEELC 105 (KLR) (4 May 2022) (Judgment)

Neutral citation: [2022] KEELC 105 (KLR)

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

A NYUKURI, J

MAY 4, 2022

BETWEEN

PATRICK KINYAMASYO MUNYI (MUNYI MUTUNGA) APPELLANT

AND

KAVATA MAUTA & ANOTHER RESPONDENT

LEGAL REPRESENTATIVE OF JACKSON KIVINDYO MAVULU

(This appeal arises from the decision of the Minister vide Appeal Case No. 144 of 1987 in respect of parcel No. 756 at Kwa Vonza Adjudication Section)

JUDGMENT

Introduction

1. This appeal arises from the decision of the Minister vide Appeal Case No. 144 of 1987 in respect of parcel No. 756 at Kwa Vonza Adjudication Section (suit land), in accordance to Section 29 of the [Land Adjudication Act](#) Cap 284 Laws of Kenya.

Background

2. Jackson Matheka Kinyae filed an objection against Munyi Mutunga being Objection No. 53 of 1985 in respect of the suit land. The objection was allowed in favour of Jackson Mavindyo Mavulu and he was awarded the suit land. Dissatisfied, Munyi Mutunga appealed against the decision of the Land Adjudication Officer to the Minister, vide Appeal Case No. 144 of 1987. Upon hearing the appeal, the same was dismissed and the Minister ordered the land to remain registered in the name of Jackson Mavindyo Mavulu, the Respondent.
3. Dissatisfied with the decision of the Minister, Patrick Kinyamasyo Munyi filed an appeal before this court against the minister's decision based on the following grounds;



- a. That the Chairman (DCC) of Lower Yatta Kitui, erred in law and in fact in not considering from the year 1987 to date, me and my father have been taking care of the land, developing and fencing.
 - b. The DCC and the court did not consider that I have called the Respondent since the death of my father through their offices for more than 5 times and they were not showing up for the case.
 - c. That the witnesses who one of them was the chairman of the Board that was distributing land at Kwa Vonza in 1987 was not properly addressed because the other people who knew which land was given to who before the determination of the case.
 - d. That I was not asked by the court to show where we had built and the piece of shamba we used to cultivate which is still there now instead they asked the Respondent who gave them wrong information concerning the shamba and the buildings and there was none. On my side there are buildings which were there and they are still there to date.
 - e. That the Chief of Kwa Vonza was not called to give evidence of what he knows about the land for more than 30 years.
 - f. That the Respondent is not known by people around, only two people claim to know him.
 - g. That I have taken care of that land for more than 30 years alone and the Respondent was nowhere to say that the land belongs to him.
 - h. All the witnesses must be called afresh in the court of law for a fresh hearing and determination.
 - i. That the determination of the case was made in my absence which was wrong and against the law as per my letter dated 16/04/2019.
 - j. That there was no child who died and buried in that land as purported by the respondent.
 - k. That there was no structure or buildings done by the Respondent on that land per the Respondent's claim.
4. The Appellant sought orders as follows;
- a. The court do set aside the judgment of the DCC Lower Yatta and to proceed to allow me the Appellant; claim and dismiss the Respondents claims.
 - b. The court do award me, the Appellant costs of this appeal and the costs in the subordinate court.
5. Upon being served with the appeal, the Respondent filed a Notice of Motion dated 3rd June 2021, and sought the following orders;
- a. That the appeal lodged herein against the decision of the Minister be struck out.
 - b. That the appellant respondent and any other person claiming under him, be ordered evicted from Land Title Number Yatta B2/Kwa Vonza/756, and the Officer Commanding Station (OCS) Kwa Vonza Police Station be ordered to carry out the eviction.
 - c. That the costs of the application and the appeal be awarded to the Applicant.
6. The application is supported by the annexed affidavit of Kavita Mauta sworn on 3rd June 2021 where she averred that she was the legal representative of the estate of Jackson Kivindyo Mavulu who is deceased and the Respondent in this appeal; that the suit property is registered in her name; that both



the appellant and herself participated in the appeal before the Minister; that the Appellant is engaged in wanton destruction of the suit property; that she has issued a demand letter to the Appellants requiring him to vacate the land only for him to inform her that he had filed this appeal; that section 29 of the [Land Adjudication Act](#) provides that the Minister's decision is final and not appealable to this court; that the appeal herein is an abuse of the court process and ought to be struck out with costs.

7. In view of the fact that the application dated 3rd June 2021 was in response of the appeal, on 26th October 2021, this court directed that both the said application and the appeal, shall be argued together and directed parties to file written submissions in respect thereof. On record are the appellant's submissions filed on 24th November 2021 as well as the Respondent's submissions filed on 3rd December 2021.

