



REPUBLIC OF KENYA



**Itharuni v Mwirichia & 3 others (Environment and Land Appeal
97 of 2019) [2022] KEELC 2660 (KLR) (6 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2660 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 97 OF 2019**

CK NZILI, J

JULY 6, 2022

BETWEEN

JOHN NABEA ITHARUNI APPELLANT

AND

DOMINIC MWIRICHIA 1ST RESPONDENT

JOSEPH MUNGIRIA M'NGARUTHI 2ND RESPONDENT

THE LAND ADJUDICATION OFFICER TIGANIA 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

A. Grounds of Appeal

1. The appeal arises out of a ruling by the trial court delivered on July 4, 2019 declining jurisdiction. The basis of the appeal is that: - the subject in issue was registered land hence the court mis interpreted sections 26 (3) and 29 of the *Land Adjudication Act*; the court arrived at the wrong decision yet it had jurisdiction over the matter and lastly that the trial court failed to appreciate the existence of a land adjudication officer's consent to sue.

B. Mandate of Appellate Court

2. This being a first appeal it is expected this court shall rehearse and or reappraise itself on the lower court file, come up with independent findings and conclusions on both facts and law. See *Peter vs Sunday Post Ltd* (1958) EA 424.



C. Pleadings

3. By a plaint dated October 7, 2014 the appellant at the lower court sued the respondents as the registered owner of LR no Athinga/Athanja 2637 measuring 2.20 acres on the basis that the 1st respondent had filed an objection no 253 and the 3rd respondent purported to award him one acre out of it for reasons that the appellant was occupying the 1st respondents parcel of land. He pleaded as a result that he had lost one acre of his land. He prayed that the 1st respondent be ordered to transfer the one acre of land to his LR No Athinga/Athanja/93.3. He attached proceedings of the objection no 253, confirmation letter on ownership, a letter from the District Officer, and a consent letter to sue.
4. Alongside the plaint the appellant filed a notice of motion dated October 7, 2014 seeking for temporary orders of injunction. The respondents entered appearance and filed a replying affidavit sworn on November 24, 2014 stating he was the registered owner of LR no 9303 measuring 2.77 acres which was distinct from LR no 2637 Athinga/Athanja belonging to the appellant. He sought for the referral of the dispute to Njuri-Ncheke elders for arbitration since they were close relatives.
5. The trial court in a ruling dated March 26, 2015 granted a temporary injunction so as to preserve the suit property until the matter was heard and determined.
6. There is no indication if the respondents filed a defence after the ruling.
7. Be that as it may when the matter came up for hearing on May 23, 2019 the trial court directed the parties to address it on jurisdiction by way of written submissions.
8. The appellant filed written submissions dated May 25, 2019 taking the view that section 26 and 29 of the Land Adjudication Act did not oust the jurisdiction of the court to hear a matter as long as there was a consent to institute the suit from a land adjudication officer. Reliance was placed on Justus Ntuti vs Mwirichia Kaumbuthu, Meru HCC Civil suit no 50 of 2000.
9. The appellant was claiming his one acre of Parcel No 2633 was taken away and given to the 1st respondent as Parcel No 9303 on 7.7.08. He claimed there was collusion among the respondent sin having such changes effected.
10. He attached letter dated October 15, 2014 in which the Land Adjudication Officer confirmed the adjudication section was at the final stages of the Land Adjudication Act.
11. The trial court had already issued a ruling granting some interim orders pending the hearing and determination of the suit. Pleadings had also not closed. The 2nd, 3rd and 4th respondents were yet to put in a defence more so given the issues of collusion had been pleaded against htem.
12. None of the respondents had raised a preliminary objection on the issue of jurisdiction. Whereas the court has powers to *suo-moto* seek parties to address it on jurisdiction, there is no evidence that the respondents were issued with the notice to that effect and on whether there input on the issue of jurisdiction was factored in the ruling.
13. The facts at the time the court determined the issue of jurisdiction were yet to be settled given the respondents had not filed a defence. See Oraro vs Mbaja (2005) eKLR. In my view the facts were contested and hence the issue of whether or not the court had jurisdiction was not a pure point of law. The court needed to ascertain the facts from the pleadings before determining whether or not it had jurisdiction.
14. In view of the above reasons, I find the trial court erred in law and in fact in declining jurisdiction. The appeal is allowed with costs to the appellant.



**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
THIS 6TH DAY OF JULY, 2022**

In presence of:

C/A: Kananu

No appearance

HON. C.K. NZILI

ELC JUDGE