Submissions

8. The appellant submitted that he was born in 1955. That in 1987, when he was aged 32 years and working, the suit land was allocated to his father, the late Munyi Mutunga. He submitted further that in 1998, his father started developing the suit property and sold part of it to 4 people, before he passed on in 1999. He further contended that in 2001 when he went to the Lands office in Kitui, he was surprised to learn that there was appeal No. 144 of 1987.
9. It was the Appellant's contention that he had stayed, developed and sold part of the suit land without any complaint from anyone and that the Respondent having been registered as the owner of the suit property, ought to have been visiting the land or engaged the services of a care taker to watch over the land, which, according to the Appellant was not done.
10. On their part, counsel for the Respondent submitted that the orders of the Minister dismissing the appellant's appeal were final and cannot be challenged in court except by way of Judicial Review. Counsel relied on Section 29 of the [Land Adjudication Act](#) Cap 284, for the proposition that the decision by the Minister is final and cannot be subject of an appeal in this court. Counsel argued that the appeal as presented is incompetent and ought to be struck out.
11. Counsel also submitted that the statement of facts filed by the Appellant was incompetent, and pointed out that though the appellant was served and was aware of the application dated 3rd June 2021, he did not respond to the said application. Counsel concluded by urging this court to allow the application dated 3rd June 2021.

Analysis and determination

12. I have carefully considered the appeal, the application dated 3rd June 2021 as well as the submissions of parties. The issues that arise for determination are as follows;
 - a. Whether the appeal is incompetent
 - b. Whether an order of eviction should issue against the Appellant herein.
13. Section 29 of the [Land Adjudication Act](#) Cap 284 laws of Kenya provides as follows;

Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by:

 - a. Delivering to the Minister an appeal in writing specifying the grounds of appeal; and



- b. Sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
14. It is therefore clear that the decision of the Minister under section 29 of the [Land Adjudication Act](#), cannot be appealed against and or challenged on merit.

15. In the case of *Robert Kulinga v Musembi Mutunga & another* [2020] eKLR, the court held as follows;

The position that the court can only interfere with the decision of the bodies established under the Act by way of judicial review proceedings or where a new cause of action is introduced after the proceedings of the Minister have closed was upheld in the case of *Dume Deri Mumbo & 19 Others v Cabinet Secretary of Lands, Housing & Urban Development & 6 Others* [2016] e KLR, where the court held as follows;

The issues that are being raised in the current suit as to which clan owns the suit property were conclusively dealt with by the various bodies including the Minister, pursuant to the provisions of the [Land Adjudication Act](#). Considering that the suit herein is wholly challenging the decision of the Minister to allocate the 7th Defendant's clan 2/3 of the suit property and in view of the provisions of section 29(1) (b) of the [Land Adjudication Act](#) which provides that the decision of the Minister shall be final, the Plaintiff cannot appeal against the said decision- in the manner he has done. I say so because the mechanism to resolve disputes within an adjudication area have been set out in the Act. Consequently, the court can only interfere with the decision of the bodies established under the Act by way of Judicial Review proceedings or where a new cause of action is introduced after the proceedings of the Minister have closed. Then, and only then can the court interfere by way of an ordinary suit or judicial review proceedings. As was stated by the Court of Appeal in the Nicholas Njeru case (supra) during the various proceedings, the issue in the current "appeal" were thrashed to the pulp and the issues as to which clan owned the suit property was determined in the year 2012. This court cannot re-open that issue as claimed by the Plaintiff by way of ordinary suit without disclosing the new cause of action that has arisen.

16. A decision of the Minister cannot be challenged on merit. However, if the decision does not meet the Constitutional test of legality, reasonableness and procedural fairness, the same may be challenged in this court by way of Judicial Review. As the appellant in this appeal is challenging the merits of the Minister's decision, it is my finding that this court lacks jurisdiction to hear and determine this appeal, because the Minister's decision is final; by dint of section 29 of the [Land Adjudication Act](#).
17. In the application dated 3rd June 2021, the Respondent sought for orders of eviction against the Appellant on grounds that she is the registered proprietor of the suit land and that the appellant is engaged in wanton destruction of the suit land. In my considered view, the prayer for eviction is a new cause of action which cannot be raised at this level in an incompetent appeal filed by the Appellant herein. As observed in the case of *Dume Deri Mumbo & 19 Others v Cabinet Secretary of Lands, Housing & Urban Development & 6 Others* (supra), a new cause of action arising pursuant to the Minister's decision, may be pursued by an ordinary suit. To my understanding, if the Minister's decision has created a right for the Respondent entitling her to seek for eviction against the Appellant, then the Respondent may file a plaint and have the opportunity to avail witnesses to prove the claim for eviction. In any event, a new claim for eviction cannot competently be prosecuted on an appeal. It is my view, bringing a claim for eviction by way of Notice of Motion in this appeal, is not only an abuse of the court process, but also constitutes an incompetent claim. A claim for eviction is a substantive claim that can not be raised in an appeal. Therefore, the Respondent's prayer for eviction is incompetent.



18. Ultimately, I find and hold that the appeal herein is incompetent and the same is struck out. In addition, the Respondent's prayer for eviction is also incompetent and the same is struck out. Each party shall bear its own costs.

19. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 4TH DAY OF MAY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Patrick Kinyamasyo Munyi the Appellant in person

No appearance for the Respondent

Ms Josephine Misigo – Court Assistant

